

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205 :
 :
 v. : Case No. PERA-C-09-62-W
 :
 NEW EAGLE BOROUGH :

PROPOSED DECISION AND ORDER

On February 11, 2009, Teamsters Local Union No. 205 (Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that New Eagle Borough (Borough) violated sections 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by terminating the employment of Candice Kreitzer shortly after it entered into a grievance settlement setting forth her terms and conditions of employment. On February 26, 2009, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on June 12, 2009, if conciliation did not resolve the charge by then. The hearing examiner thereafter continued the hearing, first because of a scheduling conflict on his part and then because of a lack of a budget for travel. On September 1, 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 January 15, 1992, the Board certified the Union as the exclusive representative of a bargaining unit that includes road department employees of the Borough. (Case No. PERA-R-91-550-W)

2. Effective January 1, 2008, the parties entered into a five-year collective bargaining agreement covering the terms and conditions of employment for the employees in the bargaining unit. (Joint Exhibit 1)

3. Article 6, section C, of the collective bargaining agreement provides as follows:

"All new employees shall be considered probationary employees for a period of one hundred eighty (180) calendar days from the beginning of their employment during which time they shall have no seniority and no rights to holiday pay, insurance benefits, bereavement pay or jury duty pay, but they shall otherwise enjoy and be bound by all of the other provisions of this Agreement. A new employee may be summarily dismissed within said one hundred eighty (180) day period from the date of employment at the sole discretion of the Employer. If such employee is retained beyond the one hundred eighty (180) day probationary period from the beginning of his employment, he shall immediately thereafter be classified as a regular employee and his seniority shall commence as of his original employment and all of his rights and benefits under this Agreement shall accrue from the beginning of his employment. All new employees shall receive benefits after ninety (90) days from the beginning of their employment but remain[] subject to being considered a probationary employee during the one hundred eighty (180) day probationary period."

(Joint Exhibit 1)

4. On April 1, 2008, the Borough hired Ms. Kreitzer as a laborer in its road department. (N.T. 21-22, 26, 37-38)

5. On December 2, 2008, the Union's secretary-treasurer (William E. Lickert, Jr.) filed with the president of the Borough's council (Jack Fine) a grievance (no. 8867) involving Ms. Kreitzer's terms and conditions of employment. (N.T. 11-12, 33; Joint Exhibit 2)

6. By letter dated January 7, 2009, the Borough's solicitor (Robert A. Zunich, Esquire) wrote to the Union's business agent (John Winters) as follows:

"This letter will serve to memorialize an offer of settlement for Grievance Number 8867 filed on behalf of Ms. Candice Kreitzer, a non-union employee in the New Eagle Borough Public Works Department that was approved by council for New Eagle at the January 6, 2009 meeting. In order to settle the grievance, New Eagle Borough will pay Ms. Kreitzer the union rate of \$14.18 per hour commencing retroactively to the date of the grievance, December 2, 2008. She will also be required to become a member of Local 205 and begin paying dues and she will be a probationary employee also commencing on this date. For three (3) months commencing December 2, 2008, Mr. Kreitzer will not receive medical coverage but will receive any other benefits due under the union contract. At the expiration of three months, if Ms. Kreitzer remains an employee of New Eagle she will be entitled to full benefits including medical coverage. It is also agreed that this agreement will be non-precedent setting and is a one time compromise of the Collective Bargaining Agreement between the Borough and the Union. I have added consent lines to be signed by you on behalf of the Union, Ms. Kreitzer and Jack Fine, the president of council.

Thank you for your cooperation."

(N.T. 9, 12-13, 18; Joint Exhibit 3)

7. By letter dated January 9, 2009, Mr. Winters wrote to Mr. Zunich that "[t]he Union is in agreement with your proposed settlement of Grievance No. 8867 as per your letter of January 7, 2009." (N.T. 15; Joint Exhibit 4)

8. By letter dated January 23, 2009, Mr. Zunich provided Mr. Winters with signed copies of the agreement. (N.T. 16; Joint Exhibit 5)

9. On February 3, 2009, the Borough terminated Ms. Kreitzer's employment without explanation. (N.T. 18, 28-30, 40)

DISCUSSION

The Union has charged that the Borough committed unfair practices under sections 1201(a)(1) and (5) of the PERA by terminating the employment of Ms. Kreitzer shortly after it entered into a grievance settlement setting forth her terms and conditions of employment. According to the Union, the timing of events and the lack of an explanation for the Borough's termination of her employment support a finding that the Borough terminated her employment in violation of its statutory obligation to bargain in good faith and in an attempt to coerce employees in the exercise of their rights under the PERA.

The Borough contends that the charge should be dismissed for lack of proof. According to the Borough, because article 6, section C, of the parties' collective bargaining agreement provides that it may terminate at its sole discretion the employment of new employees while in probationary status and because Ms. Kreitzer was in probationary status when it terminated her, neither the timing of events nor its lack of an explanation for terminating her employment supports the charge.

An employer commits unfair practices under sections 1201(a)(1) and (5) of the PERA if it refuses to comply with the terms of a grievance settlement. Moshannon Valley School District v. PLRB, 587 A.2d 229 (Pa. Cmwlth. 1991). In the absence of changed circumstances following the execution of a grievance settlement, its terms as written are binding for an indeterminate period of time. SSHE (Edinboro University), 32 PPER ¶ 32080 (Final Order 2001), 32 PPER ¶ 32118 (Order Denying Application for Supersedeas 2001).

A close review of the record shows that the Borough terminated Ms. Kreitzer's employment without explanation shortly after it entered into a grievance settlement under which it agreed to employ Ms. Kreitzer subject to certain terms and conditions of employment, one of which was a three-month probationary period. See findings of fact 6-9. The record does not show, however, a changed circumstance authorizing the Borough to

terminate her employment after it entered into the grievance settlement. Moreover, the record does not show that the Borough reserved the right to terminate her employment at its sole discretion during the probationary period referenced in the grievance settlement. Thus, it is apparent that the Borough refused to comply with the terms of the grievance settlement by terminating her employment without explanation.

The Borough's reliance on article 6, section C, of the parties' collective bargaining agreement is misplaced. That provision authorizes the Borough to "summarily dismiss" a "new" employe at its "sole discretion" while the employe is serving a probationary period referenced in the collective bargaining agreement. See finding of fact 3. Ms. Kreitzer, however, was not a new employe serving a probationary period under the collective bargaining agreement; rather, she was a previously-hired employe serving a probationary period referenced in the grievance settlement. See findings of fact 4 and 6. Moreover, the grievance settlement expressly provides that it "is a one time compromise of the Collective Bargaining Agreement between the Borough and the Union." See finding of fact 6. Under the circumstances, article 6, section C, of the collective bargaining agreement provides no defense to the charge.

On a substantially similar record in SSHE (Edinboro University), supra, the Board likewise found that an employer had refused to comply with the terms of a grievance settlement. In that case, the grievance settlement provided that the employer was to reinstate an employe to a certain position subject to a probationary period. Upon the expiration of the probationary period, the employer removed the employe from the position. Noting the absence of changed circumstances and of language in the grievance settlement limiting the duration of the employe's reinstatement to the position, the Board found that the employer had no right to remove the employe from the position.

CONCLUSIONS

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

1. The Borough 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 Borough has committed unfair practices under sections 1201(a)(1) and (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 Borough shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in article IV of the PERA.
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the PERA:

(a) Offer to Ms. Kreitzer in writing unconditional reinstatement to her former position without prejudice to any rights and privileges enjoyed by her;

(b) Make her whole for any loss of pay and/or benefits from the date it terminated her up to the date it offers her unconditional reinstatement;

(c) The backpay due shall be computed on the basis of each separate calendar quarter or portion thereof during the period stated above. The quarterly period shall begin with the first day of January, April, July and October. The pay shall be determined by deducting from a sum equal to that which she normally would have earned for each quarter or portion thereof earnings that she actually earned or with the exercise of due diligence would have earned in other employment, earnings that she would have lost through sickness and any unemployment compensation received by her. If the Borough claims lack of due diligence, it shall be obligated to establish that there was substantially equivalent employment reasonably available to her and that she did not exercise due diligence to find interim employment. Earnings in one particular quarter shall have no effect on the liability for any other quarter;

(d) Pay interest at the simple rate of six per cent per annum on any backpay due her from the date she would have been earned the pay up to the date it pays her;

(e) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and

(f) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this order by completing and filing the attached affidavit of compliance.

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 fifteenth day of September 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner