

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 85 :
 :
 v. : Case No. PERA-C-06-474-W
 :
 ERIE COUNTY :

PROPOSED DECISION AND ORDER

On September 19, 2006, AFSCME District Council 85 (AFSCME) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Erie County (County) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). On October 5, 2006, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held before a Board hearing examiner on November 16, 2006. On that date, all parties in interest appeared before the examiner and were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties made closing arguments at the hearing in lieu of filing briefs.

The examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The County is a public employer for purposes of PERA.
2. AFSCME is an employe organization for purposes of PERA.
3. AFSCME represents two bargaining units of County employes: a clerical/technical bargaining unit and a professional unit. Both bargaining units are covered by a collective bargaining agreement that expires on December 31, 2006. Both agreements include provisions regarding health care coverage for the bargaining unit employes. (N.T. 13)
4. In the spring of 2006, AFSCME requested that the County commence negotiations for successor collective bargaining agreements for the clerical/technical and professional bargaining units. (N.T. 13-14)
5. Due to its intention to negotiate over health care in the negotiations for successor collective bargaining agreements with the County, AFSCME requested in May 2006 that the County provide certain health care information for the purpose of determining whether there were alternative providers of health care coverage for the bargaining unit employes that may potentially save the County money. AFSCME was aware that the Pennsylvania Employees Benefit Trust Fund (PEBTF), which provides health care benefits to employes of the Commonwealth of Pennsylvania, has a program whereby other public employers such as the County may request that PEBTF provide health care benefits for their employes. AFSCME was interested in determining if provision of health care benefits by PEBTF or another provider could save the County money, so that employe coverage levels may be maintained, and additional funds may be available for wage increases or other benefits. (N.T. 14-18, 32-33, 40; Joint Exhibit 4)
6. The County did not respond to AFSCME's May 2006 information request. Therefore, by letter dated June 20, 2006, AFSCME reiterated its information request. In that letter, the AFSCME staff representative stated that "[i]n preparation for our upcoming negotiations for the Clerical/Technical and Professional Bargaining Units, I am again requesting the information on the attached letter." The specific information requested by AFSCME was as follows:

Electronic census file with a record for each eligible employe:
Date of birth
Gender

Residence zip code
Tier status (single, 2-party, family)
Medical/Dental Plan election (PPO,HMO,etc.)

Monthly plan enrollment history for the prior 24 months

Monthly paid claims for the prior 24 months:
Medical
Pharmacy
Dental
Vision

Administrative fees (per employee per month):
Medical/Pharmacy/Dental/Vision
Stop loss
Other (i.e., FSA, HIPPA, etc.)

Fully insured premium rates for current and prior year

Last two renewals

Large claimant history for prior two years (i.e., \$50,000 + claimants)

Employee Contributions by plan

Plan design summaries (SPD's, Plan Documents, Contracts)

Carrier/TPA utilization and year end management reports

Self funded stop loss information
Attachment point
Deductible
Large claims

(N.T. 7-8, 16-18; Joint Exhibits 1A, 1B)

7. By letter dated June 21, 2006, the County denied AFSCME's May and June 2006 information requests on the ground that those requests "are well beyond those necessary for proper negotiations between the parties and involve personal information that [the County] cannot release without approval from each employee." (N.T. 8, 18-19; Joint Exhibit 2)

8. After receipt of the County's letter of June 21, 2006, AFSCME contacted the County regarding the information request, but was informed that the County would not provide the requested information. (N.T. 19)

9. By letter dated June 30, 2006, AFSCME again requested that the County provide the information. (N.T. 8, 20); Joint Exhibit 3)

10. Before the hearing in this matter, AFSCME did not receive any of the information requested from the County. (N.T. 21, 31)

11. AFSCME requested the information specified in Finding of Fact 6 because it understood that such information would be required to determine whether other providers could provide health care benefits to the bargaining unit employees at a cost savings for the County. (N.T. 14-18, 21-32)

12. In the current negotiations, the County has proposed an increase in the employee contribution for health care. AFSCME has not yet made a health care proposal due to the County's refusal to provide the requested information. (N.T. 34-36, 44-45)

DISCUSSION

AFSCME alleges that the County violated Section 1201(a)(1) and (5) of PERA by refusing to provide the requested information concerning the employe health care plan. AFSCME also contends that the County's refusal to provide the information is contrary to well settled caselaw, such that the County should be directed to pay the attorney's fees that AFSCME incurred in filing and prosecuting the unfair practice charge. The County contends that the charge should be dismissed and the request for attorney's fees should be denied because AFSCME had not made any health care proposal when it requested the information, and AFSCME did not advise the County of the purpose for which the information was being sought.¹

An employer's collective bargaining obligation includes the duty to provide the employe bargaining representative with information that is relevant to "representing employes in negotiations for a future contract and also for policing the administration of the existing contract." Commonwealth of Pennsylvania, 17 PPER ¶ 17042 at 108, quoting NLRB v. Acme Industrial Company, 385 U.S. 432, 87 S.Ct. 565 (1967). When a union requests information relating to the wages, hours and working conditions of the employes it represents, the information is presumptively relevant and must be provided unless the employer shows that the information is not relevant or cannot reasonably be provided. Lawrence Park Township, 17 PPER ¶ 17057 (Proposed Decision and Order, 1986), citing NLRB v. Borden, Inc., 600 F.2d 313 (1st Cir. 1979) and Curtiss-Wright Corporation v. NLRB, 347 F.2d 61 (3rd Cir. 1965). Information concerning the bargaining unit's health insurance benefits, such as that pertaining to plan premiums and claims experience, is presumptively relevant. Nestle Company, Inc., 238 NLRB 92, 99 LRRM 1241 (1978).

Here the parties were involved in negotiations for successor collective bargaining agreements and AFSCME requested information pertaining to the bargaining unit employes' health insurance benefits. Such information is presumptively relevant to AFSCME's role as employe bargaining representative, and the County failed to show that the information is not relevant or cannot reasonably be provided. Therefore, the County violated its duty to bargain under Section 1201(a)(1) and (5) of PERA by refusing to provide the requested information.

The fact that AFSCME had not yet made a proposal on health care at the time of its information request is immaterial. As is clear from the caselaw cited above, a union is entitled to timely provision of information relating to the bargaining unit employes' wages, hours and working conditions so that the union may determine whether it desires to make a proposal or counterproposal concerning those matters. Indeed, it would be illogical to hold that AFSCME must propose use of an alternative health care provider before it may obtain the very information that it needs to determine whether such a course of action is even cost effective.

Contrary to the County's argument, AFSCME did explain the purpose for which it sought the requested information: it wanted to prepare for its upcoming negotiations with the County (FF 6). The County fails to cite any authority requiring AFSCME to provide greater specificity concerning the purpose for the information, and the examiner is aware of no authority that would impose such a requirement. Consequently, under the well settled caselaw cited above, the County committed an unfair practice.

With regard to AFSCME's request for attorney's fees, the Board has held that it lacks statutory authority to impose such a remedy. Northampton Township, 35 PPER 138 (Final Order, 2004); City of Reading, 26 PPER ¶ 26082 (Final Order, 1995). The decision cited by AFSCME in support of its request for attorney's fees, Reading School District, 35 PPER 90 (Proposed Decision and Order, 2004), does not expressly provide this remedy. Moreover, that decision is a proposed decision of a Board hearing examiner that was not appealed to the Board. Thus, it does not override the above-cited Board decisions

¹ The County does not contend that AFSCME requested confidential information, and such a contention would be meritless because AFSCME did not ask for information that would identify particular employes. Even if AFSCME had sought confidential information, the County would have been obligated to make a reasonable attempt to accommodate AFSCME, Commonwealth, Department of Revenue, 22 PPER ¶ 22069 (Final Order, 1991), which it clearly failed to do. Instead, the County simply refused to comply with AFSCME's information request, and thereby violated its duty to bargain in good faith. Id.

directly on point. Accordingly, I must deny the request for attorney's fees, notwithstanding the absence of legal authority supporting the County's refusal to comply with the information request.

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The County is a public employer within the meaning of Section 301(1) of PERA.
2. AFSCME is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The County has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the examiner

HEREBY ORDERS AND DIRECTS

that the County shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of PERA.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Immediately comply with AFSCME's information request;

(b) Post a copy of this decision and order within five (5) days from the date hereof in a conspicuous place readily accessible to their employes and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED AND MAILED this fourth day of December, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, HEARING EXAMINER

December 4, 2006

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ERIE COUNTY
Case No. PERA-C-06-474-W

Enclosed please find a copy of the proposed decision and order issued in the above-captioned case.

Sincerely,

Peter Lassi
Hearing Examiner

Enclosure

cc: Erie County
AFSCME DC 85
R. Michael Kirkpatrick, Esquire
Pittsburgh Regional Office