COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WASHINGTON COURT ASSOCIATION OF PROFESSIONAL EMPLOYEES AFFILIATED WITH AFSCME DC 84	:	
	:	Case No. PERA-C-10-283-W
v.	:	
WASHINGTON COUNTY	:	

FINAL ORDER

Washington County (County) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on March 7, 2012, to a February 16, 2012 Proposed Decision and Order (PDO), in which the Hearing Examiner concluded that the County violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). On March 28, 2012, the Washington Court Association of Professional Employees, affiliated with AFSCME District Council 84 (Association) filed a response and brief in opposition to the exceptions. In the PDO, the Hearing Examiner made Findings of Fact, which are summarized as follows.

The Association is the certified exclusive representative for a bargaining unit of court-appointed employes of the County, including Juvenile and Adult Probation Officers. (FF 1 and 2). Article VII of the parties' 2002 - 2003 collective bargaining agreement, titled "HOURS OF WORK AND MEAL PERIODS," provided that "[t]he work shift shall consist of seven-and-one-half (7.5) work hours within a workday of Juvenile and Adult Probation Officers." (FF 4). Because the County and the Association were unable to reach a successor agreement, an interest arbitration panel, with Christopher E. Miles, Esquire as the neutral, issued an award, which was made effective January 1, 2004 through December 31, 2006. ("Miles Award"). (FF 3). The Miles Award changed the language of Article VII of the parties' agreement to provide as follows: "The work shift shall consist of eight (8) work hours within a work day of Juvenile and Adult probation officers." (FF 4).

The President Judge of the Washington County Court of Common Pleas notified the County Commissioners that the Court refused to implement the shift provisions of the Miles Award. (FF 5). On May 3, 2004, the County petitioned the Common Pleas Court to vacate the Miles Award. On April 19, 2007, Senior Judge Paul H. Millin, visiting from Forest County, issued an order granting the County's petition to vacate the Miles Award with respect to the provision extending the work day of bargaining unit members by one-half hour. (FF 6).

After Judge Millin's order, in preparing for the interest arbitration for a successor award, the Association presented the County with its issues in dispute. Referring to Article VII, the Association stated the following:

> The Union's demand was for an increase in the workday from 7 1/2 hours to 8 hours. In light of the recent ruling of Judge Millin, the Union revises its demand to 30 minutes paid lunch period. Section 7 would read as follows:
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> All employees shall be granted a paid lunch period of one half(1/2) hour.

(FF 7). On September 24, 2007, an interest arbitration panel, with David A. Petersen, Esquire as the neutral panel chairman, issued an award, retroactively effective from January 1, 2007 through December 31, 2009. (Petersen I Award) (FF 8). In Petersen I, the panel awarded a one-time bonus of $1200.00 and an additional 1% wage increase to bargaining unit members employed as of May 3, 2004, the date the County filed its petition to vacate the Miles Award, but did not address the one-half hour workday extension or the Association's request for a one-half hour paid lunch. (FF 9).

The Association appealed Judge Millin's Order to the Commonwealth Court, and on May 14, 2008, the Commonwealth Court issued an opinion and order reversing Judge Millin's decision and reinstating the Miles Award. (FF 10). On April 8, 2010, the Supreme Court of Pennsylvania denied the County's Petition for Allowance of Appeal. (FF 11). Thereafter, on or about April 12, 2010, the President Judge of the Court of Common Pleas changed the workday for bargaining unit members from seven-and-one-half hours to eight hours. (FF 12).

On August 12, 2010, an interest arbitration panel, again with David A. Petersen, Esquire as the neutral, issued an interest award (Petersen II Award), retroactively effective from January 1, 2010 through December 31, 2012. The Petersen II Award did not address the one-half hour workday extension. (FF 13).

The Hearing Examiner concluded that the Association's Charge of Unfair Practices was filed within four months of when the Miles Award became enforceable, and thus was timely under Section 1505 of PERA. The Hearing Examiner also determined that the County was properly named as a respondent in the charge, and liable for the unfair practice. Further, the Hearing Examiner held that the County was not entitled to an offset from the back pay due the employes as a result of the intervening Peterson arbitration awards.

On exceptions, the County argues that the Hearing Examiner erred in finding that the Association's Charge of Unfair Practices was timely filed under Section 1505 of PERA. Section 1505 of PERA provides in relevant part that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge." 43 P.S. §1101.1505. The County asserts that under Teamsters Local No. 764 v. Lycoming County, 37 PPER 12 (Final Order, 2006), *affirmed unreported sub nom*, County of Lycoming v. PLRB, No. 474 CD 2007, 38 PPER 178 (Pa. Cmwlth. 2007), in the absence of a stay, an interest arbitration award is immediately enforceable before the Board. Accordingly, the County asserts that under the Lycoming County decision, the statute of limitations for the Association's charge of unfair practices alleging noncompliance with the Miles Award commenced with issuance of the award in 2004, and expired four months thereafter while the County's appeal of the award was pending in the court of common pleas.

Lycoming County is distinguishable, and the unique facts of that case renders it an exception to the general rule. In Lycoming County, the county filed an appeal of an interest arbitration award for its assistant district attorneys and public defenders. In its appeal, the county argued that implementation of the award would require legislative action, and therefore was beyond the power of the arbitrator to award. [1] The union filed a charge of unfair practices concerning the county's refusal to implement the award. The county defended the charge by arguing that implementation would require legislative action, and therefore the award was advisory under Section 805 of PERA. The only issue raised by Lycoming County in both the appeal of the award and the unfair practice charge was whether the interest arbitration award would require legislative action to implement and thus could be deemed advisory under Section 805 of PERA.

In Lycoming County, the Board held that determination of whether an employer properly deems an award advisory under Section 805 of PERA is a question of an unfair practice under the Board's exclusive jurisdiction. Hollinger v. Department of Public Welfare, 469 Pa. 358, 366, 365 A.2d 1245, 1249 (1976).[2] Lycoming County was nothing less than the county seeking to usurp the Board's jurisdiction by seeking a judicial determination of an unfair practice under the guise of an appeal of an interest

[1] In a companion case involving an Act 111 interest arbitration award for county detectives, Lycoming County raised the similar argument that an Act 111 interest arbitration panel could not award pay increases in excess of those budgeted by the County. Lycoming County v. PLRB, 943 A.2d 333 (Pa. Cmwlth. 2007).

[2] Indeed, by the very nature of the proviso, the interest arbitration award under Section 805 must first be final and binding in order for an employer to even assert that an interest award is only advisory. Thus, raising a claim on appeal of the award that an interest arbitration award is advisory under Section 805, as a matter of fact and law, concedes the finality of the award and that there are no appealable issues under narrow certiorari scope of review.

arbitration award. Thus, the Board and Commonwealth Court held that the question of whether Lycoming County committed an unfair practice in declaring the interest arbitration award to be advisory was properly within the purview of the Board, notwithstanding the county's appeal pending in the court of common pleas.

Unlike Lycoming County, the County here has not raised an issue that the Miles Award was only advisory under Section 805 of PERA. Instead, the County had filed a timely appeal of the Miles Award challenging, on constitutional grounds, the arbitrator's jurisdiction to award an eight-hour work day for court-appointed employes. The County's appeal of the award went to the very heart of the merits of that provision of the Miles Award, and did not raise an unfair practice. Accordingly, Lycoming County is distinguishable, and here the general rule enunciated by the Supreme Court and the Board regarding when an interest arbitration award becomes enforceable before the Board governs the commencement of the statute of limitations for purposes of this case.

In PLRB v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978), the Pennsylvania Supreme Court held as follows:

> [W]hen the complainant in an unfair labor practice action charges a refusal ". . . to comply with the provisions of an arbitration award. . .," the Board must determine first if an award exists, second, if the appeal procedure available to the aggrieved party under Pa.R.J.A. 2101 has been exhausted, and third, if the party has failed to comply with the provisions of the arbitrator's decision. Once the appeal procedure provided by Pa.R.J.A. 2101 has been completed (whether by appeal to the Commonwealth Court and petition for allowance of appeal to us or by allowing the time period for appeal to expire without taking any action), the award is final and "deemed binding" for purposes of Section 1301.

Commonwealth, 478 Pa. at 591, 387 A.2d at 479.[3] An exception to the Commonwealth decision arose with the 1987 amendments to the Pennsylvania Rules of Appellate Procedure. In Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 32 PPER ¶ 32102 (Order Directing Remand to Secretary for Further Proceedings, 2001), the Board held as follows:

> The Supreme Court's 1978 decision in PLRB v. Commonwealth, *supra* was fully consistent with then existing Rules of Appellate Procedure, which provided for an automatic supersedeas for political subdivisions appealing arbitration awards ... to the Commonwealth Court. It was therefore logical for the Court to instruct the Board to wait until the aggrieved employer's appeal procedures were exhausted in the arbitration arena. To opine otherwise and permit the order of compliance at an earlier stage, would thereby violate the automatic supersedeas.
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> However, in 1987 the Rules of Appellate Procedure were amended and the amendment to Rule 1736 fundamentally altered the protections provided to employers by the Supreme Court in PLRB v. Commonwealth, *supra*.
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> * * *
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> The note following the rule more fully explains the amendment:
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> > The 1987 amendment eliminates the automatic supersedeas for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.
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> Thus, once an arbitration award has been affirmed by a common pleas court, the award becomes enforceable. The aggrieved employer has been stripped of

[3] For purposes of appellate procedure, there is fundamentally no difference in the analysis between grievance and interest arbitration awards. Fraternal Order of Police Lodge No. 5 v. City of Philadelphia, 39 PPER 9 (Final Order, 2008).

its ability to delay compliance with the award by seeking further redress in subsequent appeals.

City of Philadelphia, 32 PPER at 266-267; City of Philadelphia, 39 PPER at 30; E.B. Jermyn Lodge No. 2 v. City of Scranton, 2006 WL 6824766 (Final Order, 2006); *see also*, City of Scranton v. PLRB, ___ A.3d ____, 2012 Pa. Cmmw. LEXIS 88 (Pa. Cmwlth. 2012) (noting that Board decisions hold that an arbitration award becomes enforceable only after a decision by a common pleas court); North Hills Education Association v. North Hills School District, 38 PPER 78 (Final Order, 2007) (holding that arbitration award became enforceable when court of common pleas affirmed the award).

The Supreme Court's decision in Commonwealth still applies to hold that provisions of an arbitration award that are pending appeal on the merits are not enforceable before the Board. *See e.g.* Cheltenham Township Police Association v. Cheltenham Township, 21 PPER ¶ 21026 (Final Order, 1989) (holding that employer's failure to implement unappealed provisions of an interest arbitration award is an unfair labor practice); Northampton Township Police Association v. Northampton Township, 35 PPER 138 (Final Order, 2004) (same). However, Pa. R.A.P. 1736(b) effectively compels compliance with an affirmed award that is pending a secondary appeal in Commonwealth Court. Thus, in accordance with Commonwealth and Pa. R.A.P. 1736, the Board has consistently held that a charge filed within the statute of limitations following a court of common pleas' affirmance of an arbitration award is timely. However, the Board will dismiss, as premature, a charge alleging a refusal to comply with provisions of an arbitration award that are pending initial first level judicial review, because those provisions are not yet enforceable before the Board.

Here, the County appealed the provision in the interest arbitration award granting an eight-hour work day for Juvenile and Adult Probation Officers to the court of common pleas, arguing on appeal that the provision violated the constitutional separation of powers and Section 1620 of the County Code. Under the Supreme Court's decision in Commonwealth, that provision was therefore not enforceable pending first level review in the court of common pleas.

The court of common pleas did not affirm the Miles Award, but instead vacated the provision awarding an eight-hour work day for court-appointed employes. Thus, upon issuance of the court of common pleas' order, that provision effectively no longer existed, and there was nothing left to be enforced.

The Association appealed to the Commonwealth Court. However, the Association is not a political subdivision, and therefore its appeal could not have effectuated a stay of the common pleas court's order. Pa. R.A.P. 1736(a). Although the Commonwealth Court reinstated the eight-hour work day in the Miles Award, the County filed a Petition for Allowance of Appeal to the Supreme Court. A Petition for Allowance of Appeal is an appeal for purposes of Pa. R.A.P. 1736, Elizabeth Forward School District v. PLRB, 613 A.2d 68 (Pa. Cmwlth. 1992), and the County is a political subdivision. Thus, there was an automatic supersedeas of the Commonwealth Court's reinstatement of the Miles Award pending disposition of the County's Petition for Allowance of Appeal. International Association of Fire Fighters Local 1400 v. City of Chester, 42 PPER 50 (Final Order, 2011).

Accordingly, the eight-hour work day provision of the Miles Award did not become enforceable before the Board until the Supreme Court denied the Petition for Allowance of Appeal, thus exhausting the appellate process and sustaining the Commonwealth Court's reinstatement of the Miles Award. With dismissal of the Petition for Allowance of Appeal on April 8, 2010, the provision awarding an eight-hour work day for Adult and Juvenile Probation Officers under the Miles Award became enforceable against the County. The Association's Charge of Unfair Practices filed on August 5, 2010, within four months of the denial of the Petition for Allowance of Appeal, was therefore timely filed in accordance with Section 1505 of PERA.

The County also argues that the Hearing Examiner erred in holding that "the remedy of backpay" is a separate unfair practice against the Commissioners. The County further asserts that the Hearing Examiner erred in finding that by pursuing appeals of the Miles Award on behalf of the Court of Common Pleas, the Commissioners assumed responsibility for the refusal to implement the Miles Award.

The County's exceptions, however, mischaracterize the unfair practices against the County.[4] The unfair practice alleged here is the County's failure to pay adult and juvenile probation officers eight hours of wages per day as had been directed in the Miles Award.

