

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 88 :
 :
 v. : Case No. PERA-C-09-148-E
 :
 NORTHAMPTON COUNTY :

PROPOSED DECISION AND ORDER

On April 21, 2009, AFSCME District Council 88(Complainant or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Northampton County (Respondent or County) alleging that the County violated Sections 1201(a)(1),(5) and (8) of the Public Employe Relations Act (PERA).

On May 6, 2009, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and August 26, 2009, in Easton was scheduled as the time and place of hearing if necessary.

Prior to the hearing, the parties informed the Hearing Examiner that the parties would submit stipulations and briefs in lieu of a hearing. The Union submitted its brief on September 28, 2009 and the County did so on October 19, 2009.

The examiner, on the basis of the stipulations, briefs and all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. Northampton County is a public employer within the meaning of Section 301(1) of PERA.
2. AFSCME District Council 88 is an employe organization within the meaning of Section 301(3) of PERA.
3. AFSCME is the exclusive certified representative of a residual unit of non professional employes of Northampton County. (Specification of Charges)
4. That the County and AFSCME are parties to a collective bargaining agreement for the wages, hours and terms and conditions of employment for this unit of employes. The CBA contains a provision for binding grievance arbitration. (Exhibit A)
5. That David Kaesler is a member of the residual employes bargaining unit. (Exhibit B)
6. That on May 4, 2007, Mr. Kaesler injured himself in a motorcycle accident. On June 1, 2007, Mr. Kaesler applied for catastrophic leave pursuant to Article 31 of the collective bargaining agreement. "Leave Donation." This provision allows county employes to donate leave to an employe under certain circumstances. (Exhibits A and B).
7. A dispute between the County and the Union arose over Mr. Kaesler's use of the catastrophic leave for his injury.which allowed county employes to donate leave to Mr. Kaesler. (Exhibit C)
8. That on October 9, 2007, the Union filed a grievance on behalf of Mr. Kaesler over the County's determination that he did not meet the eligibility requirements for catastrophic leave. (Exhibit C)
9. That on May 29, 2008, an arbitrator rendered an award on the grievance. The award stated, "The grievance is sustained. The grievance was eligible for catastrophic leave and, therefore, is not required to return the donated days." (Exhibit B)
10. By letter dated August 13, 2008, the County Human Resources Manager notified Kaesler that pursuant to the Arbitration Award the County is returning 108 hours (or 13.5 days) to his sick leave balance reflected in his August 15, 2008 paycheck. (Exhibit E)

11. On September 5, 2008, Kaesler's union representative contacted the County's labor representative to complain that the County should have credited Kaesler with additional days sick leave, arguing that the employees donated more than 13.5 days to him. The County disagreed, without resolution. More discussion between the parties continued. (Exhibit F)

12. On December 24, 2008, the County informed the Union that it complied with the arbitration award because "the County provided Mr. Kaesler with catastrophic leave for all the days he was out during the period in question." The County went on to say that it "will not, however, provide him with days that he did not use. Any days in excess of those he actually used were returned to the donors so as not to provide Mr. Kaesler with a windfall." (Exhibit F)

DISCUSSION

The Union's charge of unfair practices alleges that the County committed an unfair practice in violation of Sections 1201(a)(1), (5) and (8) of PERA by refusing to comply with the provisions of a grievance arbitration award deemed binding under Section 903 of PERA. Specifically, the union contends that the County has not, despite requests, complied with an arbitration award rendered on May 29, 2008, that stated, "The grievance is sustained. The grievance was eligible for catastrophic leave and, therefore, is not required to return the donated days."

The Board has held that a public employer violates Section 1201(a) (8) when the complainant proves that the public employer refused to comply with a binding arbitration award. The Board has held that when the complainant in an unfair labor practice action charges a refusal to comply with the provisions of a binding arbitration award, the Board must determine first if an award exists, second, if the award has been stayed by an appeal, and third, if the respondent has failed to comply with the provisions of the arbitrator's decision. FOP Lodge 5 v. Philadelphia, 32 PPER ¶ 32102 (Order Directing Remand, 2001). Where the Board has determined that an award exists, and an appeal of the award does not stay the enforcement and the charged party has failed to comply with the provisions of the award, then the Board will find that the charged party committed an unfair practice under Section 1201(a)(8).

In this case, the Union proved that an award exists and that there has been no appeal of the award. It is the third part of the test that is at issue, whether the County has complied with the arbitrator's award stating that the grievant was "not required to return the donated days."

The County contends that it has complied with the award by allowing Mr. Kaesler to retain the donated days he needed to cover sick leave that he used. The County agrees that he did not have to return those days to the donors.

The Union contends that the grievant should be entitled to 44 additional hours of sick leave that were donated to him and not used.

The County responds that this relief cannot be gleaned from award. The County contends that there was no mention of a specific number of donated days Mr. Kaesler was entitled to retain.

The Board will not find that a public employer committed an unfair practice if the provisions of the arbitration award are ambiguous and the purported action necessary for compliance cannot be gleaned from the award. Joint Bargaining Committee of the Pennsylvania Employment Security Employees Association v. Commonwealth, Bureau of Labor Relations, 17 PPER ¶ 17177 (Final Order, 1986). In divining the intent of the arbitrator, the inquiry cannot require the Board to add to the award or fill gaps or holes in the award. AFSCME, Local 1971 v. City of Philadelphia, Office of Housing and Community Development, 24 PPER P. 24052 (Final Order, 1993).

This award is ambiguous on the number of donated days to be retained. There is no mention of the number of donated days that Mr. Kaesler is allowed to retain, yet each side argues that its number of days is the correct number. Does the award mean all the donated days that he received, as the Union argues? Or does it mean all the days that actually had to use to cover the sick leave he was forced to use, as the County argues?

Given this ambiguity, it cannot be said that the employer has refused to comply with the arbitration award. Commonwealth, Bureau of Labor Relations, supra. Accordingly, there will be no finding that the County violated Section 1201(a)(8)

The Union has also checked off the boxes indicating that it is charging that the County has also violated Section 1201(a)(5) of PERA, which makes it an unfair practice for a public employer to refuse to bargain collectively with the exclusive representative. A public employer violates this Section of PERA by refusing to proceed to arbitrate a grievance. Bald Eagle Area School District, 499 Pa. 62, 451 A.2d 671 (1982). In this case, the County proceeded to arbitration in a timely fashion. Accordingly, there will be no finding of a Section 1201(a)(5) violation.

Finally, the Union has also checked off the box indicating that the County has also violated Section 1201(a)(1) of PERA, which makes it an unfair practice for a public employer to interfere, restrain or coerce employees in the exercise of their rights guaranteed in PERA. The specification of charges do not set forth in what manner the County violated Section 1201(a)(1). An independent violation of Section 1201(a)(1) of PERA occurs, "where in light of the totality of the circumstances the employer's actions have a tendency to coerce a reasonable employee in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). There is no evidence in this record that the County engaged in interference, restraint or coercion so as to lead to the finding of an independent Section 1201(a)(1) violation.

The law also permits the Board to find a derivative violation of Section 1201(a)(1) when the employer has violated other sections of PERA on the theory that all other unfair practices (1201(a)(2) through (9)) necessarily interfere with employees in the exercise of their rights and, thus, derivatively violate 1201(a)(1) as well. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978). Having found that the County has not violated any other sections of PERA, there will be no finding of a derivative Section 1201(a)(1) violation either.

CONCLUSIONS

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

1. That Northampton County is a public employer within the meaning of Section 301(1) of PERA.
2. That AFSCME District Council 88 is an employee organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the County has not committed unfair practices in violation of Sections 1201(a)(1), (5) and (8) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this twelfth day of March, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner