COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED MINE WORKERS OF AMERICA	:	
	:	
v.	:	Case No. PERA-C-04-204-W
	:	
COUNTY OF FAYETTE	:	

FINAL ORDER

United Mine Workers (Union) filed Exceptions with the Pennsylvania Labor Relations Board (Board) from the June 22, 2004 decision of the Secretary of the Board declining to issue a complaint on its Charge of Unfair Practices.

On April 26, 2004, the Union filed a Charge alleging that the County of Fayette (County) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA), by refusing to arbitrate grievances involving a unit of probation officers. On May 14, 2004, the Secretary issued a letter by certified mail to the Union, stating in pertinent part:

> Review of the Specification of Charges and supplementing documentation discloses that the employer takes the position that the judges did not agree to arbitrate hire, fire and supervision matters. Accordingly, it will be necessary for you to amend the charge of unfair practices to set forth facts to demonstrate that the contract was negotiated in compliance with Section 1620 [of the County Code].
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> Failure to amend the charge as requested in the enclosed form within twenty (20) days of the date of this letter may result in a dismissal of the charge...

No amendment was filed pursuant to the Secretary's May 14 letter requesting amendment. On June 22, 2004, the Secretary dismissed the Union's charge for failure to respond to the May 14 letter. The Union filed timely exceptions to the Secretary's dismissal of the Charge by letter dated July 9, 2004. In its exceptions, the Union reiterated its allegations against the County and argued the legal merits of issuing a complaint without the amendment requested by the Secretary, but did not provide an explanation for his failure to timely respond to the Secretary's certified letter of May 14.

Assuming, *arguendo*, that the Union's exceptions were timely filed to the May 14 letter, rather than the June 22 letter, the exceptions would be unavailing. In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Generally, a complaint will be issued unless the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998). The Union alleges the following facts: The County refused to arbitrate the "just cause" of the termination of a probation officer, pursuant to the grievance procedure contained in the collective bargaining agreement. Further, the County has refused to arbitrate a refusal to grant a probation officer's vacation request pursuant to the collective bargaining agreement.

As stated by the Secretary in her May 14 letter, collective bargaining for probation officers is conducted under the auspices of Section 1620 of the County Code, which provides:

> The salaries and compensation of county officers shall be as now or hereafter fixed by law. The salaries and compensation of all appointed officers and employes who are paid from the county treasury shall be fixed by the salary board created by this act for such purposes: Provided, however, That with respect to representation proceedings before the Pennsylvania Labor Relations Board or collective bargaining negotiations involving any or all employes paid from the county treasury, the board of county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers over the affected employes. The exercise of such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employes as may be vested in the judges or other county officers.

16 P.S. § 1620 (2003). The Supreme Court has stated that compliance with Section 1620 requires "consultation" between the judges or elected row officials and the county commissioners, who negotiate on their behalf over wages, hours and working conditions. Lehigh County v. PLRB, 507 Pa. 270, 489 A.2d 1325 (1985). However, in the almost three decades since the passage of Section 1620, it remains the source of litigation on its application and meaning. One major

source of mischief has been the negotiation of contracts between commissioners (as agents for judges and row officials under Section 1620) and unions, where there is inadequate consultation between the commissioners and the judges (or row official) they represent. Too often, such contracts have been rendered unenforceable, because they were not negotiated in compliance with Section 1620. See PLRB v. Della Vecchia, 517 Pa. 349, 537 A.2d 805 (1988); Butler v. O'Brien, 650 A.2d 1146 (Pa. Cmwlth. 1994). In addition to the purely statutory issue presented by row official contracts under Section 1620, judicially appointed employes present the question of potential interference with the independence of the judiciary. As Commonwealth Court pointed out in O'Brien, judges can voluntarily limit their hire and fire rights through collective bargaining, but commissioners, without the Court's consent, cannot limit the Court's authority and independence. See also Teamsters Local 115 v. PLRB, 619 A.2d 382 (Pa. Cmwlth.), *allocatur denied* 535 Pa. 671, 634 A.2d 1119 (1993).

Due to the practical problems found in the negotiation of collective bargaining agreements under Section 1620, the Board in 1998 provided guidance and instruction to parties seeking to negotiate enforceable contracts:

