COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY DETECTIVES ASSOCIATION	:	
v.	:	Case No. PF-C-11-173-E
COUNTY OF BUCKS AND THE OFFICE OF THE DISTRICT ATTORNEY OF THE COUNTY OF BUCKS	:	

PROPOSED DECISION AND ORDER

On December 23, 2011, the Bucks County Detectives Association (Union), filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the County of Bucks and the Office of the District Attorney (collectively "County") violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Union specifically alleged that the County had failed and refused to implement all of the terms of an interest arbitration award issued in November, 2011.

On January 27, 2012, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of June 18, 2012. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed 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 and political subdivision under Act 111, as read in **pari materia** with the PLRA. (N.T. 4).

2. The Union is a labor organization under Act 111, as read in **pari materia** with the PLRA. (N.T. 4).

3. There are two groups of County employes for purposes of medical insurance benefits. (N.T. 23-24, 36).

4. All County employes receive major medical coverage from one of three plans: the HMO; the PPO; or the POS. Prescription, vision, dental and disability are separate and distinct from the three major medical plans and are not covered by those plans. Prescription, vision, dental and disability are either provided to employes by their union or by the County. (N.T. 23-25, 36).

5. The Bucks County Detectives receive coverage from the County for prescription, vision, dental and disability, along with all other management and non-union employes. (N.T. 34, 36).

6. The County hired a consultant, Charon Planning, to develop three scenarios for changing health care benefit costs. The first scenario maximized the value of coverage; the second minimized health care plan changes; and in the third, the HMO provided low co-pays. (N.T. 26-27; Joint Exhibit 1-E).

7. Employes who began employment with the County prior to 2007 are entitled to have their choice of the HMO, PPO or POS plans. The employes who began employment with the County in 2007 and after must have the HMO. (N.T. 27-28).

8. All County employes in the County-provided prescription plan receive the same prescription plan and benefits, regardless of whether the employes have the HMO, PPO or POS for major

medical. The County provided prescription plan is a stand-alone plan that is not a component of or related to any of the three major medical plans. (N.T. 27-28, 37).

9. There is only one prescription plan for every employe receiving County-provided prescription benefits, regardless of whether the employe is management, non-union or union. (N.T. 32-33).

10. On January 1, 2011, the County implemented major medical health plan changes and prescription plan changes for non-union and management employes.

11. The parties participated in two interest arbitration hearings in 2011, for the bargaining unit of Detectives; one in January and another in April. (N.T. 10).

12. During the second day of hearing, the County presented a three-scenario summary to the panel of arbitrators outlining the manner by which the County could save money on health plans. (N.T. 13-15; Joint Exhibit 1-E).

13. On November 18, 2011, an interest arbitration panel, with Walt De Treux, Esquire serving as the neutral panel member, issued an interest arbitration award (De Treux Award). (N.T. 17; Joint Exhibit 3).

14. Paragraph 5 of the De Treux Award provides, in pertinent part, as follows:

> 5. Article 6, Hospital and Health Coverage
>
> a. Effective January 1, 2012, all bargaining unit members shall receive health insurance coverage under the following plans:
>
> For all bargainbing unit employees enrolled in an HMO-Keystone HMO C2-F1
>
> For all bargaining unit employees enrolled in a POS plan-Keystone POS C1-F1-01
>
> For all bargaining unit employees enrolled in a PPO plan–Personal Choice PPO C3-F1-01
>
> b. Effective January 1, 2012, bargaining unit members who opt out of insurance coverage shall receive a payment of $2500 per year, pursuant to the County's opt out policy.
>
> c. Effective upon issuance of this Award, Article 6, Section 3 [pertaining to retirees] shall be amended to include vision, dental and prescription benefits.
>
> d. Effective upon issuance of this Award, Article 6, Section 3(c)(1) shall be amended to read as follows:
>
> . . . .
>
> (Joint Exhibit 3, ¶ 5).

15. The De Treux Award does not explicitly reference changes to the prescription plan for bargaining unit Detectives. (N.T. 38; Joint Exhibit 3).

16. The Union's specification of facts, attached to its charge of unfair labor practices, contains five paragraphs of allegations and provides, in pertinent part, as follows:

2. On November 18, 2011 an interest arbitration panel convened pursuant to the provisions of Act 111 issued its award providing for the terms and conditions of employment for detectives employed by the county for the period of January 1, 2011 through December 31, 2013. A true and correct copy of the Award is attached as Exhibit 1.

3. The County did not file an appeal to this award.

4. To date, the County has failed and refused, and is failing and refusing, to fully implement all of the terms of the Award.

5. By the above acts, the County has violated the aforesaid provisions of the Act. As the Award involves the payment of monies, interest is specifically request[ed].

(Specification of Facts/Charges, ¶s 2-5)

DISCUSSION

There are two issues presented for consideration: (1) Whether the Board should dismiss the Union's charge, where the Detectives' prescription plan changes, complained of at the hearing, were not explicitly referenced in the specification of charges; and (2) if not, whether the County engaged in unfair labor practices by changing the prescription plan for the Detectives, where the De Treux Award does not expressly reference a prescription plan change.

The County argues in its post-hearing brief that the charge should be dismissed for two reasons. First, argues the County, the charge cannot pertain to the prescription plan changes because the County did not implement those changes until after the charge was filed. (County's Post-hearing Brief at 5-6). Secondly, the County maintains that the charge alleges a failure to implement parts of the De Treux Award (i.e., as of the date of the filing of the charge) whereas at the hearing the Union complained of the County's unilaterally implementing changes to the prescription plan. (County's Post-hearing Brief at 5-7). A unilateral change, argues the County, is not a failure to implement the express provisions of the De Treux Award. (County's Post-hearing Brief at 5-7).

As properly emphasized by the County in its brief, Section 95.31(b) of the Board's regulations provides that a charge of unfair labor practices shall include, **inter alia**, the following:

> (3) A clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the act alleged to have been violated.

34 Pa. Code § 95.31(b)(3). In applying this regulatory provision, the Board has consistently held the following regarding the specificity of claims and allegations sought to be remedied in a charge:

> We are fully cognizant of due process considerations which arise out of the processing of unfair practice charges. Charges must be sufficiently detailed so as to put a respondent on notice of the specific conduct alleged to have been in violation of the Act, thereby allowing adequate opportunity to prepare and present the defense. Accordingly, **a charging party is limited to the presentation of evidence as to the specific allegations contained in the charge as timely amended**.

Iroquois Education Ass'n v. Iroquois School District, 37 PPER 167 (Final Order, 2006)(emphasis added)(quoting **Lawrence County**, 12 PPER ¶ 12312 (Final Order, 1981), **aff'd**, 469 A.2d 1145 (Pa. Cmwlth. 1983) and citing **Independent State Store Union v. Commonwealth, Liquor Control Board**, 22 PPER ¶ 22009 (Final Order, 1990)).

To properly place the County on notice, and thereby comply with fundamental principles of due process, the Union should have at least mentioned the unilateral changes to the prescription plan in a charge seeking redress of the same. The Union could not have been contemplating the January 2012 prescription plan changes when it filed the charge in December 2011. The Union, therefore, was not complaining of the prescription plan changes in its charge and failed to place the County on notice that it sought redress for those prescription plan changes. Indeed, pursuant to **Iroquois, supra**, I should not have permitted the Union to present evidence regarding the prescription plan changes at the June 18, 2012, hearing based on the December 23, 2011, charge.

At the hearing, Counsel for the Union stated that the charge was filed "as a **protective measure** in that, given the rather tight definition of six weeks that the Board issued about twelve years ago, where we knew that there was some delay in implementing the award in its entirety, rather than wait and see and run the risk of running in to the six week problem, the charge was filed." (N.T. 7)(emphasis added). He further explained that "it's true there's been some evolution, I guess, as far as the facts in the case since the charge was filed. (N.T. 7). He then reiterated that "[w]e filed it as a, I guess for want of a better way to describe it, as a **protective measure** given the six week problem, and, at the time the charge was filed, it wasn't — absolutely— it wasn't frivolous. (N.T. 8)(emphasis added). Clearly, the Union was not complaining about anything specific. The Union was simply seeking to preserve the right to complain about the possible future failure to implement some part of the Award. The specification of charges, as written in December 2011, is inadequate to place the County on notice that it was seeking redress for the prescription plan changes. At a minimum, an amended or new charge should have been filed after January 1, 2012, to specifically reflect the nature and dates of the unilateral changes to the prescription plan.

Moreover, I agree with the County that the Union's position is logically fallacious. The Union argued at the hearing and in its post-hearing brief that no where does the De Treux Award make reference to or provide for changes in the prescription plan for Detectives. (N.T. 7; Union's Post-hearing Brief at 7-9). Yet, the charge alleged a failure to implement provisions of the Award. It is inconsistent to contend both that the County failed to implement provisions of the Award, on the one hand, and that there are no prescription provisions to implement in that Award, on the other. Had the Union contemplated the changes to the prescription drug plans at the time it filed the charge (which it could not have done because those changes were not made until one week after the charge was filed) it would have alleged that the County unilaterally implemented changes to a mandatory subject of bargaining rather than alleging that the County failed to implement that which was required by the Award.

Also, as the Board held in **Iroquois, supra**, the Union's attempt to present to the Board facts and allegations of the unilateral changes to the prescription plan for the first time at the June 18, 2012, hearing is barred by the PLRA's six-week statute of limitations. Thus, the Board lacks subject matter jurisdiction over the claims that the County unilaterally changed the prescription plan for the Detectives. Accordingly, the charge is dismissed for failing to comply with the dictates of due process, as required by Section 95.31 of the Board's regulations, and for lack of subject matter jurisdiction over the untimely claims.

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 and political subdivision within the meaning of Act 111, as read in **pari materia** with the PLRA.

2. The Union is a labor organization within the meaning of Act 111, as read in **pari materia** with PLRA.

3. The Board has jurisdiction over the parties hereto.

4. The County **not** has committed unfair labor practices within the meaning of Section 6(1) (a) or (e) of the PLRA, as read in **pari materia** with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded and 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 thirteenth day of February, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

_____
JACK E. MARINO
Hearing Examiner