

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

YORK CITY EMPLOYEES' UNION :
 :
 v. : Case No. PERA-C-06-375-E
 :
 CITY OF YORK :

FINAL ORDER

The City of York (City) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on March 19, 2007, challenging a Proposed Decision and Order (PDO) issued February 28, 2007, wherein the Hearing Examiner concluded that the City violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). The York City Employees' Union did not file a response to the exceptions.

AMENDED FINDING OF FACT

8. Ferguson then proceeded to the office of the City's director of human resources (Robert Nace) to obtain more details on the temporary assignment. Nace advised Ferguson that the temporary assignment would not affect his salary or overtime opportunity. Nace showed Ferguson a document which was entitled "side letter agreement." The agreement contained signature lines for the City, the Union and Ferguson, and provided, inter alia, that Ferguson had the right to return to his bargaining unit position, that the City was under no obligation to post or fill Ferguson's bargaining unit position during the term of his temporary appointment and that the arrangement with Ferguson would not operate as precedent regarding any other members of the bargaining unit, present or future, involved in a similar situation. Ferguson signed the agreement. After Ferguson reviewed the agreement, Nace told Ferguson, "If it's to your satisfaction . . . go ahead and sign it." Ferguson then signed the agreement. At some point in their conversation, Nace advised Ferguson that the Union would have to approve the agreement. (N.T. 8-9, 14-15, 30-32; Union Exhibit 1)

DISCUSSION

The factual background is briefly stated as follows: On July 12, 2006, the City terminated the employment of its youth program coordinator. This coordinator was a management level employe and therefore not in the bargaining unit represented by the Union. (Finding of Fact No. 4). The termination of the youth program coordinator created an immediate need for a summer playground director, as the termination occurred three weeks into the six-week summer playground program. (Finding of Fact No. 5). On July 13, 2006, the City asked a bargaining unit member, Raymond Ferguson, who had previously worked as an assistant to the youth program coordinator, to fill this position for the next three weeks. Ferguson told his supervisor he was interested in the temporary position. (Finding of Fact Nos. 6 and 7). Ferguson then met with the City's director of human resources, Robert Nace, who asked him to sign a "side letter of agreement" which contained signature lines for Ferguson, the City and the Union and which generally provided that Ferguson had the right to return to his bargaining unit position, that the City was under no obligation to post or fill his bargaining unit position during his three-week absence and that the arrangement with Ferguson would not operate as precedent regarding any other members of the bargaining unit, present or future, involved in a similar situation. Ferguson signed the agreement. Thereafter, Nace attempted to deliver the side letter of agreement to the Union for signature. The Union was not aware of this agreement because the City had not discussed the proposed temporary assignment of Ferguson with the Union. On July 14, 2006, the Union informed the City that it would not approve the side letter of agreement. The City proceeded to fill the position with a non-bargaining unit employe. (Findings of Fact 8-11).

The Union's charge alleged that the City violated Section 1201(a)(1), (2), (3) and (5) by directly negotiating with Ferguson rather than negotiating with the Union. In the PDO, the Hearing Examiner found that the City committed unfair practices in violation of Section 1201(a) (1) and (5).¹

¹ The Hearing Examiner dismissed the charge under Section 1201(a)(2) and (3). The Union did not file exceptions to this dismissal.

In its exceptions, the City argues that the Hearing Examiner erred by finding that it committed an unfair practice by presenting the side letter of agreement to Ferguson. Specifically, the City argues that the Board's decision in Upper Southampton Township, 31 PPER ¶ 31105 (Final Order, 2000), supports its position that it did not commit an unfair practice.

In Upper Southampton Township, the employer appointed a bargaining unit police sergeant to the non-bargaining unit position of "Acting Lieutenant". The union filed a charge alleging that the employer committed an unfair practice by failing to bargain with the union prior to taking this action and that the employer had the duty to bargain with the union over the wages, benefits and working conditions of the acting lieutenant position. The Board rejected the union's argument and affirmed the hearing examiner's conclusion that the employer did not commit an unfair practice because the employer had no duty to bargain over the terms and conditions of a non-bargaining unit position that is temporarily being filled by a member of the bargaining unit.

In this case, unlike Upper Southampton Township, the Hearing Examiner's Decision is not based upon the fact that the City failed to bargain over the terms and conditions of a temporary non-bargaining unit position. Rather, the Hearing Examiner concluded that the City dealt directly with Ferguson over bargainable matters related to his bargaining unit position. The Hearing Examiner concluded that those matters included Ferguson's right to return to the bargaining unit position and whether the City was obligated to post and fill the bargaining unit position during Ferguson's absence. Additionally, as noted in Amended Finding of Fact No. 8 above, the agreement also provided that the arrangement with Ferguson would not operate as a precedent regarding other bargaining unit employees. As such, this case is more akin to Philadelphia Office of Housing and Community Development, 31 PPER ¶ 31055 (Final Order, 2000), which the Hearing Examiner cited. That case stands for the proposition that an employer engages in direct dealing when a bargainable matter is not first presented to the union representative. As noted in Philadelphia OHCD, one of the concerns with engaging in such direct dealing is that the union is not given "a meaningful opportunity to consider the proposed matter in the context of bargaining without external influences or reactions from employees, who may not be privy to the full panoply of issues relevant to the proposal or the negotiations in general." Id. at 135.

Although Philadelphia OHCD dealt with negotiations over a collective bargaining agreement, similar concerns are present here. The side letter of agreement addressed bargainable matters over which the City was obligated to deal exclusively with the Union. The City further argues that no "bargaining" took place because the City presented Ferguson with the proposal and no further counter-proposals were offered. However, an exchange of proposals is not required to conclude that an employer has violated the Act in bypassing the exclusive bargaining representative and dealing directly with employees. No such exchange of proposals occurred in Philadelphia OHCD or in other similar cases where unlawful direct dealing was found. See Millcreek Township School District v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1993), petition for allowance of appeal denied, 537 Pa. 626, 641 A.2d 590 (1994); AFSCME District Council 88 v. Warminster Township, 31 PPER ¶ 31156 (Final Order, 2000). Accordingly, the Hearing Examiner correctly concluded that the City committed an unfair practice by presenting the side letter of agreement to Ferguson without first discussing it with the Union.

After a thorough review of the exceptions, the brief in support and all matters of record, the Board shall dismiss the City's exceptions and affirm the Hearing Examiner's conclusion that the City committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the City are hereby dismissed, and the February 28, 2007 Proposed Decision and Order, as amended herein, be and hereby is made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this fifteenth day of May, 2007. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

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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 PERA; that it has posted a copy of the final order and proposed decision and order as directed; 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