

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 83 :  
 :  
 v. : Case No. PERA-C-08-453-W  
 :  
 INDIANA AREA SCHOOL DISTRICT<sup>1</sup> :

**PROPOSED DECISION AND ORDER**

On November 25, 2008, AFSCME District Council 83 (AFSCME) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Indiana Area School District (District) had violated section 1201(5) of the Public Employee Relations Act (PERA) by misleading AFSCME during the negotiations for their current collective bargaining agreement.<sup>2</sup> On December 18, 2008, the Secretary of the Board informed AFSCME that the Board was unable to process the charge as filed. The Secretary gave AFSCME 20 days to amend the charge to specify which subsection of section 1201 of the PERA had been violated by the District and to specify when it believed the violation occurred. On January 7, 2009, AFSCME filed an amended charge alleging that the District had violated section 1201(a)(5) of the PERA on September 5, 2008. On January 29, 2009, the Secretary issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on April 15, 2008, if conciliation did not resolve the charge by then. The hearing examiner thereafter continued the hearing three times, twice upon the request of the District and without objection by AFSCME and once because no monies were available for his travel to the hearing. On September 3, 2009, the hearing was held. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. Each party made a closing argument. Neither party filed a brief.

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 April 29, 1974, the Board certified AFSCME as the exclusive representative of a bargaining unit that includes nonprofessional employes of the District. (Case No. PERA-R-4167-W)

2. On August 28, 2006, the parties executed a collective bargaining agreement covering the non-professional employes. (Union Exhibit 1)

3. Article XIX of the collective bargaining agreement is entitled "**TOTALITY OF AGREEMENT**" and provides at section 1 as follows:

"The District and the Union acknowledge that this Agreement represents the result of collective bargaining said parties conducted under and in accordance with the provisions of the Public Employee[] Relations Act Number 195 and constitutes the entire Agreement between the parties for the life of said Agreement; each party waiving the right to bargain collectively with the other with reference to any other subject matter, issue or thing, whether specifically covered herein or wholly omitted herefrom and irrespective of whether said subject was mentioned or discussed during negotiations preceding the execution of this Agreement."

---

<sup>1</sup> The caption appears as amended by the hearing examiner to reflect the name of the complainant as set forth in the charge and to exclude Diana Paccapaniccia as a named respondent. As explained in n. 2, *infra*, the charge does not state a cause of action against her.

<sup>2</sup> AFSCME also filed the charge against Ms. Paccapaniccia as president of the District's board of directors. As president of the District's board of directors, however, she would be the District's agent, and the District would be her principal. An agent is not personally liable for any unfair practice that her principal may have committed. *Lancaster County*, 30 PPER ¶ 30180 (Final Order, 1999), *aff'd on another ground sub nom. Teamsters Local 771 v. PLRB*, 760 A.2d 496 (Pa. Cmwlth. 2000). Thus, the charge does not state a cause of action against Ms. Paccapaniccia.

(Union Exhibit 1)

4. Appendix A of the collective bargaining agreement is entitled "**WAGES - FRINGE BENEFITS**" and provides at section 8 as follows:

"Effective July 1, 2008, all full time employees shall have five cents per hour (\$0.05/hr), to a maximum of forty (40) hours per week, deducted from his/her pay. Said monies shall be paid toward the cost of medical insurance premiums."

(Union Exhibit 1)

5. AFSCME subsequently found out that the District's management level employees are not contributing toward the cost of their medical insurance premiums. (N.T. 16)

6. On September 5, 2008, the District and the exclusive representative of its professional employees executed a collective bargaining agreement providing at paragraph A of Appendix C as follows:

"Throughout the life of this agreement, the District will provide each employee with the Highmark Blue Cross/Blue Shield PPO Blue Medical Plan in effect for the 2007-2008 school year. The District shall pay one hundred percent (100%) of the premium cost for the PPO Blue Medical Plan."

(Union Exhibit 2)

#### DISCUSSION

AFSCME has charged that the District committed an unfair practice under section 1201(a)(5) of the PERA by misleading AFSCME during the negotiations for their current collective bargaining agreement. The collective bargaining agreement includes a provision requiring non-professional employees of the District to contribute toward the cost of their medical insurance premiums (findings of fact 3-4). As specifically set forth in the amended charge, AFSCME alleges that the District "led AFSCME's negotiating team to believe the teachers and management would all be required to pay for health care" and that "[t]he team and the membership, in reliance on those assertions, ratified an agreement which required health care insurance contributions." AFSCME would have the Board nullify the provision in the collective bargaining agreement requiring the non-professional employees to contribute toward the cost of their medical insurance premiums because, contrary to what the District led AFSCME's bargaining team to believe, teachers and management are not required to contribute toward the cost of their medical insurance premiums.

The District contends that the charge should be dismissed because AFSCME's bargaining team should have known that a contribution toward the cost of medical insurance premiums for the teachers was subject to negotiation with the exclusive representative of the teachers and thus could not be assured by the District. The District also contends that the charge should be dismissed regardless of what it may have led AFSCME's bargaining team to believe because the collective bargaining agreement (1) does not contain a reopener for health care insurance contributions and (2) contains a zipper clause shielding it from any further obligation to bargain over health care contributions.

In light of the collective bargaining agreement and the applicable law, the charge must be dismissed.

An employer is obligated to bargain in good faith for a collective bargaining agreement. PLRB v. Commonwealth of Pennsylvania, State Liquor Control Board, 367 A.2d 805 (Pa. Cmwlth. 1977). In deciding whether or not an employer has met its obligation to bargain in good faith, the Board evaluates the employer's conduct under the totality of circumstances if the parties have yet to enter into a collective bargaining agreement. Commonwealth of Pennsylvania, Public Utility Commission, 35 PPER 113 (Final Order 2004). If the parties have entered into a collective bargaining agreement, however, the Board's evaluation of the employer's conduct is limited by the parol evidence rule.

As the Board explained in New Britain Borough, 39 PPER 102 (Final Order 2008):

"Under the parol evidence rule, prior alleged oral representations concerning terms specifically covered by the parties' written contract are inadmissible to prove a contrary intent by the parties. Youndt v. First National Bank of Port Allegheny, 868 A.2d 539 (Pa. Super. 2005). Moreover, while the Pennsylvania Supreme Court has recognized an exception to the parol evidence rule where a party alleges fraud in the execution of a contract, it has refused to recognize an exception to the parol evidence rule for alleged fraud in the inducement of a contract. Toy v. Metropolitan Life Insurance Company, 593 Pa. 20, 928 A.2d 186 (2007); Yocca v. Pittsburgh Steelers Sports, Inc., 578 Pa. 479, 854 A.2d 425 (2004). In Toy, the Supreme Court noted that in Yocca:

We stated that 'while parol evidence may be introduced based on a party's claim that there was fraud in the execution of a contract, *i.e.*, that a term was fraudulently omitted from the contract, parol evidence may not be admitted based on a claim that there was fraud in the inducement of the contract, *i.e.*, that an opposing party made false representations that induced the complaining party to agree to the contract.'

928 A.2d at 205. The Court then explained its refusal to adopt the fraud in the inducement exception to the parol evidence rule as follows:

First, the policy that the parol evidence rule aims to serve, which is to uphold the integrity of the written contract because that writing is considered the embodiment [of] the parties' true agreement . . . is not furthered by a refusal to recognize the fraud in the execution exception, as it is in refusing to recognize an exception for fraud in the inducement . . . Second, if a party were allowed to introduce representations made prior to contract formation that contradicted or varied the terms of his written contract by merely alleging that the representations were fraudulent, the fraud exception could swallow the rule. . . And third, a party to a contract has the ability to protect himself from fraudulent inducements by insisting that those 'inducements' be made part of the written agreement, and refusing to contract if they are not.

Id. at 206 n. 24."

Id. at 346.

In support of the charge, AFSCME presented testimony by the members of its bargaining team (Chief Negotiator Terry Skultety, President Dan Wilson and Treasurer Marjorie Snedden) who negotiated the collective bargaining agreement. They testified that during the negotiations leading up to the collective bargaining agreement the members of the District's bargaining team (Chief Negotiator James Felice, Business Manager Don Gardner and School Board Members Bill Balint, Leonard Anderson and Joseph Trimarchi) "basically guaranteed" that all employees of the District would be required to contribute toward the cost of their health insurance premiums (N.T. 14-16, 35-39, 45). They also testified that they unconditionally agreed to the provision requiring the non-professional employees to contribute toward the cost of their medical insurance because they took the members of the District's bargaining team at their word (N.T. 30, 38-39, 42-43, 46, 51). As Treasurer Snedden eloquently put it, "where I come from, you can take a man for his word" (N.Y. 46).

On a substantially similar record in New Britain Borough, *supra*, however, the Board found that similar testimony provided no basis for nullifying a scheduling provision in a collective bargaining agreement, explaining as follows:

"The Association argues that its members were induced to agree to the removal of the minimum-hour provision in the prior contract based on Chief Bowers' alleged assurances that he would continue to schedule the part-time officers with an

equivalent number of hours per month. However, as held in the Pennsylvania Supreme Court cases cited above, the parol evidence rule bars the Association's attempt to claim that it was induced to agree to the change in contract language by alleged false representations by the Chief of Police. Here, the parties' successor collective bargaining agreement provides in Article 3, Section 7(a)(ii) that part-time officers will be scheduled to work available hours at the discretion of the Chief of Police. Further, the agreement states that '[a]ll proposals of the parties not included in this Agreement shall be deemed denied.' (Association Exhibit 4 at 5). Because the Association agreed to the revised language in Article 3, Section 7(a)(ii), it cannot now rely on the alleged oral representations of Chief Bowers to nullify that agreement. Toy, supra; Yocca, supra; Youndt, supra. Therefore, the Hearing Examiner did not err in concluding that the Association's reliance on alleged statements made by Chief Bowers is barred by the parol evidence rule."

39 PPER at 346.

Unfortunately for AFSCME, the testimony by the members of its bargaining team is at best parol evidence of fraud in the inducement on the part of the District. Thus, under the law as set forth in New Britain Borough, their testimony is inadmissible and provides no basis for nullifying the provision in the collective bargaining agreement requiring the non-professional employees to contribute toward the cost of their medical insurance premiums.

#### CONCLUSIONS

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

1. The District is a public employer under section 301(1) of the PERA.
2. AFSCME is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The District has not committed an unfair practice under section 1201(a)(5) 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 charge is dismissed and the complaint rescinded.

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 eighteenth day of September 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

---

Donald A. Wallace, Hearing Examiner