

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 401 :
 :
 v. : Case No. PERA-C-08-150-E
 :
 CITY OF NANTICOKE :

PROPOSED DECISION AND ORDER

On April 28, 2008, the International Brotherhood of Teamsters, Local No. 401 (Union), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that in violation of sections 1201(a)(1), (5) and (6) of the Public Employe Relations Act (PERA) the City of Nanticoke (City) has refused to implement and reduce to writing an agreement involving a section 125 plan that the parties reached in their negotiations for their current collective bargaining agreement.¹ On May 22, 2008, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on June 30, 2008, if conciliation did not resolve the charge by then. On June 27, 2008, the hearing examiner, upon the request of the Union and without objection by the City, continued the hearing. On July 2, 2008, the Union requested that the hearing be rescheduled. On August 5, 2008, the hearing examiner, after clearing a date with the parties, rescheduled the hearing to October 6, 2008.

On October 6, 2008, the hearing was held. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On November 26, 2008, the Union filed a brief by deposit in the U.S. Mail. On December 5, 2008, the City filed a brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On January 24, 2003, the Board certified the Union as the exclusive representative of a bargaining unit that includes street and parks department employes of the City. (Case No. PERA-R-02-492-E)

2. During the last half of 2007, the parties met to negotiate a collective bargaining agreement. The City's administrator (Kenneth Johnson) negotiated for the City. No member of the City's council participated in the negotiations. The Union understood that any agreement it reached with Mr. Johnson was subject to ratification by council. (N.T. 9-11, 17, 32, 38, 41)

3. On January 31, 2008, Mr. Johnson submitted to the Union a proposal for a collective bargaining agreement. The proposal included a section 125 plan under which employes would pay for their medical benefits with pre-tax dollars. (N.T. 10-11, 18, 23)

4. On February 11, 2008, the Union rejected the proposal. (N.T. 12, 23)

5. Mr. Johnson submitted to the Union a revised proposal for a collective bargaining agreement. The revised proposal did not include a section 125 plan. (N.T. 19-20, 25-26; Employer Exhibit 1)

6. On February 25, 2008, the Union ratified Mr. Johnson's proposal of January 31, 2008. (N.T. 12-13, 23)

¹ The Union also filed the charge under section 1201(a)(3). The Union withdrew that portion of the charge in its brief, however (Brief at 2). Accordingly, the charge as filed under section 1201(a)(3) is no longer before the Board and will not be addressed.

7. On March 5, 2008, council ratified Mr. Johnson's revised proposal for a collective bargaining agreement. (N.T. 28, 32-34; Employer Exhibits 1-2)

8. On March 11, 2008, a business agent for the Union (James V. Murphy) and Mr. Johnson signed a collective bargaining agreement without a section 125 plan. Mr. Murphy did not ask Mr. Johnson to include a section 125 plan in the collective bargaining agreement. (N.T. 8, 14-15, 18-19, 40; Employer Exhibit 1)

9. The City is a third class city. (Pennsylvania Manual, Volume 116, Section 6-47)

DISCUSSION

The Union has charged that the City violated sections 1201(a)(1), (5) and (6) by refusing to implement and reduce to writing an agreement involving a section 125 plan that the parties reached in negotiations for their current collective bargaining agreement.

The City contends that the charge should be dismissed because the parties never reached an agreement involving a section 125 plan in their negotiations for their current collective bargaining agreement, because its council never ratified a collective bargaining agreement with a section 125 plan and because the parties' signed their current collective bargaining agreement without a section 125 plan.²

An employer commits unfair practices under sections 1201(a)(1), (5) and (6) if it refuses to implement and reduce to writing an agreement reached in collective bargaining. St. Clair Area School District v. St. Clair Area Education Association, 552 A.2d 1133 (Pa. Cmwlth. 1988), aff'd per curiam, 525 Pa. 236, 579 A.2d 879 (1990); Athens Area School District v. PLRB, 760 A.2d 917 (Pa. Cmwlth 2000). If no agreement was ever reached in collective bargaining, however, then no such unfair practices may be found. Tussey Mountain School District, 8 PPER 332 (Nisi Decision and Order 1977); City of McKeesport, 31 PPER ¶ 31130 (Final Order 2000)(construing analogous provisions of the Pennsylvania Labor Relations Act as read in pari materia with Act 111 of 1968). Nor may any such unfair practices be found where the employer's governing body vested with the authority to enter into collective bargaining agreements has not ratified the agreement. Upper Moreland-Hatboro Joint Sewer Authority, 30 PPER ¶ 30220 (Final Order 1999).

The City is a third class city (finding of fact 9). As former hearing examiner Peter Lassi astutely observed in City of Butler, 32 PPER ¶ 32074 (Proposed Decision and Order 2001),

"under the Third Class City Code, [a third class city's] legislative power is vested in city council. 53 P.S. § 36002. Accordingly, the Board has declined to enforce alleged collective bargaining agreements between a third class city and its employes without evidence that the agreement was approved by city council. See, e.g., City of Farrell, 6 PPER 102 (Nisi Decision and Order, 1975) and City of Johnstown, 22 PPER ¶ 22199 (Proposed Decision and Order, 1991) [cited with approval in Upper Moreland-Hatboro Joint Sewer Authority, 30 PPER ¶ 30220 (Final Order, 1999)]. See also Moore v. Reed, 559 A.2d 602 (Pa. Cmwlth. 1989), appeal denied, 527 Pa. 639-660, 593 A.2d 428 (1991)(negotiation of a contract is a legislative function; contract not binding without assent of city council)."

32 PPER at 193.

The record does not show that the parties ever reached an agreement on a section 125 plan in their negotiations for their current collective bargaining agreement. To the contrary, although the record shows that on February 25, 2008, the Union ratified a January 31, 2008, proposal from the City's administrator (Mr. Johnson) for a collective bargaining agreement that included a section 125 plan (findings of fact 3 and 6), the

² The City also contends that the charge should be dismissed because it did not violate the parties' current collective bargaining agreement when its council passed a motion on April 2, 2008, to participate if fiscally prudent in a section 125 plan that it adopted by resolution on February 20, 2008, and not to participate in such a plan for the time being. See Union Exhibits 2 and 4, Employer Exhibit 3. The Union, however, has not charged that the City committed unfair practices by violating the parties' current collective bargaining agreement. Accordingly, the City's additional contention will not be addressed.

record also shows that the Union rejected that proposal on February 11, 2008 (finding of fact 4) and that Mr. Johnson subsequently proposed a collective bargaining agreement that did not include a section 125 plan (finding of fact 5). Thus, there is no basis for finding that the parties ever reached an agreement on a section 125 plan in their negotiations for their current collective bargaining agreement. Accordingly, under the analysis set forth in Tussey Mountain School District, supra, the charge must be dismissed for that reason alone.

The record also does not show that the City's council ever ratified a collective bargaining agreement with a section 125 plan. To the contrary, the record shows that it ratified Mr. Johnson's proposal for a collective bargaining agreement that did not include a section 125 plan (finding of fact 8). Thus, there is no basis for finding that it ratified a collective bargaining agreement with a section 125 plan. Accordingly, under the analysis set forth in Upper Moreland-Hatboro Joint Sewer Authority, supra, and City of Butler, supra, the charge must be dismissed for that reason as well.

Beyond all of that, the record shows that the Union signed the parties' current collective bargaining agreement without a section 125 plan (finding of fact 8) and that the Union never asked the City to include a section 125 plan in the collective bargaining agreement. Id. In Tussey Mountain School District, supra, the Board dismissed a refusal to bargain/refusal to reduce an agreement to writing charge under similar circumstances, explaining that

"where doubt arises as to whether certain provisions are included in an 'agreement,' it is incumbent upon the party expressing the doubt to clarify the matter through simply discussion. If that discussion reveals that the parties are not in total agreement on the contract, they can continue with their negotiations until they have a contract which they can sign"

8 PPER at 333. Given that the Union signed the parties' current collective bargaining agreement without asking the City to include a section 125 plan in it, the same result obtains here.

The Union contends that support for the charge may be found in testimony by its business agent (Mr. Murphy) that after he and Mr. Johnson signed the parties' current collective bargaining agreement he was notified by Mr. Johnson that the City "was not going to comply with the 125 Plan." Brief at 4. The Union queries, "If the [City] had not agreed to the proposal concerning the 125 Plan, why would it unilaterally notify Mr. Murphy that it was not going to comply?" Id. at 4-5. As Mr. Murphy further testified, however, he asked Mr. Johnson to implement a section 125 plan after he and Mr. Johnson signed the parties' current collective bargaining agreement (N.T. 20). In light of his further testimony, it is apparent that Mr. Johnson did not unilaterally notify him that the City "was not going to comply with the 125 plan" as though the City had agreed to one but rather in response to an inquiry by him notified him that the City would not implement a section 125 plan as requested by him. Indeed, if anything, Mr. Murphy's further testimony suggests that the parties had not agreed to a section 125 plan in that there would have been no need for him to have asked Mr. Johnson to implement one if the parties had already agreed to one. Thus, Mr. Murphy's testimony provides no basis for finding that the City agreed to a section 125 plan. Moreover, the fact remains that the City's council never agreed to a section 125 plan, which is fatal to the charge under the analysis set forth in Upper Moreland-Hatboro Joint Sewer Authority, supra, and City of Butler, supra. Furthermore, the fact remains that the parties signed their current collective bargaining agreement without a section 125 plan, which is equally fatal to the charge under the analysis set forth in Tussey Mountain School District, supra.

The Union also contends that support for the charge may be found in testimony by Mr. Murphy that Mr. Johnson represented that he had the authority to bind the City when he signed the parties' current collective bargaining agreement (N.T. 38) and in testimony by Mr. Murphy and its local steward (Kenneth James) that Mr. Johnson never told them that the City's council had to approve the agreement (N.T. 40-41). The fact that Mr. Johnson represented that he had the authority to bind the City when he signed the parties' current collective bargaining agreement is unexceptional, however, because under the

analysis set forth in Upper Moreland-Hatboro Joint Sewer Authority, supra, and City of Butler, supra, his authority was limited as a matter of law to signing a collective bargaining agreement as ratified by the City's council, which he did. The fact that Mr. Johnson never told Mr. Murphy and Mr. James that the City's council had to approve the agreement is equally unexceptional because under the analysis set forth in Upper Moreland-Hatboro Joint Sewer Authority, supra, and City of Butler, supra, the City's council as a matter of law had to ratify any agreement he reached in collective bargaining. Moreover, the record shows that Mr. Murphy and Mr. James understood that any agreement they reached with Mr. Johnson was subject to ratification by the City's council (finding of fact 2). Thus, the testimony by Mr. Murphy and Mr. James provides no support for the charge.

CONCLUSIONS

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

1. The City is a public employer under section 301(1) of the PERA.
2. The Union is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The City has not committed unfair practices under sections 1201(a)(1), (5) or (6) of the PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the complaint is rescinded and the charge dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eighth day of January 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner