

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

UNITED STEELWORKERS LOCAL 9305 :  
KATHRYN STANDISH :  
 :  
 v. : Case No. PERA-C-10-173-W  
 :  
AMBRIDGE WATER AUTHORITY<sup>1</sup> :

**PROPOSED DECISION AND ORDER**

On May 17, 2010, Kathryn Standish and USW 9305-12 (USW) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the Ambridge Water Authority (Authority) violated section 1201(a)(8) of the Public Employee Relations Act (Act) by "not act[ing] on the Binding Mediation ruling[] of Mr. Joseph A. Lamenza" that Ms. Standish had "the opportunity to bump to another job where [her] ability, physical fitness, and seniority allows."<sup>2</sup> On June 9, 2010, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 19, 2010, if conciliation did not resolve the charge by then. On June 28, 2010, the Authority filed an answer denying, among other things, that it had "failed to act on the ruling[] of Mr. Lamenza." On June 15, 2010, the hearing examiner, upon the request of Ms. Standish and the USW and without objection by the Authority, continued the hearing. On October 26, 2010, the parties appeared for the hearing<sup>3</sup> but entered into a "conditional" settlement agreement and requested an indefinite continuance so they might "confer and attempt to resolve the question of the appropriate amount of back pay to be paid" (N.T. I 6-8). The hearing examiner continued the hearing as requested (N.T. I 8).

On March 24, 2011, Ms. Standish and the USW requested that the hearing be rescheduled because the parties had been unable to resolve the appropriate amount of back pay to be paid. On March 31, 2011, the hearing examiner rescheduled the hearing to June 30, 2011. On June 30, 2011, the hearing examiner held the hearing<sup>4</sup> and afforded the parties a full opportunity to present testimony and to cross-examine witnesses as to whether or not the Authority had complied with the settlement agreement as to Ms. Standish.<sup>5</sup> On July 5, 2011, the Authority filed a brief by deposit in the U.S. Mail. On July 6, 2011, Ms. Standish and the USW filed a brief by deposit in the U.S. Mail.

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

**FINDINGS OF FACT**

1. On September 9, 1994, the Board certified the United Steelworkers of America as the exclusive representative of a bargaining unit that includes nonprofessional employees of the Authority. (Case No. PERA-R-94-233-W)

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<sup>1</sup> The caption appears as amended by the hearing examiner. The caption previously included Paulette Battisti as a named complainant and Myron Sainovich, Esquire, as a named respondent. Ms. Battisti's name has been struck from the caption because she has reached a settlement with the Authority. See footnote 5. Thus, her charge is not presently before the Board. Mr. Sainovich's name has been struck from the caption because he is legal counsel for the Authority and would not be personally liable for any unfair labor practices he may have committed as such. See Wilson School District, 24 PPER ¶ 24068 (Final Order 1993) (only the principal is liable for unfair practices committed by its agents).

<sup>2</sup> Ms. Standish and the USW also filed the charge against Mr. Sainovich, but the charge only states a cause of action against the Authority. See footnote 1.

<sup>3</sup> The notes of testimony from the October 26, 2010, hearing will be proceeded by a I.

<sup>4</sup> The notes of testimony from the June 30, 2011, hearing will be proceeded by a II.

<sup>5</sup> The parties represented that they settled the charge as to Ms. Battisti (N.T. II 6-7).

2. On October 30, 2009, the Authority laid off Ms. Standish. (N.T. II 23; Respondent Exhibit 2)

3. On April 5, 2010, a mediator (Joseph A. Lamenza) issued a recommendation in settlement of a grievance as to whether or not the Authority had the right to lay off Ms. Standish. The mediator wrote that Ms. Standish "should have been offered the opportunity to bump to another job where [her] ability, physical fitness and seniority allows" and recommended that she "be offered the opportunity to bump to another job with the Ambridge Water Authority where [she has] the ability, physical fitness and seniority to perform the work." (N.T. II 10, 24, 36, 42; Respondent Exhibit 4)

4. On October 26, 2010, the parties entered into a "conditional" settlement agreement under which the Authority was to place Ms. Standish in an operator trainee position subject to review of her performance over time to make sure she could perform the work and the parties were to "confer and attempt to resolve the question of the appropriate amount of back pay" due Ms. Standish as the result of the Authority not having offered her the opportunity to bump to another job, giving credit for interim earnings and unemployment compensation received by her since it denied her that opportunity. (N.T. I 6-8)

5. By November 19, 2010, Ms. Standish had lost wages totaling \$39,773.60, had gross interim earnings totaling \$5,539.00, had received gross unemployment compensation benefits totaling \$21,636.00 and had paid \$2,244.00 for her COBRA benefits. (N.T. II 7, 21; Complainant Exhibit 1)

6. On November 19, 2010, the Authority placed Ms. Standish in an operator trainee position. (N.T. II 6-7, 10, 17, 25)

7. On December 23, 2010, Ms. Standish resigned. (N.T. II 11, 20; Respondent Exhibit 1)

8. The parties have been unable to resolve the appropriate amount of back pay due Ms. Standish under the settlement agreement. (N.T. 6-7)

#### DISCUSSION

Ms. Standish and the USW contend that the Authority has refused to comply with an agreement they entered into in settlement of a charge alleging that the Authority had committed an unfair practice by "not act[ing] on the Binding Mediation ruling[] of Mr. Joseph A. Lamenza" that Ms. Standish had "the opportunity to bump to another job where [her] ability, physical fitness, and seniority allows."

Under the settlement agreement, which the parties deemed "conditional," the Authority was to place Ms. Standish in an operator trainee position subject to review of her performance over time to make sure she could perform the work, and the parties were to "confer and attempt to resolve the question of the appropriate amount of back pay" due Ms. Standish as the result of the Authority not having offered her the opportunity to bump to another job, giving credit for interim earnings and unemployment compensation received by her since it denied her that opportunity. See finding of fact 4.

The parties have been unable to resolve the appropriate amount of back pay due Ms. Standish under the settlement agreement. See finding of fact 8.

According to Ms. Standish and the USW, the appropriate amount of back pay due Ms. Standish under the settlement agreement would include \$15,460.40 in net lost earnings (\$39,773.60 in gross lost wages less \$4,845.20 in net interim earnings less \$19,468.00 in net unemployment compensation), \$2,244.00 she paid for COBRA benefits, full credit for her pension for all lay-off time and reimbursement for sick days and vacation entitlement she lost while she was laid off (Complainant Exhibit 1).

According to the Authority, the appropriate amount of back pay due Ms. Standish is zero because back pay under the settlement agreement was conditioned on her remaining in the employment of the Authority, which did not happen. See finding of fact 7. The

Authority also presented testimony that Ms. Standish earned no vacation leave after she returned to work under the settlement agreement (N.T. II 31-32).

A close review of the settlement agreement does not show that remaining in the employment of the Authority was a condition for Ms. Standish to receive back pay. Rather, it shows that Ms. Standish's continued employment with the Authority was conditioned on her being able to perform the work of an operator trainee. Thus, Ms. Standish is entitled to an appropriate amount of back pay even though she resigned after the parties entered into the settlement agreement. See Avery v. PLRB, 509 A.2d 888 (Pa. Cmwlth. 1986) (an employer is obligated to comply with the provisions of an agreement in settlement of a charge).

As noted above, the settlement agreement contemplates back pay with two offsets: credit for her interim earnings and credit for her unemployment compensation. Thus, the appropriate amount of back pay due Ms. Standish would include \$12,598.60 for her lost wages (\$39,773.60 in gross compensation less \$5,539.00 in gross interim earnings less \$21,636.00 in gross unemployment compensation benefits), see finding of fact 5, \$2,244.00 for her COBRA benefits, id., full credit toward her pension for the period of her layoff and reimbursement for her sick and vacation leave entitlements while she was laid off. The fact that she did not earn any vacation leave after she returned to work is of no moment as back pay by definition relates to the period before, not after, an employe returns to work.

No merit is found in the contention of Ms. Standish and the USW that she is entitled to \$15,460.40 in lost wages. Their calculation in that regard gives her credit for taxes paid by her on her interim earnings and the unemployment compensation she received. A close review of the settlement agreement shows, however, that credit is only to be given for interim earnings and unemployment compensation received by her. See finding of fact 4. Thus, there is no basis for offsetting from her gross wages lost the taxes she paid on her interim earnings and her unemployment compensation. See Corry Area School District, 38 PPER 155 (Final Order 2007) (back pay is to make employes whole, not to give them a windfall).

#### CONCLUSIONS

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

1. The Authority is a public employer under section 301(1) of the PERA.
2. Ms. Standish was a public employe under section 301(2) of the PERA.
3. The USW is an employe organization under section 301(3) of the PERA.
4. The Board has jurisdiction over the parties.
5. The Authority is in violation of the settlement agreement.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the Authority shall:

1. Comply with the settlement agreement.
2. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the PERA:

(a) Pay Ms. Standish \$12,598.60 for her lost wages and \$2,244.00 for her COBRA benefits, credit her pension for the period of her layoff and reimburse her for her sick and vacation leave entitlements while she was laid off.

(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 its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this 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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twentieth day of July 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner

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**AFFIDAVIT OF COMPLIANCE**

The Authority hereby certifies that it has complied with the settlement agreement, that it has paid Ms. Standish back pay as directed, that it has posted the proposed decision and order as directed and that it has served an executed copy of this affidavit on Ms. Standish and the USW.

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

\_\_\_\_\_  
Title

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

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Signature of Notary Public