

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

SCHUYLKILL COUNTY COURT :  
RELATED EMPLOYEES UNION :  
v. : CASE NO. PERA-C-16-342-E  
SCHUYLKILL COUNTY :

**PROPOSED DECISION AND ORDER**

On November 21, 2016, the Schuylkill County Court Related Union (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the County of Schuylkill (County) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act). The Union specifically alleged that, by letter dated October 28, 2016, the County's Solicitor unlawfully refused to arbitrate two grievances challenging the termination of two employes by the County Clerk of Courts, Maria Casey, informed the Union that Ms. Casey was asserting her rights under Section 1620 of the County Code and, as such, the County was further refusing to strike names from the list of arbitrators issued by the Bureau of Mediation.

On December 7, 2016, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on Friday, February 24, 2017, in Harrisburg. On January 20, 2017, the County filed an answer. On February 23, 2017, I cancelled the hearing based on the representation that the parties had finalized a joint stipulation of facts obviating the need for a hearing. On February 24, 2017, the Board received the parties' Joint Stipulation of Facts with attached Exhibits A through D. On April 13, 2017, the Union filed its post-hearing brief. The County filed its post-hearing brief on May 12, 2017.

The examiner, based upon the Joint Stipulations of Fact (SOF) and all matters of record, makes the following:

**FINDINGS OF FACT**

1. The Union is the exclusive recognized bargaining agent for the unit consisting of court-related, professional and non-professional, employees employed by the County pursuant to the Public Employe Relations Act (Act). (SOF 1)
2. The County is a public employer of the Union's members within the meaning of the Act. (SOF 3)
3. The Union and the County are parties to a Collective Bargaining Agreement (CBA), effective January 11, 2011 through December 31, 2015. [A true and correct copy of the CBA is attached to the Stipulations of Fact, made part thereof, as Exhibit "A."] (SOF 3)
4. The parties are engaged in collective bargaining negotiations and are proceeding to interest arbitration on a new CBA. (SOF 4)
5. Article XXXIV of the CBA states, in part, as follows:  
  
This Agreement shall be effective January 1, 2011 and shall remain in effect until December 31, 2015. In the event that a contract settlement is not reached for any new contract

prior to January 1, 2016 the terms and conditions of this contract shall remain in full force and effect until such time as a new Agreement and/or arbitration is reached.

(SOF 5)

6. Article XV of the CBA (Discharge, Demotion, Suspension, Discipline) states, in part:

The Employer shall not demote, suspend, discharge, or take any disciplinary action against any employee without just cause.

(SOF 6)

7. Article XVI of the CBA (Grievance Procedure) states, in part, that any dispute relating to the discipline of any of the Union's employees shall be settled by a step grievance procedure that concludes with arbitration before an arbitrator selected from a list obtained from the Pennsylvania Bureau of Mediation. (SOF 7)

8. The CBA does not place any limitation on the Union or a bargaining unit member's ability to challenge disciplinary action based upon a Row Officer's alleged rights under Section 1620 of the County Code, 16 P.S. §1620. The CBA makes no reference at all to Section 1620 of the County Code, 16 P.S. §1620. (SOF 8)

9. Maria Casey (Casey) was duly elected as Clerk of Courts for Schuylkill County effective January 4, 2016 and is considered a joint employer with the County within the meaning of the Act. Upon election and assumption of office, Casey notified the County and Union that she objected to the continuation of any provision of the CBA including Articles II, XV, XVI and XVII based on Section 1620 of the County Code. [A true and correct copy of Casey's January 5, 2016 letter is attached to the Stipulations of Fact as Exhibit "B."] (SOF 9)

10. On or about January 8, 2016, Karen Rogers (Rogers), a bargaining unit member, was terminated by Casey. (SOF 10)

11. On or about January 11, 2016, the Union filed a grievance challenging the termination of Rogers. (SOF 11)

12. On June 2, 2016 Casey advised the County Solicitor via email that she would be asserting her 1620 rights at any arbitration or interest proceedings. [A true and correct copy of Casey's June 2, 2016 email is attached and marked as Exhibit "C."] (SOF 12)

13. On or about July 27, 2016, Michael Gavaletz (Gavaletz), a bargaining unit member, was terminated by Casey. (SOF 134)

14. On or about July 29, 2016, the Union filed a grievance challenging the termination of Gavaletz. (SOF 14)

15. The parties processed the grievances in accordance with the grievance procedure but could not resolve the grievances. Consequently, in accordance with Step III of the grievance procedure, the Union notified the County of its intent to proceed to arbitration. (SOF 15)

16. Casey directed the County to refuse to approve or engage in any arbitration of the grievances involving the discharge of Rogers and Gavaletz,

based on the exercise of her rights as a Row Officer under Section 1620 of the County Code asserting that: (1) the CBA and the grievance and arbitration provisions of the CBA pursuant to which the grievances were submitted to arbitration infringe upon her right to hire, discharge, and supervise the employees of her office; and (2) as a Row Officer, she is not bound or subject to those grievance provisions. (SOF 16)

17. The County's Solicitor, Alvin Marshall, Esq. (Marshall), informed the Union's attorney by letter dated October 28, 2016, that the County was refusing to select an arbitrator based on an objection raised by Casey that the CBA was interfering with her 1620 Rights. [A true and correct copy of Marshall's October 28, 2016 letter to the Union's attorney is attached to the Stipulations of Fact as Exhibit "D."] (SOF 17)

18. Marshall was appointed by the County as its chief negotiator for the CBA. (SOF 18)

19. Prior to execution of the CBA on October 7, 2013, and up to the time Casey directed the County not select an arbitrator, Marshall did not do any of the following:

a. Consult with or seek input from the elected row officers affected by the CBA, specifically the then duly elected Clerk of Courts for the County, Stephen Lukach (Lukach);

b. Make any attempt to obtain Lukach's verbal or written consent, acquiescence, acknowledgment, approval, or stipulation to the terms and conditions of the CBA including those terms and conditions related to Lukach's 1620 Rights; and

c. Receive from Lukach or any other row officer affected by the CBA their verbal or written consent, acquiescence, acknowledgment, approval or stipulation to the terms and conditions of the CBA including those terms and conditions related to Lukach's 1620 Rights.

(SOF 19)

20. Prior to Casey directing the County to refuse to approve or engage in any arbitration of the grievances involving the discharge of Rogers and Gavaletz, Casey, Lukach or any other row officer affected by the CBA did not appeal, seek review and/or initiate any legal challenge to the CBA asserting a challenge based on Section 1620 or any other bases. (SOF 20)

#### DISCUSSION

The County cites **Troutman v. AFSCME**, 87 A.3d 954 (Pa. Cmwlth. 2014) and argues that the only way that the just-cause and grievance provisions of the parties' CBA are enforceable are if the Clerk of Courts tacitly or expressly consented to those provisions. The County further emphasizes that the record shows that Ms. Casey did not tacitly or expressly agree to those contractual provisions. The County explains that its Solicitor did not, at any time, consult with Ms. Casey's predecessor and, as soon as Ms. Casey became the Clerk of Courts, she immediately notified the Commissioners that she was invoking her Section 1620 rights and that she objected to Articles II, XV, XVI and XVII.

However, with these arguments, the County is merely advancing its case that the grievances are not arbitrable. The County is making a case for why its refusal

to select an arbitrator was not unlawful because the just-cause and grievance provisions are not enforceable and consequently the grievances are not arbitrable. Contrary to the County's position here, the Board has long and consistently held that the determination of arbitrability of grievances in the first instance is within the jurisdiction of the arbitrator and that employers unlawfully refuse to bargain in good faith when they refuse to arbitrate and argue arbitrability to the Board. **Abington Heights Education Association v. Abington Heights School District**, 48 PPER 24 (Proposed Decision and Order, 2016); **Palmerton Area Education Association v. Palmerton Area School District**, 41 PPER 153 (Proposed Decision and Order, 2010). The Board has held that an employer is without the power or authority to unilaterally or subjectively determine which grievances are arbitrable because it would empower the employer to simply refuse to submit grievances to arbitration. **Abington Heights, supra; Palmerton, supra.**<sup>1</sup>

In this case, there is no dispute that the County has refused to arbitrate the two grievances. Indeed, the County's defense is predicated upon that concession. The County, however, offers legal argument to this Board justifying its refusal and explaining that, under Section 1620, the just-cause provision and the grievance procedures are not binding on the Clerk of Courts. In essence, the County is claiming that the grievances are not arbitrable because an arbitrator is arguably without the authority to apply the grievance procedures and the just-cause provision to the Clerk of Courts where, under **Troutman, supra**, she has not consented, either tacitly or expressly, to those provisions and where she expressly objected to those provisions upon assuming office. The arbitrability of the grievances, however, must be submitted to and determined by an arbitrator, not this Board.

Accordingly, the District engaged in unfair practices in violation of Section 1201(a) (1) and (5) of PERA by unilaterally determining arbitrability and by refusing to submit the question of arbitrability of the grievances to an arbitrator.

#### 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.
2. The Union is an employe organization.
3. The Board has jurisdiction over the parties hereto.
4. The County has committed unfair practices in violation of Section 1201(a) (1) and (5) of PERA.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

#### HEREBY ORDERS AND DIRECTS

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<sup>1</sup> In **Palmerton**, this examiner included a string of citations emphasizing the Board's long and consistent holdings that "ARBITRABILITY IS FOR THE ARBITRATOR TO DECIDE!" **Palmerton**, 41 PPER at 469. The Board has emphasized that arbitrability must be submitted to the arbitrator even where the grievances are frivolous, the Act seemingly prohibits relief or the contract is silent on the issue. **Id.**

that the County shall

1. Cease and desist from interfering, restraining and coercing employes in the exercise of the rights guaranteed in Article IV of PERA;

2. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in an appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

3. Cease and desist from refusing to strike names from the list of arbitrators provided by the Pennsylvania Bureau of Mediation and from refusing to submit the question of arbitrability of the grievances to an arbitrator;

4. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the Act and make the Union whole for losses suffered as a result of the County's unfair practices:

(a) Immediately submit to the Union in writing an offer to arbitrate the grievances, specifically offering to submit the question of arbitrability of the Rogers and Gavaletz grievances to an arbitrator and to arbitrate thereafter if the arbitrator concludes that the grievances are arbitrable;

(b) Immediately strike names of arbitrators from the list of arbitrators provided by the Pennsylvania Bureau of Mediation until an arbitrator is selected to hear the grievance;

(c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

(d) 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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eighteenth (18<sup>th</sup>) day of May, 2017.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

SCHUYLKILL COUNTY COURT :  
RELATED EMPLOYEES UNION :  
v. : CASE NOS. PERA-C-16-342-E  
SCHUYLKILL COUNTY :

**AFFIDAVIT OF COMPLIANCE**

The County hereby certifies that it has ceased and desisted from its violation of Section 1201(a) (1) and(5) of the Public Employe Relations Act; that it has ceased and desisted from interfering, restraining and coercing employes in the exercise of the rights guaranteed in Article IV of PERA; that it has ceased and desisted from refusing to strike names from the list of arbitrators provided by the Pennsylvania Bureau of Mediation and from refusing to submit the Karen Rogers and Michael Gavaletz grievances to arbitration; that it has submitted to the Union in writing an offer to submit the question of arbitrability of the grievances to an arbitrator and to arbitrate thereafter if the arbitrator concludes that the grievances are arbitrable; that it has posted a copy of the proposed decision and order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public