

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

YORK CITY EMPLOYEES' UNION :
 :
 v. : Case No. PERA-C-05-354-E
 :
 CITY OF YORK :

PROPOSED DECISION AND ORDER

On August 12, 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), (2) and (5) of the Public Employee Relations Act (PERA).¹ On October 27, 2005, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on December 22, 2005. At the request of the parties, the hearing was continued to February 14, 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.² The Union filed a post-hearing brief on April 14, 2006. The City filed a brief on April 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 Union is the exclusive representative of a bargaining unit of City employes, which is comprised of all full-time and regular part-time blue collar employes, including the parking meter service person. (N.T. 3-4, 10-11; Joint Exhibit 1; PERA-R-87-38-E).
4. The City has employed Lori Simmons for over twenty-one years. Her most recent assignment is parking meter service person. Her job responsibilities consist of collecting money from the parking meters and maintaining the meters. (N.T. 5)
5. Simmons is the only parking meter service person employed by the City. (N.T. 31)
6. Simmons had ankle surgery on June 3, 2005. She advised the City that she would need surgery in January or February 2005. (N.T. 6)
7. Before her surgery, Simmons performed her usual duties as parking meter service person. (NT. 6-7)
8. Simmons requested and received leave under the Family and Medical Leave Act for her ankle surgery. (N.T. 8, 29-31)
9. Simmons was on leave from June 3, 2005 until immediately after Labor Day because of her ankle surgery. She returned to work on a part-time basis and resumed full-time duties at the end of September or beginning of October. (N.T. 7-8)

¹ The charge under Section 1201(a)(2) of PERA must be dismissed because the Union failed to adduce any evidence that could support such a charge. See Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978)(Section 1201(a)(2) prohibits so-called company unions and is directed at employer domination of, or assistance to, unions).

² At the hearing, the Union moved to amend its charge to allege that the City failed to follow an alleged past practice between the parties (N.T. 25-28). However, the motion must be denied because the amendment would add a new cause of action after the limitations period has expired. See 34 Pa. Code § 95.32(a).

10. Becky Schweitzer performed Simmons' parking meter duties while she was on leave for surgery during the summer of 2005. Schweitzer was not a member of the blue collar bargaining unit.
(N.T. 24-25)

11. Schweitzer worked full-time while filling in for Simmons during the summer of 2005. (N.T. 25)

12. Simmons trained Schweitzer in performance of the parking meter duties a week before her surgery. (N.T. 7)

13. Stanley Sexton has served as the president of the Union for two years. (N.T. 10)

14. While Simmons was training Schweitzer to perform the parking meter duties, the City contacted Sexton and asked whether the Union would consent to use of a non-unit employe to fill in for Simmons. Sexton declined to consent to the arrangement. (N.T. 11, 22, 24)

DISCUSSION

The Union alleged in its unfair practice charge that the City committed an unfair practice by unilaterally removing work from the blue collar bargaining unit and assigning it to non-unit personnel. The Union also alleged that the City failed to follow the posting provision in the collective bargaining agreement (CBA) between the parties. The City contends that the charge should be dismissed because it had a sound arguable basis in the CBA for not posting the temporary vacancy created by Simmons' leave of absence.

An employer commits an unfair practice by unilaterally transferring bargaining unit work to persons outside the unit, including non-unit employes of the employer. See, e.g., City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992); Commonwealth v. PLRB, 568 A.2d 730 (Pa. Cmwlth. 1990), appeal denied, 527 Pa. 625, 592 A.2d 46 (1991). Here it is undisputed that the parking meter service person position is a bargaining unit position (FF 3). It is also undisputed that the City assigned the duties of the position on a temporary basis to a non-unit employe without prior bargaining with the Union (FF 10, 14). Indeed, the non-unit employe to whom the bargaining unit work was assigned was already being trained in performance of the work when the City notified the Union of its intent to assign the work out of the unit. Id. Therefore, under well-settled caselaw, the City committed an unfair practice and I need not address the parties' arguments on the contractual issue of whether the City had a duty to post the temporary vacancy.³

With regard to the issue of remedy, the Union requests that the City be directed to pay the Union "a sum equal to all sums paid to Ms. Simmons' replacement" (brief at 7). However, the Board has determined that such a remedy is inappropriate, and that only affected employes are to be made whole for any losses resulting from employer unfair practices. See Lake Lehman School District, ___ PPER ___ (Final Order, May 16, 2006). Here the Union failed to prove that a bargaining unit member or members incurred a loss of pay because of the City's unfair practice. Indeed, while the Union president testified that there was a unit member who was capable of performing the functions and duties of the parking meter position (N.T. 11-12), the witness failed to explain how the referenced unit member could have performed the duties of his regular position, as well as the full-time duties of the parking meter service person (FF 11). Accordingly, a back pay order is not warranted.

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.

³ Due to the temporary nature of Becky Schweitzer's assignment to perform the duties of parking meter service person, she had no reasonable expectancy of continued employment in that position. Thus, she did not become a member of the blue collar bargaining unit by temporarily filling in for Lori Simmons. See City of Chester, 20 PPER ¶ 20099 (Final Order, 1989)(city committed unfair practice by unilaterally assigning work of police bargaining unit to temporary police officers who had no reasonable expectancy of continued employment).

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 committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

5. The City has not committed unfair practices in violation of Section 1201(a)(2) 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 City shall:

1. Cease and desist from interfering with, 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) Post a copy of this decision and order within five (5) days from the date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(b) 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 thirtieth day of May, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

YORK CITY EMPLOYEES' UNION :
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AFFIDAVIT OF COMPLIANCE

The City of York hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has posted a copy of the proposed decision and order as directed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public

May 30, 2006

Joseph C. Korsak, Esquire
33 North Queen Street
York, PA 17403

Michael M. Miller, Esquire
213 Market Street 9th Floor
PO Box 865
Harrisburg, PA 17108-0865

CITY OF YORK
Case No. PERA-C-05-354-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: Stanley Sexton
City of York