

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 33 AND :
AFSCME LOCAL 159 :
 : Case No. PERA-C-04-446-E
v. :
 :
CITY OF PHILADELPHIA :

FINAL ORDER

The American Federation of State, County and Municipal Employees (AFSCME), District Council 33 (DC 33) and Local 159B (Local 159B), filed exceptions with the Pennsylvania Labor Relations Board (Board) on August 2, 2005, to a Proposed Decision and Order issued July 14, 2005, dismissing as moot their Charge of Unfair Practices alleging that the City of Philadelphia (City) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). After receiving an extension of time, AFSCME filed a brief in support of the exceptions on September 12, 2005. The City filed a timely response to the exceptions on September 29, 2005.

The facts of the case as found by the hearing examiner are not in dispute. DC 33 is the exclusive bargaining representative for employees of the City of Philadelphia by virtue of Section 2003 of PERA.¹ DC 33 consists of fifteen locals, including Local 159A (800 prison clerical and support staff not involved in custody of inmates) and Local 159B (1,700 guards responsible for custody and control of inmates).

A master collective bargaining agreement between the City and DC 33 from July 1, 2000 to June 30, 2004, was expiring and DC 33 initiated negotiations for a successor master agreement while Local 159B separately sought interest arbitration for the prison guards under Section 805 of PERA. The City refused to proceed with mediation separately for Local 159B, and on August 20, 2004, when AFSCME requested that the issues in dispute for Local 159B employees be submitted to interest arbitration under Section 805 of PERA, the City refused to participate in interest arbitration.

During this time DC 33 was also negotiating a master agreement for the City employees. On October 27, 2004, the City informed AFSCME that it would not agree to a master collective bargaining agreement with DC 33 unless it withdrew a demand for interest arbitration for the prison guards in the Local 159B unit. AFSCME's health and welfare fund had insufficient funds to pay newly increased health benefit premiums absent a new master agreement, and in what the hearing examiner characterized as a "heated and difficult vote" (PDO at 3), AFSCME chose to withdraw the demand for interest arbitration for Local 159B and sign a new collective bargaining agreement with the City. The City and DC 33 thereafter executed a master collective bargaining agreement for AFSCME represented City employees, including the Local 159B unit.

AFSCME argues that the hearing examiner erred in dismissing its charge as moot where the City's unfair practice for refusing to proceed to interest arbitration occurred before AFSCME withdrew its demand for arbitration. AFSCME posits that since a refusal to engage in interest arbitration for Section 805 covered employees is a *per se* violation of PERA, Office of Administration v. PLRB, 528 Pa. 472, 598 A.2d 1274 (1991), the hearing

¹ Section 2003 of PERA provides

Present provisions of an ordinance of the City of Philadelphia approved April 4, 1961, entitled "An Ordinance to authorize the Mayor to enter into an agreement with District Council 33, American Federation of State, County and Municipal Employees, A.F.L.-C.I.O., Philadelphia and vicinity regarding its representation of certain City Employees," which are inconsistent with the provisions of this act shall remain in full force and effect so long as the present provisions of that ordinance are valid and operative.

examiner should have found, as a matter of law, that the City's August 26, 2004 refusal violated Section 1201(a)(1) and (5) of PERA.

Under Section 1302 of PERA, which recognizes that the Board may issue a complaint to determine if the respondent "has engaged in ... any such unfair practice[,]" it is within the discretion of the Board whether to adjudicate and remedy past violations of PERA. Fraternal Order of Police, Queen City Lodge #10 v. City of Allentown, 27 PPER ¶27250 (Final Order, 1996). In determining whether alleged past violations of bargaining obligations occurring during negotiations should be heard, the Board considers as paramount whether its involvement after a successor agreement has been reached, is appropriate under the facts of any particular case. In this regard, the Board distinguishes between those charges where the employes continue to suffer residual effects of an unlawful, unilateral change to wages, hours and working conditions, which are typically not moot, as opposed to those involving bargaining tactics which do not result in affirmative relief to the employes, but rather cease and desist orders, which are generally mooted by the parties' entry into a collective bargaining agreement. Hazleton Area Education Support Personnel Association v. Hazleton Area School District, 29 PPER ¶29180 (Final Order, 1998).²

As regards Section 805 covered employes, the collective bargaining obligations may be fulfilled either through interest arbitration or through prior successful negotiation of a collective bargaining agreement. Because a refusal to engage in a mandatory dispute resolution procedure such as interest arbitration under Section 805 is remedied by directing arbitration of the impasse as required by PERA, charges of unfair practices alleging refusals to arbitrate are generally rendered moot where the parties reach an agreement during litigation to enforce the arbitration obligation. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 29 PPER ¶29149 (Final Order, 1998).

The subsequent execution of a negotiated collective bargaining agreement between District Council 33 and the City, as an alternative to interest arbitration, fulfills the City's obligations under PERA. In accordance with Section 2003 of PERA, the City's bargaining obligation is to District Council 33, as the exclusive representative of approximately fifteen DC 33 locals, including Local 159B. AFSCME, Local No. 159 v. City of Philadelphia, 25 PPER ¶25081 (Proposed Decision and Order, 1994). Thus, just as District Council 33 may demand arbitration for the prison guards it represents, it may also agree with the City to withdraw that request in connection with execution of a negotiated agreement. As aptly noted by the hearing examiner, "[w]hile it is clear from the record AFSCME faced hard choices in these negotiations, it did have choices to make, and the choice it made rendered this charge moot."

Accordingly, after a thorough review of the exceptions and all matters of record the hearing examiner did not err in dismissing AFSCME's charge as moot.

ORDER

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

HEREBY ORDERS AND DIRECTS

that exceptions filed by AFSCME, District Council 33 and Local 159 are hereby dismissed, and the July 14, 2005 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this fifteenth day of November, 2005. 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.

² The Board may also exercise discretion to hear those cases that are technically moot, but yet capable of repetition and able to escape review. City of Allentown, supra; Slippery Rock Area Education Association v. Slippery Rock Area School District, 24 PPER ¶ 24175 (Proposed Decision and Order, 1993).