

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

McCANDLESS POLICE OFFICERS :
ASSOCIATION :
 :
v. : Case No. PF-C-97-75-W
 :
TOWN OF McCANDLESS :

FINAL ORDER

On April 12, 1999, the McCandless Police Officers Association (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to a proposed decision and order (PDO) issued on March 23, 1999. In the PDO, the hearing examiner dismissed a charge of unfair labor practices (filed May 5, 1997) in which the Association alleged that the Town of McCandless (Town) had violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by failing to comply with a grievance arbitration award. In its charge, the Association specifically alleged that the Town committed unfair labor practices by failing to apply the full amount of the state contribution to the police pension fund before requiring officer contributions for the years 1995, 1996 and 1997. The hearing examiner concluded that the arbitration award did not order the Town to apply the state contribution as argued by the Association and instead required only that officer contributions for 1994 be suspended and all monies deducted for 1994 be refunded. On April 27, 1999, the Town filed its response to the Association's exceptions and a brief in support.

The essential facts of this case are set forth in the PDO and are summarized as follows. On October 4, 1994, arbitrator Elliot Newman issued the following grievance award under Act 111:

"The grievance is sustained. All Contributions by police officers to the Police Pension Fund are to be immediately suspended, and all monies deducted pursuant to Section 4.02 of the Pension Plan as contributions for 1994 are to be Refunded."

(Union Exhibit 1 at 1). In arriving at the award, the arbitrator reasoned:

"there is clear and unambiguous contract language in Article IX,¹ Section 4.03(2) [of the pension plan], as incorporated into the parties' contract in Article XX, Section (d), that the full amount of the state's contribution must be applied to the Police Pension Fund before the total financial requirement can be reduced by an employe contribution."

(Union Exhibit 1 at 11). The arbitrator sustained the grievance because the Town did not apply the full amount of the state's contribution to the police pension fund before the Town's total financial requirement was reduced by the contributions of the officers.

The Town filed an appeal of the arbitrator's award to the Court of Common Pleas of Allegheny County. As the appeal process continued into 1995, the Town did not apply the full amount of the state's contribution to the police pension fund before the total financial requirement was reduced by officer contributions, and the Town continued to withhold officer contributions at the rate of 4.25%.

As a result, the Association directed its attorney to inquire as to what the Town intended to do about 1995 contributions. In response, the Town manager by letter of February 1, 1995, confirmed that "all 1995 police pension contributions will continue to be held in an escrow account pending resolution of the outstanding litigation" (Union Exhibit 7). Subsequently, by order of July 17, 1995, the common pleas court vacated the 1994 arbitration award. The Association then filed an appeal with the Commonwealth Court. On June 10, 1996, the Commonwealth Court reversed the order of the common pleas court and reinstated the 1994 arbitration award. Thereafter, the Town sought allocatur, which the Pennsylvania Supreme Court denied by order of March 18, 1997. As a result, the 1994 arbitration award became final.

On April 9, 1997, the Town informed counsel for the Association that it intended to abide by its interpretation of the Newman award for only 1994 and therefore the Town refunded the 1994 police contributions with interest. In 1995 and 1996, the Town did not place all of the state contribution into the police pension fund. In 1995, the Town allocated to the police pension fund \$97,443 of the approximately \$185,805 in state contribution. In 1996, the Town allocated to the police pension fund \$94,094 of the approximately \$179,677 in state contribution. The Association filed no grievances over the state contribution issue in 1995 or 1996. For 1995, 1996 and 1997 the Town maintained the police contributions in an escrow account. The Town later refunded these amounts to the officers as directed by Arbitrator Michael Zobrak in a July 1997 interest arbitration award (Zobrak award).

The Association first excepts to the hearing examiner's failure to find that the Town's refusal to apply the full amount of the state's contribution to the police pension fund before the total financial requirement was reduced by officer contributions, as allegedly required by the Newman award, for the years 1995 through 1997 constituted a refusal to comply with an arbitration award in violation of Section 6(1)(a) and (e) of the PLRA and Act 111. When an unfair labor practice charge alleges a refusal to comply with a grievance arbitration award, the Board must determine first whether an arbitration award exists and whether the appeal process has been exhausted. Wilkins Township Police Department v. PLRB, 707 A.2d 1202 (Pa. Cmwlth. 1998). If these two conditions are present, the Board must then determine whether the employer failed to comply with the award. Id. The party alleging non-compliance with a grievance arbitration award has the burden of proof to show that the opposing party has indeed failed to comply with the arbitrator's decision. PLRB v. Commonwealth of Pennsylvania, 478 Pa. 582, 378 A.2d 475 (1978). In this case, the parties do not dispute that a grievance arbitration award exists and that the appeal process has been exhausted. The only question then is whether the Town complied with the Newman award. On the basis of the record as a whole, the hearing examiner concluded that the Association failed to meet its burden of proof and therefore the Town did not commit an unfair labor practice.

The Association asserts that the issue addressed in the Newman award was "[w]hether the Town violated Article XX of the parties' agreement by failing to first apply all pension funds received from the State to the police pension fund as allegedly required by Article IV, Section 4.03(2) of the Police Pension Plan" (Union Exhibit 1). After a review of the relevant provisions and the evidence before him, the arbitrator found that the Town had violated the collective bargaining agreement and therefore sustained the Association's grievance. In reaching this conclusion, the arbitrator concluded that the language in Article IV Section 4.03(2) of the police pension plan, as incorporated into the parties' contract in Article XX, Section (d), was clear and unambiguous and required that the full amount of the state's contribution must be applied to the police pension

fund before the total financial requirement could be reduced by contributions from police officers. Because the Town failed to apportion the money accordingly, the arbitrator sustained the grievance. The Association contends that the Newman award was a statement of the Town's duty under the agreement, which existed for the life of the parties' agreement. Thus, the Association asserts that the hearing examiner incorrectly determined that the grievance award simply involved a question of the 1994 contributions. The Association asserts that the Newman award was intended to apply to police contributions for the years after 1994 as well. Otherwise, according to the Association, the arbitrator would not have ordered the immediate suspension of all police contributions. The Association believes that the Town had a continuing duty to comply with Arbitrator Newman's interpretation of the provision at issue for as long as the contract remained in effect.

However, after a thorough review of the Newman award we agree with the hearing examiner that the Town has complied with that award. Indeed, a review of the four corners of the Newman award indicates that the arbitrator sustained the Association's position as to the contract interpretation issue but only directed the suspension of police contributions and the refund of those contributions for 1994. Contrary to the Association's assertion that the Newman award required the Town to first apply the entire amount of state aid first to the police pension fund for years beyond 1994, the Newman award mentions numerous times that the focus of the award is on officers' contributions for 1994. In the discussion section of the award, Arbitrator Newman restates the issue as "what contribution, if any, the police officers must make to the Police Pension Plan for 1994 pursuant to Article XX of the parties' contract and Article IV of the Plan?" (Union Exhibit 1 at 9) (emphasis added). Continuing on with this discussion, Arbitrator Newman recognized:

[i]n resolving the grievance, it is also proper to use the 1993 (rather than the 1991) actuarial valuation, as its utilization results in the best indication of what the actual total financial requirement is for 1994. The net financial requirement is therefore \$192,005 based upon Mockenhaupt's report, but this must be reduced by \$217,399 which is the amount of the General Municipal Pension System State Aid received for 1994. Accordingly, with a surplus of \$25,394, there is no additional financial need or any necessity for an employee contribution in 1994. As contributions from the police officers' wages have been deducted at the rate of 4 1/4% of monthly compensation during 1994, these monies will have to be refunded.

(Union Exhibit 1 at 13) (emphasis added).

Finally, at the conclusion of the discussion, the arbitrator entered the following:

Award

The grievance is sustained. All contributions by police officers to the Police Pension Fund are to be immediately suspended, and all monies deducted pursuant to Section 4.02 of the Pension Plan as contributions for 1994 are to be refunded.

(Union Exhibit 1 at 15) (emphasis added). Nowhere in the Newman award is there a discussion of the application of the state contribution to the police pension fund for the years 1995 through 1997. For the Board to adopt the Association's

position, the Board would in fact be requiring the Town to do more than what the arbitrator awarded; this the Board cannot do. The Board is limited to a determination of whether the charged party has in fact complied with the award and is not permitted to review the merits of the award or to act as a "super-arbitrator." Pennsylvania, Department of Labor and Industry, 17 PPER ¶ 17177 (Final Order, 1986).

Although the Newman award may be considered a binding interpretation of the provision at issue for the life of the parties' agreement, which the Town disputes, the Board cannot act as a super-arbitrator and grant a remedy not given by the arbitrator himself. Even if the Town were bound in years subsequent to 1994 to act in accordance with Arbitrator Newman's interpretation of Article XX of the parties' agreement, these subsequent years did not necessarily involve the same facts present in 1994. The Association cites to Northwest Tri-County Intermediate No. 5, 23 PPER ¶ 23071 (Final Order, 1992) for the proposition that multiple grievances need not be filed where the facts, the parties and the contractual language in dispute are the same. The Association further contends that the years subsequent to 1994 involved the same parties, same fact pattern and the interpretation of the very same contractual provision. Therefore, the Association argues it was not required to file grievances for 1995 through 1997 over the same contract dispute.²

However, contrary to the Association's argument, Northwest Tri-County Intermediate Unit No. 5 holds that where there is a subsequent claim involving different facts a new grievance should be filed. Indeed, in that case the Board recognized that it has consistently held that no violation will be found where the conduct alleged to constitute a refusal to comply with an arbitration award involves different grievants, separate facts, and arises under a subsequent contract. Id.; Westmont-Hilltop School District, 22 PPER ¶ 22225 (Final Order, 1991). In this case, the Town's continuing retention of officer contributions in the amount of 4.25% in 1995, 1996 and 1997 did not involve the same facts as 1994. Rather, as argued by the Town, the financial requirements of the pension plan must be determined annually and actuarial facts may differ for any given year. Although subsequent years may involve the same actuarial protocols, those subsequent years could involve differing pension calculations based on the actuarial soundness of the pension plan for that given year (Union Exhibits 12, 13, 14; N.T. 59, 76, 81). The fact that Arbitrator Newman ordered the immediate suspension of all police contributions for 1994 does not necessarily show that the award was intended to preclude the Town from requiring police contributions in future years. Article XX of the collective bargaining agreement provides that officer contributions to the police pension fund are subject to an annual report as to the actuarial soundness of the fund. Based on our review of the record, the Board is convinced that the Newman award required the Town to refund the police contributions for only 1994.

Although not specifically raised as a separately enumerated exception, the Association additionally argues that the Town is estopped from arguing that the Newman award was limited only to 1994 officer contributions and that the Association should have filed a grievance for 1995, 1996 and 1997. In support, the Association points out that during the appeal of the Newman award from 1994 through 1997, the Town continued to deduct 4.25% as officer contributions and did not apply the full amount of state aid to the financial requirement for 1995 through 1997. When Association's counsel contacted the Town and asked what the Town intended to do with the 1995 contributions, the Town manager advised that all police pension contributions continue to be held in escrow pending resolution of the outstanding litigation (i.e., appeal of the 1994 award). Moreover, shortly after the Supreme Court denied allocatur and the Newman award became

final, the Town council president advised the Association that the contributions for the years subsequent to 1994 were still in escrow earning interest (Union Exhibit 8). Based on these facts, the Association contends that the Town impliedly, if not unambiguously, represented that the pending litigation would control the parties' dispute over officer contributions and resolve the application of state contributions in subsequent years. The Association claims that it did not file a grievance for the subsequent years based on the Town's representations.

Despite the Towns' representations, the Association was aware that the Town was not applying the full amount of state contributions to the police pension fund for 1995, 1996 or 1997. Thus, the Association was free to file grievances over that issue for those years. Moreover, the Board is limited to determining whether the Town complied with the Newman award. Because the Board concludes the Town complied with that award, the Board need not look to subsequent events other than what is relevant and necessary to determine compliance with the award at issue. The Association's position in this regard is also inconsistent in that the Association claims on the one hand it was not required to file multiple grievances for 1995, 1996 and 1997 while on the other hand it was precluded from filing grievances for those years because of the Town's implied representations. The Association cannot have it both ways.

Finally, the Association argues that the hearing examiner erroneously relied on Whitehall Township, 18 PPER ¶ 18024 (Final Order, 1986), Minersville Area School District v. PLRB, 568 A.2d 979 (Pa. Cmwlth. 1989), and PLRB v. Erie City School District, 15 PPER ¶ 15134 (Court of Common Pleas of Erie County, 1984) for the proposition that the discussion portion of the Newman award should not be considered in determining whether the charged party complied with the award. The Association contends that this view is contrary to the custom of affording precedential value to labor arbitration decisions. In order to meet this goal, the Association stresses the need to consider the entire arbitration award, including the discussion section wherein Arbitrator Newman clearly intended for the Town to apply the full amount of state contribution to the police pension fund.

However, the hearing examiner did not refuse to consider the discussion portion of Arbitrator Newman's award but instead determined that the award did not order the Town to first apply all future state contributions to the police pension fund for years beyond 1994. Furthermore, the Board will look at the discussion section of an award and the language of the arbitration award as a whole to determine the arbitrator's award of remedial relief. SSHE v. PLRB, 528 A.2d 278 (Pa. Cmwlth. 1987). Review of the Newman award shows that the hearing examiner's interpretation of that award was based on substantial and credible evidence. Indeed, the hearing examiner's interpretation of the Newman award does in fact further the policy of affording arbitration award's precedential value in that the award was limited to the refund of the 1994 contributions. Because the Town refunded the 1994 contributions, the Town complied with the Newman award. Accordingly, the Association's exceptions will be dismissed.

After a thorough review of the exceptions, the brief in support of 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 Pennsylvania Labor Relations Act and Act 111, 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 twenty-first day of June, 1999. 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.

¹ The reference in the award to Article IX of the police pension plan, which is incorporated into the parties' collective bargaining agreement, was incorrect. Review of the award as well as the agreement and the pension plan reveal that the award was referring to Article IV rather than Article IX of the police pension plan.

² The Town contends that the Association's charge here is moot because the Zobrak award in 1997 directed the Town to refund officer contributions for 1995, 1996 and 1997. The Town has refunded those contributions. Moreover, the Town points out that the Zobrak award resolved the issue concerning the allocation of state contributions. Thus, the Town claims any dispute over officer contributions beyond 1994 is moot. However, the Board cannot agree at this time that the Association's charge is moot. Even though the Town refunded officer contributions for 1995, 1996 and 1997 as directed by the Zobrak award, the issue remains as to whether the Newman award required state contributions for those years to be allocated entirely to the police pension fund before the pension fund for non-police employees. The Zobrak award resolved the state aid issue for 1998 and beyond but not for 1995 through 1997 (Town Exhibit 10). The charge in this case is also not moot because according to the Town the Zobrak award is on appeal.