COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

COMMONWEALTH BAR ASSOCIATION	:	
	:	
v.	:	Case No. PERA-C-03-398-E
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
PUBLIC UTILITY COMMISSION	:	

FINAL ORDER

The Commonwealth Bar Association (CBA) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 12, 2004, from a Proposed Decision and Order of July 26, 2004. The CBA takes exception to the hearing examiner's dismissal of its Charge of Unfair Practices, and finding that the Commonwealth of Pennsylvania, Public Utility Commission (PUC) did not violate Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) in its negotiations for a successor collective bargaining agreement. The PUC timely filed a responsive brief on September 1, 2004.

The CBA represents 28 attorneys employed by the PUC, and their collective bargaining agreement expired June 30, 2003. THE CBA began negotiations with the PUC for a successor collective bargaining agreement in May 2003. At the time of their negotiations, the Commonwealth of Pennsylvania was also negotiating with the American Federation of State County and Municipal Employees (AFSCME) for a successor agreement for a unit of Commonwealth employes. AFSCME also represented a majority of the approximately 500 employes of the PUC. During negotiations with the CBA, the PUC's proposals in essence "mirrored" the AFSCME proposals with regard to wage and step increases, and health care benefits through the Pennsylvania Employe Benefit Trust Fund (PEBTF), which included CBA employes. The PUC submitted a final proposal to the CBA, which neglected to include provisions concerning an alternative work schedule and compensatory time that it had previously agreed to. The CBA did not ratify that proposal.

In determining whether an employer has violated Section 1201(a)(5) of PERA by not exhibiting good faith in its negotiations, the Board examines the totality of the circumstances surrounding the parties' negotiations. Pennsylvania Labor Relations Board v. Homer-Center School District, 12 PPER ¶12169 (Final Order, 1981).

> 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.

Id. at 262. Section 701 of PERA provides, however, that the obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession."

The CBA argues that the hearing examiner erred in failing to conclude that the PUC violated its duty to bargain in good faith with the CBA by maintaining its wage and benefits proposals consistent with the bargaining positions taken in the Commonwealth's negotiations with AFSCME. The hearing examiner, however, did recognize the CBA's position with regard to the bargaining allegations, and simply rejected its argument. The hearing examiner aptly noted

> Although the PUC's wage and benefit proposals to the Association may have remained essentially consistent with the terms that were being offered to other PUC employes who are represented by AFSCME, the Association has failed to cite any authority which indicates that a public employer may not offer the same terms to different units of employes. Therefore, the Association's first argument in support of its bad faith bargaining charge must be dismissed.

(PDO at 3).

Board case law, in fact, recognizes that an employer does not engage in bad faith bargaining by attempting to maintain consistent bargaining positions between separate units. In Fraternal Order of Police Lodge #5 v. City of Philadelphia, 29 PPER ¶29042 at 96-97 (Final Order, 1998) the Board noted that "[i]n negotiating a collective bargaining agreement with one of a number of units of its employes, an employer has a legitimate interest in seeking what it regards as consistent agreements and avoiding settlements where the employer is whipsawed by unions in the bargaining process." As pointed out by the PUC, consistency in terms and conditions of employment between employes working for the same employer, albeit in separate bargaining units, may have its benefits for labor/management relations and collective bargaining. Simply stated, a public employer does not engage in bad faith bargaining by seeking to maintain consistent bargaining positions between separate collective bargaining units of its employes.

Section 701 of PERA expressly protects the right of a party in the negotiation process to refuse to make concessions and does not require agreement to any particular proposal. By claiming that the PUC engaged in bad faith bargaining by maintaining a position on wages and health benefits consistent with other Commonwealth employes, what the CBA is seeking is in fact a concession on wage and benefit proposals. Public employe labor relations are not served by compelling concessions through unfair practice proceedings. Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwth. 2004), *petition for allowance of appeal filed*, No. 749 MAL 2004 (August 17, 2004).

The CBA also argues that the hearing examiner erred in failing to find that the PUC negotiated in bad faith when it did not correct the apparent inadvertent omission of the alternative work schedule and compensatory time provisions in its final offer tendered to the CBA, which had already been rejected by the CBA for other reasons. The CBA's

argument in this regard strains logic. There is no indication in the record that the CBA advised the PUC that the PUC's final offer would be accepted if those two provisions had been presented. Essentially, the CBA wants the PUC to be required by law to engage in the futile act of submitting a corrected proposal which had already been rejected by the CBA (further delaying the bargaining process).

More significant, however, is that the hearing examiner's finding that there was no unfair practice is in part predicated on credibility determinations, which the Board will not overturn absent the most compelling of circumstances, which are not present here. Crestwood School District v. Crestwood Education Association, 32 PPER ¶32050 (Final Order, 2001). The hearing examiner accepted the PUC spokesperson's testimony that he "did not intentionally fail to include the two items in the PUC's final offer, that the matter was not brought to his attention until after the Association membership voted to reject the PUC's final offer, and that he did not amend the PUC's final offer because the vote of the Association membership had already occurred and he was not asked to provide the Association with an amended final offer (N.T. 69-70, 72-73)." (PDO at 4). Under the totality of the circumstances, as credibly testified to by the PUC spokesperson, the PUC did not exhibit a lack of good faith in its negotiations with the CBA when it inadvertently omitted tentatively agreed upon provisions from its final offer.

Furthermore, the record here does not support the notion that the PUC had a mindset against reaching an agreement with the PUC. The CBA president testified that the proposals offered by the PUC were not identical to the Commonwealth's proposals to AFSCME, and contained provisions specific to the CBA covered employes (including payment of attorney licensing fees, continuing legal education reimbursements, lunch and/or dinner expenses), which, in most cases, maintained the working conditions from the expired contract. In addition, the PUC proposals did not include a "reopener" for employe contribution for health benefits depending on the solvency of the PEBTF, as had been provided to AFSCME, and requested by the PUC. As found by the hearing examiner, the parties held five bargaining sessions and a mediation session during which various proposals were discussed, and the testimony of the CBA president reveals that tentative agreements, peculiar to the CBA, were reached during these bargaining sessions. As evidenced by this testimony, "good faith" negotiations as required under PERA were ongoing between the PUC and the CBA.

While the PUC's bargaining tactics may constitute hard bargaining, the totality of the circumstances does not evidence a lack of good faith in its negotiations with the CBA. Accordingly, the hearing examiner did not err in dismissing the CBA's charge of unfair practices based on his conclusion that the PUC did not violate Section 1201(a)(1) and (5) of PERA.

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 Commonwealth Bar Association are hereby dismissed, and Proposed Decision and Order of July 26, 2004, is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Anne E. Covey, Member, this twenty-first day of September, 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.