

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 33 AND :
AFSCME LOCAL 159 :
 : Case No. PERA-C-07-489-E
v. :
 :
CITY OF PHILADELPHIA :

FINAL ORDER

On July 14, 2008, the City of Philadelphia (City) filed timely exceptions¹ and a supporting brief with the Pennsylvania Labor Relations Board (Board) challenging a June 23, 2008 Proposed Decision and Order (PDO). In the PDO, the Hearing Examiner concluded that the City violated Section 1201 (a)(1) and (5) of the Public Employee Relations Act (PERA) by refusing to proceed to interest arbitration for the guards at the City prison and youth detention center. The American Federation of State, County and Municipal Employees, District Council 33 (DC 33) and the American Federation of State, County and Municipal Employees, Local 159 (Local 159) filed a timely response and brief in opposition to the exceptions on August 4, 2008. The facts relevant to disposition of the exceptions are summarized as follows.

Section 2003 of PERA provides that the "[p]resent provisions of an ordinance of the City of Philadelphia approved April 4, 1961, entitled 'An Ordinance to authorize the Mayor to enter into an agreement with District Council 33, American Federation of State, County and Municipal Employes, A.F.L.-C.I.O., Philadelphia and vicinity regarding its representation of certain City Employes,' which are inconsistent with the provisions of this act shall remain in full force and effect so long as the present provisions of that ordinance are valid and operative." 43 P.S. §1101.2003. The 1961 Ordinance remains valid and operative to date.

Under the 1961 Ordinance, DC 33 is the exclusive bargaining representative of those City employes designated by the 1961 Ordinance. Local 159 is one of the fifteen constituent affiliates of DC 33, and is comprised of two chapters, A and B. Local 159B represents correctional officers, correctional supervisors, prison maintenance personnel, and counselors at the adult prison and security guards at the youth study center. There are over 1,900 Chapter B unit members, including 1811 guards and 133 youth detention counselors. The City's prison system has issued a Policies and Procedures document which states that "[c]orrectional personnel, as security employees, are considered essential for the protection of public safety and by Pennsylvania law are not permitted to strike." Since 1980, the City has gone to interest arbitration with DC 33 over the terms and conditions of employment for the members of Local 159B on at least three prior occasions: 1980, 1982 and 1988.²

In anticipation of the expiration of a 2004-2008 collective bargaining agreement between DC 33 and the City, under which the Local 159 members were included, DC 33 notified the City's labor relations director that it intended to request collective

¹ The City's exceptions are timely because July 13, 2008, the twentieth day following issuance of the Hearing Examiner's proposed decision, was a Sunday and is therefore excluded from the computation of the twenty-day period for filing exceptions. 34 Pa. Code §95.100(b).

² In Exception 12, the City takes issue with the Hearing Examiner's finding that it has engaged in interest arbitration for the Local 159B prison guards on three prior occasions. However, Union Exhibits 10, 11 and 12 are the interest arbitration awards for 1980, 1982 and 1988 respectively. Indeed, the 1980 and 1982 awards expressly note that they are issued pursuant to Section 805 of PERA, and the 1988 award sets forth the job classifications that comprise a unit of prison guards within Local 159B who are covered by the award. Accordingly, the Hearing Examiner's Finding of Fact is supported by substantial evidence and will not be disturbed. Pennsylvania Labor Relations Board v. Kaufmann Dept. Stores, Inc., 345 Pa. 398, 29 A.2d 90 (1942). In addition, the Board takes administrative notice of its proceedings in Case No. PERA-C-87-22-E, wherein the Board concluded that the City committed an unfair practice by failing to comply with a 1986 interest arbitration award for the City's prison guards and youth detention counselors issued pursuant to Sections 805 and 806 of PERA.

bargaining, and if necessary, interest arbitration for the Local 159B employees. On November 5, 2007, the City advised DC 33 that it was refusing to participate in any separate negotiations to resolve the contractual issues of its correctional employees in Local 159B and was rejecting DC 33's demand for interest arbitration on their behalf.

On November 16, 2007, DC 33 and Local 159 filed a Charge of Unfair Practices with the Board alleging that the City violated Section 1201(a)(1) and (5) of PERA. Hearings were held on April 3 and 30, 2008, during which the parties presented testimony and introduced documentary evidence. The Hearing Examiner issued the PDO on June 23, 2008, concluding that the City committed unfair practices by refusing to proceed to interest arbitration under Section 805 for the guards at the City's prison and youth detention center.

The crux of the City's exceptions to the PDO is its argument that in order for there to be a "unit of guards" for purposes of Section 805 interest arbitration, the Board must certify a separate homogenous bargaining unit under Section 604 of PERA. The City contends that the Board does not have jurisdiction to separate out such a unit and therefore, due to the 1961 Ordinance, City prison guards are prohibited from striking, but are not afforded interest arbitration under PERA.

The City argues that the circumstances of the City's prison guards are indistinguishable from those of the City's deputy sheriffs. In 1972 and 1973, the Fraternal Order of Police (FOP) sought to organize the City's deputy sheriffs, and filed representation petitions with the Board. In both instances, the Board dismissed the petitions, concluding that the 1961 Ordinance precluded the certification of any representative other than DC 33 for any group of City employees covered by the 1961 Ordinance. The City points to language in those decisions in which the Board stated that the 1961 Ordinance and Section 2003 of PERA "create a bar to the Board's jurisdiction in cases involving the question of whether a group of employees were properly included in the overall unit established by the Ordinance." City of Philadelphia (Deputy Sheriffs I), 2 PPER 138, 139 (Final Order, 1972) and City of Philadelphia (Deputy Sheriffs II), 3 PPER 355, 357-58 (Nisi Order of Dismissal, 1973).³ However, Deputy Sheriffs I & II, dealt with whether Section 2003 of PERA and the 1961 Ordinance permitted the deputy sheriffs to change their bargaining representative from DC 33 to the FOP. Those cases stand for the proposition that Section 2003 of PERA and the 1961 Ordinance preserve the representation rights of DC 33 against challenge from any other employe organization. Further, those decisions did not hold that the deputy sheriffs would not be entitled to interest arbitration under Section 805 (as employees who are involved with and necessary to the functioning of the courts) through DC 33 as their representative, which is the issue that the Board is faced with for the prison guards in this case.

The City also takes issue with the Hearing Examiner's conclusion that the legislative intent of PERA was to grant City prison guards interest arbitration in exchange for the prohibition to strike. The City reasons that because the General Assembly expressly limited Section 805 interest arbitration only for a "unit of guards", and City prison guards were included in the overall City unit in 1961, they must now be denied both the right to strike and the right to proceed to interest arbitration. We agree with and adopt herein the Hearing Examiner's discussion and conclusion that the intent of PERA is to afford any represented group of guards at a prison, including those in the City, interest arbitration to resolve disputes regarding their wages, hours, and working conditions. The grant of interest arbitration is in exchange for their not being granted the right to strike provided to other PERA-covered employees, including the other City employees covered by the 1961 Ordinance. Office of Administration v. PLRB, 528 Pa. 472, 598 A.2d 1274 (1991); Snyder County Prison Board v. PLRB, 912 A.2d 356 (Pa. Cmwlth. 2006). In stressing this legislative intent, the Commonwealth Court held in County of Lehigh v. AFSCME, District Council 88, 505 A.2d 1104, 1106-07 (Pa. Cmwlth. 1986), appeal denied, 522 Pa. 590, 561 A.2d 743 (1989):

Section 805 of the PERA mandates binding arbitration where the public employer and representatives of prison guards reach an impasse. The reason for this mandate is because prison guards are prohibited from striking. The mandatory binding

³ Both cases were consolidated on appeal and the Board was affirmed by the Commonwealth Court. Employes of the City of Philadelphia, Deputy Sheriffs I & II v. PLRB, 350 A.2d 923 (Pa. Cmwlth. 1976).

arbitration of disputes over employment issues is considered the quid pro quo for the denial of the right to strike to prison guards. Franklin County Prison Board v. Pennsylvania Labor Relations Board, 491 Pa. 50, 417 A.2d 1138 (1980)....

Additionally, in ascertaining legislative intent, the introductory clause of Section 805 cannot be ignored. What is made clear by expressly providing that "notwithstanding any other provision of this act..." is that Section 805 is designed to preempt any application of PERA, including that asserted by the City here, which would undermine the General Assembly's intent to afford guards at prisons interest arbitration in lieu of a right to strike.⁴ Thus, we agree with the Hearing Examiner that the clear purpose and policy of PERA is to provide guards at prisons interest arbitration in lieu of a right to strike wherever they may be employed, which includes the City.

We disagree with the City's contention in its exceptions that the Board has already held that the City's prison guards are not entitled to interest arbitration under Section 805 of PERA. The City, relying on AFSCME, Local 159 v. City of Philadelphia, 25 PPER ¶25081 (Proposed Decision and Order 1994), affirmed on different grounds, 26 PPER ¶26046 (Final Order, 1995), asserts that the Board adopted a hearing examiner's conclusion that Local 159 did not have standing to demand interest arbitration. The City misconstrues both the Board's and the hearing examiner's holdings in that case. In that case, Local 159, independent of DC 33, attempted to invoke Section 805 interest arbitration after DC 33 had entered into a collective bargaining agreement with the City for all of the employees covered by the 1961 Ordinance, including the prison guards. The hearing examiner concluded that because DC 33 is the exclusive bargaining representative, Local 159 has no right independent of DC 33 to force the City to interest arbitration. The Board affirmed the hearing examiner's conclusion, but on different grounds (i.e., that Local 159 failed to comply with the mandatory bargaining timetable under PERA). In doing so, the Board expressly recognized that the City's "correctional officers are granted the right to interest arbitration under Section 805 of PERA as their final impasse resolution procedure." City of Philadelphia, 26 PPER at 108.

The City asserts that DC 33's authorizing Local 159 as its representative for the prison guards raises a question of representation. We disagree that the exclusive bargaining representative's designation of a representative for a group of employees to negotiate their unique wages, hours and working conditions, is the equivalent of a new exclusive bargaining representative. The Board has consistently held that "[t]here is no doubt that either party to the negotiation process must bargain in good faith with the representative sent to the bargaining table by the other side. The parties are free to bargain through employees, attorneys, hired negotiators, etc." Norristown Borough, 8 PPER 70, 71 (Nisi Decision and Order, 1977). "It is the duty of both parties in the collective bargaining process to negotiate with a designated representative of its counterpart." Pittston City Police Association v. City of Pittston, 26 PPER 26016 (Final Order 1994) (quoting Port Authority of Allegheny County, 21 PPER ¶21023 at 69 (Final Order, 1989).

Clearly DC 33 is the bargaining representative for, and has the final say with regard to, all collective bargaining matters for all of the employees covered by the 1961 Ordinance. Indeed, the Board has recognized that DC 33 may, even over the objection of a local, enter into a City-wide collective bargaining agreement without calling a strike or demanding interest arbitration for a particular group of employees. See AFSCME District Council 33 v. City of Philadelphia, 36 PPER 158 (Final Order, 2005). While the 1961 Ordinance is clear that DC 33 is the exclusive bargaining representative for all City employees covered by it, the Ordinance does not speak as to whom DC 33 may select as its representative at the bargaining table for any specific issues or group of employees.⁵ Consistent with the 1961 Ordinance, and good faith collective bargaining, PERA reserves the right of DC 33 as the exclusive bargaining representative to select Local 159 as its

⁴ Indeed, "notwithstanding any other provision of this act" means that Section 805 interest arbitration is required even though a separate homogenous bargaining unit of prison guards was not certified under Section 604(3) of PERA. More importantly, *notwithstanding* Section 2003, and thus the overall bargaining unit created by the City's 1961 Ordinance, under Section 805 of PERA guards at prisons are entitled to interest arbitration.

⁵ Further, the 1968 bargaining agreement between the City and DC 33 (Exhibit C-2) recognizes the authority of the various locals to act as the representative for DC 33 for specific employees.

agent for purposes of bargaining and interest arbitration for wages, hours and working conditions unique to City prison guards. City of Pittston, supra.

Finally, the City argues that even if the City prison guards within Local 159B are entitled to interest arbitration, the Hearing Examiner erred in failing to delineate the specific employes entitled to interest arbitration. As noted above, Section 805 does not require the Board to engage in a separate certification of a unit of City prison guards. Instead here, as recognized by the Hearing Examiner, the City has already identified in a Policies and Procedures document those employes it believes are essential to the security of the City's prisons and youth detention center and whom it considers to be prison guards under PERA without the right to strike. (Finding of Fact 4).

Indeed, the contours of a unit of the City's prison guards have already been identified for purposes of Section 805 interest arbitration through prior awards. Item 3 of the 1988 interest arbitration award (Exhibit U-12) expressly identifies those job classifications to which the award applies as Correctional Officer, Correctional Sergeant, Correctional Lieutenant, Youth Detention Counselor I, Youth Detention Counselor II, Prison Maintenance Mechanic, Prison Dry Cleaning Instructor, Prison Laundry Assistant, Industries Shop Assistant Supervisor, Industries Shop Supervisor, Prison Trades Worker, Prison Trades Crew Chief, Prison Cook and Prison Baker. Should there be an issue as to whether a particular position is a prison guard within the meaning of Section 805, that dispute would properly be a subject for the interest arbitration panel, subject, of course, to appellate review by the courts. Office of Administration, supra.

After a thorough review of the exceptions and all matters of record, we agree with the Hearing Examiner's conclusion that the City's prison guards within Local 159B are entitled to interest arbitration under Section 805 of PERA upon demand by DC 33. By refusing to proceed to interest arbitration under PERA's bargaining process for its prison guards, the City violated Section 1201(a)(1) and (5) of PERA. Accordingly, the City's exceptions shall be dismissed and the PDO made final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the City of Philadelphia are hereby dismissed, and the June 23, 2008 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED 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 sixteenth day of September, 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.

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AFFIDAVIT OF COMPLIANCE

The City hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of PERA; that it has named its arbitrator to the interest arbitration panel and placed all issues in dispute before the interest arbitration panel; that it has posted the Final Order and Proposed Decision and Order as directed and that it has served a copy of this affidavit on AFSCME at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED to before me
The day and year first aforesaid

Signature of Notary Public