

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

EAST HEMPFIELD TOWNSHIP :
POLICE ASSOCIATION :
 :
v. : Case No. PF-C-07-76-E
 :
EAST HEMPFIELD TOWNSHIP :

FINAL ORDER

The East Hempfield Township Police Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 24, 2007, challenging an August 6, 2007 Proposed Decision and Order (PDO) dismissing its Charge of Unfair Labor Practices filed against East Hempfield Township (Township). In the PDO, the Board Hearing Examiner concluded that the Association failed to sustain its burden of proving that the Township violated Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by failing to comply with a grievance arbitration award. On September 13, 2007, the Township filed a timely brief in opposition to the exceptions. After a thorough review of the record, the Board makes the following

AMENDED FINDINGS OF FACT

4. In the Award, Arbitrator Loewenberg concluded as follows:

If the Township had cause to administer discipline to officer Urey, but, in its own mind, the valid basis for discipline did not require immediate discharge, what is the appropriate penalty? Certainly two violations in processing the DUI cases justify a lengthy suspension. Under normal circumstances, a remedy of immediate reinstatement without back pay would be in order. The complication in this case is Officer Urey's physical status. At the arbitration hearing Officer Urey testified that she still suffers from work-related injuries, which suggests that she has not recuperated fully and is not in a position to return to regular duty. The Township must have medical assurance that Officer Urey can perform on a full-term basis without restrictions before it is required to reinstate her. Until such time, as of the date of this award she should be placed in off-duty status.

(Joint Exhibit 1 at 16).

5. The Arbitrator further ordered the following relief:

Award

The Township did not have just cause to discharge Officer Terri L. Urey on July 8, 2005. The discharge shall be reduced to a suspension without compensation or benefits from July 8, 2005 until the date of this award. Officer Urey shall be reinstated to duty if and when she provides medical certification that she is able to perform the duties of a police officer on a regular basis and without any medical restrictions.

(Joint Exhibit 1 at 17).

DISCUSSION

On March 20, 2007, a grievance arbitration award was issued resolving Police Officer Terri L. Urey's July 8, 2005 dismissal from Township employment. (FF 3). The Arbitrator found there was not just cause for Officer Urey's termination, but that discipline in the nature of a lengthy suspension was warranted. The Arbitrator issued the Award quoted above in Amended Finding of Fact 5. Neither the Township nor the Association appealed the Award to the Court of Common Pleas. (FF 6)

To conclude that a party has failed to comply with the provisions of a grievance arbitration award, the Board must find that (1) a binding award exists, (2) no appeal of the award has been filed or stay of the award issued, and (3) the responding party has failed to comply with the provisions of the arbitration award. AFSCME, District Council 47 Local 2187 v. City of Philadelphia, 36 PPER 124 (Final Order, 2005). In addressing compliance with the provisions of the award, the Board performs a limited interpretive role necessary to ascertain the arbitrator's intended remedy. State System of Higher Education (Kutztown University) v. PLRB, 528 A.2d 278 (Pa. Cmwlth. 1987); PLRB v. Erie City School District, 15 PPER ¶15134 (Erie County Court of Common Pleas, 1984); AFSCME, Local 1971 v. City of Philadelphia (Office of Housing and Community Development), 24 PPER ¶24052 (Final Order, 1993). The charging party bears the burden of proving the respondent's non-compliance with the arbitrator's decision. City of Philadelphia v. PLRB, 759 A.2d 40 (Pa. Cmwlth. 2000).

There is no dispute that a binding grievance award exists, and that no appeal has been filed. The only issue is whether the Township has complied with the award. The Hearing Examiner found that the award required Officer Urey's reinstatement as an employe only after she provided medical assurance that she could perform her duties as a police officer without restrictions. The Hearing Examiner believed that the arbitrator's reference to "off-duty status" was too vague to constitute a form of reinstatement. Accordingly, the Hearing Examiner found that Officer Urey was not entitled to pay or benefits until she provided medical assurances as a prerequisite to her reinstatement under the award. On exceptions, the Association argues that the arbitrator intended to award Officer Urey prospective compensation and benefits from March 20, 2007 until she obtained medical clearance to return to active duty.

In modifying the discipline from a termination to a suspension, the arbitrator ensured that Officer Urey would remain as an employe of the Township. A fair reading of the award reveals that what the arbitrator intended was that effective March 20, 2007, Officer Urey would be in the same position as any officer who was out of work due to a work-related injury.

However, other than directing that Officer Urey's disciplinary suspension cease as of March 20, 2007, there is nothing in the award indicative of an intent to award prospective pay and benefits. As such, the Association failed to carry its burden on this unfair labor practice charge of showing that as of March 20, 2007, Officer Urey would have, unquestionably, been entitled to prospective compensation and benefits from the Township as a result of her being on off-duty status due to a work-related injury.¹

Accordingly, we agree with the Hearing Examiner's determination that the Association failed to prove that the Township unlawfully refused to comply with the provisions of the March 20, 2007 grievance arbitration award in violation of Section 6(1)(a) and (e) of the PLRA and Act 111. After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the PDO final, as modified.

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 the exceptions filed by the East Hempfield Township Police Association are hereby dismissed, and the August 6, 2007 Proposed Decision and Order, be and is hereby made absolute and final, as modified.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, Anne E. Covey, Member, and James M. Darby, Member, this sixteenth day of October, 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.

¹ In rendering this determination we only find that there has been no clear repudiation of the award by the Township. Whatever benefits Officer Urey is entitled to under the collective bargaining agreement as an off-duty employe is properly subject to the grievance procedure. Parents Union for Public Schools in Philadelphia v. Board of Education of the School District of Philadelphia, 480 Pa. 194, 389 A.2d 577 (1978).