For purposes of collective bargaining under PERA, court-appointed bargaining units of a County employer have two responsible joint employers, each handling separate aspects of the employer-employe relationship. Ellenbogen v. County of Allegheny, 79 Pa. 429, 388 A.2d 730 (1978). The judges of the County Court of Common Pleas are the principal employer with respect to matters of hire, fire and supervision of court-appointed employes, Jefferson County Court Appointed Employees Association v. PLRB, 603 PA. 482, 985 A.2d 697 (2009); Teamsters Local 771 v. PLRB, 760 A.2d 496 (Pa. Cmwlth. 2000), whereas the County Commissioners are the principal entity with respect to financial matters of wages and benefits. PLRB v. American Federation of State County and Municipal Employees, District Council 84, 515 Pa. 23, 526 A.2d 769 (1987) (AFSCME). Thus, as the Pennsylvania Supreme Court recognized in AFSCME, the commissioners' negotiation of employes' entitlement to pay for time off given to court-appointed employes at the direction of the judge, is strictly a financial matter within the sole purview of the commissioners.

[4] In this regard the County asserts in its exceptions that the Hearing Examiner failed to make findings of fact. We note however that the Hearing Examiner need not render findings on all of the evidence presented, or on matters not pertinent to the disposition of the unfair practice alleged. Page's Department Store v. Velardi, 464 Pa. 76, 346 A.2d 556 (1975); PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942).

Here, as regards the implementation of the Miles Award, there is no dispute that the President Judge of the Court of Common Pleas was the principal with respect to matters of scheduling court-appointed employes, and decided not to have Adult and Juvenile Probation Officers actually work eight hours per day. However, the separate issue involved is the County's failure to pay employes for eight hours per day as set forth in the Miles Award, a financial matter over which the Commissioners were the principal in bargaining, and responsible for implementing as a joint employer of the County's court-appointed employes.[5]

The Board noted in Lebanon County Detectives Association v. Lebanon County, 29 PPER ¶29005 (Final Order, 1997), that where the county commissioners take action with regard to matters of wages, hours and working conditions within their control, a charge alleging the commission of unfair practices is against the county commissioners. Here, separate and aside from the judges' failure to schedule Adult and Juvenile Probation Officers to actually work a full eight hours in a day, there is the concurrent obligation of the County Commissioners to pay those employes eight hours of wages as directed by the Miles Award. Accordingly, the Hearing Examiner did not err in finding that the County failed to pay court-appointed employes wages for eight hours as directed by the Miles Award.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the County violated Section 1201(a)(1) and (5) of PERA, and did not abuse his discretion in directing the County to pay back pay as a remedy for the unfair practice.[6] Accordingly, the Board shall dismiss the County's exceptions and make the PDO final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Washington County are hereby dismissed, and the February 16, 2012 Proposed Decision and Order, be and hereby is made absolute and final.

[5] As noted by the Hearing Examiner, the County Commissioners prepare the budget, allocate funds to the various departments, including the Court of Common Pleas, have authority to transfer funds within the budget, and are ultimately the County agent responsible for fulfilling the financial obligations of the County. *See* County of Allegheny v. Allegheny Court Association of Professional Employees, 517 Pa. 505, 539 A.2d 348 (1988).

[6] Upon review of the record, the Hearing Examiner's finding that the Peterson arbitration awards did not address or affect the remedy for the eight-hour work day established by the Miles Award, is supported by substantial evidence of record and will not be disturbed.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, James M. Darby, Member, and Robert H. Shoop, Jr., Member, this nineteenth day of June, 2012. 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.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WASHINGTON COURT ASSOCIATION OF PROFESSIONAL EMPLOYEES AFFILIATED WITH AFSCME DC 84	:	
	:	Case No. PERA-C-10-283-W
v.	:	
WASHINGTON COUNTY	:	

AFFIDAVIT OF COMPLIANCE

Washington County hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has ceased and desisted from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act; that it has ceased and desisted from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in an appropriate unit; that it has ceased and desisted from refusing to pay bargaining unit employes for one-half-hour of paid time per workday shift as required by the Miles Award beginning April 5, 2004 through April 12, 2010; that it has paid bargaining unit employes for one-half hour of paid time per workday shift between April 5, 2004 and April 12, 2010, including employes who worked during that period of time who began after April 5, 2004 and left before April 12, 2010; that the County calculated the relief based on the period of time that employes were employed between the bookends of April 5, 2004 and April 12, 2010; that it has paid interest at the simple rate of six percent per annum on any and all backpay due bargaining unit employes from April 5, 2004 through April 12, 2010, including employes who worked during that period of time who began after April 5, 2004 and left before April 12, 2010; that the County calculated the interest based on the period of time employes were employed between the bookends of April 5, 2004 and April 12, 2010; that it has posted a copy of the Final Order and the Proposed Decision and Order as directed; and that it has served a copy of this affidavit on the Association at its principal place of business.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public