

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 88 :
 :
 v. : Case No. PERA-C-08-217-E
 :
 :
 UPPER GWYNEDD-TOWAMENCIN :
 MUNICIPAL AUTHORITY :

ORDER DEFERRING UNFAIR PRACTICE CHARGE UNTIL FURTHER ORDER OF THE BOARD

On June 9, 2008, AFSCME District Council 88 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Upper Gwynedd-Towamencin Municipal Authority (Authority) violated Section 1201(a)(5) and (9) of the Public Employe Relations Act (PERA) and the parties' collective bargaining agreement (CBA) by unilaterally removing bargaining unit work. By letter dated June 24, 2008, the Secretary of the Board informed the Union that the Board would not process the charge in its current form. In the same letter, the Secretary of the Board gave the Union twenty (20) days to amend its charge and indicate whether the Union was also alleging a violation of clause (1) of Section 1201(a). On July 2, 2008, the Union timely filed an amended charge of unfair practices (Charge) at the same case number and included a causes of action under Section 1201(a)(1), (5) and (9).

The Union has checked the box on its Charge indicating that "a grievance relating to this issue has been filed." The Union included with the Charge the related class action grievance (Grievance), dated May 30, 2008, as well as the parties' CBA. The Grievance alleges that the Authority violated Article XX of the CBA by directing employes of an "outside entity" to perform the grass-cutting work at the Authority. In its specification of charges the Union has specifically alleged that, on May 27, 2008, the Union received notice "that the Authority has [t]ownship workers inside the facility cutting grass," which "is usually done by bargaining unit employees." (Specification of Charges ¶ 3). Also in its specification of charges, the Union has alleged that the removal of grass-cutting work at the Authority "is a direct violation of the Collective Bargaining Agreement." (Specification of Charges ¶ 3).

As set forth in PLRB v. Pine Grove Area School District, 10 PPER ¶ 10167 (Order Deferring Unfair Practice Charge Until Further Order of the Board, 1979), the processing of a charge is to be deferred pending completion of the grievance-arbitration process when (1) a grievance has been filed; (2) the parties' dispute is rooted in their collective bargaining agreement; and (3) no discrimination or enmity toward the exercise of employe rights under PERA has been alleged. The Commonwealth Court has endorsed the Board's deferral policy. York Paid Firefighters Ass'n, Local 627 v. PLRB, 630 A.2d 527 (Pa. Cmwlth. 1993).

The Union has filed a Grievance. The matters about which the Union complains in the Grievance are identical to those contained in the Charge. Article XX of the CBA establishes the bargaining rights and obligations of the parties regarding subcontracting. It also expressly preserves bargaining unit employes' rights under PERA. I conclude that both the Charge and the Grievance are rooted in Article XX of the parties' CBA. Finally, the Union has made no claim of discrimination against the Authority. Accordingly, the Board's Pine Grove standard has been satisfied, and deferral to the grievance arbitration procedure is proper.

As also set forth in Pine Grove, the Board will retain limited jurisdiction over any charge it defers "to ensure upon timely filed notice that (a) the grievance arbitration proceedings were fair and regular; (b) the dispute was amicably settled or submitted promptly to arbitration; and (c) the result reached was not repugnant to the Act." Pine Grove, 10 PPER at 271. Thus, the Charge, which alleges the unilateral

removal of bargaining unit work in violation of Article XX of the CBA is deferred to arbitration, and the parties are directed to notify the Board in a timely fashion of the outcome of the processing of the Grievance so that the Board may take appropriate action at that time.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the processing of the Charge is deferred pending completion of the grievance arbitration process.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that no exceptions may be filed to this procedural order, pursuant to 34 Pa. Code § 95.96(a). If a proposed decision and order is issued pursuant to 34 Pa. Code § 95.91(k)(1) in the future, exceptions to this order may be filed pursuant to 34 Pa. Code § 95.98(a) at that time.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-second day of July, 2008.

Pennsylvania Labor Relations Board

Jack E. Marino, Hearing Examiner