

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL NO. 764 :  
 :  
 v. : Case No. PF-C-05-50-E  
 :  
 LYCOMING COUNTY :

**FINAL ORDER**

Lycoming County (County) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 22, 2005, to a Proposed Decision and Order issued November 2, 2005, in which it was determined that the County violated Act 111 and Section 6(1)(a),(c) and (e) of the Pennsylvania Labor Relations Act (PLRA) by refusing to implement provisions of an interest arbitration award between the County and the Teamsters Local #764 (Teamsters) covering the County Detectives. The Teamsters also filed exceptions and a supporting brief with the Board on November 28, 2005,<sup>1</sup> requesting interest on the back pay awarded by the hearing examiner. On December 12, 2005, the Teamsters filed a response to the exceptions filed by the County, and on December 14, 2005, the County responded to the Teamsters' exceptions. After a thorough review of the exceptions, briefs and all matters of record,<sup>2</sup> the Board makes the following:

**AMENDED FINDING OF FACT**

3. That the Union is the exclusive representative of two units of county employes: the Assistant District Attorneys (ADAs) and Assistant Public Defenders (APDs) and the County Detectives. These two units of employes selected Teamsters Local Union 764 as their collective bargaining representative and the Board certified the unit on July 10, 2003. (N.T. See PERA-R-03-102-E (ADAs & APDs) and PF-R-03-45-E (Detectives)).

**DISCUSSION**

The material facts are largely not in dispute. On December 16, 2004, the County Commissioners adopted a budget for 2005, including \$150,000.00 in a discretionary contingency fund. (Finding of Fact 11). Thereafter, on January 4, 2005, pursuant to Section 805 of PERA, an interest arbitration award was issued for the ADA and APD unit which included an increase in wages, benefits and taxes that was \$52,512.00 over what the County had unilaterally budgeted for the eight bargaining unit employes. (Finding of Fact 7). On February 16, 2005, an interest arbitration award pursuant to Act 111 was issued covering the County Detectives including wages, benefits and taxes \$12,731.00 over what the County budgeted for the three detectives in 2005. (Finding of Fact 8). After the February 16, 2005 award was issued, the County Commissioners considered the arbitration award, and decided to accept the non-economic terms, but rejected the wage increases set forth in the award. (Findings of Fact 9 and 10).<sup>3</sup> There is no dispute from the County that

<sup>1</sup> The Teamsters exceptions were forwarded to the Board by certified mail, however the envelope bears only a private postage meter mark, and is devoid of any official United States Postal Service postmark or postmark cancellation. Absent third-party proof of mailing appearing on the face of the envelope, the exceptions are deemed filed when received. AFSCME Council 13 v. Department of Transportation, 33 PPER ¶133027 (Final Order, 2001). The Teamsters exceptions, received November 28, 2001, are therefore untimely.

<sup>2</sup> The County argues that the date the Teamsters were certified by the Board was July 10, 2003, not June 10, 2003 as set forth in Finding of Fact 3. Upon review, Finding of Fact 3 will be amended.

<sup>3</sup> By taking Finding of Fact 10 out of context the County erroneously assumed that the hearing examiner found that the two interest awards were reviewed and rejected by the Commissioners at the same public meeting. The preceding Finding, Finding of Fact 9 states "[t]hat the County Commissioners ratified the non-economic terms of both agreements." The clause "That at the same hearings," appearing in Finding of Fact 10, is in reference to Finding of Fact 9, such that the Commissioners accepted the non-economic terms, and reject the economic terms for each award at the same hearing. The plural "hearings," in Finding of Fact 10 obviously reflects that more than one public hearing took place. Accordingly, the exception to Finding of Fact 10 is dismissed.

when the interest awards were issued the County had at least \$150,000.00 of discretionary funds available, which could have been transferred to pay the interest arbitration awards for the ADA/APD and County Detective bargaining units.<sup>4</sup>

These undisputed facts unquestionably constitute an unfair practice under Act 111 and the PLRA. Under Article III, Section 31 of the Pennsylvania Constitution,<sup>5</sup> an Act 111 interest arbitration award is a mandate to the political subdivision to do what it must to implement the award. A public employer may not hide behind self-imposed legal restrictions to avoid giving effect to a final and binding award under Act 111. An arbitration award issued pursuant to Act 111, covering lawful terms and conditions of employment "serves as a mandate to the legislative branch of the public employer, and if the terms of the award require affirmative action on the part of the Legislature, they must take such action...." Washington Arbitration Case, 436 Pa. 168, 259 A.2d 437 (1969).

The County's arguments fundamentally fail to account for differences between interest arbitration under Act 111 and interest arbitration for court employes under the Public Employe Relations Act of 1970 (PERA). The legislative and constitutional history of Act 111 compared to that of PERA is instructive. In 1968 the General Assembly enacted Act 111 providing for "binding" interest arbitration for police and fire employes who otherwise were denied a right to strike in support of bargaining proposals. Because the Pennsylvania Constitution did not allow for binding arbitration, Article III, Section 31 of the Constitution was amended thirty-eight years ago to provide for "binding" interest arbitration for policemen, such as the County's detectives. In response to this well-established constitutional and legislative history, the County argues that it may, prior to the arbitration process, budget for wages for these employes and then refuse to comply with a binding award under the Constitutional and legislative scheme.

In its exceptions the County makes no justification for its refusal to comply with the Constitution, legislative, and Supreme Court mandates to implement the Act 111 interest arbitration award. Instead, it argues the unfounded and self-imposed claim that legislative action is required to fund the award, and therefore it need not comply. First, this claim is not even viable for purposes of Act 111, Washington Arbitration Case, *supra*; City of Farrell v. Fraternal Order of Police Lodge No. 34, 538 Pa. 75, 645 A.2d 1294 (1994), and therefore, the County's refusal to fund the Act 111 interest arbitration award for the County Detectives is, as a matter of law, an unfair labor practice in violation of Section 6(1)(a) and (e) of the PLRA, and the County's exceptions challenging the hearing examiner's conclusions in that regard are dismissed.<sup>6</sup>

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<sup>4</sup> Although the County argues that Commissioner approval was required to transfer funds from the contingency fund, Rebecca Burke, Chairman of the County Commissioners, admitted that discretionary funds were available to pay the awards, and that the transfer of funds from the contingency fund would not take a legislative action. (N.T. 240). Further, there is no question that Commissioners delegated authority to the accounting department to transfer funds out of the contingency as needed.

<sup>5</sup> Article III, Section 31 of the Pennsylvania constitution provides in relevant part:

General Assembly may enact laws which provide that the findings of panels or commissions, selected and acting in accordance with law for the adjustment or settlement of grievances or disputes or for collective bargaining between policemen and firemen and their public employers shall be binding upon all parties and shall constitute a mandate to the head of the political subdivision which is the employer, or to the appropriate officer of the Commonwealth if the Commonwealth is the employer, with respect to matters which can be remedied by administrative action, and to the lawmaking body of such political subdivision or of the Commonwealth, with respect to matters which require legislative action, to take action necessary to carry out such findings. (emphasis added).

<sup>6</sup> Moreover, we agree with the hearing examiner that the County's unlawful actions were inherently destructive of employe rights to amount to a violation of Section 6(1)(a) and (c) in accordance with the Great Dane Trailers, Inc, 388 U.S. 26, 87 S.Ct. 1792 (1967), as adopted by the Board. Chester Upland Deputy Sheriffs Association v. Chester County, 28 PPER ¶ 28045 (Final Order, 1997). No specific exception to this conclusion has been raised by the County and is therefore waived in these exceptions, and for further appellate review. Board Rules and Regulations §95.98(a)(3).

Moreover, as noted in Teamsters Local 764 v. Lycoming County, No. PERA-C-05-81-E (Final Order, 2006), the County's argument that legislative action is required to transfer the funds necessary for an interest arbitration award is equally flawed, and has been repeatedly rejected by the Pennsylvania Supreme Court, Commonwealth Court and the Board since 1980. In Franklin County Prison Board v. Pennsylvania Labor Relations Board, 491 Pa. 50, 417 A.2d 1138 (1980), the Pennsylvania Supreme Court addressed Section 805 of PERA which, unlike Act 111's binding interest award provisions, qualified PERA interest arbitration because the Constitution was not amended to allow fully binding interest arbitration for PERA covered prison guards and court employees. Section 805 accordingly provided that interest arbitration awards were binding unless "legislative enactment" was required to effectuate an award. In its landmark decision in Franklin County, *supra*, the Supreme Court determined that the Constitutional and legislative policies were limited to fundamental matters of taxation and Section 805 did not allow county commissioners simply to veto economic provisions in an award which were inconsistent with the commissioners' bargaining position. Thus, interest awards under Section 805 were binding on county commissioners unless they required the raising of additional taxes, in which case the commissioners could meet, consider and reject such provisions.

After Franklin County the next round of litigation over the meaning of Section 805 focused on whether the transfer of monies in a county budget to fund an award, after taxes were levied and collected, was a legislative act.<sup>7</sup> That issue was addressed by the Board, the Commonwealth Court and Supreme Court in a series of decisions issued in the years following Franklin County. County of Allegheny v. Allegheny Court Association of Professional Employees, 517 Pa. 505, 539 A.2d 348 (1988); American Federation of State County and Municipal Employees, District Council 83 v. Pennsylvania Labor Relations Board (Indiana County), 505 A.2d 1041 (Pa. Cmwlth. 1986); Butler County Correctional Officers v. Butler County Commissioners, 505 A.2d 1110 (Pa. Cmwlth. 1986); County of Lehigh v. American Federation of State County and Municipal Employees, District Council 88, Local 543, 505 A.2d 1104 (Pa. Cmwlth. 1986). The precedent established in these cases firmly establishes that the transfer of monies within the county budget to fund an interest arbitration award under Section 805 of PERA is administrative and not legislative action and has remained the law of the Commonwealth for more than two decades. Further in Pennsylvania Labor Relations Board v. Clarion County, 442 A.2d 374 (pa. Cmwlth. 1982), the Commonwealth Court affirmed the Board's final order that a pre-existing county-wide policy to limit employe pay increases to an established figure did not impair the authority of the interest arbitration panel to award an increase more than the employer sought to give by only budgeting an amount consistent with its bargaining position. The County's argument here raises no new or novel issue, but rather seeks only to rehash well-established law thoroughly addressed and resolved more than twenty years ago. Moreover, the County seeks to neuter the authority of the arbitration panel to award any increase over what the Commissioners desire to pay, regardless of their ability and obligation under the law to provide. This argument is fundamentally antithetical to the policies of Act 111 and PERA, and would return the parties to the state of the law prior to their enactment when the commissioners unilaterally decided employe pay and benefits.

The County's reliance on Yost v. McKnight, 865 A.2d 979 (Pa. Cmwlth. 2005) is misplaced. Yost involved a service purchase contract entered into between the district attorney of Clinton County and an attorney to assist in the prosecution of a particular capital murder case. The commissioners objected to the contract claiming, in part, that the district attorney lacked authority to fill a position that the county salary board had not fixed a salary and that no money had been appropriated to the district attorney to engage the services of this special assistant. Commonwealth Court rejected the commissioners' argument and held that the internal checks and balances within the county code authorized the contract but the district attorney could not enter into a contract which would exceed the funds budgeted to the district attorney and required additional taxation and appropriation. Commonwealth Court ruled on the appropriate role of the commissioners to require county row officials to stay within budget.

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<sup>7</sup> That issue is presented in the companion case of Teamsters Local 764 v. Lycoming County, No. PERA-C-05-81-E (Final Order, 2006), which we decide today.

In arguing Yost the County fails to appreciate the legislative change undertaken with the passage of PERA and Act 111, recognizing that certain matters of wages, hours and working condition once within the purview of management's discretion, were now with the passage of collective bargaining laws, subject to negotiations and binding agreements or interest awards. Pennsylvania Labor Relations Board v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975). Obviously, Yost was not a collective bargaining case and does not address PERA and Act 111, which clearly, as above noted in Franklin County, supra and Washington Arbitration Case, supra, and their progeny, obligate county commissioners to fund a collective bargaining agreement or interest arbitration award. Section 805 of PERA and Act 111 created an obligation, in addition to pre-existing provisions of the County Code such as what was at issue in Yost, to comply with binding arbitration awards. Rather than address its arguments to the wealth of authority decided in the context of the collective bargaining scheme of PERA and Act 111, which categorically reject the County's specific arguments, the County seeks to relegate the authority of the collective bargaining interest arbitration panel to that of a row official who has no authority to issue binding awards. The Supreme Court clearly stated in Allegheny County, supra, that to regard line item transfers within the county budget as a means by which commissioners can avoid binding arbitration is "absurd" and would "emasculat[e]" the value of arbitration as a tool to resolve conflicts in labor relations, and overrides the General Assembly's clear intent that arbitration awards are final and binding on the parties. Allegheny County, 517 Pa. at 517, 539 A.2d at 354.

As the amount of money necessary to fund the interest arbitration award is admittedly available in the County budget, it is irrelevant for purposes of finding an unfair practice, that the money could have also been obtained elsewhere. However, we note that the County's argument that the hearing examiner erred in finding that it could have also funded the interest arbitration through borrowing on a line of credit was previously rejected by the Commonwealth Court in American Federation of State County and Municipal Employees, District Council 83 v. Pennsylvania Labor Relations Board, 505 A.2d 1041 (Pa. Cmwlth. 1986), and is similarly rejected here. In addition, the County's contention that several million dollars in a cash reserve account established pursuant to Section 1784.3 of the County Code, 16 P.S. §1784.3 (Operating Reserve Fund),<sup>8</sup> cannot be used to fund wages, belies statutory construction and common usage. While Section 1784.3(c) does restrict appropriations from reserves for certain projects and emergencies, "wages" are an operating expense within the meaning of clause (a), for which the fund is

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<sup>8</sup> Section 1784.3 of the County Code provides:

(a) The county commissioners shall have the power to create and maintain a separate operating reserve fund in order to minimize future revenue shortfalls and deficits, provide greater continuity and predictability in the funding of vital government services, minimize the need to increase taxes to balance the budget in times of fiscal distress, provide the capacity to undertake long-range financial planning and develop fiscal resources to meet long-term needs.

(b) The county commissioners may annually make appropriations from the general county fund to the operating reserve fund, but no appropriation shall be made to the operating reserve fund if the effect of the appropriation would cause the fund to exceed ten per centum of the estimated revenues of the county's general fund in the current fiscal year.

(c) The commissioners may at any time, by resolution, make appropriations from the operating reserve fund for the following purposes only:

(1) to meet emergencies involving the health, safety or welfare of the residents of the county;

(2) to counterbalance potential budget deficits resulting from shortfalls in anticipated revenues or program receipts from whatever source; or

(3) to provide for anticipated operating expenditures related either to the planned growth of existing projects or programs or to the establishment of new projects or programs if for each project or program appropriations have been made and allocated to a separate restricted account established within the operating reserve fund.

(d) The operating reserve fund shall be invested, reinvested and administered in a manner consistent with the provisions of section 1706.

legislatively designed to ensure continued payment. The County's position, that clause (c) delineates the exclusive uses for the operating reserve fund, renders clause (a), and the purpose for the fund, meaningless, and is therefore rejected.

The County asserts that the hearing examiner erred in failing to dismiss or hold the Teamsters' charge in abeyance pending the outcome of its appeal of the arbitration award in the court of common pleas. We reject this contention. First, the County's argument misperceives the role of a court in judicial review of appeals of Act 111 interest arbitration awards wherein it is alleged that the arbitration panel committed legal error by including provisions in an award beyond the legal authority of the panel to award, and the role of the Board to require compliance with a lawful interest arbitration award through the filing of a charge of unfair labor practices. Ostensibly, in the County's view, an unpopular interest award issued under Act 111 can be avoided by the filing of an unmeritorious appeal of the award and as long as the appeal is pending in that court, the County can avoid all the undesirable portions of the award. Clearly, the arbitration panel had authority to award the most basic matter negotiable under Section 1 of Act 111 (pay) in excess of the amount previously offered by the County and the County's arguments amount to nothing more than a protest that the arbitration panel awarded more than the County desired. Accordingly, there is no arguable claim of error in the award within the jurisdiction of the court and it was not error for the hearing examiner to not hold the charge in abeyance while the County's appeal of the award is pending in the Court of Common Pleas. Further, the Board observed in Cheltenham Township Police Association v. Cheltenham Township, 21 PPER ¶21026 (Final Order, 1989), that as a general matter, there is no automatic supersedeas of an interest arbitration award on direct appeal to the court of common pleas, and absent the grant of a stay of the award by the court, the award is enforceable before the Board. Third, the County has persisted in this exception despite a June 21, 2005 order of the Court of Common Pleas filed in the appeal of the interest arbitration award, denying the County's motion for supersedeas and stay of PLRB proceedings. Accordingly the County's exception to the Board's jurisdiction to hear this matter is dismissed.

Although the Teamsters' exceptions were filed untimely, the remedy for a demonstrated unfair labor practice is a matter within the Board's broad discretion under Section 8 of the PLRA, Pennsylvania Labor Relations Board v. Martha Company, 359 Pa.347, 59 A.2d 166 (1948); In re Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978). Both Section 8 of the PLRA and Section 1303 of PERA expressly authorize the Board to fashion remedies which will "effectuate the policies" of the PLRA and PERA and is neither limited nor must it include the relief requested by a complainant. Rather the key inquiry by the Board under Section 8 of the PLRA and Section 1303 of PERA is not whether the complainant requested or the respondent opposed certain relief, but whether in the Board's discretion such relief effectuates the policies of the PLRA or PERA. Due to the fact that the County Detectives have, without justification, been denied the fair use of monies lawfully due them under the February 16, 2005 interest arbitration award, we believe interest is appropriate in order to effectuate the policies of the PLRA and Act 111 and make these employes whole. The Board has directed the payment of interest on monies owed in remedial back pay remedies particularly in cases as here where the employer has wrongfully withheld money from employes for lengthy periods of time. E.g. Martinez v. Pennsylvania Human Relations Commission, 22 PPER ¶22131 (Final Order, 1991). The arbitration award was effective from January 1, 2005, and the County has withheld the pay increase from the employes during this litigation. As such, the remedy issued by the hearing examiner will be amended accordingly.

After a thorough review of the exceptions and all matters of record, Finding of Fact 3 will be corrected, however we find that the hearing examiner did not err in concluding that the County violated Act 111 and Section 6(1)(a),(c) and (e) of the PLRA, and the County's exceptions will be dismissed in that regard. Further, we find that to effectuate the policies of Act 111 and the PLRA, and make the employes whole for the County's unfair practices, interest at the lawful rate of six percent (6%) is due on any back wages owed since February 16, 2005.

ORDER

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

HEREBY ORDERS AND DIRECTS

that exceptions filed by Lycoming County are hereby dismissed in part, and the November 2, 2005 Proposed Decision and Order, as amended, be and hereby is made absolute and final.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that, in addition to the affirmative action directed by the hearing examiner in the PDO, the County take the following affirmative action which the Board finds necessary to effectuate the policies of PERA:

(e) Pay simple interest at a rate of six percent per annum on the back pay due under the February 16, 2005 interest arbitration award for the County Detective bargaining unit.

SEALED, DATED and MAILED 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 twenty-first day of February, 2006. 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.

