COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL NO. 764	:	
	:	
v.	:	Case No. PERA-C-05-81-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 Section 1201(a)(1)(3) and (5) of the Public Employe Relations Act (PERA) by refusing to implement provisions of an interest arbitration award between the County and the Teamsters Local #764 (Teamsters) covering the Assistant District Attorneys and Public Defenders. The Teamsters also filed exceptions and a supporting brief with the Board on August 28, 2005,[1] requesting interest on the backpay 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,[2] briefs and all matters of record, 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 relevant to the Board's finding of an unfair practice are 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 January 4, 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 8 and 9).[3]

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[1] 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 ¶33027 (Final Order, 2001). The Teamsters exceptions, received November 28, 2001, are therefore untimely.

[2] 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.

[3] 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.

Under the current state of the law these undisputed facts constitute an unfair practice under PERA. Nevertheless, in its exceptions the County raises the very same argument that has consistently been rejected by the Pennsylvania Supreme Court, Commonwealth Court and the Board since 1980. E.g. Franklin County Prison Board v. Pennsylvania Labor Relations Board, 491 Pa. 50, 417 A.2d 1138 (1980). Without any justification for a reversal in this long-standing precedent, the County argues that the transfer of money from the discretionary contingency fund, or from another line item in the County budget, constitutes legislative action rendering the interest arbitration award advisory pursuant to Section 805 of PERA. This very same argument was flatly rejected by the Pennsylvania Supreme Court in County of Allegheny v. Allegheny Court Association of Professional Employees, 517 Pa. 505, 539 A.2d 348 (1988).

The Supreme Court in Allegheny County adopted the reasoning of Judge Stranahan of the Court of Common Pleas, quoting at length:

> We assume that any arbitration award which grants increased wages to public employees will require such a line item transfer within the political subdivision's budget. Thus, to find that such a transfer constitutes a legislative enactment produces the exact absurd result which the courts of this Commonwealth have struggled to avoid -- that of emasculating the value of arbitration as a tool to solve conflicts in labor relations, and overriding the legislature's clear intent that arbitration awards be final and binding on the parties. Rather, we believe that the intended result of the legislature in enacting [Act 195] will be honored and effectuated by considering the budget adoption process as legislative enactment, and the subsequent transfer of funds from one line item to another to constitute the ordinary administration of municipal affairs.
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> Of course, where the implementation of an arbitration award would require the local governmental body to levy further taxes in order to have funds to appropriate to such line item, then the legislature cannot constitutionally be forced to take such action. This would clearly be legislative enactment, and would conflict with *Franklin County's* expressed concern over taxation without representation. However, where there is money available in the government's general fund or from other items with surplus funds, we hold that in order to effectuate the policy and intent of [Act 195], such money must administratively be transferred to fund a legally binding arbitration award.
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> The [County] did not submit evidence at the hearing held on September 17, 1984, to show that the Allegheny County budget for the year 1980 did not have sufficient revenues to fund the instant arbitration award. They did indicate that the court's salary account was overdrawn so that more money had to be transferred into that account. However, since it has not been shown that there were no other items in the budget with excess or surplus funds available for administrative transfer to the salary account, we find that the arbitration award . . . must be implemented.
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> We agree that it is absurd to suggest that an entire statutory scheme designed to foster fair and peaceful labor relations by providing for binding arbitration in place of disruptive and costly strikes must be frustrated and rendered totally ineffective by allowing one party to the award to summarily reject it, while the same award is binding on the other party. We cannot believe that the legislature intended such a result, and we will not endorse it.

Allegheny County, 517 Pa. at 515-517, 539 A.2d at 353-354. The Supreme Court went on to expressly hold that

> Where the funds are available in the subdivision's coffers over and above that required to perform essential services and those funds earmarked to satisfy existing contractual obligations, the award should be considered mandatory.

* * *

> It is clear that county commissioners perform complex, multiple roles of mixed legislative, executive and administrative functions. It also seems clear that, as the County argues and [the union] acknowledges, some degree of "legislative action" is involved in transferring funds from one county account (or "line item") to another. However, to equate such "legislative action" with "required legislative enactment" would, as Judge Stranahan suggests, completely emasculate Act 195 and render all arbitration awards dealing with fiscal matters advisory. This we will not do.

Allegheny County, 517 Pa. at 517, 539 A.2d at 354-355. Pursuant to Allegheny County, transferring funds from a discretionary contingency fund, or some other line item in the County budget, necessary to fund an interest arbitration award is not legislative enactment as required by Section 805 of PERA, and therefore to the extent funds can be "administratively" transferred, a Section 805 interest arbitration award is mandatory. Accord, Pennsylvania Labor Relations Board v. Clarion County, 442 A.2d 374 (pa. Cmwlth. 1982); 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). As we noted in the companion case of Teamsters Local 764 v. Lycoming County, No. PF-C-05-50-E (Final Order, 2006), where the County makes the same argument regarding an Act 111 interest award, the County argues nothing new or novel about this issue but merely rehashes well-established law decided more than two decades ago which has guided the law in this area consistently since then.

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.

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 its 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.

There is absolutely no dispute from the County that 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 detective bargaining units.[4] Accordingly, the County's refusal to implement the economic provisions of the January 4, 2005 interest arbitration award covering the ADA and APD bargaining unit, is as a matter of law, a violation of Section 1210(a)(1) and (5) of PERA.[5]

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 in a cash reserve account established pursuant to Section 1784.3 of the County Code, 16 P.S. §1784.3 (Operating Reserve Fund),[6] 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

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[4] 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.

[5] 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 1201(a)(1) and (3) 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).

[6] 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.
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> (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.
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> (c) The commissioners may at any time, by resolution, make appropriations from the operating reserve fund for the following purposes only:
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> (1) to meet emergencies involving the health, safety or welfare of the residents of the county;
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> (2) to counterbalance potential budget deficits resulting from shortfalls in anticipated revenues or program receipts from whatever source; or
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> (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.
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> (d) The operating reserve fund shall be invested, reinvested and administered in a manner consistent with the provisions of section 1706.

unquestionably an operating expense within the meaning of clause (a), for which the fund is 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 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 practices. Ostensibly, in the county's view, an unpopular interest award issued under PERA 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 701 of PERA (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 generally 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, whether the remedy "effectuates the policies of the act" is a matter within the Board's broad discretion under Section 1303 of PERA, 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). Section 1303 of PERA expressly authorize the Board to fashion a remedy which will "effectuate the policies" of PERA and is neither limited to nor must it include the relief requested by a complainant. Rather the key inquiry by the Board under 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 PERA. Due to the fact that the ADAs and APDs have, without justification, been denied the fair use of monies lawfully due them under the January 4, 2005 interest arbitration award, we believe interest is appropriate in order to effectuate the policies of PERA 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 ADAs and APDs during this litigation. As such, the remedy issued by the hearing examiner will be amended accordingly to include interest.

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 Section 1201(a)(1),(3) and (5) of PERA, and the County's exceptions will be dismissed in that regard. Further, we find that to effectuate the policies of PERA, 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 January 4, 2005.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe 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 backpay due under the January 4, 2005 interest arbitration award for the ADA and APD 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.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL #764	:	
	:	
v.	:	Case No. PERA-C-05-81-E
	:	
LYCOMING COUNTY	:	

AFFIDAVIT OF COMPLIANCE

The Lycoming County (County) hereby certifies that it has ceased and desisted from its violations of Sections 1201(a)(1), (3) and (5) of the Act; that it has complied with all portions of the January 4, 2005 interest arbitration award for the ADA-APD unit and made whole all of the employes of the ADA-APD bargaining unit for the financial portion of the award, with interest; that it has posted a copy of the proposed decision and order as directed therein; 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