

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 84 :
 :
 v. : Case No. PERA-C-07-243-W
 :
 PITTSBURGH PARKING AUTHORITY :

FINAL ORDER

The American Federation of State, County, and Municipal Employees, District Council 84 (AFSCME) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relation Board (Board) on March 31, 2008, challenging a March 11, 2008 Proposed Decision and Order (PDO). In the PDO, the Board Hearing Examiner concluded that the Pittsburgh Parking Authority (Authority) adequately complied with a grievance arbitration award, and thus did not violate Section 1201(a)(1) and (8) of the Public Employe Relations Act (PERA). On April 21, 2008, the Authority timely filed a brief in response to the exceptions. The Hearing Examiner's Findings of Fact, as adopted herein, are summarized as follows.

Effective October 1, 2004, the Authority transferred five employes in the AFSCME bargaining unit from full-time to part-time status. Under the collective bargaining agreement between AFSCME and the Authority, part-time employes do not receive vacation benefits. A grievance was filed on December 3, 2004 over the employes' entitlement to payment for their accrued vacation benefits. During 2005, while the grievance was proceeding to arbitration, three of the five employes at issue reached their fifth-year anniversary date, and but for the transfer to part-time would have been entitled to three weeks vacation in 2005. On February 23, 2007, an arbitrator sustained the grievance concluding as follows:

[T]he grievants were paid other accrued benefits, e.g., personal time and comp time because those benefits had been earned. Likewise, however, the grievants had earned vacation benefits. In 2003, the grievants had earned vacation benefits, which they took in 2004. The vacation benefits, which they earned in 2004, could not be taken until 2005. . . .

The grievants were part time employes in 2005, and as such they earned no vacation benefits or other benefits in accordance with Article XXI. However, that does not equate with forfeiting the vacation benefit earned during the first nine months of 2004.

The arbitrator directed the Authority to "pay the grievants pro rated vacation benefits for nine months of 2004." In March, 2007, the Authority paid each of the five grievants 75% of eighty hours (i.e., two weeks) of vacation as a result of the Award. The 75% represents the nine months out of twelve months for 2004 during which the five grievants were full-time employes.

AFSCME filed a Charge of Unfair Practice with the Board alleging that the Authority failed to comply with the grievance arbitration award for the three employes who reached their fifth-year anniversary date in 2005. AFSCME asserted that those three employes were earning vacation in 2004 (to be used in 2005) at a rate of three weeks per year, but were only paid pro rated vacation benefits at a rate of two weeks per year. Based on the parties' stipulated facts, the Hearing Examiner found that AFSCME failed to establish the Authority's non-compliance with the award, and thus dismissed the charge.

In its first two exceptions, AFSCME asserts that the Hearing Examiner erred in failing to find certain proposed facts. First, AFSCME argues that the Hearing Examiner should have found that all grievants had either utilized or been paid for 2004 vacation benefits which were earned during 2003. This finding however, is sufficiently subsumed within the Hearing Examiner's finding that quotes from the arbitration award. Finding of Fact 7 in the PDO notes that the arbitrator recognized that "[i]n 2003, the grievants had earned vacation benefits, which they took in 2004." Accordingly, no separate additional finding of fact is necessary.

Second, AFSCME asserts that the Hearing Examiner should have found that this was the first time the Authority had made full-time bargaining unit positions part-time. Generally,

a Board hearing examiner need not summarize all of the evidence presented, but must make the necessary findings of fact that are relevant to the conclusions needed to be reached in the proposed decision and order. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). The fact that this may have been the first time that the Authority made full-time positions part-time is not necessary to the determination of whether the Authority has failed to comply with the provisions of the grievance arbitration award. As such, the Hearing Examiner did not err in failing to make this finding.

There is no dispute that the February 23, 2007 grievance arbitration award exists, and that no appeal has been filed in the court of common pleas. Thus, the only issue is whether the Authority has complied with the provisions of that award. Teamsters, Local 401 v. Hazle Township, 38 PPER 157 (Final Order, 2007). In ascertaining whether there has been compliance with the award, the Board appropriately performs an interpretive role. AFSCME, Local 1971 v. City of Philadelphia, Officer of Housing and Community Development, 24 PPER ¶24052 (Final Order, 1993) (citing State System of Higher Education v. PLRB, 528 A.2d 278 (Pa. Cmwlth. 1987)). In interpreting the award for compliance, the Board reviews the award to ascertain, if at all possible, the arbitrator's intended relief. North Hills Education Association v. North Hills School District, 38 PPER 78 (Final Order, 2007). Where aspects of the arbitrator's directed relief are at best ambiguous, the Board will dismiss an unfair practice charge alleging non-compliance with those provisions of the award. Fraternal Order of Transit Police v. Southeastern Pennsylvania Transportation Authority, 29 PPER ¶29038 (Final Order, 1998).

AFSCME contends that under the award, the three employees who reached their fifth year anniversary in 2005, were actually earning three weeks vacation during 2004, which they could not use until 2005. The Authority asserts to the contrary, that employees only earn the number of weeks depending on years of service, such that the fourth-year employees at issue were earning two weeks of vacation in 2004, although they would not have been entitled to use those two weeks until 2005. The Authority goes on to argue that those employees would have earned vacation at the rate of three weeks in 2005, if they had remained full-time employees.

The arbitrator found that vacation benefits were earned in one year to be used in the next, similar to deferred compensation. However, the arbitrator did not specifically address the rate at which employees earn those vacation benefits during the preceding year. In interpreting the award for compliance, the Hearing Examiner concluded that the Authority did not fail to comply with the award by paying those three employees for a pro-rated two weeks of vacation which they earned during their fourth year of employment.

Without clear direction from the arbitrator regarding the three employees whose fifth-year anniversary fell in 2005, the award is susceptible to different reasonable interpretations concerning the rate at which these employees earned vacation time in 2004. As the remedy under the award is at best ambiguous, we agree with the Hearing Examiner that we are unable to find that the Authority unlawfully failed to comply with the award. See SEPTA, supra. After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the Authority has not committed a violation of Section 1201(a)(1) and (8) of PERA.¹ Accordingly, the Board shall dismiss AFSCME's exceptions and make the PDO final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by AFSCME, District Council 84 are hereby dismissed, and the March 11, 2008 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED 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 twentieth day of May, 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.

¹ Because we find that the Authority has not committed an unfair practice under PERA, AFSCME's request that the Board award interest on back pay is denied.