

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

PROPOSED DECISION AND ORDER

On May 1, 2007, the East Hempfield Township Police Association (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that East Hempfield Township (Township) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111, for allegedly failing to comply with a grievance arbitration award.

On June 5, 2007, the Secretary of the Board issued a complaint and notice of hearing directing a June 15, 2007 hearing in Lancaster, Pennsylvania. During the June 15th hearing both parties in interest were afforded a full opportunity to present viva voce and documentary evidence and cross-examine witnesses. Also, the parties agreed to factual stipulations. Both parties filed post-hearing briefs on August 3, 2007.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The Township is a public employer. (N.T. 3).
2. The Union is a labor organization. (N.T. 4).
3. Arbitrator J. Joseph Loewenberg issued a grievance arbitration award (Award) on March 20, 2007, resolving the termination of Township Police Officer Terri L. Urey. (Joint Exhibit 1; N.T. 4, 12).
4. In the Award, Arbitrator Loewenberg concluded as follows:

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:

The discharge shall be reduced to a suspension without compensation or benefits from July 8, 2005 until the date of this award [March 20, 2007]. 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 restriction.

(Joint Exhibit 1 at 17).
6. Neither party appealed the Award. (N.T. 4).

DISCUSSION

The Union did not meet its burden of proving that the Township failed to comply with the Award. Consequently, the Township did not violate Section 6(1)(a) or (e) of the PLRA as read with Act 111. The Board has jurisdiction to determine whether an employer's alleged failure to comply with a grievance arbitration award constitutes an unfair labor practice. Wilkins Township Police Dep't v. PLRB, 707 A.2d 1202 (Pa. Cmwlth. 1998); FOP, Lodge 5 v. City of Philadelphia, 30 PPER 30204 (Final Order, 1999). "When an unfair labor practice charge alleges a party's refusal to comply with a grievance arbitration award, the Board must first determine whether an arbitration award exists, then, whether the appeal process has been exhausted, and, if so, whether the employer failed to comply with the award." City of Philadelphia v. PLRB, 759 A.2d 40, 42 (Pa. Cmwlth. 2000); accord, Wilkins Township, supra. The party alleging non-compliance with the grievance arbitration award has the burden of proving that the respondent has indeed failed to comply with the arbitrator's decision and order. FOP, Lodge 5 v. City of Philadelphia, 30 PPER 30204 (Final Order, 1999). Here, it is undisputed that the Award exists and that neither party appealed the Award.

The sole question is whether the Union has met its burden of proving that the Township failed to comply with the Award. The Board may not review the merits of a grievance arbitration award, when determining compliance. City of Philadelphia, 759 A.2d at 42. However, the Board may reasonably interpret a grievance award to determine whether an employer has complied with it, "[s]o long as [the Board's] interpretation of the arbitrator's award is supported by the record, not violative of constitutional rights, or contrary to law." Wilkins Township, 707 A.2d at 1204 (quoting Crawford Central Sch. Dist. v. PLRB, 618 A.2d 1202, 1206 (Pa. Cmwlth. 1992)).

The Union argues in its post-hearing brief that the Arbitrator's deliberate assignment of Officer Urey to "off-duty status" reinstated her as an employee entitled to compensation and benefits. The Union contends that, as an employee, the collective bargaining agreement provides Officer Urey with health and dental benefits as well as sick leave and vacation and holiday pay. As acknowledged by the Union in its brief, however, where an employer is charged with a failure to comply with a binding grievance arbitration award, the Board's inquiry is limited to the four corners of the award to determine the intent of the arbitrator as expressed in the award only. AFSCME, Local 1971 v. City of Philadelphia, Office of Housing and Community Development, 24 PPER ¶ 24052 (Final Order, 1993); North Hills Education Ass'n v. North Hills School District, 38 PPER 11 (Proposed Decision and Order, 2007). Absent express language to the contrary in the body of the award, a collective bargaining agreement does not complement an award or the reasonable interpretation thereof. "If upon review of the award as a whole the Board is unable to discern the intent of the arbitrator and the award is therefore ambiguous, the Board will dismiss an unfair practice charge alleging non-compliance with the award." City of Philadelphia, supra.

The plain meaning of the express language of the Award directly contradicts the Union's position. After denying Officer Urey any compensation or benefits for almost two years, Arbitrator Loewenberg ordered that Officer Urey shall only be reinstated "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 restriction." (Joint Exhibit 1 at 17) (emphasis added). The Arbitrator further stated that "[t]he Township must have medical assurance that Officer Urey can perform on a full-term basis without restrictions before it is required to reinstate her." (Joint Exhibit 1 at 16)(emphasis added). Therefore, medical certification clearing Officer Urey to return to regular Township police work is the necessary condition precedent required to trigger the Township's obligation under the Award to reinstate her as an employee. Under the clear language of the Award, the Township has no affirmative obligation to reinstate Officer Urey, and therefore provide her benefits or compensation, until she obtains a medical clearance to return to full police work. The record is devoid of substantial evidence establishing that Officer Urey has obtained the requisite medical documentation certifying "that she is able to perform the duties of a police officer on a regular basis and without any medical restriction," as required by Arbitrator Loewenberg. (Joint Exhibit 1 at 17). Moreover, contrary to the Union's argument that the term "off-duty status" describes a

condition of reinstatement to employment, the intent of the Arbitrator in using that term in the same context as necessary conditions precedent is indiscernible and unclear, requiring dismissal of the charge. City of Philadelphia, supra. Accordingly, the Union has not met its burden of establishing that the Township failed to comply with the Award, and therefore, Township has not violated Section (6)(1) (a) and (e) of the PLRA as read with Act 111.

CONCLUSIONS

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

1. The Township is a public employer under PLRA and Act 111.
2. The Union is a labor organization under PLRA and Act 111.
3. The Board has jurisdiction over the parties hereto.

4. The Township has not committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixth day of August, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner