

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 84 LOCAL 2792 :  
 :  
 v. : Case No. PERA-C-06-528-E  
 :  
 BETHEL PARK SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On October 24, 2006, AFSCME District Council 84 Local 2792(Union) filed a charge of unfair practices against the Bethel Park School District (District)) alleging that the District violated Section 1201(a)(1) and (8) of the Public Employe Relations Act (Act) by failing to comply with an arbitration award.

On December 14, 2006, the Secretary of the Board issued a complaint and notice of hearing in which the matter was assigned to hearing examiner Peter Lassi, Esq., with hearing scheduled for March 13, 2007 in Pittsburgh, Pennsylvania. In lieu of a hearing the parties elected to submit a series of factual stipulations and then brief the legal issues. On January 31, 2006 the Union filed its brief and a copy of the parties' factual stipulations. The District filed its brief on March 2, 2007. The case was then reassigned to this hearing examiner for disposition.

The examiner, on the basis of the submitted factual stipulations and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The District is an Employer within the meaning Section 301(1) of the Act.
2. The Union is an employe organization under Section 301(3) of the Act.
3. The parties stipulated and agreed that on March 27, 2006, arbitrator Matthew M. Frankiewicz issued an opinion and award pursuant to Section 903 of the Act and the parties' collective bargaining agreement. The award resolved a grievance filed by the Union on behalf of a bargaining unit member, Gale Garwood. That award required the District, *inter alia*, to reinstate Garwood to her prior position within the District. (Stipulation of Facts 1-3; Stipulated Exhibit A, B).
4. The parties stipulated and agreed that on April 26, 2006, the District filed a petition to vacate the March 27 award with the Allegheny County Court of Common Pleas. On September 5, 2006, the Court of Common Pleas issued an Order dismissing with prejudice the District's petition to vacate. On September 29, 2006, the District filed a notice of appeal to the Commonwealth Court. (Stipulation of Facts 4, 6, 7; Stipulated Exhibit C).
5. The parties stipulated and agreed that on January 12, 2007, the District filed a "Motion to Set Amount of Security on Appeal" with the Allegheny Court of Common Pleas. The District has never requested from any court a supersedeas or stay of the Common Pleas Court's Order dismissing the District's petition to vacate the arbitration award. (Stipulation of Facts 14, 15; Stipulated Exhibit I).
6. The parties stipulated and agreed that the District has not reinstated Garwood nor tendered her back pay, as the award requires. (Stipulation of Facts 17).

DISCUSSION

The Union charges the District with violating Section 1201(a)(1) and (8) of the Act because the District has not complied with the tenets of a grievance arbitration award after it was affirmed by the common pleas court. As affirmative defenses, the District

replies that the Pennsylvania Rules of Appellate Procedure (Pa. R.A.P.)relieve it of the need to comply with the award in question, and that it has acted reasonably. Neither of these responses, however, relieves the District of its legal responsibility to comply with the award in question.

More specifically, the District initially asserts that it "is entitled to the benefits of the automatic supersedeas provisions of Rule 1736 of the Pennsylvania Rules of Appellate Procedure upon the posting of appropriate security, and therefore, has not violated Sections [sic] 1201(a)(1) and (8) of PERA." (District brief at 3). Before addressing that fallacious argument, a review of Board law interpreting Pa. R.A.P. 1736 provides the necessary context.

As the Board explained in City of Philadelphia, 32 PPER ¶ 32102 (Order Directing Remand to Secretary for Further Proceedings, 2001):

"[I]n 1987 the Rules of Appellate Procedure were amended and the Amendment to Rule 1736 fundamentally altered the protections provided to employers . . . Pa.R.A.P. 1736 provides as follows:

(a) General Rule. No security shall be required of

[2] Any political subdivision . . . except in any case in which a common pleas court has affirmed an arbitration award in a grievance or similar personnel matter . . .

(b) Supersedeas Automatic. Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party.

The note following the rule more fully explains the amendment:

The 1987 amendment eliminates the automatic supersedeas for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.

Thus, once an arbitration award has been affirmed by a common pleas court, the award becomes enforceable. The aggrieved employer has been stripped of its ability to delay compliance with the award by seeking further redress in subsequent appeals. The Commonwealth Court explained that Pa.R.A.P. 1736(a)(2) 'expressly negates an automatic supersedeas for a political subdivision in an appeal from an arbitration award.' Commonwealth, Dep't of the Auditor General v. AFSCME, Council 13, 573 A.2d 233, 234 (Pa. Cmwlth. 1990). See also . . . Cheltenham Township Police Ass'n v. Cheltenham Township, 21 PPER ¶ 21026 (Final Order, 1989); City of Philadelphia, Office of Housing and Community Development v. AFSCME, Local 1971, 37 Pa. D. & C. 4<sup>th</sup> 116 (Philadelphia County Common Pleas, 1996); Crawford County v. AFSCME, Council 85, 27 PPER ¶ 27117 (Crawford County Common Pleas, 1996)(where arbitration award affirmed by common pleas, application for a stay denied; while appellate court could ultimately reverse arbitrator, no irreparable harm in requiring employer to comply with award)."

32 PPER at 267. See also Philadelphia OHCD, 34 PPER 15 (Proposed Decision and Order, 2003) (employer committed unfair practice by failing to comply with grievance arbitration award after it was affirmed by Common Pleas Court); Lebanon County, 37 PPER 25 (Proposed Decision and Order, 2006)(same).

Here the grievance arbitration award directing reinstatement of a bargaining unit employe to her prior employment was affirmed by the Common Pleas Court. Under Pa.R.A.P. 1736(a)(2), the County's appeal of the Common Pleas Court order to Commonwealth Court did not operate as an automatic stay of the Court's order affirming the arbitration award. Nor did the County obtain a stay of the Court's order. Therefore, the County was obligated to comply with the arbitration award and committed an unfair practice by failing to do so. City of Philadelphia, *supra*; Philadelphia OHCD, *supra*; Lebanon County, *supra*.

The District somehow reads the appellate rules to allow it an automatic supersedeas upon its appeal to the Commonwealth Court so long as it posts security with the Court. The District argues on page three of its brief that "although the automatic supersedeas took effect upon the filing of the appeal to Commonwealth Court, it is necessary for appropriate security to be posted, which the School District is prepared to immediately submit as Judge Horgos or the Commonwealth Court directs." The District then states that this argument is supported in the *locus classicus* authored by, *inter alia*, G. Ronald Darlington, Executive Administrator of the Commonwealth Court.<sup>1</sup>

In fact, the District's position is not supported by Darlington. At the end of the lengthy paragraph quoted in the District's brief, Darlington, after opining that the rules are not the "models of clarity" simply states, "This interpretation [relied upon by the District] is, however, negated by the Official Note that unequivocally states that the automatic supersedeas is eliminated". *Pennsylvania Appellate Practice*, p. 278. Darlington, therefore, provides the sockdolager to the District's argument and fully supports the Board's position that there is no automatic supersedeas under these facts.

The District goes on to argue that Elizabeth Forward School District v. PLRB and AFSCME AFL-CIO, 613 A.2d 68 (Pa. Cmwlth. 1992) controls here. It is unclear how that case is at all applicable since it did not involve a Common Pleas Court's affirmation of a grievance arbitration award appealed by a political subdivision, but rather an appeal from a final order of the Board. Under Pa. R.A.P. 1736(a)(2), only appeals from affirmed arbitration awards are exempt from an automatic supersedeas.

The District asks the Board to wait until the Allegheny Court of Common Pleas rules on the District's pending motion to set the amount of security on appeal<sup>2</sup>. Should the Court of Common Pleas deny the District's motion, it wants the Board to refrain from issuing an order until the District decides whether it wants to appeal that order. Moreover, should the District appeal the order of the Court of Common Pleas, it wants the Board to refrain from action until the Commonwealth Court rules.

All these entreaties ignore the simple fact that the District must comply with the affirmed arbitration award now, under the applicable case law. City of Philadelphia, *supra*; Philadelphia OHCD, *supra*; Lebanon County, *supra*.

The District lastly asserts that, even if the automatic supersedeas does not apply and it has committed an unfair practice, nevertheless the District is "entitled to a stay pending the appeal." (District brief at 9). While the District has, indeed, set forth the applicable test for deciding whether to grant a stay as set forth in Pa. Public Utility Commission v Process Gas Consumer Group, 502 Pa. 545, 467 A.2d 805 (1983), the District is asking the wrong forum for a stay. Under Pa. R.A.P. 1732 the District must first ask for a stay from the Common Pleas Court or show why such a request is not practicable before making application to Commonwealth Court. There is no order of the Board to stay.

The District has no supersedeas, either automatic or requested. Absent a supersedeas, its noncompliance with the underlying arbitration award is a violation of Section 1201(a)(1) and (8) of the Act. The District is ordered to comply immediately with the tenets of that arbitration award.

#### CONCLUSIONS

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

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<sup>1</sup> G. Ronald Darlington, et al., *Pennsylvania Appellate Practice*, (Thomson West 2007). See first full paragraph on page 278 for lengthy quote relied upon by District.

<sup>2</sup> Under Pa. R.A.P. 1731, upon the filing of the proper security that party may obtain a supersedeas when the appealed order involves only the payment of money. How the motion filed by the District here will result in a supersedeas is a mystery, since the award required the District to reinstate the grievant, an act that is certainly more than only the payment of money. Moreover, even if the posting of security was material to a stay's issuance, it seems the District has not met the mandatory time limit under Pa. R.A.P. 1735.

1. The District is a public employer for purposes of Section 301(1) of the Act.
2. The Union is an employe organization for purposes of Section 301(3) of the Act.
3. The Board has jurisdiction over the parties hereto.
4. The District has committed unfair practices in violation of Section 1201(a)(1) and (8) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to comply with the provisions of an arbitration award being binding under Section 903 of Article IX of the Act.

3. Take the following affirmative action which the Examiner finds necessary to effectuate the polices of the Act:

- a. Immediately comply with the arbitration award issued by Arbitrator Matthew M. Franckiewicz on March 27, 2006;

- 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 Decision and 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 pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED AND MAILED this sixteenth day of March, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL LOCAL 2792 :  
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v. : Case No. PERA-C-06-528-E  
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BETHEL PARK SCHOOL DISTRICT :

**AFFIDAVIT OF COMPLIANCE**

The Bethel Park School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (8) of the Act; that it has complied with all the tenets of the March 17, 2006 arbitration award; that it has posted the proposed decision and order as directed therein; and that it has served a copy of this affidavit on AFSCME District Council Local 2792 at its principal place of business.

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

\_\_\_\_\_  
Title

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

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Signature of Notary Public