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	:	

PROPOSED DECISION AND ORDER

On August 5, 2010, the Washington Court Association of Professional Employees (Union), filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Washington County (County) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). The Union specifically alleged that the County refused to retroactively implement a 2004 interest –arbitration-award provision that extended the workday shift by one-half hour of paid time.

On August 30, 2010, the Secretary of the Board issued a letter requesting that the Union amend the charge to include a copy of the interest award. On September 7, 2010, the Union filed an amended charge including the requested award. On September 29, 2010, the Secretary issued a complaint and notice of hearing, designating a hearing date of February 4, 2011, in Harrisburg. By letter dated October 9, 2010, I granted the parties' joint request to change the location of the hearing to Pittsburgh and rescheduled the hearing to February 9, 2011. At the February 9th hearing in Pittsburgh, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both the County and the Union submitted post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (In the Matter of the Employes of Washington County, PERA-U-04-344-W (PERA-R-89-544-W)).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (In the Matter of the Employes of Washington County, PERA-U-04-344-W (PERA-R-89-544-W)).

3. Between March 31, 2004 and April 5, 2004, an interest arbitration panel, with Christopher E. Miles, Esquire as the neutral chairman, signed an interest award (Miles Award) which was made effective January 1, 2004 through December 31, 2006. (N.T. 17; Union Exhibit 1).

4. Page four of the Miles Award addresses Article VII of the parties' then existing collective bargaining agreement (CBA) (in effect from January 1, 2002 through December 31, 2003) titled "HOURS OF WORK AND MEAL PERIODS." Article VII, Section 3 of the CBA 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. The Miles Award changed the language of Article VII, Section 3 to provide as follows: "The work shift shall consist of eight (8) work hours within a work day of Juvenile and Adult probation officers." (N.T. 17, 43-44, 49-50; Union Exhibits 1, 2 & 3; County Exhibits 4 & 8).

5. The President Judge of the Washington County Court of Common Pleas at the time notified the County that the Court refused to implement the shift provisions of the Miles Award. The County paid for the appeals. (N.T. 50-52, 68-69, 73; County Exhibit 5, p. 62).

6. On May 3, 2004, the County petitioned the Court of Common Pleas of Washington County to vacate the Miles Award, initially challenging multiple provisions. The parties resolved all but one issue which was the provision extending the work day of bargaining unit members by one-half hour of paid time. 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. (N.T. 18-19, 70-71, 74; Union Exhibits 2, 3 & 5).

7. In preparing for interest arbitration after Judge Millin's order, the Union presented the County with its issues in dispute. Referring to Article VII, the Union 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:
>
> All employees shall be granted a paid lunch period of one half(1/2) hour.

(N.T. 83; County Exhibit 1).

8. On September 24, 2007, an interest arbitration panel, with David A. Petersen, Esquire as the neutral panel chairman, issued an interest award (Petersen I Award), retroactively effective from January 1, 2007 through December 31, 2009. (N.T. 22, 26; Union Exhibit 6).

9. 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. Petersen I did not address the one-half hour workday extension or the Union's request for a one-half hour paid lunch. (N.T. 85; Union Exhibit 6, ¶ 3).

10. On May 14, 2008, the Commonwealth Court of Pennsylvania issued an opinion and order reversing Judge Millin's decision, reinstating the Miles Award. (N.T. 19; Union Exhibit 3).

11. On April 8, 2010, the Supreme Court of Pennsylvania denied the County's Petition for Allowance of Appeal. Throughout the appeals, the

County was appealing on behalf of the Court of Common Pleas. (N.T. 20; Union Exhibit 4; County Exhibit 5, pgs. 60-62).

12. On or about April 12, 2010, the County changed the workday for bargaining unit members from seven-and-one-half hours of paid work time to eight hours of paid work time. (N.T. 39-40, 54, 105-106, 113).

13. On August 12, 2010, an interest arbitration panel, again with David A. Petersen, Esquire as the neutral panel chairman, issued an interest award (Petersen II Award), retroactively effective from January 1, 2010 through December 31, 2012. Petersen II did not address the one-half hour workday extension. (N.T. 24; Union Exhibit 7).

DISCUSSION

1. Timeliness

The Union claims that the County repudiated the Miles Award by refusing to retroactively implement the increased paid time provisions contained therein. (Union's Post-hearing Brief at 4). The material facts in this case are not in dispute. The County's appeals were exhausted on April 8, 2010, when the Supreme Court of Pennsylvania denied the County's petition for allowance of appeal. On April 12, 2010, the County prospectively implemented the increased paid time provision from the Miles Award. The County concedes that it has not applied the Miles Award retroactively, but it presents several legal defenses in support of its position that the charge should be dismissed.

In unfair practice cases alleging a refusal to comply with an interest arbitration award, the Board must determine the following: (1) whether there was an award; (2) whether the award is enforceable; and (3) whether there was compliance with the award. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 39 PPER 9 (Final Order, 2008). Whether an award is enforceable depends on the posture of the case. In City of Philadelphia, the Board stated the following:

> In addressing whether there has been an unlawful failure to comply with an arbitration award, the Board generally does not review the merits of the awards. However, the Board will review the issues raised in a petition to vacate an arbitration award filed with the court of common pleas to determine what elements of the award may have been challenged for purposes of appellate review, and whether provisions of the award have been stayed.

City of Philadelphia, 39 PPER at 32 (citations omitted). Unappealed interest-award provisions remain enforceable at the expiration of the initial appeal period, for common pleas review involving local governments, and Commonwealth Court review involving the Commonwealth. Derry Township v. PLRB, 571 A.2d 513 (Pa. Cmwlth. 1989); Cheltenham Township Police Ass'n v. Cheltenham Township, 21 PPER ¶ 21026 (Final Order, 1989).

Under Rule 1736 of the Pennsylvania Rules of Appellate Procedure, an award that has been appealed to a court of common pleas is enforceable after it has been affirmed by the common pleas court and appealed (or not appealed) to the Commonwealth Court. City of Philadelphia, 39 PPER at 30-31. Of course, if the common pleas court reverses the award, as here, the award is no longer enforceable by the Board, regardless of whether it is appealed to Commonwealth Court; the award is in effect stayed by the vacatur. Also, an appeal from the Commonwealth Court to the Supreme Court (where the common pleas court vacated an arbitration award) imposes an automatic stay and the award remains unenforceable. International Association of Fire Fighters Local 1400 v. City of Chester, 42 PPER 50 (Final Order, 2011)(citing Elizabeth Forward School District v. PLRB, 613 A.2d 68 (Pa. Cmwlth. 1992)). Indeed, the County acknowledges that an automatic supersedeas prevented enforcement of the Miles Award during the secondary appeals. (N.T. 80-81; County Exhibit 6 at 16).

The County seemingly does not dispute the satisfaction of the three-part test for determining whether an unfair practice has been committed for refusing to comply with an arbitration award. An award exists in the form of the Miles Award, which provides that the paid time in a workday for bargaining unit members would increase from 7.5 hours per workday to 8 hours per workday. On April 8, 2010, the Supreme Court of Pennsylvania denied the County's petition for allowance of appeal, which exhausted the County's appeals and finalized the Commonwealth Court's May 14, 2008, order reinstating the Miles Award and reversing the Washington County Court of Common Pleas. On April 12, 2010, the County increased the workday by one-half hour of paid time to an 8-hour workday. The County has not complied with the retroactivity of the Miles Award, and it has not paid the bargaining unit members for the one-half hour of paid time that they were not permitted to work during the pendency of the appeals.

The County instead argues that the Union's charge is untimely filed because, under the second prong, the Miles Award was enforceable almost six years before the Union filed the charge. The County argues that there was no stay in effect during the three years that the petition to vacate the Miles Award was pending in the Washington County Court of Common Pleas. Therefore, contends the County, the Miles Award was enforceable and the Union's four-month statute of limitations under PERA expired during that time period.

Under Section 1505 of PERA, a charge of unfair practices must be filed within four months of the date the complainant knew or should have known of the acts alleged to constitute the unfair practice. Eisenhart v. Eastern Lancaster County School District, 40 PPER 11 (Final Order, 2009). For purposes of enforceability, interest arbitration awards and grievance arbitration awards are treated the same. City of Philadelphia, 39 PPER at 31. Although the unappealed provisions of an interest arbitration award are immediately enforceable during common pleas review, Derry Township, supra, the provisions on review are not enforceable under the circumstances in this case.

