

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 773 :  
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 v. : CASE NO. PERA-C-18-274-E  
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 STROUD TOWNSHIP :

**PROPOSED DECISION AND ORDER**

On October 19, 2018, Teamsters Local Union No. 773 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Stroud Township (Township) violated Section 1201(a) (1) and (5) of the Public Employee Relations Act (PERA or Act). The Union specifically alleged that the Township unilaterally established a higher pay rate for an employe who the Township returned to his former position of Equipment Operator in its Road Department after serving as Acting Foreman at a higher rate of pay. The Union further alleged that the Township refused the Union's requests to bargain the pay rate for the employe and changed the status quo.

On December 24, 2018, the Secretary of the Board issued a complaint and notice of hearing, directing that a hearing be held on March 29, 2019, in Harrisburg. I granted the Complainant's continuance request and rescheduled the matter for May 29, 2019. By letter dated May 23, 2019, the attorney of record for the Township memorialized a telephone conversation with me confirming that he "decided to respectfully decline attending the hearing scheduled for May 29, 2019," and that the "Respondent understands that the hearing will proceed without the Respondent." (see also, N.T. 5-6). During the hearing on May 29, 2019, although both parties were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses, only the complainant appeared and presented testimonial and documentary evidence. There was no cross-examination. At the end of the hearing, the attorney of record for the Union indicated that he would not file a post-hearing brief. (N.T. 28).

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

**FINDINGS OF FACT**

1. The Township is a public employer within the meaning of Section 301(1) of PERA. (Union Exhibit 1 at 3-4)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (Union Exhibit 1 at 3-4)
3. The Union and the Township have been bargaining since the Board certified the Union as the exclusive collective bargaining representative of Township employes on February 24, 2017, at Case No. PERA-R-16-336-E.<sup>1</sup> The

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<sup>1</sup> The Board certified the bargaining unit as follows:

parties are in status quo, and they have not reached an initial collective bargaining agreement. (N.T. 12, 23)

4. Mark Pysher is the Acting Foreman for approximately ten employes in the Township Road Department. (N.T. 12-13)

5. Chris Clause is one of the newer employes in the Township Road Department. His title is Equipment Operator. As Equipment Operator, Mr. Clause was paid at a rate of \$19.50 per hour. (N.T. 12-13, 20-21, 27; Union Exhibit 4)

6. In September 2017, after the Board certified the bargaining unit in February 2017, Mr. Pysher took a medical leave of absence and the Township appointed Mr. Clause to the position of Acting Foremen at a rate of pay of \$22.50 per hour. Mr. Pysher was earning a little over \$26.00 per hour. (N.T. 13-14; Union Exhibit 2)

7. The Township did not bargain with the Union over Mr. Clause's appointment to Acting Foreman or his new pay rate of \$22.50/hour in that position. At the time of his appointment, Mr. Clause had worked for the Township for approximately one year. (N.T. 14-15)

8. Union Business Agent Brian Taylor made demands to bargain with the Township over Mr. Clause's appointment and his rate of pay. (N.T. 14-15)

9. On January 22, 2018, the Union filed a charge of unfair practices, at Case No. PERA-C-18-20-E, over the Township's appointment of Mr. Clause to the position of Acting Foreman and the unilateral increase in his rate of pay. (N.T. 15-17; Union Exhibits 2 & 3)

10. By letter dated September 17, 2018, the Union filed with the Secretary of the Board a requested to withdraw the charge at Case No. PERA-C-18-20-E because Mr. Pysher had returned to work and the Township reinstated him to his former position as Foreman at the same rate of pay he was earning before his leave of absence. The Township also returned Mr. Clause to his former position of Equipment Operator. The Secretary of the Board issued a Nisi Order of Withdrawal on October 1, 2018. (N.T. 15-17; Union Exhibits 2 & 3)

11. When the Township returned Mr. Clause to his former position of Equipment Operator, it continued to pay him the \$22.50 per hour rate of pay that he received as Acting Foreman. (N.T. 19-20)

12. On September 7, 2018, Mr. Taylor emailed the Township's attorney requesting that Mr. Clause be paid the hourly rate he earned before his appointment to Acting Foreman. Mr. Taylor further stated: "By not doing so, the Township has unilaterally changed the rate of pay and altered the status

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All full-time and regular part-time blue collar nonprofessional employes including but not limited to laborers, equipment operators, mechanics, crew leaders, parks superintendents, golf course mechanics and heavy equipment operators; and excluding management level employes, supervisors, first level supervisors, confidential employes and guards as defined in the Act.

quo." The September 7, 2018 email also makes a specific demand to return the pay rate earned by Mr. Clause to the rate of pay that he received before his appointment. (N.T. 20-21; Union Exhibit 4)

13. Mr. Clause had been employed at the Township for approximately one year at the time of his appointment to Acting Foreman. Mr. Taylor discussed on multiple occasions with the Township and its attorney the issue of promoting Mr. Clause with one year of experience over more experienced veteran employes of the Township. Some Township employes had over 15 years' experience with the Township. (N.T. 21, 25-26)

14. Mr. Taylor attempted on multiple occasions to discuss reducing Mr. Clause's rate of pay when he was returned to Equipment Operator. The Township refused to reduce his rate of pay and refused to bargain the matter. (N.T. 25-26)

15. The Union, in negotiations, has proposed both general wage increases and starting wage increases. When the Union proposed a \$20.00 per hour wage rate for Class A CDL drivers, the Township countered with \$18.00 per hour, but they pay Mr. Clause \$22.50 per hour.

#### DISCUSSION

The Union argues that the Township violated Section 1201(a)(1) and (5) of PERA by unilaterally altering the status quo and establishing a higher rate of pay for Mr. Clause who is a bargaining unit employe. In Shamokin Area Education Association v. Shamokin Area School District, 50 PPER 54 (Final Order, 2019), the Board stated as follows:

Section 701 of PERA requires public employers to bargain in good faith with the employes' exclusive bargaining representative "with respect to wages, hours and other terms and conditions of employment..." 43 P.S. § 1101.701 (emphasis added). Thus, an employer commits an unfair practice when it unilaterally changes a mandatory subject, such as wages, even where the change may benefit an individual employe. Warrior Run Education Association v. Warrior Run School District, 48 PPER 71 (Final Order, 2017); PLRB v. Jefferson-Morgan School District, 9 PPER ¶ 9056 (Nisi Decision and Order, 1978); PLRB v. Highland Sewer and Water Authority, 4 PPER 116 (Nisi Decision and Order, 1974); PLRB v. General Braddock Area School District, 4 PPER 86 (Nisi Decision and Order, 1974). As stated by the Commonwealth Court in Millcreek Township School District v. PLRB, 631 A.2d 734, 738 (Pa. Cmwlth. 1993), 537 Pa. 626, 641 A.2d 590 (1994), the rationale for considering the unilateral grant of benefits to be an unfair practice is that "the role of the collective bargaining agent as the sole representative of all employes would be undermined if the school district could unilaterally bargain to give individual employes greater benefits than those negotiated for employes who bargained collectively."

Shamokin Area School District, 50 PPER at 245. (emphasis original)

In this case, the Township unilaterally changed Mr. Clause's wages when they appointed him to the position of Acting Foreman, a bargaining unit position, and it refused to bargain with the Union over maintaining his increased rate of pay beyond that which he earned under the status quo. It is

beyond dispute or objection that the Township has an obligation to maintain the status quo regarding wages, hours and other terms and conditions of employment unless a negotiated agreement is reached with the Union. The Township undermined the role of the Union by giving greater wage benefits to a single employe. The best illustration of how the Township undermined the Union is that, at the same time it increased Mr. Clause's wages, the Township rejected wage increase proposals from the Union for other employes with many more years of experience working for the Township. Accordingly, the Township violated Section 1201(a) (1) and (5) by unilaterally increasing Mr. Clause's rate of pay without bargaining with the Union.

However, in returning Mr. Clause to his former rate of pay under the status quo of \$19.50 per hour, Mr. Clause will keep the excess wages earned from the start date of those increased wages until the end of the first pay period following the date of this order. AFSCME District Council 88 v. Warminster Township, 31 PPER ¶ 31156 (Final Order, 2000) (holding that "[t]he collective bargaining rights of public employes would become a nullity if employers were permitted to undermine the employes' exclusive bargaining representative through direct dealing and then unilaterally recoup its unlawful investment when found by that conduct to have violated its bargaining duty.")

#### CONCLUSIONS

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

1. The Township is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Township 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

that the Township shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act;
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative;

3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of PERA:

(a) Immediately return Mr. Clause's rate of pay to \$19.50 per hour and immediately cease and desist from paying him \$22.50 per hour;

(b) Immediately return to the status quo ante of applying the wages, hours and other terms and conditions of employment to Mr. Clause and other employees that existed prior to Mr. Clause's appointment to Acting Foreman.

(c) Permit Mr. Clause to keep the unlawfully increased wages received until the end of the first pay period following the date of this order;

(d) 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 employees and have the same remain so posted for a period of ten (10) consecutive days; and

(e) 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 third day of July 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 773

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CASE NO. PERA-C-18-274-E

**AFFIDAVIT OF COMPLIANCE**

Stroud Township hereby certifies that it has ceased and desisted from directly dealing with employes, and from unilaterally changing the status quo regarding mandatory subjects of bargaining and bargainable terms and conditions of employment in violation of Section 1201(a) (1) and (5) of the Public Employe Relations Act; that it has immediately returned to the status quo ante regarding wages, hours and other terms and conditions of employment for all employes; that it has returned Mr. Clause to a rate of pay of \$19.50 per hour; that it has posted a copy of the decision and order as directed therein; and that it has served a 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