

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

UTILITY WORKERS UNION OF AMERICA :  
LOCAL 416 :  
 :  
v. : Case No. PERA-C-12-256-W  
 :  
 :  
ROBINSON TOWNSHIP MUNICIPAL AUTHORITY :

**AMENDED PROPOSED DECISION AND ORDER<sup>1</sup>**

On August 15, 2012, the Utility Workers Union of America, Local 416 (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Robinson Township Municipal Authority (Authority or Respondent) alleging that the Authority violated sections 1201(a)(5) of the Public Employe Relations Act (PERA) when it unilaterally increased the shift differential for operators.

On August 30, 2012, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and February 20, 2013 in Pittsburgh was assigned as the time and place of hearing if necessary.

The conciliation process did not resolve the dispute and a hearing was necessary. At the hearing, the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. Robinson Township Municipal Authority is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act. (N.T. 6-7)
2. The Utility Workers Union of America, Local 416 is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 6-7)
3. The Authority has recognized the Union as the exclusive representative of a unit of "all hourly employees excluding managers, assistants to managers, supervisors, guards and confidential employees as defined by Pennsylvania Act 195." (N.T. 38, Collective Bargaining Agreement, page 2)
4. The Authority operates a water treatment plant and three sewage treatment plants. The Authority employs 25 persons, 22 of whom are in the bargaining unit. (N.T. 18)
5. The parties' collective bargaining agreement runs from July 1, 2009 to June 30, 2014. (N.T. 4, 38, 39)
6. In early 2012, the Authority's Executive Director, Anthony Lenze, found that the Authority was having difficulty hiring replacements for operators who had recently retired. Lenze believed that if the Authority could increase the shift

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<sup>1</sup> I am issuing this because in the Proposed Decision and Order, I incorrectly included paragraph No. 2 in the Conclusion section from another PDO.

differential for evening and night shifts then the Authority would be able to hire replacements more easily. (N.T. 18-24, 31-32)

7. In early May, 2012, Lenze and the Authority and John Witherel, President of the Union Local 416, met to discuss the Authority's proposal to increase the shift differential to \$4.00 per hour. (N.T. 8-9, 33)
8. On May 25, Witherel informed Lenze that the Union met on May 23, to vote on the Authority's proposed increase in the shift differential and that the members did not approve the proposal. (N.T. 8-9, 13, Union Exhibit 1)
9. On May 29, 2012 Lenze replied to Witherel, expressing his disappointment that the members rejected the proposal. Lenze informed Witherel that "as a result of this impasse, the employer would be unilaterally instituting the shift differential increase effective June 2, 2012." (N.T. 13, Union Exhibit 1)
10. The Authority implemented the shift differential proposal. (N.T. 9, 31)
11. The Authority did not file for assistance in negotiations with the Pennsylvania Bureau of Mediation. (N.T. 34)

#### DISCUSSION

The Union's charge of unfair practices alleges that the Authority violated its duty to bargain by unilaterally increasing the shift differential for operators in the middle of a contract term.

The facts are not in dispute. In the third year of a five year collective bargaining agreement, the Authority approached the Union to obtain its approval to increase the shift differential for operators. The Authority was facing difficulties filling operator positions on evening and night shifts and its management believed that an increase in the wages for those shifts would help. The Authority and the Union then engaged in one negotiating session to discuss the Authority's proposal. The Union then took the proposal its members, who rejected it. Following that, the Authority unilaterally implemented an increase in the shift differential to \$4.00 per hour. The Union filed the present charge.

A public employer is obliged to maintain the status quo of a collective bargaining agreement's terms and conditions throughout the duration of that term unless the employer obtains the employee representative's agreement to a change. **Snyder County Prison Board v PLRB**, 912 A.2d 356 (Pa. Cmwlth. 2006). A public employer which changes the status quo without exhausting PERA's impasse resolution procedures violates its duty to bargain under Section 1201(a)(5). **Id.** In the present case, the Authority did not obtain the Union's agreement to an increase in the shift differential. The Authority did not exhaust PERA's impasse resolution procedures, engaging in only one negotiation meeting. The Authority's increase in the shift differential was a unilateral change that violated the Authority's duty to bargain and constitutes an unfair practice under Section 1201(a)(5) of PERA.

#### CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. Robinson Township Municipal Authority is a public employer under section 301(1) of the PERA.
2. The Utility Workers Union of America, Local 416 is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.

4. The Authority has committed unfair practices under sections 1201(a)(5) of the PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Authority shall

1. Cease and desist from refusing to bargain collectively in good faith with an employe representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
2. Take the following affirmative action:
  - (a) Rescind the June 2, 2012 order of the shift differential;
  - (b) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and
  - (c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eleventh day of March, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner