

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ELIZABETH TOWNSHIP :  
 :  
 v. : Case No. PERA-C-04-188-W  
 :  
 TEAMSTERS LOCAL 205 :

**FINAL ORDER**

Elizabeth Township (Township) filed exceptions with the Pennsylvania Labor Relations Board (Board) on May 3, 2005, to a Proposed Decision and Order (PDO) of April 13, 2005, dismissing its Charge of Unfair Practices alleging that the Teamsters Local Union No. 205 (Teamsters) violated Section 1201(b)(3) of the Public Employee Relations Act (PERA). A hearing was held before a Board hearing examiner on November 19, 2004, at which time both parties presented testimony and documentary evidence.

Based on the evidence presented, the hearing examiner found that the Township and Teamsters were parties to a collective bargaining agreement effective January 1, 2003, through December 31, 2005. (Finding of Fact (FF) 3). Article 15, Section A(1) of the agreement provides that

The Township agrees to provide and pay for hospitalization and medical insurance coverage for all of its employees and their dependents. Said program shall be Keystone Health Plan West administered through Employer Teamsters Local 205 Welfare Fund. The Township may change health care programs provided such coverage is equal to or better than the aforementioned program and with mutual agreement of the Township and the Union.

(FF 3).

The Employer Teamsters Local 205 Welfare Fund (Fund), administers health care benefits through the Keystone Health Plan West for approximately sixty-eight participating employers. (FF 6). Four trustees, two from the Teamsters and two from employers in the dairy industry, govern the Fund. (FF 4 and 5).

At the time the Township executed the current collective bargaining agreement, the Fund offered participating employers the option of paying premiums based on a composite rate or a component rate. (FF 8).<sup>1</sup> However, around January 2004, the Fund became aware of a substantial monthly deficit between what it was receiving from employer contributions and the premiums being paid for the Keystone Health Plan West. (FF 9). By letter dated March 4, 2004, the Fund required that, effective March 1, 2004, each employer is to pay the component rate for health insurance premiums. (FF 10).<sup>2</sup>

The Township argued before the hearing examiner, and now in its exceptions, that because the Fund was nothing more than an alter ego of the Teamsters, the Teamsters had a duty to negotiate any changes to health and medical benefit premiums paid by the Township into the Fund. However, the evidence only supports that the Teamsters had fifty percent voice in the administration of the Fund. The governing board of the Fund is comprised of two members from the Teamsters and two members selected from the sixty-eight participating employers. The Teamsters fifty percent participation on the governing board of the Fund does not amount to a controlling interest to support a finding that the Fund

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<sup>1</sup> The component rate is the actual rate for each employe based on the employe's class or category (i.e. , single, single parent, married, or family), whereas the composite rate is an average rate assessed per employe. (FF 8).

<sup>2</sup> The component rate for the dairy industry became effective May 1, 2004. (FF 11).

is an alter ego of the Teamsters. See Milton Borough, 34 PPER 159 (Final Order, 2003). Moreover, there is no evidence to support that the day-to-day direction and management of the Fund was ultimately governed by the Teamsters.

Based on the record evidence, the hearing examiner did not err in finding that the Fund was not an alter ego of the Teamsters. Therefore, the hearing examiner likewise did not err in concluding that because the Fund, a third party, had made the alleged change to a composite rate for health benefit premiums, the Teamsters did not commit the alleged unfair practice.<sup>3</sup>

Had the Teamsters been responsible for the change to the composite rate, the Township argues that the hearing examiner erred in refusing to admit parol evidence, which would have shown that the component rate for health benefit premiums was contrary to the parties' understanding of Section A(1) of Article 15 of the collective bargaining agreement. The Township argues that the hearing examiner should have permitted the testimony of Donald Similo, Councilman, regarding his discussions with union representatives and the negotiations leading up to Article 15 Section A(1) of the collective bargaining agreement.<sup>4</sup> In addition, the Township contends that there is a latent ambiguity of the contract terms arising from extraneous documents and circumstances relevant to the parties' negotiations on that provision.<sup>5</sup>

