

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SERVICE EMPLOYEES INTERNATIONAL :
UNION, LOCAL 668, AFL-CIO :
 :
v. : Case No. PERA-C-04-311-W
 :
FAYETTE COUNTY :

FINAL ORDER

Fayette County (County) filed timely exceptions and a supporting brief on August 16, 2005, with the Pennsylvania Labor Relations Board (Board) from a Proposed Decision and Order (PDO) issued July 27, 2005. In the PDO, the Hearing Examiner concluded that Fayette County (County) had committed unfair labor practices within the meaning of Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA), by refusing to comply with the Register of Wills' resolution of a grievance in favor of a member of Service Employees International Union, Local 668, AFL-CIO (Union).

In its exceptions, the County challenges the Hearing Examiner's conclusion that the County is bound by its designated representative's resolution of the grievance, irrespective of the correctness of the representative's interpretation and application of the collective bargaining agreement. The County further excepts to the Hearing Examiner's conclusion that the County designated its Register of Wills to resolve grievances at the first two levels of the grievance process. Finally, the County contends that the Hearing Examiner failed to find as fact that the Register of Wills informed the County Commissioners, prior to receiving the grievance, that he would sustain the grievance.

The Hearing Examiner's salient findings of fact, based in large part on the parties' stipulations, are as follows. The County and the Union are parties to a collective bargaining agreement, effective from January 1, 2003, through December 31, 2005. Article XXI, Section 1 of the agreement contains the following grievance procedure:

An employee is entitled to select the Union or its accredited representative to represent him during all steps of the grievance procedure which follows:

First Step - Immediate Supervisor. An employee with a grievance shall discuss it with his immediate supervisor who shall attempt to resolve the grievance to the mutual satisfaction of the employee and management within five (5) work days of its presentation. The supervisor shall report his decision to the employee in writing. If the employee does not proceed with his grievance to the second step within the time limits prescribed in the following subsection and no extension of time is granted, the grievance shall be considered to be satisfactorily resolved.

Second Step - Head of Department. If the employee is not satisfied with the disposition of his grievance after discussion with his immediate supervisor, he may submit a written appeal to the department head within five (5) work days after receiving a decision at the First Step or within not less than five (5) work days or not more than ten (10) work days after the grievance was presented at the First Step. The department head, within five (5) work days after receiving the appeal, shall meet with the employee in an attempt to resolve the grievance. The department head shall give the employee a written decision within five (5) work days following the meeting. If the employee does not proceed with his grievance to the Third Step within the time limits prescribed in the following subsection and no extension of time is granted, the grievance shall be considered to be satisfactorily resolved.

Third Step - Commissioners' Designee. If the employee is not satisfied with the disposition of his grievance at the Second Step, he may submit a written appeal to the designee of the County Commissioners within five (5) work days

after receiving a decision at the Second Step or within not less than ten (10) work days nor more than fifteen (15) work days after the grievance was presented at the Second Step. The designee, within ten (10) work days after receiving the appeal, shall hold a hearing at which the employee may present his grievance. The designee, within ten (10) work days following the hearing, shall give the employee a written decision. If the employee does not proceed with his grievance to the Fourth Step within the time limits prescribed in the following subsection and no extension of time is granted, the grievance shall be considered to be satisfactorily resolved.

Fourth Step - Arbitration. If the employee is not satisfied with the disposition of his grievance at the Third Step, he may appeal to arbitration within five (5) work days after receiving a decision at the Third Step or in not less than twenty (20) work days nor more than twenty-five (25) work days after the grievance was presented at the Third Step. A request for arbitration may be initiated by the Union serving upon the County a notice in writing of an intent to proceed to arbitration...

(PDO, Finding of Fact 3).

Patricia Payne is employed as a computer operator/clerk in the office of the Register of Wills. She was initially employed by the County in the same office from July 1, 1970, to January 1993, when her position was eliminated. Payne returned to County employment on July 24, 1995. On or about September 19, 2003, Payne filed a grievance alleging that the County's failure to provide her with longevity raises violated the collective bargaining agreement. On September 19, 2003, Register of Wills Donald Redman, Payne's immediate supervisor and department head, sustained the grievance.

On or about October 2, 2004 [sic]¹, the County Commissioners adopted a resolution granting Payne credit for her prior service for the purpose of calculating, *inter alia*, longevity increases. On or about February 18, 2004, County director of human resources David Rodgers informed Payne that the newly elected commissioners rescinded the resolution. On or about February 19, 2004, Payne filed a grievance alleging that the rescission of her longevity raises violated the collective bargaining agreement, which Redman subsequently sustained. Neither Payne nor the Union requested that the grievance proceed to the third step of the grievance procedure. On or about March 17, 2004, Rodgers informed Payne that the County Commissioners refused to comply with Redman's resolution of the grievance.

The County first excepts to the Hearing Examiner's conclusion that the County is bound by its designated representative's resolution of the grievance. The law is well established that a public employer's refusal to comply with a resolution at a lower stage in the grievance procedure constitutes an unfair practice. Moshannon Valley School District v. PLRB 597 A.2d 229 (Pa. Cmwlth. 1991). In this case, the collective bargaining agreement authorized Redman, as Payne's immediate supervisor "to resolve the grievance to the mutual satisfaction of the employee and management." Further, as the department head, Redman was authorized to "attempt to resolve the grievance," giving the employee a "written decision." The agreement provides no mechanism for the County to challenge its supervisors' and department heads' resolutions of grievances at the first two stages of the grievance procedure, stating only that if the employee does not proceed to the next level of the grievance process, "the grievance shall be considered to be satisfactorily resolved." Therefore, the County is bound by Redman's decision to grant Payne the longevity pay increases.

The County's contention that Redman's interpretation and application of the agreement is erroneous and constitutes an impermissible, unilateral change in the terms and conditions of employment is unavailing. The County's argument for a broad standard of

¹ The parties stipulated to October 2, 2004, as the operative date of the commissioner's resolution granting Payne credit for her prior service (N.T. 6-7; unfair practice charge). However, review of the record, including a copy of the resolution admitted as evidence, reveals that the operative date was October 2, 2003. (Joint Exhibit 4). As no party has challenged the date, the Board declines to amend the Hearing Examiner's finding of fact with regard to this date.

review for Board review of grievance arbitrations is analogous to the argument raised before the courts by parties arguing for a broad standard of appellate review of grievance arbitration awards. The Supreme Court rejected that argument, stating that such a review,

emboldens a court to become a "superarbitrator" and to vacate an award when it finds that the award is at odds with how the members of the court would have decided the case. The admonition against such judicial intervention was persuasively stated by this court in Scranton Federation of Teachers v. Scranton School District, 498 Pa. 58, 444 A.2d 1144, 1147 (Pa. 1982): "The parties to a collective bargaining agreement have bargained for the arbitrator's construction, not the court's; thus, a court has no business intruding into the domain of the arbitrator because its interpretation of the agreement differs from his." The court's rejection of a broad review is well founded. This approach takes away the dispute resolution procedure bargained for, and agreed to, by the parties, as well as undermines the many benefits of labor arbitration as a form of dispute resolution. Moreover, when a court vacates an arbitrator's award as being at odds with its idea of a proper resolution of the dispute, it inspires employers and employees alike to seek judicial review when they do not prevail at arbitration, in the hope that they too can reargue their case, and win in court what they could not achieve in arbitration.

State System of Higher Education v. State College and University Professional Association, 560 Pa. 135, 149, 743 A.2d 405, 413 (1999).

The logic espoused by the Court in above-cited language is considerably more powerful and applicable in this case than in Board and Court review of arbitration awards. If the losing party at lower stages of grievance procedures (which, other than in extraordinary circumstances such as the one presented in this case, would exclusively consist of bargaining units) is permitted to challenge the lower level adjudicator's interpretation of the collective bargaining agreement, it would create multiple additional levels of protracted litigation, conflict with the parties' intent as expressed in the contract and further delay the resolution of grievances. This result would undermine the Board's policy of encouraging expeditious grievance procedures that result in binding settlements or arbitration awards. Accordingly, the Board dismisses this exception.

The County next challenges the Hearing Examiner's determination that the County designated its Register of Wills to resolve grievances at the first two levels of the grievance process. The parties' collective bargaining agreement designates immediate supervisors and department heads as the County's representatives in the first two levels of the grievance process and authorizes them to resolve employee grievances. The first and second steps of the grievance procedure provide that the "immediate supervisor ... shall attempt to resolve the grievance to the mutual satisfaction of the employee and management[,]" and that if the employee is dissatisfied with the first step resolution the employee may appeal to the department head who "shall meet with the employee in an attempt to resolve the grievance. The department head shall give the employee a written decision within five (5) work days following the meeting."

It is undisputed that Register of Wills Redman served as Payne's immediate supervisor and department head, designating him as the County's representative for the first two levels of her grievance process and authorizing him to grant her grievances at either stage. Furthermore, the contract language is equally clear and express that only the employee or the Union may demand a third-level grievance hearing. Since Redman sustained Payne's grievance, and since neither Payne nor the union requested a third-level grievance hearing, Redman's resolution of the grievance is binding under the terms of the collective bargaining agreement.

To further its position, the County argues that as an elected official, Redman was not designated by the County and has no accountability with the County Commissioners. The County knew that the row officials acted as their employees' immediate supervisors and

department heads, and it knew the level of accountability the row officials had with the County Commissioners. Nevertheless, the County acceded to the grievance procedure language in the contract, which clearly designates them as the County representative during the procedure's first two stages. The County's opposition to the Register of Wills' and other row officials' authority in the grievance procedure should have been addressed at the time of collective bargaining, especially since the Commissioners negotiate the contract under Section 1620 of the County Code, and the Commissioner's lack of foresight when negotiating the contract does not serve as a defense to refusing to implement a grievance properly resolved under that agreement. Accordingly, this exception is dismissed.

Finally, the County excepts to the Hearing Examiner's failure to find as fact that the Register of Wills informed the County Commissioners, prior to receiving the grievance, that he would sustain the grievance. The Hearing Examiner is obligated only to set forth those findings necessary to support his conclusion. He is not required to summarize the evidence, make unnecessary findings of fact or make findings that would support another conclusion, regardless of the existence of substantial evidence to support such findings. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988); AFSCME v. Dep't Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986). The proposed finding of fact forwarded by the County is irrelevant to the Hearing Examiner's conclusions, which are supported by substantial record evidence. Accordingly, this exception is dismissed.

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 Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the above case number 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, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member this fifteenth day of November, 2005. 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

Fayette County hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of PERA; that it has complied with the grievance settlement; 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