

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 764 :
 :
 v. : Case No. PERA-C-09-229-E
 :
 MILTON REGIONAL SEWER AUTHORITY :

FINAL ORDER

The Milton Regional Sewer Authority (Authority) filed timely exceptions and a supporting brief on June 11, 2010, with the Pennsylvania Labor Relations Board (Board) to a Proposed Decision and Order (PDO) issued on May 25, 2010. In the PDO, the Hearing Examiner found that the Authority violated Section 1201(a)(5) of the Public Employee Relations Act (PERA) by ceasing the practice of allowing employes to use the Authority dumpster.¹ The Authority filed exceptions challenging the Hearing Examiner's finding of an unfair practice with respect to the change in policy regarding employes' use of the Authority dumpster. Teamsters Local 764 (Teamsters) filed a brief in response to the exceptions on June 17, 2010. For purposes of the exceptions, the Hearing Examiner's Findings of Fact are summarized as follows.

The Authority employs 11 persons. Operators represented by the Teamsters work with raw sewage samples and caustic chemicals. Since at least 1977 the Authority allowed the employes to use the dumpster for their personal trash as long as it did not create extra costs. George Myers, the Authority Superintendent, sent a memorandum to employes on May 21, 2009, stating that no employe would be allowed to bring their personal trash to the Authority's dumpster for disposal. Mr. Myers testified that he was motivated to issue the May 21 memo because of his discovery of a large quantity of carpet in the dumpster. On investigation, he learned that an employe had brought the carpet from his home. Mr. Myers' memo was the first time the Authority told employes that they could not use the Authority dumpster for their personal trash, and prior to issuing the May 21 memo, the Authority did not contact the Teamsters to discuss the issue of employe use of the dumpster for personal trash disposal.

The Hearing Examiner found that the Authority's acquiescence in the employes' use of its dumpster for personal trash was a benefit to the employes that existed uninterrupted since 1977. Finding that employe disposal of personal trash in the dumpster was a binding past practice, the Hearing Examiner concluded that the Authority's unilateral rescission of that practice violated Section 1201(a)(5) of PERA.

The Authority argues on exceptions that only a mandatory subject of bargaining can create a binding past practice, and that the employes' use of the dumpster is not a mandatory subject of bargaining. In this regard, the Authority argues that because use of the dumpster for personal trash is not rationally related to employe working conditions, it cannot be a mandatory subject of bargaining, and thus there can be no binding practice.

Initially, we note that the rational relationship test relied upon by the Authority in its exceptions has only been applied in deciding the scope of bargaining for policemen and firemen under Act 111 of 1968. City of Philadelphia v. PLRB, 588 A.2d 67 (Pa. Cmwlth. 1991), appeal denied, 528 Pa. 632, 598 A.2d 285 (1991). Under PERA, the proper analysis is as set forth by the Pennsylvania Supreme Court in PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975). Under the State College balancing test, a matter is deemed negotiable if "the impact of the issue on the interest of the employe in wages, hours and terms and conditions of employment outweighs its probable effect on the [employer's] basic policy of the system as a whole." Id. at 268.

¹ The Hearing Examiner found that the Authority did not violate Section 1201 (a)(5) of PERA when it advised employes that they were not permitted to shower during work time. The Hearing Examiner also concluded that the Authority did not violate Section 1201(a)(3), or commit an independent violation of Section 1201(a)(1) of PERA.

Under the State College balancing test, the initial burden lies with the union to articulate some interest of the employees in the subject matter in dispute. Crawford County v. PLRB, 659 A.2d 1078 (Pa. Cmwlth. 1995). Here, the Hearing Examiner found that employees have a cognizable interest in use of the Authority dumpster to dispose of personal trash, because "[a]llowing employees to dispose of their personal trash saved money that those employees would otherwise spend for a private or municipal trash hauler." (PDO at 6).

To sustain its burden under the State College balancing test, the employer must articulate some managerial interest which would outweigh the employees' interest in the matter. For example, in cases decided under PERA, such as Abington Transportation Association v. Abington School District, 18 PPER ¶ 18188 (Proposed Decision and Order 1987), aff'd, 19 PPER ¶ 19067 (Final Order 1988), aff'd sub nom. Abington School District v. PLRB, 570 A.2d 108 (Pa. Cmwlth. 1990), AFSCME, Council 13 v. Commonwealth of Pennsylvania, Department of Transportation, 21 PPER ¶ 21108 (Proposed Decision and Order 1990), aff'd on other grounds, 22 PPER ¶ 22105 (Final Order 1990), and International Union of Operating Engineers, Local 542 v. Quakertown Borough, 39 PPER 2 (Proposed Decision and Order, 2007), aff'd, Case No. PERA-C-06-570-E (Final Order, June 17, 2008), the employer advanced an interest in controlling the employees' use of the public employer's facilities in order to preserve integrity and foster public trust and confidence in government. Quakertown Borough, 39 PPER at 7.

Here, the Authority advanced no stated interest to outweigh the employees' interest in the use of the Authority's dumpster. At best, the Authority expressed its belated concern over the possibility of a violation of environmental laws. (PDO at 6). However, the Hearing Examiner found that the practice involved here only permitted employees to use the dumpster for personal trash where there would be no additional cost for the Authority. Indeed, if an employee's use of the dumpster caused a violation of environmental laws, and thus a fine, administrative cost or fee, the employee's use would have been unauthorized under the existing practice. As such, the Authority's stated concern over possible violations of environmental laws does not outweigh the employees' interest in use of the dumpster for personal trash, so long as the employees' use does not create additional costs for the Authority.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in finding a binding past practice in the employees' use of the Authority's dumpster for personal trash where there is no additional cost for the Authority. Accordingly, the Hearing Examiner did not err in concluding that the Authority's unilateral rescission of the practice on May 21, 2009 violated Section 1201(a)(5) of PERA. As such, the Authority's exceptions are dismissed, and the PDO shall be made final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Milton Regional Sewer Authority are hereby dismissed, and the May 25, 2010 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of December, 2010. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

MEMBER ANNE E. COVEY DISSENTS

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AFFIDAVIT OF COMPLIANCE

The Milton Regional Sewer Authority hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employe Relations Act, that it has rescinded the May 21, 2009, memorandum prohibiting the use of the Authority dumpster for personal trash; that it has offered to bargain with the Teamsters Local 764 over any changes in the policy for use of the dumpster for personal trash; that it has posted the Proposed Decision and Order and Final Order as directed; and that it has served a copy of this affidavit on the Teamsters Local 764.

Signature/Date

Title

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

Signature of Notary Public