

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 764 :
 :
 :
 v. : CASE NO. PERA-C-20-149-E
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 NORTHUMBERLAND COUNTY :

PROPOSED DECISION AND ORDER

On July 9, 2020, Teamsters Local Union No. 764 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the County of Northumberland (County) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act or PERA). The Union specifically alleged that the County reneged on a grievance settlement agreement to promote Laura James from Secretary II to Lead Secretary in the Office of the District Attorney.

On October 26, 2020, the Secretary of the Board issued a Complaint and Notice of Hearing designating a hearing date of April 9, 2021, in Harrisburg. Due to the closure of Commonwealth property to the public as a result of the COVID pandemic, the parties agreed to conduct the hearing by video conference. During the video hearing on that date, both parties were afforded a full and fair opportunity to present documents and testimony and to cross-examine witnesses. On June 18, 2021, the County and the Union both filed their post-hearing briefs.

The 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. 6)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)
3. Laura James is a Secretary II in the District Attorney's Office in a bargaining unit represented by the Union. (Union Exhibit A)
4. Ty Sees is the Union Secretary-Treasurer and Business Agent for the bargaining unit employes in the District Attorney's Office. (Union Exhibit A; Unfair Practice Charge Form)
5. Tony Matulewicz is the District Attorney for the County. (Union Exhibits B & C)
6. Joseph Picarelli is the Director of Human Resources for the County. (N.T. 36)
7. On March 27, 2020, Ms. James and Mr. Sees filed Grievance No. 6688 with the District Attorney, who is the first step in the grievance

procedure for grievances filed concerning employees in the District Attorney's Office. The Commissioners are the third step. (N.T. 72; Union Exhibits A, B & I, Article XXXI)

8. The County and the Union are parties to a collective bargaining agreement, as amended by an interest arbitration award, effective January 1, 2018, through December 31, 2020 (collectively CBA). (Union Exhibit I)

9. Grievance No. 6688 alleged violations of Article XVI (Wages) of the parties' CBA. In the Grievance, Ms. James alleged the following:

I've been performing work in the lead secretary classification over an[d] above that of my current secretary II classification. Please pay me lead secretary wages for the work I'm performing, instead of my secretary II wages in violation of the CBA.

Effective immediately agree paying lead secretary wages consistent with the work I perform and consistent with other lead secretaries.

(Union Exhibit A)

10. On March 30, 2020, Mr. Sees emailed Grievance No. 6688 to District Attorney Matulewicz. In the email, Mr. Sees stated: "Attached is a grievance filed by Laura James because of the work she performs similar to those lead secretaries in the DJs offices, but is not compensated similarly. Since you are the first step in the grievance process, I've forwarded it onto you for your approval or denial. Thank you for your consideration." (Union Exhibits A & B)

11. The same day, District Attorney Matulewicz responded that he was available any day to meet with Mr. Sees and Ms. James. However, on April 2, 2020, District Attorney Matulewicz emailed Mr. Sees requesting an extension to respond to the Grievance because Ms. James was in self-quarantine due to COVID-19. Mr. Sees agreed to the extension. (Union Exhibit B).

12. On May 7, 2020, District Attorney Matulewicz emailed Mr. Sees attaching a letter. In the letter, District Attorney Matulewicz stated the following:

On March 27, 2020 Laura James filed a grievance (No. 6688). Due to Mrs. James being on indefinite sick leave because of COVID-19, I requested an extension of time which you had granted on her behalf. The grievance alleges that she performs job duties above her current Secretary II classification. The grievance requests that I acknowledge that she performs duties of a Lead Secretary classification and also that she be paid the wages of that classification.

For the record, I did not know of the duties of a Lead Secretary classification until after the grievance was filed. I do not directly participate in the collective bargaining process other than to assert section 1620 rights.

I agree that Mrs. James has been performing work over and above a Secretary II classification. I further agree that she

performs work similar to that of a Lead Secretary classification. I agree that Mrs. James should be reclassified as a Lead Secretary.

As you are aware, the District Attorney is not legally able to unilaterally reclassify a position in order to adjust an employee's salary. If I were able to reclassify Mrs. James as a Lead Secretary and pay her commensurate wages then I would do so immediately.

(Union Exhibit C)

13. Also on May 7, 2020, Mr. Sees emailed Joe Picarelli, Human Resources Director, and attached District Attorney Matulewicz's letter, in which the District Attorney agreed that Ms. James should be reclassified as a Lead Secretary. The Lead Secretary position is a position that exists in the parties' CBA. (N.T. 47; Union Exhibit D)

14. On May 13, 2020, Mr. Sees emailed Mr. Picarelli asking him to see the District Attorney's response to Grievance No. 6688 and asked him to "[p]lease pay Laura Lead Secretary's wages." Mr. Picarelli emailed Mr. Sees stating that "[t]here is only one lead secretary in the complement. She should stop doing the work." Mr. Sees responded the same day stating that Laura would be the only lead secretary in the DA's office per the bargaining agreement and grievance settlement." (N.T. 54-56; Union Exhibit E)

15. On May 19, 2020, Mr. Picarelli emailed Mr. Sees and stated the following:

Ty, I spoke [to] the Commissioners and they will agree to moving the grievant Laura James into the lead secretary position effective 5/11/20. That is the first day of pay [period] 11. Also I never received a copy of the initial grievance. You can send a draft of the settlement proposal.

(Union Exhibit E)

16. Director Picarelli testified that the Commissioners agreed that they would promote Ms. James to Lead Secretary in the District Attorney's Office, effective May 11, 2020, the first day of pay period 11. When Mr. Picarelli sent the May 19, 2020 email to Mr. Sees informing him of the Commissioners' agreement to promote Ms. James, he was unaware of any terms or conditions beyond the agreement to promote her. (N.T. 42-43, 53-54)

17. On June 1, 2020, per Mr. Picarelli's request, Mr. Sees attached the Grievance and the Grievance settlement to an email to Mr. Picarelli and requested that Mr. Picarelli return the signed Grievance settlement. (Union Exhibit F)

18. When a County employe is transferred or promoted to a new position, the employe's supervisor generally completes an "employee status sheet," which is forwarded to the Commissioners' Office and eventually Human Resources. Ms. James' movement from Secretary II to Lead Secretary is a promotional transfer to a different position. Director Picarelli is uncertain whether the status sheet can be filed by the District Attorney with the Commissioners. The status sheet contains background information on the

employe, information on whether the employe is in a bargaining unit and salary information.¹ (N.T. 38-41)

19. After the Commissioners agreed to promote Ms. James, Director Picarelli received an employe status sheet from the District Attorney's Office for a new hire in the District Attorney's Office for an Office Administrator or Manager, which had been a vacant position. The Commissioners then changed their position on agreeing to promote Ms. James and wanted a job description for the Lead Secretary position to determine the difference between the Office Administrator and the Lead Secretary. Director Picarelli contacted both the District Attorney and Mr. Sees for a job description for the Lead Secretary position. The Human Resources Department has not received an employe status sheet for Ms. James from the District Attorney's Office or Mr. Sees. (N.T. 39-41, 43-44, 60, 70)

20. In early June 2020, after the Grievance settlement agreement, Director Picarelli participated in a meeting with the three Commissioners and the District Attorney. The Commissioners discussed with the District Attorney that he cannot have two lead positions and that there is no Lead Secretary position currently in the complement in the District Attorney's Office. A complement is a list of specific positions in each County department, and the Commissioners told the District Attorney that the salary board would have to place the Lead Secretary position in the District Attorney's complement. (N.T. 45-47, 54)

21. After the Commissioners met with the District Attorney and Director Picarelli, the Commissioners asked Director Picarelli to hold off on Ms. James' promotion to Lead Secretary until they received a job description for that position so they could compare the Lead Secretary position with the Office Administrator position. Director Picarelli asked Mr. Sees for the job description. (N.T. 49-50)

22. The Office Administrator position in the District Attorney's Office is a non-bargaining unit, managerial position. The Lead Secretary position is a bargaining unit position. They are distinct positions. Both positions were created with the understanding that the job duties were different. (N.T. 57-59, 65-66, 71-72; Union Exhibit J)

23. The District Attorney has attended salary board meetings when he has an item on the agenda affecting his Office. He has not presented the Lead Secretary position to the salary board. Article XVI of the CBA provides that the starting salary for the Lead Secretary position is \$25,000. Director Picarelli is uncertain if Ms. James would make that starting salary or more. The District Attorney has not requested a particular salary for Ms. James as Lead Secretary. (N.T. 48, 51-52)

24. On June 22, 2020, Mr. Sees emailed Director Picarelli referencing Director Picarelli's May 19, 2020 email stating that the Commissioners agreed to promote Ms. James. Director Picarelli responded: "That was before the Commissioners met with Tony [the District Attorney]. We want to see a job description first. You may want to talk to Tony about this." (Union Exhibit G)

¹ Director Picarelli testified that the status sheet includes salary, but his testimony is unclear whether, in the context of a promotion, he meant the current salary or the new proposed salary of the employe or both. (N.T. 41).

