COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL #385	:	
v.	:	Case No. PERA-C-00-240-W
CENTER TOWNSHIP SEWER AUTHORITY	:	

FINAL ORDER

On October 11, 2000, the Center Township Sewer Authority (Authority) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated September 21, 2000. In the PDO, the Hearing Examiner concluded that the Authority committed unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by failing to proceed to grievance arbitration, as charged by the International Brotherhood of Electrical Workers, Local Number 385 (Union).

The relevant facts are not in dispute. The Authority and the Union are parties to a collective bargaining agreement effective from January 1, 1997 through December 31, 2000 (CBA). The 1997-2000 CBA has a three-step grievance procedure in which the third and final step is binding arbitration. The Authority has a board that governs, directs and administers the operations of the Authority. On or about September 14, 1995, the Authority appointed Joseph Yezzi to the position of Acting Manager. The Authority's board agreed to pay Mr. Yezzi additional compensation for the additional responsibilities and duties associated with the position of Acting Manager. On March 4, 1996, the Authority indefinitely extended Mr. Yezzi's tenure. During his tenure as Acting Manager, Mr. Yezzi continued to pay dues to the Union.

On or about January 6, 2000, the Authority demoted Mr. Yezzi from Acting Manager to laborer. On January 7, 2000, the Union filed a grievance with the Authority on Mr. Yezzi's behalf. The Union stated the nature of the grievance as the "unjustified demotion from the Acting [Manager's] position by the Center Township Sewer Authority Board on 1-6-2000 pertaining to Joseph Yezzi." (Joint Exhibit 2). The Union requested immediate reinstatement with back wages and benefits. On January 11, 2000, the new acting manager denied the grievance contending that the position of Acting Manager is a position that is not covered by the CBA. On January 12, 2000, the Union entered step two of the grievance procedure delineated in Article 6, Section 6 of the 1997-2000 CBA and requested a hearing. The Authority agreed to a hearing, which was held on February 8, 2000. After this hearing, the Authority affirmed the response of the current acting manager that the position of Acting Manager is an "at-will" position that is not subject to the terms of the CBA. At another hearing held on March 14, 2000, the Authority's board affirmed its previous position. By letter dated March 21, 2000, the Union requested that the Authority proceed to step three of the grievance procedure and submit to binding arbitration. By letter dated March 24, 2000, the Authority refused to proceed to binding arbitration maintaining that the position of Acting Manager is a management level position that is expressly excluded from the CBA.

The Hearing Examiner concluded that the Authority committed an unfair practice by refusing to proceed to step 3 of the grievance procedure and submit the unresolved grievance to binding arbitration. The Hearing Examiner reasoned that, under the Supreme Court's mandate in PLRB v. Bald Eagle Area School District, 499 Pa. 62, 451 A.2d 671 (1982), the arbitrability of this matter must be decided by an arbitrator. Consequently, the Authority raises three exceptions before the Board. The Authority claims that the Hearing Examiner erred in concluding that it committed unfair practices by refusing to arbitrate the removal of an individual from the position of Acting Manager because that position is an at-will position that is clearly not subject to the terms and conditions of the CBA. Secondly, the Authority contends that the Examiner failed to consider evidence that, during contract negotiations, the parties specifically agreed to exclude the position of Acting Manager from the terms of the CBA. Lastly, the Authority maintains that the Examiner failed to consider and apply Section 301 of PERA, which provides that management level employes are expressly excluded from the definition of public employe and the protection of PERA. The Board will address all three exceptions in the same discussion because the import of all the Authority's objections presents essentially the same issue. That issue is whether an employer, under PERA, may refuse to permit an arbitrator to determine the arbitrability of a grievance when the nature of the grievance is seemingly, or even clearly, outside the terms and applicability of the parties' collective bargaining agreement. The Board answers this question in the negative.

In Bald Eagle, the employer refused to arbitrate a grievance seeking payment for striking teachers because a statutory provision expressly forbids such payment. The employer school district believed that it had no duty to arbitrate because there was no contractual provision or interpretation that could even arguably contribute to resolving the grievance issues, given the clear statutory application. Although the Board concluded that the Bald Eagle School District engaged in unfair practices for refusing to arbitrate, the court of common pleas of Centre County reversed and the Commonwealth Court affirmed that decision, agreeing with the district. Bald Eagle, 499 Pa. at 62-66, 451 A.2d at 671-72. However, in reinstating the Board's decision, the Supreme Court reiterated the pervasive and mandatory statutory policy in the Commonwealth favoring arbitration for the resolution of disputes arising under collective bargaining agreements. Id. at 65-67, 451 A.2d at 672-73. Moreover, the Bald Eagle Court held that, even where the resolution of a dispute is clearly beyond the contract, arbitrability in the first instance lies with the arbitrator because "`arbitration is not an improper remedy simply because an arbitrator might possibly fashion an invalid award.'" Id. at 67, 451 A.2d at 672 (quoting North Star Sch. Dist. v. PLRB, 386 A.2d 1059 (Pa. Cmwlth. 1978)). The Bald Eagle Court further undergirded its reasoning by explaining the extent and nature of judicial review of arbitration awards. In this regard, this Board, the parties and the "[c]ourts have no reason to assume an arbitrator will ignore the law." Id. The judiciary, stated the court, "has express statutory authority to review and correct or modify arbitration awards against the Commonwealth or its political subdivisions." Id.

The Commonwealth Court has consistently held that when the parties to a collective bargaining agreement have incorporated the Board's certification of the representation and the definition of the bargaining unit into their agreement, they "have rendered the question of whether

certain parties are encompassed by the definition of the bargaining unit a matter of contract interpretation which, in turn, makes it a proper subject for arbitration under the `essence test'". Northwest Tri-County Intermediate Unit No. 5 Educ. Ass'n v. Northwest Tri-County Intermediate Unit No. 5, 465 A.2d 89, 91 (Pa. Cmwlth. 1983); accord AFSCME, AFL-CIO, District Council 87 v. Luzerne County, 540 A.2d 1002, 1005 (Pa. Cmwlth. 1988); West Shore Sch. Dist. v. West Shore Educ. Ass'n, 519 A.2d 552, 553 (Pa. Cmwlth. 1986), appeal denied, 517 Pa. 612, 536 A.2d 1335 (1987). As the Commonwealth Court emphasized in West Shore, an "arbitrator does have jurisdiction to determine whether particular employees are members of the bargaining unit as that unit is defined." West Shore, 519 A.2d at 553.

The Board recently followed this line of cases and addressed a similar issue in Allegheny Intermediate Unit 3 Educ. Ass'n v. Allegheny Intermediate Unit 3, 31 PPER ¶ 31128 (Final Order, 2000). In Allegheny, supra, this Board concluded that "although the Board and an arbitrator have different subject matter jurisdiction, and accordingly different means of resolving the issue, either forum provides a viable means of resolving whether a particular [employe or] group of employes should be included in a predefined bargaining unit." Id. at 304. The Board further concluded that "[t]he nature of this distinction to interpret contractual provisions does not encroach upon, nor is it preempted by, the Board's subject matter jurisdiction over defining the bargaining unit. Id. Therefore, the arbitrability of a matter, that requires the resolution of the question of whether an employe is in a bargaining unit, is not predetermined as a matter of law such that an employer is empowered to unilaterally refuse to submit the question of arbitrability to an arbitrator for lack of subject matter jurisdiction.

In the instant case, the Union filed a grievance to challenge the Authority's unilateral demotion of Mr. Yezzi from the position of Acting Manager to the position of laborer. The Authority denied the grievance and refused to arbitrate the dispute. The Authority maintains that the position of Acting Manager is an at-will, non-bargaining unit position subject to the unilateral action and discretion of the Authority. The Authority specifically argues that the CBA, the evidence of contract negotiations and Section 302 of PERA demonstrate that the position of Acting Manager is outside the bargaining unit and, therefore, the terms and protections of the CBA. This position, however, requires the Board to evaluate evidence and make findings of fact regarding the intent of the parties and the overall nature of the parties' agreement, a matter that the courts of the Commonwealth have repeatedly and consistently reserved to an arbitrator. Bald Eagle, supra; Chester Upland School District v. McLaughlin, 655 A.2d 621 (Pa. Cmwlth. 1995), aff'd per curiam, 544 Pa. 199, 675 A.2d 1211 (1996). Also, the Authority's arguments regarding the CBA and the evidence of contract negotiations essentially require the Board to evaluate the facts and circumstances surrounding the execution of the CBA as well as the practices of the parties. The Authority would also have the Board assess evidence regarding the actual duties and responsibilities of the Acting Manager, which has not been provided, to determine whether this position is embraced by the exclusion set forth in the recognition clause of the CBA or Section 302 of PERA. These inquiries are within the jurisdiction and expertise of an arbitrator and not this Board.

Article I of the 1997-2000 CBA contains a recognition clause that incorporates the Board's certification verbatim. This clause states the following:

1. Pursuant to the certification entered by the Pennsylvania Labor Relations Board on July 24, 1984 in case No. PERA-R-84-249-W, the Authority during the term of this Agreement and for the purposes of collective bargaining with respect to wages, hours, and terms and conditions of employment hereby recognizes the Union as the exclusive representative of all full time and regular part-time non-professional employees of the Authority, excluding management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act.

2. As used herein the term "employee" refers only to those employees of the Authority embraced in the classification above. It is hereby stipulated and agreed that the office force of the Authority are excluded from the term "employee" as used herein under the general exclusion of first level and/or confidential employees.

(Joint Exhibit 3). By incorporating the Board's definition of the bargaining unit into the CBA, both the Authority and the Union have rendered the question of which employes are included within the bargaining unit a matter of contract interpretation subject to the jurisdiction of an arbitrator. Northwest Tri-County Intermediate Unit No. 5, 465 A.2d at 91. At a minimum, the arbitrability of the matter requires a threshold level of contract interpretation within an arbitrator's jurisdiction. In other words, the arbitrator must assume subject matter jurisdiction to determine the threshold question of whether he has subject matter jurisdiction over the merits of the underlying dispute.

The Authority argues that the Hearing Examiner erred in failing to conclude that the position of Acting Manager is excluded from the coverage and protection of PERA by operation of Section 302(2) and (16). This Section provides, in relevant part, the following:

> (2) "Public employe" or "employe" means any individual employed by a public employer but shall not include . . . management level employes.
>
> . . . .
>
> (16) "Management level employe" means any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision.

As an initial matter, even if this were a relevant inquiry, the Board notes that the Authority advanced no evidence for the Examiner or the Board to make a determination regarding the status of an employe in the position of Acting Manager. Although the Authority provided evidence that Mr. Yezzi was paid additional money when he assumed the position of Acting Manager, it offered no evidence concerning the duties or responsibilities of that position. Also, the Authority failed to offer evidence of whether a person in that position implements the Authority's policies or whether he is merely the lead employe in the bargaining unit. At a minimum, evidence of this nature would be required to resolve the question of whether the Acting Manager is a public employe under PERA.

However, an inquiry into whether the Acting Manager position is excluded from the protection of the CBA and PERA is not relevant to the resolution of the Union's unfair practice claim. To conclude otherwise would be to give this Board jurisdiction over determining the arbitrability of the underlying grievance in this case. The Board cannot usurp the jurisdiction of arbitrators by encouraging employers to refuse to submit arbitrability to an arbitrator in the hopes of having the Board decide that an employe is outside a particular bargaining unit or outside the protection of PERA when the Union eventually files an unfair practice charge for refusing to arbitrate. Such a policy would empower the employer to choose another forum, i.e., the Board, to decide whether an issue is arbitrable and to delay the arbitration process; a process that is favored, in part, for its expediency and cost effectiveness. Such an anomalous result was directly addressed and emphatically rejected by the Commonwealth Court in Chester Upland, supra (holding that, under PERA, the arbitrability of a dispute, in the first instance, must be determined by an arbitrator and that an employer cannot procure an injunction from a trial court enjoining the arbitration of the dispute). The Hearing Examiner, therefore, did not err in excluding the finding requested by the Authority because such a finding is irrelevant and unnecessary to the disposition of the issues presented. Paige's Dep't Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975) (stating that a fact finder is required only to set forth the facts necessary to support his decision).

The Authority also argues that the recent decision of the Pennsylvania Supreme Court in Upper Makefield Township v. PLRB, ___ Pa. ___, 753 A.2d 803 (2000), controls the disposition of the instant matter. However the unique facts and circumstances of Upper Makefield render that case inapposite. Upper Makefield is an Act 111 case whereas the instant matter is governed by PERA. Although there are many circumstances where legal principles are equally applicable to resolve similar issues arising under both statutes, the resolution of the issues presented herein is clearly not one of those circumstances. There are clear statutory differences between PERA, on the one hand, and Act 111, which is read in pari materia with the Pennsylvania Labor Relations Act (PLRA), on the other. Section 903 of PERA provides that the "[a]rbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory." 43 P.S. § 1101.903. In Bald Eagle, supra, our Supreme Court held that the statutory mandate of Section 903 not only requires arbitration to resolve unsettled grievances in every case, but also requires the arbitrator to determine substantive arbitrability and the scope of the grievance arbitration procedure. Bald Eagle, supra. Because Section 903 of PERA was the foundation of the Court's decision in Bald Eagle and because Act 111 and the PLRA contain no provision comparable to Section 903, the statutory and case law principals relating to the arbitrability of grievances governed by PERA often vary from those relating to the arbitrability of grievances governed by Act 111 and the PLRA. Therefore, Upper Makefield, a case governed by Act 111 and PLRA, is not applicable to the instant case, which is governed by the mandatory provisions of Section 903 of PERA.

Moreover, the Upper Makefield decision is distinguishable on the facts. In Upper Makefield, ___ Pa. ___, 753 A.2d 803 (2000), the township unilaterally discharged a probationary police officer approximately one month before his one-year probationary period expired. The collective bargaining agreement did not contain any provisions allowing for the

arbitration of any grievances nor did it contain any provisions for probationary employes. The issue before the Supreme Court was whether the Commonwealth Court erred in concluding that Act 111 does not compel a public employer to proceed to arbitration when the applicable collective bargaining agreement fails to provide for it. Id. The Upper Makefield Court, however, opined that it did not need to resolve the issue presented. Id., 753 A.2d at 806. Rather, the Court relied upon the Police Tenure Act[1] and concluded that probationary police officers at the township level are unprotected employes undergoing evaluation to determine whether or not they will become permanent employes. Id.

Conversely, in this case, the record contains no evidence or allegations that even suggest that Mr. Yezzi, as either Acting Manager or laborer, was a probationary employe, within the meaning of the Police Tenure Act, at any time. This specific factual and legal conclusion governed the Supreme Court's decision in Upper Makefield. As a probationary employe, the officer did not qualify for contractual grievance protections where the parties did not agree to afford probationary employes such protections. Therefore, the question of arbitrability was rendered moot because the officer was not entitled to the protections of collective bargaining governing his employment relationship. Moreover, the Supreme Court in Upper Makefield expressly relied upon the Police Tenure Act to conclude that a probationary police officer was an unprotected employe. Here, however, there is no comparable legislation that could divest the non-probationary, Acting Manager of the protections of PERA by operation of law such that the Authority is exempt from submitting arbitrability of this matter to an arbitrator. Rather the issue here is whether the recognition clause and the agreement exclude the grievant, a question of contract interpretation reserved to the arbitrator.

Additionally, the Supreme Court recently limited its holding in Upper Makefield in Township of Sugarloaf v. Bowling, ___ Pa. ___, 759 A.2d 913 (2000). The Bowling Court held that where the parties expressly included arbitration provisions in a collective bargaining agreement governed by Act 111 and the PLRA, arbitration is the proper forum for determining the arbitrability of a grievance filed on behalf of a probationary officer. Accordingly, Upper Makefield only applies to exclude an employe where that employe is a probationary police officer, whose employment is governed by the Police Tenure Act and the parties' collective bargaining agreement fails to contain arbitration machinery.

The limited holding of Upper Makefield and its inapplicability to the instant matter, is exemplified by the Supreme Court's decision in Board of Educ. of the School Dist. of Philadelphia v. Philadelphia Federation of Teachers, Local No. 3, AFL-CIO (Vahey), 464 Pa. 92, 346 A.2d 35 (1975), wherein the Court addressed the status of probationary, non-tenured teachers under PERA who were not protected by the Public School Code of 1949 (School Code)[2]. In Vahey, the collective bargaining agreement extended "just cause" protection to non-tenured teachers. Id., 346 A.2d at 36. When Vahey, a non-tenured teacher, was suspended pending dismissal, the union invoked the grievance and arbitration process. Id., 346 A.2d at 37. The school board sought to enjoin arbitration in the trial court, which granted the union's preliminary objections in the nature of a demurrer. Id. The school board argued on appeal that non-tenured teachers

[1] Act of June 15, 1951, P.L. 586, 53 P.S. §§811-815.
[2] Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §§ 1-101-27-2702.

have no protections under the School Code. Id. Therefore, under sections 510 and 514 of the School Code, the school board had exclusive authority to govern, regulate and conduct all school affairs. Id. This authority, argued the district, could not be illegally delegated to an arbitrator by a collective bargaining scheme that would violate the exclusive statutory means by which probationary, non-tenured teachers would be evaluated.

In dismissing this argument, the Supreme Court relied upon the strong policy favoring arbitration of labor disputes in this Commonwealth as exemplified by the compelling language in Section 903 of PERA mandating arbitration. Id., 346 A.2d at 37-39. The Supreme Court held that where there is no direct conflict with existing law, e.g., the School Code, an employer and union could mutually agree to bestow protections upon employes who are otherwise without statutory protection. Id. In relying on its decision in PLRB v. State College Area Sch. Dist., 461 Pa. 494, 337 A.2d 262 (1975), the Court reiterated its position that "`[t]he mere fact that the General Assembly granted the prerogative to the employer does not exclude the possibility that the decision to exercise that prerogative was influenced by the collective bargaining process.'" Vahey, 464 Pa. 92, 346 A.2d at 38 (quoting State College, 461 Pa. at 509, 337 A.2d at 269). Pursuant to its decision in State College, the Vahey Court recognized that an employer can agree to give more rights to certain employes than those which are provided in the statute governing their industry without being in conflict with that statute. See also Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, 481 Pa. 66, 391 A.2d 1318 (1978)(holding that an employer will even be bound by a collective bargaining provision that conflicts with a statute, or is otherwise prohibited by law, where the employer voluntarily agreed to the terms of the agreement and failed to raise the conflict during bargaining).

The Authority also cites Harbor Creek Sch. Dist. v. Harbor Creek Educ. Ass'n, 536 Pa. 574, 640 A.2d 899 (1994), to argue that parties to a collective bargaining agreement cannot be compelled to arbitrate a dispute unless they have, by contract agreed to arbitrate the particular issue involved. Id. at 578, 640 A.2d at 901. However, the Authority's reliance on Harbor Creek is misplaced. In Harbor Creek, the school district's extracurricular activities and sports programs were overseen by an athletic director. The position of athletic director was a voluntary, part-time position that was usually occupied by a full-time professional teacher in the bargaining unit. The athletic director position was governed by a supplemental agreement between the district and the union, which was not part of the parties' collective bargaining agreement. A subsequent expansion in the extracurricular programs also expanded the duties and responsibilities of the athletic director. The school district therefore created a new full-time supervisory position, entitled the "Assistant Principal for Student and Supplemental Activities". This Assistant Principal would perform the duties of the former athletic director and the additional administrative duties that were generated by the expanding program. The school district eliminated the position of athletic director. The teacher who acted as the athletic director was chosen for the new Assistant Principal position and voluntarily left the bargaining unit. The union filed a grievance over the elimination of the position of athletic director.

The Harbor Creek School District, however, proceeded to arbitration which renders Harbor Creek vastly different than the instant matter. The Harbor Creek decision was an appeal pursuant to a petition to vacate an

arbitration award. Unlike the instant case, the arbitrator in Harbor Creek separately and expressly addressed the issue of substantive arbitrability of the grievance. The Supreme Court therefore reviewed the arbitrator's determination of arbitrability under the essence test. The initial determination of substantive arbitrability was properly submitted to the arbitrator. After the arbitrator determined that he had jurisdiction to arbitrate the underlying grievance and issued an award, his decision was subsequently subject to judicial review. Harbor Creek exemplifies the appropriate procedural path for the Authority in the instant case. The Supreme Court therefore did not reach a conclusion until it was reviewing the arbitrator's determination that the grievance was arbitrable and that he had jurisdiction. The Court did not state or even imply that its holding in Harbor Creek could be applied by an employer to unilaterally determine for itself that a grievance is not arbitrable in the first instance. Such a conclusion would be inconsistent with the Court's own long-standing precedent that substantive arbitrability, in the first instance, must be determined by an arbitrator. Bald Eagle, supra. Harbor Creek merely emphasized that substantive arbitrability can be independently evaluated and reviewed by the judiciary.[3] Harbor Creek, supra.[4]

Lastly, the Authority cites Stumpp v. Stroudsburg Municipal Authority, 540 Pa. 391, 658 A.2d 333 (1995), for the proposition that Mr. Yezzi is not covered by the CBA or PERA because the Acting Manager is an "at-will" employe and a municipal authority cannot contract away its right of summary dismissal. In this regard, the Authority asserts that dismissing Mr. Yezzi as the Acting Manager is not arbitrable. This argument fails for several reasons. First, the Authority's position depends on the conclusion that Mr. Yezzi, as Acting Manager, was an employe without any rights flowing from the collective (versus the individual) agreement. The fallacy of this argument is that the Authority is not legally authorized to unilaterally determine that Mr. Yezzi, as Acting Manager, was an unprotected employe and then rely on that conclusion to decide that the position is beyond the reach and protection of the parties'

[3] In Scranton Fed'n of Teachers, Local 1147, AFT v. Scranton Sch. Dist., 498 Pa. 58, 444 A.2d 1144 (1982), the Pennsylvania Supreme Court held that arbitrators have broad authority in procedural matters regarding the conduct of an arbitration and, therefore, proceedings to resolve issues of arbitrability can be bifurcated from the merits of the grievance. See also Bensalem Township Sch. Dist. v. Bensalem Township Educ. Ass'n., 512 A.2d 802 (Pa. Cmwlth. 1986). The proceedings regarding the resolution of arbitrability may be conducted separately and, depending on the resolution, reviewed separately.

[4] The holding in Harbor Creek was substantially limited in Cranberry Area Sch. Dist. v. Cranberry Educ. Ass'n., 713 A.2d 726 (Pa. Cmwlth. 1998). The Cranberry Court held that Harbor Creek was limited to the factual scenario where a supplemental agreement outside the collective bargaining agreement revealed that a non-professional position was beyond the reach of the collective bargaining agreement which applied only to professional teachers and which was occupied by a professional acting beyond his professional duties. In the instant case, however, there is no similar supplemental agreement that clearly expresses whether the Acting Manager position is beyond the reach of or the definition of the bargaining unit contained in the CBA. Moreover, even if there were such an agreement in this case, the limited Harbor Creek principals are only applicable and relevant upon judicial review after an arbitrator has determined arbitrability, as previously stated herein.

CBA. The determination of whether Mr. Yezzi, is protected by the CBA in this matter is for the arbitrator to decide as discussed at length above.

Additionally, the term "at-will employe" is a term of art, which has been misused by the Authority throughout its argument. The courts of this Commonwealth have consistently held that, absent an individual employment contract or a statute that specifically confers tenure or civil service in employment, an employe is presumptively an at-will employe, which means that either the employer or the employe may terminate the employment relationship at any time for any or no reason. Stumpp, supra; Geary v. United States Steel Corp., 456 Pa. 171, 319 A.2d 174 (1974); Reilly v. Stroehmann Bros. Co., 367 Pa. Super. 411, 532 A.2d 1212 (1987). An at-will employe has no vested property right in his employment. Stumpp, supra. Although most collective bargaining agreements manifest the employer's intention to compromise its general right to discharge bargaining unit employes for any reason at any time by agreeing to a "just-cause" provision, the collective bargaining agreement does not bestow property rights on individual bargaining unit members and not all collective bargaining agreements provide "just-cause" protection for bargaining unit employes. PERA applies to and authorizes collective bargaining for numerous categories of "at-will" governmental employes. The fact that the Acting Manager in this case, or any other employe, is an at-will employe does not necessarily yield the conclusion, as a matter of law, that he is not entitled to the protections of PERA or his collective bargaining agreement. There are many public employes in this Commonwealth who have the status of being both at-will employes and bargaining unit members protected by PERA and collective bargaining agreements. In this regard, an arbitrator has the authority and jurisdiction to determine an employe's status and protection under a collective bargaining agreement, not this Board or any of the parties in interest, because such a determination requires an objective interpretation of the CBA.

Secondly, the Stumpp decision is inapposite on the facts. The employment relationship in Stumpp did not involve any collective bargaining agreement or PERA. In that case, Mr. Stumpp claimed that he had an individual contract from his public employer, which gave him a property right in his employment and which prevented his employer from unilaterally demoting him. The Stumpp Court disagreed and held that there was no individual employment contract because the municipal authority lacked the statutory authority to enter into such a contract, there was no statute conferring tenure upon Mr. Stumpp, and the memo that Mr. Stumpp claimed to constitute a contract was not a contract as a matter of law. The fact that a collective bargaining relationship under PERA did not exist in the Stumpp case, as it does here, presents a tremendous difference between that case and the instant matter. Accordingly, the Authority cannot argue that the holding in Stumpp applies to the instant matter where there is a collective bargaining relationship because, under PERA, there is an absolute duty to bargain collective agreements with the certified bargaining representatives of its employes. Because there was no union representation or collective bargaining agreement in the Stumpp case, the obligations of an employer under PERA did not factor into the Supreme Court's decision. PERA provides an extensive statutory scheme encouraging employers such as the Stroudsburg Municipal Authority and the Authority here to enter into collective employment agreements to minimize unresolved employment disputes. State College, supra.

Moreover, the significance of the fact that there was no collective bargaining agreement in the Stumpp case is further exemplified by the landmark decision of the United States Supreme Court in J.I. Case Co. v. NLRB, 321 U.S. 332, 64 S.Ct. 576 (1944), which this Board has long since adopted and applied to its public sector cases. PLRB v. Jefferson-Morgan Sch. Dist., 9 PPER ¶ 9056 (Final Order, 1978). In J.I. Case, the Supreme Court of the United States held that a collective bargaining agreement supercedes and nullifies any separate, individual employment agreements. J.I. Case, 321 U.S. at 335-338, 64 S. Ct. at 579-80. In Jefferson-Morgan, the Board opined that "[t]o permit otherwise, would be to reduce the agreement to an empty shell." Jefferson-Morgan, 9 PPER at 110. Accordingly, even if Mr. Stumpp would have had a valid individual employment contract, a collective agreement under PERA would have superseded employment contracts negotiated with individual employe members of the bargaining unit. Therefore, the non-existence of a collective bargaining agreement made the landscape of the Stumpp case legally and factually inapplicable and irrelevant to the issues presented here. In the instant matter, the Authority was legally obligated to and did, in fact, bargain. As a result of bargaining with the Union, the Authority bargained away part of its general right to summarily dismiss bargaining unit employes under PERA. In processing an unresolved grievance, determining whether the Acting Manager is in the bargaining unit within the meaning of the CBA is a question for an arbitrator to decide.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Decision and Order of the Hearing Examiner.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; and that the Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this sixteenth day of January, 2001. 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.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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v.	:	Case No. PERA-C-00-240-W
CENTER TOWNSHIP SEWER AUTHORITY	:	

AFFIDAVIT OF COMPLIANCE

The Center Township Sewer Authority hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of PERA; that it has complied with the request of the International Brotherhood of Electrical Workers, Local 385 (Union) to arbitrate the grievance filed on behalf of Joseph Yezzi; that it has posted a true and correct copy of the proposed decision and order as directed therein; that it has posted a true and correct copy of the Final Order; 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.

_____
Signature of Notary Public