

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 205 :
 :
 v. : Case No. PERA-C-98-588-W
 :
 CLEARFIELD COUNTY :

FINAL ORDER

On October 19, 1999, Clearfield County (County) filed timely exceptions and a brief in support of exceptions with the Pennsylvania Labor Relations Board (Board) to a proposed decision and order (PDO) issued September 30, 1999. In the PDO, the hearing examiner concluded that the County committed unfair practices in violation of Section 1201(a)(1) and (8) of the Public Employe Relations Act (PERA) by refusing to implement a binding grievance arbitration award. Teamsters Local 205 (Union) did not file a response or opposing brief.

This charge of unfair practices arises out of a grievance filed by Dawn Peters (Peters) concerning her contractual rate of pay.¹ Pursuant to the collective bargaining agreement (CBA) between the County and the Union, this grievance proceeded to binding arbitration wherein the arbitrator sustained the grievance and recommended that Peters be paid a higher rate of pay. The County refused to implement the arbitrator's award, despite the fact that both parties agreed that the decision would be considered final and binding prior to receiving the award. The County notified the Union of its refusal, claiming that the arbitrator's decision circumvented the statutory rights of the salary board. However, the County did not appeal the arbitrator's award.

Relying on established caselaw, the hearing examiner concluded that the County committed unfair practices when it refused to implement a binding, unappealed grievance arbitration award. In Philadelphia v. Philadelphia Federation of Teachers, 464 Pa. 92, 346 A.2d 35 (1978), the Supreme Court opined that Section 903 of PERA² commands that the arbitration of grievances is mandatory and that the arbitration procedure adopted by the parties must be final and binding. Further, under PLRB v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978), an award that is not appealed is final and binding on the parties, and the employer may not collaterally attack the award via an unfair practice enforcement proceeding. The hearing examiner followed the test articulated in Crawford

¹ Peters sought a higher rate of pay as the Administrative Assistant in the District Attorney's Office. (FF 5, PDO at 1).

² Section 903 provides in pertinent part:

Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a binding decision by an arbitrator

Central School District v. PLRB, 618 A.2d 1202 (Pa. Cmwlth. 1992), that an employer commits an unfair labor practice when the following three conditions are met: (1) an award exists; (2) the appeal procedure available to the employer has expired; and (3) the employer refuses to comply with the provisions of the arbitrator's decision. The hearing examiner determined that all three criteria were met, and concluded that the County committed an unfair practice by refusing to comply with the award. The hearing examiner rejected the County's defense that the arbitration award was illegal because it conflicts with the County Code, because questions concerning the legality of an award are appropriately addressed during direct appeal of the award. See PLRB v. Commonwealth, supra.

In its exceptions, the County asserts that: (1) the County cannot be compelled to implement this award because it requires legislation and such legislation was not enacted; (2) the hearing examiner erred in determining that the County was barred from arguing that the award was merely a recommendation; (3) the hearing examiner erred in determining that the County was estopped from repudiating existing contractual provisions based on alleged illegality, because the CBA recognizes the precedence of statutory provisions.

The County alleges that the hearing examiner ignored the procedure for setting salaries of County employes.³ The County asserts that the award necessitates the expenditure of money, and that any such expenditure required by a grievance arbitration award in turn requires a legislative appropriation. The County cites Franklin County Prison Board v. PLRB, 406 A.2d 829, 831 (Pa. Cmwlth. 1979) (rev'd, 491 Pa. 50, 417 A.2d 1138 (1980)) as support for its argument. However, that case is not supportive of the County's position for two reasons. First, unlike Franklin County Prison Board, which addressed implementation of a binding interest arbitration award, this case deals with a binding grievance arbitration award. Second, the Commonwealth Court decision on which the County relies was appealed to the Supreme Court which reversed the Commonwealth Court and reinstated the Board's final order. When that case was appealed, the Supreme Court rejected the same argument that the County makes in this case. The Court reinstated the Board's holding that an employer may not refuse to implement an arbitration award merely because the County Code grants a salary board the authority to fix salaries and compensation of county employes. Franklin County Prison Board v. PLRB, 491 Pa. 50, 417 A.2d 1138, 1140-1144 (1980).

The Board notes that "[t]he 'legislative proviso' exception[s] provided in [Sections 903 and 805 of] the Act for compliance with arbitration awards has been distinguished as between grievance and interest arbitration awards." Upper Dublin Township, 28 PPER ¶ 28047 (Final Order, 1997). See also Cambria County, 17 PPER ¶ 17078 (Final Order, 1986). In the grievance arbitration award setting, a public employer exercises its legislative powers when it enters into the CBA under which a grievance arises. In Danville Education Association v. Danville Area School District, 467 A.2d 644 (Pa. Cmwlth. 1983), the Commonwealth Court rejected the argument that a grievance arbitration award was not binding because it interfered with the public employer's legislative functions to appropriate and spend taxpayer money. The Court distinguished this issue from the

³ The County Code, 16 P.S. § 1620 mandates that the "salaries and compensation of all appointed officers and employees who are paid from the county treasury shall be fixed by the salary board."

interest arbitration issue Franklin County Prison Board by noting that when a public employer enters into an agreement that provides for grievance arbitration pursuant to Section 903 of the Act, it has exercised its legislative prerogatives. The court held that no interference with the legislative function occurs when an arbitrator finds the public employer violated its own voluntarily agreed-to contract. See also Upper Dublin Township, supra; Zelienople Borough, 27 PPER ¶ 27024 (Final Order, 1995); City of Philadelphia, 22 PPER ¶ 22228 (Final Order, 1991).

Even if the Board were to accept case authority regarding interest arbitration awards (Franklin County Prison Board), the County's argument fails. In that case the Supreme Court rejected the same argument that the County makes in this case - that it cannot implement the award because the County Code grants only the salary board the authority to fix salaries and compensation. In Franklin County Prison Board, the Supreme Court ordered the salary board to fix the salaries in accordance with the terms of the arbitration award. PLRB v. Clarion County, 442 A.2d 374 (Pa. Cmwlth. 1982)(the salary board is required under the law of our Commonwealth to implement the award; Commonwealth Court rejected the County's argument that an arbitration award was advisory only because it required action by its salary board); Indiana County, 14 PPER ¶ 14221 (Proposed Decision and Order, 1983)(salary boards are duty bound to implement interest arbitration awards). Further, the Commonwealth Court opined that "declaring that all arbitration awards calling for an increase in compensation or benefits are automatically advisory . . . would be an absurd conclusion." APSCUF v. Kline, 427 A.2d 684 (Pa. Cmwlth. 1980). It is thus established precedent that county salary boards are required to implement binding arbitration awards. Contrary to the County's position, Franklin County Prison Board addresses the fundamental, constitutional, non-delegable legislative powers of the elected legislative branch of government to levy and raise taxes. In that case, the Supreme Court held that an interest arbitration award does not violate the non-delegation of legislative powers required by the Pennsylvania Constitution where the public employer does not show that a unit-wide pay and benefit increase to all members of the bargaining unit requires the levying and raising of additional taxes to be effective. An interest arbitration award under Franklin County Prison Board is rendered advisory only where existing resources of the employer are inadequate to fund it. This employer has not made, or even attempted, a showing that the monies necessary to satisfy the grievance of one bargaining unit employe will require the levying of additional taxes.

The County asserts that the arbitration award is merely a recommendation, relying on Section 903 of PERA. The County argues that implementation of the award would require a legislative enactment, thereby rendering the award advisory. However, as discussed above, a public employer exercises its legislative prerogatives by entering into an agreement with a union. Legislative approval is necessary in the establishment of wages and benefits by way of negotiation or interest arbitration, where a collective bargaining agreement does not yet exist. Additional legislative approval is not necessary in the grievance arbitration setting where there is an existing agreement and the grievance merely seeks to make employes whole for the employer's breach of that agreement. City of Philadelphia, supra. Even if this were not the case, the County has not demonstrated that legislative action is required to implement the award in the form of levying taxes or appropriating funds. Even in a pure Franklin County Prison Board interest arbitration case, it is the public employer's burden to demonstrate whether a legislative

enactment is required to execute the award. County of Lehigh, 505 A.2d 1104 (Pa. Cmwlth. 1986)(citing County of Lawrence v. PLRB, 469 A.2d 1145 (Pa. Cmwlth. 1983). In such a case, the public employer must demonstrate that the raising of additional taxes is necessary to fund the award, and that it has met, considered and rejected the award. Franklin County Prison Board, supra.

The County asserts in its final exception that the hearing examiner erred in determining that the County was estopped from repudiating existing contractual provisions based on alleged illegality. The County argues that because the CBA recognizes the precedence of existing statutory provisions, the award is not valid because it is inconsistent with the County Code. As the hearing examiner explained, the County's defense that the arbitration award is illegal because it conflicts with the County Code fails. The Hearing Examiner properly relied on Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, 481 Pa. 66, 391 A.2d 1318, in concluding that the County should have raised such claims when the agreement was negotiated. The hearing examiner properly noted that under PLRB v. Commonwealth, 387 A.2d 475 (Pa. Cmwlth. 1978), questions concerning the legality of an award are appropriately addressed on appeal. Further, the Supreme Court has opined that when a party fails to appeal an arbitration award and fails to comply with the arbitrator's decision, it waives its right to raise the legality of the arbitration award as a defense to the unfair labor practice charges. Borough of Lewistown v. PLRB, ___ Pa. ___, 735 A.2d 1240, 1246 (1999). The County cannot now, in an unfair labor practice proceeding, raise issues of the legality of the unappealed award.

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.

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 exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed, and the 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, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this eighteenth day of January, 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.

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AFFIDAVIT OF COMPLIANCE

Clearfield County hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (8) of the Act, that it has complied with the award issued on November 16, 1998, grievance number 15967; that it has posted the proposed decision and order and final order as directed, 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