COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TIOGA COUNTY COURT EMPLOYEES ASSOCIATION	:	
v.	:	CASE NO. PERA-C-15-1-E
TIOGA COUNTY	:	

PROPOSED DECISION AND ORDER

On January 2, 2015, the Tioga County Court Employees Association (Union or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the County of Tioga (County) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA), by refusing to strike names from a Board issued panel of interest arbitrators. On January 23, 2015, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on February 17, 2015, in Harrisburg. The hearing was continued to and held on April 24, 2015. During the hearing, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. On July 29, 2015, the Union filed its post-hearing brief. On August 27, 2015, the County filed its post-hearing brief.

The examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)

3. The Tioga County Court Employees Association represents both the professional and nonprofessional court-appointed employes in the County. (N.T. 5-6)

4. The parties' collective bargaining agreements for professional and nonprofessional court-appointed employes expired on December 31, 2014. (Association Exhibit 1)

5. On May 8, 2014, the Union delivered its bargaining proposals to the County. After submitting the proposals, the parties did not discuss anything until August 6, 2014. (N.T. 8-9, 17; Association Exhibit 2)

6. On June 2, 2014, the Union's attorney filed with the Bureau of Mediation a request for the appointment of a mediator for both units. (N.T. 9; Association Exhibit 3)

7. The Bureau of Mediation acknowledged receipt of the Union's request, by letter dated June 5, 2014, and appointed Daniel O'Rourke as the mediator. (N.T. 10; Association Exhibit 4)

8. The County's Budget Submission Date is December 31st. (N.T. 11)

9. On July 29, 2014, via email, Casey Zuchowski, the Human Resources Director, asked the Union to initiate bargaining because the County had not heard from the Union. The Union did not respond to the email. (N.T. 19, 23-23, 50)

10. Ms. Zuchowsky informed the County's attorney that a mediation was scheduled for August 6, 2014. (N.T. 23-24)

11. On August 6, 2014, the Union and the County met but without the state mediator. Mr. O'Rourke was ill and could not attend, and no agreement was reached that

day. The County's attorney informed the Union's attorney of his position that the statutory requirement for mediation to begin is 150 days prior to budget submission, which was August 3, 2014, and that August 6, 2014 was too late. (N.T. 11-12, 24-26)

12. The two attorneys agreed that August 6, 2014 would count as a mediation day. The County, however, objected to the August 6, 2014 date as a timely initiation of mediation under PERA. The parties agreed that they disputed the timeliness of the commencement of mediation. (N.T. 27-30; County Exhibit 2)

13. Thereafter, the parties met with Mediator O'Rourke on August 28, 2014, but no agreement was reached. (N.T. 12-13)

14. Also on August 28, 2014, the Union filed with the Board a request for a panel of neutral interest arbitrators pursuant to PERA, for both units. (N.T. 13; Union Exhibit 5)

15. On September 16, 2014, the Board issued a panel of neutral interest arbitrators. (N.T. 14; Association Exhibit 6)

16. The County, to date, has not struck any of the arbitrators from the list. By letter dated December 10, 2014, the Union's attorney requested that the County strike names from the list of arbitrators. (N.T. 15-16; Association Exhibit 7)

DISCUSSION

The Union claims that the County engaged in unfair practices by refusing to strike arbitrators and proceed to interest arbitration. The County, however, contends that it has no obligation to proceed to interest arbitration for 2015 because the Union did not comply with the statutory requirements for mediation and arbitration under Sections 801 and 802 of PERA.

The Union maintains that Section 801 of PERA merely requires that the parties call in the service of the Bureau of Mediation 150 days prior to the budget submission date, which is August 3, 2014 in this case. As such, the Union called in the services of Mediation on June 2, 2014, well in advance of the 150-day requirement. Moreover, the Union argues, it did not have an obligation to demand interest arbitration by August 23, 2014 (130 days prior to the County's budget submission date), as argued by the County, because Section 802 does not apply to Section 805 employes. Section 805, argues the Union, expressly requires representatives of employes prohibited from striking to comply with Section 801 only. There is no mention of Section 802 in Section 805. The Union argues that if the General Assembly intended to require 805 employes to comply with 802, then it would have been expressly required in Section 805, as was done with Section 801.

