

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD

JEFFERSON COUNTY COURT APPOINTED :
EMPLOYEES ASSOCIATION :
 :
v. : CASE NO. PERA-C-04-353-W
 :
JEFFERSON COUNTY :

FINAL ORDER

Jefferson County (County) filed timely exceptions on June 29, 2005, with the Pennsylvania Labor Relations Board (PLRB), and following an extension granted by the PLRB Secretary, a supporting brief on July 20, 2005, from a Proposed Decision and Order (PDO) issued June 7, 2005. In the PDO, the Hearing Examiner concluded that the County committed unfair practices within the meaning of Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by refusing to comply with grievance resolutions favoring five members of Jefferson County Court Appointed Employees Association (Union). Further, the Hearing Examiner found that the County did not commit unfair practices within the meaning of Section 1201(a)(3), (8) and (9) of PERA.¹ After the Secretary granted an extension, the Union filed a brief in opposition on September 7, 2005. After a thorough review of the exceptions and all matters of record, the PLRB makes the following:

ADDITIONAL FINDINGS OF FACT

12. The County Commissioners sought Court approval to raise taxes in an effort to fund its \$1.7 million deficit, as the County already levied the maximum level of taxes permitted without prior Court approval. The President Judge denied this petition. (N.T. 61).

13. President Judge Foradora selected the specific bargaining unit members that were laid off, after the County's salary board informed the Court that it eliminated five court-appointed positions.

DISCUSSION

The County filed eight enumerated exceptions to the PDO, asserting that the Hearing Examiner erred by 1) failing to find numerous findings of fact that support the County's defense to the charge of unfair practices; 2) concluding that the letters filed by the employees at issue constituted grievances and that the letters drafted by the grievants' first-level supervisors and by the President Judge Foradora constituted grievance resolutions; 3) concluding that the County is bound by the first-level supervisors' or President Judge's grievance resolutions; 4) concluding that the County's failure to implement the resolutions constituted an unfair practice, without determining that the underlying matter complained of constituted a contractual violation; 5) failing to conclude that the President Judge's actions violated the County Code and the separation of powers doctrine; 6) misapplying cited case law to support the conclusion that the County is bound by the grievance resolutions of both the first-level supervisors and the President Judge; 7) concluding that the County committed unfair practices under Section 1201(a)(1) and (5) of PERA; and 8) concluding that the Union presented substantial evidence to support its charges of violations under Section 1201(a)(1) and (5).

The salient findings of fact set forth in the PDO are as follows. The County and the Union are parties to a collective bargaining agreement, effective from January 1, 2004, through December 31, 2006. Article 21 of the contract contains a grievance procedure and defines a grievance as "a dispute concerning the interpretation, application or alleged violation of this agreement." The grievance procedure consists of four steps, ending if necessary, in the submission of the grievance to arbitration. Article 21 states in pertinent part:

¹ The Union has not filed exceptions to the dismissal of these charges.

FIRST STEP - IMMEDIATE SUPERVISOR

An employee with a grievance shall submit in writing said grievance to his immediate Supervisor within five (5) work days of its occurrence or knowledge thereof. The Supervisor 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/her 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 - DEPARTMENT HEAD

If the employee is not satisfied with the disposition of his/her grievance after receiving a decision from his/her immediate Supervisor, he/she may submit a written appeal to his/her Department Head within five (5) work days after receiving a decision at the First Step or within not less than five (5) work days nor 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/her grievance to the Third Step with (sic) the time limits prescribed in the following subsection and no extension of time is granted, the grievance shall be considered to be satisfactorily resolved.

(PDO, Finding of Fact 4).

The County petitioned the Court for authority to levy taxes beyond its statutorily authorized limit; the Court refused this request and dismissed the petition. Subsequently, on March 8, 2004, the County's salary board² eliminated five positions within the bargaining unit; the President Judge, a member of the salary board for purposes of this decision, cast an opposing vote. On or about March 15, 2004, the five terminated bargaining unit members filed grievances with their immediate supervisors over the elimination of their positions. Between March 15 and 19, 2004, the supervisors sent letters to the President Judge concurring with the grievants' position. On March 22, 2004, the President Judge issued a letter to the chairman of the board of county commissioners and the salary board, stating as follows:

I am enclosing the Court Employees Union Grievances as well as their immediate supervisor [sic] responses.

I believe the Union Contract has been violated and that the employees' grievances should be rectified by reinstating the employees back to their respective March 8, 2004 status.

(PDO, Finding of Fact 8). By letter dated March 30, 2004, the County rejected the Union's request for reinstatement of the five bargaining unit employees. Following this refusal, the Union brought an action in the Jefferson County Court of Common Pleas to compel the County to reinstate the employees. After the Court ruled for the Union, the County reinstated the employees and paid their salaries without raising taxes.

The County argues that the Hearing Examiner erred by failing to make seventeen additional findings of fact. Upon review of the record evidence, the PLRB finds the above stated additional facts: 12) the County Commissioners sought Court approval to raise taxes in an effort to fund its \$1.7 million deficit, as the County already levied the maximum level of taxes permitted without prior Court approval. The President Judge denied this petition, and 13) President Judge Foradora determined the specific bargaining unit

² The salary board consists of the three county commissioners, the county treasurer and the head of the department affected by a particular decision of the board. 16 P.S. § 1622. The President Judge is the department head for the court-appointed employees.

members laid off, after the County's salary board informed the Court that it eliminated five court-appointed positions. The remaining proposed findings of fact raised by the County are either legal conclusions and not appropriate as findings of fact (e.g. the County salary board is statutorily required to set the number and fix the salaries of each County employe, including Court personnel) or are unnecessary to support the PLRB's conclusions of law. The PLRB is obligated only to set forth those findings necessary to support its conclusion. It 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. See 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). Accordingly, this exception is sustained in part and dismissed in part consistent with the above discussion.

The County next excepts to the Hearing Examiner's conclusion that the letters drafted by the employes constituted grievances, and the letters drafted by the employes' first-level supervisors and President Judge Foradora constituted grievance resolutions. The first step of the grievance procedure states that, "An employee with a grievance shall submit in writing said grievance to his immediate Supervisor within five (5) work days of its occurrence or knowledge thereof." (PDO, Finding of Fact 4). The contract defines a "grievance" as "a dispute concerning the interpretation, application or alleged violation of this agreement." Id. Other than requiring the employe to reduce his or her grievance to writing, the contract does not require a specific form or language necessary to constitute a properly submitted grievance. The Hearing Examiner determined that the letters sufficiently conformed to the requirements of the collective bargaining agreement and articulated a dispute concerning the interpretation, application or alleged violation of the agreement, and therefore found that the letters constituted properly filed grievances. (PDO, Finding of Fact7). Upon review of the record, the PLRB agrees with the Hearing Examiner that the letters constituted grievances properly filed under the relevant contract provisions. Similarly, the PLRB finds substantial evidence to support the Hearing Examiner's reasonable conclusion that the President Judge's letter to the commissioners stating, "I believe the Union Contract has been violated and that the employees' grievances should be rectified by reinstating the employees back to their respective March 8, 2004 status," conformed with the contract's procedural requirements for resolving grievances at the second stage of the grievance process. Accordingly, it is unnecessary to determine whether the first-level supervisors' letters to the President Judge constituted resolutions of the grievances at the first stage of the process. Therefore, this exception is dismissed.

As the County's remaining exceptions assert that the County is not bound by the President Judge's resolution of the grievances, and its refusal to implement the resolutions does not constitute an unfair practice under PERA, the PLRB will consolidate these exceptions for purposes of analysis and discussion. The underlying issue of the enforceability of the grievance resolutions involves a conflict between the County's obligation to adopt and implement a budget for the County's judicial branch and the judiciary's statutory and constitutional authority to hire, fire and supervise its employes. An analysis of the County's exceptions requires a discussion of this underlying issue prior to determining whether or not the Union possesses standing to challenge the County's refusal to implement the President Judge's grievance resolution, involving budgetary matters, and whether or not the PLRB has jurisdiction to entertain this issue in an unfair practices proceeding.

The parameters and procedures of collective bargaining between counties and court-appointed bargaining units are governed by the County Code. Section 1620 of the County Code provides that:

The salaries and compensation of county officers shall be as now or hereafter fixed by law. The salaries and compensation of all appointed officers and employes who are paid from the county treasury shall be fixed by the salary board created by this act for such purposes: Provided, however, That with respect to representation proceedings before the Pennsylvania Labor Relations Board or collective bargaining negotiations involving any or all employes

paid from the county treasury, the board of county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers over the affected employees. The exercise of such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers.

16 P.S. § 1620.

The PLRB and the Courts have interpreted this section of the County Code to indicate that the scope of bargaining between county commissioners and court-appointed bargaining units ordinarily includes both economic matters and matters that flow from the right of courts to hire, fire and supervise their work force, so long as the exercise of such jurisdiction does not impair the independence of the judiciary. See County of Lehigh v. Pennsylvania Labor Relations Board, 507 Pa. 270, 489 A.2d 1325 (1985); Troutman v. PLRB, 735 A.2d 192 (Pa. Cmwlth. 1999), appeal denied, 563 Pa. 624, 757 A.2d 937 (2000). Further, the PLRB and the Courts have held that county commissioners must consult with the courts regarding proposals that may affect their powers to hire, fire and supervise Court employees. See Ellenbogen v. County of Allegheny, 479 Pa. 429, 388 A.2d 730 (1978). Accordingly, the commissioners serve a dual role when bargaining agreements with court-appointed bargaining units. When negotiating monetary provisions not affecting the Court's authority to hire, fire and direct, the commissioners have greater authority to negotiate due to their primary role in matters of budget, taxation and appropriation. See Leahey v. Farrell, 362 Pa. 52, 66 A.2d 577 (1949)(citing Article V, Section 1 and Article IX of the Pennsylvania Constitution in holding that while the judicial power is vested exclusively in the courts, the fiscal power necessary to sustain the judiciary is vested in the legislature); Curtis v. Cleland, 586 A.2d 1029 (Pa. Cmwlth. 1991)(holding that the judiciary's control of county funds is secondary to that of the legislature or county salary board). When negotiating matters that impact the courts' right to hire, fire and supervise their workforce, the commissioners bargain on behalf of the courts. Commissioners must consult with courts regarding these issues, otherwise, any contractual provision dealing with these matters is deemed unenforceable. See Ellenbogen v. County of Allegheny, *supra*.

Consequently, during the bargaining process, it is incumbent upon the commissioners to evaluate the county's financial circumstance and determine the appropriate compensation levels for its employees, including court-appointed personnel. While the President Judge's input is obtained through his or her position on the salary board, the level of compensation is generally reserved to the legislative branch. Similarly, after levels of compensation are negotiated by the commissioners and the union, and included in the collective bargaining agreement, the commissioners are generally empowered to determine the number of court-appointed personnel employed by the county under the provisions of the agreement. As Section 1623 of the County Code provides in relevant part:

The board, subject to limitations imposed by law, shall fix the compensation of all appointed county officers, and the number and compensation of all...court criers, tipstaves and other court employees, and of all officers, clerks, stenographers and employees appointed by the judges of any court and who are paid from the county treasury.

16 P.S. § 1623. In this regard, the Supreme and Commonwealth Courts have held that Section 1623 requires the salary board to determine the number of all court employees paid out of the county treasury. Lavelle v. Koch, 532 Pa. 631, 617 A.2d 319 (1992); Leahey v. Farrell, *supra* (finding the salary board's statutory authority to set the number and salary of court employees constitutional); Green v. Tioga County Board of Commissioners, 661 A.2d 932 (Pa. Cmwlth. 1995); Penksa v. Holtzman, 620 A.2d 632 (Pa. Cmwlth. 1993)(holding that the salary board has the authority to create county employee positions by fixing the number for those positions at one or more and that the Courts have given the salary board substantial discretion over fixing the number of county employees in a given office).

By reserving budgetary matters to the discretion of the legislature and the right to hire, fire and supervise its employees to the judiciary, the County Code preserves the doctrine of separation of powers, derived "from the fundamental precept that the executive, the legislature and the judiciary are independent, co-equal branches of government, none of which should exercise functions exclusively committed to another branch." Lavelle v. Koch, 532 Pa. at 635, 617 A.2d at 321. To further ensure that the branches remain equal, the judiciary possesses the inherent power to compel expenditures necessary to prevent the impairment of the exercise of its judicial power or of the proper administration of justice. See Beckert v. Warren, 497 Pa. 137, 439 A.2d 638 (1981); Commonwealth ex rel. Carroll v. Tate, 442 Pa. 45, 274 A.2d 193 (1971), cert. denied sub non. Tate v. Pennsylvania ex rel. Jamieson, 402 U.S. 974, 91 S.Ct. 1665 (1971).

