

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 401 :
 :
 v. : Case No. PERA-C-07-107-E
 :
 HAZLE TOWNSHIP :

FINAL ORDER

Hazle Township (Township) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 31, 2007, challenging a Proposed Decision and Order (PDO) issued on August 15, 2007.¹ In the PDO, the Board's Hearing Examiner concluded that the Township violated Section 1201(a)(1) and (8) of the Public Employe Relations Act (PERA) by refusing to make pension contributions on behalf of the grievant and refusing to credit him for accumulated sick leave in accordance with the terms of a grievance arbitration award.² Teamsters Local 401 (Union) filed a brief in response to the exceptions on September 18, 2007.

The factual underpinning of this case can be summarized as follows. On February 5, 2005, Mark Benyo was injured while in the employ of the Township. Benyo applied for and received workers' compensation payments beginning in February 2005. On February 3, 2006, the Union filed a grievance, seeking to have Benyo reinstated to work immediately and made whole for lost wages and benefits. On January 24, 2007, the Arbitrator issued the following award:

Award

1. The Grievant is to be reinstated to his former job as soon as possible with full seniority and benefits.
2. The Township can require the Grievant to undergo a pre-employment physical, at its expense, if it requires that of other employees returning from a similar leave.
3. The Grievant shall be reimbursed any medical expenses that would have been otherwise covered by the medical insurance had he been employed from February 2006 to the date of his reinstatement.

(Exhibit B at 12). The Arbitrator noted that Benyo received unemployment compensation for six months, but he did not engage in any work after his unemployment compensation ceased. Therefore, the Arbitrator denied Benyo backpay for failing to mitigate his damages.

When the complainant alleges a refusal to comply with a grievance arbitration award, the Board must determine whether (1) an award exists; (2) the appeal period available to the aggrieved party has been exhausted; and (3) the respondent failed to comply with the provisions of the arbitration award. AFSCME, District Council 88 v. Upper Dublin Township, 27 PPER ¶ 27262 (Proposed Decision and Order, 1996)(citing PLRB v. Commonwealth of Pennsylvania, 478 Pa. 582, 387 A.2d 475 (1978)). The complainant bears the burden of establishing that the respondent has failed to comply with the arbitration award. McCandless Police Officers Association v. Town of McCandless, 30 PPER ¶ 30141 (Final Order, 1999). The Board's review is limited to ascertaining the arbitrator's intent from the four corners of the award, and it may not review the merits of the award. AFSCME, Local 1971 v. City of Philadelphia, Office of Housing and Community Development,

¹ The Township also filed a request for oral argument, which is denied as the exceptions raise no novel issue of law or fact and all arguments are adequately addressed in the parties' briefs.

² The Hearing Examiner also concluded that the Township did not violate Section 1201(a)(5) of PERA. No exceptions have been filed concerning that portion of the Hearing Examiner's decision.

24 PPER ¶ 24052 (Final Order, 1993); Upper Dublin Township, supra. A collateral attack on the validity of an arbitration award is not an affirmative defense to a Section 1201(a)(8) charge. Id.

There is no dispute that an award exists and that the appeal period has passed without an appeal of the award. Therefore, the only issue before the Board is whether the Township has complied with the provisions of the arbitration award. The Hearing Examiner determined that the Arbitrator intended to award retroactive benefits to Benyo because the Arbitrator linked "full seniority" and "benefits" in the same sentence. Additionally, the Hearing Examiner stated that the Township's interpretation that the Arbitrator only intended benefits from the time of Benyo's reinstatement forward would render the word "benefits" superfluous. Accordingly, the Hearing Examiner concluded that the Union met its burden of proving that the Township had not complied with the award in violation of Section 1201(a)(1) and (8) of PERA. The Hearing Examiner directed the Township to give Benyo accumulated sick day credit and make pension contributions on his behalf from the date that he should have been reinstated until the date that he was reinstated.

The Township argues that the Hearing Examiner erred by interpreting the arbitration award to include retroactive payment of pension contributions and credit for sick days. The Township argues that this interpretation substantially alters the relief awarded by the Arbitrator and goes beyond the scope of the collective bargaining agreement (CBA). The Township asserts that Benyo is not entitled to these benefits under the CBA because the Arbitrator denied backpay. The Township further asserts that the relief awarded would modify the Township's benefit plan requiring it to make pension contributions for all employees without the corresponding hours worked and money earned. The Township contends that the award would require the Township to violate the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. §§ 895.101 - 895.803, 895.901, 895.1001, because a study demonstrating the actuarial soundness of the award has not been performed, citing Upper Merion Township v. Upper Merion Township Police Officers, 915 A.2d 174 (Pa. Cmwlth. 2006), appeal denied, ___ Pa. ___, 929 A.2d 647 (2007).

The arbitration award indicates that the Union requested that Benyo be returned to his former position and made whole. Specifically, the Union requested that the Arbitrator award Benyo backpay from the date he was able to return to work along with compensation for any medical expenses he incurred and any other benefits he should have received during that time.

Concluding that the Township improperly refused to reinstate Benyo in February 2006, the Arbitrator awarded Benyo reinstatement "with full seniority and benefits." (Exhibit B at 12). However, the Arbitrator determined that Benyo was not entitled to backpay because he had failed to mitigate his damages while he was unemployed. Upon review of the award in its entirety, the Board finds (as did the Hearing Examiner) that the Arbitrator intended that Benyo be made whole with the lone exception being backpay. Thus, Benyo was to be reinstated with his seniority computed, and his benefits provided, as if he had been reinstated in February 2006. Otherwise, the Arbitrator's award of "full seniority and benefits" would not be effectuated.

The Township's arguments that awarding pension credits to Benyo goes beyond the scope of the CBA and that the award would require the Township to violate the Municipal Pension Plan Funding Standard and Recovery Act are impermissible collateral attacks on the validity of the award. Upper Dublin Township, supra. Moreover, the Township has waived any arguments concerning the award's legality by failing to appeal the award. Borough of Lewistown v. PLRB, 558 Pa. 141, 735 A.2d 1240 (1999). The Township has further waived the right to challenge the legality of the award on exceptions to the Board because the Township failed to raise that argument before the Hearing Examiner. AFSCME, Council 13 v. PLRB, 514 A.2d 255 (Pa. Cmwlth. 1986); Bucks County Schools, Intermediate Unit No. 22 v. PLRB, 466 A.2d 262 (Pa. Cmwlth. 1983). Accordingly, the Hearing Examiner properly concluded that the Township failed to comply with the arbitration award.

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board shall dismiss the Township's exceptions and affirm the

Hearing Examiner's conclusion that the Township committed unfair practices in violation of Section 1201(a)(1) and (8) of PERA.

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 the exceptions filed by Hazle Township are hereby dismissed, and the August 15, 2007 Proposed Decision and Order be and the same is hereby made absolute and final.

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 twentieth day of November, 2007. 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.

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AFFIDAVIT OF COMPLIANCE

Hazle Township hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (8) of the Public Employee Relations Act; that it has complied with each and every provision of Arbitrator Rochelle Kaplan's Award dated January 24, 2007; that it has made pension contributions to Mark Benyo's account which would have been made on his behalf from the time he should have been reinstated until the date he was reinstated; that it has credited Mark Benyo the sick days he would have accumulated from the time he should have been reinstated until the date he was reinstated; that it has posted a copy of the Proposed Decision and Order and Final Order as directed 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