

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 764 :
 :
 v. : Case No. PERA-C-06-114-E
 :
 MILTON REGIONAL SEWER AUTHORITY :

PROPOSED DECISION AND ORDER

On March 17, 2006, Teamsters Local Union No. 764 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Milton Regional Sewer Authority (Authority) violated Section 1201(a)(1), (3) and (8) of the Public Employe Relations Act (PERA). On April 21, 2006, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on June 21, 2006. Based on the parties' request to submit stipulations of fact and waive the right to an evidentiary hearing, the hearing was continued. On June 15, 2006, the Authority filed stipulations of fact on behalf of both parties. On July 6, 2006, the Union filed a brief. On July 7, 2006, the Authority forwarded its brief to the Board.

The examiner, on the basis of the stipulations submitted by the parties and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Authority is a public employer for purposes of PERA. (Stipulation 1)
2. The Union is an employe organization for purposes of PERA. (Stipulation 2)
3. The Union is the exclusive bargaining representative of certain employes of the Authority. Patricia Pfleegor was a member of the bargaining unit represented by the Union during the time that she worked as a billing clerk for the Authority from June 1, 2003 until her termination on September 6, 2005. (Stipulation 3)
4. During the period that she was employed by the Authority, Pfleegor filed a grievance challenging the seniority date that the Authority had assigned to her. (Stipulation 4)
5. Pfleegor's grievance was processed to arbitration. On September 5, 2005, the arbitrator issued an award sustaining the grievance and directing the Authority to restore grievant's seniority date to January 3, 1989. (Stipulation 5)
6. On September 30, 2005, the Authority filed a petition for review of the arbitration award in the Court of Common Pleas of Northumberland County. (Stipulation 6)
7. On December 6, 2005, the common pleas court denied the Authority's request to vacate the arbitration award and granted the Union's cross-petition to confirm the award. (Stipulation 7)
8. On January 5, 2006, the Authority appealed the common pleas court order to Commonwealth Court. That appeal is still pending. (Stipulation 8)
9. Pfleegor is not currently employed by the Authority. (Stipulation 9)
10. Pfleegor has filed a grievance and an unfair labor practice charge regarding her termination from employment.¹ (Stipulation 10)

¹ On August 14, 2006, the examiner issued a proposed decision and order dismissing the unfair practice charge filed over Pfleegor's discharge. (PERA-C-05-431-E)

11. Only current bargaining unit employees are included in the union seniority list posted at the Authority. Pfleegor is not listed at this time. (Stipulation 11)

12. Pfleegor has not applied for retirement benefits under the Authority's pension plans. (Stipulation 12)

DISCUSSION

The Union alleges that the Authority violated Section 1201(a)(1), (3) and (8) of PERA by failing to comply with a grievance arbitration award directing the Authority to restore Patricia Pfleegor's seniority date to January 3, 1989. The Authority argues that it did not commit an unfair practice because (1) its appeal of the arbitration award is still pending, and (2) the Union did not prove that the Authority refused to comply with the award.

The Authority's first argument must be rejected because its appeal of the common pleas court order did not operate as an automatic stay, and there is no indication in the record that the Authority obtained a stay of the court's order. Unless it obtained a stay, the Authority was obligated to comply with the common pleas court order affirming the arbitration award. As the Board explained in City of Philadelphia, 32 PPER 32102 (Order Directing Remand to Secretary for Further Proceedings, 2001):

"[I]n 1987 the Rules of Appellate Procedure were amended and the Amendment to Rule 1736 fundamentally altered the protections provided to employers . . . Pa.R.A.P. 1736 provides as follows:

(a) General Rule. No security shall be required of

[2] Any political subdivision . . . except in any case in which a common pleas court has affirmed an arbitration award in a grievance or similar personnel matter . . .

(b) Supersedeas Automatic. Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party.

The note following the rule more fully explains the amendment:

The 1987 amendment eliminates the automatic supersedeas for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.

Thus, once an arbitration award has been affirmed by a common pleas court, the award becomes enforceable. The aggrieved employer has been stripped of its ability to delay compliance with the award by seeking further redress in subsequent appeals. The Commonwealth Court explained that Pa.R.A.P. 1736(a)(2) 'expressly negates an automatic supersedeas for a political subdivision in an appeal from an arbitration award.' Commonwealth, Dep't of the Auditor General v. AFSCME, Council 13, 573 A.2d 233, 234 (Pa. Cmwlth. 1990). See also . . . Cheltenham Township Police Ass'n v. Cheltenham Township, 21 PPER ¶ 21026 (Final Order, 1989); City of Philadelphia, Office of Housing and Community Development v. AFSCME, Local 1971, 37 Pa. D. & C. 4th 116 (Philadelphia County Common Pleas, 1996); Crawford County v. AFSCME, Council 85, 27 PPER ¶ 27117 (Crawford County Common Pleas, 1996) (where arbitration award affirmed by common pleas, application for a stay denied; while appellate court could ultimately reverse arbitrator, no irreparable harm in requiring employer to comply with award)."

32 PPER at 267. See also Philadelphia Office of Housing and Community Development, 34 PPER 15 (Proposed Decision and Order, 2003 (employer committed unfair practice by failing to comply with grievance arbitration award after it was affirmed by common pleas court); Lebanon County, 37 PPER 25 (Proposed Decision and Order, 2006)(same).

Here the arbitration award concerning Pfleegor's grievance was affirmed by the common pleas court. Under Pa.R.A.P. 1736(a)(2), the Authority's appeal of the common pleas court order to Commonwealth Court did not operate as an automatic stay of the court's order. Nor did the Authority obtain a stay. Therefore, the Authority was obligated to comply with the arbitration award. City of Philadelphia, supra; Philadelphia OHCD, supra; Lebanon County, supra.

The question remains whether the Union proved that the Authority failed to comply with the arbitration award. The stipulated facts indicate that only current bargaining unit employees are included in the union seniority list posted at the Authority, and that Pfleegor is not a current employee. The stipulated facts also indicate that Pfleegor has not applied for retirement benefits, which is one situation where her seniority date may come into play. The stipulated facts show no instance where the Authority has refused to recognize the seniority date determined by the arbitrator. Therefore, on this record, I cannot find that the Authority has failed to comply with the arbitrator's award. If there is some instance in the future where the Authority refuses to recognize Pfleegor's seniority date, as determined by the arbitrator, the Union may file a charge at that time.

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The Authority is a public employer for purposes of Section 301(1) of PERA.
2. The Union is an employe organization for purposes of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Authority has not committed unfair practices in violation of Section 1201(a)(1), (3) or (8) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the examiner

HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint issued thereon is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED AND MAILED this fifth day of October, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

October 5, 2006

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MILTON REGIONAL SEWER AUTHORITY
Case No. PERA-C-06-114-E

Enclosed please find a copy of the proposed decision and order issued in the above-captioned matter.

Sincerely,

Peter Lassi
Hearing Examiner

Enclosure

cc: Milton Regional Sewer Authority