> It is our view that the bargaining process would best be served by a safeguard inserted toward the conclusion of the negotiations. We believe that there would be fewer disputes of this nature if at the time of ratification and execution of collective bargaining agreements involving row office employes, the commissioners submit a copy of the proposed agreement to the individual row officers and request that they inform the commissioners and the union in writing that their rights and obligations under Section 1620 have been satisfied. At that time the principal, the row official, must ratify the action of the county commissioners, the row official's agent in the bargaining process, to the extent the commissioners have lawfully carried out collective bargaining in good faith under Section 1620. In AFSCME, District Council 84, supra, the Supreme Court stated that negotiations by commissioners may impact judicial employes in areas above-discussed as long as judges were "consulted by the county commissioners and approved of such terms." 515 Pa. at 35, 526 A.2d at 775. The Supreme Court similarly stated in Della Vecchia that the ". . .final collective bargaining agreement should ideally cover all aspects bargainable under PERA and should be entered into only after the Commissioners have received input from the respective row officers." 517 Pa. at 356, 537 A.2d at 808.
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> By such a procedure the interests of the row official, the commissioners, the collective bargaining representative and the affected employes will be served. The row official will be apprised in writing of the terms of the agreement and he or she will be obliged at that time (prior to ratification and execution) to make the commissioners and the employe representative aware of any instance where the commissioners have not properly represented their interests in bargaining under Section 1620. The commissioners, charged with negotiating in good faith under Section 1620 and Section 1201(a)(5) of PERA, will be protected from row officials' disavowing contracts after ratification and be prevented from communicating one position to the union in negotiations and another position to the row official. Armed with the knowledge that the product of negotiations will be ratified by the row official prior to execution, commissioners negotiating in good faith will be encouraged to consult with and be accountable to the row official. The benefit to the union and the employes they represent is obvious, they will have some assurance at the time of ratification and execution of the contract that they have entered into a reliable and enforceable contract, rather than the house of cards envisioned by the commissioners and row official here which will collapse as soon as the union seeks its enforcement.
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> It is essential for the collective bargaining representative to remain vigilant to insure that Section 1620 is not subverted as it has been in the past. Where county commissioners refuse to bargain over "hours" and "other terms and conditions of employment," negotiable under Section 701, in units of row office employes, such refusals are actionable under Section 1201(a)(5). Similarly, negotiations conducted by county commissioners without the required consultation with the affected row official are in violation of Section 1201(a)(5). A tentative agreement negotiated by the commissioners not submitted to the row official for ratification is also actionable under Section 1201(a)(5). Lastly, if the agreement has been negotiated by the commissioners, in consultation with the affected row official, the row official's refusal to ratify would constitute a violation of Section 1201(a)(1) of PERA because such action would interfere with the employes' right to collectively bargain through their designated representative.
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> We believe these procedures will obviate the sort of problem evidenced by the facts of this case. Because of the bad faith bargaining and disingenuous communication surrounding negotiation of the agreement at issue, the bargaining relationship has degenerated into unproductive litigation. We strongly urge county commissioners and employe organizations representing row office employes to negotiate in the fashion above discussed which the Board will enforce pursuant to its power to address and remedy unfair practices under Articles XII and XIII of PERA. Where negotiations are not so conducted the parties act at

their peril. See, e.g., Butler County v. O'Brien, 650 A.2d 1146 (Pa. Cmwlth.1994)(grievance arbitration enjoined where there was not evidence of voluntary assent to contract terms involving hiring and firing powers).

AFSCME DC 88 v. Berks County, 29 PPER ¶ 29044 (Final Order, 1998), *affirmed* 735 A.2d 192 (Pa. Cmwlth. 1999), *allocatur denied*, 563 A.2d 624, 757 A.2d 937 (2000).

Because the Union did not set forth sufficient allegations of the Court's consent to the contract executed by the commissioners, the Secretary, by certified letter dated May 14, 2004, requested amendment of the charge indicating compliance with the bargaining process outlined by the Board in Berks County. When the Union did not amend, the Secretary dismissed the charge on June 22, 2004, for failure of the Union to amend. In its exceptions to the June 22 dismissal, the Union concedes that the contract entered in 2001 was not negotiated pursuant to the consultation required by Section 1620, Lehigh County and Berks County, and therefore does not warrant issuance of a complaint.

However, the Union argues in its exceptions that the County should be bound by an estoppel theory, since the commissioners negotiated the contract. However, our view of the voluminous case law decided under Section 1620 reveals that ordinary estoppel principles do not apply to negotiations under Section 1620. County commissioners are mere statutorily designated agents of judges and row officials and cannot bind them without adequate consultation prior to entry into collective bargaining agreements. It is folly to suggest, for example, that the discharge of a judicial employe for disciplinary reasons can be arbitrated without the consent of the Court. Teamsters Local 115, *supra*. To claim, as does the Union here, that the county commissioners can bind the Court without its consent obtained through consultation prior to entry into the contract invites precisely the sort of mischief the Board's Berks County decision sought to obviate.

The Union further claims that vacation scheduling does not impact the "supervisory right" of the Court. Despite the Union's argument to the contrary, vacation scheduling directly impacts the Court's supervisory right to direct its personnel. While the number of vacation days provided annually is a matter of wages and hours, the vacation schedule directly impacts the Court's management and supervision of its personnel. The authority of the Court, like any other employer, to approve vacation schedules consistent with its workload is an indisputable right and responsibility of management.

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 to the above case number be and the same, are hereby dismissed, and the Secretary's letter declining to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 twentieth day of September, 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.