

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 764 :
 :
 v. : Case No. PERA-C-04-450-E
 :
 SNYDER COUNTY :
 SNYDER COUNTY PRISON BOARD :

FINAL ORDER

Snyder County and the Snyder County Prison Board (collectively the "County") jointly filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on April 15, 2005, challenging the Proposed Decision and Order (PDO) of March 28, 2005, in which the hearing examiner concluded that the County violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA), by subcontracting the work of bargaining unit employes represented by the Teamsters Local #764 (Teamsters). Teamsters filed a timely brief in response to the exceptions on April 25, 2005. The County filed a Reply to the Teamsters' brief in response to exceptions on May 9, 2005.¹

The Teamsters are the certified representative for a unit of prison guards, including correctional officers/cooks employed by the County. The Teamsters and the County are parties to a collective bargaining agreement effective January 1, 2002, through December 31, 2005, covering the certified prison guard unit. (Finding of Fact 4).

In May 2004, the Teamsters became aware that the County had been exploring subcontracting the kitchen operation at the county prison, and sent a letter to the County requesting that it bargain the issue. (Finding of Fact 5, 6). The County sent proposals to the Teamsters for consideration, (Finding of Fact 8) and a bargaining session was arranged for August 5, 2004. During the August 5, 2004 meeting, the Teamsters did not offer any proposals of its own, and indicated that none would be forthcoming. The position of the Teamsters was that the recognition clause in the collective bargaining agreement prevented the County from subcontracting. (Finding of Fact 10).² Subsequent correspondence between the parties addressed the possibility of retaining bargaining unit employes to work for the subcontractor. (Findings of Fact 11, 12). No further meetings were arranged, (Finding of Fact 14) and on October 1, 2004, the County subcontracted the prison kitchen operation to Aramark Corporation. (Finding of Fact 15).

The County argues that the hearing examiner erred in concluding that it violated Section 1201(a)(1) and (5) of PERA by subcontracting prior to having engaged in the statutory impasse resolution procedures of Article VIII of PERA. In this regard, it asserts that the Article VIII procedures do not apply to subcontracting issues arising during the terms of a collective bargaining agreement. In the alternative, the County contends that under Board precedent it was entitled to subcontract, because a bargaining impasse was in fact reached where the Teamsters refused to provide any proposals or negotiate the issue.

Where the employes' collective bargaining rights include impasse resolution procedures or interest arbitration as a *quid pro quo* for the denial of a right to strike, such as the correctional officers/cooks represented here by the Teamsters, those statutory procedures must be fulfilled prior to the employer taking action on a matter that is subject to mandatory bargaining under PERA. Office of Administration v. PLRB, 528

¹ The Board accepts a reply on exceptions only in limited circumstances, and will not consider the County's Reply Brief, which merely reiterates the arguments made in its principal brief. Dauphin County, 34 PPER 99 (Final Order, 2003).

² While a contractual "zipper" or waiver clause may be used by a party as a shield to avoid bargaining demands mid-contract, Commonwealth of Pennsylvania (Vanengo County Board of Assistance) v. Pennsylvania Labor Relations Board, 459 A.2d 452 (Pa. Cmwlth. 1983), no such clause is present in the parties' 2002 - 2005 collective bargaining agreement. The general recognition clause in Article I, purportedly relied on by the Teamsters, does not relieve the union's statutory duty to negotiate proposed subject matters not addressed in the collective bargaining agreement.

Pa. 472, 598 A.2d 1274 (1991). The employer's collective bargaining obligations, and the union's right to fulfillment of those duties, apply during mid-term of a collective bargaining agreement. Salisbury Township v. PLRB, 672 A.2d 385 (Pa. Cmwlth. 1996); International Association of Firefighters, Local No. 22 AFL-CIO v. City of Philadelphia, 28 PPER ¶ 28100 at 207 (Final Order, 1997), *affirmed unreported*, No. 1000 C.D. 1997 (Pa. Cmwlth 1998), *petition for allowance of appeal denied*, 556 Pa. 714, 729 A.2d 1132 (1998).

Where the issue is one of subcontracting, an employer must engage in the bargaining process and negotiate in good faith to a bona fide impasse before exercising its managerial right to subcontract bargaining unit work. Morrisville School District v. PLRB, 687 A.2d 5 (Pa. Cmwlth. 1996); Teamsters Local #205 v. Peters Creek Sanitary Authority, 34 PPER 27 (Final Order, 2003). For bargaining unit work performed by Section 805 employes, "impasse" arises at "the end of the statutory dispute resolution process under Article VIII ... [which] as regards employes of this nature is not exhausted until the unresolved dispute is submitted to interest arbitration for resolution" AFSCME, District Council 88 v. Clinton County, 24 PPER ¶24144 (Final Order, 1993).³

An employer desiring to make changes to wages, hours or working conditions must seek out its bargaining counterpart and engage in good faith negotiations without prompting or prodding from the union. Peters Creek Sanitary Authority, *supra*. The contrary

permits a municipality to avoid its statutory obligation to bargain and make a unilateral change regarding an expressly mandatory subject, thereby forcing the bargaining representative to attempt to bargain out from under a *fait accompli* which the municipality has already chosen and implemented, with little or no incentive to consider union proposals not consistent with its prior choice. Not only is such a result contrary to all notions of bargaining, but it is also contrary to longstanding Board policy.

International Association of Firefighters, Local No. 713 v. City of Easton, 20 PPER ¶20098 at 268 (Final Order, 1989).

The employer's bargaining obligation, especially with regard to Section 805 covered employes, recognizes the legislative intent that, in exchange for the denial of a right to strike, employes must be given an opportunity for their union to be heard under the statutory bargaining framework. Office of Administration, *supra*. The fact that the union is hesitant, or even trying to avoid negotiating subcontracting, does not obviate the employer from proceeding with its bargaining obligations and compelling the union through the statutory process. Thus, if it is the employer that is considering subcontracting, it is the employer that must satisfy the Article VIII collective bargaining obligations through to statutory impasse. Clinton County, *supra*; Salisbury Township, *supra*.

Throughout this proceeding the County has attempted to shift the onus to the Teamsters to satisfy the collective bargaining duty. Consistent with the above precedent, the law is clear that it was the County's obligation, as the party seeking the change in the *status quo*, to seek out its bargaining counterpart and offer the Teamsters completion of the mandatory bargaining steps provided in Article VIII of PERA (i.e. bargaining, mediation and interest arbitration). The record shows that because the Teamsters expressed understandable reluctance to negotiate the elimination of their jobs, the County seized on this as justification to abort the bargaining process and decline to mediate and arbitrate, as the law requires. Because it was the County seeking to subcontract bargaining unit work and eliminate bargaining unit jobs, it was the County's burden to seek out the Teamsters and insure compliance with its statutory bargaining obligation, including an offer to interest arbitrate. Its failure to do so was an unfair practice.

³ Bargaining under Article VIII of PERA requires a reasonable period of negotiation of at least twenty-one days, followed by a request for mediation from both parties. 43 Pa. C.S. §1101.801. After a minimum of twenty days of mediation, either party may demand arbitration. 43 Pa. C.S. §§1101.802, 1101.805. A refusal to participate in the process is an unfair practice under Section 1201 of PERA.

Accordingly, after a thorough review of the exceptions and all matters of record, the hearing examiner's determination that the County violated Section 1201(a)(1) and (5) of PERA was not in error. The County's exceptions to the PDO are therefore dismissed.

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 Snyder County and the Snyder County Prison Board are hereby dismissed, and the March 28, 2005 Proposed Decision and Order, be and hereby is made absolute and final.

SIGNED, SEALED, DATED and MAILED this nineteenth of July, 2005.

PENNSYLVANIA LABOR RELATIONS BOARD

L. DENNIS MARTIRE, CHAIRMAN

ANNE E. COVEY, MEMBER

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

Snyder County and the Snyder County Prison Board hereby certify that they have ceased and desisted from their violation of Section 1201(a)(1) and (5) of PERA; that they have rescinded the subcontracting of food services at the County prison; that they have restored the food service work to the bargaining unit; that they have offered the affected employes unconditional reinstatement to their former positions without prejudice to any rights or privileges enjoyed by them; that they have made the affected employes whole for lost wages and benefits due to the subcontracting of the food service work; that they have posted the final order and proposed decision and order as directed; and that they have served a copy of this affidavit on the Union 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