

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

YORK CITY EMPLOYEES' UNION :  
 :  
 v. : Case No. PERA-C-05-612-E  
 :  
 CITY OF YORK :

**PROPOSED DECISION AND ORDER**

On December 30, 2005, the York City Employees' Union (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of York (City) violated Section 1201(a)(1), (3) and (5) of the Public Employee Relations Act (PERA).<sup>1</sup> On March 10, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on May 10, 2006. At the request of the City, the hearing was continued to May 22, 2006. On May 19, 2006, the examiner granted the York Daily Record's motion to quash a subpoena that was served on one of its reporters. On May 22, 2006, a hearing was held, at which time all parties in interest appeared before the examiner and were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed a post-hearing brief on July 3, 2006. The Board received the City's brief on July 17, 2006.

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 City is a public employer for purposes of Section 301(1) of PERA.
2. The Union is an employe organization for purposes of Section 301(3) of PERA.
3. The City and the Union were parties to a collective bargaining agreement (CBA), which was effective from January 1, 2001 through December 31, 2005. The parties began negotiations for a successor agreement in October 2005. (N.T. 8, 14-15, 18, 47; Union Exhibit 5-G)
4. The City and the Union held bargaining sessions on October 11, November 3, November 10 and December 2, 2005. Both the City and the Union made various proposals regarding a successor contract. (N.T. 18, 26-27, 47)
5. At a bargaining session in November 2005, the City proposed no increase in wages. In response to that proposal, the Union requested the following information from the City: "[c]opies of contracts with all other bargaining units dealing with the City"; "[a] listing of raises and amounts for unaffiliated personnel . . . for 2004 and 2005"; and "[a] listing of managerial raises and amounts in 2004 and 2005." (N.T. 9; Union Exhibit 1)
6. At one of the November 2005 bargaining sessions, the parties discussed the issue of health care. (N.T. 10)
7. On November 10, 2005, the Union sent the City an e-mail which stated that "[w]ithout knowing what the coverage features of the proposed health plan are, do not expect any response to the co-pay proposal made this morning." (N.T. 10-11; Union Exhibit 2)
8. On December 6, 2005, the City submitted certain wage and salary information to the Union, which included managerial salaries for 2005, but not for 2004. (N.T. 11, 15-16; Union Exhibit 4)
9. The City and the Union scheduled a bargaining session for December 14, 2005. (N.T. 18)

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<sup>1</sup> The charge under Section 1201(a)(3) of PERA must be dismissed because the Union failed to adduce any evidence that could support such a charge. See *St. Joseph's Hospital v. PLRB*, 473 Pa. 101, 373 A.2d 1069 (1977)(complainant in discrimination case must prove that employer took adverse action against employes because of a discriminatory motive or anti-union animus).

10. Robert Nace is the City's human resources manager. Nace was responsible for negotiating with the Union in 2005. (N.T. 33, 47)

11. Nace believed that the December 14, 2005 bargaining session was scheduled for 1:00 p.m. (N.T. 48-52; City Exhibits 3, 4)

12. On the morning of December 14, 2005, representatives of the Union arrived at the City's offices and had a discussion with City Human Resources Manager Nace. The Union representatives indicated that they thought the bargaining session was scheduled for 10:00 a.m. Nace stated that he understood that the parties were to meet at 1:00 p.m. The Union's legal counsel stated that he was not available at 1:00 p.m., and the bargaining session was not held. (N.T. 42-43, 50-52)

13. On December 19, 2005, the City submitted copies of collective bargaining agreements to the Union, including agreements between the City and the following unions: White Rose Lodge No. 15, Fraternal Order of Police (FOP); York Public Employees' Association, affiliated with AFSCME/AFL-CIO (YPEA); International Association of Firefighters, AFL-CIO (IAFF); and International Brotherhood of Electrical Workers, Local Union No. 229 (IBEW). The contract between the City and the YPEA was effective from January 1, 2001 through December 31, 2005. The contract between the City and the IBEW was effective from January 1, 2001 through December 31, 2003, and there was no successor agreement to that contract. The contracts between the City and the FOP and the City and the IAFF were effective from January 1, 1999 through December 31, 2003. The City also provided the Union with copies of memoranda of understanding between the City and the FOP and the City and the IAFF extending the police and fire contracts through December 31, 2006. In addition, the City provided the Union with a copy of a January 21, 2003 resolution of city council, which stated that the City and the FOP had agreed to extend the 1999-2003 CBA through December 31, 2006 and had agreed to the memorandum of understanding that was attached to the resolution as an addendum to the existing CBA. (N.T. 11-12, 14, 19-20; Union Exhibits 5-C, 5-D, 5-E, 5-F)

14. The City and the Union have not scheduled a bargaining session since December 14, 2005. (N.T. 31-32, 53)

15. As of the last bargaining session between the parties, the City had not made a comprehensive health care proposal because it was waiting for a consultant's report concerning health care costs. The City received that report in January 2006. (N.T. 52-53, 57-59)

#### DISCUSSION

The Union alleged in its unfair practice charge that the City violated its duty under PERA to bargain in good faith (1) by not complying with the Union's request for copies of all contracts with other unions, (2) by not complying with the Union's request for a listing of raises and amounts for non-bargaining unit employees for 2004 and 2005, (3) by not being prepared to negotiate on December 14, 2005 when a bargaining session was scheduled, and (4) by "not providing information concerning the cost of proposed health care for the proposed contract such that the negotiations cannot move forward." The City contends that it did not commit unfair practices and that the Union's charge should be dismissed.

The portion of the unfair practice charge that concerns the bargaining session on December 14, 2005 must be dismissed because the substantial, credible evidence of record indicates that the parties had a misunderstanding regarding the time that the bargaining session was to occur. Based on my observation of the witnesses and review of the record as a whole, I find that the City offered credible testimony that it believed the December 14 bargaining session was to commence at 1:00 p.m. Therefore, merely because the City was not prepared to bargain three hours earlier when the Union believed bargaining was to commence is not an unfair practice. The City was prepared to negotiate at the time that it believed the bargaining session was to be held, but the Union was not available at that time and consequently the bargaining session was not held. While the confusion regarding the time of the bargaining session was unfortunate, it does not warrant the finding of an unfair practice.

The remaining portions of the Union's charge allege that the City failed to provide the Union with information that was relevant to the parties' contract negotiations. The Board has held that an employer's statutory bargaining duty includes the obligation to provide the employee bargaining representative with information that is relevant to "representing employees

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 employees 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 (1<sup>st</sup> Cir. 1979) and Curtiss-Wright Corporation v. NLRB, 347 F.2d 61 (3<sup>rd</sup> Cir. 1965). However, when a union requests information relating to the employer's financial condition or the wages, hours and working conditions of non-unit employees, the information does not have to be provided unless the union shows why the information is relevant. Lawrence Park Township, supra, citing San Diego Newspaper Guild v. NLRB, 548 F.2d 863 (9<sup>th</sup> Cir. 1997) and Crane Company, 244 NLRB No. 15, 102 LRRM 1351 (1979). To meet its burden of proof concerning information which relates to non-unit employees, the Union must establish on the record why it needed the information. Lawrence Park Township, supra.

The portion of the Union's charge concerning contracts with other unions must be dismissed because the Union failed to prove that the City withheld any contracts. To the contrary, the record indicates that in December 2005, the City provided the Union with copies of the following contracts: the existing agreement between the City and the York Public Employees' Association; the most recent agreement between the City and the International Brotherhood of Electrical Workers; the 1999-2003 agreements between the City and the Fraternal Order of Police (FOP) and the City and the International Association of Firefighters (IAFF); and memoranda of understanding between the City and the FOP and the City and the IAFF extending the 1999-2003 agreements through 2006.

Although the Union notes in its brief that the memorandum of understanding between the City and the FOP is unsigned, the Union also offered into evidence (as part of the same exhibit as the memorandum of understanding) a resolution of city council which states that the 1999-2003 agreement between the City and the FOP was extended through 2006 with the modifications set forth in the memorandum of understanding (Union Exhibit 5-C). Presumably the Union is not disputing the authenticity of the city council resolution which the Union itself introduced into the record. Nor has the Union proven that the memorandum of understanding that was attached to the city council resolution is not the actual agreement between the City and the FOP. Therefore, the Union has not demonstrated that the City failed to provide any contracts with other unions, and this portion of the Union's unfair practice charge must be dismissed (without even considering whether the Union proved the relevance of the requested information concerning non-unit employees).

The Union's allegation that the City failed to provide health care cost information must be dismissed because the Union failed to prove that it requested such information. Rather, the November 10, 2005 e-mail which the Union relies on as a request for health care cost information refers only to "the coverage features of the proposed health plan" (FF 7). Thus, at best, this e-mail requested information concerning the coverage features of the health plan proposed by the City.<sup>2</sup> The Union did not charge the City with committing an unfair practice by refusing to provide information concerning the coverage features of the health care plan proposed by the City. Therefore, no unfair practice may be found on that basis.

The final matter to be addressed is the Union's request for information concerning wages for non-bargaining unit employees. As the findings of fact indicate, I have credited the Union's testimony that it received a listing of managerial salaries for 2005, but not for 2004 (N.T. 11, 15-16). This testimony is supported by Union Exhibit 4. Although the City's witness testified that he believed that the 2004 information "should have been in" the document marked as Union Exhibit 4 (N.T. 61-62), I find this testimony less than certain and not worthy of credit.<sup>3</sup>

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<sup>2</sup> Even if the Union had requested health care cost information in November 2005, the record indicates that the information was not yet available (FF 15), which would preclude a finding that the City was obligated to provide the information. See Lawrence Park Township, 17 PPER at 150, citing PLRB v. Dowling, 9 PPER ¶ 9267 (Nisi Decision and Order, 1978), 10 PPER ¶ 10120 (Final Order, 1979)(employer's duty to provide relevant information only arises when union makes a specific request for existing information).

However, the question remains whether the Union met its burden of proving the relevance of the requested salary information for non-bargaining unit managerial personnel. The only testimony offered by the Union concerning the requested information was that the City had discussed "what they called a zero wage increase" (N.T. 9). This testimony, standing alone, does not establish that 2004 salary data for non-unit personnel is relevant to the Union's negotiations on behalf of the unit members for a new contract to commence in 2006. Nor did the Union offer any other evidence concerning how the requested information regarding non-unit managerial employes relates to its negotiations with the City. Compare Brazos Electric Power Cooperative, Inc., 241 NLRB 1016, 101 LRRM 1003 (1979), enforced, 615 F.2d 1100 (5<sup>th</sup> Cir. 1980)(non-unit wage data relevant to contract negotiations where record indicates that employer had an established practice of maintaining wage parity between unit and non-unit employes with similar skills).

The Union cites NLRB v. Truitt Manufacturing Co., 351 U.S. 149, 76 S.Ct. 753 (1956) for the proposition that "an employer has not bargained in good faith where the employer claims it cannot afford to pay higher wages but refuses to produce information substantiating its claim" (brief at 5). However, there is no record evidence that the City based its proposal for no wage increase on a claim of inability to pay higher wages. Therefore, this case is distinguished from Truitt. Because the Union failed to prove that the requested non-unit salary information is relevant to its contract negotiations with the City, the remaining portion of its unfair practice charge must be dismissed.

#### CONCLUSIONS

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

1. The City is a public employer for purposes of Section 301(1) of PERA.
2. The Union is an employe organization for purposes of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The City has not committed unfair practices in violation of Section 1201(a)(1), (3) or (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 charge of unfair practices is dismissed and the complaint issued thereon is rescinded.

#### 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 second day of October, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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PETER LASSI, Hearing Examiner

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<sup>3</sup> The City asserts in its brief that it provided the 2004 salary information to the Union at the hearing. However, where an employer is obligated to provide information to a union, it must do so within a reasonable period of time. Ford City Borough, 37 PPER 11 (Final Order, 2006). Even if the City gave the Union the information at the hearing six months after it was requested, there is no record evidence justifying such a delay.

October 2, 2006

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CITY OF YORK  
Case No. PERA-C-05-612-E

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

Sincerely,

Peter Lassi  
Hearing Examiner

Enclosure

cc: City of York