

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DC 47 LOCAL 2187, AFL-CIO :
:
:
v. : Case No. PERA-C-17-43-E
:
:
CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On February 17, 2017, the American Federation of State, County, and Municipal Employees District Council 47, Local 2187 (Local 2187 or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the City of Philadelphia (City or Employer), alleging that the City violated Section 1201(a) (5) of the Public Employee Relations Act (PERA or Act) by unilaterally reducing pension benefits related to the City's Deferred Retirement Option Plan (DROP) program without the Union's agreement and ratification of such changes by the Union's membership, as required by the Union's constitution and bylaws.

On March 2, 2017, the Secretary of the Board issued a Complaint and Notice of Hearing, directing a hearing on May 17, 2017, in Harrisburg, if necessary. On June 5, 2017, the City filed a Motion to Dismiss the charge of unfair practices, alleging that the parties executed a settlement agreement, which specifically granted the City authority to adopt an ordinance changing the DROP benefits. Local 2187 filed a Response to the Motion to Dismiss on June 26, 2017, after which the City filed a reply thereto on August 24, 2017. The Union's response to the City's reply followed on August 29, 2017.

After several continuances, the hearing eventually ensued on November 29, 2017, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Local 2187 filed a post-hearing brief on May 3, 2018. The City filed a post-hearing brief on August 30, 2018. Local 2187 filed a reply brief on September 17, 2018. The City did not file a response to the Union's reply brief.

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 City is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8)
2. Local 2187 is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 8-9)
3. AFSCME District Council 47, Local 2187 is the certified bargaining agent for a unit of professional, administrative, and technical employes of the City. (PERA-R-1063-E)
4. Local 2187, Local 2186, and Local 810 are affiliated organizations of AFSCME DC 47. (Union Exhibit 3, 4)

5. Affiliate Local 2186 represents first-level supervisory professional and nonprofessional employees of the City and the First Judicial District. (PERA-R-1063-E; Union Exhibit 3, 4)

6. Affiliate Local 810 represents the rank and file professional employees of the First Judicial District. (Union Exhibit 3, 4)

7. On October 28, 2011, AFSCME DC 47 filed a charge of unfair practices with the Board against the City, alleging that the City violated Section 1201(a)(1) and (5) of PERA by unilaterally amending the DROP without bargaining. The charge was docketed at PERA-C-11-387-E. (Union Exhibit 3; PERA-C-11-387-E)

8. At the time of the October 28, 2011 charge, Cathy Scott was president of AFSCME DC 47. (Union Exhibit 12)

9. In September 2013, Frederick Wright defeated Scott in an election for presidency of AFSCME DC 47. (Union Exhibit 12)

10. Wright changed legal counsel from the firm that was previously representing AFSCME DC 47 in connection with the charge docketed at PERA-C-11-387-E, and retained Jonathon Walters, Esquire instead. (Union Exhibit 12)

11. On December 18, 2014, Hearing Examiner Thomas Leonard issued a Proposed Decision and Order, finding that the City had committed unfair practices in violation of Section 1201(a)(1) and (5) of the Act in PERA-C-11-387-E with respect to all three locals. (Union Exhibit 3)

12. The City subsequently filed exceptions to the December 2014 PDO, which the Board sustained in part in a July 21, 2015 Final Order. The Board concluded that the City did not violate Section 1201(a)(9) of PERA because the City satisfied its meet and discuss obligations with respect to Local 2186. The Board dismissed the City's remaining exceptions and affirmed the Hearing Examiner's determination that the City violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing changes to the DROP pension for employees represented by Locals 2187 and 810. (Union Exhibit 4)

13. The City subsequently filed a Petition for Review with the Commonwealth Court, alleging that the Board erred in issuing the July 2015 Final Order. (N.T. 32, 73; Union Exhibit 12)

14. In the summer of 2016, the City began negotiating for a successor agreement with AFSCME DC 33, whose contract expired on June 30, 2016. On or about July 25, 2016, the City resolved the outstanding DROP litigation with DC 33 by including settlement terms for the litigation in DC 33's new contract. (N.T. 74)¹

15. In early August 2016, Walters contacted Shannon Farmer, Esquire, who represented the City with regard to the 2011 unfair practices litigation, and asked if the City was willing to resolve the DROP litigation with DC 47. (N.T. 75)

¹ AFSCME DC 33 filed a parallel charge of unfair practices to the charge initiated by AFSCME DC 47 in 2011, which also challenged the City's unilateral changes to the DROP pension. The AFSCME DC 33 charge was docketed at PERA-C-11-324-E. (Union Exhibit 5).

16. The City was not yet negotiating for a successor agreement with DC 47 during August 2016 because DC 47's contract was effective through June 30, 2017. (N.T. 74)

17. Over the next few weeks, Walters and Farmer negotiated a proposed settlement that offered the same benefits to Local 2186 members as Local 810 and 2187 members would receive. Farmer memorialized the proposed terms in a September 28, 2016 email to Walters. (N.T. 76; City Exhibit 2)

18. On October 12, 2016, Wright and Walters met with the leadership of Locals 810, 2186, and 2187, including Robert Coyle, who was elected president of Local 2187 in December 2015, to discuss the proposed settlement. (N.T. 33-34)

19. On November 2, 2016, the City entered into a settlement agreement with DC 47 resolving the DROP litigation. Wright signed the agreement on behalf of DC 47. (N.T. 77-78; Union Exhibit 2, City Exhibit 3)

20. Farmer testified that she had no reason to doubt Wright's authority to enter the agreement. She described how Walters initially represented to her that Wright had authority to sign the agreement because it constituted settlement of litigation. In addition, Walters told Farmer that AFSCME's Region Director had sent a letter to Wright detailing this authority. She also explained that, in nearly two decades of negotiations experience with DC 47, the District Council president was the chief negotiator for the locals. In December 2015, Farmer negotiated an agreement regarding pension rights of certain Local 2187 employees that was signed by the DC 47 president, and Local 2187 never challenged the agreement or claimed that it required ratification by its members. Farmer also witnessed Wright eject Coyle from a grievance arbitration in 2015 or 2016, following a physical altercation between Wright and Coyle, on the basis that it was DC 47's grievance, and not that of Local 2187. Farmer testified that nobody from the Union told her that the settlement agreement required ratification. (N.T. 78-84, 91-92, 100)

21. On November 17, 2016, as part of the settlement agreement, and following notice from Board counsel that it had no objection, the City filed its application to the Commonwealth Court to discontinue the appeal from the Board's July 2015 Final Order. (City Exhibit 5, 7)

22. On December 8, 2016, the City Council passed an ordinance implementing the DROP pension changes consistent with the settlement agreement. (Union Exhibit 7; City Exhibit 10)

23. The City Mayor signed the bill on December 9, 2010. (City Exhibit 10)

DISCUSSION

Local 2187's charge alleges that the City violated Section 1201(a)(5) of PERA² by unilaterally changing DROP pension benefits without the Union's

² Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (5) 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

agreement and ratification of such changes by the Union's membership, as required by the Union's constitution and bylaws. Specifically, Local 2187 maintains that Wright, as president of DC 47, lacked the authority to bind Local 2187 to the terms of a settlement agreement. Further, Local 2187 posits that the agreement regarding members' pension benefits must be submitted to the members for ratification and that the City was aware of this requirement. The City contends that the charge should be dismissed because Wright had apparent authority as DC 47 president to enter the settlement agreement, and the City detrimentally relied on such apparent authority by withdrawing its appeal of the prior unfair practices charge in the Commonwealth Court. The City also maintains that the charge should be barred by the doctrine of laches because Local 2187 knowingly withheld its objections until after the City was irreparably harmed.

As the City points out, the Board has long recognized that an agreement made between agents of the employer and union are binding upon the agent's principal if the agent has apparent authority to negotiate on behalf of that principal. AFSCME Local 394 v. City of Philadelphia, 27 PPER ¶ 27185 (Final Order, 1996). The principle of apparent authority in labor relations is premised upon the need of the parties to the bargaining process to be able to rely on the promises and commitments of their bargaining counterpart. *Id.* at 425-426. The Board has found that union presidents, chief negotiators, and the highest-ranking union official in a union chapter all possess apparent authority sufficient to bind their union. Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, 24 PPER ¶ 24055 (Final Order, 1993) (union president); Lehigh Area Education Support Personnel Ass'n v. Lehigh School District, 23 PPER ¶ 23133 (Proposed Decision and Order, 1992) (chief negotiator); SEIU Local 585, 15 PPER ¶ 15101 (Proposed Decision and Order, 1984) (highest ranking union official in chapter). Although the Board has held that either party has the right to return agreements reached at the bargaining table to their appointing authorities for ratification, the reservation of this right must be made clear to the other party. Richland Education Ass'n v. Richland School District, 22 PPER ¶ 22075 (Proposed Decision and Order, 1991).

In this case, the record shows that Wright had apparent authority to bind Local 2187 to the terms of the settlement agreement. First of all, as the City persuasively notes, DC 47 was the charging party in PERA-C-11-387-E and represented the interests of all three locals in that case, including 2187, 2186, and 810. Likewise, DC 47 was party to the City's appeal of the Board's July 2015 Final Order in the Commonwealth Court, not Local 2187. Furthermore, Farmer credibly and persuasively testified that she had no reason to doubt Wright's authority to enter the agreement. She described how Walters initially represented to her that Wright had authority to sign the agreement because it constituted settlement of litigation. In addition, Walters told Farmer that AFSCME's Region Director had sent a letter to Wright detailing this authority. Farmer also explained that, in nearly two decades of negotiations experience with DC 47, the District Council president was the chief negotiator for the locals. In December 2015, Farmer negotiated an agreement regarding pension rights of certain Local 2187 employees that was signed by the DC 47 president, and Local 2187 never challenged the agreement or claimed that it required ratification by its members. Farmer also witnessed Wright eject Coyle from a grievance arbitration in 2015 or 2016, following a physical altercation between Wright and Coyle, on the basis that

to the discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

it was DC 47's grievance, and not that of Local 2187. Farmer convincingly testified that nobody from the Union told her that the settlement agreement required ratification. As a result, there can be little doubt that the City genuinely believed that Wright had the authority to enter the agreement regarding DROP pension benefits.

Local 2187's arguments to the contrary are not persuasive. First of all, it is of no consequence that Coyle charged Wright with violating the AFSCME international constitution following execution of the agreement. Nor does it matter that the AFSCME judicial chairperson found that Wright did not have the actual authority to enter the agreement, which required ratification by the Local 2187 members. How the City was supposed to know this is unclear, especially in light of Farmer's credible testimony regarding her many years of experience with DC 47.³ Although Coyle eventually contacted City representatives in late November 2016, just prior to the public hearing before the Labor and Civil Service Committee on the proposed ordinance, to raise objections to the DROP changes and to maintain that such a change required Local 2187's ratification, the settlement agreement was executed several weeks prior and was binding on the parties. What is more, the City had also already withdrawn its pending appeal of the prior charge in the Commonwealth Court in reliance on the settlement agreement by the time Coyle raised these concerns. In addition, Local 2187's reliance on the City's treatment of DC 33 is similarly misplaced. The record shows that the City resolved the DROP litigation with DC 33 after the DC 33 contract expired and during the course of negotiations for a successor agreement. The City simply resolved the DROP litigation with DC 33 by including the settlement terms for the litigation in DC 33's new contract, which was then ratified by the members. However, merely because the City is aware that contracts must be ratified, it does not follow that the City should have known that resolution of the DROP litigation with DC 47 required ratification by Local 2187, especially in light of the fact that DC 47's contract was still effective for nearly another year. Once again, Farmer had every reason to believe that Wright had the authority to enter the settlement agreement, and nobody from the Union ever told her that the agreement required ratification. As such, it must be concluded that the City did not unilaterally change DROP pension benefits in 2016, but instead bargained those changes with the DC 47 president who had apparent authority to enter the agreement. Accordingly, the charge must be dismissed.

CONCLUSIONS

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

³ Indeed, even the AFSCME judicial panel chairperson Richard Abelson concluded that there were mitigating circumstances present, which required only a minor penalty against Wright, including the October 2, 2014 letter from AFSCME's Eastern Region Director, which could be interpreted as giving the DC 47 president the authority and jurisdiction to settle the DROP litigation. (Union Exhibit 12). And, while Abelson found that Wright violated the Bill of Rights for Union Members, Abelson also noted that "there are countless settlements which arise during the duration of collective bargaining agreements which do not rise to the level of bringing the matter to membership for their 'discussion and vote,'" and that the Bill of Rights for Union Members "does not contemplate or obligate the decision-makers of the controlling subordinate body to bring those settlements back to the membership for their 'discussion and vote.'" (Union Exhibit 12 at 17).

1. The City is a public employer under Section 301(1) of PERA.
2. Local 2187 is an employe organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The City has not committed unfair practices in violation of Section 1201(a)(5) 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 charge is dismissed and the complaint rescinded.

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 27th day of December, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner