

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS ASSOCIATION :
:
v. : Case No. PF-C-09-71-E
:
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :

PROPOSED DECISION AND ORDER

On May 14, 2009, the Pennsylvania State Troopers Association (PSTA) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the Commonwealth of Pennsylvania, Pennsylvania State Police (Commonwealth), violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) by refusing to implement the terms of a grievance arbitration award involving Corporal Gerald Hocker. On June 2, 2009, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing on the charge be held on September 15, 2009. On June 18, 2009, the PSTA filed an amended charge alleging that the Commonwealth committed additional unfair labor practices under sections 6(1)(a) and (e) by continuing to refuse to comply with the terms of the award. On June 29, 2009, the Secretary issued an amended complaint and notice of hearing directing that a hearing on the amended charge also be held on September 15, 2009. On September 15, 2009, a hearing on the charge and the amended charge was held. The hearing examiner afforded both parties a full opportunity to present testimony and to cross-examine witnesses. On October 30, 2009, each party filed a brief.

The hearing examiner, on the basis of the stipulations presented by the parties at the hearing, makes the following:

FINDINGS OF FACT

1. The Commonwealth has recognized the PSTA as the exclusive representative of a bargaining unit that includes corporals employed by the Pennsylvania State Police (PSP). (N.T. 6)

2. The parties have entered into a collective bargaining agreement. (N.T. 6)

3. The PSTA filed a grievance alleging that the Commonwealth violated the collective bargaining agreement by discharging Corporal Hocker. (N.T. 6)

4. On April 13, 2009, an arbitrator issued an award as follows:

"I find that the grievant's discharge was not for just cause under the Agreement and should be rescinded, and that he be offered the opportunity to return to his previous position, with no loss of seniority or other benefits. The record does not persuade me, however, that any award of back pay is appropriate."

(N.T. 6)

5. The Commonwealth did not appeal the award. (N.T. 6)

6. Corporal Hocker's previous position was at the PSP Academy, State Police Training Division, Position Number 00060658. (N.T. 6)

7. Effective April 13, 2009, the Commonwealth reinstated Corporal Hocker without offering him the opportunity to return to his previous position. (N.T. 6)

8. By letter dated May 5, 2009, the director of human resources for the PSP (Kim H. Studenroth) wrote to Corporal Hocker as follows:

"During your suspension, your State Police Health Program/State Police Supplemental Benefits Program, Group Life Insurance Program and Health Reimbursement Account benefits continued in effect. This policy is in accordance with the Pennsylvania State Trooper Association Labor Contract, Article 26, Discipline.

In addition to addressing benefits during suspensions, Article 26 also states:

'If the member elects not to file a grievance, or the grievance is denied wholly or in part, for any reason, the member shall reimburse the Commonwealth for the cost of the benefits within 90 days of the final disposition or upon separation from the Department, whichever shall occur sooner.'

You are required to repay the Commonwealth for the cost of benefits extended to you while on suspension. You were suspended with benefits from November 21, 2008 - April 13, 2009. Reimbursement must be made whether or not any actual claims were incurred. Accordingly, the costs associated with your benefits are provided below:

State Police Health Program:	\$3,006.06
State Police Supplemental Benefits Program:	\$1,173.84
Group Life Insurance Program:	\$ 46.80
Health Reimbursement Account:	\$ 113.16
Total owed to Commonwealth:	\$4,339.86

The Office of the Budget, Bureau of Commonwealth Payroll Operations (BCPO), has been notified of the debt. BCPO will contact you about your repayment options.

Questions regarding this matter may be addressed to Mr. George M. Sheedy, Human Resources Benefits Division, Bureau of Human Resources, at 717-772-6935."

(N.T. 6)

DISCUSSION

The PSTA has charged that the Commonwealth committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by refusing to comply with the terms of a grievance arbitration award involving Corporal Hocker. The award rescinded the Commonwealth's discharge of him and directed that he "be offered the opportunity to return to his previous position, with no loss of seniority or other benefits" (finding of fact 4). According to the PSTA, in contravention of the award, the Commonwealth (1) has reinstated Corporal Hocker without offering him the opportunity to return to his previous position and (2) has demanded that he reimburse it for the cost of his benefits while he was discharged.

The Commonwealth contends that the charge should be dismissed for three reasons: (1) because it substantially complied with the terms of the award by reinstating Corporal Hocker to a position at the same work location and with the same schedule and rate of pay as his previous position; (2) because article 26 of the parties' collective bargaining agreement authorizes its demand that he reimburse it for the cost of his benefits while he was discharged; and (3) because the award's reference to "loss of benefits" is vague and therefore unenforceable.

In City of Philadelphia v. PLRB, 759 A.2d 40 (Pa. Cmwlth. 2000), the court summarized the law to be applied in a case of this nature as follows:

"When an unfair labor practice charge alleges a party's refusal to comply with a grievance arbitration award, the Board must first determine whether an arbitration award exists, then, whether the appeal process has been exhausted, and, if so, whether the employer failed to comply with the award. Pennsylvania Labor Relations Board v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978). The Board is not permitted to review the merits of the award and it is the party alleging non-compliance with a grievance arbitration award that has the burden of proof to show

that the opposing party has failed to comply with the arbitrator's decision. Id. Furthermore, in evaluating whether the City complied with the Arbitration Award, the Board can not transcend the Award or reevaluate the City's case against these officers. Id. After the exhaustion of the appeal process, an arbitration award may not be collaterally challenged in an unfair labor practice enforcement proceeding. Id.; Derry Township v. Pennsylvania Labor Relations Board, 131 Pa. Commw. 574, 571 A.2d 513 (Pa. Cmwlth. 1989)."

759 A.2d at 42-43.

There is no dispute that an award exists. There also is no dispute that the appeal process has been exhausted. The dispositive question, then, is whether or not the Commonwealth has refused to comply with the terms of the award.

A close review of the record reveals that the Commonwealth has refused to comply with the terms of the award. As noted above, the record shows that the award rescinded the Commonwealth's discharge of Corporal Hocker and directed that he "be offered the opportunity to return to his previous position, with no loss of seniority or other benefits." The record also shows that the Commonwealth has not offered him the opportunity to return to his previous position (finding of fact 7) and that it has demanded reimbursement from him for the cost of his benefits while he was discharged (finding of fact 8). Thus, it is apparent that the Commonwealth has refused to comply with the terms of the award (1) by not offering Corporal Hocker the opportunity to return to his previous position and (2) by subjecting him to a loss of benefits.

The Commonwealth's contention that the charge should be dismissed because it substantially complied with the terms of the award by reinstating Corporal Hocker to a position at the same work location and with the same schedule and rate of pay as his previous position is without merit. In McKeesport Area School District, 39 PPER 75 (Final Order 2008), aff'd, SA08-000709 (Court of Common Pleas of Allegheny County 2008), the Board found that the employer had refused to comply with the terms of an award under like circumstances. In that case, the award similarly directed the reinstatement of a discharged employe to his former position. The employer, however, only reinstated him to a substantially equivalent position. Given the language of the award, the Board reasoned that the employer had to reinstate him to his former position, not to a substantially equivalent one, in order to comply with the terms of the award. Given the language of the instant award, the same reasoning compels the same result here.¹

The Commonwealth's contention that the charge should be dismissed because article 26 of the collective bargaining agreement authorizes it to demand from Corporal Hocker the cost of his benefits while he was discharged also is without merit. In City of Philadelphia, supra, the court explained that the Board can not transcend the award in a case of this nature. The award makes no reference to article 26 of the collective bargaining agreement, so whatever article 26 provides is irrelevant.

The Commonwealth's contention that the charge should be dismissed because the award's reference to "loss of benefits" is vague and therefore unenforceable is without merit, too. Notably, the Commonwealth does not explain how the award's reference to "loss of benefits" is vague. Moreover, as a close review of the Commonwealth's demand that Corporal Hocker reimburse it for the cost of his benefits while he was discharged reveals, it had no difficulty in calculating the cost of those benefits, so there is no basis for finding the award's reference to "loss of benefits" to be vague.

CONCLUSIONS

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

¹ Although the Commonwealth does not argue the point, it presented testimony by Major John W. Laufer that it did not reinstate Corporal Hocker to his previous position because Corporal Hocker's integrity, which was at issue in the award, was still in question despite the award (N.T. 11). In a case of this nature, however, the Board is not to review the merits of an award. City of Philadelphia, supra. Major Laufer's testimony speaks to the merits of the award and thus provides no defense to the charge.

1. The Commonwealth is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.

2. The PSTA is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.

3. The Board has jurisdiction over the parties.

4. The Commonwealth has committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in pari materia with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Commonwealth shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA as read in pari materia with Act 111.

2. Cease and desist from refusing to bargain collectively with a representative of its employes.

3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the PLRA as read in pari materia with Act 111:

(a) Comply with the terms of the award;

(b) Offer Corporal Hocker the opportunity to return to his previous position (PSP Academy, State Police Training Division, Position Number 00060658);

(c) Rescind the May 5, 2009, letter to Corporal Hocker;

(d) Post a copy of this decision and order within five (5) days from the effective date hereof 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

(e) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this order by completion and filing of the attached affidavit of compliance.

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 sixth day of November 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS ASSOCIATION :
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AFFIDAVIT OF COMPLIANCE

The Commonwealth hereby certifies that it has ceased and desisted from its violations of sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111, that it has complied with the terms of the award, that it has offered Corporal Hocker reinstatement to his previous position (PSP Academy, State Police Training Division, Position Number 00060658), that it has rescinded the May 5, 2009, letter to Corporal Hocker, that it has posted the proposed decision and order as directed and that it has served an executed copy of this affidavit on the PSTA.

Signature/Date

Title

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

Signature of Notary Public