

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

RYE TOWNSHIP POLICE ASSOCIATION :
 :
 v. : Case No. PF-C-06-24-E
 :
 RYE TOWNSHIP :

FINAL ORDER

On July 24, 2006, Rye Township Police Association (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated July 10, 2006. In the PDO, the Hearing Examiner dismissed a charge of unfair labor practices and concluded that Rye Township (Township) did not engage in unfair labor practices in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), when the Township Board of Supervisors refused to ratify a collective bargaining agreement to which two of the three supervisors allegedly agreed. On July 31, 2006, the Township also filed exceptions to the PDO. On August 21, 2006, the Township filed a document that constituted both a response to the Union's exceptions and a brief in support of its exceptions. The Township's filing of its brief in support of exceptions complied with the extension granted by the Board Secretary. On September 8, 2006, the Union filed its response to the Township's exceptions.

The facts as found by the Examiner are as follows. The Township employs two police officers: Corporal Clinton Shoop and Officer John Bruno. Shoop is the president of and chief negotiator for the Union. On April 8, 2005, the Union filed a petition for representation with the Board seeking to represent the Township's police officers in collective bargaining under the PLRA and Act 111. Due to a dispute between the Township and the Union over the appropriate composition of the police bargaining unit, a hearing was held before a Board hearing examiner on May 18, 2005. On August 1, 2005, the hearing examiner issued an order directing submission of eligibility list, which determined the appropriate composition of the bargaining unit. Thereafter, on September 30, 2005, the Board issued an order and notice of election, which directed that an election be held on the Union's petition for representation on October 13, 2005. (PF-R-05-47-E).

The Township Board of Supervisors consists of Sharon Cole, Ronald Evans and Charles Kunkle. On October 6, 2005, the Board of Supervisors conducted a budget meeting. At the meeting, Corporal Shoop was asked to provide his input regarding the police department budget. There was also discussion at the meeting concerning a police contract. Shoop advised the supervisors that they were under no duty to negotiate a police contract for 2006, because the Union had missed the Act 111 timeframe for commencement of bargaining. The supervisors nevertheless indicated that they were interested in discussing a police contract that would include 2006. Supervisors Kunkle and Cole also advised Shoop that, once the Board certified the Union, they would meet with him regarding a police contract. On October 24, 2005, the Board issued a nisi order of certification, which certified the Union as the exclusive collective bargaining representative of the Township's police officers. (PF-R-05-47-E).

After the Union was certified by the Board, Corporal Shoop prepared a police contract and delivered a copy of the contract to Supervisor Kunkle in late October or early November 2005. Shoop and Kunkle discussed the proposed contract. Shoop then delivered a copy of the contract to Supervisor Cole. Supervisors Kunkle and Cole made certain changes to which Shoop agreed. Shoop then prepared a new draft of the contract that included the agreed upon changes. In mid-November 2005, Corporal Shoop delivered the new draft of the police contract to Supervisor Kunkle for review. Kunkle indicated his agreement and initialed the draft. Shoop then reviewed the draft agreement with Supervisor Cole who changed some contract language. Cole telephoned Kunkle to discuss the changes, and he advised her that he agreed with her changes. Cole then initialed the contract and wrote "w[ith] edits" under her initials.

At some point after Supervisors Kunkle and Cole initialed the draft of the police contract, Cole asked Shoop whether the Union would agree to a one-percent healthcare contribution. Shoop reserved his agreement to the healthcare contribution until he conferred

with Officer Bruno. At some point before the regular meeting of the Township supervisors on December 27, 2005, Corporal Shoop advised Supervisor Cole that the Union would agree to a one percent employe health care contribution. The one-percent healthcare contribution provision was not written into the contract initialed by Cole and Kunkle. At the meeting of the Township supervisors on December 27, 2005, Supervisor Cole moved to approve the police contract that was initialed by Supervisors Cole and Kunkle, with the oral amendment that the police officers pay a one percent employe health care contribution. However, Supervisors Kunkle and Evans declined to second Cole's motion, and the contract was not ratified.

Initially, the Union has submitted a request for oral argument before the Board. However, the Board has routinely addressed factual and legal issues similar to those presented in this case. Further, the Board finds that the parties have comprehensively researched and presented the issues in their briefs. Consequently, the Board fully understands the issues presented and the parties' positions without the need for oral argument. Accordingly, the Union's request for oral argument is denied.

Essentially, both the Union's and the Township's exceptions require the Board to address the following issue: Whether the Township was under a duty to ratify the collective bargaining agreement where the Township had no duty to bargain under Act 111 for 2006, because the bargaining unit was not certified until after the mandatory time limit for initiating bargaining or requesting interest arbitration for that year. Accordingly, the Board will address the Township's and the Union's exceptions in the same discussion.

In Pennsylvania Ass'n of State Mental Hosp. Physicians v. Commonwealth of Pennsylvania, Office of Administration, 18 PPER ¶ 18118 (Final Order, 1987), aff'd sub nom., 557 A.2d 825 (Pa. Cmwlth. 1989), the Commonwealth Court affirmed the Board's determination that an agreement between a public employer and a unit of first level supervisors certified as a meet and discuss unit was unenforceable, because the employer does not owe a bargaining obligation to those employes. The Court further opined that, where there is no duty to bargain terms and conditions of employment, any agreement reached is not legally binding. The Board, in Office of Administration, significantly stated that "it is questionable whether an employer's voluntary bargaining will give a unit of meet and discuss employes Board-enforceable bargaining rights." Office of Administration, 18 PPER at 343. Furthermore, "the Board may enforce only those bargaining rights which are derived from the [statute]. Therefore, even if there are other means of imposing a bargaining obligation upon an employer, such obligation is not enforceable by the PLRB." Id. Therefore, the Board has previously held that agreements between public employers and the representatives of their employes, where no bargaining obligation is owed, are not enforceable by the Board. See also, Shaffer v. Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board, 500 A.2d 917 (Pa. Cmwlth. 1985)(holding that a memorandum of understanding in a meet and discuss unit, although not enforceable by the PLRB, may be enforceable before the Board of Claims). Accordingly, it would be fallacious for the Board to sustain a charge of unfair labor practices filed under Section 6(1)(e) of the PLRA alleging a "refus[al] to bargain collectively with the representatives of [the employer's] employes," 43 P.S. 211.6(1)(e), when there is no duty to bargain.

In Delaware City Lodge # 27, FOP v. PLRB, 461 A.2d 1337 (Pa. Cmwlth. 1983), the Commonwealth Court opined that "Act 111 requires timely adherence to the bargaining schedules set forth in sections 3 and 4 of the Act in order to perfect the right to arbitration." Id. at 1340. "[T]he time provisions in Section 3 of 'Act 111' are mandatory, both for the beginning of collective bargaining and the right to request arbitration." Bivighouse v. Borough Council of the Borough of Telford, 445 A.2d 561, 564 (Pa. Cmwlth. 1982). The limited exception to the mandatory timetables in Act 111 is "where an employer has failed to act in good faith by engaging in dilatory bargaining tactics." Delaware City Lodge, 461 A.2d at 1340. Also, a public employer does not have a duty to bargain under Act 111 with an employe representative, with which it has no bargaining history and which has not been certified by the Board as the exclusive collective bargaining representative. Roof Garden Lodge No. 98, FOP v. Paint Township, 27 PPER ¶ 27022 (Final Order, 1995), aff'd, sub nom., 685 A.2d 658 (Pa. Cmwlth. 1996). In this case, the Board certified the Union as the exclusive bargaining representative of the bargaining unit of uniformed police employes in the Township on October 24, 2005, which is beyond the statutory time limit for requesting interest arbitration under Act 111. Indeed, the Union acknowledged that fact at the outset

of the process regarding fiscal year 2006. Accordingly, the Township did not have duty to bargain with the Union in the Fall of 2005.

The Board has recognized a limited exception to the mandatory timetable in the very limited circumstance where negotiations have been initiated in a timely manner and the police employer waives the timeframe for submission of the dispute to interest arbitration in favor of additional bilateral negotiations. PLRB v. Borough of Stroudsburg, 10 PPER ¶ 10277 (Final Order, 1979); PLRB v. Borough of East Stroudsburg, 10 PPER ¶ 10278 (Final Order, 1979). An employer may for sound reasons find efforts to seek a voluntary agreement between the employer and the union to be preferable to an interest award imposed by a third party arbitration panel, which by its very nature may not have the support of the public employer. However, those limited facts are not present here, especially when the negotiations were not timely initiated and the understanding from the outset was that the Township was engaging in voluntary talks without bargaining rights. Paint Township, supra.

If a properly executed written agreement is unenforceable where there is no duty to bargain, Office of Administration, supra, then there is no duty to ratify an agreement that would be unenforceable for the fiscal year at issue. The duty to ratify a tentative agreement, therefore, flows from the duty to bargain in good faith. Contrary to the conclusion of the Examiner, the duty to ratify does not flow out of voluntarily engaging in the bargaining process or even an alleged tentative agreement. Absent a duty to bargain in good faith, the Township was permitted to terminate bargaining at anytime, and it was under no duty to ratify the alleged tentative agreement either with or without the healthcare contribution amendment. The Board, therefore, affirms the Examiner on grounds other than those upon which he based his decision, as authorized by Section 95.98(f)(1) of the Board's regulations. 34 Pa. Code § 95.98(f)(1) (authorizing the Board to modify a proposed decision and order or to "[t]ake such other action as it deems proper"). See also, Ellwood City Police Wage and Policy Committee v. PLRB, 736 A.2d 707 (Pa. Cmwlth. 1999)(affirming the Board's affirmance of a proposed decision and order on other grounds).

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Union, sustain, in part, the exceptions filed by Township and sustain the Proposed Decision and Order of the Hearing Examiner, as modified. ¹

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111 of 1968, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Union to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; the exceptions filed by the Township to the proposed decision and order are sustained, in part; and that the Proposed Decision and Order be and the same is hereby made final and absolute, as modified.

SIGNED, SEALED, DATED and MAILED this Seventeenth day of October, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

L. DENNIS MARTIRE, CHAIRMAN

ANNE E. COVEY, MEMBER

JAMES M. DARBY, MEMBER

¹ In view of the Board's disposition of the matter, the remaining exceptions raised by the Union and the Township need not be addressed because they are not relevant to nor would they change the result herein obtained.