

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION :
LOCAL 668, SEIU :
:
v. : Case No. PERA-C-06-288-E
:
COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF PUBLIC WELFARE :

PROPOSED DECISION AND ORDER

On June 22, 2006, the Pennsylvania Social Services Union, Local 668 SEIU (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Public Welfare (Commonwealth or Respondent) violated Sections 1201(a)(1), (5) and (9) of the Public Employe Relations Act (Act).

On July 18, 2006, the Secretary of the Board issued a Complaint and Notice of hearing in which September 14, 2006 in Harrisburg was assigned as the time and place of hearing, if necessary.

The hearing was necessary, but was continued to November 30, 2006, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

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

FINDINGS OF FACT

1. That the Commonwealth of Pennsylvania, Department of Public Welfare is a public employer within the meaning of Section 301(1) of the Act. (N.T. 7-8)
2. That the Pennsylvania Social Services Union, Local 668, SEIU is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 7-8)
3. That PSSU represents thousands of Commonwealth employees, including Income Maintenance Caseworkers (IMCWs) who work in the Department of Public Welfare (DPW)'s county assistance offices (CAOs). (N.T. 10)
4. That the Commonwealth and the Union are parties to a collective bargaining agreement (CBA) addressing the terms and conditions of employment of PSSU-represented employees from July 1, 2003 to June 30, 2007 (Respondent Exhibit 1; N.T. 19)
5. Among the issues addressed in this agreement is "Preservation of Bargaining Unit Work", which is found in Article 46 of the agreement. This Article provides, in pertinent part:

Section 1. The Employer may contract/assign bargaining unit work, subject to the limitations set forth in this Article.

Section 2. The Employer shall not contract/assign bargaining unit work to independent contractors...where such agreement would result in the layoff or downgrading of an employee or prevent the return to work of an available, competent employee except for legitimate operation reasons resulting in reasonable cost savings or improved delivery of service....

Section 3. The Employer shall not contract/assign bargaining unit work which becomes available as a result of a retirement, resignation, termination, promotion, demotion or reassignment of an employee; to independent contractors...except for legitimate operational reasons resulting in reasonable cost savings or improved delivery of service.

Section 4. The Employer shall provide the Union with as much advance notice as possible of a proposed contract/assignment of bargaining unit work outside the bargaining unit either when the contract/assignment would result in the layoff or downgrading of an employee or prevent the return to work of an available, competent employee or when the work has become available as a result of a retirement, resignation, termination, promotion, demotion or reassignment of an employee.

Section 5. At each site where a proposed contract/assignment of bargaining unit work is to occur and provided either: that the contract/assignment would result in the layoff or downgrading of an employee to prevent the return to work of an available, competent employee; or, that the work has become available as a result of a retirement, resignation, termination, promotion, demotion or reassignment of an employee, local labor/management committees shall meet and discuss over the reasons for the assignment. At this meeting the Employer shall provide the Union all information it has to support a claim of reasonable cost saving or improved delivery of service...The Union shall have the opportunity to provide alternative methods to attaining the Employer's desired result....

* * *

Section 7. The Employer agrees to meet and discuss and contract/assignment involving work performed by employees covered by this Agreement in the affected Agency that does not result in the layoff or downgrading of an employee or prevent the return to work of an available competent employee upon request of the Statewide Union and presentation by the Statewide Union of an alternative which may result in reasonable cost savings or improved delivery of service.

* * *

Section 8. The Employer and the Union acknowledge the above represents the results of negotiations conducted under and in accordance with the Public Employe Relations Act and constitutes the full and complete understanding regarding the issues of contracting out and transfer of bargaining unit work.

(N.T. 19, 20-23, 75, Respondent Exhibit 1 at 129-131)

6. The parties' collective bargaining agreement, in Article 44, Section 4, defines the term "meet and discuss" as used in the agreement, to "have the meaning of that term as defined and applied under the Public Employe Relations Act". (N.T. 19, 75, Respondent Exhibit 1 at 128)

7. The Commonwealth's Department of Public Welfare subsidizes the child care for nearly 100,000 children in Pennsylvania each day. Of these, one-third are served through the County Assistance Offices (CAOs), under DPW's Office of Income Maintenance, and two-thirds through the Child Care Information Services (CCIS), a private company that contracts with DPW's Office of Child Development. (N.T. 20-223, 60, 75, Respondent Exhibit 2)

8. That IMCWs determine the eligibility for subsidized child care for the Temporary Assistance to Needy Families (TANF), food stamp eligible families and general assistance families. The IMCWs also perform a myriad of other tasks in the course of serving these clients in the CAOs. (N.T. 58, 63 and 70)

9. That other DPW clients, consisting of former TANF families and low income families qualifying for subsidized child care services based on federal poverty guidelines, receive child care related services from CCIS. (N.T. 58)

10. That in contrast to the IMCWs in the CAOs, who deal with many issues, the private company, CCIS, which is comprised of 59 county-based agencies, deals exclusively with the services necessary to provide child care assistance. (N.T. 61-63, Respondent Exhibit 2)

11. That Robert Frein is the Director of the Bureau of Subsidized Child Care Services for the Office of Child Development in the Department of Public Welfare. At the hearing in this matter, Mr. Frein explained that because of the expertise that CCIS held in the area of child care the officials in DPW decided that clients would be served best if there was a unifying of the child care services provided in the department under CCIS. The officials

believed that this would result in an improved delivery of service to its clients. This unification would eliminate the bifurcated system and provide to DPW's clients one gateway to a single, coordinated child system, providing consistent services to all eligible clients, regardless of the basis for eligibility. CCIS identifies every available child care provider in the area that each agency serves. (N.T. 61-64, Respondent Exhibit 2)

12. That Joanne Glover is the Director of Operations for the Office of Income Maintenance in DPW. At the hearing in this matter, Ms. Glover testified that DPW's purpose in shifting the child care related work from the IMCWs to CCIS was always to improve service delivery for the clients who needed day care services, not cost savings. (N.T. 72-74)

13. That in October, 2005, DPW informed PSSU, as the representative of the IMCWs, of DPW's intention regarding unification of child care services. (N.T. 9-10)

14. That the issue of the unification of the services for subsidized child care was the subject of a meet and discuss session on October 14, 2005 and again on November 8, 2005. (N.T. 10, 15, 35 and 59).

15. That at the November 8, 2005 meet and discuss DPW representatives provided the PSSU representatives with an explanation of its proposal. (N.T. 16 and 60; Respondent Exhibit 2)

16. That DPW explained that improved delivery of services was the driving force behind its proposal. (N.T. 24 and 65; Respondent Exhibit 2)

17. That despite the fact that DPW was concerned only with improving the delivery of services to its clients, PSSU requested information regarding the costs of the subcontract. (N.T. 13)

18. That the DPW officials at the meet and discuss session declined to provide the requested information. (N.T. 46-48, 74-75)

19. That at the November 8, 2005 meet and discuss session, Christine Bowser, Ms. Glover's predecessor as Director of Operations for DPW's Office of Income Maintenance, told Eugene Quaglia, chair of the PSSU CAO rank and file committee, that the subcontract to CCIS would result in approximately two per cent (2%) of the IMCWs duties being removed. The officials said nothing about layoffs of IMCWs. (N.T. 34-38, 50-51)

DISCUSSION

The Union's charge of unfair practices alleges that the Commonwealth's Department of Public Welfare (DPW) violated its duty to bargain and its duty to meet and discuss when it refused to provide the Union with information about the cost of a change in the delivery of social work services related to state subsidized day care, services formerly performed by union members.

This charge was precipitated by the Department of Public Welfare's restructuring the delivery of social work services related to the subsidized child care the department provides to approximately 100,000 Pennsylvania children each day. The Union represents Income Maintenance Case Workers (IMCWs). In 2005, DPW decided to unify the Department's delivery of child care services by assigning certain tasks formerly done by IMCWs to a private company, Child Care Information Services (CCIS). The Union believed that the change would result in the layoff of some IMCWs so it requested information about the costs of the Commonwealth contract with CCIS. The Commonwealth refused and this charge resulted.

A public employer violates its duty to bargain in good faith when it fails to provide information to the exclusive representative necessary to carry out its obligation to bargain on behalf of its members. Commonwealth of Pennsylvania (Department of Public Welfare), 17 PPER ¶ 17125 (Final Order, 1986). However, if an employer has no duty to bargain over a decision, it also has no duty to supply the information on which it based the decision. Commonwealth of Pennsylvania, 19 PPER ¶ 19138 (Final Order, 1988).

Before concluding that a public employer had an obligation to engage in collective bargaining and, therefore, a duty to provide information relevant to the issue, the Board "must determine whether the employer met its obligation to engage in collective bargaining with the union. To make this determination, the Board will look first to the collective

bargaining agreement for evidence of bargaining." Commonwealth of Pennsylvania (Harrisburg International Airport), 26 PPER ¶ 26185 (Final Order, 1995). Evidence of bargaining may include evidence that a union agreed to meet and discuss over issues which would normally constitute mandatory subjects of bargaining. See HIA (FOP contractually agreed to meet and discuss over schedule changes); and Commonwealth of Pennsylvania (State Police), 20 PPER ¶ 20173 (Proposed Decision and Order, 1989)(AFSCME contractually agreed to meet and discuss over schedule changes).

In the present case, the Commonwealth presented substantial evidence that it fulfilled its obligation to bargain over subcontracting. The collective bargaining agreement includes language allowing subcontracting, even if the subcontracting resulted in layoffs, as long as the subcontract be "for legitimate operational reasons resulting in reasonable cost savings or improved delivery of service." (Article 46, Section 2). The Commonwealth presented evidence that supported its assertion that the new arrangement with CCIS would improve the delivery of social work services to clients related to the state subsidized child care. The Commonwealth shared the specifics of the improved delivery of the services with the Union at a meet and discuss (Respondent Exhibit 2). Therefore, the Commonwealth has discharged its obligation to bargain the issue of subcontracting and the Commonwealth has no duty to provide information that would flow from the duty to bargain.

Accordingly, the remaining question is whether the Commonwealth met its obligation to meet and discuss, as that term is defined and applied under the Act. The parties engaged in two meet and discuss sessions in the fall of 2005. High level officials of DPW met with high level PSSU representatives, at which time the DPW officials explained the policy and service delivery rationale behind the shifting of the child care related work.

The Union claims that these meetings did not satisfy the Commonwealth's statutory meet and discuss obligations because the DPW officials did not provide the Union with information about the cost of the subcontract to assist it in the meet and discuss. The Union first argues that the Commonwealth repudiated Article 46, Section 5 of the CBA, which states that where layoffs result from the subcontract, the employer "shall provide to the union all the information it has to support a claim of reasonable cost saving or improved service." The Union contends that this section is relevant because there would be layoffs from the transfer to CCIS. However, there is no evidence in the record that the subcontract has caused layoffs among IMCWs. The Union argues that the certainty of layoffs can be extrapolated from the Commonwealth's admission that two per cent (2%) of the IMCW workload would be shifted to the CCIS agencies. But the prospect of layoffs is speculative given this minor impact on the bargaining unit workload. Accordingly, Article 46, Section 5, requiring the provision of information, is not applicable. Instead Article 46, Section 7, in which the parties agree to meet and discuss without any obligation to provide information, is the applicable contract provision.

As an alternate argument, the Union argues that the employer's refusal to provide the cost information reduced the meet and discuss sessions into meaningless exercises because the union was unable to make serious recommendations to the employer.

The Act defines the meet and discuss obligation as follows:

(17) meet and discuss means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes:

Provided, that any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues discussed.

43 P.S. 1101.301(17).

The Board case law interpreting this definition of meet and discuss is not abundant. However, the Board has held that the employer's duty to provide information does not apply in cases where an employer is only obligated to meet and discuss over a matter. See Commonwealth of Pennsylvania, 19 PPER ¶ 19138 (Final Order, 1988). Accordingly, I am constrained by this precedent to find that the Commonwealth's refusal to provide the cost information for the meet and discuss session does not constitute a violation of the meet and discuss obligation.

Putting aside this legal precedent for a moment, as a practical matter there is a salutary effect of a public employer providing relevant information to the employe organization whenever it is requested. Providing information to the union for meet and discuss certainly promotes labor-management cooperation, an expressed policy of the Commonwealth for at least the last twenty years and three administrations. If there is any advantage to the union, there appears to be no corresponding disadvantage to the employer to providing such information. Furthermore, the cost information sought by the Union, as would be true in many other meet and discuss scenarios, is subject to disclosure under Pennsylvania's Right to Know Act, Act of June 21, 1957, P.L. 390, as amended, 65 P.S. 66.1 et seq. Nevertheless, Board precedent requires a finding that the Commonwealth has not committed an unfair practice for violating its meet and discuss obligation in this instance.

Finally, the Union argues that the Commonwealth engaged in bad faith in carrying out its meet and discuss obligation. The Union contends that the DPW officials displayed bad faith by deciding not to provide the cost information after earlier telling the Union that they would provide the information. The Commonwealth Court in Commonwealth, Labor Relations Board v. APSCUF, 355 A. 2d 853 (Pa. Cmwlth. 1976) stated that although the meet and discuss obligation does not have a good faith component similar to the notion of good faith in the duty to bargain, the employer may not act in bad faith. Even with this judicial admonition in mind, if an employer was not obligated to provide information in the first instance for the meet and discuss session then it does not follow that an employer should be found to have violated the law if its initial offer to provide the information was an incorrect interpretation of the law. Accordingly, I cannot conclude that the Commonwealth acted in bad faith in this instance.

For all of the reasons above, it must be concluded that the Commonwealth of Pennsylvania, Department of Public Welfare has not committed unfair practices in violation of Sections 1201 (a)(1), (5) and (9) of the Act.

CONCLUSIONS

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

1. That the Commonwealth of Pennsylvania, Department of Public Welfare is a public employer within the meaning of Section 301(1) of the Act.
2. That the Pennsylvania Social Services Union, Local 668 SEIU is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties hereto.
4. That the Commonwealth of Pennsylvania, Department of Public Welfare has not committed unfair practices in violation of Sections 1201(a)(1),(5) and (9) of the Act.

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 charge of unfair practices is dismissed and the complaint rescinded.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this tenth day of December, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner