

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CONSTRUCTION AND GENERAL LABORERS :
LOCAL No. 373 :
 : Case No. PERA-C-05-5-E
v. :
 :
PITTSBURGH HOUSING AUTHORITY :

PROPOSED DECISION AND ORDER

On January 3, 2005, the Construction and General Laborers Local No. 373 (Complainant or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Pittsburgh Housing Authority (Respondent or Authority) alleging that the Authority committed unfair practices in violation of Sections 1201(a)(1) and (5) of the Public Employee Relations Act (Act).

The Secretary declined to issue a complaint by letter dated February 15, 2005. Exceptions to the Secretary's decision not to issue a complaint were received on March 7, 2005. On August 16, 2005, the Board issued an Order Directing Remand to Secretary for further Proceedings directing the Secretary to issue a complaint.

On October 6, 2005, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of seeking resolution of the matters in dispute through mutual agreement of the parties, and December 12, 2005, in Pittsburgh was assigned as the time and place of hearing, if necessary.

The hearing was necessary, but was continued to March 21, 2006 at which time the hearing was held before Thomas P. Leonard, Esquire, a hearing examiner of the Board. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The 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 Pittsburgh Housing Authority is a public employer within the meaning of Section 301(1) of the Act. (N.T. 3-4)
2. That the Construction and General Laborers Local No. 373 is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 3-4)
3. That Laborers 373 was never certified or grandfathered as the exclusive representative of a bargaining unit that includes laborers at the Authority.
4. That the Authority purchased and installed at various points through the public housing facilities owned and operated by the Authority, security/surveillance video cameras for the purpose of discouraging and/or investigating vandalism, drug activity and other improper behavior on Authority premises. (N.T. 34-36)
5. That these cameras focused on doors and entrances in high rises and Authority communities, and were installed with the goal of deterring crime or assisting in the apprehension of individuals involved in criminal activity, which included vandalism, shootings, killings, drug dealing, and prostitution at Authority properties. The cameras have never recorded audio. (N.T. 36,41)

6. That because the primary function of these cameras has always been to act as a deterrent to crime, the Authority posted signs notifying the public of the cameras' presence. (N.T. 35)

7. That at various times since 1998, the Authority has also utilized video surveillance cameras in connection with specific investigations into employee misconduct. These cameras also do not record audio. These cameras are routinely installed in reference to a specific suspicion or complaint involving an Authority employee, and are immediately removed upon resolution of that complaint. (N.T. 38-41)

8. That in 2004, the Authority received complaints of employee misconduct involving an employee in a bargaining unit represented by another union. This employee, when confronted with these allegations, denied wrongdoing and asserted that the report of misconduct had been fabricated. In the fall of 2004, as part of a continuing investigation into these allegations, the Authority temporarily installed a video surveillance camera. (N.T. 42)

9. That the area subject to surveillance was an appliance shop in the basement of a three story walk-up property in Bedford Dwellings, a community owned by the Authority. The basement was utilized by the Authority to store equipment and perform appliance repairs, and was also known to be utilized for authorized employee breaks, including lunch breaks. (N.T. 37)

10. That the area subject to surveillance was an area open to all Authority employees, including members of the Laborers, other employees, supervisors and management. As a result of the investigation and the information recorded by the surveillance camera, the employee who had been suspected of misconduct was discharged. The discharge of this employee was sustained in the grievance process. Once the employee investigation was concluded, the camera was removed immediately. (N.T. 43-44)

11. That upon reviewing the surveillance evidence, it was also discovered that two other employees, including an employee in the unit represented by the Laborers, Robin Mathews, had been present in the break room without authorization in violation of the Authority policy. These employees, including Ms. Mathews, receiving warnings for this unauthorized activity. A grievance was filed but never processed on the warning. (N.T. 43)

12. That the Authority did not engage in collective bargaining negotiations with Laborers 373 concerning the use of this surveillance camera prior to the installation of the camera. (N.T. 13)

DISCUSSION

The Union's charge of unfair practices alleges that the Authority established a video surveillance program without bargaining with the union in violation of Sections 1201(a)(1) and 1201(a)(5) of the Act.

The Authority raises the defense that the union lacks standing to bring the charge. In United Steelworkers of America v. Ford City Borough, 30 PPER 30031 (Final Order, 1999), the Board held that a union lacks standing to file a refusal to bargain charge against a public employer where the union was not certified as the exclusive representative of the bargaining unit or was not otherwise grandfathered under the Act.

As for the certification grounds for standing, a search of the Board records by this Examiner revealed no evidence that Laborers 373 is a certified representative of the employes in question. Therefore, Laborers 373 cannot rely on the certification ground for standing to bring a refusal to bargain charge.

As for the grandfathered status ground for establishing standing, there is no evidence that Laborers 373 was a grandfathered representative. In Pittsburgh Housing Authority, 5 PPER 15 (1974), the Board addressed the issue of the appropriate unit of the blue collar employes of this employer. In addressing the issue of whether the recognized units at the Authority constituted overfragmentation, the Board made no reference to

the Laborers as one of the recognized unions that existed prior to the passage of the Act in 1970. The Board did note that the Pittsburgh Building and Construction Trades Council (PBCTC) had been a recognized union. The Laborers are part of the PBCTC, but the PBCTC has not filed this charge. Therefore, since there is no evidence that the Laborers was recognized as the exclusive representative of the employees prior to the 1970 passage of the Act the Laborers cannot assert standing via the grandfathered status.

The Authority also argues that even if the union had standing to bring the charge, the facts of this case do not present a valid cause of action. The Authority argues that the installation of surveillance cameras is not a mandatory subject of bargaining. However, since the Authority's standing argument has resolved this dispute, it is unnecessary to address the issue of whether the installation of cameras in this instance was a mandatory subject of bargaining.

CONCLUSIONS

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

1. That the Authority is a public employer within the meaning of Section 301(1) of the Act.
2. That the Union 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 Construction and General Laborers Local No. 373 lacks standing to bring the present charge of unfair practices.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, 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 at Harrisburg, Pennsylvania this twenty-first day of March, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner