

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PORT AUTHORITY TRANSIT POLICE ASSOCIATION :
:
v. : Case No. PERA-C-07-323-W
:
PORT AUTHORITY OF ALLEGHENY COUNTY :

FINAL ORDER

The Port Authority Transit Police Association (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on July 29, 2008, challenging a July 10, 2008 Proposed Decision and Order (PDO) issued by a Board Hearing Examiner. In the PDO, the Hearing Examiner concluded that the Port Authority of Allegheny County (Port Authority) did not violate Section 1201(a)(1) and (5) of the Public Employee Relations Act, and dismissed the Association's Charge of Unfair Practices. The Port Authority filed a timely response to the exceptions on August 19, 2008. The Findings of Fact relevant to the disposition of the exceptions, are summarized as follows.

The Association is the exclusive representative for two separate bargaining units of the Port Authority's transit police: one unit includes the officers, and the other, the lieutenants and sergeants¹ (referred to herein collectively as the "transit police"). The pension plan covering both units of transit police is entitled the "Port Authority of Allegheny County Retirement and Disability Allowance Plan for Employees Not Represented by a Union" (herein the "Retirement Plan"). The Retirement plan covers non-represented employees of the Port Authority, and by agreement has been made applicable to the transit police bargaining units. The Port Authority and the Association entered into separate four-year collective bargaining agreements for each bargaining unit that were both effective August 1, 2004. Those collective bargaining agreements provided, in pertinent part, that:

The Pension Plan currently in effect for [employees] covered by this Agreement shall be continued for the term of this Agreement. Any changes instituted in such Plan by the Authority during the life of this Agreement shall be applicable to the [employees] covered by this Agreement, in like manner and time as to other employees covered by this Pension Plan.

On March 30, 2007, the Port Authority adopted a resolution amending the Retirement Plan to 1) eliminate the option to purchase prior public service, except for prior qualified military service; 2) change the vesting schedule from five (5) to ten (10) years of continuous service; 3) eliminate the crediting of unused sick leave towards continuous service for retirement; and 4) eliminate post-retirement health benefits and replace such benefits with a \$500 per month supplement. On July 1, 2007, the Port Authority applied those amendments to all covered employees including both bargaining units of transit police.

The Hearing Examiner determined that the Port Authority presented a sound arguable basis that amendment of the transit police pension benefits was permissible under the collective bargaining agreement. Finding that the Port Authority sustained a contractual privilege defense to the charge of unfair practices, the Hearing Examiner dismissed the Association's allegations that the Port Authority violated Section 1201(a)(1) and (5) of PERA. On exceptions to the PDO, the Association argues that the Hearing Examiner erred because pensions were addressed in the collective bargaining agreement and the Port Authority unilaterally altered the pension benefits for the transit police bargaining units. Therefore, according to the Association, the Port Authority must have violated its statutory bargaining obligation under PERA.

¹ Section 13.2 of the Second Class County Port Authority Act grants collective bargaining rights to first level supervisors. 55 P.S. §563.2(d); Port Authority of Allegheny County v. Local 85, Amalgamated Transit Union, 533 Pa. 135, 620 A.2d 1099 (1993).

It is well established that a public employer may not unilaterally alter terms agreed to in a collective bargaining agreement. Thus, a clear repudiation of the terms of the collective bargaining agreement is an unfair practice under Section 1201(a)(5) of PERA. Wilkes-Barre Township v. PLRB, 878 A.2d 977 (Pa. Cmwlth. 2005). However, a public employer may defend against an alleged bargaining violation arising from changes to a mandatory subject of bargaining by relying on agreed-upon contract language that arguably supports its actions. Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000); Jersey Shore Area Education Association v. Jersey Shore Area School District, 18 PPER ¶18117 (Final Order, 1987). In assessing whether there is a "sound arguable basis" in the contract, the Board will not endorse one interpretation over another and the employer's interpretation of the contract need not even be the correct or most accurate interpretation for the contractual privilege defense to apply.² North Cornwall Township Police Association v. North Cornwall Township, 33 PPER ¶33054 (Final Order, 2002). Where there is language in the contract that supports the employer's claimed right to act unilaterally regarding a specific subject matter, the employer has sustained its burden of proving a "contractual privilege," and the Board will dismiss a charge alleging that the employer violated its bargaining obligation under Section 1201(a)(5) of PERA. Pennsylvania State Troopers Association, *supra*.

The issue is whether the Port Authority had a sound arguable basis for believing that it had been contractually vested with the ability to unilaterally amend the pension plan covering the transit police.³ In this regard, we agree with the Hearing Examiner's assessment that:

The dispositive question is whether the Authority repudiated the pension provisions of the collective bargaining agreements when it applied the amendments to the pension plan to the transit police officers and to the transit police lieutenants and sergeants.

The Association contends that the Board should answer that question in the affirmative because the first sentence of each pension provision states that the pension plan "currently in effect for [employees] covered by this Agreement shall be continued for the term of this Agreement." See findings of fact 3-4. When read in a vacuum, that sentence seemingly prohibits the Authority from changing the pension plan for the transit police officers and for the transit police lieutenants and sergeants during the terms of the collective bargaining agreements, which provides support for the Association's contention. There is a second sentence in each pension provision, however, that in apparent contradiction of the first sentence seemingly permits the Authority to change the pension plan for the transit police officers and for the transit police lieutenants and sergeants during the terms of their collective bargaining agreements under certain circumstances. The second sentence in each pension provision states as follows:

"Any changes instituted in such plan by the Authority during the life of this Agreement shall be applicable to the [employees] covered by this Agreement, in like manner and time as to other employees covered by this pension plan."

Id.

On that record, there is no basis for finding that the Authority repudiated the pension provisions in the collective bargaining agreements when it applied the amendments to the pension plan to the transit police

² Interpretation of the collective bargaining agreement is within the province of the grievance arbitrator, not the Board. Parents Union for Public Schools in Philadelphia v. Board of Education of the School District of Philadelphia, 480 Pa. 194, 389 A.2d 577 (1978).

³ Neither Wilkes-Barre Township, *supra* nor Upper Chichester Township v. PLRB, 621 A.2d 1134 (Pa. Cmwlth. 1993), relied upon by the Association, presented contract language which arguably authorized the employer's unilateral changes in pension benefits as is being presented in this case. Thus, neither of those cases is controlling in this case.

officers and to the transit police lieutenants and sergeants. To the contrary, in light of the second sentence in each pension provision, it is apparent that the Authority has a sound basis for construing those provisions to mean that it could change the pension plan for the transit police officers and for the transit police lieutenants and sergeants as it did for other employes covered by the pension plan. Under the circumstances, only an arbitrator has jurisdiction to decide if the Authority violated the pension provisions of the collective bargaining agreements when it applied the amendments to the pension plan to the transit police officers and to the transit police lieutenants and sergeants. See Pennsylvania State Troopers Association, supra (the Board is not to function as an arbitrator to determine whose interpretation of a collective bargaining agreement is correct).

(PDO at 4 - 5).

After a thorough review of the exceptions and all matters of record, we concur with the Hearing Examiner's conclusion that the Port Authority has a sound arguable basis for asserting that its amendment of the pension plan covering transit police was contractually privileged under the parties' collective bargaining agreements. As such, the Hearing Examiner did not err in concluding that the Port Authority did not violate Section 1201(a)(1) and (5) of PERA. Accordingly, the Association's exceptions to the Hearing Examiner's determination shall be dismissed, and the PDO made final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Port Authority Transit Police Association are hereby dismissed, and the July 10, 2008 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of October, 2008. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.