However, the inherent judicial power to compel expenditures is reserved for exceptional cases. As the Pennsylvania Supreme Court has stated, "There must be a *genuine threat* to the administration of justice, that is, a nexus between the legislative act and the injury to the judiciary, not merely a theoretical encroachment by the legislature." Beckert v. Warren, 497 Pa. at 147, 439 A.2d at 643. When urging the Pennsylvania Supreme Court to exercise the judiciary's inherent power to compel funding, the plaintiff bears the burden of proving that the requests are reasonably necessary. Lavelle v. Hoch, *supra* (actual proof of a genuine threat to the administration of justice is required to compel the commissioners to appropriate additional funds for court employee salaries and personnel); Carroll v. Tate, *supra*; Leahey v. Farrell, *supra*. Furthermore, the Courts have established that an action in mandamus before a court of competent jurisdiction is the sole sanctioned channel for seeking to remedy a county's alleged failure to provide sufficient funding, whereby the administration of justice is impaired, absent the Pennsylvania Supreme Court's grant of plenary jurisdiction prior to a trial. See Beckert v. Warren, *supra*.

In this case, the County Commissioners exercised their responsibilities as fiscal manager, an essential legislative function, by eliminating a number of positions, including five court-appointed positions, in an effort to reduce the County's mounting budget deficit. The commissioners eliminated these positions through their budgetary function and role on the salary board.³ The Union argues that the County's action infringed upon the Court's right to hire, fire and supervise its employees. The Union cites to L.J.S. v. State Ethics Commission, 744 A.2d 798 (Pa. Cmwlth. 2000), which stated that the "Salary Board is precluded from any responsibilities which affect the hiring, discharging, and supervisory rights and obligations with respect to [court-appointed employees]." However, the Union misapplies this legal principle derived from Section 1620 of the County Code. Through extensive litigation, the PLRB and the Courts have concluded that the Court's right to hire, fire and supervise its workforce is akin to rights reserved by public employers under Section 702 of PERA. As under PERA, the statutory recognition of the power to hire, fire and direct its employees under Section 1620 of the County Code does not render all matters that flow from this power matters of managerial prerogative strictly reserved for the Court. See County of Lehigh v. Pennsylvania Labor Relations Board, *supra*; Troutman v. PLRB, *supra*; See e.g. Juniata Mifflin Counties Area Vocational-Technical School v. Corbin, 547 Pa. 495, 691 A.2d 924 (1997). In this case, while the County eliminated the court-appointed positions, it deferred to the President Judge the selection of the particular employees laid off. By this action, the County exercised its lawful role regarding budget, taxation and appropriation, while deferring to the Court's authority to hire, fire and supervise its workforce, consistent with Section 1620 and its jurisprudence.

Similarly, the Union's argument that the salary board waived its authority to lay off court-appointed employees, by expressly reserving the right to hire, fire and direct its workforce to the Court in the collective bargaining agreement, is unavailing. The

³ The Pennsylvania Supreme Court has held that the salary board performs administrative, rather than legislative, functions when it sets salaries and numbers of employees, because "The authority to appropriate funds and levy taxes has been vested in the county commissioners...not in the Salary Board," by Section 202 and 203 of the County Code. See Franklin County Prison Board v. PLRB, 491 Pa. 50, 61, 417 A.2d 1138, 1142 (1980)(emphasis in original); 16 P.S. §§ 202 and 203. The salary board's power to fix the number of a new position does not invade the commissioners' legislative power to appropriate funds and levy taxes as they choose. See Penska v. Holtzman, *supra*.

Union cites to the agreement's Preamble, Article Two and Article Six, which state that nothing in the contract shall limit the Court's inherent power to hire, fire and direct its workforce. As previously stated, this right does not extend to determining the number of court-appointed positions employed by the County, but rather, once the County sets the number of positions, it is the Court's inherent right to hire, discharge and supervise the employees that fill those positions. This distinction ensures that the legislative branch manages the County's fiscal concerns, while the judiciary manages the administration of justice, consistent with the separation of powers doctrine.

The Union further contends that the County waived its authority to lay off the employees by allegedly recognizing in Article Two of the collective bargaining agreement that the bargaining unit members were "directly involved with and necessary to the functioning of the Courts." In essence, this argument asserts that the County is precluded from laying off these employees, because, as the County recognized in the contract, the employees are essential to the administration of justice. First, the Union has no standing to raise, and the PLRB has no jurisdiction to entertain, this issue. As stated above, an action in mandamus before a court of competent jurisdiction is the sole sanctioned channel for seeking to remedy an alleged failure of a county to provide sufficient court funding, whereby the administration of justice is impaired, absent the Pennsylvania Supreme Court's grant of plenary jurisdiction prior to a trial. See Beckert v. Warren, supra. Second, assuming *arguendo*, that the Union had standing and the PLRB possessed jurisdiction, we find this argument unmeritorious. A contractual recognition clause that identifies a court-related unit as being directly involved with and necessary to the functioning of the Courts is insufficient to prove that the County recognizes that every court-appointed employee employed at the time of contract enactment is essential to the administration of justice. Rather, this clause serves as an indication of what employees are represented by the exclusive representative in a unit certified by the PLRB under Section 604(3) for purposes of bargaining terms and conditions of employment, culminating in interest arbitration under Section 805 (court-related employees lack strike rights enjoyed by certain other County employees).

The Union's argument that the County waived its right to lay off the employees by incorporating the employees' names and respective salaries in the agreement is similarly unmeritorious. The agreement negotiated and enacted by the Union and the County constitutes a collective bargaining agreement and not an employment contract. As the United States Supreme Court has held:

collective bargaining between employer and the representatives of a unit...result in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a contract of employment except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone.

J. I. Case Co. v. NLRB, 321 U.S. 332, 334-335, 64 S.Ct. 576, 579 (1944); AFSCME, District Council 86 v. Clinton County, 24 PPER ¶ 24144 (Final Order, 1993). An agreement does not transcend the conventional limitations of a collective bargaining agreement merely by providing specific employee names to a salary provision of the contract. Instead, a clear, express and unequivocal statement of the parties' intent to guarantee the specifically named employees' tenure of employment for a specifically identified time frame is required. Here, the agreement falls woefully short of this requirement, and therefore, does not transcend the traditional scope of a collective bargaining agreement.

The Union next argues, consistent with the Hearing Examiner's discussion in the PDO, that the County delegated its authority to the Court to resolve the grievances at issue. This argument, however, contradicts the PLRB's and the courts' previous holdings that the commissioners may not delegate their essential legislative functions. See Lehman v. Pennsylvania State Police, 576 Pa. 365, 839 A.2d 265 (2003), citing Schechter Poultry Corp. v. United States, 295 U.S. 495, 55 S.Ct. 837 (1935) (Congress cannot abdicate or transfer essential legislative functions) and Blackwell v. State Ethics Commission, 523 Pa. 347, 567 A.2d 630 (1989) (same as to General Assembly); Somerset Police Bargaining Unit v. Somerset Borough, 18 PPER ¶ 18085 (Final Order, 1987). In Somerset, during the term of a collective bargaining agreement, the employer's legislative body enacted an

ordinance prohibiting the assignment of overtime to staff three daily shifts, seven days a week. The ordinance did not itself violate the contract and was enacted over the veto of the mayor. The mayor's continued dissatisfaction with council's prohibition on overtime was manifest in the mayor's subsequent sustaining of a union grievance that claimed that the ordinance violated the contract. In finding that the council's refusal to implement the resolution did not constitute an unfair practice under provisions of the Pennsylvania Labor Relations Act and Act 111 analogous to the provisions of PERA at issue here, the PLRB held that the mayor could not exercise alleged contractual authority to usurp the Borough Council's statutory function in the guise of resolving contractual grievances on behalf of the borough. Somerset Police Bargaining Unit v. Somerset Borough, supra. Further, the PLRB stated that the mayor's inclusion in the collective bargaining agreement's grievance procedure was a recognition by the parties that the person who has "full charge and control of the chief of police and the police force" should have the opportunity to resolve problems that arise from this area of responsibility. Accordingly, the mayor's role in the grievance procedure did not clearly and unequivocally delegate council's legislative function to the mayor. Id.

We believe this case requires the same result as that reached in Somerset. The County's decision to lay off court-appointed employees did not violate the contract and was reached over the objections and opposing vote of the President Judge. The Court's continued dissatisfaction with the County's elimination of the five bargaining unit positions is manifest in the Judge's subsequent sustaining of the Union's grievances claiming that the lay offs violated the collective bargaining agreement. For the same reasons articulated in Somerset, the County's refusal to implement the President Judge's grievance resolution does not constitute an unfair practice, as the Court may not usurp the County's legislative function in the guise of resolving a contractual grievance. The President Judge's role in the grievance procedure constitutes a recognition by the parties that the President Judge, who maintains full control of the administration of justice and the right to hire, fire and direct the court-appointed employees as discussed *infra*, should have the opportunity to resolve problems that arise from this area of responsibility. However, by including the President Judge in the grievance procedure, the County did not clearly and unequivocally delegate its legislative authority to determine the number of court-appointed personnel employed by the County. Accordingly, the grievance resolution reached by the President Judge involving an essential legislative function is unenforceable before the PLRB by way of a charge of unfair practices. The issues sought to be litigated through the grievance procedure invoke much broader constitutional questions that should be litigated in a judicial forum, and not before the PLRB. Carroll v. Tate, supra; Leahey v. Farrell, supra; Beckert v. Warren, supra.

Were the argument that a "department head" at an intermediate step of the grievance procedure could nullify the legislative determination of the commissioners correct, then other county elected and non-elected officials could similarly act. Elected row officials and others having authority to hire, fire and direct could veto attempts by the legislative branch to exercise appropriate power to control the county budget by insulating their offices and departments from assuming a proportionate role in balancing the county budget. We do not believe that PERA was enacted to effectuate such a result. Rather, consistent with the above discussion, this role is reserved to the legislative branch of county government subject to the inherent right of the court to administer justice. Beckert v. Warren, supra; Commonwealth ex rel. Carroll v. Tate, supra.

We further find attempts to distinguish Zelienople Police Department Wage and Policy Unit v. Zelienople Borough, 27 PPER ¶ 27024 (Final Order, 1995) unavailing. In Zelienople, the PLRB ruled that the employer's legislative body was bound by a grievance resolution reached by the borough police chief, as the contract delegated the police chief the power to resolve grievances at an early stage of the grievance procedure. The facts of that case, however, are distinguishable from the facts present here, as they were in Somerset. First, as the acting police chief was not a member of a different branch of government than borough council, and that case did not implicate the separation of powers doctrine as it is implicated here. Second, the County's intervening determination to lay off the employees, which itself did not violate the contract, was a legitimate exercise of legislative authorization to determine the number of court-appointed personnel employed by the County. The Court and the Union simply sought to

nullify the lawful exercise of legislative power vested exclusively in county government. These facts were not present in Zelienople, as there was no intervening legislative action that itself would not violate the commitment set forth in the collective bargaining agreement. See Zelienople Police Department Wage and Policy Unit v. Zelienople Borough, supra. Accordingly, Zelienople is distinguished from this case and Somerset controls.

Finally, the Hearing Examiner's conclusion that the County's decision to lay off the employees does not constitute a legislative act because it did not require the enactment of an ordinance is erroneous. The mechanism by which the legislative body performs its essential legislative function is immaterial. The operative issue is whether or not the legislative branch is constitutionally, statutorily or otherwise authorized to act, and whether this act constitutes an essential legislative function. As stated above, the County is statutorily authorized to determine the number and compensation of its employees, including the court-appointed employees, and this responsibility strikes at the core of its legislative function. Furthermore, the fact that the County reinstated the employees at issue without levying additional taxes does not support the conclusion that the commissioners' decision to lay off the employees was not a legislative action. Reliance on the commissioners' failure to levy additional taxes to fund the cost of the reinstated employees, when the County's request to raise taxes in excess of its statutory authorization was rejected by the Court, would be disingenuous. Consequently, the County's decision to lay off the employees constituted an essential legislative act.

After a thorough review of the exceptions and all matters of record, the PLRB shall sustain in part and dismiss in part the exceptions filed by the County and amend the Proposed Decision and Order consistent with the above discussion and findings.

CONCLUSIONS

That CONCLUSIONS numbers 1 through 3 inclusive and CONCLUSION number 5, as set forth in the Proposed Decision and Order are hereby affirmed and incorporated by reference, and CONCLUSION number 4 is hereby vacated and set aside.

6. The County has not committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the PLRB

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the above case number be and the same are hereby sustained in part and dismissed in part, and the Proposed Decision and Order be and the same is hereby amended consistent with the above discussion and findings. The Board further orders and directs that the charge of unfair practices is dismissed and the complaint issued thereon is rescinded.

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 eighteenth day of October, 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.