COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 429	:	
	:	
v.	:	Case No. PERA-C-05-398-E
	:	
LEBANON COUNTY	:	

PROPOSED DECISION AND ORDER

On September 12, 2005, Teamsters Local 429 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Lebanon County (County) violated Section 1201(a)(1) and (8) of the Public Employe Relations Act (PERA). On November 3, 2005, the Secretary of the Board issued a complaint and notice of hearing directing a hearing before a Board hearing examiner on January 25, 2006. On January 13, 2006, the Union and the County filed stipulations of fact and exhibits and waived the right to an evidentiary hearing. The Union filed a brief on January 20, 2006. The County filed a brief on February 6, 2006.

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

FINDINGS OF FACT

1. The Union is the exclusive bargaining agent for all nonprofessional employes who are necessary to but not appointed by the courts, as certified by the Board in Case No. PERA-R-96-514-E. (Stipulation 1)

2. The County is a public employer within the meaning of PERA. (Stipulation 2)

3. The Union and the County have a collective bargaining agreement (CBA) effective January 1, 2002 through December 31, 2005. (Stipulation 3)

4. The Union filed a grievance on behalf of Elsie Garcia, a bargaining unit employe represented by the Union. The grievance alleged that the County violated the CBA because it reduced Ms. Garcia's hours from full-time to part-time, and then had non-bargaining unit managerial personnel perform the bargaining unit work she had performed previously. (Stipulation 4)

5. In an award rendered on February 22, 2005, Arbitrator John Skonier sustained the grievance. Arbitrator Skonier found that the work performed by Ms. Garcia was still being performed, however, it was being performed by non-bargaining unit employes. Arbitrator Skonier directed the County to return Ms. Garcia to full-time status as a clerk in the Register of Wills office. (Stipulation 5; Exhibit A)

6. The County did not return Ms. Garcia to full-time employment. Instead, it filed a petition to vacate the award on March 22, 2005. (Stipulation 6)

7. By letter dated March 28, 2005, the Union requested that the County implement the award and reinstate Ms. Garcia to full-time employment. (Stipulation 7; Exhibit B)

8. The Court of Common Pleas of Lebanon County denied the County's petition to vacate the arbitration award on August 4, 2005. (Stipulation 8; Exhibit C)

9. By letter dated August 9, 2005, the Union demanded that the County immediately reinstate Ms. Garcia. The Union also advised the County that it did not enjoy an automatic supersedeas of the arbitration award. (Stipulation 9; Exhibit D)

10. The County filed a notice of appeal to Commonwealth Court on August 30, 2005. That appeal is pending before the court. (Stipulation 10).

11. The Union filed the instant unfair practice charge on or about September 12, 2005. (Stipulation 11)

12. On October 21, 2005, the County filed a motion for supersedeas in the Commonwealth Court. (Stipulation 12)

13. On or about November 15, 2005, the Commonwealth Court denied the County's motion for supersedeas for lack of compliance with Pa.R.A.P. 1732(a). (Stipulation 13)

14. On November 16, 2005, the County filed a motion for supersedeas in the Lebanon County Court of Common Pleas. (Stipulation 14)

15. The County has not reinstated the grievant, Elsie Garcia, to full-time employment. (Stipulation 15)

DISCUSSION

The Union alleges that the County violated Section 1201(a)(1) and (8) of PERA by failing to comply with a grievance arbitration award after it was affirmed by the common pleas court. The Union cites City of Philadelphia, 32 PPER ¶ 32102 (Order Directing Remand to Secretary for Further Proceedings, 2001) and Philadelphia Office of Housing and Community Development, 34 PPER 15 (Proposed Decision and Order, 2003) for the proposition that the award became enforceable once it was affirmed by the court.

The County argues that it "viewed the award as advisory in that it relates to an area that requires legislative action to accomplish (i.e. the County Commissioners must vote to make the position full time, and then the County's salary board must vote to set the rate for that new position)" (County's brief at 2). According to the County, "both the County Commissioners and the Salary Board voted to not accept the award." Id. The County cites the Commonwealth Court decision in Franklin County Prison Board v. PLRB, 406 A.2d 829 (Pa. Cmwlth. 1979), rev'd, 491 Pa. 50, 417 A.2d 1138 (1980) for the proposition that "when a County elects not to legislate a salary award from an arbitrator . . . such an act is permissible, and not an unfair labor practice." Id.

The County made the same argument in its appeal of the grievance arbitration award to the common pleas court, and the court rejected the County's argument and affirmed the award (Exhibit C). Thus, the award became enforceable at that time. City of Philadelphia, supra; Philadelphia OHCD, supra. As the Board explained in City of Philadelphia:

> "[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 OHCD, supra (employer committed unfair practice by failing to comply with grievance arbitration award after it was affirmed by common pleas court).

Here the grievance arbitration award directing reinstatement of a bargaining unit employe to full-time employment was affirmed by the common pleas court. Under Pa.R.A.P. 1736(a)(2), the County's appeal of the common pleas court order to Commonwealth Court did not operate as an automatic stay of the court's order affirming the arbitration award. Nor did the County obtain a stay of the court's order. Therefore, the County was obligated to comply with the arbitration award and committed an unfair practice by failing to do so. City of Philadelphia, supra; Philadelphia OHCD, supra.

The County's argument in its brief goes to the merits of its appeal from the arbitration award. That argument was rejected by the common pleas court. Therefore, it is not a defense to the unfair practice charge and need not be addressed in this order. However, it should be noted that the County is relying on a Commonwealth Court decision that was reversed by the Pennsylvania Supreme Court. In Franklin County Prison Board, supra, the Supreme Court rejected Commonwealth Court's view (espoused by the County here) that fixing of salaries and compensation by the county salary board is legislative action for purposes of Section 805 of PERA.[1] The Supreme Court instead held: (1) that legislative action for purposes of Section 805 of PERA is appropriation of funds and levying of taxes by a lawmaking body (i.e., the county commissioners); and (2) that an interest arbitration award will only be deemed advisory under Section 805 where the public employer demonstrates that implementation of the award requires levying of taxes or appropriation of funds, and that the lawmaking body has met, considered and rejected the award. Franklin County Prison Board, supra.

The County's reliance on Section 805 of PERA is misplaced because that provision does not apply to grievance arbitration awards. As the Board stated in Clearfield County, 31 PPER ¶ 31037 (Final Order, 2000):

> The Board notes that "the '[l]egislative proviso' exception provided in [Sections 903 and 805 of] the Act for compliance with arbitration awards has been distinguished as between grievance and interest arbitration awards." Upper Dublin Township, 28 PPER ¶ 28047 (Final Order, 1997). See also Cambria County, 17 PPER ¶ 17078 (Final Order, 1986). In the grievance arbitration award setting, a public employer exercises its legislative powers when it enters into the CBA under which a grievance arises. In Danville Education Association v. Danville Area School District, 467 A.2d 644 (Pa. Cmwlth. 1983), the Commonwealth [Court] rejected the argument that a grievance

[1] Section 805 states that "where representatives of . . . units of employes directly involved with and necessary to the functioning of the courts of this Commonwealth have reached an impasse in collective bargaining and mediation as required in section 801 of this article has not resolved the dispute, the impasse shall be submitted to a panel of arbitrators whose decision shall be final and binding upon both parties with the proviso that the decisions of the arbitrators which would require legislative enactment to be effective shall be considered advisory only." 43 P.S. § 1101.805.

> arbitration award was not binding because it interfered with the public employer's legislative functions to appropriate and spend taxpayer money. The Court distinguished this issue from the interest arbitration issue [i]n Franklin County Prison Board by noting that when a public employer enters into an agreement that provides for grievance arbitration pursuant to Section 903 of the Act, it has exercised its legislative prerogatives. The court held that no interference with the legislative function occurs when an arbitrator finds the public employer violated its own voluntarily agreed-to contract. See also Upper Dublin Township, supra; Zelienople Borough, 27 PPER ¶ 27024 (Final Order, 1995); City of Philadelphia, 22 PPER ¶ 22228 (Final Order, 1991).
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> * * *
>
> The County argues that implementation of the award would require a legislative enactment, thereby rendering the award advisory. However, as discussed above, a public employer exercises its legislative prerogatives by entering into an agreement with a union. Legislative approval is necessary in the establishment of wages and benefits by way of negotiation or interest arbitration, where a collective bargaining agreement does not yet exist. Additional legislative approval is not necessary in the grievance arbitration setting where there is an existing agreement and the grievance merely seeks to make employes whole for the employer's breach of that agreement. City of Philadelphia, supra. Even if this were not the case, the County has not demonstrated that legislative action is required to implement the award in the form of levying taxes or appropriating funds. Even in a pure Franklin County Prison Board interest arbitration case, it is the public employer's burden to demonstrate whether a legislative enactment is required to execute the award. County of Lehigh, 505 A.2d 1104 (Pa. Cmwlth. 1986), (citing County of Lawrence v. PLRB, 469 A.2d 1145 (Pa. Cmwlth. 1983). In such a case, the public employer must demonstrate that the raising of additional taxes is necessary to fund the award, and that it has met, considered and rejected the award. Franklin County Prison Board, supra.

31 PPER at 89-90.

As in Clearfield County, Section 805 of PERA does not apply because this case does not involve an interest arbitration award. Moreover, the County has not demonstrated that compliance with the grievance award requires raising of additional taxes. Therefore, the Supreme Court's decision in Franklin County Prison Board, supra, does not support the County's attempt to avoid compliance with the grievance award. By failing to reinstate the bargaining unit member to full-time employment as directed by the arbitrator, the County violated Section 1201(a)(1) and (8) of PERA. Accordingly, the County will be directed to comply with the arbitration award.

CONCLUSIONS

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

1. The County is a public employer within the meaning of Section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The County has committed unfair practices in violation of 1201(a)(1) and (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 County shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of PERA.

2. Cease and desist from refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX of PERA.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Comply with the grievance arbitration award;

(b) Post a copy of this decision and order within five (5) days from the date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

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 ninth day of February, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

_____

PETER LASSI, Hearing Examiner

February 9, 2006

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LEBANON COUNTY
Case No. PERA-C-05-398-E

Enclosed is a copy of the proposed decision and order in the above-captioned matter.

Sincerely,

PETER LASSI
Hearing Examiner

Enclosure

cc: Lebanon County

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 429	:	
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v.	:	Case No. PERA-C-05-398-E
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AFFIDAVIT OF COMPLIANCE

Lebanon County hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (8) of PERA; that it has complied with the grievance arbitration award; that it has posted 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