25. On June 23, 2020, Mr. Sees emailed Director Picarelli and stated the following:

The fact of the matter is, you, in accordance with Step 3 of the Grievance Procedure and on behalf of the Commissioners, already agreed in your May 19, 2020 email, to settle the above subject matter by moving the grievant Laura James into the lead secretary position effective 5/11/20. That is the first day of Pay 11. Please let me know if the County intends to honor their settlement agreement or not, no later than the close of business on Friday June 26, 2020. No decision will be considered a denial and the Union will seek all legal remedies to rectify the matter."

(Union Exhibit G)

DISCUSSION

The Union argues that a public employer is bound by grievance settlements at lower levels of the grievance procedure and that the District Attorney in this case unequivocally entered into a final and binding agreement to promote Ms. James to Lead Secretary when he wrote Mr. Sees: "I agree that Mrs. James should be reclassified as a Lead Secretary." (Union Brief at 5). The Union further claims that, as the contractually recognized representative to hear first-step grievances, the District Attorney had the contractually negotiated authority to bind the County to the grievance settlement to promote Ms. James. (Union Brief at 5). The fact that the District Attorney acknowledged that he was without authority to unilaterally implement her salary adjustment without the County, did not undermine the District Attorney's unequivocal agreement to grant the grievance, as authorized by the CBA. Additionally, the Union contends that the governing body of the County, i.e., the Commissioners, at the third and higher step of the grievance procedure, unequivocally agreed to promote Ms. James and that, thereafter, it does not affect the agreement if the District Attorney neglected to submit a "bureaucratic" form. (Union Brief at 4-5).

In Moshannon Valley School District v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991), the Commonwealth Court affirmed the Board and concluded that a grievance settlement agreement at the first level of the contractually negotiated grievance procedure is binding on the employer absent a timely appeal to the next level of the grievance procedure. In this case, there is not just one, but there are two levels of granting the grievance and agreeing to Ms. James' promotion, where the second level of agreement was made by the governing body of the County. The facts of record clearly demonstrate that the Commissioners agreed to promote Ms. James as of May 11, 2020, without conditions, reservations or requirements to submit forms or seek approval from the salary board. Moshannon Valley requires the finding of an unfair practice in this case. Moreover, under Section 1620 of the County Code, the Commissioners are the collective bargaining representative for all elected County officials, including the District Attorney. As the collective bargaining representative, the Board of Commissioners agreed in the CBA to empower the District Attorney to make the very kind of grievance settlement that he made in this case, even if the Commissioners had not also agreed to the Grievance settlement.

Subsequent to Moshannon Valley, our Supreme Court addressed the same issue, albeit in the context of a constitutional question of separation of

powers, Jefferson County Court Employees Association v. PLRB, 603 Pa. 482, 985 A.2d 697 (2009). In Jefferson County, the county salary board voted to eliminate 5 court appointed employees. The president judge, who sat on the salary board for those employees, was the sole vote against the reduction in his workforce. Pursuant to the salary board's directive, the president judge eliminated 5 court positions and 5 employees lost their jobs. The affected employees filed grievances under the collective bargaining agreement challenging the salary board's elimination of their positions. The collective bargaining agreement contained a negotiated grievance procedure. Pursuant to that procedure, the employees filed their grievances with their immediate supervisor, who sustained the grievance. The supervisor then forwarded that determination to the department head, who was the president judge at the next step of the grievance procedure. The president judge also sustained the grievances. The Supreme Court reversed the Commonwealth Court and the Board, reinstating the hearing examiner's conclusion that the county committed unfair practices by not reinstating the eliminated employees in accordance with the president judge's grievance settlement.

The Supreme Court, in Jefferson County, rejected the county's argument that the president judge lacked authority to settle the grievance under the separation of powers doctrine because his determination encroached on the County's legislative function to establish the budget. The Court further reasoned that the president judge has the constitutional authority to hire, fire, supervise and direct personnel necessary to the functioning of his court and that the county, not the court, was violating separation of powers by encroaching on the court's ability to operate the business of the court and to administer justice by determining the number of employees necessary to effectuate those court functions. The High Court opined that, just because the county has the constitutional authority to legislate a budget for the court, does not mean that the court is powerless to determine how to work within that budget with the personnel it deems necessary to carry on its functions. Accordingly, the Court held that, pursuant to the negotiated grievance procedure, the county was legally obligated to honor and effectuate the president judge's grievance settlement of reinstating 5 employees.

The case sub judice is analogous to Jefferson County because the District Attorney has the right, under Section 1620 of the County Code, to control the hiring, firing, supervising and direction of his personnel. The District Attorney has the discretion to effectively carry out the operations of his Office and the contractually negotiated authority to grant a grievance filed by one of his employees. The District Attorney's settlement was clear that Ms. James was to be reclassified, but that the actual salary change had to come from the County. When the president judge, in Jefferson County, rehired his 5 employees, their salaries, as here, had to be paid by the County also. The County pays the salaries and/or the increases resulting from lower-level grievance settlements from County officials who are authorized by the collective bargaining agreement to settle grievances at their level.

The County, here, attempts to distinguish Jefferson County arguing that the president judge in Jefferson County took the necessary steps to rehire his employees, unlike the District Attorney in this case who has not taken the required steps to facilitate the promotion (by submitting the job description and status sheet). (County Brief at 9-10). This argument ignores the fact that the agreement in this case was not conditioned upon submitting those documents. The County's argument also ignores the fact that this case is indeed analogous to Jefferson County because the Jefferson County Court required the county to pay the employees rehired by the president judge, which

he had a contractual right, a 1620 right and a constitutional right to do. Here, the County is likewise required to pay the salary increase to Ms. James according to the grievance agreement made by the District Attorney under his 1620 right to govern his office and as confirmed unconditionally by the Commissioners, the governing body of the County. This case is not only about implementing a lower-level grievance settlement. In this case, the highest governing body in the County unconditionally agreed to promote Ms. James and now they are renegeing on that agreement by imposing conditions that imply that they could deny the promotion.

Moreover, contrary to the County's arguments, the post-agreement actions or inactions of the District Attorney in this case are not relevant and never have been. The Commissioners themselves, the governing body of the County, sustained the District Attorney's determination to promote Ms. James and entered into an unconditional agreement to promote her by May 11, 2020, pursuant to step 3 of the contractually negotiated grievance procedure. The Commissioner's agreement, as relayed to the Union by Director Picarelli, contained no conditions or requirements, other than asking Mr. Sees to submit a copy of the Grievance and the District Attorney's Grievance settlement. Mr. Sees complied with that request on June 1, 2020.² Indeed, Mr. Picarelli credibly testified that it was his understanding that there were no conditions on the agreement to reclassify Ms. James. Then, in June 2020, the Commissioners renegeed on that agreement, after learning of the hiring of an Office Administrator in the District Attorney's Office, and imposed conditions on Ms. James' promotion, such as the provision of a job description to compare the two positions. This condition, however, was not part of the original agreement and implies that the Commissioners could reject Ms. James' promotion if they subjectively conclude that some of the job duties of both positions overlap. The Commissioners had already agreed and promised to promote Ms. James and increase her salary effective the beginning of pay period 11 of 2020. Any conditions or subsequent determinations that there cannot be both an Office Administrator and a Lead Secretary in the District Attorney's Office violates the Commissioners' original agreement to unequivocally promote Ms. James to Lead Secretary and increase her salary.

The argument that, without the job description, the employe status sheet and the salary information from the District Attorney, the County is unable to calculate her new salary, is a specious position. The County already has Ms. James' background information and current salary. Calculating her new salary as a pay-grade increase from her current salary is certainly ascertainable without burden. Further, the County is not going to automatically pay any salary requested by the District Attorney. The County will perform its own independent salary determination within the parameters set forth by the CBA and other Lead Secretaries within the County.

Also, the salary board is not a potential obstacle to implementing the promotion. At this time, the salary board has the legal obligation to create the Lead Secretary position within the District Attorney's Office to comply with the Commissioners' Grievance settlement. The County cannot renege on the

² The May 19, 2020 agreement to promote Ms. James provided that the promotion was retroactively effective as of May 11, 2020. Therefore, the June 1, 2020 submission of the Grievance and the District Attorney's settlement in compliance with the May 19, 2020 agreement does not affect the retroactive promotion date of May 11, 2020.

Grievance settlement and justify its actions with the defense that the promotion is now contingent upon satisfying certain conditions that were not part of the original agreement or using the salary board as an excuse. The County is attempting to add terms and conditions to the agreement, which did not exist at the time of the agreement. Moreover, the County's conditions imply that the Commissioners could refuse Ms. James' promotion, which is also not part of the original agreement. The fact that the Lead Secretary position may not currently exist in the complement of the District Attorney's Office is no obstacle to creating the position within the District Attorney's Office, pursuant to the Grievance settlement agreement. Therefore, the County's post-agreement conditions and justifications are unlawful. Additionally, the three County Commissioners and the District Attorney, who already agreed to promote Ms. James, hold a super majority on the salary board for the District Attorney's Office, meaning that the salary board is no impediment to implementing the unequivocal and unconditional agreement.³

The County relies on ASCME DC 47 Local 2187 v. City of Philadelphia, 52 PPER 81 (PDO, 2021). In the City of Philadelphia case, this examiner concluded that there was no grievance settlement at a particular grievance settlement meeting, as claimed by the union, because the union did not meet its burden of establishing a meeting of the minds and the record as a whole contained evidence that there was indeed no agreement to settle the grievance. The County posits that, in City of Philadelphia, this examiner relied on the fact that there was no hand-signed, written agreement and there was no evidence that the necessary protocols, known to the union, were followed. (County Brief at 10). However, City of Philadelphia, supra, is not controlling here because there is indeed unequivocal, substantial evidence on this record establishing a meeting of the minds and there is a written representation by Mr. Picarelli that the Commissioners agreed to promote Ms. James, after the District Attorney signed a letter agreeing to the same.

The City of Philadelphia case is also distinguishable because there were emails from the City's Human Resources Director and its Labor Relations Specialist, after the grievance meeting, clearly informing the union that the grievance in that case had been denied. There were also emails showing that the union understood that there was no settlement because the union offered to settle the grievance if the city were to transfer the grievant, clearly evidencing that the union understood that the grievance had not been settled after the grievance meeting. Absent evidence on this record that historical protocols required an exchange of hand-signed settlement agreements approved by the County's lawyers and labor relations specialists, as in the City of Philadelphia case, Mr. Picarelli's email confirmation that the Commissioners agreed to promote Ms. James' is certainly unequivocal and substantial, competent evidence that the Commissioners agreed to promote Ms. James, effective May 11, 2020. Moreover, the County argues that the "email from Picarelli agreeing to the move, but having conditions attached to the acceptance to which the Union nor the DA have completed, does not raise itself to an unequivocal acceptance of the parties." This argument, however, is belied by Mr. Picarelli's testimony wherein he stated that it was his understanding that the Commissioners agreed to promote Ms. James without conditions. (F.F 16). Certainly, Mr. Picarelli's email confirming the

³ Although the District Attorney and the County Commissioners agreed to reclassify Ms. James, her Grievance only requested that she receive the compensation of a Lead Secretary and did not specifically request reclassification into that position.

agreement contains no such conditions, except the submission of the Grievance and the District Attorney's settlement, with which Mr. Sees complied.

Accordingly, the County has violated Section 1201(a)(1) and (5) by reneging on the Grievance settlement agreement to unconditionally promote Ms. James to the position of Lead Secretary within the District Attorney's Office, with the commensurate increase in salary, and create that position in the District Attorney's complement.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record, concludes and finds as follows:

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 the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the County 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 promote Laura James to the position of Lead Secretary in the Office of the District Attorney and immediately increase her salary commensurate with the promotion and higher pay grade placement;
 - (b) Immediately make whole Laura James by paying her backpay on the difference between her salary as Lead Secretary and her current salary as Secretary II, from the beginning of pay period 11 of 2020, i.e., May 11, 2020, until the date that she is paid, including any other financial

payments/benefits that would have been increased during the backpay period as a result of her promotion, such as pension contributions, etc. Any withholdings from backpay shall be calculated on a pay-period basis and not on the lump sum.

(c) Immediately pay Laura James interest at the rate of six percent per annum on the outstanding backpay owed to her as a result of the County's failure to promote her pursuant to the agreement, starting on May 11, 2020, and the beginning of pay period 11 of 2020, until she is paid her backpay.

(d) 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; and

(e) 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.

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 twenty-fifth day of June 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO/S

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 764 :
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 v. : CASE NO. PERA-C-20-149-E
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 NORTHUMBERLAND COUNTY :

AFFIDAVIT OF COMPLIANCE

The County of Northumberland hereby certifies that it has ceased and desisted from interfering with and coercing employees in the exercise of their protected grievance activities; that it has ceased and desisted from violating its collective bargaining obligation to effectuate a Grievance settlement agreement to promote Laura James to the position of Lead Secretary in the District Attorney’s Office, in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has promoted Laura James to the position of Lead Secretary in the Office of the District Attorney and increased her salary commensurate with the promotion and placement at the higher pay grade; that it has made Laura James whole by paying her backpay in the amount of the difference between her salary as Secretary II and the salary she should have earned as Lead Secretary from May 11, 2020, until the date that she was paid; that it has increased other financial payments/benefits that should have been increased with her increased salary during the backpay period; that it has paid Laura James 6% per annum interest on the backpay amount for the backpay period; that it has posted a copy of the decision and order as directed 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