

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). The Union alleged that the County committed an unfair practice by failing to comply with a certain arbitration award (Korbell Award) which bargaining unit member Officer Jack Theis.

The parties litigated the charge, and on April 3, 2019, the undersigned Hearing Examiner issued a Proposed Decision and Order (PDO), finding that the County had committed an unfair practice, as alleged. The PDO ordered, in part, that the County immediately comply with the Kobell 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. No exceptions were filed to the PDO and it became final by operation of law.

On May 5, 2020, the Union filed a request for a compliance hearing, alleging that the County had failed to fully comply with the PDO.

The parties appeared for a compliance hearing on September 21, 2020 before the undersigned Hearing Examiner. The Union filed a post-hearing brief in support of its position on October 27, 2020. The County filed a post-hearing brief in support of its position on January 15, 2021.

The Hearing 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 8 as set forth in the Proposed Decision and Order are hereby incorporated by reference.

9. Theis applied for unemployment compensation benefits in January 2017 and he began receiving those benefits in February 2017. (9/21/20 N.T. 15).

10. Theis received a total of \$5,650 in unemployment compensation payments before they were discontinued. The last payment occurred in February 2017. The County appealed the initial grant of unemployment benefits to Theis and the Unemployment Compensation Referee subsequently issued an order in the County's favor discontinuing unemployment benefit

payment. The Office of Unemployment Compensation Benefits ruled that Theis owes the Office of Unemployment Compensation Benefits \$5,680.00 as a "nofault overpayment". (9/21/20 N.T. 15-19; Union Exhibit 2, 3).

11. The County returned Theis to work on March 4, 2018. The County issued a backpay check to Theis for the period between October 8, 2017 and this return to work date of March 8, 2018. The amount of the check was \$10,772.89. (9/21/20 N.T. 22-24; Union Exhibit 4).

12. The County figured a total gross backpay amount of \$30,720.41. From this amount, the County deducted \$11,360.00 for "unemployment". This figure incorrectly doubled the actual amount received by Theis which was \$5,680.00. (9/21/20 N.T. 17-18; Union Exhibit 2).

13. The County also deducted a healthcare premium contribution from Theis' backpay in the amount of \$808.11. The collective bargaining agreement between the parties dictates that the County takes a 2.5% deduction for a health care contribution from bargaining unit members' wages. The County made an error in its calculation and deducted an extra \$41.08. (9/21/20 N.T. 9, 19-25; Union Exhibit 4, 5).

DISCUSSION

The Union asked the Board for a compliance hearing in this matter to determine whether the County has complied with the April 3, 2019, Proposed Decision and Order which directed the County to immediately "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 record in this case is clear that the County did not do that. The record shows clearly that the County incorrectly withheld \$11,360.00 as "unemployment." \$5,650 of that amount the County incorrectly withheld as an error on its part when it mistakenly doubled the amount the County thought Theis had received as unemployment compensation benefits.

The County also incorrectly withheld the remaining \$5,650.00 of that \$11,360.00 amount. The County in its brief argues that, generally, it is proper for an employer to withhold a setoff for earnings from other sources any compensation due. (County's Brief at 14-19). It is true that Theis received \$5,650 of unemployment compensation benefits in early 2017. This was during the time period when he was off of work and during the pendency of his grievance. The Kobell Award did reinstate Theis but did not award him backpay for that time period. The Kobell Award ordered the County to put Theis back to work, with no back pay, on October 8, 2017. The County did not do so which lead to the unfair practice charge and hearing before me. In my PDO I ordered full back pay and seniority benefits retroactive to and including October 8, 2017, the date the Korbell Award said Theis should be reinstated. Importantly, and distinguishable from the cases cited by the County, this time period is distinct from the time period covered by the Kobell Award.

The record in this matter shows that, in the time period I ordered back pay for Theis, he did not receive any unemployment compensation benefits. He received unemployment compensation benefits in the time period of the Korbell Award, not the PDO. Thus, the unemployment compensation benefits Theis received covered a time period separate from the time period for which I ordered a make whole remedy. Therefore, it was not proper for the County to

take a set off for unemployment compensation benefits while complying with my PDO.

The record is clear the County may withhold amounts for health insurance contributions pursuant to the collective bargaining agreement between the parties. The record also shows that the County made a mistake in its calculation of the insurance contribution and deducted an extra \$41.08. This amount, \$41.08, shall be paid to Theis.

The County shall immediately recalculate the backpay calculation to Theis by taking care to remove any deduction for unemployment, by including \$41.08 to reflect the miscalculated healthcare insurance contribution, by recalculating the interest owed, and immediately pay such amount to Theis.

Finally, the County argues that this compliance proceeding is untimely. The County argues that the time limit to file charges under PERA is four months (43 P.S. 1101.1505) and that this matter was resolved once Theis accepted the check to him. This compliance matter is not barred as untimely. It is the continuation of the matter PERA-C-18-105-W which was timely filed and the Board's oversight continues until the County complies with the PDO, which became final in this matter. It is clear from this record that the County has not complied with the PDO: it has not made Theis whole in conformity with the PDO. Additionally, the County's argument that it complied with the PDO and that this present issue is barred by timeliness is undercut by the fact that the County never filed an affidavit of compliance in conformity with the PDO.

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 April 3, 2019 are hereby incorporated by reference.

5. The County is not in compliance with the Proposed Decision and Order dated April 3, 2019.

ORDER

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

HEREBY ORDERS AND DIRECTS

That the County shall:

(a) Immediately comply with the Proposed Decision and Order of April 3, 2019, by immediately recalculating the backpay amount owed to Theis by eliminating any deductions for unemployment compensation, by including \$41.08 to reflect the miscalculated healthcare insurance contribution, by recalculating the interest owed, and by immediately paying such amount to Theis;

(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 fourth day of February, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

 /s/ Stephen A. Helmerich

Stephen A. Helmerich, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

Allegheny 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 by immediately recalculating the backpay amount owed to Theis by eliminating any deductions for unemployment compensation, by including \$41.08 to reflect the miscalculated healthcare insurance contribution, by recalculating the interest owed, and by immediately paying such amount to Theis; 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