

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE :
COUNTY AND MUNICIPAL EMPLOYEES :
DISTRICT COUNCIL 89 :
 :
v. : Case No. PERA-C-11-28-E
 :
LANCASTER COUNTY :

PROPOSED DECISION AND ORDER

On January 24, 2011, 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 "refus[ing] to pay the wage and differential increases" that were "effective January 1, 2011" under the third year of an interest arbitration award covering its corrections officers. On February 9, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on May 12, 2011, if conciliation did not resolve the charge by then. On February 24, 2011, the County filed an answer denying that it had "refused to implement any binding provision of the interest arbitration award" and new matter alleging that the charge is untimely filed. Upon unobjected-to requests by each party, the hearing examiner twice continued the hearing. On August 31, 2011, the hearing examiner held the hearing and afforded both parties a full opportunity to present evidence and to cross-examine witnesses.¹

On September 6, 2011, AFSCME filed an amended charge alleging that the County violated sections 1201(a)(1) and (5) of the PERA by "[a]dditionally . . . refus[ing] to pay the wage increases that were to be effective July 1, 2011." On September 30, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 26, 2011. On October 17, 2011, the hearing examiner continued the hearing in anticipation of the parties stipulating to the facts. On November 2, 2011, the parties informed the hearing examiner that they would "rely upon the record as it now stands[.]"

By December 2, 2011, 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 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. I 15; Union Exhibit 1)

3. On April 16, 2009, a panel of arbitrators issued an interest arbitration award providing in pertinent part as follows:

"DIFFERENTIALS

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

¹The parties agreed to incorporate by reference the record from Lancaster County, Case No. PERA-C-10-10-E, which involves the second year of the award and is reported at 42 PPER 44 (Final Order 2011)(appeal pending). The hearing in that case was on September 10, 2010.

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 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. On November 18, 2009, the County's board of commissioners passed a 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)

6. In December 2010, the board of commissioners passed a resolution (no. 96 of 2010) adopting an operating budget for 2011 of \$263,467,757.00 without a tax increase. The operating budget included an anticipated year-end fund balance of \$3,891,981.00. (N.T. 228, 265, 268, 272; Union Exhibit 25)

7. On January 1, 2011, the County did not pay the differential and salary increases provided for in the award. (N.T. 215-216, 220)

8. On July 1, 2011, the County did not pay the salary increases provided for in the award. (N.T. 220)

9. The County has calculated the cost of the increases for 2011 to be \$1,317,873.00. (N.T. 149; Employer Exhibit 2).

DISCUSSION

AFSCME has charged that the County committed unfair practices under sections 1201(a)(1) and (5) of the PERA by "refus[ing] to pay the wage and differential increases" that were "effective January 1, 2011" under the third year of an interest arbitration award covering its corrections officers and by "[a]dditionally . . . refus[ing] to pay the wage increases that were to be effective July 1, 2011." According to AFSCME, the County was obligated to implement those provisions of the award because legislative action was not required for the award to be effective, making the award binding under section 805 of the PERA.

Citing FOP Haas Memorial Lodge # 7 v. PLRB, 696 A.2d 873 (Pa. Cmwlth. 1997), the County contends that the charge should be dismissed as untimely filed more than four months after it refused to pay the increases when it passed a resolution on November 18, 2009. The County also contends that the charge should be dismissed because the increases required legislative action to be effective, making the award advisory only under section 805 of the PERA, and because its board of commissioners met, considered and rejected the award on that basis.

The County's timeliness contention is without merit. In County of Lehigh v. AFSCME, District Council 88, Local 543, 505 A.2d 1104 (Pa. Cmwlth. 1986), the 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. The County had yet to pass a budget for 2011 when it passed the resolution on November 18, 2009, so the four month limitation period for filing the charge did not begin to run at that time.

