

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :  
OFFICERS ASSOCIATION :  
 :  
v. : Case No. PERA-C-08-430-E  
 :  
COMMONWEALTH OF PENNSYLVANIA :

**PROPOSED DECISION AND ORDER**

On November 7, 2008, the Pennsylvania State Corrections Officers Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board). In the charge, the Union alleged that the Commonwealth of Pennsylvania (Commonwealth) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by failing to implement a wage increase directed by the arbitration panel in the parties' unappealed interest arbitration award (Award), issued in September, 2008.

On November 25, 2008, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing take place on Friday, February 27, 2009, in Harrisburg, Pennsylvania. On February 9, 2009, I continued the hearing and the parties agreed to a new hearing date of Monday, April 20, 2009, in Harrisburg. The hearing was held on that day at which time both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3; PERA-R-01-153-E, Order and Notice of Election).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3; PERA-R-01-153-E, Order and Notice of Election).
3. The bargaining unit consists of approximately 10,600 employes. (N.T. 6, 19).
4. The parties participated in interest arbitration pursuant to Sections 805 and 806 of PERA, which culminated in the Award that was signed by a majority of the arbitration on Friday, September 12, 2008. (N.T. 7, 37, 39-42; Union Exhibits 1 & 2).<sup>1</sup>
5. The Award is retroactive to July 1, 2008, and remains effective through June 30, 2011. In the first year, the Award required the Commonwealth to give bargaining unit employes a general wage increase of three percent effective July 1, 2008. (N.T. 7-8; Union Exhibits 1 & 2).
6. The Award contains precalculated and preprinted wage and salary schedules, which the Commonwealth possessed September 12, 2008. (N.T. 8-9, 16, 39-42; Union Exhibit 1).
7. The employes received the wage increases required by the Award on December 12, 2008, retroactive to July 1, 2008. (N.T. 8-9, 22, 24, 44; Union Exhibit 4).
8. The retroactive pay increase applied to overtime worked on and after July 1, 2008. (N.T. 18-19, 33; Union Exhibit 4).
9. The Commonwealth pays employes on a two-week delay (i.e., payment is for the two week period prior to the immediately expired two week period). (N.T. 21; Union Exhibit 4).

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<sup>1</sup> I admitted Union Exhibit 2 over the Commonwealth's objection for the limited purpose of establishing that, as of September 15, 2008, the Commonwealth and the Union understood that the Award was issued on September 12, 2008, and certainly by September 15, 2008, which is corroborated by the Award. I did not rely on Union Exhibit 2 for the summaries of the Award contained therein or any other purposes.

10. The Commonwealth's partial arbitrator forwarded the Award to Brian Oles, Labor Relations Specialist with the Office of Administration, such that he received it on September 30, 2008. Mr. Oles summarized the Award and sent it to other Commonwealth human resource offices dealing with various aspects of Commonwealth employment such as payroll, leave and benefits, which are controlled by different offices. After the dissemination of the summary, Mr. Oles scheduled and held a meeting with representatives from those offices to ensure their understanding of the Commonwealth's position and interpretation of the Award. At the meeting, Mr. Oles reviewed each provision of the Award with the representatives. On October 2, 2008, Mr. Oles forwarded the Award via e-mail to Gregg Matthews, Salary and Time Administration Chief. (N.T. 29-30, 34, 51, 55, 59, 67).

11. On October 3, 2008, Mr. Matthews created a draft Resolution for the Governor's Executive Board to authorize the implementation of the Award and forwarded the draft to his supervisor who returned it to him on October 6, 2008. The Resolution outlined the Award and bargaining process. It accompanied the Award for review and authorization by the Executive Board. (N.T. 56, 59, 67-68; Commonwealth Exhibit 6).

12. Mr. Matthews sent the draft Resolution and Award to the Classification and Compensation Bureau Director, and the Human Resources Management Deputy Secretary, for approval. On October 8, 2008, Mr. Matthews submitted the Resolution and Award to the Directives Management Division Chief, Audrey-Ellen Gaines, who created an electronic version of the Resolution for routing to the Executive Board members. (N.T. 59-60; Commonwealth Exhibit 3).

13. Ms. Gaines placed the Resolution and Award on the Executive Board web page. On October 12, 2008, she e-mailed Mr. Matthews for his review. Mr. Matthews approved the web page version on October 15, 2008. (N.T. 60-61; Commonwealth Exhibit 4).

14. The review history of the Executive Board Resolution reveals that the Resolution was reviewed by thirteen people (including the Governor and the Executive Board members) and was finally approved by the Executive Board during a fifteen-day period between October 12 and 27, 2008. (N.T. 62-64; Commonwealth Exhibits 5 & 6).

15. After the Award and Resolution were submitted to the Executive Board, Mr. Matthews and the Salary and Time Administration staff then generated an "upload file," which is a computer file that SAP--the Commonwealth's payroll software system--can recognize. The upload file contained the same employe wage rate information as the precalculated, preprinted wage schedules. The upload file is a vertical table of rates that is manually compared to and generated from the paper wage grids. (N.T. 52, 56-59).

16. Mr. Matthews utilized two analysts to help him with preparing the upload file, which had taken approximately two days. On October 15, 2008, Mr. Matthews forwarded the electronic upload file to Patricia Krzykowski, the Operations Division Chief in the Bureau of Systems, Policy and Program Planning, to implement the wage rate increases of the Award. (N.T. 64, 68, 79-80, 85-86).

17. The Commonwealth cannot implement an interest award or collective bargaining agreement without a final approved resolution from the Executive Board. (N.T. 75).

18. The Operations Division staff was unable to make payroll changes in the SAP system until November 3, 2008. The SAP system was unavailable for approximately three months prior to November 3, 2008. The payroll changes necessary to implement the Award must be effectuated through SAP. (N.T. 80, 86-87, 94-95).

19. Ms. Krzykowski utilized five employes to implement the Award. Once Ms. Krzykowski received the upload file and final authority from the Executive Board, she coordinated with the Integrated Enterprise System (IES) technical staff to upload the rates into the SAP system. (N.T. 77, 92).

20. The Commonwealth's SAP system read the new pay rates from the upload file and applied those new wage rates to the employes in the bargaining unit. Pay and longevity were loaded together. (N.T. 77-78, 88, 90).

21. After the pay and longevity rates were loaded into the IES, the Operations Division staff began testing. The tests revealed whether employees would be properly paid for longevity and promotional increases when the general pay increase was applied back to July 1, 2008. The Operations Division staff performed approximately fifteen mass pay processes to ensure that employees would receive their correct longevity increases and general pay increases. During the testing, the system ejected approximately 1,450 employees. Operations Division personnel had to manually re-input and re-test the payroll information for those 1,450 employees. (N.T. 78-79, 88).

22. The Operations Division staff completed all the necessary automatic and manual payroll inputs to the SAP system and testing between November 3 and 26, 2008. (N.T. 80-81, 83-84).

#### DISCUSSION

The Union claims that the Commonwealth violated Section 1201(a)(1) and (5) of PERA by taking an unreasonable amount of time to implement the wage increase provisions of the Award. The Union specifically argues that "the Commonwealth sat on its hands in this case, and forced members of the bargaining unit to work without a wage increase in the process." (Union Brief at 5). The Union contends that "the process is not served when employees are required to wait over three months for basic wage increases." (Union Brief at 5). In support of its position, the Union specifically argues that "[e]ven conceding the need to wait for executive authorization of the Award, there is still no explanation for an additional eight weeks passage prior to the implementation of a simple and basic 3% wage increase." (Union Brief at 4). The Union further emphasizes that, although Commonwealth witnesses testified to alleged difficulties in calculating and applying the increases retroactively for a large bargaining unit of employees, that process did not cause delay because it was computerized. The Commonwealth, contends the Union, "simply took its time." (Union Brief at 4-5).

