

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 764 :  
 :  
 : CASE NO. PERA-C-12-46-E  
 v. :  
 :  
 :  
 NORTHUMBERLAND COUNTY :

**PROPOSED DECISION AND ORDER**

On February 13, 2012, the Teamsters, Local Union 764 (Union), filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Northumberland County (County) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by refusing to comply with a grievance settlement. The Union specifically alleged that the County unlawfully refused to reinstate Assistant District Attorney John P. Muncer in compliance with District Attorney Anthony J. Rosini's granting of Mr. Muncer's grievance, which challenged his dismissal under the collective bargaining agreement (CBA).

On April 2, 2012, the Secretary of the Board issued a letter informing the Union that no complaint would be issued on the charge. In that letter, the Secretary concluded that "the District Attorney's decision sustaining the grievance filed on behalf of Mr. Muncer is unenforceable as it is an attempt to usurp the County's legislative function over its fiscal affairs." On April 13, 2012, the Union filed exceptions with the Board to the Secretary's decision not to issue a complaint. On May 15, 2012, the Board issued an Order Directing Remand to the Secretary for Further Proceedings. On May 29, 2012, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on July 20, 2012, in Harrisburg.

On July 12, 2012, the parties filed a Stipulation of Facts, signed by both parties' attorneys. On July 9, 2012, I issued a letter informing the parties that the Board had received the Stipulation of Facts and that the hearing scheduled for July 20, 2012, was unnecessary and cancelled. On August 22, 2012, the County filed a brief in support of the Secretary's original decision not to issue a complaint and the County's position that it did not engage in unfair practices. On August 28, 2012, the Union's attorney informed me by electronic mail that he would not be filing a post-stipulation brief.

The examiner, based upon the Stipulation of Facts and all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. Northumberland County is a public employer within the meaning of Section 301(1) of PERA. (Stipulation of Facts, ¶ 1).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (Stipulation of Facts, ¶ 2).
3. The Union and the County are parties to a collective bargaining agreement ("CBA") for a unit of Assistant District Attorneys, Assistant Public Defenders and Special Counsel, as certified in Board Case No. PERA-R-01-370-E, for the period January 1, 2011 through December 31, 2013. (Stipulation of Facts, ¶ 3).
4. Article XXI of the CBA-Maintenance of Standards- states:

The Employer agrees that all conditions of employment, **not involving the statutory or constitutional authority of the District Attorney or the Courts**, relating to wages, hours of work, overtime differential and general working conditions, as negotiated or agreed upon, shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement; and the conditions of employment shall be improved wherever specific provisions for improvements are made elsewhere in this Agreement.

(Stipulation of Facts, ¶ 4)(emphasis original).

5. Article VII of the CBA sets forth the grievance procedure and provides, in part:

Section 1.b. Step 1. District Attorney, Chief Public Defender or appropriate designee. An employee with a grievance shall discuss it with the district attorney, chief public defender or appropriate designee, who shall attempt to resolve the grievance to the mutual satisfaction of the employee and management within five (5) workdays of its presentation. The district attorney, public defender or appropriate designee shall report his/her decision in writing to the employee within five (5) workdays.

(Stipulation of Facts, ¶ 5).

6. On a date prior to February 1, 2012, ADA John Muncer was laid off. (Stipulation of Facts, ¶ 6).
7. In response to that layoff, Muncer, through the Union, filed a grievance, alleging a violation of Article XXI of the CBA and requested "[t]o be returned to work immediately with no loss of pay, benefits, seniority and to be made whole." (Stipulation of Facts, ¶ 7).
8. On February 1, 2012, District Attorney Rosini sent a letter to Joseph Picarella, Director of the Department of Human Resources of the County, and stated, in part:

The basis for this grievance is that the Commissioners have changed the general working conditions in the office which they were required to maintain under Article 21 of the Union Contract. The language of the contract requires that the general work conditions be maintained the same as they were at the signing of the contract. In my opinion increasing the caseload of each assistant by 25% at a time when the caseload is at record high levels in Northumberland County is a significant change in the general working conditions. Since I have approved this grievance, under the Union contract, Mr. Muncer's position should be restored and his pay for the same be reinstated.

(Stipulation of Facts, ¶ 8).

9. Although District Attorney Rosini approved the Union's grievance, he did not request any additional money from the Commissioners to fund Muncer's position. (Stipulation of Facts, ¶ 9).
10. By letter dated February 3, 2012, the County refused to reinstate Muncer to his former position. (Stipulation of Facts, ¶ 10).

#### DISCUSSION

Generally, a public employer is bound by the settlement of a grievance by its contractually designated representative at lower levels of the grievance procedure. **Moshannon Valley Sch. Dist. v. PLRB**, 597 A.2d 229 (Pa. Cmwlth 1991), **appeal denied**, 530 Pa. 662, 609 A.2d 170 (1992). By agreeing to a multi-step grievance procedure, an employer endorses the authority of particular management employees at lower steps to deal with problems arising from that employees area of responsibility. The exception to this principle is in those circumstances where management's settlement of a grievance at a lower step of the grievance procedure would usurp the statutory or legislative functions of the employer's governing body without an express delegation of that authority. **Somerset Police Bargaining Unit v. Somerset Borough**, 18 PPER ¶ 18085 (Final Order, 1987) (holding that the mayor could not resolve a grievance in a manner that nullified borough council's statutory authority to establish the number of hours of borough employees).

In its exceptions to the Secretary's no-complaint letter, the Union argues that our Supreme Court's decision in **Jefferson County Court Appointed Employees Association v. PLRB**, 603 Pa. 482, 985 A.2d 697 (2009), controls the disposition of this case. In **Jefferson County**, the board of commissioners was confronted with a projected \$1.7 million budget deficit. The commissioners sought a tax increase from the judiciary and the president judge denied the request. The commissioners then instituted reductions in budget appropriations to various county departments including the judiciary and charged the salary board, which included the president judge, with the responsibility to implement those reductions by eliminating personnel. The salary board, over the objection of the president judge, voted to eliminate five court-appointed positions. Those

five individuals grieved their dismissal. Pursuant to the collective bargaining agreement negotiated by the county, the grievances were first filed with their immediate supervisor, who decided the grievances in their favor and issued a written determination to the president judge. The president judge was the department head and the second step in the grievance procedure. The president judge granted the grievance and reinstated the five court appointed employes. The county refused to reinstate the five employes and the union filed an unfair practice charge with the Board.

Although the hearing examiner, in **Jefferson County**, sustained the charge, the Board reversed and the Commonwealth Court affirmed the Board's decision, which held that the president judge could not encroach on the legislative function of the board of commissioners to establish a budget because that authority was not unequivocally granted to the president judge. The Supreme Court reversed the Commonwealth Court and the Board holding that, under Section 1620 of the County Code, the president judge had exclusive control over hiring and discharging personnel, and that it was incumbent on the county to present a budget to the court and permit the court to determine how it would eliminate expenditures to conform to the budget (i.e., absent a mandamus action to compel the county to provide more funding to the court). Accordingly, the Supreme Court held, **inter alia**, that the president judge properly exercised his authority, as delegated to him by the county in collective bargaining as the second step in the grievance procedure, to grant the grievance which resulted in the rehiring of the five employes. Significant to the Court's decision was the fact that the Jefferson County Court did not request more funding to pay for the rehired employes. The Supreme Court, therefore, concluded that the grievance settlement did not encroach on the legislative (i.e., budgetary) powers of the board of commissioners.

The County in this case argues in its brief as follows:

In this matter, the District Attorney made the decision to lay off the Grievant, John P. Muncer (Muncer). The District Attorney utilized his Section 1620 rights as found under the County Code to lay off Muncer. Once the District Attorney made the decision to lay off Muncer, the Union was barred from filing any grievance under the clear, negotiated language of the Agreement.

(County's Brief at 2).

I agree with the Union that this case is on all fours with the Supreme Court's decision in **Jefferson County, supra**. (Union's Brief in Support of Exceptions to Refusal to Issue Complaint at 2). District Attorney Rosini is the first step in the grievance procedure. Assistant District Attorney Muncer presented him with a grievance claiming that the County violated Article XXI of the CBA (which guarantees the maintenance of wages, hours of work and working conditions) by furloughing him. In sustaining the grievance, District Attorney Rosini wrote to the County's Human Resources Director and emphasized the following:

The basis for this grievance is that the Commissioners have changed the general working conditions in the

office which they were required to maintain under Article 21 of the Union Contract. The language of the contract requires that the general work conditions be maintained the same as they were at the signing of the contract. *In my opinion increasing the caseload of each assistant by 25% at a time when the caseload is at record high levels in Northumberland County is a significant change in the general working conditions. Since I have approved this grievance, under the Union contract, Mr. Muncer's position should be restored and his pay for the same be reinstated.*

(F.F.8; Stipulation of Facts ¶ 8)(emphasis added). As in **Jefferson County**, where the President Judge effectuated layoffs demanded by the salary board, the District Attorney's letter establishes that he furloughed Mr. Muncer at the direction of the County Board of Commissioners, an important fact omitted by the County in its brief.<sup>1</sup> Accordingly, the factual premise, and the *sine qua non*, of the County's argument is unsupported by the record.

In addition to the District Attorney's acting at the direction of the County Commissioners, the other significant factor that brings this case within the holding of **Jefferson County** is that District Attorney Rosini did not request any additional funding from the County to support Mr. Muncer's position. Therefore, his management decision to rehire Mr. Muncer within the established budgetary limits provided to the District Attorney's Office by the County, did not encroach on the County's statutory or legislative function to set the budget. Rather District Attorney Rosini exercised his authority under Section 1620 of the County Code, as a row officer with exclusive rights to hire, fire and direct his workforce, as well as the contractual authority granted to him by the County to settle grievances at the first level, to properly settle a contract dispute, the implementation of which did not require legislative or budgetary actions by the board of commissioners.

The County also argues that the Grievance was barred pursuant to the contract language and that its arbitrability should have been determined by an arbitrator, which thereby precluded the District Attorney from granting the grievance. The County contends that "[t]he Union never allowed the Grievance Procedure process to be carried out for a determination as to whether the matter is even allowed to be grieved under the clear language of the contract." (County's Brief at 3). The County further maintains that the "District Attorney's response to the grievance

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<sup>1</sup> The text of the District Attorney's letter has been made part of the stipulation of facts. (Stipulation of Facts ¶ 8). The letter establishes that the Commissioners are responsible for changing working conditions in the Office of the District Attorney. A reasonable inference from this fact is that the Commissioners directed the District Attorney to reduce his workforce. Paragraph 6 of the Stipulation of Facts provides only that on a date prior to February 1, 2012, Mr. Muncer "was laid off." The letter, dated February 3, 2012, from Human Resources Director Joseph B. Picarelli, states that the County did not layoff Mr. Muncer, rather the District Attorney did. However, the text of this letter was not incorporated into the Stipulations of Fact and is, therefore, not part of the record. However, I have considered that, pursuant to Section 1620, only the District Attorney has the authority to hire and discharge the employees working in his office. Accordingly, I conclude that the facts of record establish that the District Attorney was operating at the direction of the County when he selected to furlough Mr. Muncer to reduce his workforce, which is analogous, if not identical, to the manner in which layoffs were effectuated in **Jefferson County**.

procedure leads to speculation as to whether or not his decision would violate the separation of powers between the County and the District Attorney's Office." (County's Brief at 3). The County also argues that the "District Attorney failed to provide any guidance to the County Commissioners as to how he was going to be able to run his office without additional funds."<sup>2</sup> I have considered and rejected all of these arguments.

Accordingly, the County engaged in unfair practices in violation of Section 1201(1) and (5) and the Supreme Court's decision in **Jefferson County, supra**, when, on February 3, 2012, it refused to comply with District Attorney Rosini's grievance settlement and reinstate Mr. Muncer without loss of pay and benefits.

#### CONCLUSIONS

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

1. The County 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 County 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 the Public Employe Relations Act, the hearing examiner

#### HEREBY ORDERS AND DIRECTS

that the County 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 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) Offer John Muncer unconditional reinstatement, in writing, to his former position in the Office of the District Attorney

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<sup>2</sup> This argument seems to acknowledge that the personnel reduction in the District Attorney's Office was at the direction of the County Board of Commissioners.

without prejudice to any rights or privileges previously enjoyed by him;

(c) Pay John Muncer and make him whole for all wages and benefits that he would have earned from the date of discharge to the date of unconditional offer of reinstatement, including but not limited to wage increases received by the bargaining unit during the backpay period, seniority, out of pocket dental, medical and optical expenses for himself and responsible family members, holiday pay and accrued sick and vacation time.

(d) The back pay due to John Muncer shall be computed on the basis of each separate calendar quarter or portion thereof during the period stated above. The quarterly period shall begin with the first day of January, April, July and October. The pay shall be determined by deducting from a sum, equal to that which Mr. Muncer normally would have earned for each quarter or portion thereof, earnings which he actually earned or with the exercise of due diligence would have earned in other employment during that period; earnings which he would have lost through sickness; and any unemployment compensation received by him. Where an employer claims lack of due diligence, it shall be the employer's obligation to establish that there was substantially equivalent employment reasonably available and that due diligence was not exercised to find interim employment. Earnings in one particular quarter shall have no effect on the liability for any other quarter.

(e) Pay interest at the simple rate of six percent per annum on any and all backpay due John Muncer from the date of his discharge until the date of the written offer of unconditional reinstatement to his former position;

(f) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to bargaining unit employes and not limited to the District Attorney's Office and have the same remain so posted for a period of ten (10) consecutive days; and

(g) 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.

**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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-eighth day of August 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

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**AFFIDAVIT OF COMPLIANCE**

The County hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has offered John Muncer unconditional reinstatement, in writing, to his former position without prejudice to any rights or privileges previously enjoyed by him; that it has paid, and made John Muncer whole for, all wages and benefits that he would have earned from the date of separation to the date of unconditional offer of reinstatement, including but not limited to wage increases received by the bargaining unit during the backpay period, seniority, out of pocket dental, medical and optical expenses for himself and responsible family members that would have been covered during his employment, holiday pay and accrued sick and vacation time; that it has paid interest at the simple rate of six percent per annum on any and all backpay due John Muncer from the date of his discharge until the date of the written offer of unconditional reinstatement to his former position; that it has posted a copy of the decision and order as directed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

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

\_\_\_\_\_  
Title

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

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Signature of Notary Public