

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE :  
COUNTY AND MUNICIPAL EMPLOYEES :  
DISTRICT COUNCIL 89 :  
v. : Case No. PERA-C-10-10-E  
LANCASTER COUNTY :

**PROPOSED DECISION AND ORDER**

On January 12, 2010, AFSCME, District Council 89 (AFSCME), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that Lancaster County (County) violated sections 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by refusing to implement the financial terms of an interest arbitration award covering its prison guards for 2010 and 2011.<sup>1</sup> On January 26, 2010, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on April 27, 2010, if conciliation did not result in a resolution of the charge by then. On February 12, 2010, the County filed an answer admitting that it had passed a resolution rejecting the financial terms of the award for 2010 and 2011 but denying that it had thereby committed unfair practices. The hearing examiner subsequently continued the hearing upon the request of AFSCME and without objection by the County. On September 10, 2010, the hearing examiner held the hearing and afforded both parties a full opportunity to present testimony and to cross-examine witnesses. On December 6, 2010, each party filed a brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the evidence presented at the hearing and from all the other matters of record, makes the following:

FINDINGS OF FACT

1. On April 17, 1975, the Board certified AFSCME as the exclusive representative of a bargaining unit that includes prison guards employed by the County. (Case No. PERA-R-5662-E)
2. Effective January 1, 2006, the parties entered into a three-year collective bargaining agreement. (N.T. 15; Union Exhibit 1)
3. On April 16, 2009, a panel of arbitrators issued an interest arbitration award with the following financial terms:

**"DIFFERENTIALS**

"Article 15, Section 1 (A) [of the parties' 2006-2008 collective bargaining agreement] shall be amended to provide:

Section 1. Shift Differential

- (A) A shift differential of seventy cents (\$.70) per hour shall be paid to employees working the 4:00 p.m. to midnight or the midnight to 8:00 a.m. shifts. The shift differential shall be increased to seventy five cents (\$.75) per hour effective January 1, 2010 and to eighty cents (\$.80) per hour effective January 1, 2011.

Article 15, Section 2 shall be amended to list all permanent posts and commitment posts. Additionally, the job shift differentials in Section 2(A), (C), (D) and (E) shall increase to seventy five cents (\$.75) per hour effective January

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<sup>1</sup> AFSCME also charged that the County committed unfair practices when it notified AFSCME of its intent to modify insurance and retirement provisions of the award, but the parties stipulated that the only issue before the Board relates to the County's refusal to implement the financial terms of the award (N.T. 31).

1, 2009; to eighty cents (\$.80) per hour effective January 1, 2010; and, to eighty-five cents (\$.85 per hour effective January 1, 2011.

\* \* \*

#### WAGES AND LONGEVITY

Article 23, Section 1 shall be amended to provide:

##### Section 1. Salary - New Hires

- (A) Effective January 1, 2009, the starting rate for new corrections officers will be \$14.38 per hour.
- (B) Effective January 1, 2010, the starting rate for new corrections officers will be \$14.88 per hour.
- (C) Effective January 1, 2011, the starting rate for new corrections officers will be \$15.88 per hour.

Article 23, Section 2 shall be amended to provide:

##### Section 2. Salary - Current Employees

- (A) Effective January 1, 2009, all employees will receive a salary increase of \$.75 per hour.

Effective July 1, 2009, all employees will receive a salary increase of \$.50 per hour.

- (B) Effective January 1, 2010, all employees will receive a salary increase of \$.75 per hour.

Effective July 1, 2010, all employees will receive a salary increase of \$.50 per hour.

- (C) Effective January 1, 2011, all employees will receive a salary increase of \$.75 per hour.

Effective July 1, 2011, all employees will receive a salary increase of \$.50 per hour."

(N.T. 16; Union Exhibit 2)

4. The County did not appeal the award. (N.T. 19)

5. During its deliberations for a 2010 budget, the County's board of commissioners calculated the cost of implementing the financial terms of the award for 2010 to be "up to \$650,000.00." (N.T. 104-105)

6. On November 18, 2009, the board of commissioners passed resolution no. 88 of 2009 providing as follows:

"WHEREAS, The Board of Commissioners has met and considered the interest arbitration award issued in the Matter of the Interest Arbitration between AFSCME District Council 89 and Lancaster County, concerning the correctional officers bargaining unit at the Lancaster County Prison; and

WHEREAS, In conjunction with its budgeting hearings and processes, the Board of Commissioners has determined that the financial terms of the award for calendar years 2010 and 2011 would require the appropriation of funds and/or the levying of taxes,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF LANCASTER COUNTY, PENNSYLVANIA, to reject the financial terms of the award for 2010 and 2011, including the provisions concerning Wages and Longevity, Insurance and Retirement, and Differentials."

(N.T. 19-20, 25, 104, 106-107; Employer Exhibit 6)

7. In December 2009, the board of commissioners passed resolution no. 96 of 2009 adopting an operating budget for 2010 of \$264,260,964.00 without a tax increase. The operating budget includes an anticipated year-end fund balance of \$4,537,919.00. (N.T. 91-92, 103, 115, 127-128; Employer Exhibit 4)

8. On January 1, 2010, the County did not implement the financial terms of the award. (N.T. 29, 31)

9. As of the date of the hearing, the County had not adopted a budget for 2011. (N.T. 92)

#### DISCUSSION

AFSCME has charged that the County committed unfair practices under sections 1201(a)(1) and (5) of the PERA by refusing to implement the financial terms of an interest arbitration award covering its prison guards for 2010 and 2011. AFSCME filed the charge after the County passed a resolution rejecting the financial terms of the award for both of those years and after the County did not implement the financial terms of the award for 2010. See findings of fact 6 and 8. According to AFSCME, legislative action was not required for the financial terms of the award for either of those years to be effective, so the financial terms of the award for both 2010 and 2011 are final and binding on the County.

The County contends that the charge should be dismissed because the financial terms of the award for both years required legislative action to be effective and because its board of commissioners lawfully met, considered and rejected those terms on that basis, making them advisory only.

Resolution of the charge requires an interpretation of section 805 of the PERA, which provides as follows:

"Notwithstanding any other provisions of this act where representatives of units of guards at prisons or mental hospitals or units of employes 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."

In Franklin County Prison Board v. PLRB, 491 Pa. 50, 417 A.2d 1138 (1980), our Supreme Court set forth the analysis to be applied in interpreting section 805. As the Court initially observed,

"[w]here an arbitration award would infringe on the legislative power of the General Assembly or of the lawmaking body of a political subdivision of the Commonwealth, as where the appropriation of funds and/or the levying of taxes is required by the award, then that award is invalid under Art. III, section 31 [of the Pennsylvania Constitution] as an attempted delegation of legislative power to a non-legislative body."

491 Pa. at 59-60, 417 A.2d at 1142-43. As the Court went on to state,

"[w]here it is *demonstrated* by the public employer that the lawmaking body has met, considered and rejected an arbitration award concerning financial items, then Art. III, sec. 31 and the proviso of section 805 become operative, and the award is

thereby rendered advisory only. In such an event, the only recourse at present available to the public employees is either a constitutional amendment or resort to the political processes."

491 Pa. at 62, 417 A.2d at 1144 (emphasis in original).

In County of Allegheny v. ACAPE, 517 Pa. 505, 539 A.2d 348 (1988), the Court reiterated the applicable law as follows:

"As the lower courts in this case correctly observed, *Franklin County* placed the burden of demonstrating that an arbitration award is advisory only upon the public employer which must establish (1) that 'legislative enactment,' i.e. the levying of taxes or appropriation of funds, is necessary to implement the award and (2) if so, that the public employer has, in fact, met, considered and rejected the award."

517 Pa. at 513, 539 A.2d at 352-353. Applying the law to the facts of record in that case, the Court found an interest arbitration award to be final and binding, reasoning as follows:

"[In] November and December of each year, budget requests are made from the various departments or agencies in the county, which are compiled into the official county annual budget. The rate of taxation is then set in order to provide funding for items in the budget. Thus, it is this process whereby 'taxes are levied' and 'funds are appropriated.'

During the administration of the county government, changes will be made from one line item of the budget to another. According to the witnesses and the evidence presented by [the County], the Commissioners can independently by majority vote increase or decrease the amount of money allotted to any given line item. The money transferred into a line item generally comes from some other line item with excess or surplus funds.

