

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
 : Case No. PERA-D-04-5-E
 :
 MILTON REGIONAL SEWER AUTHORITY :

FINAL ORDER

On January 12, 2004, Petitioners, employees of the Milton Regional Sewer Authority, filed a petition with the Pennsylvania Labor Relations Board (Board) seeking to decertify the Teamsters, Local 764 as their exclusive bargaining representative. By letter dated January 22, 2004, the Secretary of the Board dismissed the petition noting that the employer, Milton Regional Sewer Authority (Authority), was found to have committed unfair practices in Case No. PERA-C-02-622-E, including a refusal to bargain in good faith with the Teamsters as the successor employer to Milton Borough, that would make a free and fair election impossible. On February 11, 2004, the Authority and the Petitioners each filed with the Board timely exceptions to the Secretary's decision, together with their supporting briefs.¹

The Board has recognized that following a violation of the employer's bargaining duty, a union is entitled to a reasonable period of uninterrupted good faith bargaining with the employer, without challenges to its representation status. PSSU, Local #668, SEIU v. Franklin County, 34 PPER 161 (Final Order, 2003). In Franklin County, the employees filed a decertification petition seeking to decertify PSSU as their bargaining representative. PSSU filed a charge of unfair practices seeking to block the decertification petition, alleging that the County had engaged in bad faith bargaining by unilaterally increasing employe wages. A Proposed Decision and Order was issued finding that the County had violated its bargaining obligations. The County did not file exceptions to the PDO, but instead filed an affidavit of compliance evidencing that it had complied with the PDO. Because the decertification petition was still pending, PSSU filed exceptions with the Board arguing that the County's unfair practice continued to taint the employes' choice, making it impossible to proceed with a decertification election free of coercion.

In sustaining PSSU's exceptions, the Board recognized that the Commonwealth Court endorsed the Board's "discretion to decide when the

¹ As a preliminary matter, we must first dismiss the exceptions filed by the Authority. Although an employer may have an interest in participating in a decertification matter, here the Authority is not a party to the decertification, and no motion or request to intervene has been filed with the Board as required by Section 95.44 (a) of the Board's Rules and Regulations. Additionally, we note that the exceptions and supporting briefs filed by the Authority and the Petitioners are identical, and thus the interests of the Authority are adequately protected. Accordingly, the exceptions filed by the Authority are dismissed.

effects of an unfair labor practice require a refusal to conduct a representation election." Charley v. PLRB, 583 A.2d 65, 67 (Pa. Cmwlth. 1990). The Board held that to determine the appropriate time for an election "the Board will examine and reconcile several competing factors, including the unfair labor practice, the remedial actions ordered, the policies of PERA and the employees' right to a fair and impartial resolution of the decertification petition." Franklin County, 34 PPER at 496.

The holding in Franklin County is equally applicable in the context of a successor employer relationship. As noted in Teamsters Local 764 v. Milton Borough and Milton Regional Sewer Authority, 34 PPER 159 (Final Order, 2003), the successor employer is required to bargain for a new collective bargaining agreement covering the employees represented by the union. Where the employer has challenged its successor status and refused to bargain, the union has not had a satisfactory opportunity to negotiate with the successor employer. Prior to a challenge to its status as the collective bargaining representative of employees of a successor employer, the union is entitled under Franklin County, to enjoy a reasonable period of stable bargaining relations, free of unlawful refusals to bargain by the employer.

Applying the Franklin County analysis to this case, the unfair practices which formed the basis of the Secretary's dismissal of the employees' decertification petition occurred in context of the charge in Teamsters Local 764 v. Milton Regional Sewer Authority, *supra*. In that case, on January 1, 2003, the Authority took over operation of the Milton Waste Water Treatment Plant as a regional authority. Despite that it had hired the employees of the Treatment Plant, the Authority refused to recognize and bargain with the Teamsters as the representative of the employees. Prior to commencing operations, the Authority issued a handbook establishing the employees' terms and conditions of employment for the Authority. The Teamsters filed a charge of unfair practices alleging that the Authority refused to bargain and had engaged in direct dealing with the employees. The Board found that the Authority was a successor employer, and had unlawfully refused to bargain with the Teamsters. The Board also found that the Authority had unilaterally imposed its own terms and conditions on the employees. On December 16, 2003, the Board, in a final order, directed the Authority to, *inter alia*, restore the *status quo* and make an offer to bargain with the Teamsters. On January 12, 2004, the Petitioners filed the decertification petition.²

Since the decertification petition was filed immediately in the wake of the Authority's unfair practices and months prior to the Authority's compliance with the Board's order, the Teamsters were denied a fair chance to bargain with the Authority as recognized in Franklin County, and therefore a free and fair election is presently impossible. Accordingly, the Secretary did not err in dismissing the decertification petition.

² Here, the decertification petition was filed even before the Authority filed its affidavit indicating compliance with the unfair practice determination at Case No. PERA-C-02-622-E.

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 by the employes of the Milton Regional Sewer Authority, and the exceptions filed by the Milton Regional Sewer Authority, are dismissed, and the January 22, 2004 decision of the Secretary is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Anne E. Covey, Member, this sixteenth day of March, 2004. 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.