COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

EASTON AREA EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION	:	
v.	:	Case No. PERA-C-05-320-E
EASTON AREA SCHOOL DISTRICT	:	

FINAL ORDER

On August 27, 2007, the Easton Area Educational Support Personnel Association (Association) filed a request with the Pennsylvania Labor Relations Board (Board) for a hearing before a Hearing Examiner regarding outstanding issues of compliance with the Board's May 16, 2006 Final Order. The Final Order held that the Easton Area School District (District) violated Section 1201(a)(5) of the Public Employes Relations Act (PERA) by subcontracting food service work without fulfilling its statutory bargaining obligation. The Board directed the usual and customary remedy for such an unfair practice, including rescission of the subcontract, reinstatement of the work to the bargaining unit, and make-whole relief for affected employes.

Following continuances for settlement discussions, a compliance hearing was held on February 28, 2008 to determine unresolved issues concerning the District's compliance with the Board's Final Order. The Hearing Examiner issued a Proposed Decision and Order (PDO) on June 12, 2008, in which the Examiner accepted the District's calculation of back pay as accurate, including its deductions for employe pension contributions to be submitted to the Public School Employees' Retirement System (PSERS). In addition, the Hearing Examiner directed that the District pay the employes substantiated, reimbursable out-of-pocket medical expenses. Specifically, the Hearing Examiner found that to fully comply with the Board's Final Order the District must: "(1) [p]ay Dawn Woolf her full back pay of $6,380.00 less $1,002.00 in unemployment compensation, plus six per cent per annum interest of $322.68, less her employe contribution to the retirement system of $478.00, which is $5,222.68, as well as any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; (2) [p]ay Lois Olsen $3,374.00, as well as any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; (3) [p]ay Gemma Chakeres any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; (4) [p]ay Suzanne Greenleaf $7,794.00, as well as any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; (5) [p]ay all remaining affected employes any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; [and] (6) [d]educt from affected employes' paychecks the outstanding employe contribution to the retirement system." (PDO at 10 -11). The Hearing Examiner denied the Association's request for additional interest finding that the Board's Final Order only required interest on back pay through reinstatement. The Hearing Examiner also denied interest on reimbursable medical expenses because the District was only recently provided with the needed documentation from the Association and was still following up with the employes for additional records.

The Association filed timely exceptions with the Board on June 27, 2008, challenging the Hearing Examiner's compliance specifications in the June 12, 2008 PDO.[1] Following extensions of time granted by the Secretary of the Board, the Association filed a brief in support of the exceptions on July 31, 2008. The District filed a timely brief in response to the exceptions on August 26, 2008.[2]

The Association argues on exceptions that the Hearing Examiner erred in accepting the District's determination of the employes' gross pay from which deductions were to be made for the District's back pay liability. At the hearing, the Association introduced a

[1] The Association's request to present oral argument on its exceptions is denied.

[2] On September 17, 2008, the District filed the Affidavit of Compliance evidencing its compliance with the Hearing Examiner's directives in the June 12, 2008 PDO.

"summary sheet" that was previously given to the District identifying each affected employe and a total amount claimed by the Association to be owed to each employe for back pay and medical expenses. The District presented a spreadsheet (District Exhibit 1) which detailed its calculation of the employes' back pay based on the employes' rate of pay and anticipated hours worked to arrive at a gross pay amount, from which it took deductions and off-sets. At the compliance hearing the Association did not object, and in fact stipulated, to the District's determination of the employes' gross pay calculation. (N.T. 46 - 51). On the evidence presented, the Hearing Examiner's adoption of the District's gross pay calculations for each employe, as set forth in District Exhibit 1, will not be disturbed.

The Association also argues that the Hearing Examiner erred in allowing the District to deduct the employes' PSERS contributions from the back pay owed to employes. However, the Board's Final Order directed the District to reinstate the employes without prejudice to their rights and privileges, and to make them whole for all lost wages and benefits. Such relief would include taking steps necessary to ensure that the employes' service credit for retirement purposes was fully restored. Corry Area Education Association v. Corry Area School District, 38 PPER 155 (Final Order, 2007). As recognized by the Hearing Examiner, an employe's credited service for retirement is based on the employe's contributions to PSERS. 24 Pa. C.S. § 8302(a). In fact, PSERS instructs employers that to satisfy a restoration of pension credits pursuant to an order directing reinstatement of an employe, the employer is required to withhold from back pay, and forward to PSERS, the employe's pension contribution. Public School Employees' Retirement System, Employer Reference Manual, 153 – 154 (2007-2008). Thus, it was not error for the Hearing Examiner to find that in order to restore the affected employes' retirement service credits with PSERS as directed by the Board, the District is required to withhold, and forward to PSERS, the employes' retirement contributions out of their back pay award. Accordingly, the Hearing Examiner's back pay specifications for the affected employes, requiring the employes' PSERS contributions to restore service credits, is in accordance with the Final Order of the Board and will not be disturbed.

The Association also contends that it was error for the Hearing Examiner to find that the Association only provided the District with documentation of its medical reimbursement claims the day before the compliance hearing. The Association argues that it had provided the District with documentation concerning the employes' out-of-pocket medical expenses as early as February 2007 and subsequently in December 2007. However, the record indicates that the District received Association Exhibit 4, which included some of the necessary documentation of the employes' medical expenses, on the day before the hearing. (N.T. 16). Accordingly, the Hearing Examiner's finding will not be disturbed.

Moreover, the Hearing Examiner did not excuse the District from having to pay the employes' out-of-pocket medical expenses. Instead, the Examiner specifically directed that the District pay any and all substantiated claims for medical reimbursement as reflected in the Association's exhibits and documentation which may be forthcoming in response to a February 28, 2008 letter that the District sent to employes. (District Exhibit 3). Pursuant to the Board's Final Order, the Hearing Examiner properly directed the District to pay the employes' substantiated claims for out-of-pocket medical expenses. Corry Area School District, supra.

The Association also asserts that the Hearing Examiner erred in failing to award interest until the Association's receipt of payment on the amounts owed by the District. However, as noted by the Hearing Examiner, the Board's Final Order directed interest on back pay until the date of the District's unconditional offer to reinstate the employes. Additionally, the Hearing Examiner properly attributed some of the delay to the employes' failure to provide necessary documentation concerning their out-of-pocket medical expenses. Accordingly, the Hearing Examiner did not err in failing to provide prospective interest on the amounts owed by the District.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner's compliance specification is in accordance with the Board's Final Order directing a remedy for the District's violation of Section 1201(a)(5) of PERA. Further, in accordance with Section 1303 of PERA, we find that the Hearing Examiner's June 12, 2008 PDO is designed to effectuate the purposes and policies of PERA and does not direct

a punitive remedy. Accordingly, the Association’s exceptions to the June 12, 2008 PDO shall be dismissed, and the PDO made absolute and final.

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 the Easton Area Education Support Personnel Association are hereby dismissed, and the June 12, 2008 Proposed Decision and Order, be and hereby is 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 twenty-first day of October, 2008. 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

Easton Area School District hereby certifies that it has paid Dawn Woolf $5,222.68, as well as any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; that it has paid Lois Olsen $3,374.00, as well as any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; that it has paid Gemma Chakeres any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; that it has paid Suzanne Greenleaf $7,794.00, as well as any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; that it has paid all remaining affected employes any and all substantiated out-of-pocket medical expenses and premium differential costs without interest; that it has deducted from affected employes' pay outstanding amounts owed to the retirement system; that it has posted a copy of the Proposed Decision and Order and the Final Order 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 that it has served an executed copy of this affidavit on the Association at its principal place of business.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public