

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORTHAMPTON TOWNSHIP POLICE BENEVOLENT :
ASSOCIATION :
 :
 v. : Case No. PF-C-04-28-E
 :
 NORTHAMPTON TOWNSHIP :

FINAL ORDER

Northampton Township (Township) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on October 5, 2004, from a Proposed Decision and Order (PDO) issued September 17, 2004, wherein the hearing examiner concluded that the Township violated Act 111 of 1968 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by refusing to implement provisions of an interest arbitration award. The Northampton Township Police Benevolent Association (Association) filed a response to the exceptions on October 15, 2004.

The material facts of this case are generally not in dispute. Pursuant to the parties' bargaining obligations under Act 111, an interest arbitration award was issued December 26, 2003, addressing wages, pensions, a savings plan, and post-retirement medical benefits, effective January 1, 2003 through December 31, 2006. On January 26, 2004, the Township filed a "Petition to Vacate Act 111 Arbitration Award" with the Bucks County Court of Common Pleas.¹ In the Petition to Vacate, the Township alleged that "The Board of Arbitration exceeded its authority under Act 111 in capping the employees' pension contributions without the benefit of an actuarial cost estimate or actuarial report as required by Act 205." (Specification of Charges Exhibit B, ¶15; Finding of Fact 3). The Township's requested relief from the court was to vacate the entire award. The Township has refused to implement any provisions of the December 26, 2003 Act 111 interest arbitration award while its appeal is pending. The hearing examiner found that the Township was only appealing the cap on employee pension contributions, and that its refusal to implement the uncontested provisions of the award constituted a violation of Act 111 and Section 6(1)(a) and (e) of the PLRA.

The Township asserts that PLRB v. Commonwealth of Pennsylvania, 478 Pa. 582, 387 A.2d 475 (1978), City of Philadelphia, 11 PPER ¶ 11079 (Nisi Order of Dismissal 1980), and City of Philadelphia, 32 PPER ¶ 32132 (Order Directing Remand to Secretary for Further Proceedings 2001),² are controlling of this case since an interest award is not

¹ Northampton Township v. Northampton Township Police Benevolent Association, No. 0400509-16-6. As of the issuance of this Final Order the Petition to Vacate is still pending in the Court of Common Pleas.

² To the extent the Township cites City of Philadelphia, 32 PPER ¶ 32132 (Order Directing Remand to Secretary for Further Proceedings 2001), we

binding where the employer petitions to vacate the award in the court of common pleas. The Township claims that the hearing examiner erred in relying on Cheltenham Township, 21 PPER ¶ 21026 (Final Order 1989), arguing that because it has petitioned to vacate the interest award, Cheltenham Township does not support the finding of a violation of Section 6(1)(e) of the PLRA.

In PLRB v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978), the Supreme Court held that decisions of a grievance arbitrator under Section 903 of the Public Employe Relations Act are "deemed binding" for purposes of enforcement as soon as that decision becomes final in the sense that it is no longer appealable. For enforcement actions under Section 1201(a)(8) of PERA, the Court held that "the Board must determine first if an award exists, second, if the appeal procedure available to the aggrieved party... has been exhausted, and third, if the party has failed to comply with the provisions of the arbitrator's decision." Commonwealth, 387 A.2d at 480. Relying on PLRB v. Commonwealth, the Board subsequently issued a Nisi Order of Dismissal in City of Philadelphia, 11 PPER ¶ 11079 (Nisi Order of Dismissal, 1980), to which no exceptions were filed, dismissing a charge seeking enforcement of an interest arbitration award under Act 111 while the employer's appeal of that award was pending in common pleas court.

However, thereafter the Commonwealth Court recognized that a public employer is bound by provisions of an interest arbitration award that are not in dispute. Dunmore Police Association v. Borough of Dunmore, 528 A.2d 299 (Pa. Cmwlth. 1987), involved an interest arbitration award that did not resolve with finality all the issues, but left some remaining disputed issues to be studied by a committee. On appeal of the award, the court agreed that the delegation to a committee was in error, but rejected the argument that the award should be vacated in its entirety, and remanded the outstanding issue to a new arbitration panel for final resolution and directed the lower court to entertain the union's mandamus action for enforcement of the remaining portions of the award not at issue. Thereafter, referring to Dunmore in an enforcement action where the employer was found to have committed an unfair practice by refusing to fully implement an unappealed interest award on claims that a provision of the award was unlawful, the Commonwealth Court noted that "[t]he Boards' order ... is consistent with Dunmore as it directed the Township to enforce those provisions of

note that that case is an aberration, clearly distinguishable on its facts. City of Philadelphia dealt with a grievance arbitration award over the discharge of an employe. The arbitrator directed the employer to choose between two remedies: (a) reinstate the employe without back pay, or (b) compensate the employe without reinstatement. Both the employer and union were in a catch-22. The union could not insist on compliance it appealed as inappropriate, and if the employer complied, the union would object and the compliance could be declared unlawful. The Board did however address the 1987 amendments to the Rules of Appellate Procedure, noting that there is no longer an automatic supersedeas when a public employer appeals a trial court's affirmance of an arbitration award. Because of the unique nature of the award, the Board found that the statute of limitations was tolled and remanded for a hearing on compliance. The holding of City of Philadelphia is not relevant to the issues presented in this case.

the award addressed with finality." Derry Township v. PLRB, 571 A.2d 513, 516 (Pa. Cmwlth. 1989). In Derry Township the employer did not implement unappealed and uncontested portions of an Act 111 interest award because the arbitration panel directed the parties to prepare a comprehensive agreement incorporating prior award provisions which had been carried over. The Board and the court found the employer obliged to implement uncontested portions of the interest award over the employer's objection that the award "lacked finality" because an additional unrelated action was yet to occur. Consistent with the holding in Dunmore and the language of Derry Township, the Board held in Cheltenham Township that provisions of an Act 111 interest arbitration award, which have gone unchallenged in an appeal, are final and binding on the employer, and absent a common pleas court order staying the award, are immediately enforceable before the Board.

The Township's central challenge in its exceptions is not to the holding in Cheltenham Township, but to the hearing examiner's finding that it was only appealing the cap on employe pension contributions and was not seeking to vacate the entire interest arbitration award. Generally, the hearing examiner's findings of fact will not be disturbed on exceptions where the findings are supported by substantial evidence in the record. Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942) (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1938)). Here, the Petition to Vacate Act 111 Arbitration Award supplies the substantial evidence supporting the hearing examiner's finding that the Township was only challenging the cap on employe pension contributions.

Paragraph 8 of the Petition to Vacate alleges that the award contained the provision

3. Pension:

(b) Effective January 1, 2004, and continuing through the life of this award, employee contributions to the police pension plan shall be capped at a maximum of 3%.

Further, in Paragraphs 12 and 13 of the Petition to Vacate the Township alleged that "the Award violates Act 205 because it altered the pension plan without the benefit of an actuarial cost estimate and compels the Township, by implementing the pension plan changes, to commit an unlawful act." Paragraph 15 alleges that "the Board of Arbitration exceeded its authority under Act 111 in capping the employees' pension contributions without the benefit of an actuarial cost estimate or actuarial report as required by Act 205." Nowhere in the Petition to Vacate Act 111 Arbitration Award does the Township claim that any other provision of the award, other than Section 3(b) involving the cap on employe contributions, would compel it to commit an unlawful act if implemented.³ The usual and customary rule is that matters not raised

³ In addition, although the Township argues that its Petition to Vacate requested the exclusive relief of vacating the award in its entirety, the "Wherefore" clause does not limit the court to this relief, but requests that the court "grant such other relief as is appropriate". Although the common pleas court may raise certain matters *sua sponte*,

in a petition to vacate an interest arbitration award are waived. Local 85 of the Amalgamated Transit Union, AFL-CIO, Appellant v. Port Authority of Allegheny County, 840 A.2d 506 (Pa. Cmwlth. 2004), see also Borough of Lewistown v. PLRB, 558 Pa. 141; 735 A.2d 1240 (1997) (unappealed issue of the illegality of an interest arbitration award cannot be challenged in a subsequent enforcement action before the Board).

The Petition to Vacate Act 111 Arbitration Award is substantial evidence supporting that the Township was not contesting provisions of the December 26, 2003 award, including the Deferred Retirement Options Program, 457 savings plan, post-retirement medical benefits, or wages. Accordingly, the hearing examiner's finding that the Township was only appealing the provisions of the award concerning the cap on employee contributions is not in error and is sustained.

Because the hearing examiner's finding that there were provisions of the award which were not pending on appeal is supported by substantial evidence, consistent with Cheltenham Township, the Township committed an unfair labor practice by refusing to implement those unchallenged provisions of the award. Accordingly, after a thorough review of the exceptions, and all matters of record, the hearing examiner did not err in concluding that the Township violated Act 111 and Section 6(1)(a) and (e) of the PLRA, and the Township's exceptions to the PDO are dismissed.⁴

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 of 1968 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order of September 17, 2004, are dismissed, and the PDO is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Anne E. Covey, Member, this sixteenth day of November, 2004. 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.

the general request for relief ordinarily does not preserve all matters of the award for review.

⁴ The Association has requested that the Board reconsider its policy of refusing to award attorney's fees. The Board however is not empowered by statute to award attorney's fees. Cheltenham Township, supra. Accordingly, the Association's request is denied.

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AFFIDAVIT OF COMPLIANCE

Northampton Township hereby certifies that it has ceased and desisted from its violations of Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act; that it has implemented the provisions of the award with the exception of the one involving the cap on employe contributions to their pension plan; that it has posted the Final Order and Proposed Decision and Order as directed; and that it has served an executed copy of this affidavit on the Northampton Township Police Benevolent Association 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