

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL #205 :
 :
 v. : Case No. PERA-C-02-138-W
 :
 PETERS CREEK SANITARY AUTHORITY :

FINAL ORDER

On January 6, 2003, the Peters Creek Sanitary Authority (Authority) filed with the Pennsylvania Labor Relations Board (Board) timely¹ exceptions and a supporting brief to a December 16, 2002 Proposed Decision and Order (PDO). 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) when it subcontracted billing and collection services without bargaining with the newly-certified collective bargaining representative of its employes, Teamsters Local 205 (Teamsters). The Authority excepts to the Hearing Examiner's: (1) findings of fact 15, 16, 17; (2) finding that the Authority's proposal to subcontract was not discussed in negotiations; (3) conclusion that the Authority violated its duty to bargain; (4) conclusion that the Authority's use of a time study consultant beginning in May 2000 as part of its "process" of subcontracting, is irrelevant to the unfair practice litigation; (5) discussion concerning the fact that the employes did not strike; (6) discussion regarding the Authority's defense that no bargaining unit positions were lost; and (7) remedy to cease and desist and rescind the subcontract. The Authority also requests oral argument and at the conclusion of its exceptions requests that the Board "reopen the record for additional evidence." (Exceptions, at 4.) These final two requests are not briefed.

The first 14 of the Hearing Examiner's Findings of Fact are unchallenged and are adopted herein. The Board certified the Teamsters as the collective bargaining representative of the Authority's nonprofessional employes on December 13, 2001, including clerical employes involved in billing operations. In February 2002, the Teamsters and the Authority exchanged proposals for the parties' first collective bargaining agreement. After receipt of the Authority's proposal, the Teamsters countered by resubmitting their initial proposal. Regarding subcontracting, the Authority's proposal contained a provision that it reserved the right to outsource billing operations, which had been performed by its clerical employes for at least the last 13 years. On March 11, 2002, the Authority Board voted to subcontract its billing operations to the Washington-East Washington Joint Authority. Upon learning of this action, the Teamsters notified the Authority that if the Authority did not rescind the subcontract,

¹ The Board's Rules and Regulations grant the parties twenty (20) days to file exceptions from the date of the Proposed Decision and Order. 34 Pa. Code § 95.98(a). The twentieth day was January 5, 2003, a Sunday. Pursuant to Section 95.100(b) of the Board's Rules and Regulations, this day is omitted from the computation of time and the exceptions were timely filed on January 6, 2003. 34 Pa. Code § 95.100(b).

the Teamsters would file a charge of unfair practices. The Authority did not rescind, but delayed the implementation of the subcontract until June 2002.

The parties met thereafter on March 18, 2002. The parties then had two unsuccessful sessions with a mediator on March 28 and April 24, 2002 and met again on May 17 and June 6, 2002. In none of these sessions did the Authority initiate discussion regarding its written proposal to include a provision in the parties' initial collective bargaining agreement to permit it to subcontract billing service. On April 23, 2002, the Authority signed a contract with the subcontractor.

The Board will first address the Authority's exceptions to the Hearing Examiner's Findings of Fact. The Authority argues that the Hearing Examiner's Finding of Fact 15, that following two bargaining sessions on May 17 and June 6, 2002, no agreement was reached, is in error because the parties reached "tentative" agreement on "various items in the proposals." (Exceptions, at 1.) This exception reveals the Authority's misunderstanding of its collective bargaining duty regarding subcontracting. The employer argues that because there was tentative agreement on "holidays, personal days, grievance procedures and wages" (Exceptions, at 1), the Authority was somehow excused from bargaining over subcontracting. The issue before the Board in this unfair practice charge is whether the Authority met its bargaining duty regarding subcontracting before unilaterally transferring bargaining unit work out of the unit. The fact that the Authority and the Teamsters may have reached tentative agreement about other issues on the bargaining table does not satisfy the Authority's bargaining obligation regarding subcontracting. PLRB v. West Perry School District, 12 PPER ¶ 12274 (Proposed Order of Dismissal, 1981)(although parties reached tentative agreement on other bargaining subjects, there was no evidence on agreement on four items and therefore, no agreement was reached), aff'd, 12 PPER ¶ 12377 (Final Order, 1981). The Findings of Fact and analysis in the PDO regarding this issue accurately reflect the record that there is no evidence that the parties reached even a tentative agreement regarding subcontracting or that the Teamsters conceded its position regarding subcontracting. "[T]here is no question that the Union can expressly agree that an otherwise negotiable subject matter . . . shall be the sole province of management and thereby waive the bargaining rights on that subject during the contract term [However,] waiver of bargaining rights will not be lightly inferred. It is clear that the waiver of bargaining rights may only be found when the words show a clear and unmistakable waiver." Crawford County v. PLRB, 659 A.2d 1078 (Pa. Cmwlth. 1995) appeal dismissed, 543 Pa. 482, 672 A.2d 1318 (1996)(citing In re Appeal from Decision of PLRB, 433 A.2d 578 (1981); Township of Upper Saucon v. PLRB, 620 A.2d 71 (1993)). There is no record evidence, and the Authority does not argue, that the Teamsters waived their right to bargain over subcontracting, an otherwise negotiable matter. This exception is therefore dismissed.

