

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION No. 249 :
 :
 : CASE NO. PERA-C-18-140-W
 v. :
 :
 CITY OF PITTSBURGH :
 :

PROPOSED DECISION AND ORDER

On June 19, 2018, the International Brotherhood of Teamsters, Local Union No. 249 (Union) filed an amended charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Pittsburgh (City or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On July 17, 2018, the Secretary of the Board issued a complaint and notice of hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating November 19, 2018, in Pittsburgh, as the time and place of hearing, if necessary.

The hearing was held on November 19, 2018, in Pittsburgh, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed its post-hearing brief on March 11, 2019. The City filed its post-hearing brief on April 8, 2019.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The City is a public 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 Union represents a unit of blue-collar workers in the City's refuse department and also blue-collar animal controllers. (N.T. 24).
4. On or about August 3, 2016, the Union and the City entered into a Memorandum of Understanding [MOU] which states in relevant part:

WHEREAS, the Union and the City are signatories to a collective bargaining agreement effective by its terms from November 14, 2011 to December 31, 2015, and continued thereafter through an agreement by the parties, covering a bargaining unit of the City's employees employed in the

Bureau of Environmental Services and the Bureau of Animal Control (hereinafter the "CBA"); and

WHEREAS, the Union and the City have reached a Tentative Agreement on the successor CBA (hereinafter the "2016 CBA"); and

WHEREAS, the City is currently in financially-distressed status and is under Act 47 oversight, which the City asserts prevents the negotiation of financial enhancements beyond those provided by the Act 47 Recovery Plan; and

WHEREAS, the Union filed an unfair labor practice charge with the [Board] at Case No. PERA-C-15-339-W regarding the City's bargaining position while under the Act 47 Recovery Plan; and

WHEREAS, the City anticipates that it will exit Act 47 oversight sometime during the term of the 2016 CBA:

NOW THEREFORE, the City and the Union agree as follows:

1. In the event that the 2016 CBA is ratified by the City and the Union, the Union will promptly withdraw the above reference [Board] charge (Case Number PERA-C-15-339-W) with prejudice.
2. Upon the City's exit from the Act 47 Recovery Plan or Act 47 Oversight during the term of the 2016 CBA the City will notify the Union in writing. The Union will then have the right to reopen certain provisions of the 2016 CBA as set forth in Paragraph 3 below.
3. Should the Union decide to reopen the 2016 CBA, the Union will provide written notice of same to the City. Upon receipt of the Union's written demand, the City agrees to reopen the 2016 CBA for the sole and exclusive purpose of negotiating over following topics: Life Insurance Coverage, Holidays, Pay for Saturday Work (under Article VII, Section A(3)), and Sick Leave. . .

(N.T. 16; Joint Exhibit 1).

5. Contemporaneously with the execution of the MOU, the City submitted the first Tentative Agreement mentioned in the Memorandum of Understanding to its Act 47 Coordinator for approval pursuant to Act 47. The Tentative Agreement was agreed to by the City and the Union. This first Tentative Agreement was rejected due to a technical issue with monetary allotments as the Act 47 Coordinator considered them to be forbidden wage increases. (N.T. 19, 26-27; Joint Exhibit 2).

6. After the first Tentative Agreement was first rejected by the Act 47 Coordinator, the City and the Union agreed to a revised Tentative Agreement which fixed the issues raised by the Act 47 Coordinator. Specifically, the City and the Union agreed to a bonus payout over a three-year period which alleviated a problem the Act 47 Coordinator had with an initial plan for percentage wage increases. This revised Tentative Agreement was accepted by the Act 47 Coordinator. (N.T. 19-20, 27; Joint Exhibit 3).

7. After the approval of the Tentative Agreement by the Act 47 Coordinator, the parties, on or about October 27, 2016, executed a collective bargaining agreement effective January 1, 2016, through December 31, 2020 [the 2016 CBA]. (Joint Exhibit 4).

8. The 2016 CBA contains an integration or "zipper" clause which provides as follows:

This Agreement spells out the total agreement in its entirety between the parties, including all wages, salaries, pensions and fringe benefits, and there shall be no other additions or changes during the term of the Agreement.

The parties are aware of the [Board's] revised policy concerning "zipper clauses" Venango County Board of Assistance, 11 PPER 11223 (1980), aff'd 14 PPER 14122 (1983), and state unequivocally that the language of this Article is intended to evidence an unmistakable intent to relinquish the right to bargain over any mandatory subject of bargaining, whether or not that subject is specifically dealt with in this Agreement, during the term of this Agreement, notwithstanding the holdings of the PLRB and the Commonwealth Court in Venango County.

