COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PSSU LOCAL 668 SEIU	:	
	:	
v.	:	Case No. PERA-C-06-108-W
	:	
BEAVER COUNTY	:	

PROPOSED DECISION AND ORDER

On March 13, 2006, the Pennsylvania Social Services Union, SEIU Local 668 (Union), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the County of Beaver (Employer) violated sections 1201(a)(1) and 1201(a)(5) of the Public Employe Relations Act (Act) by refusing to negotiate in good faith before it invoked the impasse resolution procedure set forth in section 805 of the Act. The Board docketed the charge to Case No. PERA-C-06-108-W. On April 25, 2006, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on June 29, 2006, if conciliation did not resolve the charge by then. The hearing examiner subsequently continued the hearing at the request of the Employer and without objection by the Union. The hearing examiner rescheduled the hearing to August 24, 2006. On August 24, 2006, the hearing examiner continued the hearing to October 11 and 12, 2006, so it could be consolidated with a hearing on a related charge the Union filed or was in the process of filing.

On August 25, 2006, the Union filed the related charge alleging that the County committed additional unfair practices by refusing to comply with the provisions of an award issued after the parties proceeded to interest arbitration. The Board docketed the related charge to Case No. PERA-C-06-406-W.

On August 29, 2006, the hearing examiner, in order to narrow the issues to be heard on October 11 and 12, 2006, gave the parties 15 days to brief the issue of whether or not the instant charge should be dismissed as moot in light of the award.

On August 30, 2006, the Secretary dismissed the related charge for failure to state a cause of action. The Secretary opined that there were conflicting provisions in the award making the award ambiguous and that any relief available to the Union would be in grievance arbitration under the circumstances. On September 11, 2006, the Union filed exceptions alleging that the Secretary erred in dismissing the related charge, but only the instant charge is presently scheduled for hearing on October 11 and 12, 2006.

On September 13, 2006, the Employer filed a brief arguing that the charge should be dismissed as moot in light of the award.

In City of Philadelphia, 29 PPER ¶ 29149 (Final Order 1998), the Board dismissed as moot a charge alleging that an employer committed unfair practices by refusing to commence collective bargaining in a timely fashion. Noting that the parties had proceeded to interest

arbitration, the Board explained that "[i]t is generally well accepted that charges of unfair practices contesting refusals to collectively bargain are rendered moot by the subsequent performance of the collective bargaining obligation." 29 PPER at 347 (citations omitted). In Southeastern Pennsylvania Transportation Authority, Case No. PERA-C-05-512-E (Final Order, September 19, 2006), the Board recently reaffirmed its view in that regard.

The same result a fortiori obtains here. As set forth in the Union's charge filed to Case No. PERA-C-06-406-W and in the Employer's brief, there is no factual dispute that the parties not only have proceeded to interest arbitration but have received an award as well. Thus, under the analysis set forth in City of Philadelphia, it is apparent that the instant charge is moot.

A charge that is moot nevertheless may be heard under an exception to the mootness rule if the charge presents an issue "of great public importance and is capable of repetition and yet evading review." City of Philadelphia, 29 PPER at 348 (citation omitted). As the hearing examiner explained in Homer-Center Education Association, 30 PPER ¶ 31042 (Proposed Decision and Order 2000), however, once the parties proceed to interest arbitration to resolve an impasse in their negotiations, a charge alleging a refusal to bargain at the outset of negotiations does not present an issue of great public importance that would trigger the exception to the mootness rule. Inasmuch as the parties not only have proceeded to interest arbitration but also have received an award, such is the case here. There is, therefore, no basis for hearing the instant charge.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaint is rescinded and the charge dismissed.

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 final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twentieth day of September 2006.

Pennsylvania Labor Relations Board

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Donald A. Wallace, Hearing Examiner