

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SEIU LOCAL 668 PSSU :
v. :
YORK COUNTY AND YORK COUNTY COURT :
OF COMMON PLEAS :
CASE NO. PERA-C-19-168-E

PROPOSED DECISION AND ORDER

On July 26, 2019, the Service Employees International Union, Local 668 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that York County (County) and the York County Court of Common Please (Court) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act). The Union specifically alleged that, beginning in early January 2019, the Director of Probation Services unilaterally implemented changes to the safety policy governing Juvenile and Adult Probation Units which required probation officers to carry their firearms to and from work instead of storing them in the gun locker in their office, which has economic ramifications.

On August 29, 2019, the Secretary of the Board issued a complaint and notice of hearing, directing that a hearing be held on November 4, 2019, in Harrisburg. On September 12, 2019, the Administrative Office of Pennsylvania Courts filed a Motion to Dismiss and Memorandum of Law in support thereof on behalf on the Court. On September 17, 2019, the County filed a Motion to Dismiss and a Memorandum of Law in support thereof. On October 16, 2019, the Union filed a Brief in Opposition to the Motions to Dismiss. On October 18, 2019, I granted the Union's request to continue the hearing without objection from the Respondents. On November 5, 2019, I held a pre-hearing conference call with the parties' representatives.

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. (PERA-R-12601-C)

2. The Court is a public employer within the meaning of Section 301(1) of PERA. (PERA-R-12601-C)

3. The Union is an employe organization within the meaning of Section 301(3) of PERA. (PERA-R-12601-C)

4. In the specification of charges, the Union alleges, in relevant part, the following:

6. On or about November 27, 2018, April Billet-Barclay, Director of Probation Services, informed employees in the Juvenile and Adult Probation units of upcoming changes to its safety policy concerning when employees must carry firearms. These changes were set to be

implemented at the beginning of January 2019. (Please see Appendix A.)

7. The Employer's changes were not bargained with the Union, nor did the Employer notify the Union of any proposed changes.

8. On December 7, 2018, Ms. Billet-Barclay distributed an email with the subject "Safety Policy Updates" clarifying that staff

-will not have the option of "stor[ing their] firearm in the gun locker in [their] office all of the time."

-will be "required to carry [their] firearm to and from work";

-will not be compensated for their time carrying their firearms to and from work. (Please see Appendix B.)

9. By the Fair Labor Standards Act and Portal-to-Portal Act's definitions of On-Duty, Off Duty, and Hours Worked, as well as York County Policy EC-13.4's definition of "hours worked" (attached) and the Employer's own admission, these changes have clear economic ramifications- a mandatory subject of bargaining-for all employees covered by the memorandum of understanding with the Union. As such, the suggested changes cannot be implemented until the parties reach agreement.

10. On December 21, 2018, the Union, through Business Agent Erik Strobl, informed the Employer of its obligation under Act 195 to bargain economic issues. Nevertheless, the Employer refused to delay implementation. (Please see Appendix C.)

11. On January 30, 2019, the Union through Business Agent Erik Strobl, met with Kristy Bixler, the Executive Director of York County Human Resources, and Kim Rinker, the Deputy Director of York County Human Resources, to notify them of the issue. The County's position was that this policy change is an internal department matter and therefore out of Human Resource's purview.

12. At a Labor-Management meeting held on February 12, 2019 with the specific goal of addressing this issue, the Employer, through District Court Administrator Paul Crouse, again refused to cease implementation of these changes, asserting that bargaining takes place with the Executive Director of York County Human Resources.

13. In a follow-up conversation with Business Agent Erik Strobl on or about February 27, 2019, Kristy Bixler, the Executive Director of Human Resources, reiterated that she does not oversee policy changes in the Probation Unit, nor does she enforce policy implementation. She recommended speaking with the President Judge, as he oversees the court units.

14. On or about March 30, 2019, [t]he Union, through Michael Gross, the Juvenile Probation Unit's chief shop steward, contacted President Judge Joseph Adams, who said he was unwilling to discuss these matters, since the contract is between Human Resources and the county commissioners. He recommended speaking with Billa Jamison, York County Court's Human Resources Manager.

15. On April 4, 2019, the Union, again through the Juvenile Probation Unit's chief shop steward, contacted Billa Jamison, who replied that she would only hear concerns in his capacity "as an

individual employee" (i.e. not in his role as [U]nion steward). (Please see Appendix D.)

16. On or about April 10, 2019, the Union, again through the Juvenile Probation Unit's chief shop steward, contacted York County President Commissioner Susan Byrnes to seek redress (or, at the very least, clarification on the process for obtaining redress). Commissioner Byrnes met with the Union stewards and the Business Agent several times between April and June on this issue, eventually determining that the Union originally contacted the correct Employer representative, who on multiple occasions refused to delay or cease implementing changes to safety policies with economic ramifications despite a clear legal obligation to do so.

17. Further, the Employer's obfuscation of the bargaining process prevented a timely resolution of the problem, despite the Union's repeated best efforts.

18. In refusing to recognize the Union as the exclusive representative for collective bargaining purposes of York County's Probation and Parole and Domestic Relations units, and refusing to bargain changes to working conditions that have a clear financial impact, the Employer violated Article XII(a)-(1) and Article XII(a)(5) of the [Public] Employe Relations Act.

(Specification of Charges, 6-18)

5. The Complainant included the Firearms Policy for the York County Department of Probation Services which includes a revised date of January 1, 2018, but the Complainant notes that it should read January 1, 2019. (Appendix A attached to the Charge)

6. The Complainant highlighted the changes to the Policy on pages 5 and 6. The changes are included in the following language:

An officer must carry his/her department-approved firearm to and from an assigned office location. The firearm need not be concealed, regardless of attire. While in transit between the office and the officer's vehicle, the firearm must be secured in an approved holster either on the officer's belt or in an approved paddle holster. In certain limited circumstances and with supervisor approval, an officer may be exempted from carrying the firearm for the day due to special circumstances. This will be in special circumstances and will not be approved routinely. The officer's department-issued badge must be visibly displayed. When conducting field work and/or an arrest, the firearm must be secured in an approved holster on an officer's belt.

Firearms certified officers must carry their duty weapon to work daily.

. . .

Probation Officers working in tandem with other law enforcement agencies during special details (Operation Night Light, warrant sweeps, GVI, etc.) may render assistance to other law enforcement officers in order to ensure the safety of all officers/agents involved in the situation.

(Appendix A at 5 & 6)

7. Appendix B attached to the Charge is an email from April Billet-Barclay dated December 18, 2018 which answers questions about the new safety policy changes. Answer No. 1 states that "Staff are not compensated for transporting any equipment required in performance of their duties before or after work hours." Answer No. 5 provides: "The policy is to carry your firearm to and from work. As such, overnight storage [in the gun locker in the officer's office] will be rare. However, in the event of extenuating circumstances, approval to store your weapon overnight must be given by Jamie Forry or designee (firearms instructor).

8. Appendix C attached to the specification of charges is an email exchange between Union Business Agent Erik Strobl and April Billet-Barclay which shows that the Union had actual knowledge of the policy changes on December 21, 2018. On January 2, 2019, Ms. Billet-Barclay emailed Mr. Strobl informing him that "the court will not delay implementation of the revised safety policies." (Appendix C at 1)

9. On January 9, 2019, Mr. Strobl emailed Ms. Billet-Barclay in relevant part as follows: Implementing these changes to working conditions unilaterally, though, prior to notifying and bargaining with the union, constitutes an unfair labor practice under PA Act 195. If the court won't cease implementation until we reach agreement, the union will file charges with the labor relations board. (Appendix C at 2)

10. Also on January 9, 2019, Mr. Strobl wrote to Kristy Bixler, in relevant part, the following: "I need confirmation from them that they'll revert to the old policy until something is bargained.

(Attachment C at 4)

11. On November 5, 2019, the Hearing Examiner held a conference call with all parties' representatives during which all parties agreed that the amendments to the safety policy complained of in the specification of charges were implemented and governing behavior in early January 2019.

DISCUSSION

In determining whether the facts alleged in the charge could support a cause of action for an unfair practice charge as defined by PERA, the Board and its examiners assume that all the facts alleged in the specification of charges are true. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978); Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998). Accepting all the facts as alleged and pled by the Complainant in this case as true, I must conclude that the Charge was untimely filed and that the Board, therefore, lacks jurisdiction over the claims against the County and the Court.

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 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 specification of charges, the attached exhibits and the agreement of the parties during a conference call on November 5, 2019, establish that the Union had actual knowledge that the Probation Department implemented changes to the firearms policy and that such changes were actually governing the behavior of probation officers in early January 2019. The Union specifically alleged that, at a labor management meeting on February 12, 2019, Court Administrator Paul Crouse refused to cease the implementation of the policy changes complained of by the Union. By the Union's own claims, the policy was clearly governing behavior before February 12, 2019. On January 9, 2019, the Union emailed Ms. Billet-Barclay stating that, if the Court refuses to cease implementation until there is an agreement, the Union will file unfair practice charges. On the same day, the Union wrote to Kristy Bixler seeking confirmation that the employer will "revert to the old policy until something is bargained."

Clearly, the Union was well aware that the policy changes had been implemented affecting terms and conditions of employment prior to January 9, 2019 and, at the latest, February 12, 2019. The Charge was filed on July 26, 2019, which was over five months after the February date and six months after the January date, which is beyond the four-month limitations period under PERA. During the November 5, 2019 conference call and in the Specification of Charges, the Union emphasized that the County and Court representatives delayed and refused bargaining for some time after implementation. This alleged delay does not toll the statute of limitations where the clock on the limitations period began running when the policy was allegedly implemented unilaterally before and without any bargaining. The refusal to bargain charge relates to the lack of bargaining upon unilateral implementation and not afterwards. Therefore, the charge was untimely filed, and the Board lacks subject matter jurisdiction over the claims contained in the charge. Accordingly, the charge is hereby dismissed, and the complaint is rescinded.

Lacking jurisdiction over any of the claims against the County and the Court, the Board is also without jurisdiction to address the merits, arguments and claims in the motions to dismiss filed by the County and the Court because to do so would require taking jurisdiction over the claims and defenses presented by the parties. The Board has jurisdiction over the County and the Court, as public employers under PERA, and the Union, as an employe organization under PERA, as evidenced by and subject to the Board's bargaining unit certification at PERA-R-12601-C (see also, Section 604(3) of PERA, giving the Board jurisdiction over the courts of this Commonwealth and court employes). Consequently, the Board's unfair practice jurisdiction, by logical extension, also covers the parties. However, the Board lacks subject matter jurisdiction over the claims and defenses contained in the charge in this case and the motions respectively. The hearing currently rescheduled for February 10, 2020, is hereby cancelled.

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 Section 301(1) of PERA.
2. The Court is a public employer under Section 301(1) of PERA.
3. The Union is an employe organization under Section 301(3) of PERA.
4. The Board has jurisdiction over the parties hereto.
5. The charge was not timely filed 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 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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fifth day of November, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner