COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ASSOCIATION OF PROFESSIONAL PARAMEDICS	:	
v.	:	Case No. PERA-C-05-141-W
CITY OF PITTSBURGH	:	

PROPOSED DECISION AND ORDER

On March 14, 2005, the Fraternal Association of Professional Paramedics (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the City of Pittsburgh (City) had violated sections 1201(a)(1) and 1201(a)(5) of the Public Employe Relations Act (Act) "by unilaterally removing the bargaining unit position and work of emergency medical technician from the bargaining unit and making a collective bargaining agreement with the International Association of Firefighters [(IAFF)] to include the work and position of emergency medical technicians." On May 12, 2005, 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 2, 2005, if conciliation did not resolve the charge by then. The hearing examiner subsequently continued the hearing to June 14, 2005. On June 13, 2005, the hearing examiner generally continued the hearing for settlement discussions.

On October 17, 2005, the Association filed an amended charge alleging that the City violated sections 1201(a)(1) and 1201(a)(5) "by unilaterally removing the work of first responders training and emergency medical technicians training from the bargaining unit." On December 6, 2005, the Secretary issued an amended complaint and notice of hearing assigning the amended charge to conciliation and directing that a hearing be held on February 16, 2005, if conciliation did not resolve the amended charge by then. The hearing examiner subsequently continued the hearing upon the request of the City and without objection by the Association.

On March 8, 2006, the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On May 9, 2006, each party filed a brief.

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

FINDINGS OF FACT

1. On August 24, 1984, the Board certified the Association as the exclusive representative of a bargaining unit that includes paramedics and crew chiefs employed by the City. (Case Nos. PERA-U-84-458-W and PERA-R-11,562-W)

2. In 1988, the City began using members of the bargaining unit to train its fire fighters as first responders. (N.T. 19, 22, 32, 34-35; Union Exhibits 8-10)

3. First responders administer oxygen and automatic defibrillation along with CPR to patients in cardiac arrest. (N.T. 19)

4. In 1991, the City used members of the bargaining unit to train the "minority recruitment class" as emergency medical technicians. (N.T. 25-26, 34)

5. Emergency medical technicians provide basic life support, assist with the administration of medications, perform advanced airway maneuvers, assist with complications involving pregnancy and perform complex spinal mobilization, packaging and transport of patients. (N.T. 26)

6. By letter dated June 8, 2005, the City wrote that "we have . . . no current plans which would require or permit firefighters to work as EMTs." (Union Exhibit 5)

7. In its current collective bargaining agreement with the IAFF, the City agreed to the following:

> "Effective January 1, 2006, all newly hired fire fighters shall be required to earn and maintain EMT certification at the employer's expense. Such certification will be offered to firefighters hired before January 1, 2006 on a voluntary basis."

(N.T. 17, 45; Union Exhibits 4-5)

8. In February 2006, the City used non-members of the bargaining unit to provide emergency medical technician training for its fire fighters. Subsumed within the emergency medical technician training was first responder training. (N.T. 25, 37, 43-44)

9. Fire fighters thereafter administered medications in the field. (N.T. 29)

DISCUSSION

The Association has filed a charge alleging that the City committed unfair practices under sections 1201(a)(1) and 1201(a)(5) "by unilaterally removing the bargaining unit position and work of emergency medical technician from the bargaining unit and making a collective bargaining agreement with the [IAFF] to include the work and position of emergency medical technicians." According to the Association, the parties' bargaining history shows that the emergency medical technicians are members of the bargaining unit that it represents.

The City contends that the charge should be dismissed for lack of proof. According to the City, although it agreed with the IAFF that newly hired fire fighters would be required to earn and maintain emergency medical technician certification and that other fire fighters would be offered the training to be certified as emergency medical technicians, it has not removed the position and work of emergency medical technician from the Association's bargaining unit and has not agreed with the IAFF to include the work and position of emergency medical technician in the IAFF's bargaining unit.

The Association also has filed an amended charge alleging that the City committed unfair practices under sections 1201(a)(1) and 1201(a)(5) "by unilaterally removing the work of first responders training and emergency medical technicians training from the bargaining unit." According to the Association, although members of the bargaining unit have never trained fire fighters as emergency medical technicians, the training of fire fighters as emergency medical technicians is bargaining unit work because members of the bargaining unit have always trained fire fighters as first responders, because members of the bargaining unit provided emergency medical technician training to other employes of the City in the past and because first responder training is subsumed within emergency medical technician training.

The City contends that the amended charge should be dismissed for lack of proof as well. According to the City, although members of the bargaining unit have always trained fire fighters as first responders, they never have trained fire fighters as emergency medical technicians. The City also contends that the amended charge should be dismissed because it was contractually privileged to subcontract training work performed by members of the bargaining unit.

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(5) if it unilaterally transfers bargaining unit work to non-members of the bargaining unit. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978). If the work transferred had not been performed by members of the bargaining unit on an exclusive basis, however, then no such unfair practices may be found. Abington School District, 32 PPER ¶ 32129 (Final Order 2001). Nor may such unfair practices be found if the employer has a sound basis for arguing that it was contractually privileged to transfer work from the bargaining unit. Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2004). The charging party has the burden of proving its charge by substantial evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

A complainant must have standing in order to prosecute a charge. Ford City Borough, 30 PPER ¶ 30031 (Final Order 1999). Because standing is jurisdictional, if a complainant does not have standing to prosecute a charge, the charge is to be dismissed sua sponte. Id. A complainant has no standing to prosecute a refusal to bargain charge unless the Board has certified the complainant as the exclusive representative of the employes involved. Id., citing Professional and Public Service Employees Union Local 1300 v. Trinisewski, 504 A.2d 391 (Pa. Cmwlth 1986).

The Board must have subject matter jurisdiction in order to find an employer in violation of the Act. Commonwealth of Pennsylvania, Pennsylvania State Police, 37 PPER 4 (Final Order 2006)(construing analogous provisions of the Pennsylvania Labor Relations Act). If the Board has no such jurisdiction, a charge is to be dismissed sua sponte. Id. The Board has no jurisdiction to find unfair practices based solely on post-charge events. Id.

In support of the charge, the Association obtained stipulations from the City that the "[e]mergency medical technician job is within the paramedic contract," that "the emergency medical technician's job has been performed exclusively by [the] paramedic union" and that "the emergency medical technician job . . . has historically been performed and is part of the [Association's] unit" (N.T. 7-8). The Association also presented evidence that effective January 1, 2001, the parties entered into a collective bargaining agreement covering emergency medical technicians employed by the City (Union Exhibit 1), that by letter dated June 8, 2005, the City wrote that "we have . . . no current plans which would require or permit firefighters to work as EMTs" (Union Exhibit 5), that effective January 1, 2006, the City agreed with the IAFF that newly hired fire fighters would be required to earn and maintain emergency medical technician certification and that all other fire fighters would be offered training to earn and maintain emergency medical technician certification (N.T. 17, 45; Union Exhibits 4-5), that in February 2005 the City trained fire fighters as emergency medical technicians (N.T. 25), that fire fighters performed emergency medical technician work after the City trained them as emergency medical technicians (N.T. 29) and that the City's chief of emergency medical services (Robert McCaughan) had no reason to dispute that the fire fighters performed that work (N.T. 35-36).

The charge must be dismissed for lack of standing on the part of the Association. In deciding whether or not a party has standing to file a charge of this nature, the Board's focus is on the party's certification history, not its bargaining history. Ford City Borough, supra. A close review of the Association's certification history reveals that the Board has not certified the Association as the exclusive representative of the City's emergency medical technicians; rather, the Board has only certified the Association as the exclusive representative of the City's paramedics and crew chiefs (finding of fact 1). The City's stipulations and the parties' collective bargaining agreement do not prove otherwise. Thus, it is apparent that the Association has no standing to prosecute the charge.

Even if the Association had standing to prosecute the charge, the charge nevertheless would have to be dismissed for lack of subject matter jurisdiction. In deciding whether or not a party has committed unfair practices, the Board may not rely solely on post-charge events. Commonwealth of Pennsylvania, Pennsylvania State Police, supra. The Association filed the charge on March 14, 2005, so any events occurring after that date may not form the sole basis for finding the City in violation of the Act. A close review of the record reveals that the City's letter, the City's agreement with the IAFF, the City's training of the fire fighters as emergency medical technicians and the fire fighters performance of emergency medical technician work all post-dated the charge by more than ten months (findings of fact 6-9). A close review of the record does not reveal any pre-charge event that would support the charge. Thus, the Board has no subject matter jurisdiction even if the Association had standing to prosecute the charge.[1]

In support of the amended charge, the Association presented evidence that the City has used members of the bargaining unit to provide first responder training to fire

[1] Given the lack of standing and the lack of subject matter jurisdiction, no attempt has been made to decide if the City's post-charge conduct was violative of the Act.

fighters since 1988 (N.T. 22), that the City used members of the bargaining unit to provide emergency medical technician training to "the minority recruitment class" in 1991 (N.T. 25, 34), that the City used non-members of the bargaining unit to provide emergency medical technician training to fire fighters in February 2006 (N.T. 25) and that first responder training is subsumed within emergency medical technician training (N.T. 37).

The amended charge also must be dismissed for lack of subject matter jurisdiction. Again, in deciding whether or not a party has committed unfair practices, the Board may not rely solely on post-charge events. Commonwealth of Pennsylvania, Pennsylvania State Police, supra. The Association filed the amended charge on October 17, 2005, so any events occurring after that date may not form the sole basis for finding the City in violation of the Act. A close review of the record reveals that the City's use of non-members of the bargaining unit to train fire fighters as emergency medical technicians post-dated the amended charge by more than three months (finding of fact 8). The record does not show that the City used non-members of the bargaining unit to train fire fighters as emergency medical technicians before the charge was filed. Thus, it is apparent that the Board has no subject matter jurisdiction to find the City in violation of the Act.[2]

CONCLUSIONS

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

1. The City is a public employer under section 301(1) of the Act.

2. The Association is an employe organization under section 301(3) of the Act.

3. The Board has jurisdiction over the parties.

4. The Association has no standing to prosecute the charge.

5. The Board has no subject matter jurisdiction.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaint and amended complaint are rescinded and the charge and amended charge dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-sixth day of May 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner

[2] Given the lack of subject matter jurisdiction, no attempt has been made to decide if the City's post-charge conduct was violative of the Act.

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May 26, 2006

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CITY OF PITTSBURGH
Case No. PERA-C-05-141-W

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: City of Pittsburgh
Pittsburgh Regional Office