Moreover, contends the Union, the plain language of Section 802 does not require that the Union demand arbitration 20 days after mediation has actually commenced. Section 802, the Union contends, states that it is Mediation's, and not the Union's, responsibility to initiate interest arbitration under Section 802. Also, during the hearing, a Union witness testified that the Bureau of Mediation is short staffed and overly worked such that the appointed mediator was unable to meet any sooner than August 6, 2014.[1] The implication being that complying with the statutory timetables was not entirely within the Union's control, and the Union should not be denied its statutory right to arbitrate when compliance with the timetables were beyond its control.

It is undisputed that the bargaining timetables and impasse resolution procedures outlined in Article VIII of PERA are mandatory. **City of Philadelphia v. PLRB**, 531 Pa. 489, 614 A.2d 213 (1992). In **Peters Township School District v. Peters Township Federation of Teachers**, 501 A.2d 327 (Pa. Cmwlth. 1985), the Commonwealth Court held that

[1] There is a conflict in the testimony on this point, which I am unable to resolve. However, as will be discussed *infra*, it is inconsequential.

under Section 802 of PERA, the language: "mediation has commenced" means that some mediation has actually occurred "by reason of the parties getting together with a mediator in an actual mediation session." **Id.** at 330. The Court also held that the twenty-day requirement under Section 802 "refers to the expiration of a period of twenty calendar days; the statute does not speak in terms of pursuing twenty days *of* mediation." **Id.** (emphasis original). The **Peters Township** Court relied on **Port Authority of Allegheny County v. Division 85, Amalgamated Transit Union**, 383 A.2d 954 (Pa. Cmwlth. 1978) and concluded that the first actual mediation session starts the clock running for the twenty-day period for mediation. **Peters Township School District** requires that at least one actual mediation session, and the lapse of twenty calendar days after that first session, occur by the 130th day before the employer's budget submission date. Thus, the first actual mediation session must occur 150 days prior to the employer's budget submission date.

Peters Township School District was a school district case and did not involve 805 arbitration employes. However, the Board has consistently held that Section 802 applies to interest arbitration employes covered by Section 805. In **Teamsters Local 429 v. Lebanon County**, 29 PPER ¶ 29108 (Final Order, 1998), the Board stated the following:

> Section 802 mandates that following twenty days of mediation and in no event later than 130 days prior to budget submission, the bureau of mediation shall notify the Board of the fact that the dispute remains unresolved. From that point the impasse resolution procedures under Article VIII mandate ***one of two paths depending on whether the employes possess the statutory right to strike under Article X***. Section 802 provides that with regard to employes who possess the right to strike, the Board may in its discretion appoint a fact finder at that time. However, with regard to court employes, prison guards and mental hospital guards, Section 805 provides that upon notice by the bureau of mediation of the continued unresolved impasse, the impasse "shall be submitted" to a panel of arbitrators whose decision shall be final and binding . . . .

Lebanon County, 29 PPER at 258 (citations omitted) (emphasis added).

In addressing the same argument as made by the Union here, the **Lebanon County** Board more poignantly opined as follows:

> It should be noted that the Union argues that the mandatory provisions of PERA should be limited to fact-finding under Section 802 and not apply to interest arbitration under Section 805 of PERA. The Union concedes that the fact-finding provisions are mandatory in the aftermath of the Supreme Court's decision in **City of Philadelphia**, **supra**, but offers a construction of Article VIII which places no impediment to the submission of an impasse to arbitration which the Union contends is triggered only by the parties' declaration of impasse at any time less than 130 days prior to budget submission. Our review of the provisions of Article VIII and the case law leads us to precisely the opposite conclusion. We believe that the arbitration process in Section 805 applicable to court employee, prison and mental hospital guards provides even more compelling reason for the timely completion of the arbitration process. . . . Due to the generally binding nature of an arbitration award as opposed to an advisory fact-finding report, even greater reason exists for the timely completion of the arbitration mechanism under Section 805 to permit the public employer to account for the obligation set forth in an arbitration award in the budgeting process.

