

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205 :
 :
 v. : Case No. PF-C-06-135-W
 :
 UNION TOWNSHIP :

PROPOSED DECISION AND ORDER

On August 7, 2006, Teamsters Local Union No. 205 (Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that Union Township (Township) had violated sections 6(1)(a) and 6(1)(e) of the Pennsylvania Labor Relations Act (PLRA) by refusing to process a grievance. On November 1, 2006, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on December 12, 2006, if conciliation did not resolve the charge by then. On November 17, 2006, the Township filed an answer and new matter alleging that the charge should be dismissed because it was under no obligation to process the grievance. A hearing examiner thereafter continued the hearing at the request of the Township and without objection by the Union. On January 22, 2006, the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On April 20, 2007, the Township filed a brief.

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

FINDINGS OF FACT

1. On August 3, 1987, the Board certified the Union as the exclusive representative of a bargaining unit comprised of police officers employed by the Township. (Case No. PF-R-87-55-W)

2. Effective January 1, 2003, the parties entered into a three-year collective bargaining agreement. (N.T. 5, 8)

3. In 2006, the Township hired a retired state trooper to perform various tasks, including logging of evidence and police reports. (N.T. 6, 8)

4. On June 7, 2006, the Union's business agent (Carl A. Bailey) filed a grievance alleging that the Township violated the collective bargaining agreement by "sub-contract[ing] administrative work normally done by ranking police officers in the Bargaining Unit, specifically logging of evidence and filing of police reports." (N.T. 6, 8)

5. On June 15, 2006, the Township filed an answer to the grievance as follows:

"The Collective Bargaining Agreement between the parties bars further written or oral agreements between the parties and that all police work shall be done by persons under the agreement. There is no basis for the Grievant's request under the parties' Agreement. The position taken by the person on a sub-contracted basis is not police work, but is instead a matter of custody of seized property and victim's advocate work; such a public safety director has no authority to enforce the health, safety and welfare of the citizenry, and no further police powers. This position is not one ever made a part of the parties' Agreement, and its creation does not allow a basis for this grievance.

In the alternative, creation of new positions is a matter of inherent managerial rights, pursuant to the Collective Bargaining Agreement, and is not a proper subject for grievance and arbitration. This is further consistent with 43 Pa.C.S. § 1101.702" (N.T. 6-8)

6. By letter dated June 16, 2006, Mr. Bailey wrote to the Township about the grievance as follows:

"In reference to the above captioned grievance, I am requesting a meeting at the next step in the grievance procedure.

Please call the Union Office to make arrangements for a meeting to attempt resolution of this grievance."

(N.T. 6-8)

7. By letter dated June 27, 2006, the Township's solicitor (Dennis M. Makel, Esquire) wrote to Mr. Bailey about the grievance as follows:

"Kindly be advised that I am in receipt of your June 26, 2006, letter requesting a meeting as a part of the grievance procedure for the above referenced matter.

Please be advised that at this point in time it has been approximately twelve months since Union Township had any active police officers and police union employees, and for this reason, we decline the requested meeting. Union Township takes the position in regards to this request that there is no longer a police union in the Township and therefore there is neither a bargaining unit nor is there any employment situation in which a remedy could be provided. The Township views your current request as moot."

(N.T. 7-8)

DISCUSSION

The Union has charged that the Township committed unfair labor practices under sections 6(1)(a) and 6(1)(e) by refusing to process a grievance. The grievance alleges that the Township violated the parties' collective bargaining agreement by "sub-contract[ing] administrative work normally done by ranking police officers in the Bargaining Unit, specifically logging of evidence and filing of police reports" (finding of fact 4).

The Township has answered that the charge should be dismissed because it was under no obligation to process the grievance. According to the Township, it was under no obligation to process the grievance because it abolished its police department before the grievance was filed, because the grievance does not state a violation of the collective bargaining agreement and because it has the managerial right to create new positions. The Township also contends that the charge should be dismissed because it did not subcontract bargaining unit work as alleged in the grievance.

An employer commits unfair labor practices under sections 6(1)(a) and 6(1)(e) if it refuses to comply with the dispute resolution procedure set forth in a collective bargaining agreement. Pottstown Police Officers' Association v. PLRB, 634 A.2d 711 (Pa. Cmwlth. 1993). An employer is obligated to process a grievance to arbitration if a collective bargaining agreement so provides. Municipality of Monroeville, 34 PPER 119 (Proposed Decision and Order 2003). The arbitrability of the grievance is for the arbitrator to decide in the first instance. Township of Sugarloaf v. Bowling, 563 Pa. 237, 759 A. 2d 913 (2000).

If an employer completely and permanently ceases providing police services, it is under no obligation to bargain with the exclusive representative of its police officers. Saltsburg Borough, 35 PPER 141 (Proposed Decision and Order 2004). If the employer does not completely and permanently cease providing police services, however, it remains under an obligation to bargain with the exclusive representative of its police officers. Youngwood Borough Police Department v. Commonwealth of Pennsylvania, PLRB, 539 A.2d 26 (Pa. Cmwlth. 1988), appeal denied, 522 Pa. 599, 562 A.2d 323 (1989). As the court held in County of Bucks v. Commonwealth of Pennsylvania, PLRB, 465 A.2d 731 (Pa. Cmwlth. 1983), the employer

"may not under any guise avoid its Act 111 duty to bargain by subsequently directing its employees or others to resume any of the duties principally performed by [members of the bargaining unit] prior to their termination; if it wishes to resume these duties, the [employer] must reinstate the [members of the bargaining unit] and bargain with their [exclusive representative]."

465 A.2d at 734 (emphasis in original).

As set forth in findings of fact 4-7, the record shows that the Township refused to process the grievance to the second step of the grievance procedure set forth in the parties' collective bargaining agreement as requested by the Union. Thus, under the analysis set forth in Pottstown Police Officers' Association, supra, it is apparent that the Township committed unfair labor practices under sections 6(1)(a) and 6(1)(e) as charged by refusing to comply with the dispute resolution procedure set forth in a collective bargaining agreement.

The Township contends that it was under no obligation to process the grievance because it abolished its police department before the grievance was filed. As the Township points out, it abolished the police department in July 2005 (N.T. 9-10), while the Union did not file the grievance until June 7, 2006 (finding of fact 4). The Township cites Commonwealth of Pennsylvania, SSHE v. United Plant Guard Workers of America, Local Union No. 509 (Pa. Cmwlth. 1992), and School District of the City of Duquesne v. Duquesne Education Association, 475 A.2d 279, 380 A.2d 353 (1977), for the proposition that untimely filed grievances need not be processed.

The record shows, however, that the Township hired a retired state trooper to perform a variety of tasks, including logging of evidence and police reports, after it abolished the police department (finding of fact 4). There is, therefore, no basis for finding that the Township completely and permanently ceased providing police services when it abolished the police department in July 2005. Thus, under the analysis set forth in Youngwood Borough Police Department, supra, and County of Bucks, supra, the Township was under an obligation to process the grievance even though it abolished the police department in July 2005. Moreover, neither Commonwealth of Pennsylvania, SSHE, supra, nor School District of the City of Duquesne, supra, involved a refusal to process a grievance as here; rather, they each involved an appeal from an arbitration award where an arbitrator found a grievance to be timely filed. As such, those cases are inapposite, and the Township's reliance on them is misplaced.

The Township also contends that it was under no obligation to process the grievance because the grievance does not state a violation of the collective bargaining agreement. An arbitrator is to decide in the first instance if a grievance states a violation of a collective bargaining agreement however. Township of Sugarloaf, supra. Thus, under the analysis set forth in Municipality of Monroeville, supra, the Township was obligated to process the grievance regardless of whether or not the grievance states a violation of the collective bargaining agreement.

The Township further contends that it was under no obligation to process the grievance because it has the managerial right to create new positions. Under the analysis set forth in Pottstown Police Officers' Association, supra, however, the dispositive question is whether or not the Township complied with the dispute resolution procedure set forth in the collective bargaining agreement. Whether or not the Township has the managerial right to create new positions does not bear on that question and, therefore, is irrelevant.

The Township finally contends that the charge should be dismissed because it did not subcontract bargaining unit work as alleged in the grievance. According to the Township, members of the bargaining unit did not perform any of the work that it hired the retired state trooper to perform. The Township cites Pennsylvania State Police v. PLRB, 912 A.2d 909 (Pa. Cmwlth. 2006), City of Jeanette v. PLRB, 890 A.2d 1154 (Pa. Cmwlth. 2006), and Harbor Creek School District v. PLRB, 631 A.2d 1069 (Pa. Cmwlth. 1993), for the proposition that an employer is under no obligation to bargain when the work at issue had never been performed by members of the bargaining unit.

Again, however, under the analysis set forth in Pottstown Police Officers' Association, supra, the dispositive question is whether or not the Township complied with the dispute resolution procedure set forth in the collective bargaining agreement. The merits of the grievance do not bear on that question and, therefore, are irrelevant. Moreover, neither Pennsylvania State Police, supra, City of Jeanette, supra, nor Harbor

Creek School District, supra, involved a refusal to process a grievance as here; rather, they each involved a refusal to bargain over the transfer of bargaining unit work to a non-member of the bargaining unit. As such, those cases are inapposite, and the Township's reliance on them is misplaced.

CONCLUSIONS

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

1. The Township is an employer under section 3(c) of the PLRA.
2. The Association is a labor organization under section 3(f) of the PLRA.
3. The Board has jurisdiction over the parties.
4. The Township has committed unfair labor practices under sections 6(1)(a) and 6(1)(e) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Township shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA.
2. Cease and desist from refusing to bargain collectively with the representative of its employees.
3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the PLRA:
 - (a) Process the grievance;
 - (b) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and
 - (c) 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 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 seventeenth day of May 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner