

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AFSCME DC 47 LOCAL 2186 :  
 :  
 v. : Case No. PERA-C-18-310-E  
 :  
 CITY OF PHILADELPHIA, WATER :  
 DEPARTMENT :

**PROPOSED DECISION AND ORDER**

On December 3, 2018, the American Federation of State, County, and Municipal Employees District Council 47, Local 2186 (Local 2186 or Union) filed a charge of unfair practices, as amended on January 16, 2019, with the Pennsylvania Labor Relations Board (Board) against the City of Philadelphia Water Department (City or Employer), alleging that the City violated Section 1201(a)(9) of the Public Employee Relations Act (PERA or Act). Specifically, Local 2186 alleged that the City committed unfair practices by unilaterally changing the manner in which overtime and standby status were assigned and compensated, as well as eliminating standby pay.<sup>1</sup>

On January 10, 2019, the Secretary of the Board issued a Complaint and Notice of Hearing, as amended on February 13, 2019, directing a hearing on April 12, 2019, in Harrisburg, if necessary. The hearing ensued as scheduled on April 12, 2019, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The City filed a post-hearing brief on October 3, 2019. The Union filed a post-hearing brief on October 23, 2019.

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. The City is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7)
2. Local 2186 is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7)
3. Local 2186 is the certified representative for a meet and discuss unit of first-level supervisory professional and nonprofessional employes of the City and First Judicial District. (PERA-R-1063-E)
4. The City's Water Department Distribution Unit is overseen by a Distribution Superintendent, Anthony Falcone, to whom report three Assistant Superintendents, who are managerial personnel and not part of the meet and discuss unit. The Assistant Superintendents, in turn, oversee the Water Conveyance Supervisors, who are part of the meet and discuss unit. (Respondent Exhibits 4(a), 4(b))

---

<sup>1</sup> The parties stipulated in their post-hearing briefs that they have since resolved all issues contained in the specification of charges, aside from the lone remaining issue of whether the City failed to meet and discuss whether second level and above supervisors worked overtime in place of Local 2186 members.

5. The Water Conveyance Supervisors oversee Water Distribution Crew Chiefs, who are members of the rank and file bargaining unit represented by AFSCME District Council 33 and directly lead crews in the field performing street repair, maintenance, emergency, and other associated work. (N.T. 20-22, 115-116; Respondent Exhibits 4(a), 4(b))

6. Pamela Robinson has been the President of Local 2186 since October 31, 2016. Dennis Gibson is the Vice President and Business Agent of Local 2186, while Gary Dunlap is a Water Conveyance Supervisor and shop steward. (N.T. 13, 16, 23, 80-81)

7. In addition to their regular rate of pay, Water Conveyance Supervisors receive standby and overtime pay. Standby time is earned by the duty supervisor to respond to emergencies that arise and is compensated as cash at half the hourly rate or compensatory time. Overtime is typically paid at one-and-a-half times the employe's hourly rate or double time in some circumstances. (N.T. 59-62, 118; Joint Exhibit 1)

8. On May 1, 2018, Falcone issued a memorandum to the Water Conveyance Supervisors in the Distribution Unit, which provided in relevant part as follows:

On April 18, I began sending emails to the group with directives on OT budget curtailments;  
Cease weekday Standby for [Water Conveyance] Supervisors...

The Asst's [Superintendents] will work OT when necessary but post [Compensatory Time Earned]...

(N.T. 145-146; Union Exhibit 1)

9. Robinson testified that she had a problem with the memorandum because the City was removing the Water Conveyance Supervisors from jobs whenever the rank and file crews worked and there was overtime work available, in order to curtail the overtime budget. She testified that she heard this from Local 2186 members, as well as Dennis Gibson, the Union Vice President. (N.T. 19-25)

#### DISCUSSION

The Union alleges that the City violated Section 1201(a)(9) of PERA<sup>2</sup> by unilaterally refusing to meet and discuss before it permitted managerial personnel, such as the Superintendent and Assistant Superintendents, to work overtime in place of the Water Conveyance Supervisors, who typically oversee the rank and file bargaining unit members performing street repair, maintenance, emergency, and other associated work in the field.

Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements that were made more than four months prior to the filing of the charge." 43 P.S. § 1101.1505. A charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair

---

<sup>2</sup> Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (9) Refusing to comply with the requirements of 'meet and discuss...'" 43 P.S. § 1101.1201.

practice was committed. Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER 24 (Final Order, 2004). The statute of limitations begins to run when the union receives notice of the employer action that is the subject of the unfair practice charge. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001). However, notice to employees is not considered notice to the union unless it is shown that the employees are the union's agents. Teamsters Local 77 v. Delaware County, 29 PPER ¶ 29087 (Final Order, 1998), aff'd sub nom., County of Delaware v. PLRB, 735 A.2d 131 (Pa. Cmwlth. 1999), appeal denied, 561 Pa. 679, 749 A.2d 473 (2000); AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Military Affairs, 22 PPER ¶ 22205 (Final Order, 1991).

In this case, the record shows that Local 2186 had notice of the unilateral change in terms and conditions of employment on May 1, 2018. On that date, Falcone unequivocally indicated to the Water Conveyance Supervisors in the Distribution Unit, which included Gary Dunlap, the shop steward, that overtime was being curtailed, weekday standby was ceasing, and that the managerial personnel, i.e., the Assistant Superintendents, would be working overtime when necessary. What is more, Robinson testified that she had a problem with the memorandum when it was issued because the City was removing the Water Conveyance Supervisors from jobs whenever the crews worked and there was overtime work available, in order to curtail the overtime budget. In fact, she testified that Local 2186 Vice President Dennis Gibson told her about it, along with the Local 2186 members. (N.T. 23). As such, the Union clearly had knowledge of the City's action at the time of Falcone's May 1, 2018 memorandum. However, the Union did not file the instant charge of unfair practices until December 3, 2018, which is well beyond the four-month limitations period contained in the Act.

Robinson testified that it was not until she performed her own investigation that she learned the Superintendent and Assistant Superintendents were earning overtime pay for performing the work instead of her Local 2186 members. (N.T. 24). However, the record shows that she did not even begin her own investigation of the alleged unfair practice until September 5, 2018 when she sent Falcone an email requesting time sheets for the Assistant Superintendents, who were allegedly involved. (Union Exhibit 3). As a result, the Union did not begin its own investigation until after the four-month limitations period had expired. While Falcone and the City cannot be commended for refusing to supply the requested information in a timely manner, this does not toll the limitations period set forth in Section 1505 of the Act. Indeed, the fact remains that the Union waited more than four months to investigate the charge when it had notice of the alleged unfair practices on May 1, 2018. It is well settled that the charging party has a duty to investigate upon receiving notice of an alleged removal of work. West Side Career and Technology Center Education Ass'n v. West Side Career and Technology Center, 46 PPER 102 (Proposed Decision and Order, 2015); Allentown Education Ass'n v. Allentown City School District, 49 PPER 59 (Proposed Decision and Order, 2018). Accordingly, the charge must be dismissed as untimely.

CONCLUSIONS

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

1. The City is a public employer within the meaning of Section 301(1) of PERA.
2. Local 2186 is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The charge is untimely under Section 1505 of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA the Examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint 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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 29<sup>th</sup> day of October, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

\_\_\_\_\_  
John Pozniak, Hearing Examiner