

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORTHAMPTON COUNTY DEPUTY SHERIFF'S ASSOCIATION :
v. : Case No. PERA-C-15-13-E
NORTHAMPTON COUNTY :

PROPOSED DECISION AND ORDER

On January 9, 2015, the Northampton County Deputy Sheriff's Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Northampton County (County or Employer), alleging that the County violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) by unilaterally changing healthcare benefits for bargaining unit employes without bargaining with the Association.

The parties litigated the charge, and on December 4, 2015, the Hearing Examiner issued a Proposed Decision and Order, finding that the County had committed unfair practices, as alleged. The County subsequently filed exceptions, and the Board issued a Final Order on March 15, 2016, dismissing the County's exceptions and making the Proposed Decision and Order absolute and final. On June 3, 2016, the Association filed a request for a compliance hearing, alleging that the County had failed to comply with the Board's Final Order. On June 10, 2016, the Hearing Examiner scheduled a compliance hearing for August 24, 2016. On August 15, 2016, the County filed an affidavit of compliance, certifying that it had ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Act and complied with the Final Order as well as the Proposed Decision and Order.

The parties appeared for a compliance hearing on August 24, 2016 before the undersigned Hearing Examiner of the Board and entered joint exhibits and stipulations into the evidentiary record. The Association filed a post-hearing brief in support of its position on September 22, 2016. The County filed a post-hearing brief in support of its position on October 28, 2016.

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

FINDINGS OF FACT

That Findings of Fact 1 through 9 as set forth in the Proposed Decision and Order are hereby incorporated by reference.

10. The December 4, 2015 Proposed Decision and Order directed the County to "[i]mmediately rescind the unilateral changes to the healthcare benefits package for bargaining unit employes, restore the status quo ante which is the healthcare benefits package as it existed on December 31, 2013, and make whole any and all affected bargaining unit employes for any losses sustained a (sic) result thereof."

11. The December 4, 2015 Proposed Decision and Order contained an Affidavit of Compliance, which stated as follows: "Northampton County hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business."

12. On March 15, 2016, the Board issued a Final Order, dismissing the County's exceptions to the December 4, 2015 Proposed Decision and Order and finding that the County violated Section 1201(a)(1) and (5) of the Act by unilaterally implementing

changes to the employees' health care plan on January 1, 2015, after expiration of the Interest Arbitration Award and while the parties were negotiating and proceeding with interest arbitration for a successor agreement.

13. The Board's March 15, 2016 Final Order contains an Affidavit of Compliance, which provides as follows: "Northampton County hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has complied with the Final Order and Proposed Decision and Order as directed; that it has posted a copy of the Final Order and Proposed Decision and Order in the manner prescribed; and that it has served a copy of this affidavit on the Northampton County Deputy Sheriff's Association at its principal place of business."

14. On November 23, 2015, an interest arbitration panel issued an award for the period of January 1, 2014 through December 31, 2018 which contained the following provision:

Article XXIII - Health and Welfare Program

This article will remain unchanged, except to provide that the current plan design will remain in effect through December 31, 2016. The existing gap insurance will continue through December 31, 2018.

(Joint Exhibit 1)

15. The November 23, 2015 interest arbitration award specifically states that "[t]he Award will be effective upon execution by all of the panel members, except as specifically set forth in the Award." (Joint Exhibit 1, p. 2)

16. By letter dated May 19, 2016, Jill Kirchgessner, who is the Secretary of the Association, communicated the following to Amy Trapp, the County's Human Resources Director, and Luke DeBoer, the County's Labor Relations Officer:

Dear Ms. Trapp & Mr. DeBoer,

This letter is to follow up in regards to our last conversation that occurred on Thursday April 7, 2016 in your office with me, Brendan Hetherman, (sic) David Kravatz.

As a summary, it is my understanding that Northampton County will not be appealing the recent decision regarding the... Association's Unfair Labor Practice as to the Healthcare changes. From our conversation, I believe you said that the County's position is that they are already in compliance, citing the [Association] contract arbitration award. Specifically citing that the award is retroactive and it is the belief that the County does not need to pay back or "make whole" the effected (sic) members of the healthcare changes.

The [Association] is requesting that you respond within 10 days of this letter and lack of response will be taken as our summation is correct.

(Joint Exhibit 4)

17. By an undated letter, Trapp communicated the following to Kirchgessner:

Dear Deputy Sheriff Kirchgessner:

I apologize for the delay, but please accept this letter in response to your May 19, 2016, correspondence regarding the PLRB decision to the ULP filed by the [Association].

You are correct regarding the County not filing an appeal to the PLRB's March 15, 2016, Final Order in PERA-C-15-13-E. As we discussed, the November 23, 2015, interest arbitration award provided for implementation of the current health insurance benefits effective January 1, 2015.

Consistent with that award, the PLRB's Order and Affidavit of Compliance only required that the County post a copy of the Final Order and Proposed Decision and Order and serve a copy of the affidavit on the Association. The County has or is complying with those requirements.

Please let me know if you have any questions or if you would like to discuss this matter further...

(Joint Exhibit 5)

18. The parties stipulated that the County did not implement a monetary remedy based upon its interpretation of the November 23, 2015 interest arbitration award, the Board's Final Order and Affidavit of Compliance in the instant matter, as well as the Board's Final Order and Affidavit of Compliance in PERA-C-15-3-E.¹ (N.T. II 5)²

19. The parties stipulated that if a monetary remedy is required, the County will implement such a remedy based upon process claim data received from Blue Cross subject to review by the individuals. (N.T. II 5-6)

DISCUSSION

The Association has petitioned the Board for a compliance hearing in this matter to determine whether the County has complied with the Board's March 15, 2016 Final Order. The Association contends that, since the County has not implemented a monetary remedy or back pay award to affected bargaining unit members, it has not complied with the Final Order. The County, for its part, maintains that the November 23, 2015 interest arbitration award rendered moot any such remedy contained in the December 4, 2015 Proposed Decision and Order, as the interest arbitration panel indicated that "the current plan design will remain in effect." The Association does not appear to dispute that the interest award rendered moot the remedy contained in the Proposed Decision and Order and Final Order after the panel's execution of the award on November 23, 2015. Thus, the only outstanding issue is whether the interest award rendered moot the remedy contained in the December 4, 2015 Proposed Decision and Order and Final Order prior to November 23, 2015.

In the Final Order, the Board found that the County violated Section 1201(a)(1) and (5) of the Act by unilaterally implementing changes to the employees' health care plan on January 1, 2015, after expiration of the 2011-2013 interest arbitration award and while the parties were negotiating and proceeding with interest arbitration for a successor agreement. The Final Order contains an affidavit of compliance, which provides as follows: "Northampton County hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employee Relations Act; **that it has complied with the Final Order and Proposed Decision and Order as directed**; that it has posted a copy of the Final Order and Proposed Decision and Order in the manner prescribed; and that it has served a copy of this affidavit on the Northampton County Deputy Sheriff's Association at its principal place of business." (Emphasis added). As such, the Board's Final Order specifically required the County to comply with the Proposed Decision and Order, as directed, and left the remedy contained in the Proposed Decision and Order intact. The Proposed Decision and Order directed the County to "[i]mmediately rescind the unilateral changes to the healthcare benefits package for

¹ On March 15, 2016, the Board issued a Final Order in PERA-C-15-3-E, dismissing the County's exceptions to the Hearing Examiner's December 4, 2015 Proposed Decision and Order and finding that the County violated Section 1201(a)(5) of the Act by unilaterally implementing changes to the employees' health care plan on January 1, 2015, after the collective bargaining agreement between the County and the United Steelworkers of America, Local 2599 expired, and while the parties were negotiating a successor agreement.

² Citations to the August 24, 2016 compliance hearing will be made as "N.T. II."

bargaining unit employes, restore the status quo ante which is the healthcare benefits package as it existed on December 31, 2013, and make whole any and all affected bargaining unit employes for any losses sustained a (sic) result thereof." As a result, the Board's Final Order clearly directed the County to make whole any and all affected bargaining unit members for losses sustained due to the County's unlawful conduct. The parties stipulated that the County did not implement a monetary remedy. Therefore, the County is not in compliance with the Final Order.

The County's argument that the November 23, 2015 interest arbitration award rendered moot the make whole remedy contained in the Proposed Decision and Order is without merit. While the award contains a provision indicating that "the current plan design will remain in effect through December 31, 2016," that language only rendered moot the County's bargaining obligation relative to the employes' healthcare benefits. Indeed, the County met its bargaining obligation under the Act relative to healthcare benefits once the panel issued the interest award. Thus, the remedies of rescinding the unilateral changes to the healthcare benefits package for bargaining unit employes and restoring the status quo ante, which was the benefits package as it existed on December 31, 2013, are, in fact, moot. However, the award was not executed by all members of the interest arbitration panel until November 23, 2015, and the award makes clear that it was not effective until "execution by all of the panel members." As such, the County's conduct on January 1, 2015 was still unlawful up until November 23, 2015 once the award was executed. Notwithstanding any retroactivity of the award, the bargaining unit still sustained damages as a result of the County's unlawful conduct, which are not rendered moot by the issuance of the November 23, 2015 award, as these damages are certainly capable of repetition and evading review. To be sure, if the County is permitted to unilaterally change healthcare benefits for employes unlawfully prior to meeting its bargaining obligation under the Act and not required to make whole the affected bargaining unit members, there would be no deterrent or impediment to prevent the County from doing so again in the future in the hopes of obtaining another favorable provision in a subsequent award to render the damages moot.

The County's reliance on the Board's Final Order and Affidavit of Compliance in PERA-C-15-3-E is equally unavailing. As previously set forth above, on March 15, 2016, the Board issued a Final Order in PERA-C-15-3-E, dismissing the County's exceptions to the Hearing Examiner's December 4, 2015 Proposed Decision and Order and finding that the County violated Section 1201(a)(5) of the Act by unilaterally implementing changes to the employes' health care plan on January 1, 2015, after the collective bargaining agreement between the County and the United Steelworkers of America, Local 2599 expired, and while the parties were negotiating a successor agreement. The Board's Affidavit of Compliance in that case stated as follows:

Northampton County, Gracedale Nursing Home hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order and Final Order; that it has rescinded the unilateral changes to the healthcare benefits package for bargaining unit employes; that it has restored the *status quo ante* which is the healthcare benefits package as it existed on December 31, 2010; that it has made whole any and all affected bargaining unit employes for any losses sustained as a result of the unfair practice; that it has posted a copy of the Final Order and Proposed Decision and Order in the manner prescribed; and that it has served a copy of this affidavit on the United Steelworkers of America, Local 2599 at its principal place of business.

(Joint Exhibit 3) (Emphasis in original).

As the Association points out, the Board's Final Order in PERA-C-15-3-E is simply not relevant and of no consequence in the instant matter. That the Board may have used greater specificity in its Affidavit of Compliance in another dispute does not change the result here. The question here is whether the County complied with the Board's Final Order in this matter. Indeed, the bargaining unit sustained damages as a result of the

County's unlawful conduct in the instant matter, which are not rendered moot by the November 23, 2015 interest arbitration award, as these damages are certainly capable of repetition and evading review. And, the County has not implemented a monetary remedy or made whole the affected bargaining unit members. Therefore, the County is not in compliance with the Final Order.

CONCLUSIONS

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

That conclusions 1 through 4 as set forth in the Proposed Decision and Order dated December 4, 2015 are hereby incorporated by reference.

- 5. The County is not in compliance with the Final Order.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

HEREBY ORDERS AND DIRECTS

That the County shall:

- (a) Immediately comply with the Final Order by making whole any and all affected bargaining unit employees for any losses sustained as a result of the County's unlawful unilateral change in healthcare benefits from January 1, 2015 to November 23, 2015;

- (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 its employees, 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 pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this 30th day of November, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORTHAMPTON COUNTY DEPUTY :
SHERIFF'S ASSOCIATION :
 : Case No. PERA-C-15-13-E
v. :
 :
NORTHAMPTON COUNTY :

AFFIDAVIT OF COMPLIANCE

Northampton County hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has complied with the Proposed Decision and Order and Final Order by making whole any and all affected bargaining unit employees for any losses sustained as a result of the County's unlawful unilateral change in healthcare benefits from January 1, 2015 to November 23, 2015; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; 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