In its next exception, the Authority argues that there is no evidence of record to support Findings of Fact 16 and 17. In these Findings, the Hearing Examiner states that there was no discussion of the Authority's proposal regarding subcontracting at any of the bargaining sessions with the Teamsters and that as of the date the subcontract was signed, there had been no negotiation regarding subcontracting. The Hearing Examiner's findings of fact are followed by citations to the Notes of Testimony, where witnesses called by both the Authority and the Teamsters testified that there was neither discussion nor negotiation over the issue of subcontracting. For instance, Teamsters witness Elizabeth Wellington testified as follows:

Q. In any fashion other than perhaps proposals submitted by the Peters Creek, had there ever been any discussion whatsoever about subcontracting billing and collection of funds?

A. Discussion, no.

(N.T. 20.) Similarly, Authority witness Jack Peart testified:

Q. Between March 11th and April, the date that this [sub]contract was signed, was there any negotiation about subcontracting?

A. No, there was not.

Q. You were at every bargaining session?

A. Yes, I was.

Q. You certainly knew by April, when the [sub]contract was about to be signed, that the Teamsters objected to subcontracting, correct?

A. That's true.

* * *

Q. Yet you never discussed it with them prior to signing?

A. That's true.

(N.T. 59.) Authority witness Otto Szabo, Jr. testified:

Q. At that meeting, did you discuss with the Teamsters anything about subcontracting?

[Authority objection overruled]

A. Nothing was negotiated, not only subcontracting, but nothing.

Q. So, nothing was discussed?

A. Nothing was discussed.

* * *

Q. Even after you signed the contract on April 8th, you still haven't had any discussion about subcontracting, have you?

A. No, we haven't had discussion because they wouldn't open up the contract.

(N.T. 76-78.) The Board is satisfied that these Findings of Fact are fully supported by the substantial evidence of record. PLRB v. Kaufmann Department Stores, Inc. 345 Pa. 398, 29 A.2d 90 (1942).

In support of its position that the Authority was at all times willing and did negotiate all aspects of the proposed contract, including subcontracting, the Authority argues that "the Teamster's [sic] representatives walked out of the meeting" on March 18, 2002 and cites to the Notes of Testimony, pages 53-54, 69, 82. (Exceptions, p.1; Authority, Br. at 3.) First, a review of the record reveals that the Teamsters left the negotiation session on March 18, 2002 only when "the members of the Authority immediately objected to [Elizabeth Wellington's] presence being there stating that [she] was not entitled to be there or to be part of the negotiating team." (N.T. 25.) This testimony was corroborated by Authority witness Jack Peart, who testified that "[o]ne of our negotiating members had brought up the question of whether Ms. Wellington should be there because she was office manager and she wasn't a union steward." (N.T. 52.) From this testimony, the Board concludes that it was the Authority, and not the Teamsters, that unlawfully created obstacles to negotiations on March 18, 2002 by questioning the Teamsters' representative's right to be present. The Authority offers no proof that Ms. Wellington was not authorized by the Teamsters to participate in the negotiations. To the contrary, the Board takes administrative notice of In the Matter of the Employees of the Peters Creek Sanitary Authority, Case Number PERA-R-01-332-W, which reveals that the employer-supplied eligibility list attached to the Board's Order and Notice of Election included Ms. Wellington. Sugarloaf Township Police Department v. Sugarloaf Township, 33 PPER ¶ 33023 (Final Order, 2001); 1 Pa. Code 35.173. Further, Ms. Wellington testified that she was a member of the Teamsters' negotiating committee. (N.T. 19-20.) "The public employer simply does not have the right . . . to designate for the Union which individual shall negotiate or meet and discuss on the Union's behalf. It is the duty of both parties in the collective bargaining process to negotiate with the designated representative of its counterpart." Port Authority Transit Police Association v. Port Authority of Allegheny County, 21 PPER ¶ 21023 (Final Order, 1989); see also, Pittston City Police Association v. City of Pittston, 26 PPER ¶ 26016 (Final Order, 1994)(unfair practice to refuse to bargain with counterpart's designated representative)(citations omitted).

On pages 53-54, the Authority's witness, Jack Peart testified that the purpose of the meetings and mediation sessions was to discuss the provisions within the proposals of the Authority and the Teamsters and to negotiate the differences to reach agreement. This does not disprove the Hearing Examiner's finding that the parties never discussed subcontracting. The testimony on page 69 by Otto Szabo, Jr. reveals that at the first mediation session, the Authority was in one room and the Union was in another and that the entire contract was discussed with the mediator. Evidence of discussion with a mediator does not support the Authority's position that the parties discussed subcontracting. Finally, the testimony of Authority witness Bruce Blednick on page 82 reveals only that the Authority attended the second mediation "to try to come and reach some grounds" and that no progress was made. Again, while this testimony may support the Authority's position that the parties met, it does not disprove the Hearing Examiner's finding that the parties neither discussed nor reached agreement regarding the specific issue of subcontracting. This second exception is therefore dismissed.

The Authority's next two exceptions concern the Hearing Examiner's conclusion that the Authority violated its bargaining duty by failing to

negotiate the issue of subcontracting with the Teamsters. It is well-settled that "[t]he duty to bargain in good faith extends to the subject of subcontracting bargaining unit work." Morrisville School District v. PLRB, 687 A.2d 5 (Pa. Cmwlth. 1996) (citing PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978)). As discussed above, the Board is satisfied that the issue of subcontracting was never discussed between the parties at any of their negotiation or mediation sessions. (F.F. 15-17) The Authority relies on a provision concerning subcontracting in its proposal as evidence of negotiation over the subject. In West Perry, *supra*, the Board affirmed the Hearing Examiner's conclusion that where provisions "do not appear in the contract proposed for signature by the [union] but do appear in the contract proposed by the [employer, it] is clear that there has never been an agreement between the parties as to the language of these sections." *Id.*, p. 408. Likewise, where the Authority's proposal contains a provision permitting the subcontracting of billing services and the Teamsters' proposal does not, "[i]t is clear that there has never been an agreement between the parties as to the language of [this] section[]." *Id.* In deciding whether a party's good faith bargaining obligation has been filled, the Board will examine the totality of the circumstances:

Good faith bargaining cannot be discharged simply by counting the number of meetings between the parties or by weighing the amount of information exchanged during such negotiations. The totality of the circumstances of the bargaining procedure must be considered in determining whether good faith bargaining did in fact take place. If after examining all the circumstances one can reasonably conclude that one or the other party never intended to achieve an agreement, demonstrated unreasonableness, or displayed a single-minded purpose to thwart the public policy, then good faith bargaining did not occur.

Homer-Center School District, 12 PPER ¶ 12169 (Final Order, 1981). The "circumstances" in the instant case include several meetings between the parties, where the issue of subcontracting was never raised.

Absent evidence that the parties have fully satisfied their collective bargaining duty regarding subcontracting, the Board will not accept the language in the Authority's proposal as the sole evidence of bargaining. For instance, in Minersville Area School District v. PLRB, *supra*, the parties met once and negotiated the employer's plan to subcontract its cafeteria services. Following this single meeting, without informing the union that subcontracting was imminent or that it would have only one opportunity to offer a counter-proposal to subcontracting, the employer subcontracted the work without further consultation with the union. In that case, the employer stressed the urgency of the subcontract, argued that its financial situation was desperate and that its cafeteria services were suffering severe operational problems as conducted by the bargaining unit employees. The Commonwealth Court affirmed the Board's Final Order concluding that this single meeting was insufficient and that despite the employer's alleged urgent financial situation, it failed to bargain in good faith. Similarly, in Morrisville School District v. PLRB, *supra*, the parties met seven times to discuss subcontracting and in the midst negotiations, the employer imposed a deadline for the completion of negotiations and then voted to subcontract the services of the bargaining unit. The Court criticized the employer's "rigid, inflexible adherence to its line in the sand of July 14" and found that such a self-imposed deadline constitutes "evidence of a lack of good faith . . .

as only two serious negotiating sessions on the issue of subcontracting were held during the one week period preceding." Id., at 9. The Authority subcontracted without holding even one "serious negotiating session[] on the issue of subcontracting." Id. Under the totality of the circumstances, the Commonwealth Court concluded that the employer in Morrisville had the obligation to bargain in good faith to an impasse before subcontracting. Unlike the parties in these two cases, there is no evidence that the Authority and the Teamsters ever discussed subcontracting.

