

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 776 :  
 :  
 v. : Case No. PERA-C-04-642-E  
 :  
 RYE TOWNSHIP :

**FINAL ORDER**

Rye Township (Township) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on March 28, 2007, challenging a Proposed Decision and Order (PDO) issued by a Board Hearing Examiner on March 9, 2007. In the PDO, the Examiner concluded that the Township violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by unilaterally changing its disability benefits policy without prior negotiation with Teamsters Local 776 (Teamsters).<sup>1</sup> After a thorough review of the record, the Board makes the following:

ADDITIONAL FINDINGS OF FACT

12. On or about October 19, 2004, the Township and the Teamsters held a bargaining session concerning an initial collective bargaining agreement. There was no discussion between the parties concerning a change in disability benefits. (N.T. 18-20).

13. Martin Clouse exhausted the balance of his sick leave and vacation leave during the pay period that ended on October 22, 2004, and he received only a partial paycheck on October 28, 2004. Upon review of the employe handbook, Mr. Evans, a Township Supervisor, directed Daisy Lightner, the Township Secretary/Treasurer, to pay the balance of Mr. Clouse's full salary for the October 22, 2004 pay period. On November 10, 2004, the Township issued a paycheck to Mr. Clouse in the amount of \$662.40, representing the balance of his full salary for the October 22, 2004 pay period. That was the last pay period for which Mr. Clouse received pay from the Township. (Township Exhibit 1; N.T. 13-14, 32, 39-42).

DISCUSSION

The Teamsters alleged in a Charge of Unfair Practices that the Township violated Section 1201(a)(1) and (5) of PERA. The Teamsters claimed that the Township's failure to continue paying full wages to Martin Clouse, an injured employe, was a unilateral change in the Township's disability benefits policy.

Mr. Clouse, a bargaining unit employe, suffered a non-work related injury on July 30, 2004 and was not able to return to work. (Findings of Fact 3 and 4). Effective April 2002, the Township's employe handbook provided in relevant part that "[t]he Township provides weekly disability income insurance for non-work related injuries or illnesses for full time employes. An employe who is unable to work due to an injury or illness and who is eligible for disability payments will be paid his full pay or salary" (Finding of Fact 1). Mr. Clouse applied for, and obtained, the weekly disability income benefits of \$250.00 under the Township's disability income insurance policy with Trustmark Life Insurance Company (Trustmark). (Findings of Fact 2 and 6). Although insurance payments through Trustmark were available for a maximum of thirty-five weeks, Mr. Clouse's last insurance check was in December 2004. (Findings of Fact 2 and 11).

While Mr. Clouse was still receiving his disability insurance payments from Trustmark, the Township paid Mr. Clouse only a partial salary on October 28, 2004 after he exhausted all sick leave and vacation leave. (Findings of Fact 7 and 13). Mr. Clouse called Ms. Lightner, the Township's Secretary/Treasurer, and asked why he had not

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<sup>1</sup> The Teamsters have not filed a brief in response to the Township's exceptions.

received his full pay for the pay period that ended on October 22, 2004. After Mr. Evans, a Township Supervisor, reviewed the employe handbook, he directed Ms. Lightner to pay Mr. Clouse his full salary. (Finding of Fact 13). On November 10, 2004, the Township issued a paycheck to Mr. Clouse for the remainder of his full pay for the October 22, 2004 pay period. (Finding of Fact 13). That was the last pay period for which Mr. Clouse received pay from the Township. (Finding of Fact 13).

On November 22, 2004 the Township Supervisors passed a resolution amending the disability benefits provision in the handbook to provide, in part, that "[a]fter an employee has exhausted his or her accumulated sick and vacation days, the employee may, if permitted under the Township's group disability insurance plan, continue to receive disability insurance benefits from the Township's insurance carrier, but shall not receive any compensation directly from the Township." (Finding of Fact 8, Joint Exhibit 2). Even though as of May 12, 2004, the Teamsters had been duly certified by the Board as the representative of the Township's employes, the Township did not negotiate with the Teamsters before ceasing salary payments to Mr. Clouse and amending the employe handbook provisions addressing disability benefits. (Findings of Fact 3 and 9). The Township took its actions regarding the disability benefits of Mr. Clouse and the amendments to the employe handbook while it was engaged in negotiations with the Teamsters for an initial collective bargaining agreement. (Finding of Fact 12).

As he had done since beginning to receive short-term disability, Mr. Clouse periodically obtained an insurance form from the Township, which was to be completed by the Township and his physician, and then submitted to Trustmark in order for him to continue receiving disability insurance benefits. However, Ms. Lightner did not provide Mr. Clouse with these forms after December 2004. (Finding of Fact 11). Accordingly, Mr. Clouse ceased receiving disability insurance payments from Trustmark after December 2004. (Finding of Fact 10).

The Hearing Examiner found that the Township's 2002 employe handbook established the *status quo* that the Township was obligated to maintain. The Hearing Examiner concluded that the Township violated Section 1201(a)(1) and (5) of PERA by ceasing to pay Mr. Clouse his full salary in accordance with the handbook and unilaterally amending the handbook's employe disability benefits provisions. The Hearing Examiner also found that Mr. Clouse stopped receiving disability insurance payments after December 2004 because the Township refused to provide Mr. Clouse with a necessary form. Therefore, the Hearing Examiner directed the Township to pay Mr. Clouse his full salary for the maximum thirty-five weeks for which he would have been entitled to disability insurance payments through Trustmark.

The Township argues in its exceptions that an employer-issued handbook alone cannot establish a binding past practice.<sup>2</sup> We note that the circumstances of record involve more than just the handbook in isolation. Here, Mr. Clouse exhausted the last of his sick and vacation leave during the October 22, 2004 pay period, and received only a partial paycheck on October 28, 2004. After he inquired about the partial pay, a Township Supervisor, upon reviewing the employe handbook, directed that Mr. Clouse receive his full pay. On November 10, 2004, Mr. Clouse received the balance of his paycheck for the October 22, 2004 pay period, despite having exhausted all of his leave entitlements. It was only after the Township paid Mr. Clouse his full salary following exhaustion of his leave and review of the handbook that the Township amended the handbook provisions to eliminate such payments.

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<sup>2</sup> The Township claims that the Examiner erred in excluding testimony concerning the Township's understanding of the disability benefits set forth in the handbook. The excluded testimony was the Township Secretary/Treasurer's response to the Township's attorney who asked, "In terms of the language in Joint Exhibit One [the employe handbook], what is your understanding as the secretary treasurer of the benefit that's available for a non work-related injury?" (N.T. 36). The Examiner sustained the Teamster's objection to the question on the basis that the employe handbook was a written document, admitted into evidence that could "speak for itself". Upon review of the record the Board finds that the objection to the question as posed, seeking an interpretation of the written handbook, was properly sustained. See AFSCME, Council 13 v. State System of Higher Education (Edinboro University), 32 PPER ¶132080 (Final Order, 2001).

Where an employer unilaterally pronounces terms and conditions of employment in promulgating an employe handbook and by its actions professes adherence to those terms, a binding *status quo* is established in the collective bargaining relationship. Imdorf v. Public School Employes' Retirement System, 638 A.2d 502 (Pa. Cmwlth. 1994). Indeed, in finding violations of a public employer's statutory bargaining obligation, the Board has consistently recognized that where the employer had, verbally or in writing, expressed an intent to follow its handbook, or applied the disputed terms of the handbook to an employe, the acknowledged handbook provisions are the *status quo* in the bargaining relationship. American Federation of State, County and Municipal Employees, District Council 88 v. Northampton County, 36 PPER 142 (Proposed Decision and Order, 2005); Clarks Summit Borough Employees Association v. Clark's Summit Borough, 29 PPER ¶29073 (Proposed Decision and Order, 1998); Amalgamated Transit Union, Local 168 v. Lackawanna County Transit System, 18 PPER ¶18091 (Proposed Decision and Order, 1987).

On this record there is substantial evidence that the Township actually implemented the disability benefit provisions of the 2002 employe handbook through payment to Mr. Clouse of his full salary after exhaustion of his sick leave and vacation leave. Accordingly, based on the evidence presented, the Township's application of the handbook establishes a binding *status quo* that entitles Mr. Clouse to receive his full salary beyond October 28, 2004. The Township's exception to the Examiner's direction that it pay Mr. Clouse his full salary after October 28, 2004 is therefore dismissed.<sup>3</sup>

Under the 2002 employe handbook, Mr. Clouse would have been entitled to his full salary so long as he received disability insurance payments from Trustmark. Therefore, the Township argues that by directing payment of Mr. Clouse's full salary after Trustmark ceased its payments in December 2004, the Examiner placed the burden of determining Mr. Clouse's ongoing disability on the Township, not the insurance carrier. The Township asserts that the Examiner's issuance of a remedy beyond December 2004 was in error because there was no evidence presented by Mr. Clouse to demonstrate that he would have continued to receive disability insurance payments from Trustmark.

However, there is substantial evidence of record that in order to continuously receive insurance benefit payments from Trustmark, Mr. Clouse needed to periodically submit an insurance form to Trustmark that was properly executed by the Township and completed by his physician. Ms. Lightner testified that after Mr. Clouse contacted her in December 2004 to obtain one of those necessary forms to continue his short-term disability, she contacted Trustmark and was advised that "[Mr. Clouse] does not need anything else from [the Township], all he has to do is send forms in signed by the employer, signed by the employee and then the doctor." (N.T. 59). Mr. Clouse testified that despite his efforts with the Township, and Trustmark, to obtain the form in December 2004, he had not received the executed form from the Township needed to continue his disability insurance payments beyond December 2004. (N.T. 30). Indeed, Ms. Lightner acknowledged that she did not supply Mr. Clouse with any insurance forms after December 2004. (Finding of Fact 11). Based on the above testimony, there is substantial evidence of record that but for the Township's refusal to provide Mr. Clouse with the necessary forms he would have continued to receive disability insurance payments, which would have

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<sup>3</sup> Moreover, we note that the finding of a violation of Section 1201(a)(1) and (5) of PERA is unavoidable on this record as a result of the Township's November 2004 resolution changing the disability benefit provisions of the employe handbook. Once the Board certifies a union as the employes' bargaining representative, an employer must seek out the union and negotiate before taking any action with regard to a mandatory subject of bargaining. Dormont Borough v. Pennsylvania Labor Relations Board, 794 A.2d 402 (Pa. Cmwlth. 2002); New Britain Township Police Benevolent Association v. New Britain Township, 33 PPER ¶33069 (Final Order, 2002). Disability benefits are a mandatory subject of bargaining, and are governed by the *status quo* as found above. Accordingly, before taking any action on the existing terms of the disability benefits in the handbook, the Township had a statutory obligation to bargain. New Britain Township, supra; Teamsters Local 764 v. Milton Regional Sewer Authority, 34 PPER 159 (Final Order, 2003). The Township violated Section 1201(a)(1) and (5) of PERA by passing a resolution on November 22, 2004 changing the employe disability benefits without first having negotiated with the Teamsters. Id., see also Rockwood & Company, 281 NLRB 862 (1986), *enforced*, 834 F.3d 837 (9<sup>th</sup> Cir. 1987)(employer violated its duty to bargain by issuing new employe handbook that changed terms and conditions of employment).

entitled him to his full salary under the employe handbook. Accordingly, the Hearing Examiner did not err in awarding Mr. Clouse his full salary beyond December 2004.

The Township also argues in its exceptions that the Examiner erred in awarding thirty-five (35) weeks of backpay because Mr. Clouse had already received thirteen weeks of disability insurance payments and his full salary through October 2004. We believe the Township reads the Examiner's order too broadly and out of context. In the PDO the Examiner rejected Mr. Clouse's assertion that he was entitled to his full salary indefinitely, and held that under the employe handbook Mr. Clouse would only be entitled to receive his full salary from the Township so long as he would also receive disability insurance payments from Trustmark. The Township's disability insurance policy with Trustmark provided a maximum benefit of thirty-five weekly payments. Accordingly, the Examiner directed the Township to pay Mr. Clouse his full salary for the thirty-five weeks for which he received, and/or would have received, insurance payments from Trustmark. Indeed, the Examiner acknowledged that some of the Township's salary payments were made prior to November and December 2004 by providing the Township with an offset for those insurance payments from Trustmark that Mr. Clouse did not turn over to the Township, and by directing interest on only those salary payments that were due. Clearly, under the Examiner's Order, the Township would only be required to pay Mr. Clouse a total of thirty-five weeks of full salary. The Township acknowledged in its exceptions that thirteen weeks have already been paid. Accordingly, under the PDO, the Township is required to pay the remaining twenty-two weeks of full salary (less any disability insurance payments Mr. Clouse received from Trustmark but did not turn over to the Township), with interest.

After a thorough review of the exceptions and all matters of record, the Board finds that the Township has violated Section 1201(a)(1) and (5) of PERA. Accordingly, the Township's exceptions to the Proposed Decision and Order will be dismissed.

#### 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 the exceptions filed by Rye Township are hereby dismissed and the March 9, 2007 Proposed Decision and Order is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 nineteenth day of June, 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**

The Township hereby certifies that it has ceased and desisted from its violations of sections 1201(a)(1) and 1201(a)(5) of the Act, that it has paid Mr. Clouse as directed, that it has posted the proposed decision and order and final order as directed and that it has served an executed copy of this affidavit on the Union.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year aforesaid.

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Signature of Notary Public