

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE, COUNTY :
AND MUNICIPAL EMPLOYEES, :
DISTRICT COUNCIL 47, LOCAL 810 :
: Case No. PERA-A-20-305-E
v. :
: :
CITY OF PHILADELPHIA :

FINAL ORDER

The American Federation of State, County and Municipal Employees, District Council 47, Local 810 (AFSCME) filed with the Pennsylvania Labor Relations Board (Board) a Request for Panel of Neutral Interest Arbitrators on December 23, 2020, concerning an alleged impasse in contract negotiations with the City of Philadelphia (City), for a bargaining unit of professional court-appointed employees necessary to the functioning of the courts, as set forth under the provisions of Section 805 and 806 of the Public Employee Relations Act (PERA). AFSCME alleged in its December 23, 2020 Request for a Panel of Neutral Interest Arbitrators that its Collective Bargaining Agreement (CBA) with the City is to expire June 30, 2021, that the City's budget submission date is March 31, 2021, that mediation through the Pennsylvania Bureau of Mediation commenced on November 17, 2020, and that AFSCME made a demand to arbitrate with the City on November 22, 2020.

Upon review of AFSCME's Request for a Panel of Neutral Interest Arbitrators, the allegations regarding the dates for mediation did not comport with the statutory requirements of mediation prior to commencing interest arbitration under Section 805 of PERA. Specifically, as alleged in the request, twenty days had not passed between the alleged commencement of mediation on November 17, 2020 and the alleged demand for interest arbitration on November 22, 2020, as is required by Section 801 of PERA. Accordingly, by letter issued January 8, 2021,¹ the Secretary of the Board administratively declined to provide a panel of neutral interest arbitrators, stating that "the parties have a statutory obligation to bargain in good faith and follow the timelines related to mediation prior to requesting a list of neutral arbitrators from the [Board]."

AFSCME filed timely exceptions to the Secretary's January 8, 2021 administrative decision on January 28, 2021. In the exceptions, AFSCME alleged that "on or about November 2020", AFSCME notified the City of its intent to begin negotiations for a successor contract to the CBA expiring June 30, 2021. AFSCME alleged that it notified the Pennsylvania Bureau of Mediation of its intent to negotiate a successor contract, and that "on or about December 22, 2020", AFSCME was notified by the Bureau of Mediation of the assignment of a mediator. AFSCME further alleged that on December 23, 2020, the Board received AFSCME's Request for a Panel of Neutral Interest Arbitrators. AFSCME alleges that it submitted its Request for a Panel of Neutral Arbitrators prior to mediation, in the event the parties were unable to resolve their dispute. AFSCME further alleged that as of the time of filing the exceptions, the parties are in the process of establishing a negotiation schedule with the assigned mediator.

¹ The letter was erroneously dated January 8, 2020.

Under PERA, employees directly involved with and necessary to the functioning of the Courts of this Commonwealth are entitled to submit unresolved issues in dispute in collective bargaining to a tripartite panel for interest arbitration. The process for obtaining interest arbitration is set forth in Article VIII of PERA. That process is as follows:

Section 801. If after a reasonable period of negotiation, a dispute or impasse exists between the representatives of the public employer and the public employees, the parties may voluntarily submit to mediation but if no agreement is reached between the parties within twenty-one days after negotiations have commenced, but in no event later than one hundred fifty days prior to the "budget submission date," and mediation has not been utilized by the parties, both parties shall immediately, in writing, call in the service of the Pennsylvania Bureau of Mediation.

Section 802. Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within twenty days after mediation has commenced or in no event later than one hundred thirty days prior to the "budget submission date," the Bureau of Mediation shall notify the board of this fact...

Section 805. Notwithstanding any other provisions of this act where representatives of units of guards at prisons or mental hospitals or units of employees directly involved with and necessary to the functioning of the courts of this Commonwealth have reached an impasse in collective bargaining and mediation as required in section 801 of this article has not resolved the dispute, the impasse shall be submitted to a panel of arbitrators whose decision shall be final and binding upon both parties with the proviso that the decisions of the arbitrators which would require legislative enactment to be effective shall be considered advisory only.

Section 806. Panels of arbitrators for bargaining units referred to in section 805 of this article shall be selected in the following manner:

(1) Each party shall select one member of the panel, the two so selected shall choose the third member.

(2) If the members so selected are unable to agree upon the third member within ten days from the date of their selection, the board shall submit the names of seven persons, each party shall alternately strike one name until one shall remain. The public employer shall strike the first name. The person so remaining shall be the third member and chairman.

In City of Philadelphia v. PLRB 614 A.2d 213 (Pa. 1992), the Pennsylvania Supreme Court declared that the procedures set forth in Article VIII of PERA are mandatory. Since then, the Board has recognized the mandatory bargaining procedures for employees directly and necessary to the functioning of the courts, stating as follows:

Section 801 provides that, after a reasonable period of negotiation and a dispute or "impasse" exists, the parties must submit the unresolved dispute to mediation in no event later than 150 days prior to the employer's budget submission date. Section 802 mandates that following twenty days of mediation and in no event later than 130 days prior to budget submission, the Bureau of Mediation shall notify the Board of the fact that the dispute remains unresolved. From that point, the impasse resolution procedures under Article VIII mandate one of two paths depending on whether the employees possess the statutory right to strike under Article X. Section 802 provides that, with regard to employees who possess the right to strike, the Board may in its discretion appoint a fact finder at that time. City of Philadelphia, supra. However, with regard to court employees, prison guards, and mental hospital guards, Section 805 provides that, upon notice by the Bureau of Mediation of the continued unresolved impasse, the impasse "shall be submitted" to a panel of arbitrators whose decision shall be final and binding with the proviso that provisions of the arbitration award requiring legislative action shall be considered advisory.

Teamsters Local 429 v. Lebanon County, 29 PPER ¶ 29108 (Final Order, 1998); See FOP, Lodge No. 5 v. City of Philadelphia, 27 PPER ¶ 27249 (Final Order, 1996); City of Philadelphia, 26 PPER ¶ 26046 (Final Order, 1995).

Article VIII of PERA is clear. The parties must notify the Bureau of Mediation of a dispute in negotiations over wages, hours or working conditions no later than 150 days prior to the employer's "budget submission date." 43 P.S. §1101.801. Thereafter, mediation must commence. The date mediation commences is when the parties have their first meeting with the mediator. See FOP, Lodge No. 5 v. City of Philadelphia 27 PPER ¶ 27249 (Final Order, 1996). Twenty days must pass after mediation has commenced before a demand for interest arbitration can be made no later than 130 days prior to the employer's "budget submission date". 43 P.S. §1101.802. Only then shall the impasse be submitted to a panel of arbitrators. 43 P.S. §1101.805.² To submit the dispute to a tripartite panel of arbitrators, each party is to choose their "partial" arbitrator, who then have ten days to agree upon a neutral third arbitrator. 43 P.S. §1101.806. If the "partial" arbitrators are unable to agree to a third arbitrator, the parties may then request the Board to provide a panel of neutral interest arbitrators from which the parties are to select the third member, and chair, of the interest arbitration panel. Id.³

Contrary to AFSCME's argument on exceptions, a request for a list of neutral interest arbitrators that is made before mediation has commenced, or during the twenty days of mediation, is counter to not only the express process under Article VIII, but also the purposes and policies of PERA. Indeed, when the Board issues the list of arbitrators upon request of the

² Consistent with Section 805 and 806 of PERA, the Board's role in issuing lists of arbitrators is not synonymous with the demand for arbitration between the parties which must occur no later than 130-days prior to budget submission.

³ Only if the statutory bargaining process is met for interest arbitration under Section 805 and an arbitrator is thereafter selected in accordance with Section 806, is the Board responsible for the costs of the neutral arbitrator pursuant to Section 806(A) of PERA. 43 P.S. §1101.806(A).

union, a copy of that order is sent to the employer. Receiving the list of names of neutral arbitrators without prior notice and before mediation has commenced, or during the twenty days of mediation, causes confusion over the parties' positions in bargaining and frustrates the good faith collective bargaining required under Sections 1201(a) (5) and (b) (3) of PERA.

Here, AFSCME makes clear in its exceptions that the parties did not even commence mediation under Section 801 before it requested a panel of neutral interest arbitrators from the Board, and further that the parties have yet to have a mediation session with the mediator assigned by the Bureau of Mediation as is required by Section 802 of PERA. After a thorough review of the record and the exceptions, in accordance with the mandatory and sequential nature of bargaining under Sections 801, 802, 805 and 806, we conclude that the Secretary did not err in administratively declining AFSCME's December 23, 2020 Request for a Panel of Neutral Interest Arbitrators.⁴ Accordingly, AFSCME's exceptions shall be dismissed, and the Secretary's January 8, 2021 decision will be sustained.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the American Federation of State, County and Municipal Employees, District Council 47, Local 810 are hereby dismissed, and the Secretary's January 8, 2021 decision administratively declining AFSCME's Request for a Panel of Neutral Arbitrators, be and hereby is made absolute and final.

Pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member this sixteenth day of February, 2021, 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 on February 19, 2021.

⁴ Once twenty days have passed since mediation commenced, and a timely demand for interest arbitration was made between the parties within 130 days prior to the employer's budget submission date, either party may file with the Board a new Request for a Panel of Neutral Interest Arbitrators. Alternatively, if they so choose, the parties may proceed to voluntary interest arbitration at their own expense under Section 804 of PERA.