Further, the Authority, as the party "seeking to make changes in mandatory subjects of bargaining must affirmatively introduce its proposed changes into the bargaining process." Ferndale Area Education Association v. Ferndale Area School District, 30 PPER ¶ 30033 (Final Order, 1999)(citing Garnet Valley School District, 8 PPER 365 (Final Order, 1977)). The Authority had an obligation to seek out its bargaining counterpart, the Teamsters, to negotiate over subcontracting.² See, Clarion-Limestone Area School District v. PLRB, 646 A.2d 1280 (Pa. Cmwlth. 1994); Abington Transportation Association v. PLRB, 570 A.2d 108 (Pa. Cmwlth. 1988). An employer does not have the right to effectuate change without bargaining and then force the union to attempt to negotiate out from under a fait accompli, as the Authority did in this case. Dormont Borough Police Association v. Dormont Borough, 32 PPER ¶ 32100 (Final Order, 2001), aff'd, Dormont Borough v. PLRB, 794 A.2d 402 (Pa. Cmwlth. 2002); Teamsters Local 429 v. Lebanon County, 30 PPER ¶ 30002 (Final Order, 1998).

The Authority maintains that it "continues to meet and discuss contract proposals with Teamsters" (Auth., Br. at 4); "continues to bargain with Teamsters" (Auth., Br. at 4); "continued to meet with Teamsters both before and after outside billing and collection was implemented in June 2002" (Auth., Br. at 5) and "continues to meet with Teamsters to negotiate a contract" (Auth., Br. at 5). The Authority has never argued that it subcontracted its billing and collection operations only after the parties reached impasse on the issue of subcontracting. To the contrary, the record reflects that subcontracting was never discussed and the Authority subcontracted at an earlier stage in the bargaining process. The fact that the Authority "continues to meet with the Teamsters to negotiate a contract" is meaningless because the subcontracting of bargaining unit work already took place, without prior negotiation with the Teamsters. There is no longer an incentive for the Authority to negotiate in good faith. All that remains are meaningless meetings because issue has been unilaterally resolved by the Authority. Accordingly, the Board dismisses these exceptions.

The Authority next excepts to the Hearing Examiner's assessment of its subcontracting "process". (Exceptions, at 2-3.) The Authority points out

² The Board and the Commonwealth and Supreme Courts have consistently held that an employer has the obligation to bargain in good faith to a bona fide impasse before subcontracting any bargaining unit work. Morrisville, supra, (citing Borough of Wilkinsburg v. Sanitation Department, 330 A.2d 306 (Pa. Cmwlth. 1975) aff'd, 463 Pa. 521, 345 A.2d 641 (1975)). In this regard, we note that the Hearing Examiner incorrectly characterized the law by proclaiming that even where the parties are at an impasse, as long as the employees are still working, it is an unfair practice for an employer to subcontract after reaching impasse in negotiations regarding subcontracting. (PDO, at 3-4.) The Board's position in this regard is thoroughly stated in AFSCME v. Clinton County, 24 PPER ¶ 24144 (Final Order, 1993).

that this process to subcontract its billing began with the hiring of a time study consultant in May 2000, prior to the filing of the Teamsters' Petition for Representation and the Board's certification. The Authority's use of a time study consultant prior to the Board's certification of the unit does not somehow excuse its duty to bargain with the certified representative of its employees. The Authority may not hide behind the time study simply because it was conducted prior to the Teamsters' certification. The decision to subcontract was made after the Teamsters was certified and a collective bargaining duty existed. The Authority's desire to transfer its billing services should have prompted it to raise the issue in negotiations with the Teamsters, rather than to act unilaterally in violation of PERA. Regardless of the "process", the fact remains that the Authority subcontracted after the Teamsters were certified as the collective bargaining representative of its nonprofessional employees, while the Authority had an obligation to bargain in good faith with the Teamsters over the issue. The Hearing Examiner properly explained that "the relevant date for analyzing whether an unfair practice has been committed is the date of the employer's decision to transfer, March 11, 2002, which was after the Union was certified and bargaining had commenced between the parties." (PDO, at 3.) This exception is dismissed.

The Authority criticizes the Hearing Examiner for not placing adequate importance on the fact that the Authority is a municipal authority responsible for the collection and transmission of sewage for approximately 3500 customers and depends on billing and collection to pay for the maintenance of their lines and disposal. (Authority, Br. at 4.) The Authority further notes that "the Authority had to continue operations and that Teamsters would not commit to not strike." (Exceptions, at 2-3.) First, public employees are statutorily granted the right to strike and the provisions governing this right are embodied in Article X of PERA. If the Authority claims that its employees should be denied the right to strike under Section 1003 of PERA because a strike would create "a clear and present danger or threat to the health, safety or welfare of the public", or a strike commenced during bargaining procedures under Section 1002, the public employer's remedy is a court-ordered injunction. The Authority may not unilaterally declare that its public services are paramount and abort the bargaining process because it is fearful of a strike. Like other public employers and employees under PERA, its rights regarding the right to strike are grounded in PERA and cannot be unilaterally altered to suit its strategic interest. Second, if the Authority claims that subcontracting of its billing and collection is required for it to continue its operations, the Supreme Court rejected the similar argument that an employer's unilateral subcontracting of bargaining unit work was "prompted by economic considerations" in PLRB v. Mars Area School District, *supra*. The fact that the Authority, like all public employers, provides services to customers and would like to do so as cost-effectively as possible, does not relieve it of its collective bargaining obligations with the Teamsters. As the Commonwealth Court has explained:

There has been an unflagging consistency in judicial approval of the PLRB's view that unilateral removal of work from a bargaining unit and transfer of that work to others for economic reasons, without collective bargaining, is an unfair practice.

Midland Borough District v. PLRB, 560 A.2d 303, 305 (Pa. Cmwlth. 1999).
Second, in PLRB v. Williamsport Area School District, 486 Pa. 375, 406 A.2d 329 (1979), "the [employer] attempted a unilateral change in the terms and

conditions of employment while the [union] members were at work and negotiations had not reached any impasse concerning the matter unilaterally changed by the [employer]." Id., 482 Pa. at 381, 406 A.2d 331. The Supreme Court, in affirming the Board's finding of an unfair practice under Section 1201(a)(1) and (5) of PERA, explained that "[g]ood faith collective bargaining would be impossible if the status quo as to the terms and conditions of employment were not maintained while the employes continue to work." Id., 482 Pa. at 382, 406 A.2d 332. This is precisely what occurred - the Authority subcontracted its billing operations while its employes were at work and negotiations had not reached impasse regarding subcontracting. The Teamsters was under no obligation to give up its right to strike as a condition of continued negotiation. The fact that the Teamsters would not surrender or waive their statutory rights does not excuse the Authority's unilateral action.

The Authority next excepts to the Hearing Examiner's rejection of its defense to the unfair practice that no bargaining unit position was lost. The Commonwealth Court has squarely addressed and rejected this argument in affirming the Board's Final Order in Commonwealth of Pennsylvania v. PLRB, 568 A.2d 730 (Pa. Cmwlth. 1990), appeal denied, 527 Pa. 626, 592 A.2d 46 (1991)). In that case, the Court affirmed the Board's finding of an unfair practice and explained that "[a]lthough the [employer] did not furlough or terminate any employees . . . the contracting for laundry services affected the terms and conditions of employment because, as the board found, the employees 'are no longer doing their former jobs and the unit lost work.'" Id., at 431. The employes represented by the Teamsters are likewise no longer performing billing services and the unit lost work. The Hearing Examiner properly rejected this defense and this exception is therefore dismissed.

The Authority next criticizes the Teamsters for not altering or lowering the bargaining demands in its proposals. The Board and the Courts have repeatedly held that a party need not make concessions in the bargaining process. Section 701 of PERA provides:

Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

43 P.S. § 1101.701. See also, PLRB v. Mars Area School District, supra; Annville-Cleona Educational Support Personnel Association v. Annville-Cleona School District, 28 PPER ¶ 28205 (Final Order, 1997). Further, the Teamsters decision to exercise its right to not make bargaining concessions in its proposals does not justify the Authority's unilateral subcontracting of bargaining unit work in the absence of an impasse. As discussed above, there is no evidence that the parties reached impasse in bargaining as required by Morrisville, supra, and Borough of Wilkinsburg, supra. The Board is satisfied that the Hearing Examiner correctly concluded that the Authority

violated Section 1201(a)(1) and (5) when it unilaterally subcontracted its billing operations.

The Authority's final exception is to the Hearing Examiner's imposition of the usual remedy for unlawful removal of bargaining unit work: to wit that it (1) rescind the subcontract; (2) cease and desist interfering, restraining or coercing employes in their rights guaranteed by PERA; and (3) cease and desist from refusing to bargain with the Teamsters. This exception is dismissed. This identical argument was made by the employer in Upper Moreland Township District v. PLRB, 695 A.2d 904 (Pa. Cmwlth. 1997) and the Commonwealth Court explained, "[i]n cases of unlawful subcontracting, however, a long-standing remedy is to order the subcontract rescinded The Pennsylvania Supreme Court has held that restoration of the status quo ante is the type of remedy well within the Board's discretion" Id., at 909 (citing Fiber Board Paper Products Corporation v. National Labor Relations Board, 379 U.S. 203, 85 S.Ct. 398 (1964); Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978)). The Board has rarely deviated from rescission as "the usual and customary remedy where work is unlawfully removed from a bargaining unit." Teamsters, Local 429 v. Lebanon County, *supra*, at 5. In Commonwealth v. PLRB, *supra* the Board declined to order rescission of a subcontract where the employer demonstrated institutional needs for patient activities and rehabilitation in the space previously occupied by the employer's subcontracted laundry facility. The Authority makes no similar argument. The reasons advanced by the Authority for its unfair practice - e.g. the importance of its work, a time study, no layoffs and no agreement by the Teamsters to waive its statutory right to strike - do not resemble the situation in Commonwealth v. PLRB. As discussed above, the Authority violated its statutory obligation to bargain with the representative of its employes over subcontracting and the usual remedy is appropriate. In Teamsters, the Board warned that any argument that Commonwealth v. PLRB "signals a departure from customary Board policy in removal of work cases is incorrect." Teamsters, at 5. The Board noted that "[i]n numerous cases . . . the Board has likewise directed restoration of the status quo where the bargaining unit as a whole, rather than a particular unit member, has lost work due to the employer's unilateral transfer of unit work to non-unit personnel." Id. (citing Philadelphia School District, 28 PPER ¶ 28177 (Proposed Decision and Order, 1997), 29 PPER ¶ 29085 (Final Order, 1998); Appalachia Intermediate Unit No. 8, 23 PPER ¶ 23061 (Final Order, 1992); Athens School District, 33 PPER ¶ 22215 (Proposed Decision and Order, 1991), 23 PPER ¶ 23060 (Final Order, 1992), *aff'd*, 23 PPER ¶ 23183 (Bradford County Court of Common Pleas, 1992); City of Harrisburg, 22 PPER ¶ 22039 (Proposed Decision and Order, 1991), 22 PPER ¶ 22081 (Final Order, 1991); *aff'd*, 605 A.2d 440 (Pa. Cmwlth. 1997), City of Pittsburgh, 21 PPER ¶ 21069 (Proposed Decision and Order, 1990), 21 PPER ¶ 21111 (Final Order, 1990). The Board will not disturb the customary remedy ordered by the Hearing Examiner in the PDO and the Authority's final exception is therefore dismissed.

The Board will deny the Authority's request for oral argument, as this case presents no novel issues of law or fact. In the Matter of the Employes of Allegheny County, 33 PPER ¶ 33175 (Final Order, 2002). The Board will likewise deny the Authority's request to reopen the record for the taking of additional evidence. The Board will grant such a request when the following five criteria are met. The evidence sought to be admitted must be evidence that: (1) is new; (2) could not have been obtained at the time of hearing through the exercise of due diligence; (3) is relevant and non-cumulative; (4) is not for the purpose of impeachment;

and (5) is likely to compel a different result. Middletown Township Police Benevolent Association v. Middletown Township, 24 PPER ¶ 24167 (Final Order, 1993)(citing Minersville Area School District v. Minersville School Service Personnel Association, 518 A.2d 874 (Pa. Cmwlth. 1986)). Because the Authority does not even reveal what evidence it would introduce pursuant to a reopening of the record, it fails to meet any of these five criteria and its request is therefore denied.

After a thorough review of the exceptions, briefs and all matters of record, and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions be and the same are dismissed, and the Proposed Decision and Order 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 Anne E. Covey, this eighteenth day of February, 2003. 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

TEAMSTERS LOCAL #205 :
 :
 v. : Case No. PERA-C-02-138-W
 :
 PETERS CREEK SANITARY AUTHORITY :

AFFIDAVIT OF COMPLIANCE

The Peters Creek Sanitary Authority hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has rescinded the agreement with Washington-East Washington Joint Authority to provide billing and collection services; 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 #205 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