Lebanon County, 29 PPER at 259.

Earlier, in **Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia**, 27 PPER ¶ 27249 (Final Order, 1996), the Board opined in the very same manner as follows:

> Moreover, we disagree with the city's argument that Section 802 of PERA does not apply to essential personnel who have the right to interest arbitration

> under Section 805. As we held in **City of Philadelphia, supra**, Section 802 does apply to such employes and requires that any request for interest arbitration be made at least 130 days before budget submission. Section 802 also indicates that 20 days of mediation is sufficient for a finding that mediation has been exhausted. To accept the City's argument that there is no statutory time limit for mediation or arbitration for essential personnel would mean that the bargaining process for such employes would continue beyond the point where non-essential personnel may strike. This argument is not consistent with the Supreme Court's decision in **Office of Administration, supra**, where the Court held that the public interest requires that bargaining impasses for essential personnel be resolved promptly.

City of Philadelphia, 27 PPER at 568.

Even Earlier, in **AFSCME, Local No. 159 v. City of Philadelphia**, 26 PPER ¶ 26046 (Final Order, 1995), the Board opined in the same manner and stated that "under the mandatory PERA timetable arbitration is to be involved one hundred thirty (130) days prior to budget submission." **City of Philadelphia**, 26 PPER at 108.

Accordingly, the Board has consistently and repeatedly held that 805 employes must comply with the mandatory requirements of 802. As such, the parties must actually begin mediation 150 days prior to the budget submission date of the employer so that the 20-day mediation requirement can be fulfilled by 130 days prior to the budget submission date, at which time 805 employes must demand interest arbitration, if bargaining matters are not yet resolved. Although the Union here argues that the **City of Philadelphia** case, at 26 PPER ¶ 26046, is distinguishable because it involves grandfathered Philadelphia corrections officers represented by AFSCME who are governed by a City Ordinance preserved by PERA, there is no distinguishing the categorical language the Board has used in multiple cases involving different employes and employers that the mandatory timelines of 802 apply to 805 personnel.

The Board has recognized that the timelines of 801 and 802 may be suspended where an employer intentionally refuses to participate in mediation, **City of Philadelphia**, 27 PPER ¶ 27249 at 568 (stating that "although mediation is mandatory, if one party refuses to participate in that process, as here, it may not rely on its own improper conduct to further delay resolution of the bargaining impasse). However, the record shows that the County made itself available for bargaining and mediation and indeed reached out to the Union to commence bargaining after not hearing from the Union after it delivered its initial proposal. To the extent that the Bureau of Mediation may allegedly be overworked and understaffed, making it difficult for mediators to conduct mediations within the statutory timelines, the Court in **Peters Township** rejected those conditions as operating to suspend the mandatory timelines in 801 and 802. **Peters Township School District**, 501 A.2d at 330.

In this case, 150 days prior to the County's December 31, 2014 budget submission date was August 3, 2014. Also, 130 days prior to that budget submission date was August 23, 2014. The parties agreed that, even though the appointed mediator did not attend due to illness, the first actual mediation session was held on August 6, 2014, three days after the statutory requirement to commence mediation. Also, the Union demanded arbitration on August 28, 2014, which is five days after the statutory requirement to do so. Because the Union did not comply with the mandatory mediation and arbitration requirements under Sections 801 and 802, as required by **Lebanon County, supra**, and both **City of Philadelphia** cases, **supra**, I am constrained to conclude that the County did not have a duty to proceed to interest arbitration for 2015. Therefore, the County did not engage in unfair practices by refusing to strike a name from the panel of interest arbitrators supplied by the Board.

CONCLUSIONS

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

1. The County is a public employer under PERA.

2. The Union is an employe organization under PERA.

3. The Board has jurisdiction over the parties hereto.

4. The County has **not** committed unfair practices within the meaning of Section 1201(a)(1) or (5).

ORDER

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

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded.

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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirtieth day of September, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner