

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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

**PROPOSED DECISION AND ORDER**

On August 7, 2006, the York City Employees' Union (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of York (City) violated Section 1201(a)(1), (2), (3) and (5) of the Public Employee Relations Act (PERA).<sup>1</sup> On September 14, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on November 17, 2006. On that date, 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 City also filed a motion to dismiss the unfair practice charge. Both parties filed post-hearing briefs on or before January 24, 2006.

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 City is a public employer for purposes of Section 301(1) of PERA.
2. The Union is an employe organization for purposes of Section 301(3) of PERA.
3. Raymond Ferguson is employed as a laborer for the City's parks department and is a member of the bargaining unit represented by the Union. (N.T. 5-6)
4. On July 12, 2006, the City terminated the employment of its youth program coordinator. The coordinator was a managerial level employe. (N.T.6, 29-30)
5. The termination of the youth program coordinator created an immediate need for a summer playground director because the termination occurred about midway through the City's six-week summer playground program. (N.T. 29-30)
6. Ferguson had previously worked as an assistant to the youth program coordinator and had overseen the summer camp program. (N.T. 6-7)
7. On the morning of July 13, 2006, Ferguson's supervisor asked if he would be interested in running the summer playground program for the next three weeks. Ferguson told his supervisor that he would be interested in the temporary assignment. (N.T. 6-9)
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, and that the City was under no obligation to post or fill Ferguson's bargaining unit position during the term of his temporary appointment. 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)

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<sup>1</sup> The charge under Section 1201(a)(2) and (3) must be dismissed because the Union failed to prove that the City dominated or provided assistance to a union, or discriminated against an employe or employes.

9. After Ferguson signed the side letter agreement, Nace attempted to deliver the agreement to Union President Scott Millar, but determined that he was not working that day. Nace then contacted Union Vice-President Mack Wynegar, and discussed the proposed temporary assignment for Ferguson. The City had not previously discussed the matter with Wynegar. Nace then forwarded the side letter agreement to Wynegar. (N.T. 17, 19-20, 22, 24, 32-33; Union Exhibit 1)

10. After Wynegar received the side letter agreement from Nace, he contacted Millar by telephone. Millar had not previously been aware of the issue. (N.T. 17, 24)

11. On July 14, 2006, the City became aware that the Union would not approve the side letter agreement. The City then filled the temporary playground position with a non-bargaining unit employe. (N.T. 33, 36)

#### DISCUSSION

The Union alleged in its unfair practice charge that the City violated Section 1201(a)(1) and (5) of PERA by dealing directly with a bargaining unit member concerning a temporary assignment outside the unit. The City argues that the charge should be dismissed because it has no duty to bargain with the Union over the terms and conditions of a non-bargaining unit position that is temporarily being filled by a member of the bargaining unit, citing Upper Southampton Township, 31 PPER ¶ 31105 (Final Order, 2000).

The cited decision indicates that the City did not have a duty to bargain with the Union over the terms and conditions of the non-unit position. However, the side letter agreement also addressed the bargaining unit member's right to return to his position in the unit, as well as the issue of whether his unit position would be posted or filled during the term of his temporary appointment to the non-unit position. These issues concerning the right to return to a bargaining unit position and posting and filling of such positions must be negotiated with the Union as the exclusive representative of the bargaining unit, and not with individual employes.

In Philadelphia Office of Housing and Community Development, 31 PPER ¶ 31055 (Final Order, 2000), the Board held that "an employer engages in direct dealing and bypasses the exclusive bargaining representative when a bargainable matter is not first presented to the union representative in a bargaining atmosphere where the union negotiator has a meaningful opportunity to consider the proposed matter in the context of bargaining without external influences or reactions from employes, who may not be privy to the full panoply of issues relevant to the proposal or the negotiations in general." 31 PPER at 135. Here the City presented a proposed agreement concerning bargainable matters to an individual employe before the proposed agreement was presented to the Union. Under the Board's decision in Philadelphia OHCD, such conduct is a violation of the City's duty to bargain. Accordingly, the City committed an unfair practice under Section 1201(a)(1) and (5) of PERA.

#### CONCLUSIONS

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

1. The City is a public employer for purposes of Section 301(1) of PERA.
2. The Union is an employe organization for purposes of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The City has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.
5. The City has not committed unfair practices in violation of Section 1201(a)(2) or (3) 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 City shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of PERA.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Post a copy of this decision and order within five (5) days from the date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(b) 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 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 twenty-eighth day of February, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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PETER LASSI, Hearing Examiner



February 28, 2007

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CITY OF YORK  
Case No. PERA-C-06-375-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: City of York  
Scott Millar