

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ALLEGHENY COURT ASSOCIATED PROFESSIONAL EMPLOYES :  
: :  
v. : Case No. PERA-C-07-15-W  
: :  
ALLEGHENY COUNTY :

**PROPOSED DECISION AND ORDER**

On January 8, 2007, the Allegheny Court Associated Professional Employees (ACAPE) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the County of Allegheny (County) violated sections 1201(a)(5) and 1201(a)(8) of the Public Employe Relations Act (Act) when it "refused to proceed with the neutral arbitrator selected to hear" a grievance involving longevity pay. On February 1, 2007, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on February 28, 2007, if conciliation did not resolve the charge by then. The hearing examiner subsequently continued the hearing upon the representation of the parties that they would be submitting the case on stipulated facts. On April 26, 2007, the parties filed stipulated facts. On June 6, 2007, each party filed a brief by deposit in the U.S. Mail. On June 11, 2007, ACAPE filed a reply brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the stipulated facts and from all other matters of record, makes the following:

**FINDINGS OF FACT**

1. On September 18, 1979, the Board certified ACAPE<sup>1</sup> as the exclusive representative of a bargaining unit that includes all full-time and regular part-time court-appointed professional employes in the County. (Case No. PERA-R-2311-W)

2. Effective January 1, 2004, the parties entered into a collective bargaining agreement. (Stipulation 4, Exhibit 4)

3. On March 24, 2006, ACAPE filed a grievance alleging that the County violated the collective bargaining agreement by "fail[ing] to include longevity payments in base salaries effective January 1, 2006[.]" (Stipulation 1, Exhibit 1)

4. By letter dated March 17, 2006, an attorney for the County (Robert L. McTiernan, Esquire) wrote to ACAPE's attorney (Daniel R. Delaney, Esquire, Esquire) as follows:

"I received your letter of February 27, 2006. As I explained at length during our conversation, both my memory and notes reflect the fact that the sole purpose of including the longevity in base salary was to guarantee that employees receive pension credit for these payments. There was never intent by any of the parties or any discussion that the longevity would have an impact on base salary. As we discussed, the salary schedules set forth in Appendix 'A' would not be accurate if your interpretation of the longevity issue were accepted.

For that reason, the County's final and definitive position is that the Allegheny County Courts are currently accurately calculating the longevity and base salary."

(Stipulation 2, Exhibit 2)

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<sup>1</sup> In the certification, the Board identified ACAPE as the Allegheny Court Association of Professional Employes. There is no dispute that the charging party and the certified representative are the same, however, so ACAPE will refer to them interchangeably.

5. By letter dated May 30, 2006, Attorney McTiernan wrote to Attorney Delaney as follows:

"I reviewed the list of arbitrators provided by the Bureau of Mediation. I believe we are both in agreement that if this matter must be heard by an arbitrator, Professor Donald McPherson would be the best choice. I would appreciate your agreement to hold off on this matter until I submit any proposed settlement from ACAPE to the Courts. In addition, I renew my request that the matter should most appropriately be submitted to the original arbitrator, Matt Frankiewicz, for clarification."

(Stipulation 3, Exhibit 3)

6. By letter dated December 6, 2006, Attorney McTiernan wrote to Attorney Delaney as follows:

"This letter will confirm my telephone call to you concerning the above grievance. As I indicated to you, Allegheny County continues to believe the only appropriate way of resolving the intent of the Board of Arbitration with respect to the change in longevity language in the last award is to return the matter to the neutral arbitrator and/or full tri-partite Board of Arbitrators for clarification.

The best way to determine the intent of the original arbitrator, Matthew Frankiewicz, is to return that issue to him for review and resolution. For this reason, the County is not willing at this time to select dates for Arbitrator McPherson to hear this case."

(Stipulation 8, Exhibit 5)

#### DISCUSSION

ACAPE has charged that the County committed unfair practices under sections 1201(a)(5) and 1201(a)(8) when it "refused to proceed with the neutral arbitrator selected to hear" a grievance involving longevity pay.

The County contends that the charge should be dismissed because it is untimely filed and because the parties' dispute is subject to interest arbitration rather than grievance arbitration.

In order to be timely, a charge must be filed within four months of when the charging party knew or should have known of the unfair practices charged. Thomas v. Commonwealth of Pennsylvania, PLRB, 483 A.2d 1016 (Pa. Cmwlth. 1994). The unfair practice charged is that the County "refused to proceed with the neutral arbitrator selected to hear" a grievance involving longevity pay. As set forth in finding of fact 6, the County's refusal in that regard occurred on December 6, 2006. The charge was filed on January 8, 2007, which is within four months of December 6, 2006. Thus, the charge is timely filed.

The County contends that the charge is untimely filed because ACAPE is trying to seek enforcement of an interest arbitration award that was issued on October 19, 2004, yet did not file the charge within four months thereafter. As the County points out, in Franklin County Prison Board v. PLRB, 491 Pa. 50, 417 A.2d 1138 (1980), the court held that an employer's refusal to implement the provisions of an interest arbitration award is an unfair practice. Under Thomas, supra, however, the timeliness of a charge depends on the unfair practice charged. As noted above, the charge is that the County "refused to proceed with the neutral arbitrator selected to hear" a grievance involving longevity pay, not that the County refused to comply with the provisions of an interest arbitration award. The dispositive question, then, is whether or not ACAPE filed the charge within four months of when it knew or should have known that the County "refused to proceed with the neutral arbitrator selected to hear" the grievance. Thus, whether or not ACAPE filed the charge within four months of the issuance of the interest arbitration award is of no moment. The County's contention is, therefore, without merit.

The County next contends that the charge is untimely filed because "ACAPE was well aware through the letter from Assistant Solicitor McTiernan on March 17, 2006 that the County's 'final and definitive position' was that it was 'accurately calculating the longevity based salary'" (brief at 5) yet did not file the charge within four months thereafter. A close review of the letter reveals at best, however, that the County was denying the grievance on the merits (finding of fact 4). The letter may be searched in vain for any indication that the County "refused to proceed with the neutral arbitrator selected to hear" the grievance, which is the gravamen of the charge. Thus, the letter provides no support for the County's contention that the charge is untimely filed. The County's contention is, therefore, without merit. See Armstrong County, 37 PPER 134 (Proposed Decision and Order 2006), where the hearing examiner similarly found that an employer's refusal of a request to discuss a grievance did not trigger the running of the four month limitation period for the filing of a charge alleging that the employer committed unfair practices by refusing to arbitrate the grievance.

The County finally contends that the charge is untimely filed because "on May 30, 2006, Assistant Solicitor McTiernan wrote to the union's representative once again that 'the matter should most appropriately be submitted to the original arbitrator, Matt Frankiewicz, for clarification,' a clear indication that Allegheny County would not submit the matter to the grievance arbitration procedure" (brief at 5), and because ACAPE did not file the charge within four months thereafter. A close review of the letter reveals at best, however, that the County was suggesting an alternative means for resolving the parties' dispute (finding of fact 5). The letter may be searched in vain for any indication that the County "refused to proceed with the neutral arbitrator selected to hear" the grievance, which, again, is the gravamen of the charge. Thus, the letter provides no support for the County's contention that the charge is untimely filed. The County's contention is, therefore, without merit.

In PLRB v. Bald Eagle Area School District, 499 Pa. 62, 451 A.2d 671 (1982), the court held that an employer commits an unfair practice under section 1201(a)(5) if it refuses to arbitrate a grievance. As the court explained:

"Furthermore, today's decision only returns the issue to the forum where it should have been decided at the outset; it obviously leaves open the possibility of additional review. However, were we to decide otherwise we would only encourage potential parties to such disputes to continue to follow the practice of preliminary litigating through one forum the power of another to decide the substantive issue. We condemn that practice and hold that hereafter issues involving conflicts between a public sector collective bargaining agreement and fundamental statutory policies of this Commonwealth must be presented first to arbitration for determination, subject to appropriate court review of any award in conflict with such policies."

451 A.2d at 764. See also Chester Upland School District v. McLaughlin, 655 A.2d 621 (Pa. Cmwlth. 1995), aff'd without opinion, 544 Pa. 199, 675 A.2d 1211 (1996)(same).

The record shows that ACAPE filed a grievance alleging a violation of a collective bargaining agreement between the parties (findings of fact 2-3) and that the County refused to proceed with a neutral arbitrator selected to hear the grievance (findings of fact 5-6).

Under Bald Eagle Area School District and Chester Upland School District, the County was obligated to arbitrate the grievance upon request, with any question as to the arbitrability of the grievance to be decided by the arbitrator in the first instance. Thus, the County committed an unfair practice under section 1201(a)(5) as charged.

The County contends that the charge should be dismissed because the parties' dispute is subject to interest arbitration rather than grievance arbitration. According to the County, by filing the grievance, ACAPE is improperly attempting to evade the proviso in section 805 that interest arbitration awards "which would require legislative enactment to be effective shall be considered advisory only." Under Bald Eagle Area School District and Chester Upland School District, however, any question about the arbitrability of a grievance is for an arbitrator to decide in the first instance. Thus, whether or not the parties' dispute is subject to interest arbitration rather than

grievance arbitration is for an arbitrator rather than the Board to decide. The County's contention is, therefore, without merit.

By its own terms, section 1201(a)(8) is violated if an employer refuses to comply with the provisions of a grievance arbitration award. No grievance arbitration award has yet to issue, so no violation of section 1201(a)(8) may be found.

#### CONCLUSIONS

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

1. The County is a public employer under section 301(1) of the Act.
2. ACAPE is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. The charge is timely filed.
5. The County has committed an unfair practice under section 1201(a)(5) of the Act.
6. The County has not committed an unfair practice under section 1201(a)(8) of the Act.

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

that the County shall:

1. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but limited to the discussing of grievances with the exclusive representative.
2. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the Act:
  - (a) Submit to ACAPE in writing an offer to proceed with the neutral arbitrator selected to hear the grievance;
  - (b) Post a copy of this decision and order within five (5) days from the effective 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 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 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 twentieth day of June 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ALLEGHENY COURT ASSOCIATED PROFESSIONAL EMPLOYES :  
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**AFFIDAVIT OF COMPLIANCE**

The County hereby certifies that it has ceased and desisted from its violation of section 1201(a)(5), that it has submitted to ACAPE in writing an offer to proceed with the neutral arbitrator selected to hear the grievance, that it has posted a copy of the proposed decision and order as directed and that it has served a copy of this affidavit on ACAPE.

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

\_\_\_\_\_  
Title

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

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Signature of Notary Public