

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UNITED STEELWORKERS OF AMERICA :
LOCAL 2599 :
 :
v. : Case No. PERA-C-09-497-E
 :
NORTHAMPTON COUNTY :
GRACEDALE NURSING HOME :

PROPOSED DECISION AND ORDER

On December 17, 2009, the United Steelworkers of America, Local 2599 (Complainant or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Northampton County, Gracedale Nursing Home (Respondent or County) alleging that the County violated Sections 1201(a)(5) and (6) of the Public Employe Relations Act (PERA).

On January 13, 2010, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and April 28, 2010, in Easton was scheduled as the time and place of hearing if necessary.

A hearing was necessary, at which time the parties 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 parties stipulated and agreed that Northampton County is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act (PERA), 43 P.S. § 1101.301(1).

2. The parties stipulated and agreed that the United Steelworkers of America, Local 2599, is an employe organization within the meaning of Section 301(3) of PERA, 43 P.S. 1101.301(3)

3. The County owns and operates a nursing home in Nazareth, Pennsylvania, known as Gracedale Nursing Home (Gracedale). (N.T. 11-13)

4. That the Union is the exclusive, certified bargaining representative of a unit of approximately 50 nurses and social workers at Gracedale, certified by the Board at PERA-R-03-190-E. (N.T. 11-12)

5. That the County and the Union have been parties to several collective bargaining agreements covering the hours, wages and terms and conditions of employment of the members of the bargaining unit, with the most recent CBA expiring on December 31, 2008. (N.T. 12, 14, Union Exhibit 1)

6. That in 2008, the parties engaged in several bargaining sessions for a successor CBA. The negotiations were not successful in reaching an agreement. The parties continued negotiating into 2009. (N.T. 13)

7. That John Stoffa is the current County Executive for Northampton County. (N.T. 22)

8. That Mr. Stoffa assigned the members of the County's negotiating team and gave them the scope of their negotiating authority. The County's team included Connie Sutton-Falk, the Director of Human Resources, and Ross Marcus, the Director of Human Services. (N.T. 20-22)

9. That in September, 2009, the negotiators eventually reached a tentative agreement. The agreement was reached when the Union gave up the Presidents' Day holiday

in return for the County agreeing to a 4.95% annual wage increases over the length of the CBA and making the agreement a four year agreement. (N.T. 13, Union Exhibit 6)

10. That Mr. Stoffa approved the tentative agreement. (N.T. 21, 24, 65, Union Exhibit 2)

11. That the parties met in November 9, 2009 to sign the tentative agreement. The agreement was signed by negotiators from the Union and from the County. It was understood that the County Executive had to take the agreement to the County Council for its approval and that he would do so. (N.T. 27, 37, Union Exhibit 6)

12. That Northampton County is a limited home rule charter government with an elected county executive and an elected county council. The charter is located at 348 Pa. Code § 1.01-101 et seq. (N.T. 12, 14, County Exhibit 1)

13. That the Charter, at 348 Pa. Code Section 1.302(5), states that "the County Executive, in person or through subordinates, shall-- (5) supervise and direct the negotiation and administration of any collective bargaining agreements with employees." (N.T. 12, 14, County Exhibit 1, page 12)

14. That the Charter, at 348 Pa. Code. Section 1.202(12) states that "The County Council shall have, among others, the following powers:.... (12) to approve any collective bargaining agreements with officers and employees;.." (N.T. 12, 14, County Exhibit 1, p. 7)

15. That after the agreement was reached, Mr. Stoffa and his managers, while putting together the 2010 county budget for submission to County Council, began to have reservations about sending the tentative agreement to County Council for its approval. (N.T. 56)

16. That on November 25, 2009, Mr. Stoffa sent a letter to the Union and the other unions that represent ten other bargaining units of county employes informing them that in an effort to balance the 2010 General Fund Budget, the county was proposing to renegotiate the collective bargaining agreements. (N.T. 29, Union Exhibit 4)

17. That the Union's President, Jerry Green, wrote to Mr. Stoffa to protest the proposal. (N.T. 30, Union Exhibit 5)

18. That Mr. Stoffa continues to refuse to present the tentative agreement to County Council for its approval. (N.T. 28)

DISCUSSION

The Union's charge of unfair practices alleges that the County violated PERA when the County Executive, John Stoffa, reneged on a tentative agreement for a collective bargaining agreement and decided not to send the agreement to the Northampton County Council for its approval.

The County defends the charge by contending that the County Executive had a legitimate reason for changing its mind, namely the national economic recession that caused the County Executive to have reservations about the wage increases promised in the tentative agreement.

On several occasions, the Board has found that a public employer violates its duty to bargain in good faith when it reneges on its promise to take a negotiated tentative agreement to the next step of approval process. See e.g. St. Clair Education Association v. St. Clair Area School District, 18 PPER ¶ 18116 (Final Order, 1987), aff'd 19 PPER ¶ 19084 (Schuylkill County Court of Common Pleas, No. S-967-1987), aff'd 552 A. 2d 1133 (Pa. Cmwlth. 1988), aff'd 525 Pa. 236, 579 A. 2d 879 (1990). There, the teachers' association and the school district reached a tentative agreement. A majority of the school board had been involved in negotiations and signed the tentative agreement. However, at a subsequent public meeting, some of the same Board members voted against the proposed agreement, resulting in its rejection by the school board of directors. The District offered evidence that the rejection was based on retrospective evaluation, after the conclusion of the negotiations, that the negotiated agreement was too expensive.

In the present case, the actions of County Executive John Stoffa are analogous to the actions of the school board members in St. Clair School District supra. The County's witnesses testified that Mr. Stoffa's decision not to send the tentative agreement to the County Council for its review and approval was based on his own judgment that the wage promises were too expensive for the 2010 County budget that Mr. Stoffa was also preparing for presentation to the Council. This is an example of bad faith bargaining under Section 1201(a)(5). If this conduct was allowed to stand then no negotiations by a public employer would ever be finally concluded, or safe from endless "reconsideration."

In order to remedy this unfair practice, County Executive Stoffa should immediately send the tentative agreement in writing to County Council for its consideration and approval at its next meeting.

The Union has also charged the County with violating Section 1201(a)(6) of PERA, which prohibits public employers from "[r]efusing to reduce a collective bargaining agreement to writing and sign such agreement." 43 P.S. 1101.1201(a)(6). An essential element of proving that a public employer violates this section of PERA is that the public employer refuses to do something it is legally authorized to do, i.e. sign a collective bargaining agreement.

The County's defense to this charge is that despite the authority of the County Executive to negotiate a collective bargaining agreement, the County Executive has no power to sign a collective bargaining agreement. The Northampton County Charter provides, at 348 Pa. Code § 1.202(12), that "The County Council shall have, among others, the following powers:... (12) to approve any collective bargaining agreements with officers and employees;..." Therefore, by law, it is the legislative branch of Northampton County's government, not the Executive, that has the power to sign a collective bargaining agreement.

For the purposes of analyzing the Section 1201(a)(6) allegation, the facts of this case also distinguish it from St. Clair Area School District, supra. where the Board found the school district's conduct did violate Section 1201(a)(6) of PERA. In that case, the same school board members who negotiated the collective bargaining agreement also had the legal authority to vote to approve the collective bargaining agreement. Their renegeing on the agreement was found by the Board to violate Section 1201(a)(6). In the present case, the Home Rule Charter does not provide for the Executive to vote on the collective bargaining agreement. Thus, as a matter of law, he cannot bind the legislative branch of Northampton County government by entering a tentative agreement. Furthermore, in the negotiations in the present case, the County's negotiating team made it clear to the Union's negotiating team that the tentative agreement had to be sent to the County Council for approval.

Accordingly, no violation of Section 1201 (a)(6) will be found by the County Executive's refusal to send the tentative agreement to the County Council.

CONCLUSIONS

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

1. That Northampton County is a public employer within the meaning of Section 301(1) of PERA.
2. That the United Steelworkers of America, Local 2599 is an employe organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the County has committed unfair practices in violation of Section 1201(a)(5) of PERA.
5. That the County has not committed unfair practices in violation of Section 1201(a)(6) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the County shall:

1. Cease and desist from refusing to bargain collectively in good faith with the employe representative which is the exclusive representative of the nurses and social workers at the Gracedale Nursing Home.

2. Take the following affirmative action:

(a) Immediately present the tentative agreement between the County and United Steelworkers of America, Local 2599 to the Northampton County Council for its consideration and approval.

(b) 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 employes and have the same remain so posted for a period of ten (10) consecutive days.

(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 of Compliance; and

(d) Serve a copy of the attached affidavit of compliance upon the Association.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this eleventh day of June, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner