

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEMPLE UNIVERSITY HOSPITAL :  
NURSES ASSOCIATION :  
 : Case No. PERA-C-07-446-E  
v. :  
 :  
TEMPLE UNIVERSITY HEALTH SYSTEM :

**AMENDED PROPOSED DECISION AND ORDER**

A charge of unfair practices was filed with the Pennsylvania Labor Relations Board (Board) on October 15, 2007, as amended on November 5, 2007, by the Temple University Hospital Nurses Association (Union), alleging that the Temple Health System (Temple) violated Section 1201(a)(1) and (8) of the Public Employe Relations Act (PERA) when it refused to comply with a grievance arbitration award. On November 27, 2007, the Secretary of the Board issued a complaint and notice of hearing wherein this case was scheduled for hearing on January 23, 2007, in Philadelphia, Pennsylvania. On that date all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. In lieu of *viva voce* evidence the parties agreed to enter into a series of factual stipulations and submit joint exhibits. Only the Union filed a post-hearing brief.

The examiner, on the basis of the stipulations and exhibits presented in lieu of a hearing, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. Temple is an employer within the meaning of Section 301(1) of the PERA. (Stipulated Facts No.1, submitted January 23, 2007).
2. The Union is an employe organization within the meaning of Section 301(3) of the PERA. (Stipulated Facts No. 2, submitted January 23, 2007).
3. Temple and the Union are parties to a collective bargaining agreement that contains an arbitration clause as the final step in the grievance process. In July of 2006 the Union grieved the termination of Richard Baldwin, a registered nurse and bargaining unit member. Following the denial of the grievance by Temple, arbitrator Richard R. Kasher heard the matter in 2007. Kasher issued his award in July of 2007. That order required Temple to reinstate Baldwin and make him whole for all lost seniority, income and other benefits. (Stipulated Facts No.3-7, submitted January 23, 2007).
4. Temple filed a timely complaint and petition to vacate that award, in August of 2007, in the Court of Common Pleas of Philadelphia County. The Court denied Temple's petition and affirmed the award in September of 2007. Temple filed an appeal of that order to the Commonwealth Court. Temple has not reinstated Baldwin as of January 23, 2008. (Stipulated Facts No.8-10, and a hand written stipulation also submitted January 23, 2007).

DISCUSSION

In this charge the Union alleges that Temple violated the PERA when it refused to implement a grievance arbitration award. Upon what ground Temple defends its non-compliance is turbid, since it never filed a post-hearing brief, and because the case was presented on stipulated facts there were no opening or closing statements made. A review of the stipulated facts, and the applicable law, leaves no doubt that Temple violated the PERA, as the Union alleges. The proper remedy is for Temple to immediately comply with the tenets of the grievance arbitration award, and to make Baldwin whole for all lost emoluments of employment.

The stipulations reveal that the Union and Temple are parties to a collective bargaining agreement which provides arbitration as the dénouement of the grievance process. In July of 2006, the Union filed a grievance on behalf of Baldwin, a terminated, registered nurse in the bargaining unit. After Temple denied the grievance, the Union

demanded arbitration. The appointed arbitrator heard the matter and issued his award in July of 2007. That award ordered Baldwin reinstated with back pay and benefits.

Displeased with the award, Temple appealed it to the Court of Common Pleas of Philadelphia County, asking the Court to vacate the award. In September of 2007, the Court denied Temple's petition and affirmed the award. As of January 23, 2007, Temple had yet to rehire Baldwin. Temple has, however, appealed the Common Pleas decision to the Commonwealth Court. A review of Board law leads to the inevitable conclusion that Temple has violated Section 1201(a)(1) and (8) of the PERA.<sup>1</sup>

An employer's failure to comply with the tenets of a grievance arbitration award violates Section 1201(a)(1) and (8) of the PERA. This is true in situations where a court of common pleas has affirmed the award and the employer has appealed that decision to the Commonwealth Court. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 39 PPER 9 (Final Order, 2008); City of Philadelphia, 32 PPER ¶ 32102 (Final Order, 2001). However, these two cases both involve public employers who, unlike Temple, are political subdivisions.

Nevertheless, the fact that Temple is not a political subdivision is of no moment to the analysis, since, under the Appellate Rules, Temple still has no automatic supersedeas. Reviewing the construction of Pa.R.A.P. 1736(a) shows why Temple has no automatic supersedeas.

Under Pa.R.A.P. 1736, the taking of an appeal by the classes of parties named in 1736(a) gives them an automatic supersedeas. Political subdivisions are one of those classes of parties. There is, however, one situation in 1736(a) where an automatic supersedeas is not granted to political subdivisions. And that one exception is in cases where a court of common pleas has affirmed a grievance arbitration award. That is the situation in the above-referenced two cases.

Public employers, who are not political subdivisions, are not mentioned in 1736(a) and therefore don't get the protections of an automatic supersedeas. Temple is just such a non-political subdivision public employer, and therefore has no automatic supersedeas.

If not eligible for an automatic supersedeas, a party may petition for a stay or supersedeas.<sup>2</sup> There is no evidence of record that Temple has even petitioned for, let alone been granted, a stay or supersedeas from the either Common Pleas or Commonwealth Court. Absent any applicable stay or supersedeas<sup>3</sup>, Temple must comply with the arbitration award at issue here and reinstate Baldwin. The remedy ordered includes Temple making Barclay whole for all lost emoluments of employment, from the date the award issued, July 11, 2007, until Temple actually reinstates Baldwin. That make whole remedy also contemplates the payment of interest at 6% *per annum* on all moneys owed, calculated from July 11, 2007, to the date of actual payment.

#### CONCLUSIONS

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

1. Temple is an employer within the meaning of section 301(1) of the PERA.
2. The Union is an employe organization within the meaning of section 301(3) of the PERA.

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<sup>1</sup> Because this case was submitted on stipulated facts and joint exhibits, there were no opening or closing statements made at hearing. Since Temple never filed a post-hearing brief, and without the guidance of any opening or closing statement by Temple at the hearing, I have absolutely no idea upon what legal theory, if any, Temple bases it's non-compliance. Temple has, then, waived all issues not raised before me. City of Wilkes-Barre, 25 PPER § 25196 (Final Order, 1994); Philadelphia school District, 25 PPER § 25090 (Final Order, 1994).

<sup>2</sup> In this case Pa.R.A.P. 1732 is the applicable rule.

<sup>3</sup> Strictly speaking, "stay" has been used in the context of staying proceedings, as opposed to superseding the effect of the order during the pendency of the appeal, so that parties are returned to the pre-order status that existed before the entry of the order appealed. In practice, however, both the bench and bar use these two terms interchangeably. See G. Ronald Darlington, et al., *Pennsylvania Appellate Practice 2007-2008 ed.* § 1732.1

3. The Board has jurisdiction over the parties hereto.

4. Temple has committed unfair practices within the meaning of Section 1201(a)(1) and (8) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that Temple shall:

(1) Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed under Article IV of the PERA.

(2) Cease and desist from refusing to comply with the tenets of the Kasher arbitration award issued July 11, 2007.

(3) Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of the PERA:

(a) Immediately offer Baldwin unconditional reinstatement to his former position without prejudice to any rights and privileges enjoyed by him;

(b) Make Baldwin whole for all lost emoluments of employment from the date of the arbitration award to the date Barclay is actually reinstated, including 6% *per annum* interest on all moneys owed calculated from the award's date to the date of reinstatement;

(c) The back pay due Baldwin shall be computed on the basis of each separate calendar quarter or portion thereof during the period stated above. The quarterly period shall begin with the first day of January, April, July and October. The pay shall be determined by deducting from a sum equal to that which Baldwin normally would have earned for each quarter, or portion thereof; earnings which he actually earned, or with the exercise of due diligence would have earned in other employment during that period; earnings which he would have lost through sickness; and any unemployment compensation received by him. Earnings in one particular quarter shall have no effect on the liability for any other quarter. Nothing herein shall relieve Temple of the burden of production and proof that Barclay did not exercise due diligence in mitigation;

(d) Post a copy of this decision and order within five (5) days of the date hereof and have the same remain so posted for a period of ten (10) consecutive days; and

(e) 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.

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 (20) days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eleventh day of April, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
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**AFFIDAVIT OF COMPLIANCE**

Temple hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (8) of the PERA; that it has complied with the arbitration award issued July 11, 2007, by immediately offering Baldwin unconditional reinstatement to his former position; that it has made Baldwin whole for all lost emoluments of employment, including interest on any moneys owed at the rate of 6% *per annum*, as calculated from July 11, 2007, to the date of reinstatement; that it has posted the proposed decision and order as directed and that it has served a copy of this affidavit on the Union 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