

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 88 :
 :
 v. : Case No. PERA-C-04-32-E
 :
 NORTHAMPTON COUNTY :

PROPOSED DECISION AND ORDER

On January 26, 2004, AFSCME District Council 88 (AFSCME) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Northampton County (County) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA or Act). On February 20, 2004, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on March 8, 2004. At the request of the County, the hearing was continued to March 22, 2004. On March 17, 2004, the County filed an answer to the complaint. A hearing was held on March 22, 2004, at which time all parties in interest appeared before the examiner and were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties subsequently requested that the examiner grant an indefinite continuance of the post-hearing briefing schedule so that they could engage in settlement discussions. By letter dated July 20, 2004, the examiner granted the parties' request.

No further communication was received from the parties until AFSCME filed a letter dated May 5, 2006, which alleged that the County had repudiated an agreement to settle the unfair practice charge. AFSCME requested reactivation of the charge and issuance of a briefing schedule. By letter dated June 2, 2006, the examiner directed the parties to file briefs by July 14, 2006. At the request of AFSCME, the time for filing briefs was extended to July 17, 2006. On that date, the parties forwarded briefs to the Board.

On August 28, 2006, the examiner conducted a hearing on AFSCME's charge against the County in Case No. PERA-C-06-196-E. That charge alleged that the County repudiated an agreement to settle several unfair practice charges, including the charge at issue here. The settlement alleged by AFSCME included withdrawal of the charge filed in this case. Because a ruling in favor of AFSCME in PERA-C-06-196-E would result in withdrawal of the charge at issue here, the examiner informed the parties by letter dated October 5, 2006 that he would issue a decision in PERA-C-06-196-E before deciding this case.

On February 12, 2007, the examiner issued a proposed decision in PERA-C-06-196-E, which concluded that AFSCME and the County did not reach a binding agreement to settle the unfair practice charges, including the charge at issue here. Accordingly, this case is now ripe for decision.

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 parties stipulated and agreed that the County is a public employer for purposes of PERA. (N.T. 12)
2. The parties stipulated and agreed that AFSCME is an employe organization for purposes of PERA. (N.T. 12)
3. On July 22, 2003, the Board issued an order certifying AFSCME as the exclusive bargaining representative of a unit of all full-time and regular part-time residual nonprofessional employes of the County, including but not limited to employes in Corrections. (N.T. 6, 15; PERA-R-03-164-E)

4. AFSCME also represents a bargaining unit of employes who work at the County prison and a unit of employes who work at the Gracedale Nursing Home. (N.T. 14)

5. The collective bargaining agreement that covered the nursing home employes was effective from January 1, 2003 through December 31, 2006. The collective bargaining agreement that covered the prison employes was due to expire at the end of 2005. (N.T. 21)

6. After AFSCME was certified as the exclusive bargaining representative for the residual unit, the parties did not immediately commence negotiations for an initial collective bargaining agreement for that unit because the County claimed that it was in financial distress and sought to reopen the existing contracts for the nursing home and prison employes. The County indicated that it was facing a large tax increase and that there might be furloughs in all three bargaining units. (N.T. 20-22)

7. The County has adopted home rule and has a county executive. (N.T. 35)

8. On October 16, 2003, the county executive adopted a layoff plan for a countywide reduction in force. (N.T. 54-55; County Exhibit 1)

9. On December 11, 2003, AFSCME and the county executive executed an agreement that provided as follows:

"1. AFSCME will decrease the Employer's payment into the AFSCME Health and Welfare Fund for a paid prescription Program and a vision care program administered by the Fund. Effective January 1, 2004 through December 31, 2004 the Employer shall decrease the payment for this benefit from \$194.75 to \$156.75 per month per employee based on 608 employees. This will result in a savings of \$277,248.00 to the Employer.

2. The Employer agrees that it will extend employment to those employees in each County-based AFSCME bargaining unit for 45 calendar days beginning January 1, 2004.

3. The Employer and AFSCME agree to negotiate in good faith to find viable and cost effective options to continue the employment of the employees originally scheduled to be furloughed December 31, 2003."

(N.T. 40-41; Union Exhibit 5)

10. AFSCME and the County agreed to a series of dates and times to meet concerning possible avoidance of the furloughs. (N.T. 42-43, 50-51; Union Exhibit 6)

11. AFSCME and the County met on January 7, 2004 to discuss possible avoidance of the furloughs. No specific proposals were made by either party. (N.T. 45-46, 54, 152-154)

12. AFSCME posted a notice to inform the bargaining unit members of the nature of its discussions with the County. The notice stated in part:

"As the result of actions taken by AFSCME District Council 88 at the County Council Meeting of December, fifty-one AFSCME represented workers were spared being laid off.

Management and AFSCME have further agreed to begin a series of meetings once per week until mid February to discuss a long term resolution to the complicated set of problems we fare.

THESE MEETINGS ARE NOT CONTRACT REOPENERS!

AFSCME has made it plain that current wage and benefit levels in Locals 1435 and 2549 are NOT open for discussion"

(N.T. 47-49; Union Exhibit 8)

13. On or about January 12, 2004, the County faxed a letter to AFSCME, which stated as follows:

"The American Federation of County, State, and Municipal Employees (AFSCME) union notice that was posted last Thursday, January 8, 2003, in the Northampton County Government Center stating the union's refusal to discuss current wage and benefit levels in Locals 1435 and 2549 gives the administration great pause. Unless we have misconstrued the intent of the notice, and we are open to hear any varying interpretations from you, the administration sees no reason to continue talks with the AFSCME union leadership at this time; the exception to this is the negotiation of a contract with the current residual unit.

Based on the posting of the aforementioned notice, the County believes that the AFSCME union leadership has approached this process in bad faith and is not willing to work toward the viable solution that was discussed the night of December 8, 2003 during the County's final budget meeting. At that time, a last minute agreement was reached to delay the planned layoffs for forty-five days in order to investigate a way to save those same jobs. The County of Northampton believes that if all current AFSCME contracts are closed to negotiations, then the union is not truly attempting to work toward a viable solution.

The County of Northampton will move forward with its layoff plan that will be effective on February 14, 2004. Additionally, the administration will work with the AFSCME union to schedule negotiation meetings for the residual unit. The County is regretful that a more reasonable outcome could not be realized at this time."

(N.T. 50, 146; Union Exhibit 9)

14. By letter dated January 16, 2004, AFSCME responded to the County's January 12, 2004 letter as follows:

"I am writing to reply to your letter of January 12 and to memorialize relevant portions of our telephone conversation on the morning of January 8.

You have not misconstrued the information contained in AFSCME's County-wide notice of January 7. I advised you of the source and accuracy of that information in our January 8 phone call.

AFSCME's position relative to 'reopeners' in the January 7 notice was made known repeatedly throughout the day on December 8, 2003 to members of Council and members of the Administration with whom conversations were held. This understanding was part and parcel of the agreement memorialized in writing by the parties on December 11.

What you have misconstrued, however, is AFSCME's willingness to work toward the sort of viable solution we discussed on December 8. We have never backed away from our commitment to negotiate with the County in good faith to find viable and cost effective means of avoiding furloughs.

Based upon the wording of your January 12 letter, however, I understand that the County is now refusing to abide by paragraphs 3 of the December 11 agreement. Therefore, I have canceled our room reservations for all further bargaining sessions at the Comfort Suites. I will forward a bill for the County's portion of the costs of the January 7 meeting.

If you wish to discuss this further, please give me a call."

(N.T. 51-52, 146; Union Exhibit 10)

15. The County and AFSCME did not meet after January 7, 2004 regarding possible avoidance of the layoffs. (N.T. 52-53, 146)

16. The layoffs were originally scheduled to occur in December 2003. The number of layoffs was reduced due to turnover and attrition. Ultimately, about forty employees were laid off. The layoffs were implemented in mid-February 2004. (N.T. 53, 110-111)

17. The County paid a reduced contribution to the AFSCME Health and Welfare Fund for certain employee benefits in accordance with the parties' December 11, 2003 agreement. (N.T. 53-54)

DISCUSSION

AFSCME alleges that the County violated Section 1201(a)(1) and (5) of PERA by repudiating the December 11, 2003 settlement agreement. The County contends that the charge should be dismissed because it complied with the parties' agreement.

AFSCME does not claim noncompliance with the first two paragraphs of the settlement agreement. It is undisputed that there was a reduction in the County's contribution to the AFSCME Health and Welfare Fund for certain employee benefits, and that the County extended the employment of employees who were scheduled to be furloughed from the end of December 2003 until mid-February 2004. Also, the number of furloughs was reduced due to turnover and attrition.

The dispute here concerns the third paragraph of the settlement agreement, which provides that the County and AFSCME "agree to negotiate in good faith to find viable and cost effective options to continue the employment of the employees . . . scheduled to be furloughed" The parties met on one occasion concerning possible avoidance of the furloughs, but did not exchange proposals or meet again after AFSCME indicated that it would not discuss current wage and benefit levels.

AFSCME claims that once the County obtained the benefit of its bargain (i.e., the reduction in its contributions for certain employee benefits), "it reneged on its agreement to negotiate with AFSCME to find additional cost savings that might obviate the furloughs altogether" (brief at 17). This argument overlooks the fact that AFSCME and the bargaining unit members also obtained a benefit from the settlement agreement, in that the furloughs were delayed for forty-five days. Moreover, the County did meet with AFSCME concerning possible avoidance of the furloughs, albeit on only one occasion. While the County stated that it saw no reason to continue such meetings, it only did so after AFSCME failed to offer any proposals to effectuate cost savings for the County and made it clear that it would not discuss any modification of current wage and benefit levels.

AFSCME argues: (1) that alleged futility in bargaining is not a defense to a refusal to bargain charge; (2) that its refusal to consider changes in wages and benefits should have come as no surprise to the County because it took this same position in negotiations leading up to the settlement agreement; and (3) that even if its conduct rose to the level of bad faith bargaining, that would not justify the County's refusal to bargain.

If this was a case where an employer had refused to bargain over changes in employee terms and conditions of employment, there might be merit to AFSCME's arguments. An employer cannot avoid its duty under PERA to bargain working condition changes by alleging that such bargaining would be futile or that the union is acting in bad faith. However, this case does not involve a mandatory subject of bargaining under PERA. To the contrary, the decision to furlough employees is a managerial prerogative under the Act. Commonwealth, Department of Labor and Industry, 14 PPER ¶ 14264 (Final Order, 1983). Thus, the County did not have a statutory duty to bargain over the decision to furlough employees, and the issue is not whether it satisfied its bargaining duty under PERA. Instead, the issue here is whether the County failed to comply with its contractual agreement with AFSCME.

It is not the role of the Board to interpret contractual agreements between the parties. Instead, that is a function reserved for an arbitrator. When an unfair practice

charge alleges that a party repudiated a collectively bargained agreement, the Board's inquiry is limited to determining whether the party clearly repudiated an express provision of the agreement. Commonwealth, Pennsylvania State Police, 33 PPER ¶ 33022 (Final Order, 2001).

As the complainant in this matter, AFSCME had the burden of proof. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). Upon review of the record evidence, I find that AFSCME failed to prove that the County clearly repudiated an express provision in the settlement agreement. The agreement did not provide that the parties were obligated to meet on any set number of occasions, or that the County was obligated to continue to meet with AFSCME when AFSCME failed to make any proposals to effectuate cost savings for the County (beyond that which facilitated the 45-day delay in furloughs), and stated that it was unwilling to consider changes in current wages or benefits. Notably the parties' agreement did not exclude such matters from the negotiations, but rather indicated that the negotiations were broad in scope. Having found no clear repudiation of an express provision in the settlement agreement, I must dismiss the unfair practice charge. Pennsylvania State Police, supra.

CONCLUSIONS

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

1. The County is a public employer for purposes of Section 301(1) of PERA.
2. AFSCME is an employe organization for purposes of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The County has not committed unfair practices in violation of Section 1201(a)(1) and (5) 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 charge of unfair practices is dismissed and the complaint issued thereon is rescinded.

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 thirteenth day of April, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

April 13, 2007

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NORTHAMPTON COUNTY
Case No. PERA-C-04-32-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: Northampton County Commissioners