

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UTILITY WORKERS UNION OF AMERICA, :
LOCAL 537, AFL-CIO :
 :
v. : Case No. PERA-C-17-264-W
 :
WASHINGTON-EAST WASHINGTON JOINT :
AUTHORITY :

FINAL ORDER

The Utility Workers Union of America, Local 537, AFL-CIO (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on October 9, 2017. The Union's exceptions challenge a September 20, 2017 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Practices filed against the Washington-East Washington Joint Authority (Authority).

The Union alleged in its Charge that the Authority violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by unilaterally requiring two new production and maintenance employees to obtain water/sewer treatment plant operator licenses within two years. The Secretary declined to issue a complaint and dismissed the Charge, stating that the Authority's requirement that the new employees obtain water/sewer treatment plant operator licenses was within its managerial prerogative to determine the qualifications for their positions, citing Service Employees International Union, Local 668 v. Commonwealth of Pennsylvania, Department of Military and Veterans Affairs, Southwestern Veterans Center, 40 PPER 88 (Final Order, 2009), Utility Workers Union of America, Local No. 574 v. Harrison Township Water Authority, 29 PPER ¶ 29020 (Proposed Decision and Order, 1997), 29 PPER ¶ 29086 (Final Order, 1998) and Utility Workers Union of America, Local 287, AFL-CIO v. North Fayette County Municipal Authority, 19 PPER ¶ 19052 (Proposed Decision and Order, 1988). The Secretary further stated that the Union failed to allege sufficient facts to support a finding of a violation of Section 1201(a)(1) of PERA.

In its exceptions, the Union acknowledges that under prior decisions of the Board, the Authority's requirement of obtaining a water/sewer treatment plant operator license was within its managerial prerogative. However, the Union contends that the Authority is required to bargain over the impact of this new requirement on the employees, including the expenses to obtain such a license and additional wages for licensed operators. Where a public employer is charged with violating its duty to bargain over the impact of implementation of a managerial prerogative, the employee representative must demonstrate that (1) the employer lawfully exercised its managerial prerogative; (2) there is a demonstrable, severable impact on wages, hours or working conditions following implementation of the managerial prerogative; (3) the employee representative made a demand to bargain over the demonstrable impact; and (4) the employer refused the employee representative's demand to bargain. Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000). Here, the Union failed to allege in the Charge, or in its exceptions, that it requested impact or effects bargaining. Because the obligation to engage in impact or effects bargaining arises only upon demand,

the Union failed to state a cause of action for a refusal to engage in impact bargaining. Lackawanna County Detectives' Association, supra.

Additionally, the Union has not made any further factual allegations in its exceptions concerning the Charge under Section 1201(a)(1) of PERA. Absent new factual allegations, the Union has failed to state an independent or derivative violation of Section 1201(a)(1). Therefore, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

Accordingly, after a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Secretary's decision declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Utility Workers Union of America, Local 537, AFL-CIO are dismissed and the Secretary's September 20, 2017 decision not to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this twenty-first day of November, 2017. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.