The Commonwealth initially argues that, although the Union alleged in its charge that the Commonwealth violated Section 1201(a)(1) and (5) of PERA, it has waived any arguments under clause (5) because, in its post-hearing brief, the Union "argues only that the Commonwealth committed a violation of Section 1201(a)(1) of the Act." (Commonwealth Brief at 6, n.2). However, the Union has not waived a cause of action, arguments or relief under clause (5). On page three of its post-hearing brief, the Union expressly stated that their issue for my consideration is "[w]hether the Commonwealth violated Section 1201(a)(1) **and (5)** of Act 195 [PERA] by failing to timely comply with an Act 195 [PERA] interest arbitration award?" (Union Brief at 3) (emphasis added). Accordingly, the Union expressly requested that I consider, and thereby preserved, their claims and remedies under clause (5).

The Commonwealth further defends by arguing that "it took all the necessary steps for implementation: summarization of the award, preparation and finalization of an Executive Board Resolution, creation, processing and testing of computer files (including 1450 manual operations)." (Commonwealth Brief at 8). The Commonwealth further argues that there were legitimate obstacles to implementation such as unavailability of the Commonwealth's computerized payroll system and the need to manually load payroll information for 1,450 employees. (Commonwealth Brief at 8). I agree with the Commonwealth.

In considering whether an employer has timely complied with an interest arbitration award, a grievance arbitration award or a settlement agreement, the Union has the burden of establishing that the employer unreasonably delayed implementing the award or agreement. AFSCME, Local 159 v. City of Philadelphia, 19 PPER ¶ 19069 (Final Order, 1988). The Union does not need to show that the delay was intentional, just unreasonable. Id. To determine reasonableness, the Board will consider the following factors: (1) the nature and complexity of the compliance required under the award or agreement, including the number of employees involved; (2) the length of time before compliance occurred; (3) the employer's ability to comply with the agreement or award including legitimate obstacles to compliance; (4) the steps taken by the employer toward compliance; and (5) the employer's explanation or lack thereof for the delay. Id. An employer's inactivity resulting in unreasonable delay constitutes an unfair practice. Commonwealth v. PLRB, 438 A.2d 1061 (Pa. Cmwlth. 1982).

The neutral arbitrator and the Commonwealth's partial arbitrator signed the Award on September 12, 2008. Those two arbitrators constituted a majority of the tripartite arbitration panel, and the Award became effective on that date. Section 7 of Act 111 expressly provides that "[t]he determination of the majority of the board of arbitration thus established [pursuant to Section 4] shall be final on the issue or issues in dispute and shall be binding upon the public employer and policemen or firemen involved." 43 P.S. § 217.7(a) (emphasis added). In FOP, Lodge 5 v. City of Philadelphia, 635 A.2d 222 (Pa. Cmwlth. 1993), the Commonwealth Court emphasized that only a majority of two arbitrators on a tripartite interest arbitration panel governed by Act 111 is required to make a final and binding award regardless of a dissenting third arbitrator, which has no effect on the award. Unlike Section 7 of Act 111, neither Section 805 nor 806 expressly requires a majority of the tripartite interest arbitration board impaneled under PERA for an effective, final and binding award. However, there is no reason to treat PERA interest arbitration any different than Act 111 interest arbitration for these purposes. Therefore, an interest arbitration award entered into pursuant to Sections 805 and 806 of PERA is final and binding on the date that a majority of signatures (i.e., two) appears on the award, and the fact that the Union's partial arbitrator signed as a dissenter on September 18, 2008 is of no moment regarding the effective date of the Award. City of Philadelphia, supra.

Although the Award was effective September 12, 2008, it was not unreasonable for the Commonwealth's partial arbitrator to wait for the Union's partial arbitrator to sign the Award on September 18, 2008, to learn the Union's position regarding the Award rather than proceeding to implement based on a myopic understanding of the Union's position or interpretation. Brian Oles is the Commonwealth's lead labor relations point person for coordinating the implementation of the Award. The Commonwealth's partial arbitrator forwarded the Award to Mr. Oles such that he received it on September 30, 2008. Given reasonable mailing delays after September 18, 2008, the Commonwealth's partial arbitrator reviewed and forwarded the Award to Mr. Oles in approximately one week's time. This was a reasonable amount of time.

Upon receiving the Award, Mr. Oles generated and disseminated a summary of the Award. He also held one large meeting with various Commonwealth offices involved with its implementation. There is no evidence in the record establishing that Mr. Oles held subsequent meetings with individual offices or their representatives, although he testified that if staff or representatives from those offices had questions he would hold such individual meetings. On October 2, 2008, Mr. Oles forwarded the Award to Gregg Matthews in the Salary and Time Administration. These tasks were completed in a timely fashion.

On October 3, 2008, Mr. Matthews created a draft Resolution for the Governor's Executive Board to authorize the implementation of the Award and forwarded the draft to his supervisor who returned it to him on October 6, 2008. The Resolution outlined the Award and bargaining process and accompanied the Award for review and authorization by the Executive Board. The Administrative Code requires an Executive Board resolution before the Award can be implemented. Mr. Matthews sent the Resolution and Award to the Classification and Compensation Bureau Director, as well as Human Resources Management Deputy Secretary, for approval. On Wednesday, October 8, 2008, Mr. Matthews submitted the Resolution and Award to the Directives Management Division Chief, Audrey-Ellen Gaines, who created an electronic version of the Executive Board Resolution for routing to the Executive Board members. Ms. Gaines placed the Resolution and Award on the Executive Board web page. The six days between October 2 and 8, 2008, that Mr. Matthews took to create, circulate and receive approval for the Resolution, were reasonable given the nature and complexity of the tasks and the number of people involved.

On Sunday, October 12, 2008, Ms. Gaines e-mailed Mr. Matthews for his review of the Executive Board web page containing the Resolution and Award. Mr. Matthews approved the web page version three business days later on October 15, 2008. These are reasonable review and turnaround times.

The review history of the Executive Board Resolution reveals that the Resolution was reviewed by thirteen people including the Governor and the Executive Board members, and finally approved by the Executive Board during a fifteen day period between October 12 and 27, 2008. The review history also reveals that the Award and Resolution were

reviewed one person at a time before being routed to another person. That amounts to a little more than one day for each of the individuals to review, approve and forward the Resolution and Award, which was a reasonable time.

After the Award and Resolution were submitted to and while they were being considered by the Executive Board, the Salary and Time Administration staff then generated the "upload file," which is a computer file that SAP-- the Commonwealth's payroll software system--can recognize. The upload file contains the same employe wage rate information as the precalculated, preprinted wage schedules. The upload file is a vertical table of rates that is manually compared to and generated from the paper wage grids, which existed before the Award was issued on September 12, 2008.

Mr. Matthews utilized two analysts to help him prepare the upload file, which had taken approximately two days. Not waiting for final approval from the Executive Board, Mr. Matthews, on October 15, 2008, forwarded the electronic upload file to Patricia Krzykowski, Operations Division Chief in the Bureau of Systems, Policy and Program Planning, to implement the wage rate increases of the Award. The Commonwealth cannot implement an interest award or collective bargaining agreement without an approved resolution from the Executive Board. On October 15, 2008, when Mr. Matthews sent the upload file to Ms. Krzykowski, the Commonwealth's SAP system was unavailable because of upgrades to the system. The payroll changes necessary to implement the Award must be effectuated through SAP. The Operations Division staff was unable to make payroll changes in the SAP system until November 3, 2008.

The Commonwealth has discretion to maintain, repair and upgrade its equipment. 43 P.S. § 1101.702. It, therefore, has discretion to determine when, where and how to perform equipment upgrades such that the least negative impact on Commonwealth operations will result.<sup>2</sup> The Commonwealth was fully justified in making necessary upgrades to the SAP system. Indeed, when the Commonwealth began the three-month upgrade in August, 2008, the issuance date of the Award was uncertain and indeterminable. In this case, the SAP unavailability delayed work on implementing the Award for two weeks between October 15, 2008, when Ms. Krzykowski received the upload file, and November 3, 2008, when SAP became available. Absent evidence that SAP upgrades could have been suspended to make the necessary payroll adjustments or that alternative methods for adjusting payroll could have been employed, the unavailability of the SAP system, which is necessary to implement the payroll changes, constituted a legitimate obstacle to the Commonwealth's ability to timely implement the Award.

After receiving the upload file on October 15, 2008, and the final authority from the Executive Board on October 27, 2008, Ms. Krzykowski was forced to wait for the SAP system to be available on November 3, 2008 at which time she coordinated with the IES technical staff to upload the rates into the SAP system. Ms. Krzykowski utilized five of her employes to implement the Award. The Commonwealth's SAP computerized personnel payroll system reads the new pay rates from the upload file and applies those new wage rates to the employes in the bargaining unit; Pay and longevity are loaded together. After the pay and longevity rates are loaded into the IES, the Operations Division staff begins testing. The tests reveal whether employes will be properly paid for longevity and promotional increases when the general pay increase is applied back to July 1, 2008. The Operations Division staff performed approximately fifteen mass pay processes to ensure that employes would receive their correct longevity and general pay increase. During the testing, the system ejected approximately 1,450 employes, which Operations Division personnel manually re-input and tested. All of the changes to the SAP system, testing and other work necessary to pay the employes on December 12, 2008, was completed by the Operations Division staff in the eighteen work days between November 3 and 26, 2008.

The bargaining unit employes did not receive their retroactive wage increases until December 12, 2008, because the Commonwealth pay scheme operates on a two week delay. Accordingly, employes receive payment at the end of the two week pay period following the two week pay period they are currently working. Therefore, the Award was fully

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<sup>2</sup> There was no evidence on this record that the Commonwealth suspended access to SAP for discriminatory reasons. Discriminatory interference with Commonwealth systems would disqualify such system unavailability as a legitimate obstacle to compliance and implementation.

implemented on November 26, 2008. The Commonwealth's computerized payroll system eliminates most of the complexities of implementing an award for 10,600 employees. However, the fact that the Operations Division was required to manually input 1,450 employees' information and that the SAP system was generally unavailable were legitimate obstacles to implementation, both affecting the Commonwealth's ability to comply in a more timely fashion. Accordingly, the Commonwealth met its burden of proving plausible, legitimate explanations for being unable to implement the Award until November 26, 2008, and the three weeks that Ms. Krzykowski and her staff spent loading, testing, reloading and retesting the payroll information after Executive Board approval was reasonable.

The Commonwealth implemented the Award in less than two-and-one-half months between September 12, 2008, and November 26, 2008, when it completed all processing for implementation. This was a reasonable time given the measured efforts of Commonwealth representatives, chiefs, directors and staff to perform their assigned duties for implementation in the face of legitimate obstacles including the unavailability of necessary equipment, the various Commonwealth offices involved and the Executive Board process mandated by law. Moreover, Mr. Matthews did not wait for Executive Board approval before preparing the upload file, which was used to implement the payroll changes in the SAP system. Accordingly, the Commonwealth has not committed unfair practices within the meaning of Section 1201(a)(1 or (5) and the charge is dismissed.

#### CONCLUSIONS

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

1. The Commonwealth of Pennsylvania is a public employer under PERA.
2. The Pennsylvania State Corrections Officers Association is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has not committed unfair practices within the meaning of Section 1201(a) (1) or (5).

#### ORDER

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

#### HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded.

#### 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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this first day of September, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner