

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

FINAL ORDER

On August 8, 2011, the Ambridge Water Authority (Authority) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to a Proposed Decision and Order (PDO) issued on July 20, 2011. In the PDO, the Board's Hearing Examiner concluded that the Authority failed to comply with a settlement agreement reached by the parties at the hearing on the Charge of Unfair Practices filed by the United Steelworkers, Local 9305 (Union). The Union did not file a response to the Authority's exceptions.

This matter arose on May 17, 2010, when the Union and Kathryn Standish¹ filed a Charge of Unfair Practices with the Board alleging that the Authority violated Section 1201(a)(3) and (8) of the Public Employe Relations Act (PERA). On June 9, 2010, a Complaint and Notice of Hearing was issued by the Secretary of the Board. After a continuance request was made by the Union and Ms. Standish, a hearing was held on October 26, 2010, and a settlement of the matter was set forth on the record by the Authority and the Union in lieu of testimony. The hearing was thereafter continued to allow for compliance with the settlement agreement.

On March 24, 2011, the Union and Ms. Standish requested that the hearing be rescheduled because the Authority had not paid Ms. Standish the back pay due under the settlement agreement. The hearing was held on June 30, 2011, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

The Hearing Examiner's findings of fact are summarized as follows. On October 30, 2009, the Authority laid off Ms. Standish and a grievance was filed. On April 5, 2010, a mediator issued a recommendation in settlement of the grievance as to whether the Authority had the right to lay off Ms. Standish. The mediator recommended that Ms. Standish be offered the opportunity to bump to another job where she had the ability, physical fitness and seniority to perform the work.

After the Union and Ms. Standish filed the Charge of Unfair Practices alleging that the Authority failed to comply with the mediator's decision, the parties appeared for a hearing before the Board's Hearing Examiner on October 26, 2010. In lieu of testimony, the parties entered into a "conditional" settlement agreement. In the agreement, the Authority was to place Ms. Standish in an operator trainee position subject to review of her performance to determine whether 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 as the result of the Authority laying Ms. Standish off and not having offered her the opportunity to bump to another job. The back pay award was to be offset by interim earnings and unemployment compensation received by Ms. Standish.

On November 19, 2010, the Authority reinstated Ms. Standish and placed her in an operator trainee position. By November 19, 2010, Ms. Standish had lost wages totaling \$39,773.60, had gross interim earnings totaling \$5,539, had received gross unemployment compensation benefits totaling \$21,636 and had paid \$2,244 for COBRA benefits. Ms.

¹ The Charge of Unfair Practices also named Paulette Battisti as a complainant. However, the parties reached a settlement concerning her allegations against the Authority. Therefore, the allegations in the Charge regarding Ms. Battisti are no longer before the Board.

Standish resigned from the Authority on December 23, 2010. The parties were unable to resolve the appropriate amount of back pay due under the settlement agreement.

The Hearing Examiner issued the PDO on July 20, 2011, concluding that the Authority failed to comply with the parties' settlement of the Charge. By way of remedy, the Hearing Examiner ordered the Authority to pay Ms. Standish \$12,598.60 for lost wages and \$2,244 for COBRA benefits, to reimburse her for sick and vacation leave entitlements and to credit her pension for the period of her layoff.

The Authority alleges in its exceptions that the Hearing Examiner erred in concluding that it failed to comply with the settlement agreement because Ms. Standish did not complete the training for the operator trainee position. Therefore, the Authority asserts that she is not entitled to any back pay.

A public employer is required to comply with the provisions of an agreement which settles an unfair practice charge. See Avery v. PLRB, 509 A.2d 888 (Pa. Cmwlth. 1986); see also FOP Lodge 27 v. Springfield Township, 42 PPER 20 (Final Order, 2011). The Board agrees with the Hearing Examiner's determination that the record does not contain any evidence showing that Ms. Standish's entitlement to back pay was conditioned upon her successfully completing the training for the operator trainee position and remaining employed by the Authority. Further, contrary to the Authority's assertion, the payment of back pay would not result in a windfall to Ms. Standish. Indeed, the amount of back pay owed to Ms. Standish would make her whole for the loss of pay and benefits she incurred from October 30, 2009, the date she was laid off, until November 19, 2010, the date she was reinstated and placed into the operator trainee position. Moreover, the fact that the parties' settlement expressly grants the Authority a set-off for interim earnings and unemployment compensation received by Ms. Standish during the period she was out of work only further supports the Hearing Examiner's conclusion that she is to be made whole for her loss of earnings during that same timeframe. Because the Authority's payment of back pay under the settlement agreement is not conditioned on Ms. Standish's completion of training for the operator trainee position, it is irrelevant whether she completed the training in determining the amount of back pay owed. Therefore, the Hearing Examiner properly concluded that the Authority violated the parties' settlement agreement.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Ambridge Water Authority are hereby dismissed, and the July 20, 2011 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman and James M. Darby, Member, this twentieth day of December, 2011. 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.

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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 and Final Order as directed and that it has served an executed copy of this affidavit on Ms. Standish and the Union.

Signature/Date

Title

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

Signature of Notary Public