

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
:
:
MEDICAL RESCUE TEAM : Case No. PERA-D-99-424-W
SOUTH AUTHORITY : (PERA-R-10.652-W)

FINAL ORDER

On October 12, 1999, the Medical Rescue Team South Authority (Employer) filed with the Pennsylvania Labor Relations Board (Board) a Petition for Decertification (Petition) of the Association of Professional Emergency Medical Technicians (Union). The Employer alleged in the Petition that there was a collective bargaining agreement in existence between the Employer and the Union that expires December 31, 2000. On November 15, 1999, the Secretary of the Board informed the Employer that a hearing would not be directed on the Petition for two reasons: (1) the Petition failed to request an election in the appropriate bargaining unit as certified by the Board at Case No. PERA-R-10,652-W; and (2) the Petition is barred by the current collective bargaining agreement (Agreement) as not filed within the 90-60 day "window period" prior to the expiration of that Agreement pursuant to Section 605(7) of the Public Employee Relations Act (PERA). The Employer filed timely exceptions to the Secretary's decision on December 6, 1999.¹ On December 10, 1999, the Union filed a Response and on December 27, 1999, the Employer filed a Reply to the Union's Response. The Employer's exceptions to the dismissal of its decertification Petition are now before the Board for disposition.

The history between the Employer and the Union leading up to this Petition is summarized as follows. In 1979, the Board certified the Union as the exclusive representative of:

a subdivision of the employer unit comprised of but not limited to all full-time and regular part-time Emergency Medical Technicians and Emergency Medical Technician Paramedics; and excluding management level employes, supervisors, first-level supervisors, confidential employes, and guards as defined in the Act.

Case No. PERA-R-10,652-W (emphasis added). At the time of the first collective bargaining agreement, the Employer did not employ any part-time employes. The parties' recognition clause in the agreement did not include the language "regular part-time employes" although it did state that it was "in accordance with the certification of the Board." In 1984, the Employer began employing part-time employes that it deemed to be "casual" and not "regular," and therefore not included in the unit. The Union did not seek to represent any part-time employes until 1998, when it filed a Petition for Representation for "regular part-time employes" at Case No. PERA-R-98-291-W. The Union's Petition was withdrawn because the Union

¹ The Employer requested oral argument on the exceptions. Because this case presents no novel issues of law or fact, the request for argument is denied.

already represented regular part-time employees under the 1979 Certification.

On July 15, 1998, the Union filed a grievance seeking to reform the recognition clause of the parties' agreement to expressly include regular part-time employees, consistent with the Board's certification of the unit. Pursuant to the parties' Agreement, the grievance proceeded to binding arbitration and the arbitrator ordered that the Agreement be reformed to include regular part-time employees in the recognition clause. The arbitrator remanded the case to the parties "to determine who the regular part-time employees are, either through negotiations or a PLRB determination, and to bargain over what terms and provisions shall be applicable to said regular part-time employees." (Charge Ex. B at 10). In October 1999, the Employer filed a Petition for Unit Clarification (UC)² in addition to its Petition for Decertification. The UC is scheduled for hearing on February 28, 2000, and will not be addressed in this Final Order.

In its Petition for Decertification, the Employer requests that the Board "first issue an order of unit clarification and, thereafter, order a representation election among the members of the appropriate unit." In its exceptions, the Employer renews its request to stay consideration of the exceptions until the UC is resolved. This request is denied, as the Board need not delay its consideration of this Petition until after the unit clarification because as the Secretary explained, this Petition is barred by the parties' current Agreement, as not having been filed within the 90-60 day window period under Section 605(7) of PERA. Section 607(ii) of PERA provides that "a public employer alleging a good faith doubt of the majority status of [the employe] representative may file a petition in accordance with the rules and regulations established by the board, subject to the provisions of clause (7) of section 605." Section 605(7)(ii) provides that "[p]etitions for elections may be filed with the board not sooner than ninety days nor later than sixty days before the expiration date of any collective bargaining agreement." The current Agreement between the parties does not expire until December 31, 2000. The statutorily mandated window period for filing a petition for decertification in this case is between October 2 and November 1, 2000. The Employer's October 12, 1999, Petition is clearly outside the window period under Section 605(7) of PERA.

In its exceptions, the Employer argues that the "unique, determinative circumstances" of the case "render inapposite" the provisions of Section 605(7). It further argues that Section 605(7) does not bar the decertification election because the existing Agreement does not apply to the regular part-time employees. The unappealed arbitration award states that "the Agreement shall be reformed to include regular part-time employees in the recognition clause of the Agreement [that] the regular part-time employees are to be represented by the Union for collective bargaining purposes [and that the parties are] to bargain over what terms and provisions shall be applicable to said regular part-time employees." (Charge Ex. B at 10)(emphasis added). Contrary to

² The Petition for Unit Clarification is currently pending at Case No. PERA-U-99-400-W. The Employer is requesting the Board to "clarify what members, if any, of a class of 16 part-time employees, are regular part-time employees included in the bargaining unit, as opposed to casual part-time employees not included in the bargaining unit."

the Employer's assertion, the July 23, 1999, award mandated the reformation of the Agreement to conform with the Board's certification which included regular part-time employees. The award did not direct the parties to create a new, separate collective bargaining agreement for the part-time employees. Rather, because the Union never had the opportunity to bargain for regular part-time employees, the award ordered the parties to bargain over what terms and provisions of the existing agreement shall apply to them.

The Award was not appealed, and is therefore final and binding on the parties as of August 22, 1999. City of Philadelphia, 22 PPER ¶ 22228 (Final Order, 1991)(grievance arbitration award is binding as soon as that decision becomes final in the sense that it is no longer appealable)(citing PLRB v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978)). Thus, the regular part-time employees are to be included in the Agreement covering the unit as certified by the Board. The issue of which employees are regular part-time employees and which are casual part-time employees is to be addressed in the UC proceedings, and is irrelevant to the Board's determination that this Petition was not filed within the statutorily defined window period.

The Board notes that even if it agreed with the Employer's reading of the Award and concluded that the existing Agreement does not apply to regular part-time employees, an election pursuant to a petition for decertification must be held in the unit as previously certified by the Board. Midwestern Intermediate Unit IV, 15 PPER ¶ 15178 (Final Order, 1984), aff'd, 16 PPER ¶ 16109 (Court of Common Pleas of Butler County, 1985). There is no dispute that the unit as previously certified includes all full-time and regular part-time employees. Thus, under Section 605(7) of PERA, any petition for decertification must be filed within the 90-60 day window period prior to the expiration of the Agreement covering both full-time and regular part-time employees in the Unit. The Board will not conduct an election among employees who comprise part of a unit, but through negotiation of the parties have been excluded from the agreement. Nor will the Board conduct an untimely election among all employees in this unit merely because some employees have been excluded from the contract by agreement of the parties.

The Employer's remaining exceptions concern the Secretary's determination that the Petition improperly requested an election among only regular part-time employees, rather than the broader unit as certified by the Board. The employer argues that the significantly changed circumstances in this case "absolutely require[] a departure from commonplace Board procedures and the granting of an election in the entire unit in this case." (Employer, br. at 4). The Board may exercise discretion in administering PERA in limited circumstances.³ For example,

³ Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978)(the appropriate remedy for a specific unfair labor practice is within the Board's discretion); Northwestern School District, 24 PPER ¶ 24121 (Final Order, 1993)(Article XIII of PERA Section 1303 provides the Board with broad authority to fashion appropriate remedies as will effectuate the policies of the Act); Philadelphia Housing Authority, 620 A.2d 594 (Pa. Cmwlth. Ct. 1993)(the Board may in its discretion appoint a fact finding panel); PSSU v. PLRB, 484 Pa. 81, 392 A.2d 256 (1978)(Board may exercise its discretion and decline to issue a complaint where complainant has failed to state a cause of action under PERA); West Hanover Township, 23 PPER ¶ 23156 (Final Order, 1992)(Board may exercise its discretion in determining whether a mail ballot is appropriate).

the Board has permitted rival employe representatives to file petitions for representation outside the 90-60 day window period of Section 605(7) when accompanied by a waiver by the parties of the contract bar. Peters Township School District, 13 PPER ¶ 13070 (Order and Notice of Election, 1982). In situations where there is a rival union, the parties can agree to waive the window period and the Board will conduct an election on the rival union's petition for representation before the employer and the incumbent union begin bargaining.⁴ However, a petition for decertification is inherently different from a rival petition for representation because an employer in the latter is faced with multiple claims of representation and may be obliged to negotiate with a successful rival even if it previously negotiated in good faith with an incumbent. Richland School District v. PLRB, 454 A.2d 649 (Pa. Cmwlth. Ct. 1983). Further, there is no evidence that the parties agreed to waive the Section 605(7) contract bar. In fact, the Union expressly relies on the existence of the contract bar to support the Secretary's decision in its response. The Board will not *sua sponte* suspend the express provisions of the statute, and no circumstance is presented here that statutory rights have been waived by conduct or agreement of the parties.

The Board may dismiss a petition or charge without any further proceedings upon any failure to comply with PERA or Board rules. AFSCME (Ingram), 26 PPER ¶ 26050 (Final Order, 1995)(citing the Board's Rules and Regulations, 34 Pa. Code § 95.37). If the words of the Act are clear and free from all ambiguity, the Board cannot disregard its letter under a pretext of pursuing its alleged spirit. Salvation Army Case, 349 Pa. 105; 36 A.2d 479 (1944). The Board will not disregard the express statutory requirement that petitions be filed within the 90-60 day window period, regardless of the Employer's allegation of significantly changed circumstances.

In its Response, the Union argues that the Employer did not present a sufficient factual statement of a good faith doubt of the majority status of the Union pursuant to Section 607 of PERA and 34 P.S. § 95.22(1). The Board finds no need to address the sufficiency of the Employer's assertion of a good faith doubt, because after a thorough review of the Exceptions and all matters of record, the Board shall dismiss the Employer's exceptions and affirm the Secretary's decision not to direct a hearing.

ORDER

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

⁴ The Board will allow the parties to waive the Section 605(7) contract bar in the rival/incumbent situation because of the difficulties associated with the relationship in the statute between the time of resolving issues of the negotiation of collective bargaining agreements and the resolution of issues of which union, if any, will represent employes. Where the parties agree, the processing of petitions for representation prior to initiating the timetable set forth in Article VIII of PERA for collective bargaining will serve to resolve the question of representation in a timely fashion and not unduly postpone or complicate the bargaining process. Peters Township School District, supra.

HEREBY ORDERS AND DIRECTS

that the exceptions be and the same are dismissed, and the Secretary's decision not to direct a hearing be and the same is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this fifteenth day of February, 2000. 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.