

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MOSHANNON VALLEY EDUCATION SUPPORT PROFESSIONALS :
:
v. : Case No. PERA-C-09-359-W
:
MOSHANNON VALLEY SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On September 4, 2009, the Moshannon Valley Education Support Professionals (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Moshannon Valley School District (District) violated sections 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by unilaterally changing the status quo after the Board certified the Association as the exclusive representative of a bargaining unit that includes employees of the District. On September 23, 2009, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on February 9, 2010. On November 19, 2009, the hearing examiner, upon the request of the Association and without objection by the District, continued the hearing. On March 9, 2010, the hearing examiner, upon being informed by the Association that the parties would be submitting the case for decision on stipulated facts, canceled the hearing. On March 15, 2010, the parties submitted the case for decision on stipulated facts. On April 16, 2010, each party filed a brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the stipulations submitted by the parties and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Effective July 1, 2007, the District adopted a three-year support compensation and evaluation plan (SCEP) for its "administrative assistants, secretary/clerks, personal care and classroom assistants whose job duties support administrative personnel and the management team." (Stipulation 3, Exhibit 1)

2. The SCEP provides in relevant part under "**COMPENSATION PLAN**" as follows:

"Hours of Operation - School Year:

Building Administrators will normally schedule on a weekly, bi-weekly, monthly, semester, or year long basis. Schedule will normally be maintained by Building Administrators. Variations to this schedule must be approved by the Board. These schedules are also subject to the District's ability to manage its operations.

Business Office	7:30 am to 3:30 pm
High School	7:35 am to 3:00 pm
Elementary	8:05 am to 3:30 pm"

(Stipulation 3, Exhibit 1)

3. The SCEP provides in relevant part at Appendix 2 as follows:

"SALARY

The SCEP salary increases for the period July 1, 2007 - June 30, 2010 (three years) will be 2.5% for the 2007/2008 school year, 3% for the 2008/2009 school year and 3% for the 2009/2010 school year for all employees receiving less than \$35,500.00 per year. The maximum salary for employees included in the SCEP shall be \$35,500.00. Employees currently earning in excess of maximum shall not receive the salary increases above."

(Stipulation 3, Exhibit 1)

4. The SCEP provides in relevant part at Appendix 3 as follows:

"FRINGE BENEFITS

Sick Leave

One (1) day per month based on actual months worked.

* * *

Medical Insurance

During the term of this agreement, Employees shall contribute toward the cost of healthcare premiums via payroll deductions as follows:

Year 1 2007-2008 5% of the premium
Year 2 2008-2009 6% of the premium
Year 3 2009-2010 7% of the premium"

(Stipulation 3, Exhibit 1)

5. On or about July 1, 2008, employees covered by the SCEP received three per cent pay increases, began contributing six per cent toward the cost of their healthcare premiums, accrued all of their sick days at the beginning of their work year and were working the schedule set forth in the SCEP. (Stipulations 12, 14, 16-17)

6. On September 18, 2008, the Board certified the Association as the exclusive representative of a bargaining unit that includes clerical employees, secretaries, computer lab aides, personal care aides, title 1 aides, substitute teacher support aides and classroom assistants employed by the District. (Case No. PERA-R-08-142-W)

7. On June 22, 2009, the District's solicitor (Scott Etter, Esquire) informed a representative of the Association (Jane French Brubaker) that effective July 1, 2009, the District would be unilaterally implementing the three per cent increase in pay and the one per cent increase in the contribution rate for healthcare premiums set forth in the SCEP. (Stipulation 25, Exhibit 5)

8. On or about July 1, 2009, employees received a pay increase of three per cent, began contributing seven per cent toward the cost of their healthcare premiums, worked the schedule set forth in the SCEP and began accruing sick leave on a monthly basis. (Stipulations 12, 26)

DISCUSSION

The Association has charged that the District committed unfair practices under section 1201(a)(1) and (5) of the PERA by unilaterally changing the status quo after the Board certified the Association as the exclusive representative of a bargaining unit that includes employees of the District. As set forth in the specification of charges, the Association alleges that the District changed the status quo by (1) implementing "a three percent (3%) wage increase and a one per cent (1%) increase of health insurance cost share," (2) suspending "a reduced hour summer rotational schedule for business office and building secretaries" and (3) "allocating sick days on a 'one per month' basis rather than allocating them on a work-year basis."

The District contends that the charge should be dismissed for lack of proof. According to the District, because a compensation plan (SCEP) in existence as of the date of the Association's certification provided for the increase in wages and contribution rate for healthcare premiums and for the allocation of sick days on a monthly basis, it did not change but rather maintained the status quo when it implemented those increases and so allocated the sick days. The District also submits that it did not change but rather maintained the status quo as to scheduling because it replaced the reduced hour summer schedule with a schedule set forth in the SCEP before the Association even began the organizational campaign leading up to its certification.

In Bucks County, 38 PPER 99 (Final Order 2007), aff'd on other grounds sub nom. County of Bucks v. PLRB, 39 PPER 105 (Court of Common Pleas of Bucks County 2008), the Board restated the applicable law, explaining that:

"as the hearing examiner stated in the PDO at 3, '[o]nce the Board certifies an exclusive representative for a bargaining unit, an employer is obligated to bargain before it changes any of the terms and conditions of employment for the employees in the unit,' citing Lawrence County Housing Authority, 5 PPER 39 (Final Order, 1974)."

Id. at 282. See also Beaver County, 37 PPER 62 (Proposed Decision and Order 2006)(same); Clarks Summit Borough, 29 PPER ¶ 29073 (Proposed Decision and Order 1998)(same).

The record shows that the Board certified the Association on September 18, 2008 (finding of fact 6). Thus, any change to pay, the contribution rate for healthcare premiums, schedules and the accrual of sick days after September 18, 2008, had to be bargained by the District.

A close review of the record shows that as of September 18, 2008, employes accrued all of their sick days at the beginning of their work year (finding of fact 5) and that after September 18, 2008, the District unilaterally implemented a three per cent increase in pay and a one per cent increase in the contribution rate for healthcare premiums and allocated sick days on a monthly basis (findings of fact 7-8). Thus, to that extent, it is apparent that the District changed the status quo without bargaining.

The District's contention that it did not change the status quo because the SCEP in existence as of the date of the Association's certification provided for the three per cent wage increase, the one per cent increase in the contribution rate for healthcare premiums and the allocation of sick days on a monthly basis finds no support in the law.

Indeed, in Bucks County, supra, the Board found a remarkably similar contention to be unsupported in the law. In that case, a county contended that it had the right to implement a change in healthcare for its employes after they became represented because an employe handbook in existence before they became represented reserved to it the right to unilaterally change their healthcare. Quoting the applicable law as set forth above, the Board explained that "through its prior unilateral issuance of an employe handbook, the County could not avoid its prospective obligation to negotiate changes in terms and conditions of employment with the Association." 38 PPER at 282.

In Beaver County, supra, the hearing examiner likewise found a union's contention that an employer had to pay increases in a compensation plan in effect prior to the union's certification to be unsupported in the law. As the hearing examiner explained,

"an employer does not change employe terms and conditions of employment if it refuses to pay step increases for employes whose wages are subject to negotiation. As the court explained in Pennsylvania State Park Officers Association, [854 A.2d 674 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 704, 871 A.2d 194 (2005)](construing analogous provisions of the Pennsylvania Labor Relations Act (PLRA)], because wages are subject to negotiation, to find otherwise 'would allow employees to gain an unfair advantage over their public employers by obtaining the very wage increases under negotiation. This would discourage good faith negotiations[.]' 854 A.2d at 682."

37 PPER at 194-195.

The District cites Northwest Area School District v. Northwest School District, 954 A.2d 111 (Pa. Cmwlth. 2008), as controlling authority, but that case involved an employer's obligation to pay increases within the term of a collective bargaining agreement and therefore is not on point.

The record shows that as of and after September 18, 2008, employes worked the schedule set forth in the SCEP (findings of fact 5 and 8). Thus, there is no basis for finding that the District changed the status quo by suspending "a reduced hour summer rotational schedule for business office and building secretaries."

CONCLUSIONS

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

1. The District is a public employer under section 301(1) of the PERA.
2. The Union is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The District has committed unfair practices under sections 1201(a)(1) and (5) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of their rights under article IV of the PERA.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action that the hearing examiner finds necessary to effectuate the policies of the PERA:

(a) Rescind the July 1, 2009, increases in pay and the contribution rate for healthcare premiums.

(b) Allocate all sick days as of the first day of an employe's work year;

(c) Make the employes whole for any losses sustained by them as the result of the increases in pay and the contribution rate for healthcare premiums and the allocation of sick days on a monthly basis;

(d) Pay interest at the simple rate of six percent per annum on any monies due them;

(e) 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

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eleventh day of May 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

DONALD A. WALLACE, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from its violations of sections 1201(a)(1) and (5) of the PERA, that it has rescinded the July 1, 2009, pay increase and increase in the contribution rate for healthcare premiums, that it has made the employes whole for any losses sustained by them with interest as directed, that it has posted the proposed decision and order as directed and that it has served a copy of this affidavit on the Association.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me

The day and year first aforesaid.

Signature of Notary Public