The County cites to the Board's and the Commonwealth Court's decisions in Teamsters Local No. 764 v. Lycoming County, 37 PPER 15 (Final Order, 2006), aff'd, sub nom., 943 A.2d 333 (Pa. Cmwlth. 2007), for the proposition that there is no stay of an interest arbitration award pending

review on appeal before a county court of common pleas, unless a stay is specifically applied for and granted. The County also cites Temple University Hospital Nurses Ass'n v. Temple University Health System, 41 PPER 148 (Final Order, 2008), for the proposition that arbitration awards are not stayed pending appeal and the old rule that awards are unenforceable until appeals are exhausted is no longer the law.[1] The County emphasizes the Lycoming County holding that the Board has jurisdiction to enforce interest awards while such awards are pending before the common pleas court. Accordingly, maintains the County, the four-month limitation period began running on April 5, 2004 and, because neither party obtained a stay from the Washington County Court of Common Pleas, the limitations period expired while the Miles Award was pending before the Common Pleas Court, which did not issue a decision until April 19, 2007.

The Union parries the County's timeliness argument on several fronts. First, the Union argues that there are no reported cases in which the Board has dismissed, as untimely, a charge contesting the failure to implement a grievance or interest arbitration award where it has not been filed during the pendency of review before the common pleas court. (Union Brief at 10). The Union specifically argues that "[q]uite to the contrary, the Board has repeatedly enforced grievance and interest arbitration awards where the unfair labor practice charge was filed within the pertinent limitations period following a court of common pleas' affirmance of the award on appeal—often many months after the award in question was issued." (Union's Post-hearing Brief at 10-11). The Union contends that "[t]he Board's consistent practice of enforcing arbitration awards which have been confirmed by a court of common pleas in charge proceedings initiated more than four months after the issuance of a PERA award . . . evidences the Board's legal view that awards generally are not enforceable during the pendency of the appeal to the court of common pleas." (Union's Post-hearing Brief at 11).

The Union further distinguishes the Lycoming County cases involving both Act 111 and PERA interest arbitration awards. In each case, argues the Union, "the County appealed the economic terms of the awards arguing, in essence, that the arbitration panel erred in awarding 'more than the County desired.'" (Union's Post-hearing Brief at 13)(quoting Lycoming, 37 PPER at 48 and 37 PPER at 40). The Union maintains that the Board in those cases held that Lycoming County did not enjoy a stay during the pendency of the appeal of the award in common pleas because the appeal involved "'no arguable claim of error . . . within the jurisdiction of the court.'" (Union's Post-hearing Brief at 12-13)(quoting Lycoming, 37 PPER at 48 and 37 PPER at 40).

The Union's first point is supported by the Board's language in City of Philadelphia, 39 PPER at 31. In that case, the Board reviewed the amendment to Rule 1736 of the Pennsylvania Rules of Appellate Procedure and the subsequent cases resulting in changes to the Board's law regarding

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[1] In Temple, however, the Board held that a grievance arbitration award that had already been affirmed by the court of common pleas and was on appeal before the Commonwealth Court was enforceable under Rule 1736 of the Pennsylvania Rules of Appellate Procedure. I, therefore, find Temple to be inapposite and unsupportive of the County's position here.

the enforcement of arbitration awards. The Board noted that the old rule in PLRB v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978), holding that awards were not enforceable until the appeals were exhausted, is no longer good law. Indeed, the City of Philadelphia Board stated that, since the 1987 amendment, it "has consistently entertained unfair labor practice charges to enforce arbitration awards pending appellate review in Commonwealth Court." City of Philadelphia, 39 PPER at 31 (emphasis added). This language supports the Union's position that the Board generally does not start the clock for statute of limitations purposes while awards are pending in common pleas.

Additionally, I have not found cases where the Board has dismissed as untimely cases filed after the court of common pleas has affirmed an award. Indeed, as the Union emphasizes, there are many cases where the Board has enforced interest arbitration awards affirmed by courts of common pleas. As timeliness is a matter of subject matter jurisdiction, the Board would have an obligation to raise jurisdiction sua sponte and has not done so. As the Board stated in Port Authority of Allegheny County v. Amalgamated Transit Union Local 85, 34 PPER 100 (Final Order, 2003), a challenge to the legality of the award itself or the jurisdiction of the arbitration panel is within the exclusive jurisdiction of the judiciary. The Board is simply without authority to enforce an interest award where a legitimate challenge to the legality of the award or the jurisdiction of the arbitration panel has been appealed to the common pleas court and the court has yet to issue a judicial determination. Id. at 314; Washington Arbitration Case, supra.

Regarding its second point, the Union recognizes that the Lycoming Board cited to Cheltenham Township, supra, for the proposition "'that as a general matter, there is no automatic supersedeas of an interest arbitration award on direct appeal to the court of common pleas, and absent the grant of a stay of the award by the court, the award is enforceable before the Board.'" (Union's Post-hearing Brief at 13)(quoting Lycoming County, 37 PPER at 48 (citing Cheltenham Township, supra)). However, argues the Union, these holdings are limited, and interest awards are only enforceable while pending in common pleas when the issues before the common pleas court are frivolous, not being reviewed by the common pleas court or otherwise not within the jurisdiction of the common pleas court. (Union's Post-hearing Brief at 13). I agree with the Union.

In Cheltenham, the Board specifically held that an interest arbitration panel is neither an administrative agency nor a court. Thus, appeals from such panels constitute first level judicial review, not second level review, and do not qualify for an automatic stay under Pa. R.A.P. 1736. However, the significant, distinguishing factor in Cheltenham was that the Board and the hearing examiner specifically ordered the public employer to implement the uncontested provisions of the interest award while the contested provisions were pending review. The Cheltenham Board did not take jurisdiction to enforce the contested provisions of the interest award in that case.

Cheltenham is consistent with Derry Township, supra, wherein the Commonwealth Court held that the unappealed provisions of an interest arbitration award are final, binding and immediately enforceable.

Indeed, the Board, in City of Philadelphia, 32 PPER ¶ 32102 (Order Directing Remand to Secretary for Further Proceedings, 2001), stated that it is only "[o]nce an arbitration award has been affirmed by a common pleas court, [that] the award becomes enforceable." Id. at 267.

The Board's decision, and the Commonwealth Court's affirmance, in Lycoming County are also consistent with Cheltenham and Derry Township. Although the Lycoming Board held that the appealed provisions of Act 111 and PERA interest awards were immediately enforceable by the Board, the Board predicated its decision on the fact that the county's challenge was frivolous, as noted by the Union in its post-hearing brief. In essence, the Lycoming Board concluded that there was no need to wait for a judicial determination because the county's appeal was so ridiculous that the court, as a matter of law, would have to uphold the challenged provision.

In both the Act 111 and PERA cases, Lycoming County decided to accept the non-economic terms of two interest awards, but it refused to implement the wage increases ordered by both awards where it had more than enough money in a contingency fund to cover the wage increases. In the case involving the PERA interest award, Lycoming County argued (contrary to long standing, well-established, and consistent case law) that transferring the money from the contingency fund required legislative action rendering the award advisory only. It was in this context that the Board held that the hearing examiner was not in error when he enforced the interest award while it was pending review by the common pleas court. Significantly, the Board opined as follows:

> Ostensibly, in the county's view, an unpopular interest award issued under PERA can be avoided by the filing of an unmeritorious appeal of the award and as long as the appeal is pending in that court, the County can avoid all the undesirable portions of the award. Clearly, the arbitration panel had authority to award the most basic matter negotiable under Section 701 of PERA (pay) in excess of the amount previously offered by the County, and the County's arguments amount to nothing more than a protest that the arbitration panel awarded more than the County desired. **Accordingly there is no arguable claim of error in the award within the jurisdiction of the court and it was not error for the hearing examiner to not hold the charge in abeyance while the County's appeal of the award is pending in the Court of Common Pleas**.

Lycoming, 37 PPER at 40 (emphasis added).

The scope of review of an interest award under PERA is the same as that of an Act 111 interest award and that scope of review is limited to narrow certiorari. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 725 A.2d 206 (Pa. Cmwlth. 1999). The narrow certiorari scope of review limits a court to reviewing only the following: (1) the question of jurisdiction; (2) the regularity of the proceedings before the agency; (3) questions of excess in exercise of powers; and (4) constitutional questions. Id. (citing Washington Arbitration Case, 436 Pa. 168, 174, 259 A.2d 437, 441 (1969)). Only a constitutional court, and

not this Board, can determine whether the petitioner seeking to vacate the award has established one of these elements and, therefore, an appealed arbitration award is enforceable only after the court of initial judicial review affirms the award. Washington Arbitration Case, supra; City of Philadelphia, supra. The Board would be usurping the role and jurisdiction of the courts in reviewing arbitration awards if it enforced such awards before a court has made an initial determination regarding the legality of the award and/or the authority of the arbitration panel that issued it.

The Board has consistently held that there is no automatic judicial stay in effect of the uncontested provisions of an interest arbitration award during the pendency of a petition to vacate the award before a court of common pleas, Northampton Township Police Benevolent Ass'n v. Northampton Township, 35 PPER 138 (Final Order, 2004); Cheltenham, supra. However, the Board's policy has also been to follow the Supreme Court's mandate that an interest award is not enforceable by the Board until there has been a judicial determination regarding the legal challenges before the court, except where the appeal is frivolous. This Board is simply without jurisdiction to enforce an arbitration award subject to judicial review until a court makes an initial determination concerning its validity. The Lycoming County exception to this rule applies where an appeal is clearly without merit and contrary to law such that, under the court's limited scope of review of interest awards, the court's pending decision is a foregone conclusion. Accordingly, awaiting such a court order would be unnecessary and contrary the policy favoring the expedient disposition of labor disputes through interest arbitration. Id.; Washington Arbitration Case, supra. The Lycoming County exception, however, is not present under the circumstances here.

In this case, the County appealed the Miles Award to the Washington County Court of Common Pleas where it remained pending review for almost three years (i.e., from May 3, 2004 until April 19, 2007) until Judge Millen issued his order vacating the Miles Award. On appeal to common pleas, the County initially challenged multiple provisions of the Miles Award, but only the challenge to the provision extending the work day of bargaining unit members by one-half hour of paid time remained before the court for disposition. The County's petition to vacate the Miles Award specifically challenged the legality of the workday extension and the authority of the arbitration panel to extend the workday arguing that it violated the doctrine of separation of powers by encroaching on the court's authority to supervise employes. This appeal presented a legitimate challenge to the Miles Award within the exclusive jurisdiction of the court of common pleas. Before a judicial determination was made on the workday extension provision contained in the Miles Award, the Board did not have jurisdiction to enforce that provision, and a charge would have been premature.

Once, Judge Millin vacated the Miles Award in his order dated April 19, 2007, the Union did not have a workday extension to enforce until the Commonwealth Court reversed the common pleas order and reinstated the workday extension provision in the Miles Award. However, the County appealed the Commonwealth Court's decision to the Supreme Court of Pennsylvania which imposed an automatic supersedeas. City of Chester, supra. Accordingly, the Miles Award was not enforceable by the Union

until the Supreme Court denied the County's petition for allowance of appeal on April 8, 2010 and after the Union knew or should have known that the County refused to pay the backpay owed under the workday extension provision. Accordingly, the charge was timely filed on August 5, 2010.

2. Proper Respondent

The County also argues that the Board of County Commissioners is not the proper respondent because the Commissioners have no control over the bargaining unit employes and the implementation of the Miles Award. The Union, therefore, should have charged the Court, and not the Commissioners. The County quotes from the Board's decision in Lebanon County, 29 PPER ¶ 29005 (Final Order, 1997), which examines the joint employer relationship between county commissioners and various row officials. In Lebanon County, the Board dismissed a charge filed against the county stating as follows:

> Although Act 115 designates the County Commissioners as the managerial representative, they are not the operative public employer of the employees as regards, hire fire and direct issues and, therefore, the entity which had the power to take the action, the row official, is not the party Act 115 designates as the bargaining agent. It would be absurd to regard the County Commissioners as the respondent in such an unfair practice setting even though Act 115 designates the commissioners as the managerial representative for purposes of collective bargaining.

Lebanon County, 29 PPER at 12. The County also cites to AFSCME District Council 87 v. Luzerne County, 35 PPER 126 (Final Order,2004) and Teamsters Local 771 v. PLRB, 760 A.2d 496 (Pa. Cmwlth. 2000), which are consistent with the Board's analysis and conclusion in Lebanon County, supra.

The County emphasizes that it is necessary to charge the actor that committed the unfair practice. In Teamsters, the Court administrator for Lancaster County met with a court employe about a complaint he received. The employe requested a Weingarten representative and the administrator refused. The employe thereafter refused to answer any of the administrator's questions without a union representative. The Lancaster County Court Administrator suspended the employe for refusing to answer his questions. The union in Teamsters charged, as the respondent, the Lancaster County Commissioners and not the Court or the Court Administrator. In its post-hearing brief, the County relies on the Commonwealth Court's decision in Teamsters, supra, which held that charging the Lancaster County Commissioners instead of the Court Administrator would render the Board's remedy ineffectual because the Board of Commissioners is simply without authority to direct court personnel actions, as required by a cease-and-desist order or an order reversing discipline. Fundamentally, the Board of Commissioners is simply not the responsible actors and is unable to effectuate the ordered remedy in most unfair practice cases. Rather, an independently elected county official, having the managerial control over the affected employes, is the

responsible actor who has the authority to effectuate remedies ordered by the Board.

The County maintains that to order the Commissioners to pay money to the Court's employes will have no effect on the Court's budget and will hold responsible an entity (i.e., the Board of Commissioners) that was powerless to affect the action complained of. To conclude that the payment of money can come from the County treasury and not the Court's budget, argues the County, would render the above cited cases meaningless because "that reasoning could be argued in every case. (County's Post-hearing Brief at 10). The Court took the action complained of in this case, not the County and, therefore, argues the County, the Court is the only proper respondent, and the charge against the County must be dismissed. I disagree.

The County has accurately communicated the case law regarding the necessity of a complainant to charge the elected county official/joint employer that engaged in the unfair practice of which a union complains. However, I find those cases to be inapposite here. This case does not involve an unfair practice charge alleging misconduct on the part of a county joint employer where backpay is part and parcel of remedying the unfair practice. In this case, the unfair practice charge is the failure to pay backpay to employes resulting from the Court's refusal to implement the Miles Award over six years ago. Throughout six years of litigating the Miles Award, the County, not the Court, funded the litigation and used its Special Labor Counsel to challenge the Miles Award on behalf of the Court. On April 12, 2010, the Court complied with the award prospectively. The retroactivity of the Miles Award is purely a funding issue and not a hire-fire-direct issue. The Court, therefore, has already satisfied its joint employer and managerial role in implementing the change in the paid workday shift.

Although the County could not implement the workday extension, it could certainly fund the backpay owed to employes because the Court refused to implement it. Special Counsel for the County stated that the County's position was that the County was stuck with the Court's decision not to increase the paid workday. (N.T. 73). The County has represented to the Union, throughout six years of litigating the Miles Award, that the County was bearing the financial burden of the Court's refusal to implement the workday increase provision out of the County treasury and not the money allocated to the Court in the Court's budget. Clearly, the County pays the Court's bills and expenses. Now the County wants to represent during this unfair practice litigation that it is not responsible for paying for the Court's actions. In this regard, contrary to the County's argument, the Board is not imposing responsibility on the County, rather the County has already taken that responsibility and is capable of perfecting the make-whole relief sought here.

The County argues that any backpay liability must come from the Court's budget. However, the County issues payroll and compensation payments for all County employes from its treasury. Court employes are not paid from a Court treasury; they are paid from the County treasury. The fact that the Court's payroll is part of the Court's budget is merely an accounting tool for allocating money from the County treasury for Court expenses determined by the Court. Unlike the cases cited by the County,

where remedying the unfair practice charge involves cease and desist, rescinding discipline, reinstating an employe, work or the status quo ante, remedying the unfair practice charge in this case does not require the Court to exercise its managerial control over hire-fire-direct matters. Therefore, where, as here, a Union files an unfair practice charge seeking a monetary remedy only involving County government, the Board of County Commissioners is a proper respondent. Accordingly, ordering the County respondent to pay the backpay liability instead of the Court does not, as argued by the County, render the Teamster line of cases meaningless because "that reasoning could be argued in every case." (County's Post-hearing Brief at 10). As emphasized above, the facts and circumstances here are not analogous to "every case" and do not involve remedies that impact hire-fire-direct matters. Moreover, the County treasury pays expenses and liabilities incurred by its joint employers regardless of the pre-determined budgetary allocations. The County is capable of and responsible for administrative transfers between budgetary line items for unforeseen, unanticipated and unbudgeted costs, such as wage increases required by interest arbitration, and, as seen here, the Court's litigation costs and backpay liability.

3. Backpay Offset

As part of its timeliness argument, the County further seems to argue that the Union received an offset for the lost one-half hour of paid work time in the Petersen I Award. The County specifically argues that the Union did not file a charge between April 2004 and April 2007 for the following reasons:

> presumably at least in part because it was busy using the issue of the "lost ½ hour" to convince Arbitrator Petersen to give the employees higher wages. That tactic worked, and the Union got an extra percent in base pay and $1,200.00 for each of its employees, a task that would have been more difficult if it had a pending unfair practice charge over the same issue.

(County's Post-hearing Brief at 16). The County seems to argue that the Union would receive a windfall if the County were ordered to pay the employes for the one-half hour of paid work time that they lost during the six years that the Court refused to implement the Miles Award because the employes have received a negotiated settlement for the lost one-half hour.

The problem with the County's argument is that the parties did not negotiate a settlement of the Miles Award. Both parties continued to litigate the Miles Award up to the Supreme Court. Clearly, both parties were of the position that the Miles Award, if upheld by the courts, which it was, governed the employes' terms and conditions of employment even after the Petersen I Award provided for the one-time bonus. The record does not show that, at any time, the additional wage increase and/or the one-time bonus was a quid pro quo for (or settlement of) the retroactive losses sustained by refusing to implement the Miles Award. Absent evidence of an express settlement eliminating the retroactive application of the Miles Award's increase paid time provision, either as part of Petersen I, Petersen II or a voluntarily agreement between the parties, I

cannot conclude that Petersen I settled or mooted the retroactive application of the additional paid one-half hour per workday provision.

In City of Philadelphia, supra, the Board affirmed a hearing examiner's determination that, in unfair practice cases where a charge alleging the refusal to comply with an interest arbitration award is sustained, the proper remedial determination is to order the employer to pay the union the amounts required by the award calculated from the date of the award to the date upon which the employer complied or payment is made. In this case, the County owes bargaining unit members for one-half hour of lost paid time for each workday shift from the date of the Miles Award, April 5, 2004, to the date the County increased the work day for bargaining unit members, April 12, 2010. Obviously, employes who were not employed on the date of the Miles Award will receive lost wages from their beginning date of employment with the County to April 12, 2010, and employes who have since left County employment are owed from April 5, 2004, to their last day of employment, if prior to April 12, 2010.

CONCLUSIONS

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

1. The County is a public employer within the meaning of Section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The County has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the County shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

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

discussing of grievances with the exclusive representative.

3. Cease and desist 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, including employes who began employment subsequent to April 5, 2004 and employes who were employed during that time who have since left;

4. Take the following affirmative action:

(a) Immediately pay bargaining unit employes for all lost wages, leave accrual and pension contributions for one-half hour 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. The County shall calculate the relief based on the period of time that employes were employed between the bookends of April 5, 2004 and April 12, 2010;

(b) Pay 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. The County shall calculate the interest based on the period of time employes were employed between the bookends of April 5, 2004 and April 12, 2010;

(c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

(d) 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 days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this Sixteenth day of February, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

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 this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and that it has served a copy of this affidavit on the Union 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