

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES :  
INDEPENDENT UNION :  
 : CASE NO. PERA-C-18-105-W  
 v. :  
 :  
 :  
 COUNTY OF ALLEGHENY :  
 :

**PROPOSED DECISION AND ORDER**

On June 1, 2018, Allegheny County Prison Employees Independent Union (ACPEIU or Union) filed an amended charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the County of Allegheny (County or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On June 30, 2018, the Secretary of the Board issued a complaint and notice of hearing, in which the matter was assigned to a pre-hearing conference for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating October 26, 2018, in Pittsburgh, as the time and place of hearing, if necessary.

The hearing was held on October 26, 2018, in Pittsburgh, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union filed its post-hearing brief on December 14, 2018. The County filed its post-hearing brief on January 17, 2019.

The Hearing Examiner, based upon all matters of record, makes the following:

**FINDINGS OF FACT**

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).
3. On October 4, 2017, Arbitrator Gerald Kobell issued an arbitration award (Kobell Award) in favor of the Union regarding the suspension and termination of Officer Jack Theis. (N.T. 19; Union Exhibit A).
4. The Kobell Award states in relevant part:  
  
VII. Award  
The grievance is granted in that the discharge was not for just cause and it is rescinded. The discharge is converted to a suspension with seniority and seniority related benefits, but without back pay until the date of this Award, after which [Theis] should be reinstated

with full seniority and benefits, effective the next work week. . . .

Dated: October 4, 2017

(N.T. 19-20; Union Exhibit A).

5. The first work week after the date of the Kobell Award began on October 8, 2017. (N.T. 30-31).

6. The County did not return Theis to work by October 8, 2017. The County appealed the Kobell Award to the Allegheny County Court of Common Pleas. On February 8, 2018, the Court of Common Pleas upheld the Kobell Award and denied the County's petition to vacate. The County did not appeal this order to Commonwealth Court. (N.T. 20-23; Union Exhibit B).

7. The County reinstated Theis on March 4, 2018. The County did not pay Theis retroactively to October 8, 2017. (N.T. 23-24).

8. Union Vice-President Jason Batykefer requested that the County pay Theis back pay pursuant to the Award and the County refused. (N.T. 24).

#### DISCUSSION

The Union charges that the County committed an unfair practice when it failed to fully comply with the Kobell Award. The law regarding this matter is well settled. In determining whether an employer complied with a grievance arbitration award, the Union has the burden of proving that an award exists, the award is final and binding and that the employer failed or refused to properly implement the award. State System of Higher Education v. PLRB, 528 A.2d 278 (Pa. Cmwlth. 1987). The relief provided in an arbitration award that has been affirmed on appeal is effective dating back to the date of the award or another effective date expressly provided in the award. Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 39 PPER 9 (Final Order, 2008) ("FOP, Lodge 5"); Wyoming Borough Police Department v. Wyoming Borough, 43 PPER 22 (Final Order, 2011).

Applying the law to this case, it is clear from the record that the Kobell Award exists, that it is final and binding, and that the County has not fully complied. Pursuant to the Award, Theis was to be "reinstated with full seniority and benefits, effective the next work week." The next work week began October 8, 2017. Since the County did not reinstate Theis until March 4, 2018, the County owes back pay and seniority benefits to Theis from and including October 8, 2017 until March 4, 2018.

The County argues that any obligation to comply with the Award was suspended by supersedeas and that the effective date of the Kobell Award is the date supersedeas expired. In other words, the County argues that the Award should be enforced from the date of the Common Pleas order, and not the date the Award was issued. This argument was examined and rejected by the Board in FOP, Lodge 5, supra. The Board in FOP, Lodge 5 states:

[Philadelphia] relies upon the Board's policy, set forth [above] of enforcing arbitration awards upon the affirmance of the award by the Court of Common Pleas, to argue that interest should only accrue from April 17, 2006, the date the Court of Common Pleas affirmed the award. However, a pending appeal does not obviate the fact that the money owed was due on a date certain in accordance with the award. . . . Accordingly, the Hearing Examiner's award of interest from January 13, 2006, is appropriate remedial relief based on the recognition that the payment of money became due under the interest arbitration award on that date.

Id. (internal citations omitted). Applying the Board's reasoning to this matter, it is wholly appropriate to find that the County is obligated to comply with the Kobell Award effective to the date of the Award, and not the date supersedeas expired.

The County also argues that the charge in this matter should be dismissed because the Union charged a violation of Section 1201(a) (5) and not 1201(a) (8). A review of the Specification of Charges shows however that the Union plead sufficiently precise facts for the County to be on notice as the nature of the charge against it. See Bucks County Detectives Association v. County of Bucks, 45 PPER 2 (Final Order, 2013). In particular, paragraph 10 of the Union's Specification of Charges cites Board precedent which deals with an employer's failure to comply with an arbitration award. Additionally, at the hearing, the County's attorney proceeded with no mention of any motion to dismiss for failure to cite Section 1201(a) (8) and defended the case fully on the merits. There is no demonstrated prejudice to the County due to the Union proceeding under Section 1201(a) (5) and not 1201(a) (8).

The County has violated Section 1201 (a) (1) and (5) by refusing to comply with the Kobell award, and will be ordered to fully comply with the Award and make Theis whole by providing him with full back pay and seniority benefits retroactive to and including October 8, 2017, with statutory interest of six per cent *per annum* calculated from March 8, 2018. The March 8, 2018, date is the date when the arbitration became final.

### **CONCLUSIONS**

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

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 PERA, the Hearing Examiner

**HEREBY ORDERS AND DIRECTS**

that the County of Allegheny 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 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.

3. Take the following affirmative action which the Hearing Examiner finds necessary to effectuate the policies of PERA:

(a) Immediately comply with the Kobell Award and make Officer Jack Theis whole by providing him with full back pay and seniority benefits retroactive to and including October 8, 2017, with statutory interest of six per cent *per annum* calculated from March 8, 2018.

(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 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** at Harrisburg, Pennsylvania, this third day of April, 2019.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
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**AFFIDAVIT OF COMPLIANCE**

The County of Allegheny 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 complied with the Proposed Decision and Order as directed therein; that it immediately complied with the Kobell Award and made Officer Jack Theis whole by providing him with full back pay and seniority benefits retroactive to and including October 8, 2017, with statutory interest of six per cent *per annum* calculated from March 8, 2018; 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