

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

FINAL ORDER

The Moshannon Valley School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on May 28, 2010, challenging a May 11, 2010 Proposed Decision and Order (PDO). In the PDO, the Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by unilaterally changing the status quo regarding employe wages, hours and working conditions after the Board certified the Moshannon Valley Education Support Professionals (Association) as the exclusive bargaining representative for the District's nonprofessional employes. The Association did not file a response to the District's exceptions. The Hearing Examiner's Findings of Fact, in relevant part, are summarized as follows.

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." The SCEP provides in relevant part that "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 SCEP further provided that employees shall contribute toward the cost of healthcare premiums via payroll deductions at the rate of 5% of the premium in 2007-2008, 6% of the premium in 2008-2009, and 7% of the premium in 2009-2010.

On September 18, 2008, the Board certified the Association as the exclusive representative of a bargaining unit that includes clerical employes, secretaries, computer lab aides, personal care aides, title 1 aides, substitute teacher support aides and classroom assistants employed by the District.¹

On June 22, 2009, the District informed the Association that effective July 1, 2009, the District would be unilaterally implementing the three percent increase in pay and the one percent increase in the contribution rate for healthcare premiums set forth in the SCEP. On or about July 1, 2009, employes began receiving the pay increase of three percent, and began contributing seven percent toward the cost of their healthcare premiums.

The Hearing Examiner found that the District violated Section 1201(a)(1) and (5) of PERA by unilaterally increasing employe wages and health care premium contributions after the Association was certified as the exclusive bargaining representative. To remedy the unfair practice the Hearing Examiner directed that the District "rescind the July 1, 2009, increases in pay and the contribution rate for healthcare premiums." (PDO at 5).

In its exceptions, the District does not challenge the Hearing Examiner's conclusion that it committed an unfair practice. Instead, the District seeks a clarification of the Board's remedy. The District argues that the employes' three percent increase in salary exceeds their one percent increase in healthcare premium contribution, and when the wage increases are offset by the healthcare premium contributions, the employes would owe the District the difference. The District contends that the Hearing Examiner's order does not restore the status quo because it does not provide a mechanism for the employes to compensate the District for the overpayments.

The remedy for an unfair practice is a matter within the sound discretion of the Board. Pennsylvania Labor Relations Board v. Martha Company, 359 Pa.347, 59 A.2d 166

¹ Case No. PERA-R-08-142-W.

(1948); In re Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978); Association of Mifflin County Educators v. Mifflin County School District, 22 PPER ¶ 22065 (Final Order, 1991). Section 1303 of PERA authorizes the Board to order "such reasonable affirmative action... as will effectuate the policies of [PERA]". 43 P.S. §1101.1303. Where an employer has unilaterally implemented wage increases for employees without satisfying its bargaining obligation, the Board has a long-standing policy of directing rescission of the wage increase, but not directing that employees return the wage increases that they already received as a result of the employer's unlawful action. As recognized by the Board, forcing employees to return wages after having rendered services would unfairly penalize the employees for the employer's unlawful unilateral action. AFSCME District Council 88 v. Warminster Township, 31 PPER ¶31156 (Final Order, 2000). In Warminster Township, rejecting arguments similar to those raised by the District here, the Board noted as follows:

To issue an order requiring employees to repay overpayments would encourage, not prevent, the practice of unlawful direct dealing with small groups of employees to undermine the collective bargaining obligation and the policies established by PERA... [P]ermitting employers to recover the fruits of their unlawful conduct could not possibly deter employers from repeatedly dealing directly with bargaining unit members and offering them wage increases to buy their disassociation from a union or to undermine a union's effectiveness. The collective bargaining rights of public employees would become a nullity if employers were permitted to undermine the employees' exclusive bargaining representative through direct dealing and then unilaterally recoup its unlawful investment when found by that conduct to have violated its bargaining duty.

Warminster Township, 31 PPER at 375. Thus, as a matter of sound labor policy, and in exercising discretion over the appropriate remedy for unfair practices, the Board continues to hold that "an employee who has received overpayments as a result of an employer's [unfair practice] is entitled to keep the amount of the overpayments as part of the remedy for the original unfair practice." Id. at 374.

After a thorough review of the exceptions and all matters of record, the Board finds that to effectuate the policies of PERA, the District is not entitled to recoup any wages that employees received as a result of the unlawfully implemented July 1, 2009 three percent pay increase, nor offset the one percent increase in the employee healthcare contribution rate.² Accordingly, the District's exceptions to the PDO are dismissed, and the PDO is made final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Moshannon Valley School District are hereby dismissed, and the May 11, 2010 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 twentieth day of July, 2010. 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.

² See Corry Area Education Association v. Corry Area School District, 38 PPER 155 (Final Order, 2007) (in a back pay award, reimbursement for health insurance premiums is separate from the computation of back wages and interim earnings); Scepter Ingot Castings, Inc., 331 NLRB 1509 (2000) (where employer unlawfully unilaterally implemented wage increase to offset its implementation of increased employee contribution for health insurance premiums, National Labor Relations Board directed that employees were not required to return wage increases, and also directed that the employer "[m]ake employees whole for any expenses ensuing from the Respondent's unilateral changes in medical insurance coverage and contributions..."); see also, Scepter Ingot Castings, Inc., 2003 NLRB LEXIS 688 (Supplemental Decision, 2003), affirmed, 341 NLRB 997 (2004).

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MOSHANNON VALLEY SCHOOL DISTRICT :

AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from its violations of Section 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 employees whole for any losses sustained by them with interest as directed, that it has posted the Proposed Decision and Order and Final 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