

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
LODGE NO. 5 :
 :
v. : Case No. PF-C-06-69-E
 :
CITY OF PHILADELPHIA :

FINAL ORDER

The City of Philadelphia (City) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on April 19, 2007, challenging a Proposed Decision and Order (PDO) entered by a Board Hearing Examiner on March 30, 2007. In the PDO, the Hearing Examiner concluded that the City violated Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA). The Secretary of the Board granted the City's request for an extension of time until May 10, 2007 to file its brief in support of the exceptions. The City's brief was filed with the Board on May 15, 2007.¹ The Fraternal Order of Police, Lodge No. 5 (FOP) filed a timely brief in opposition to the exceptions on May 31, 2007.

The City and FOP are parties to a series of interest arbitration awards governing the terms and conditions of employment for City police officers. The award for July 1, 2004 through June 30, 2008 provided for a re-opener to address the City's contribution to the FOP's Joint Health Benefits Program Trust. Pursuant to the re-opener, the FOP and City proceeded to interest arbitration. An award was issued August 10, 2005 setting the City's contribution to the Trust for the period of July 1, 2005 through June 30, 2007.

The City petitioned the Philadelphia Court of Common Pleas to vacate the August 10, 2005 award. On October 31, 2005, the Court of Common Pleas granted the City's petition to vacate the award, and remanded the matter to the arbitration panel to state in writing all of the factors it considered in giving substantial weight to the City's Five Year Plan as required by the Pennsylvania Intergovernmental Cooperation Authorities Act for Cities of the First Class, 53 P.S. §12720.101, *et seq* (PICA). On January 13, 2006, the arbitration panel issued a revised award adding the factual findings as directed by the Court of Common Pleas. The City filed a petition to vacate the January 13, 2006 award in the Court of Common Pleas. Upon review of the award, the Court of Common Pleas denied the City's petition, and by order dated April 17, 2006, affirmed the January 13, 2006 interest arbitration award.

On May 8, 2006, the FOP filed a Charge of Unfair Labor Practices with the Board alleging that the City violated Section 6(1)(a) and (e) of the PLRA and Act 111 by failing to implement the terms of the January 13, 2006 interest arbitration award. On May 25, 2006, the City filed a notice of appeal to the Commonwealth Court, challenging the April 17, 2006 order of the Court of Common Pleas affirming that same arbitration award.²

¹ The Board received the City's brief on May 15, 2007 in an envelope bearing a private postage meter mark. No official United States Postal Service postmark, postmark cancellation, or Form 3817 Certificate of Mailing indicated the mailing date. 34 Pa. Code §95.98(a)(1). The Board will not accept a private postage meter mark as evidence of timely filing. Teamsters Local 764 v. Lycoming County, 37 PPER 12 (Final Order, 2006), affirmed sub nom, Lycoming County v. PLRB, 38 PPER 87 (Court of Common Pleas, 2007), affirmed unreported, No. 474 CD 2007 (Pa. Cmwlth. December 3, 2007) (Lycoming County I); Pennsylvania Social Services Union Local 668 v. Commonwealth, Department of Public Welfare (Montgomery County Assistance Office), 33 PPER ¶33174 (Order, 2002). As the Brief was due on May 10, 2007, but was not filed until May 15, 2007, it is untimely. Accordingly, the City's brief has not been considered in addressing the exceptions. Upper St. Clair Police Officers Association v. PLRB, 689 A.2d 362 (Pa. Cmwlth.), petition for allowance of appeal denied, 549 Pa. 721, 701 A.2d 580 (1997).

² After hearings were held by the Board Hearing Examiner, and post-hearing briefs were filed by the parties, the Commonwealth Court issued an Opinion on the City's appeal. City of Philadelphia v. Fraternal Order of Police, Lodge No. 5, 916 A.2d 1210, petition for allowance of appeal denied, 929 A.2d 1163 (Pa. 2007). Commonwealth Court vacated the April 17, 2006 order of the Court of Common Pleas, and remanded the case to the Court of Common Pleas for consideration under the standard of review set forth in PICA. On August 22, 2007, the Pennsylvania Supreme Court denied the FOP's Petition for Allowance of Appeal seeking to challenge the Commonwealth Court's decision. However, following the Commonwealth Court's remand order, the Court of Common Pleas issued a memorandum and order on February 6, 2007, again denying the City's petition to vacate the award, finding that the arbitration panel had complied with PICA by giving substantial weight to the City's Five Year Plan in issuing its award. On November 9, 2007, the City discontinued its appeal of the Court of Common Pleas' February 6, 2007 order that it had filed in the Commonwealth Court. City of Philadelphia v. Fraternal Order of Police, Lodge No. 5, No. 456 C.D. 2007 (Pa. Cmwlth.).

The Hearing Examiner concluded that the City violated its duty to bargain in good faith under Act 111 and the PLRA by failing to implement an interest arbitration award for its police officers. The City, in its exceptions, relies on PLRB v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978), to argue that the January 13, 2006 interest arbitration award was not final and binding because the City had not yet exhausted all of its appeals of the award.

The City's reliance on PLRB v. Commonwealth is misplaced given that the state of the law has changed since the Supreme Court issued that decision. PLRB v. Commonwealth involved repealed provisions of the Rules of Judicial Administration governing appeals of arbitration awards, under which arbitration awards were stayed pending each level of appellate review. As the Board held in Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 32 PPER ¶32102 (Final Order, 2001):

The Supreme Court's 1978 decision in PLRB v. Commonwealth, supra was fully consistent with then existing Rules of Appellate Procedure, which provided for an automatic supersedeas for political subdivisions appealing arbitration awards ... to the Commonwealth Court. It was therefore logical for the Court to instruct the Board to wait until the aggrieved employer's appeal procedures were exhausted in the arbitration arena. To opine otherwise and permit the order of compliance at an earlier stage, would thereby violate the automatic supersedeas.

However, in 1987 the Rules of Appellate Procedure were amended and the amendment to Rule 1736 fundamentally altered the protections provided to employers by the Supreme Court in PLRB v. Commonwealth, supra. Pa. R.A.P. 1736 provides as follows:

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

(1)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.4th 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).

* * *

As regards appeals by political subdivisions from arbitration awards, the Board's research has disclosed no Board decisions where the Board has stayed

enforcement of an award following a common pleas affirmance of the award, pending further appeal in Commonwealth Court. To the extent that there may be any post-1987 Board final orders that withhold enforcement of affirmed arbitration awards pending a second level of appellate review in reliance on PLRB v. Commonwealth, supra, the Board will no longer adhere to them as precedent. To find otherwise would defeat the purpose of the change to Pa. R.A.P. 1736 and would occasion unwarranted delay in the timely enforcement of arbitration awards which remain on appeal under the narrow scope of judicial review of arbitration awards.

City of Philadelphia, 32 PPER at 266-267. Since City of Philadelphia, the Board has consistently entertained unfair labor practice charges to enforce arbitration awards pending appellate review in Commonwealth Court. E.g., Somerset Area Education Association v. Somerset Area School District, 37 PPER 1 (Final Order, 2005); Lycoming County I, supra.

The Board's policy of enforcing arbitration awards on appeal is consistent with the current rules of appellate procedure, and the policies and purposes of Act 111 and the PLRA. Indeed, prompt enforcement of arbitration awards, both grievance and interest awards, furthers the purposes and policies of Act 111 and the PLRA. As was recognized by the Pennsylvania Supreme Court in its landmark decision concerning Act 111 interest arbitration:

An arbitration panel is a temporary "one shot" institution, convened to respond to a specific conflict. Once it reaches a decision it is disbanded and its members disperse. Its resolution of the dispute must be sure and swift, and much of its effectiveness would be lost if the mandate of its decision could be delayed indefinitely through protracted litigation.

Washington Arbitration Case, 436 Pa. 168, 173, 259 A.2d 437, 440 (1969); Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 725 A.2d 206 (Pa. Cmwlth. 1999); Teamsters Local 764 v. Lycoming County, 37 PPER 15 (Final Order, 2006), affirmed unreported, Lycoming County v. PLRB, No. 1496 CD 2006 (Pa. Cmwlth. December 3, 2007) (Lycoming County II).

Nevertheless, the City claims that interest arbitration awards are not a "similar personnel matter" within the meaning of Pa. R.A.P. 1736. Thus, the City argues that no unfair labor practice may be found because the interest arbitration award is automatically stayed pending its appeal to Commonwealth Court.

As noted above:

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.

Pa.R.A.P. 1736 (Note). The purpose of the amendment was recognized in Department of Auditor General v. AFSCME, Council 13, 573 A.2d 233 (Pa. Cmwlth. 1990) by Judge Craig:

Pa. R.A.P. 1736(a)(2) expressly negates an automatic supersedeas for a political subdivision in an appeal from an arbitration award. Removal of the automatic supersedeas benefit for a political subdivision in that situation is consistent with the reading that the Commonwealth's petition for review of an arbitrator's award also does not have the benefit of an automatic stay. The logical effect of the 1987 amendment to Pa.R.A.P. 1736(a)(2), eliminating automatic supersedeas for a political subdivision, is to assure that a political subdivision shall be in no better position than the Commonwealth itself when seeking review of an arbitration award.

Department of Auditor General, 573 A.2d at 234. The Commonwealth does not have an automatic supersedeas when appealing arbitration awards in favor of its employees. Department of Auditor General, supra; Pa. R.A.P. 1781. Moreover, for purposes of appellate procedure, there is no distinction between grievance arbitration awards and interest arbitration awards. Derry Township v. PLRB, 571 A.2d 513 (Pa. Cmwlth. 1989);

Moon Township v. Police Officers of the Township of Moon, 508 Pa. 495, 498 A.2d 1305 (1985). As aptly noted by the Commonwealth Court "[t]he exception to an automatic supersedeas [under the Rules of Appellate Procedure] is triggered by the affirmance of an *arbitration award*...." Snyder County Prison Board v. PLRB, 912 A.2d 356, 362 (Pa. Cmwlth. 2006) (emphasis in original). "Stated otherwise, a political subdivision must apply for a stay of a court order affirming an arbitration award; it does not obtain one automatically by filing an appeal." Id. Here, the City did not seek a stay of the Court of Common Pleas' affirmance of the January 13, 2006 interest arbitration award pursuant to the Rules of Appellate Procedure.

In addition to the procedural similarities between appeals of grievance and interest arbitration awards, the subject matter addressed through grievance and interest arbitration is likewise similar. Indeed, grievance awards, like interest arbitration awards, often establish prospective terms and conditions of employment. E.g. City of Philadelphia, Office of Housing and Community Development v. AFSCME, Local Union 1971, 37 Pa. D. & C. 4th 116 (Philadelphia County Court of Common Pleas, 1996); Wage and Policy Committee of the Wilkins Township Police Department v. PLRB, 707 A.2d 1202 (Pa. Cmwlth. 1998). Interest arbitration awards, by statute, involve disputes over personnel matters, such as employes' wages, hours and working conditions, matters that are also addressed in grievances. The Pennsylvania Supreme Court has noted the similarities between grievance and interest arbitration by stating that "certainly the designing of solutions to resolve grievances ... frequently transcends the role of pure interpretation of the initial intent of the parties to the agreement." Moon Township, 508 Pa. at 501, 498 A.2d at 1308. Accordingly, procedurally and substantively, interest arbitration awards are "arbitration awards in a ... similar personnel matter" within the meaning of Pa.R.A.P. 1736(a)(2).

However, the City claims that because PICA requires a distinct scope and standard of review for interest arbitration awards, interest arbitration awards for City employes cannot be "similar personnel matters" within the meaning of Pa. R.A.P. 1736(a)(2). Interest arbitration awards issued pursuant to Act 111 or PERA between the City and its employes are still arbitration awards regardless of the scope and standard of review. The fact that a different standard and scope of review may be involved under PICA does not have an effect on the appellate process or Pa.R.A.P. 1736. Fraternal Order of Police Lodge #5 v. City of Philadelphia, 29 PPER ¶129042 (Final Order, 1998). As discussed above, pursuant to the Rules of Appellate Procedure, no automatic supersedeas was in effect during the pendency of the City's appeal to Commonwealth Court from the decision of the Court of Common Pleas affirming the January 13, 2006 interest arbitration award.

The City further argues that the Hearing Examiner erred in reviewing the merits of the City's appeal. In discussing the fact that the City had previously lost its case on two occasions before the Court of Common Pleas, the Hearing Examiner stated that the legal merit of the City's appeal was at issue before the courts, and that the City had appealed to Commonwealth Court out of "dissatisfaction" with the results reached in the Court of Common Pleas.

In addressing whether there has been an unlawful failure to comply with an arbitration award, the Board generally does not review the merits of the awards. Wilkins Township, supra. However, the Board will review the issues raised in a petition to vacate an arbitration award filed with the court of common pleas to determine what elements of the award may have been challenged for purposes of appellate review, and whether provisions of the award have been stayed. See e.g. Northampton Township Police Benevolent Association v. Northampton Township, 35 PPER ¶138 (Final Order 2004).

The Hearing Examiner's discussion in the PDO regarding the City's appeals does not warrant a different result. Where the appeal of the interest arbitration award is on secondary appellate review in Commonwealth Court, the only material issues for purposes of Section 6(1)(e) of the PLRA are whether the court has stayed the award and, if not, whether the employer has complied with the provisions of the award. City of Philadelphia, 29 PPER ¶129042 (Final Order, 1998). On this record, because the City lacked a stay of the January 13, 2006, interest arbitration award, following the Court of Common Pleas affirmance of the interest arbitration award on April 17, 2006, the City did not meet its statutory bargaining obligation when it thereafter refused to fully implement the terms

of the award. As such, the Hearing Examiner did not err in finding that in the absence of a stay of the interest arbitration award, the City violated its duty to bargain in good faith under Section 6(1)(a) and (e) of the PLRA and Act 111 by refusing to implement the provisions of the January 13, 2006 interest arbitration award.

The City also argues on exceptions that the Hearing Examiner erred in awarding interest from January 13, 2006 on the amounts owed to the FOP's Joint Health Benefits Program Trust. Contrary to the City's argument, neither the Rules of Appellate Procedure, nor the Local Rules of the Philadelphia Court of Common Pleas, provide a stay of an arbitration award pending appeal in the Court of Common Pleas. Cheltenham Township, supra. Where money is withheld when it is due, interest on the amounts unpaid is appropriate remedial relief. Pennsylvania State Education Association v. Appalachia Intermediate Unit 8, 505 Pa. 1, 476 A.2d 360 (1984); Commonwealth of Pennsylvania v. American Federation of State, County and Municipal Employees, 401 A.2d 1248 (Pa. Cmwlth. 1979); Lycoming County I & II, supra. The City relies upon the Board's policy, set forth in City of Philadelphia, supra, of enforcing arbitration awards upon the affirmance of the award by the Court of Common Pleas, to argue that interest should only accrue from April 17, 2006, the date the Court of Common Pleas affirmed the award. However, a pending appeal does not obviate the fact that the money owed was due on a date certain in accordance with the award. Ross v. Policemen's Relief and Pension Fund, 871 A.2d 277 (Pa. Cmwlth. 2005). Accordingly, the Hearing Examiner's award of interest from January 13, 2006, is appropriate remedial relief based on the recognition that the payment of money became due under the interest arbitration award on that date. Therefore, the City's exception to the award of interest from January 13, 2006 is dismissed.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the City's exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the City of Philadelphia are hereby dismissed, and the April 19, 2007 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 fifteenth day of January, 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.