(Joint Exhibit 4, page 60).

9. In February, 2018, the City was released from Act 47 oversight. On May 3, 2018, the Union sent a letter to the City which requested to bargain specific provisions of the 2016 CBA pursuant to the MOU. In response, the City responded by letter and refused to reopen negotiations stating that the MOU "was never incorporated by the parties into our [2016 CBA] As such that MOU is a legal nullity pursuant to our agreed zipper clause" (N.T. 27-31, Joint Exhibit 7).

DISCUSSION

The Union alleges that by refusing to bargain over terms and conditions of employment when the Union exercised its right under the MOU to reopen negotiations with respect to four mandatory subjects of bargaining (life insurance coverage, holidays, pay for Saturday work and sick leave), the City committed an unfair practice in violation of Section 1201(a) (1) and (5) of PERA.

The refusal to collectively bargain over mandatory subjects of bargaining is an unfair practice under PERA. Section 701 provides: "Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employes to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment. . . ." 43 P.S. § 1101.701.

Section 1201(a) (5) provides that it is an unfair practice for public employers to "Refus[e] 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 to the discussing of grievances with the exclusive representative." 43 P.S. § 1101.1201(a) (5).

The record is clear that the MOU contains a reopener provision and that the Union demanded to reopen the 2016 CBA and bargain over the topics referenced in the MOU: life insurance coverage, holidays, pay for Saturday work and sick leave pursuant to the MOU. The City does not contest that the topics referenced in the MOU are generally mandatory subjects of bargaining. The record is also clear that the City steadfastly refused the Union's unilateral demand to collective bargain based on the MOU reopener.

The contest in this matter concerns the City's interpretation of the 2016 CBA that it is not bound by the MOU because the MOU was not incorporated into the subsequent 2016 CBA and is thus "a legal nullity".¹ I disagree with the City that the 2016 CBA erased or nullified the MOU and find instead that the MOU is a governing document between the parties that did not have to be expressly incorporated into the 2016 CBA to be considered part of the parties' overall agreement. Members of the Police Department of the Borough of Boyertown v. Pennsylvania Labor Relations Board (Boyertown), 39 PPER 154 (Commonwealth Court, 2008); Sprague v. Central States, Southeast and Southwest Pension Fund, 269 F.3d 811 (7th Cir. 2001). Applying Boyertown and Sprague to this matter, I find that it is clear from the record that the MOU is a collectively bargaining document that governs the parties' behavior and should be read together with the 2016 CBA. Importantly, the MOU explicitly mentions the 2016 CBA, the Tentative Agreement, the City's status in Act 47 oversight, and the prospect that the City will leave Act 47 oversight within the term of the 2016 CBA. It is clear from the face of the MOU that it was negotiated, in part, because the City is "currently in financially-distressed status and is under Act 47 oversight, which the City asserts prevents the negotiation of financial enhancements beyond those provided by the Act 47 Recovery Plan." Further, the MOU was executed at the same time as the first Tentative Agreement, which, with minor changes required by the Act 47 Coordinator, became the 2016 CBA. Additionally, the explicit terms of the MOU are prospective and contemplate the reopener provision being enforceable during the term of the 2016 CBA. Thus, it is clear from the explicit terms of the MOU that the intent of the parties was for it

¹ The City makes additional technical arguments in its brief including but not limited to failure to exhaust administrative remedies, lack of consideration, and unilateral mistake. I have considered all these arguments and hereby reject them.

to be considered in conjunction with the CBA and that the failure of the 2016 CBA to explicitly incorporate the MOU does not defeat its status as a governing agreement between the parties.

Therefore, the reopener language in the MOU is enforceable against the City and the City committed an unfair practice when it refused to bargain life insurance coverage, holidays, pay for Saturday work and sick leave pursuant to the MOU's reopener clause.

CONCLUSIONS

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

1. The City is a public 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 City has committed unfair practices in violation of Section 1201(a) (1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the City of Pittsburgh shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.
2. Cease and desist from 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 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 bargain with the Union pursuant to the Memorandum of Understanding;
 - (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 the bargaining unit 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 Union.

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 at Harrisburg, Pennsylvania, this fifth day of June, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

