

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 88 :
: :
: :
v. : Case No. PERA-C-99-277-E
: :
WARMINSTER TOWNSHIP :

FINAL ORDER

On July 3, 2000, AFSCME District Council 88 (AFSCME) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO) dated June 14, 2000.¹ On July 5, 2000, Warminster Township (Township) also filed timely exceptions to the PDO and a supporting brief.² In the PDO, the Hearing Examiner concluded that the Township committed unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). On July 19, 2000, AFSCME filed a response in opposition to the Township's exceptions and a supporting brief. After a thorough review of the record, the Board makes the following:

ADDITIONAL FINDINGS OF FACT³

19. Ms. Troshak and Mr. Goldsworthy held and attended numerous meetings with bargaining unit members between 1996 and 1997 at the Township building and Ms. Troshak's residence. (N.T. 27, 30, 40, 66, 76, 83-85). The wage discussions that ensued in 1996 applied to the 1997 calendar year only and not the duration of the term of the collective bargaining agreement (CBA) (N.T. 88).

20. The Township has recouped a significant amount of the overpayments made to Mr. Kessler and Mr. Ott. (N.T. 7-9).

DISCUSSION

In 1996, the Township and AFSCME negotiated a collective bargaining agreement (CBA) that was effective from January 1, 1996 through December 31, 1998. The 1996-1998 CBA contains a structured wage scale classifying bargaining unit positions and assigning wage rates to those classifications. The wage rate assignments include the percentage wage

¹ Although the Board received AFSCME's exceptions on July 5, 2000, a postal form 3817 Certificate of Mailing, dated July 3, 2000, accompanied the exceptions. Section 95.98 of this Board's regulations provides, in relevant part, that "[e]xceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions."

² The twenty-day time period for filing exceptions did not expire until July 5, 2000, the date that the Township filed its exceptions, because July 4, 2000 was a legal holiday.

³ Citations to Finding(s) of Fact will be abbreviated F.F.

increases and the resulting hourly wage rates for each job classification for 1996, 1997 and 1998. Tish Troshak and William Goldsworthy, both elected Township supervisors, held numerous meetings with bargaining unit members between 1996 and 1997. In the summer of 1997, Ms. Troshak held a meeting at her residence, at which Mr. Kessler and Mr. Ott were present. At the 1997 meeting, Ms. Troshak and Mr. Goldsworthy exchanged wage increase proposals with Mr. Kessler and Mr. Ott. The meetings in 1996 and 1997 were held without the participation or knowledge of AFSCME.

During the summer-of-1997 meeting, Ms. Troshak handed Mr. Kessler and Mr. Ott each a piece of paper with a number written on it and told them that the number would be their rate of pay for 1998. The pay rate figure for Mr. Kessler was \$23.75 for the calendar year 1998. Under the terms of the 1996-1998 CBA, this figure was \$.45 over Mr. Kessler's hourly wage rate for that year. The figure for Mr. Ott was \$2.06 per hour higher than the wage rate assigned to him for 1998 under the CBA. In December 1997, Ms. Troshak approved the higher wage rates for Mr. Kessler and Mr. Ott as well as higher wage rates for several other bargaining unit members. Mr. Kessler and Mr. Ott received the higher pay rates for the entire calendar year of 1998 through the pay period ending February 13, 1999. In early March 1999, AFSCME became aware that the Township was paying wages to Mr. Kessler and Mr. Ott at a rate higher than that which was assigned to them in the 1996-1998 CBA. Consequently, the Township returned Mr. Kessler and Mr. Ott to their respective contract pay rates without objection from AFSCME. In June, 1999, however, the Township began unilaterally deducting \$40.00 from Mr. Kessler's biweekly paycheck and \$60.00 from Mr. Ott's biweekly paycheck to recoup the amount of the overpayment during 1998 and early 1999. Although the Township discussed with AFSCME its plan to recoup the overpayment, AFSCME never agreed to the Township's recoupment plan.

On June 29, 1999, AFSCME filed its charge of unfair practices. AFSCME's charge alleged that the Township engaged in direct dealing with Mr. Kessler and Mr. Ott in 1997 and repudiated the express terms of the parties' 1996-1998 CBA by increasing their wages without the Union's knowledge or approval. Notwithstanding, AFSCME also alleged that the Township violated its duty to bargain when it unilaterally deducted \$40.00 and \$60.00 from Mr. Kessler's and Mr. Ott's paychecks respectively in an effort to recoup the overpayment to those two employees. The Hearing Examiner concluded that the Township committed two bargaining violations: first by dealing directly with employees regarding their wages and second, by unilaterally deducting money from the paychecks of Mr. Kessler and Mr. Ott to recoup the overpayment that resulted from the first bargaining violation.

I. TOWNSHIP'S EXCEPTIONS

In its exceptions, the Township argues that the Findings of Fact are against the weight of the evidence since the record was clear that the written exchange with individual employees regarding rates of pay noted thereon occurred prior to the execution of the Collective Bargaining Agreement. The Township's exceptions expressly limit this challenge to the Hearing Examiner's Findings of Fact numbers 9, 10 and 13. In its supporting brief, the Township contends that "all of the discussions related to changes in wage rates that occurred outside the presence of the Union negotiating team occurred prior to the execution of the Collective Bargaining Agreement which was subsequently signed by all parties" and

"that inappropriate conduct was merged into a Collective Bargaining Agreement that was ratified by the parties." (Township's Supporting Brief at 4-5). In support of this position, the Township asserts that the Hearing Examiner failed to properly review the documentary evidence and testimony and chose to believe a witness who was contradicted by a Township witness and one of AFSCME's own witnesses. The Township urges the Board to find that the direct dealing and wage discussions occurred in 1996 and not in 1997, as Mr. Kessler and Mr. Ott testified.

The law is clear that the hearing examiner's function, and the Board's on exceptions, is to resolve conflicts in evidence, make findings of fact from conflicting evidence and draw inferences from those findings of fact. PLRB v. Stairways, Inc., 10 PPER ¶ 10098 (Final Order, 1979). Often there is substantial evidence to support two different, conflicting findings, but it is sufficient that there is substantial evidence to support the Board's finding; it is insufficient on exceptions to argue that there is substantial evidence to support a contrary finding. Id. Additionally, this "Board has a long-standing, consistently applied policy of deferring to the credibility determinations of its hearing examiner, who is able to observe the manner and demeanor of the witnesses during their testimony." AFSCME District Council 88 v. Delaware County, 27 PPER ¶ 27039 (Final Order, 1996). The Board will not disturb a hearing examiner's credibility determinations unless there are compelling circumstances. Id.

Although the Township argues to the contrary, the Board finds that the record is devoid of any compelling circumstances to warrant reversing any of the Hearing Examiner's credibility determinations or his resolution of conflicting evidence. To the extent that there is a conflict between the substantive testimony of the Township's witnesses and AFSCME's witnesses, the Hearing Examiner was entitled to credit the testimony of AFSCME's witnesses, i.e., the testimony of Mr. Kessler and Mr. Ott, over the testimony of the Township's witnesses and resolve any conflicts presented in AFSCME's favor. Delaware County, supra. In the discussion on page 3 of the PDO, the Hearing Examiner stated the following:

the credible evidence of record reveals that the Township Supervisor, Ms. Troshak, informed Mr. Kessler and Mr. Ott that they would be paid at a rate above that which the Township had negotiated with the Union, and then approved that rate when the time came to implement annual wage increases.

(PDO at 3) (emphasis added). The above-quoted language reveals that, in finding that Mr. Kessler and Mr. Ott attended a meeting at Ms. Troshak's residence in the Summer of 1997, during which Ms. Troshak handed them pieces of paper expressing their proposed salary increases, the Hearing Examiner obviously believed the testimony of AFSCME's witnesses and, therefore, gave great weight to that testimony. (PDO F.F. 7-11). Although the Township argues that the AFSCME witnesses, specifically Mr. Kessler and Mr. Ott, are biased in that they stand to benefit personally from such a finding, such alleged biases are not unusual in unfair practice matters. In other words, it is to be expected that a witness will favor the party calling for his testimony, especially when that party is pursuing the vindication of the witness's protected rights. As the finder of fact, the hearing examiner factors such biases into his credibility determinations. Such biases and interests do not, inherently, constitute compelling circumstances warranting the reversal of the Hearing Examiner's credibility determination. Further, although not a personal benefit, the Township

through its witnesses also would benefit by avoiding returning the recoupment to the employees should their testimony be credited.

After thoroughly reviewing the record, the Board rejects the proposed findings of the Township. Although the record shows that Ms. Troshak and Mr. Goldsworthy held meetings with employees in 1996, the Board concludes that the Hearing Examiner relied upon substantial competent evidence to support his findings that Ms. Troshak also held a meeting with rank and file workers at her residence in the summer of 1997, during which she and Mr. Goldsworthy made wage proposals to Mr. Kessler and Mr. Ott. Therefore, the Township bypassed AFSCME and engaged in direct dealing with bargaining unit members regarding wages in 1997 after the execution of the 1996-1998 CBA.

Based on its proposed finding, that a meeting to discuss wages and directly deal with bargaining unit employees occurred in 1996 only, before the execution of the CBA, and not, as the Hearing Examiner found, in 1997, the Township argues that the unlawful conduct merged into the CBA when it was ratified by the parties. However, having concluded that the Township engaged in unlawful direct dealing with bargaining unit members in 1997, after the execution of the CBA, the bargaining violation could not have been ratified by AFSCME or merged into the 1996-1998 CBA, as a matter of law.

Moreover, even if the Board did find that the Township's unlawful direct dealing occurred in 1996 only, before the execution of the CBA, the Township's argument that the direct dealing merged into the CBA would remain wholly without merit. The Township acknowledges that AFSCME did not have any knowledge of its direct dealing with bargaining unit members in 1996 until early 1999. Additionally, the Hearing Examiner expressly found that AFSCME did not have any such knowledge, and the Township did not object to that finding anywhere in its exceptions before the Board.⁴ The Township cannot now argue both that AFSCME was unaware of the direct dealing that occurred in 1996 before the execution of the CBA and that the Township's unlawful conduct somehow merged into the CBA when AFSCME's knowledge of these events is an essential prerequisite to the ratification, and therefore merger, of the initial direct dealing in 1996. A properly executed collective bargaining contract is a bilateral agreement that results from the mutual assent of the parties. AFSCME could only agree to those issues and terms within its actual knowledge. Accordingly, the Township's unlawful direct dealing in 1996 could not have merged into the 1996-1998 CBA, as a matter of law, even if that were the only time that direct dealing occurred between the Township and the employees.

Additionally, based on the same proposed finding, the Township argues that the actual overpayment of wages to Mr. Kessler, Mr. Ott and several other bargaining unit employees was a mistake that was made by Mr. Kessler, and not the Township. The Township recognizes that even an unintentional unilateral grant of benefits in violation of an employer's bargaining duty constitutes an unfair practice. Millcreek Township Sch. Dist. V. PLRB, 631 A.2d 734, 738 (Pa. Cmwlth. 1993). However, contends the Township, for the employer to be liable for an unfair practice, the employer must be causally responsible for the behavior constituting the unfair practice. In this regard, the Township maintains that the record reveals that Mr. Kessler, acting in his capacity as Working Supervisor, was responsible for

⁴ F.F. Nos. 14 and 15 in the PDO.

submitting the wage rates for the employees in the bargaining unit and he mistakenly placed incorrect wages on his submission. This mistake remained undetected because Ms. Troshak, failing to recognize the discrepancy, approved the submitted wage rates without comparing them to the CBA.

This argument also fails because the Board does not adopt the Township's proposed finding that no direct dealing occurred after the execution of the CBA. The Township bypassed AFSCME and engaged in direct dealing with Mr. Kessler and Mr. Ott after the execution of the CBA. That behavior constitutes the unfair practice. Determining the means by which the individual wage agreements were implemented and identifying the party responsible for that implementation is not a relevant inquiry. Moreover, having concluded that the Township engaged in direct dealing with Mr. Kessler and Mr. Ott after the execution of the CBA, the Board is entitled to draw the inference that, in submitting a document containing increased wage rates for himself and other employees, Mr. Kessler was complying with the terms of the unlawful agreements made with the Township supervisors, rather than making a mistake, especially when those increases matched the increases to which the supervisors previously agreed. The Board may lawfully draw the inference that Ms. Troshak was complying with the unlawful agreement that she made with Mr. Kessler and Mr. Ott when she ignored the wage discrepancies between Mr. Kessler's wage submission and the CBA. After numerous meetings regarding wage rates and budgets, the inference can certainly be drawn that Ms. Troshak's failure to discover the discrepancies was more than her failing to compare the wage rates with the CBA.

The Township also excepts to the Hearing Examiner's conclusion that it committed a separate unfair practice violation when it unilaterally implemented a recoupment plan to retrieve the amount overpaid to Mr. Kessler and Mr. Ott. The Township argues that it could not have committed a bargaining violation in implementing a recoupment plan when AFSCME refused to negotiate or agree to any type of recoupment plan. The Township contends that AFSCME had the same duty to negotiate as the Township. Based on its position that no unlawful conduct occurred in 1997, the Township further maintains that it was entitled to the recoupment because, to allow otherwise, would permit Mr. Kessler to benefit from his own mistake of submitting incorrect wage rates of rank and file employees for approval by the Board of Supervisors.

The record reveals that the Township attempted to negotiate a recoupment plan with AFSCME. AFSCME responded by refusing to agree to any recoupment of the overpaid wages because, in AFSCME's opinion, the Township had no legal claim or right to recoup the overpaid wages under the circumstances. The issue thus becomes whether the Township was permitted to unilaterally implement its own recoupment plan to recover excess wages, paid as a result of its own unlawful conduct, because AFSCME refused to agree to any recoupment. In resolving this issue, it is important to reiterate the Board's previous conclusion that the Township did engage in unlawful direct dealing in 1997, and that the overpayments were a matter of design and not mistake. Accordingly, the Board has consistently held that when an employer commits unfair practices by directly dealing and unilaterally extending wage increases to individual, complicit employees, the Board will not order the return of those wage increases because the employer, not the employee, is deemed to have committed an unfair practice and to have engaged in unlawful conduct. Philadelphia Housing Police Ass'n v. Philadelphia Housing Authority, 22 PPER ¶ 22227 (Final Order, 1991),

aff'd, sub nom., Philadelphia Housing Authority v. PLRB, 620 A.2d 594 (Pa. Cmwlth. 1991); Association of Mifflin County Educators v. Mifflin County Sch. Dist., 22 PPER ¶ 22065 (Final Order, 1991); PLRB v. Lower Paxton Twp., 9 PPER ¶ 9260 (Nisi Decision and Order, 1978). Moreover, in Medo Photo Supply Corp. v. NLRB, 321 U.S. 678 (1944), the United States Supreme Court held that an employer will be responsible for having committed an unfair labor practice as a result of direct dealing notwithstanding the fact that such conduct originated or emanated from the employees involved. Id. at 683. The Court, in Medo Photo Supply, further explained that the obligations imposed upon employers under the national act to protect employees cannot be ignored even when the employees themselves consent. Id. at 687. Also, the NLRB has long held that "direct dealing with employees while there is an outstanding exclusive representative whose authority is unrevoked is no less a violation of the Act's collective bargaining requirements merely because the direct dealing was acceptable to or even emanated from the employees instead of the employer." In The Matter of the Jupiter Steamship Co., 52 N.L.R.B. 1437, 1444 (1943); accord, NLRB v. Everbrite Electric Signs Inc., 562 F.2d 405, 408 (7th Cir. 1977).

In this regard, the Board has held that the purposes of PERA are not served by forcing employees to return increases after they have rendered services and relied on the increases. Mifflin County, supra. In Mifflin County, supra, the Board explained that restoring the status quo ante, where unlawful wage increases have been made to individual employees, would unfairly penalize the employees for the employer's unlawful unilateral action. Id. An employer that deals directly with its employees undermines the cohesiveness of the bargaining unit, the employees' support of the union and the union's ability to effectively represent the bargaining unit. The Pennsylvania Supreme Court has opined that the powers of this Board are remedial in nature and that the Board is in the best position to determine how to expunge the effect of an unfair practice. In re Appeal of Cumberland Valley Sch. Dist., 483 Pa. 134, 394 A.2d 946, 952-53 (1978). In this regard, the best way to remedy the Township's unlawful behavior and to expunge the effect of that behavior, which undermines the employees' chosen bargaining representative, is to follow the Board's consistent policy of balancing the interests of employees who should not be penalized by having their regular paychecks reduced below that mandated by the contract because of the employer's unlawful conduct. Under the Township's view, it could unilaterally decide to reduce or eliminate regular paychecks to employees, within its unbridled discretion, under the guise of recouping overpayments to employees procured by the employer's unlawful direct dealing with employees in the unit.

The NLRB not only refuses to order the return of additional benefits or wages unlawfully bestowed upon employees, but also it refuses to order the cessation of those benefits or wages. M.A. Harrison Manufacturing Co., Inc., 253 N.L.R.B. 675 (1980). In Harrison Manufacturing, the Board stated the following:

[W]hile permitting unlawful benefits to remain in effect obviously does not restore the status quo ante, restoration of the status quo is not necessarily a desirable or attainable goal in all cases. Other things being equal, it would serve no remedial or preventative purpose to deny employees benefits which they are enjoying. In most cases the Board [NLRB] properly exercises its breadth of discretion to require discontinuance of adverse changes while permitting continuance

of beneficial change made unilaterally by the employer in violation of the Act.

M.A. Harrison, supra (emphasis added).

This position is also held in other jurisdictions. Sparta Board of Education, 15 NJPER ¶ 20199 (Decision and Order 1989) (stating that the New Jersey Public Employment Relations Commission will not order the recoupment of a unilateral increase in wages above the contract rate to some employees); County of Camden, 20 NJPER ¶ 25143 (Decision and Order, 1994) (stating that the New Jersey Public Employment Relations Commission will not ordinarily order the recoupment of benefits unilaterally granted as part of a return to the status quo because it would unduly punish the employees for the employer's unfair practice); Academic Professionals of California v. Trustees of the California State University, 21 PERC ¶ 28075 (Proposed Decision, 1997) (stating that the California Board "has declined to order employees to refund wages or other benefits they received as a result of an employer's unlawful unilateral action"). Therefore, the longstanding precedent of the Board on this issue is consistent with that of the NLRB and other state jurisdictions, which have also addressed this issue.

Accordingly, an employee who has received overpayments as a result of an employer's direct dealing is entitled to keep the amount of the overpayments as part of the remedy for the original unfair practice of direct dealing. When AFSCME refused to negotiate a recoupment plan with the Township, it was correctly anticipating the remedy its employees would have received had they immediately brought an unfair practice charge for the direct dealing only. Therefore, for purposes of this part of the discussion, the Board does not herein decide whether the Township's unilateral recoupment constituted a separate and distinct unfair practice. The Board simply concludes that its precedent regarding the remediation of direct dealing involving overpayments requires that the employees were entitled to keep the overpayments, and the Township unlawfully interfered with that remedy. The Board notes that AFSCME did not file an unfair practice charge for the direct dealing until the Township unilaterally recouped the overpayments. Obviously, by keeping the benefit bestowed upon them, the employees already had the remedy they would have received had AFSCME successfully adjudicated the direct dealing charge initially. When the Township interfered with that remedy, AFSCME was forced to file a charge to recapture the remedy that its employees were initially and rightfully entitled to as a result of the direct dealing. Accordingly, the Township unlawfully interfered with the remediation of its direct dealing.

Even though the Board concludes that the Township's unilateral recoupment constituted an interference with the remediation of unlawful direct dealing, the Board alternatively concludes that the Township's unilateral recoupment does indeed constitute a separate and distinct unfair practice notwithstanding the direct dealing.⁵ The Township's recoupment directly affected the wages of Mr. Kessler and Mr. Ott by unilaterally reducing their pay below that to which they were minimally and contractually entitled. Section 701 of PERA expressly requires employers

⁵ In Fraternal Order of Police, Fort Pitt Lodge No. 1 v. PLRB, 553 A.2d 469, 471 n.2 (Pa. Cmwlth. 1988), the Commonwealth Court opined that this Board has the authority to resolve issues on separate and individual grounds.

to bargain over matters affecting wages and, therefore, prohibits employers from taking unilateral action affecting those wages. Here, the Township did not meet its bargaining obligation merely because it attempted to negotiate the recoupment with AFSCME. Therefore, the Township could not unilaterally reduce the wages of Mr. Kessler and Mr. Ott below their contractual minimums to recoup overpayments made to them, as a result of unlawful direct dealing, without voluntary concessions from the employees and AFSCME. An employer could potentially reduce an employee's wages to zero until it recoups all of the overpayments. Certainly, the express policies and bargaining obligations of PERA, especially Section 701, do not permit an employer's unilateral reduction of an employee's wages below his minimum entitlement. Reducing wages in such a manner is a mandatory subject of bargaining, and unilateral action is statutorily precluded.

II. AFSCME'S EXCEPTIONS

AFSCME filed exceptions in which it objects to the ambiguity of the Hearing Examiner's Order directing the Township to "[r]escind the order to recoup the overpayments to Mr. Kessler and Mr. Ott." AFSCME contends that the Hearing Examiner's remedy is in error if the language of the Order only requires the Township to cease and desist from withholding money from the paychecks of Mr. Kessler and Mr. Ott from the date of the PDO. Alternatively, AFSCME seeks clarification of the Hearing Examiner's Order to require that the Township provide a back-pay remedy to the employees for the entire amount previously recouped from their paychecks and that the Township cease and desist in the future as well.

This Board has a statutory duty to "prevent" unfair practices, pursuant to Section 1301 of PERA. Upon finding that a charged party has engaged in an unfair practice, Section 1303 of PERA empowers the Board "to take reasonable affirmative action, including . . . back pay, as will effectuate the policies of [PERA]." This section also confers upon the Board broad discretion in choosing or fashioning a remedy to fulfill its statutory function and effectuate the policies of PERA. 43 P.S. 1101.1302; Fraternal Order of Police, Lodge No. 19 v. City of Chester, 20 PPER ¶ 20099 (Final Order, 1989). This Board's broad discretionary power permits it to determine the manner in which to expunge the effect of an unfair practice. Cumberland Valley, supra.

To issue an order requiring employees to repay overpayments would encourage, not prevent, the practice of unlawful direct dealing with small groups of employees to undermine the collective bargaining obligation and the policies established by PERA. In order to fulfill its express statutory duty to prevent unfair practices and effectuate the policies of PERA, this Board must, through its decisions, influence future behavior. Accordingly, permitting employers to recover the fruits of their unlawful conduct could not possibly deter employers from repeatedly dealing directly with bargaining unit members and offering them wage increases to buy their disassociation from a union or to undermine a union's effectiveness. The collective bargaining rights of public employees would become a nullity if employers were permitted to undermine the employees' exclusive bargaining representative through direct dealing and then unilaterally recoup its unlawful investment when found by that conduct to have violated its bargaining duty.

Additionally, finding an unfair practice for unlawfully recouping the overpayment of wages would have no remedial effect if an

employer were permitted to unlawfully take that which it could not take lawfully. In this case, the record reveals that the Township has recouped a significant amount of the money overpaid to Mr. Kessler and Mr. Ott due to the delays inherent in adjudicating an unfair labor practice claim. Permitting the Township to escape liability for its unlawful conduct in this case would encourage employers in the future to unilaterally recoup overpayments that resulted from their own unlawful behavior and take advantage of systemic delays. Such a rule would promote unlawful behavior and create an imbalance that defies the purposes and the policies of PERA, the effectuation of which this Board is statutorily responsible. Therefore, whether viewed as part of the remedy for the initial unfair practice of direct dealing or as a remedy for a separate unfair practice of unilateral recoupment of the tainted fruit of the direct dealing, it is a reasonable exercise of this Board's broad discretionary authority in fashioning an appropriate remedy and in expunging the effect of the unfair practice in this case to order the Township to cease recouping the overpayments and to return all amounts heretofore recouped. The Hearing Examiner's Order will be so modified to make this clear.

After a thorough review of all matters of record, the Township's exceptions to the Proposed Decision and Order are hereby dismissed in their entirety, and AFSCME's exceptions are sustained to the extent that the Township shall be specifically directed to return all recouped overpayments to Messrs. Kessler and Ott.

ORDER

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 Township's exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; and that AFSCME's exceptions are sustained in part; and that the Order on page 4 of the Proposed Decision and Order is modified as reflected herein; and the Township shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the Act.
2. Cease and desist from refusing to bargain collectively with the representatives of its employes.
3. Take the following affirmative action which the Board finds necessary to effectuate the policies of the Act:
 - (a) Rescind the order to recoup the overpayments to Mr. Kessler and Mr. Ott;
 - (b) Return to Mr. Kessler and Mr. Ott all monies already taken from their respective paychecks for the purpose of recouping the overpayments.
 - (c) Post a copy of the Proposed Decision and Order and this Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to it's employes and have

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

- (d) 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.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this seventeenth day of October, 2000. 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.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 88 :
 :
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 v. : Case No. PERA-C-99-277-E
 :
 WARMINSTER TOWNSHIP :

AFFIDAVIT OF COMPLIANCE

Warminster Township hereby certifies that it has ceased and desisted from its violations of Sections 1201(a)(1) and (5) of the Public Employee Relations Act, that it has ceased recoupment of the overpayments to Jacob Kessler and Stephen Ott, that it has returned the amount heretofore recouped from them, that it has posted a copy of the Proposed Decision and Order, issued June 14, 2000, as directed therein, and a copy of the Final 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.

Signature of Notary Public