

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION No. 773 :
 :
 v. : Case No. PERA-C-04-82-E
 :
 LEHIGH TOWNSHIP :

FINAL ORDER

On January 3, 2005, the Teamsters Local Union No. 773 (Teamsters) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO) issued December 14, 2004, in which the hearing examiner directed Lehigh Township (Township) to cease and desist from violating Section 1201(a) (1) and (3) of the Public Employee Relations Act (PERA). No exceptions were filed by the Township, and on January 10, 2005, the Township filed a brief in response to the exceptions. After a thorough review of the exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDING OF FACT

15. The Teamsters and the Township had agreed that any tentative agreement reached on November 19, 2003, would require ratification by the union members and board of supervisors. (N.T. 23).

DISCUSSION

The uncontested findings of fact from the PDO reveal that Deborah Miltenberger, a union steward, was a member of the Teamsters negotiating team bargaining for a successor collective bargaining agreement for the contract set to expire December 31, 2003. During the final bargaining session on November 19, 2003, a tentative agreement was reached wherein, for the first two years of the contract Ms. Miltenberger, as the only police secretary, would receive pay raises of \$.75 in January and \$.25 in July. The remaining nonprofessional employees would receive \$.25 raises in both January and July. The two voting members of the Township Board of Supervisors present at that bargaining session heard Ms. Miltenberger exclaim as she left the meeting, "let's see what the non-union employees get in their raises." The hearing examiner found that because of her statement the Township Board of Supervisors rejected the tentative agreement, and instead, at the public meeting held December 23, 2003, prepared and ratified a proposal wherein Ms. Miltenberger would receive a \$.60 raise in January, and the remaining non-professional employees would receive a \$.30 raise in January and again in July. The Teamsters later ratified this proposal, and the successor collective bargaining agreement for 2004 - 2006 was signed January 23, 2004.

The Teamsters filed a Charge of Unfair Practices on February 19, 2004, alleging that the Township refused to bargain in good faith and discriminated against Ms. Miltenberger by rejecting the tentative agreement containing a \$.75/\$.25 raise because of her statement at the bargaining session. The hearing examiner dismissed the bargaining violation as moot because the parties had resolved the underlying

impasse in the January 23, 2004 collective bargaining agreement,¹ but found that the Township violated Section 1201(a)(1) and (3) of PERA by discriminating against Ms. Miltenberger for her protected comment. However, because the Teamsters and the Township had executed a successor agreement governing Ms. Miltenberger's wages, the hearing examiner limited the relief to a cease and desist order. The Teamsters now file exceptions arguing that the hearing examiner erred in failing to award back pay as "make whole" type relief for the Township's discriminatory action in rescinding the proposed \$.75/\$.25 wage increase for Ms. Miltenberger.

The remedy to be afforded a complainant is within the sound discretion of the Board. Pennsylvania Labor Relations Board v. Martha Company, 359 Pa. 347, 59 A.2d 166 (1948). In this regard, consistent with Section 1303, the Board may direct such remedial relief as necessary to correct the unfair practice that has been committed, or that would otherwise effectuate the purposes of PERA. Thus, typically in the case of discrimination, a make whole type award is generally designed to place the employe in a position he/she would have been in but for the employer's unlawful action. Mid Valley Education Association v. Mid Valley School District, 25 PPER ¶ 25138 (Final Order, 1994).

This case is unlike other cases the Board has decided where a party, faced with its bargaining counterpart's alleged failure to fulfill its obligations to reduce an agreement to writing and execute it, pursued unfair practice charges to ensure compliance with an alleged agreement. See St. Clair Area Education Association v. St. Clair Area School District, 18 PPER ¶ 18116 (Final Order, 1987), *affirmed*, 525 Pa. 236, 579 A.2d 879 (1990). Here, it is unknown on this record whether the tentative agreement would have been ratified by both parties and ripened into a contract. The record does not show that the Teamsters ratified the tentative agreement that proposed a \$.75/\$.25 pay raise for Ms. Miltenberger. Rather, the Teamsters regarded the Township's action at the December 23, 2003 meeting as a counterproposal which it later accepted, ratified and executed on January 23, 2004. The Teamsters, by their conduct, did not regard the tentative agreement as a contract binding on the parties and thus a basis to assess an actual loss by Ms. Miltenberger. Accordingly, although the Teamsters have demonstrated the commission of an unfair practice by the Township, on this record, the relief requested by the Teamsters is speculative.

After a thorough review of the exceptions, and all matters of record, the hearing examiner's cease and desist order is an adequate remedy effectuating the purposes of PERA, and thus will not be disturbed.

ORDER

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

¹ No exceptions have been filed to the hearing examiner's dismissal of the Section 1201(a)(5) claim.

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order of December 14, 2004, are dismissed, and the PDO, as amended herein, is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Member, and Anne E. Covey, Member, this fifteenth day of February, 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.