[The County's] evidence also documented that no money was appropriated during the initial budget adoption proceedings for fiscal year 1980 for increased wages for court-related employees. However, during the year 1980, funds were subsequently transferred into that line item for that purpose (although not pursuant to this arbitration award). We cannot help but believe that such an informal transfer of funds from one line item to another within a massive county budget does not constitute a 'legislative enactment.'

We assume that any arbitration award which grants increased wages to public employees will require such a line item transfer within the political subdivision's budget. Thus, to find that such a transfer constitutes a legislative enactment produces the exact absurd result which the courts of this Commonwealth have struggled to avoid -- that of emasculating the value of arbitration as a tool to solve conflicts in labor relations, and overriding the legislature's clear intent that arbitration awards be final and binding on the parties. Rather, we believe that the intended result of the legislature in enacting [Act 195] will be honored and effectuated by considering the budget adoption process as legislative enactment, and the subsequent transfer of funds from one line item to another to constitute the ordinary administration of municipal affairs.

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Of course, where the implementation of an arbitration award would require the local governmental body to levy further taxes in order to have funds to appropriate to such line item, then the legislature cannot constitutionally be forced to take such action. This would clearly be legislative enactment, and would conflict with *Franklin County's* expressed concern over taxation without representation. However, where there is money available in the government's general fund or from other items with surplus funds, we hold that in order to effectuate the policy and intent of [Act 195], such money must administratively be transferred to fund a legally binding arbitration award.

The [County] did not submit evidence at the hearing held on September 17, 1984, to show that the Allegheny County budget for the year 1980 did not have sufficient revenues to fund the instant arbitration award. They did indicate that the court's salary account was overdrawn so that more money had to be transferred into that account. However, since it has not been shown that there were no other items in the budget with excess or surplus funds available for administrative transfer to the salary account, we find that the arbitration award . . . must be implemented."

517 Pa. at 514-516, 539 A.2d at 353-354 (quoting Judge Shanahan from the court below).

Application of the law to the facts of record here leads to the same result as to the financial terms of the award for 2010. As a close review of the record reveals, the County in deliberating its budget for 2010 calculated the cost of implementing the financial terms of the award for 2010 to be "up to \$650,000.00" (finding of fact 5), adopted a budget of \$264,260,964.00 for 2010 without raising taxes (finding of fact 7) and included in the budget an anticipated year-end fund balance of \$4,537,919.00. *Id.* Given that the cost of the financial terms of the award for 2010 as calculated by the County<sup>2</sup> is less than the anticipated year-end fund balance it included in its budget for 2010, it is apparent that the County could have funded the financial terms of the award for 2010 without raising taxes or appropriating funds. Thus, as was the case with the interest arbitration award in ACAPE, *supra*, there is no basis for finding that the financial terms of the award for 2010 required legislative action to be effective. See also Lycoming County v. PLRB, 943 A.2d 333 (Pa. Cmwlth. 2007) (an interest arbitration award was final and binding where the employer's budget included sufficient monies to fund the award without a tax increase); Butler County Correctional Officers v. Butler County Commissioners, 505 A.2d 1104 (Pa. Cmwlth. 1986) (an interest arbitration award was final and binding where the employer did not show that its budget included insufficient monies to fund the award without a tax increase). Under the circumstances, the financial terms of the award for 2010 were final and binding, and the County committed unfair practices by refusing to implement them.

In support of its contention that legislative action was required to implement the financial terms of the award for 2010, the County presented evidence of the dire economy it faced in preparing its budget for 2010, causing it to furlough employes, to reorganize programs, not to grant pay increases to other employes and to cut back on funding for programs (N.T. 97-103). The County also presented evidence that it has a policy to treat union and non-union employes alike for purposes of pay increases (N.T. 101, 113), that it is prudent to "over-budget slightly" (N.T. 107-108), that its policy is to over-budget by approximately 3% (N.T. 185), that "a lot of our General Fund isn't just discretionary funds" but is designated for a specific purpose such as capital projects (N.T. 115-116, 118) and that the fund balance it carries over at the end of the year has been decreasing in recent years (N.T. 116, 185). Under the law as set forth in ACAPE, *supra*, however, whether or not the County acted in good faith in refusing to implement the financial terms of the award for 2010 is irrelevant. Moreover, inasmuch as the County had the burden of showing that the financial terms of the award required legislative action to be effective, *see id.*, the fact that some its funds are designated for a specific purpose is unavailing as the fact remains that it has discretion to spend others.

The County also posits that the rationale of Franklin County, *supra*, is inapplicable because the interest arbitration award was issued before it adopted its budget for 2010. As the County points out, Franklin County involved an interest arbitration award that was issued after the employer had adopted its budget for the year in question. As the County further points out, in County of Lehigh v. AFSCME, District Council 88, Local 543, 505 A.2d 1104 (Pa. Cmwlth. 1986), our Commonwealth Court held that an employer was under no obligation to implement the second and third years of an interest arbitration award because the employer had yet to adopt a budget for those years. Although, as noted below, the County's argument has merit as to 2011 since it has

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<sup>2</sup> For the hearing, the County precisely calculated the cost of the financial terms of the award for 2010 to be \$658,936.00 (N.T. 49; Employer Exhibit 2), while AFSCME calculated the cost of those terms to be \$484,833.00 (Exhibit Union 7). The discrepancy in the parties' calculations need not be resolved, however, because the anticipated year-end fund balance for 2010 exceeds both calculations. Thus, under either calculation, there is no basis for finding that legislative action was required for the financial terms of the award for 2010 to be effective.

yet to adopt a budget for that year, the rationale of Franklin County is wholly applicable where the employer, as here, refuses to implement an interest arbitration award after it adopts a budget for the year in question. To find otherwise would, in the words of the Court in ACAPE, supra,

"produce[] the exact absurd result which the courts of this Commonwealth have struggled to avoid -- that of emasculating the value of arbitration as a tool to solve conflicts in labor relations, and overriding the legislature's clear intent that arbitration awards be final and binding on the parties."

517 Pa. at 515, 539 A.2d at 353. Moreover, given that the County has adopted a budget for 2010, County of Lehigh is distinguishable on the facts.

In addition, the County points out that Allegheny County, 15 PPER ¶ 15095 (Final Order 1984), supports its contention. In that case, the Board found that the transfer of funds within a budget is a legislative action. As noted above, however, ACAPE, supra, holds otherwise. Moreover, in Butler County Correctional Officers, supra, the Court expressly rejected the Board's analysis in Allegheny County. See 505 A.2d at 1112. The County's reliance on Allegheny County is, therefore, misplaced.

A different result obtains as to the financial terms of the award for 2011, however. As noted above, in County of Lehigh, supra, our Commonwealth Court held that an employer could not have committed unfair practices by refusing to implement the second and third years of an interest arbitration award where the employer had yet to pass a budget for those years. Notably, as of the date of the hearing, the County had yet to adopt a budget for 2011 (finding of fact 8). Thus, on the current record, there is no basis for finding that the County has committed unfair practices by refusing to implement the financial terms of the award for 2011.

AFSCME contends that County of Lehigh was decided before ACAPE and thus is not good law. In ACAPE, however, the Court cited County of Lehigh with approval and without reservation. See 517 Pa. at 514, 539 A.2d at 353. AFSCME's contention is, therefore, without merit.

As to remedy for the unfair practices the County has committed, interest will be ordered per Lycoming County, supra, in order to make members of the bargaining unit whole.

#### CONCLUSIONS

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

1. The County is a public employer under section 301(1) of the PERA.
2. AFSCME is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties hereto.
4. The County has committed unfair practices under sections 1201(a) (1) and (5) of the PERA.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the County shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in article IV of the PERA.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of the employes in an appropriate unit, including but not limited to the discussion of grievances with the exclusive representative.

3. Take the following affirmative action:

a. Implement the financial terms of the interest arbitration award for 2010;

b. Pay interest at the simple rate of six per cent per annum on the monies due employes under the award from the date they were to have received the monies to the date they receive the monies;

c. 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;

d. Furnish to the board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision in order by completion and filing of the attached Affidavit of Compliance;

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 (20) days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourteenth day of December 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE :  
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**AFFIDAVIT OF COMPLIANCE**

The County hereby certifies that it has ceased and desisted from its violations of sections 1201(a)(1) and (5) of the PERA, that it has implemented the financial terms of the interest arbitration award for 2010 with interest as set forth in the proposed decision and order, that it has posted the proposed decision and order as directed and that it has served a copy of this affidavit on AFSCME.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

\_\_\_\_\_  
Signature of Notary Public