

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS :  
OFFICERS ASSOCIATION AND :  
CO MOORE :  
 : Case No. PERA-C-14-357-E  
v. :  
 :  
COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF CORRECTIONS :  
GREENSBURG SCI :

**PROPOSED DECISION AND ORDER**

On October 29, 2014, the Pennsylvania State Corrections Officers Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Department of Corrections, Greensburg SCI (Commonwealth or Employer), alleging that the Commonwealth violated Section 1201(a) (1) and (5) of the Public Employe Relations Act (PERA or Act) by refusing to comply with a grievance settlement agreement.

On November 10, 2014, the Secretary of the Board issued a Complaint and Notice of Hearing, designating May 29, 2015, in Harrisburg, as the time and place of hearing, if necessary. The hearing was continued twice at the request of the Union and without objection from the Commonwealth, and once at the request of the Commonwealth and without objection from the Union.

A hearing was necessary and was ultimately held before the undersigned Hearing Examiner of the Board on July 22, 2016, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Commonwealth filed a post-hearing brief in support of its position on September 30, 2016, while the Union filed a post-hearing brief in support of its position on October 3, 2016.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 8)
3. The Union is the exclusive bargaining representative for a unit of corrections officers and forensic security employes employed with the Commonwealth. (Union Exhibit A; PERA-R-01-153-E)
4. The Union and Commonwealth were parties to a Collective Bargaining Agreement (CBA), which was effective from July 1, 2011 through June 30, 2014. (Union Exhibit A)
5. Reed Moore is a retired Corrections Officer One, who is a member of the Union and worked for the Commonwealth at SCI Greensburg. He began working for the Commonwealth on June 12, 2000. (N.T. 18-19)
6. On November 29, 2012, Moore filed an appeal/grievance for the payment of Heart and Lung Act benefits related to an alleged work injury of May 11, 2011. On November 30, 2012, the Union filed a Heart Lung Act appeal on behalf of Moore for the same alleged work injury, and the parties proceeded to grievance arbitration on January 9, 2013 under the terms of the CBA. (N.T. 19-22; Union Exhibit B)

7. Moore also filed a claim for workers' compensation benefits relative to the May 11, 2011 alleged work injury. (N.T. 19-22; Union Exhibit C)

8. Moore had to use personal and/or vacation leave when he went off work for the alleged work injury, for which he received payments that were subject to taxes. (N.T. 20, 24)

9. The parties ultimately settled Moore's claims for Heart and Lung and workers' compensation benefits. (N.T. 21)

10. The parties executed a Compromise and Release Agreement on August 6, 2013, which resolved Moore's claim for workers' compensation benefits, and which contained a provision indicating that they were executing a separate "Settlement Agreement, General Release and Waiver of all Claims." On August 9, 2013, the Workers' Compensation Judge (WCJ) circulated a Decision and Order, approving the Compromise and Release Agreement. (N.T. 21-22; Union Exhibit C)

11. The parties also executed a "Settlement Agreement, General Release, and Waiver of All Claims" on August 6, 2013, which resolved Moore's claim for Heart and Lung Act benefits. The parties agreed that Moore was entitled to Heart and Lung Act benefits for the period of October 10, 2012 through July 26, 2013, in addition to workers' compensation benefits. The Agreement contains a provision, which states as follows:

Employer agrees to reclassify/re-code as "Heart & Lung Act leave" any and all leave time utilized by [Moore] from October 10, 2012 to July 26, 2013. Accordingly, said leave time will be restored to [Moore] in full, and [Moore] will be reimbursed any taxes paid on said restored leave.

(N.T. 22-24; Union Exhibit D)

12. Moore retired from his service with the Commonwealth on July 26, 2013, following which he was entitled to payment of certain contractual benefits under the CBA, such as unused leave. (N.T. 24-25; Union Exhibit A)

13. Moore received the proper workers' compensation payments he was entitled to pursuant to the WCJ's Decision and Order, approving the Compromise and Release Agreement between the parties. (N.T. 23)

14. For the Heart and Lung Act portion of the settlement, Moore received a one-time lump sum payment of \$28,313.45 on or about August 30, 2013. Moore did not receive separate checks with statements detailing the reclassification of Heart and Lung Act leave, the restoration of leave utilized for the period of October 10, 2012 through July 26, 2013, and the reimbursement of taxes on that restored leave. Moore was unable to discern whether he was paid the correct amounts due under the settlement of the Heart and Lung Act claim. (N.T. 25-28; Union Exhibit L)

15. While Moore worked as a Corrections Officer for the Commonwealth, he was able to access his pay records and leave balance via Commonwealth computer. Moore was unable to do so following his retirement in July 2013. The Union is not able to access that information either. (N.T. 32)

16. Following receipt of the Heart and Lung Act payment, Moore reached out to his Union counsel to resolve the matter. Moore attended several conferences either through or with Union counsel with Commonwealth officials, such as Donna Gelsinger, a Human Resources Analyst 3 and Supervisor of the Workers' Compensation Disability Unit, in an attempt to discern whether he was correctly paid. In connection with these conferences, the Commonwealth provided documentation in the form of pay statements and other information. Moore testified that, in reviewing these documents, he was not able to discern the correct level of Heart and Lung Act benefits he was reimbursed, whether he was properly credited leave that he previously used, whether he actually received reimbursement of taxes, and whether he received the proper amount of leave he was entitled to upon separation from employment. (N.T. 29-32, 50; Union Exhibits K & L)

## DISCUSSION

In its charge, the Union alleged that the Commonwealth violated Section 1201(a)(1) and (5) of the Act<sup>1</sup> by failing to abide by and implement the terms of the grievance settlement agreement, including making improper deductions, not providing the proper back pay, leave, and Heart Lung Act calculations, and not providing methods to independently confirm the calculations and improper restoration of benefits. The Commonwealth, on the other hand, contends that the charge should be dismissed because the Union failed to sustain its burden of proving the Commonwealth did not comply with the settlement agreement. The Commonwealth also asserts that the charge should be dismissed because the Commonwealth did comply with the settlement agreement and met its bargaining obligation under the Act by providing an explanation, as well as documentation to support the calculations.

As a general matter, an employer's refusal to comply with a grievance settlement at a lower stage in the grievance procedure is an unfair practice. **Moshannon Valley School District v. PLRB**, 597 A.2d 229 (Pa. Cmwlth. 1991); **Zelienople Borough**, 27 PPER ¶ 27024 (Final Order, 1995); **New Eagle Borough**, 25 PPER ¶ 25026 (Proposed Decision and Order, 1994). The Board's criteria for determining whether an employer has timely complied with a grievance arbitration award is equally applicable to the determination of whether an employer has timely complied with a settlement agreement. **City of Philadelphia**, 43 PPER 123 (Proposed Decision and Order, 2007). In determining timeliness, the Board will consider such factors as: (1) the nature and complexity of the compliance required under the agreement; (2) the length of time before compliance occurred; (3) the employer's ability to comply with the agreement; (4) the steps taken by the employer toward compliance; and (5) the employer's explanation or lack thereof for the delay. *Id. citing City of Philadelphia*, 19 PPER ¶ 19069 (Final Order, 1988); **Commonwealth of Pennsylvania (Department of Community Affairs)**, 19 PPER ¶ 19165 (Proposed Decision and Order, 1998); **Commonwealth of Pennsylvania (Office of Administration)**, 17 PPER ¶ 17151 (Proposed Decision and Order, 1986).

In this case, the Union has sustained its burden of proving that the Commonwealth violated its bargaining obligation under Section 1201(a)(5) of the Act. The record shows that the Union and Commonwealth executed a settlement agreement through counsel, which resolved Moore's claim for Heart and Lung Act benefits. In doing so, the parties agreed that Moore was entitled to Heart and Lung Act benefits for the period of October 10, 2012 through July 26, 2013. The Agreement contains a provision, which specifically provides that:

Employer agrees to reclassify/re-code as "Heart & Lung Act leave" any and all leave time utilized by [Moore] from October 10, 2012 to July 26, 2013. Accordingly, said leave time will be restored to [Moore] in full, and [Moore] will be reimbursed any taxes paid on said restored leave.

The record also shows that Moore retired from his service with the Commonwealth on July 26, 2013, following which he was entitled to payment of certain contractual benefits under the CBA, such as unused leave. For the Heart and Lung Act portion of the settlement, Moore received a one-time lump sum payment of \$28,313.45 on or about August 30, 2013. Moore did not receive separate checks with statements detailing the reclassification of Heart and Lung Act leave, the restoration of leave utilized for the period of October 10, 2012 through July 26, 2013, and the reimbursement of taxes on that restored leave. Moore was unable to discern whether he was paid the correct amounts due under the settlement of the Heart and Lung Act claim.

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<sup>1</sup> Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act... (5) 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. 43 P.S. § 1101.1201.

Following receipt of the Heart and Lung Act payment, Moore reached out to his Union counsel to resolve the matter. Moore attended several conferences either through or with Union counsel with Commonwealth officials, such as Gelsinger, in an attempt to discern whether he was correctly paid. In connection with these conferences, the Commonwealth provided documentation in the form of pay statements and other information. Moore testified credibly that, in reviewing these documents, he was not able to discern the correct level of Heart and Lung Act benefits he was reimbursed, whether he was properly credited leave that he previously used, whether he actually received reimbursement of taxes, and whether he received the proper amount of leave he was entitled to upon separation from employment.<sup>2</sup>

The Commonwealth argues that it complied with the settlement agreement and met its bargaining obligation under the Act because Gelsinger converted Moore's leave to Heart and Lung Act leave, and the Commonwealth provided an explanation of the leave payout, along with documentation supporting its calculations. However, the Commonwealth's argument is not persuasive. The record shows that the Commonwealth met with Moore and/or his Union counsel either in person or by teleconference on several occasions following its payment of \$28,313.45. The record also shows that the Commonwealth provided Moore through his Union counsel with scores of documentation allegedly related to the settlement payment. Gelsinger testified that she explained the payment to Moore and Union counsel. (N.T. 52-54). However, this testimony is not accepted as persuasive or sufficient to discharge the Commonwealth's bargaining obligation. Indeed, Gelsinger did not offer any explanation whatsoever for how the documents she provided to Moore and Union counsel supported the Commonwealth's calculations, nor did she detail exactly what or how she explained the calculations to them. Instead, she simply offered a bald statement that she did explain it and claimed it was easily verifiable based on the scores of documents the Commonwealth provided. (N.T. 63-65). Her testimony is belied by the fact that the Commonwealth's attorney, who handled the Heart and Lung Act portion of the dispute flatly stated in an email to Union counsel that "[t]hese are often 'complex transactions' which not only take time to calculate and input into the system, but weeks to process," as well as her own subsequent admission that the wage earning reports she provided to Moore are difficult to read. (N.T. 59-60, 68; Union Exhibit F). Likewise, Gelsinger's assertions are also belied by the fact that Union counsel asked her on February 6, 2014 several simple, straightforward, and reasonable questions, to which she provided no response. (Union Exhibit H). Indeed, Union counsel specifically asked Gelsinger the following questions by email:

1. What was the total amount of leave hours used by CO Moore for October 10, 2012 to July 26, 2013, and thus, were they all refunded as Heart and Lung Act leave?
2. What is the monetary amount of the refunded taxes on the monetary value of leave used from October 10, 2012 to July 26, 2013 that was converted to Heart and Lung Act leave?
3. What were the leave balances as of October 9, 2012, and thus, what amounts of leave were added for October 10, 2012 to July 26, 2013 to determine the proper rate of leave payout at retirement and if it was actually received?

(Union Exhibit H). When questioned about these simple inquiries, Gelsinger stated that she could not recall responding to the email or answering these questions. (N.T. 62). In fact, there is absolutely no way whatsoever for the Union to determine whether the Commonwealth paid the correct amounts due without knowing the answers to these questions, which lie solely and exclusively with the Commonwealth. How the Commonwealth expected the Union and Moore to understand the calculations and discern whether they were proper

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<sup>2</sup> The Commonwealth made a motion to dismiss the charge at the conclusion of the Union's case-in-chief, arguing that the Union did not sustain a prima facie case of proving a violation of the Act. (N.T. 47-48). The Commonwealth's motion to dismiss is denied. The Union demonstrated during its case-in-chief that the Commonwealth refused to bargain by failing to adequately explain how it calculated the payments pursuant to the settlement agreement, so that the Union and Moore could confirm that the amount was correct.

without answers to these questions is a mystery. The Commonwealth cannot lawfully discharge its bargaining obligation under Section 1201(a)(5) of the Act by simply inundating the Union and Moore with scores of data and not walking them through the calculations and answering their specific, reasonable questions related to the calculations. In my view, this is not sufficient under Section 1201(a)(5), as that statutory provision expressly requires the Commonwealth to discuss grievances with the exclusive representative. Inherent in that statutory provision is a duty to explain how exactly the Commonwealth calculated the amounts due pursuant to the parties' settlement agreement, especially where, as here, the settlement agreement does not set forth a specific dollar figure, which is outstanding. As a result, the Commonwealth has committed unfair practices under Section 1201(a)(1) and (5) of the Act.

#### **CONCLUSIONS**

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

1. The Commonwealth 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 Commonwealth 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 Employee Relations Act, the Examiner

#### **HEREBY ORDERS AND DIRECTS**

that the Commonwealth 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 the appropriate unit, including but not limited to discussing of grievances with the exclusive representative.
3. Take the following affirmative action:
  - (a) Immediately discuss the grievance settlement with the Union and demonstrate with a detailed explanation the exact amounts distributed in accordance with the settlement agreement, answer all of the Union's reasonable inquiries to evidence compliance with the settlement agreement, and to comply with the settlement agreement in all other respects, including the payment of any monies, together with six (6%) percent per annum interest, which may still be due and owing;
  - (b) 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;

(c) 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; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

**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 11th day of October, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

The Commonwealth 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 immediately discussed the grievance settlement with the Union and demonstrated with a detailed explanation the exact amounts distributed in accordance with the settlement agreement, answered all of the Union's reasonable inquiries to evidence compliance with the settlement agreement, and complied with the settlement agreement in all other respects, including the payment of any monies, together with six (6%) percent per annum interest, which may still be due and owing; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

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Signature/Date

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Title

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

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Signature of Notary Public