The issue of payment for employe health care benefits has been addressed by the parties as set forth in Article 15, Section A(1) of the collective bargaining agreement. Generally, an unfair practice for a repudiation of an agreement is based on the clear and express wording of the contract. Parol evidence is inadmissible before the Board to establish a unilateral change to the terms of a collective bargaining agreement. See Riverside School District, 27 PPER ¶ 27234 (Proposed Decision and Order, 1996). The evidence presented of record does not support a unilateral repudiation of the contract requirement that the Township "pay for hospitalization and medical insurance coverage for all of its employees and their dependents." What is at issue in this dispute, however, is an interpretation of that language.

As recognized by the Board in State System of Higher Education v. Association of Pennsylvania State College and University Faculties, 20 PPER ¶ 20125 (Final Order, 1989)

To the extent that [the employer] is asserting a refusal by [the union] to comply with ... the parties' collective bargaining agreement ..., [the employer] has not stated an unfair practice which the Board has the power to remedy. Instead, [the employer] is essentially alleging that [the union] has breached the parties' collective bargaining agreement. As we have previously indicated, Section 903 of PERA mandates arbitration as the means of resolving allegations that a party has breached the collective bargaining agreement.

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<sup>3</sup> In its exceptions, the Township claims that the Teamsters discriminated against it by allowing the dairy industry to continue the composite rate while requiring the Township to pay the component rate. To the extent this argument involves the Teamsters' good faith bargaining obligations, it is based on the faulty premise that the Teamsters had a statutory duty to negotiate the change made by the Fund. Second, discrimination by a union against an employer is not a separately enumerated unfair labor practice in Section 1201(b) of PERA over which the Board has jurisdiction. See Ziccardi v. Commonwealth, 500 Pa. 326, 456 A.2d 979 (1982).

<sup>4</sup> The Township claims that Mr. Similo's proffered testimony would have been to a statement by the Teamsters against its interests. However, no showing that the declarant(s) (the union bargaining agents) were unavailable to testify was made at the hearing to support an exception to the general rule excluding hearsay testimony. Pa. R.E. 803(b).

<sup>5</sup> The Keystone Health Plan West plan documents, upon which the claim of a latent ambiguity is premised, were not introduced into the record before the hearing examiner, and therefore cannot support a finding of ambiguity. Northeastern Regional Police Patrolman's Association v. Northeastern Regional Police Board, 21 PPER ¶21041 (Final Order, 1990).

[Maras v. Commonwealth, Department of Public Welfare, 534 A.2d 153 (Pa. Cmwlth. 1987); Neshaminy Federation of Teachers, 13 PPER 13249 (Final Order, 1982)].

Given that the issue of payment for employe medical and hospitalization benefits was addressed in the contract, evidence proffered to support an interpretation of the contract terms, and not an issue of repudiation, concerns a dispute that would properly lie in arbitration, and not before the Board as an unfair practice. Accordingly, the hearing examiner did not err in declining to admit evidence of the parties' interpretation of Section A(1) of Article 15 of the collective bargaining agreement.

The hearing examiner's findings that there was no clear repudiation of Section A(1) of Article 15 of the collective bargaining agreement, and that the Fund, a third-party, had made the alleged change to the Township's premium payment for health care benefits, are both supported by substantial evidence in the record and will not be disturbed. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942). After a thorough review of the exceptions and all matters of record, the hearing examiner did not err concluding that the Teamsters did not violate Section 1201(b)(3) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Elizabeth Township are hereby dismissed, and the April 13, 2005 Proposed Decision and Order, be and hereby is made absolute and final.

SIGNED, SEALED, DATED and MAILED this twenty-first day of June, 2005.

PENNSYLVANIA LABOR RELATIONS BOARD

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L. DENNIS MARTIRE, CHAIRMAN

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ANNE E. COVEY, MEMBER