The County's reliance on FOP Haas Memorial Lodge # 7 is misplaced. In that case, a union charged that an employer committed unfair labor practices by unilaterally implementing a change to a pension plan in 1995. The court held that the charge was not timely filed within the applicable six week limitation period because the union had reason to know that the employer had changed the plan in 1981. Under County of Lehigh,

however, AFSCME could not have filed the charge until the County passed a budget for 2011, so FOP Haas Memorial Lodge # 7 is inapposite.

In Lancaster County, 42 PPER 44 (Final Order 2011)(appeal pending), the Board found that the County violated sections 1201(a)(1) and (5) of the PERA when it refused to implement the financial terms effective under the second year of the award. Noting that "the evidence is insufficient to establish that the County lacks the funds to cover the prison guards' interest arbitration award for 2010," the Board, citing County of Lawrence v. PLRB, 469 A.2d 1145, 1147 (Pa. Cmwlth. 1983), and AFSCME, District Council 83 v. PLRB (Indiana County), 505 A.2d 1041 (Pa. Cmwlth. 1986), explained that

"[w]here the County fails to conclusively establish that its budget for the year at issue has insufficient unreserved funds necessary to cover the expenses of an interest arbitration award for that year, and therefore a legislative enactment to raise taxes would be necessary, then the award is not advisory and is final and binding under Section 805 of PERA."

42 PPER at 151.

A close review of the record shows that the County adopted a budget for 2011 that does not raise taxes and includes an anticipated year-end fund balance of \$3,891,981.00 (finding of fact 6). A close review of the record also shows that the County calculated the cost of the 2011 increases under the award to be \$1,317,873.00 (finding of fact 9; Employer Exhibit 2). Given that the cost of the increases as calculated by the County is less than the anticipated year-end fund balance it included in its budget for 2011 without raising taxes, it is apparent that a legislative enactment to raise taxes was not necessary for the County to pay the increases. Thus, there is no basis for finding the award to be advisory only.² The County, therefore, was obligated to pay the increases.

In defense of the charge, the County established that in light of prevailing economic conditions its passage of the 2011 budget was extremely difficult and included significant cuts in programs and services. The County also notes that its bond rating has recently been downgraded by Moody's. The fact remains, however, that the County passed a 2011 budget with more than enough money to fund the increases, which is the dispositive inquiry in a case of this nature. Lancaster County, supra.

As to remedy, interest will be ordered to make members of the bargaining unit whole. See Lycoming County v. PLRB, 943 A.2d 333 (Pa. Cmwlth. 2007).

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

² AFSCME calculated the cost of the increases for 2011 to be \$507,457.00 (N.T. 223-228; Union Exhibit 24). The discrepancy in the parties' calculations need not be resolved, however, because the anticipated year-end fund balance for 2011 exceeds both calculations. Thus, under either calculation, there is no basis for finding that legislative action was required for the award to be effective.

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. Pay the 2011 differential and wage increases provided for in the interest arbitration award;

b. Pay interest on the increases at the simple rate of six per cent per annum from the date they were to have been paid to the date they are paid;

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 twelfth day of December 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE :
COUNTY AND MUNICIPAL EMPLOYEES :
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LANCASTER COUNTY :

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 paid the increases provided for in the interest arbitration award for 2011 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 an executed 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

Direct Dial
717-783-3050

Email
dowallace@pa.gov

December 12, 2011

AMY L ROSENBERGER ESQUIRE
WILLIG WILLIAMS & DAVIDSON
1845 WALNUT STREET FLOOR 24
PHILADELPHIA, PA 19103

SUSAN R FRIEDMAN ESQUIRE
STEVENS & LEE
51 SOUTH DUKE STREET
PO BOX 1594
LANCASTER, PA 17608-1594

LANCASTER COUNTY
Case No. PERA-C-11-28-E

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: GARY MCCAULLEY
LANCASTER COUNTY COMMISSIONERS
E MICHAEL FOX
ALAINE S WILLIAMS ESQUIRE
BRAD M KUSHNER ESQUIRE