

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE, COUNTY :
AND MUNICIPAL EMPLOYEES :
v. : Case No. PERA-C-09-221-E
LEHIGHTON BOROUGH :

PROPOSED DECISION AND ORDER

On June 8, 2009, the American Federation of State, County and Municipal Employees (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Lehighon Borough (Borough) alleging that the Borough violated Section 1201(a)(1), (3) and (5) of the Public Employee Relations Act (PERA). On July 16, 2009, the Union filed an amended charge.

On August 11, 2009, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was scheduled for hearing on November 30, 2009, in Allentown, Pennsylvania. After a continuance request was granted, the hearing was scheduled, and took place, on March 4, 2010, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Borough is a public employer.
2. The Union is an employe organization.
3. The Union filed a contractual grievance on April 3, 2009, over the termination of a bargaining unit employe. The Borough denied the grievance at all steps, and refused to proceed to arbitration. (N.T. 9, 23-24; Union Exhibit 5, 8, 9, 10, 11; Joint Exhibit 1).

DISCUSSION

The Union charges the Borough with violating Section 1201(a)(1), (3) and (5) of PERA when it sedulously refused to appoint an arbitrator pursuant to a contractually based grievance that had reached the final step in the process. That grievance had proceeded through all the requisite predicate steps leading to arbitration, as set forth in the parties' collective bargaining agreement.

The Borough's assertion that the grievance is not arbitrable has not been a viable defense before this Board for *twenty-eight* years. It is black letter law that arbitrability is for the arbitrator in the first instance. PLRB v. Bald Eagle Area School District, 499 Pa. 62, 451 A.2d 671 (1982).

The Borough's defense is totally meritless and it is ordered immediately to select an arbitrator and proceed to arbitration, where it can argue arbitrability to the arbitrator, as the law has plainly required for decades.

CONCLUSIONS

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

1. The Borough is an employer within the meaning of section 301(1) of PERA.

2. The Union is an employe organization within the meaning of section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Borough has committed unfair practices within the meaning of Section 1201(a)(1) and (5) of PERA.
5. The Borough has not committed unfair practices within the meaning of Section 1201(a)(3) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the 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 under Article IV of PERA.
2. Cease and desist from refusing to bargain collectively in good faith with an employe organization 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 PERA:
 - (a) Immediately complete the process to select an arbitrator and proceed to grievance arbitration on the underlying grievance;
 - (b) Post a copy of this decision and order within five (5) days of the date hereof and have the same remain so posted for a period of ten (10) consecutive days; and
 - (c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit.

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 (20) days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this second day of April 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

The Borough hereby certifies that it has ceased and desisted from violations of Section 1201(a)(1) and (5) of PERA; that it has completed the process and selected an arbitrator for the underlying grievance and is proceeding to arbitration; and that it has served a copy of this affidavit on the Union at its principal places of business.

Signature/Date

Title

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

Signature of Notary Public