

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

PROPOSED DECISION AND ORDER

On February 6, 2006, the Rye Township Police Association (Association) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that Rye Township (Township) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111. On March 8, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on April 4, 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. The Association made a closing argument at the hearing in lieu of filing a brief. The Township filed a post-hearing brief on May 18, 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 Township is an employer for purposes of the PLRA and Act 111.

2. The Association is a labor organization for purposes of the PLRA and Act 111.

3. The Township employs two police officers: Corporal Clinton Shoop and Officer John Bruno. Shoop is the president of the Association and bargained on behalf of the Association in the negotiations that are at issue in this matter. (N.T. 90-92)

4. On April 8, 2005, the Association 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 Association 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 Association's petition for representation on October 13, 2005. (N.T. 40; PF-R-05-47-E)

5. The Township's board of supervisors consists of Supervisors Sharon Cole, Ronald Evans and Charles Kunkle. (N.T. 31-32, 162-163, 171-172)

6. On October 6, 2005, the Township's board of supervisors conducted a budget meeting. Corporal Shoop was asked to provide his input regarding the police department budget. There was 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 Association 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. The supervisors also advised Shoop that once the Board certified the Association as police bargaining representative, Supervisors Kunkle and Cole would meet with Shoop regarding a police contract. (N.T. 37-39, 49-52, 92-94, 172-173, 182-183)

7. On October 24, 2005, the Board issued a nisi order of certification, which certified the Association as the exclusive collective bargaining representative of the Township's police officers. (N.T. 40, 95; PF-R-05-47-E)

8. After the Association 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 and Shoop then delivered a copy of the contract to Supervisor Cole. (N.T. 39-41, 95-98, 174; Association Exhibit 5)

9. Supervisors Kunkle and Cole raised various issues with Corporal Shoop about the proposed police contract and they agreed to certain changes. Shoop then prepared a new draft of the contract that included the agreed upon changes. (N.T. 39-41, 97-102; Association Exhibits 2, 6)

10. Around mid-November 2005, Corporal Shoop delivered the new draft of the police contract to Supervisor Kunkle and they reviewed the contract. Shoop then asked Kunkle if this is what he was going to agree to, and Kunkle answered in the affirmative. Shoop then asked Kunkle to initial the contract so that Supervisor Cole knew he agreed to it, and Kunkle did so. Shoop then proceeded to Supervisor Cole's residence. Cole reviewed the contract to see that the agreed upon changes had been made. Cole then found some wording that she wanted changed. Cole telephoned Kunkle to discuss the changes and he advised her that he agreed to the changes. Cole then initialed the contract and wrote "w[ith] edits" under her initials. (N.T. 39-44, 97-104, 124-125; Association Exhibit 2)

11. On November 22, 2005, the Township supervisors held a special meeting and reached a tentative collective bargaining agreement with the Teamsters for the road crew employees. One of the terms agreed to was a one percent employee healthcare contribution. (N.T. 44, 140-141, 153)

12. At some point after Supervisors Kunkle and Cole initialed the draft of the police contract, Cole advised Corporal Shoop that the road crew employees were going to agree to a one percent employee healthcare contribution and asked whether the Association would be willing to agree to the same provision. Shoop stated that he would have to confer with Officer Bruno regarding the matter. (N.T. 104-105, 117-118)

13. Supervisor Cole was out of town and did not attend the regular meeting of the Township supervisors on November 29, 2005. (N.T. 45-46, 143-144)

14. At some point before the regular meeting of the Township supervisors on December 27, 2005, Corporal Shoop advised Supervisor Cole that the Association would agree to a one percent employee health care contribution.

15. 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 caveat that the police officers pay a one percent employee health care contribution. However, the motion did not carry and the contract was not approved because Supervisors Kunkle and Evans declined to second Cole's motion. (N.T. 47-48, 50, 107, 180)

DISCUSSION

The Association alleged in its unfair practice charge that the Township violated Section 6(1)(a) and (e) of the PLRA and Act 111 when Township Supervisor Kunkle failed to second Supervisor Cole's "motion to adopt the Police Association contract previously initialed by herself and Kunkle . . . and repudiated his prior agreement with the contract." The Township contends that the charge of unfair practices must be dismissed because: (1) the Association's failure to adhere to Act 111's interest arbitration timetable has foreclosed its only avenue of redress for an alleged breach of the Township's bargaining duty; (2) the Association failed to establish that the Township, or a majority of its supervisors, agreed to the terms and conditions of the alleged contract; (3) the Association failed to establish that the parties agreed upon a clear, precise and unmistakable contract; and (4) even if the parties reached an agreement, the Association's failure to ratify the substantive revision concerning health care contributions permitted the Township to withdraw its approval of that tentative agreement.

In St. Clair Area School District, 18 PPER ¶ 18088 (Proposed Decision and Order, 1987), 18 PPER ¶ 18116 (Final Order, 1987), aff'd sub nom. St. Clair Area School District

v. PLRB, 19 PPER ¶ 19084 (Court of Common Pleas of Schuylkill County, 1988), aff'd, 552 A.2d 1133 (Pa. Cmwlth. 1988), aff'd per curiam, 525 Pa. 236, 579 A.2d 879 (1990), the Board held that a public employer violated its statutory bargaining obligation by failing to ratify a tentative collective bargaining agreement that was negotiated by a majority of the employer's governing body. In St. Clair, the Board relied on decisions of other state labor relations boards which hold that it is an unfair practice for employer negotiators to fail to support a tentative agreement which they have assented to or negotiated in the contract ratification process. 18 PPER at 259, citing Governor Wentworth Regional School Board, 6 National Pub. Empl. Rep. 30-15001 (New Hampshire Public Employee Labor Relations Board, 1983) and Jeffersonville-Youngsville Central School District, 16 New York Pub. Empl. Rep. ¶ 4608 (Hearing Officer's Decision, 1983), 16 New York Pub. Empl. Rep. ¶ 3106 (New York Public Employment Relations Board, 1983). The latter case is particularly relevant because the specific unfair practice found by the New York Board was the failure of two employer negotiators to support the third negotiator's motion for ratification of the tentative agreement.

St. Clair was decided under the Public Employee Relations Act (PERA). The Township claims that decisions under PERA do not apply in this case because PERA requires parties to bargain in good faith, whereas Act 111 allegedly does not contain such a requirement. However, the Township fails to account for Section 2 of Act 111, which expressly states that "[i]t shall be the duty of public employers and their policemen and firemen employees to exert every reasonable effort to settle all disputes by engaging in collective bargaining in good faith" 43 P.S. § 217.2.

The Township also claims that its position is supported by Salisbury Township v. PLRB, 672 A.2d 385 (Pa. Cmwlth. 1996) and Borough of New Cumberland v. Police Employees of Borough of New Cumberland, 414 A.2d 761 (Pa. Cmwlth. 1980). However, those cases involved employer refusals to engage in binding interest arbitration and not the issue presented here of whether the parties reached a voluntary collective bargaining agreement. Also, the Board has held that an employer violates Act 111 and the PLRA by refusing to reduce to writing and sign a collective bargaining agreement that was reached in negotiations with representatives of its police officers or firefighters. Edwardsville Borough, 27 PPER ¶ 27014 (Proposed Decision and Order, 1995), 27 PPER ¶ 27109 (Final Order, 1996); City of Chester, 25 PPER ¶ 25185 (Proposed Decision and Order, 1994), 26 PPER ¶ 26084 (Final Order, 1995). Therefore, the Township's first argument must be rejected.

The next issue raised by the Township is whether the Association established that a majority of the Township supervisors agreed to the terms of the alleged contract. As the findings of fact indicate, I have determined that the testimony of Supervisor Cole and Corporal Shoop should be credited concerning the question of whether Supervisor Kunkle assented to the terms of the contract that was identified as Association Exhibit 2 in the hearing in this matter. Based on my observation of the witnesses and review of the entire record, I find that Shoop credibly testified that Kunkle advised him that he agreed to Association Exhibit 2, and that Cole credibly testified that Kunkle advised her that he agreed to the changes that she made to the document. To the extent that Kunkle offered conflicting testimony regarding these matters, his testimony is not convincing and is not credited. Indeed, on cross-examination, Kunkle seemed to concede that he had assented to the terms of Association Exhibit 2, while wavering on the question of whether he expressed his assent verbally or only through initialing of the document (N.T. 185-189).

Although I find that Supervisors Kunkle and Cole both assented to the terms of Association Exhibit 2, the alleged unfair practice was Kunkle's failure to second Cole's motion to approve Association Exhibit 2, with the additional caveat that the employees pay a one percent healthcare contribution. While this additional term was certainly favorable to the Township (and appeared in somewhat different form in a subsequent proposal by the Township),¹ I find that the Association has failed to prove that Supervisor Kunkle assented to, or was involved in negotiation of, this provision modifying the prior agreement. I decline to credit Supervisor Cole's testimony on direct examination that she and Kunkle proposed the employee healthcare contribution to Shoop because Cole

¹ By memorandum dated December 30, 2005, the Township submitted a new proposal to the Association which required an initial employee healthcare contribution of one percent, and a contribution of two percent in the second and third years of the proposed contract (Association Exhibit 4).

acknowledged on cross-examination that she was less than certain regarding these matters (N.T. 64-66), Shoop's testimony indicates that he discussed this issue with Cole alone (N.T. 104-105, 116-118), Shoop seemed to have better recollection of these events than Cole, and Cole's testimony was contrary to the bargaining process that had been employed all along, where Cole and Kunkle never jointly bargained face-to-face with Shoop. Indeed, it is noteworthy that when Shoop expressed the Association's assent to the employee healthcare contribution, he did so in a conversation with Cole which did not include Kunkle. For all of these reasons, I credit Shoop's testimony that he discussed the proposed employee healthcare contribution with Supervisor Cole, and do not credit Cole's testimony that Supervisor Kunkle was also present. Accordingly, I cannot find that Supervisor Kunkle negotiated or assented to the modified version of the police contract that Supervisor Cole moved to adopt at the meeting of the Township supervisors on December 27, 2005. Without such a finding, I cannot conclude that Supervisor Kunkle was obligated to support the modified contract, and committed an unfair labor practice by failing to do so. Therefore, the Association's charge of unfair labor practices must be dismissed.

CONCLUSIONS

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

1. The Township is an employer within the meaning of the PLRA and Act 111.
2. The Association is a labor organization within the meaning of the PLRA and Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Township has not committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA and Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the examiner

HEREBY ORDERS AND DIRECTS

that the charge of unfair labor 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 tenth day of July, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

July 10, 2006

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RYE TOWNSHIP
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Enclosed is a copy of the proposed decision and order in the above-captioned matter.

Sincerely,

PETER LASSI,
Hearing Examiner

cc: Rye Township
Joel S. Barras, Esquire