

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION :
OF FIRE FIGHTERS LOCAL 1400 :
 :
v. : Case No. PF-C-10-62-E
 :
CITY OF CHESTER :

FINAL ORDER

The International Association of Fire Fighters, Local 1400 (IAFF) filed timely exceptions with the Pennsylvania Labor Relations Board (PLRB) on December 30, 2010, challenging a December 17, 2010 Proposed Decision and Order (PDO). In the PDO, the Hearing Examiner dismissed, as premature, the IAFF's Charge of Unfair Labor Practices alleging that the City of Chester (City) refused to implement the terms of a grievance arbitration award in violation of Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read in *pari materia* with Act 111 of 1968. Following extensions of time granted by the Board Secretary, the IAFF filed a brief in support of its exceptions on March 9, 2011. The City has not filed a response to the exceptions.

The facts found by the Hearing Examiner were stipulated to by the parties and are summarized as follows. On September 24, 2008, an arbitrator issued an award sustaining a grievance filed by the IAFF. The arbitrator's award required the City to pay a 3% wage increase plus a \$500 bonus, retroactive to January 1, 2007. The City filed a Petition to Set Aside the Arbitration Award with the Delaware County Court of Common Pleas. By Order dated June 30, 2009, the Court of Common Pleas vacated and set aside the arbitration award. The IAFF filed a timely appeal to the Commonwealth Court.¹ On March 22, 2010, the Commonwealth Court issued an Opinion and Order that "affirm[ed] the common pleas order, as modified[,] reinstating part of the arbitrator's award. Thereafter, on April 21, 2010, the City filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania. Because of the pendency of its Petition for Allowance of Appeal in the Supreme Court, the City has not paid the bargaining unit members as directed in the Commonwealth Court Order modifying the arbitration award.

The Hearing Examiner found that because the Court of Common Pleas did not affirm the grievance arbitration award, the Rules of Appellate Procedure provided the City with an automatic supersedeas of the award during the pendency of its Petition for Allowance of Appeal in the Pennsylvania Supreme Court. Accordingly, the Hearing Examiner concluded that the IAFF's Charge of Unfair Labor Practices seeking immediate enforcement of that grievance arbitration award was premature.²

Rule 1736 of the Pennsylvania Rules of Appellate Procedure provides as follows:

(a) General Rule. No security shall be required of...

(1) Any political subdivision . . . except in any case in which a common pleas court has affirmed an arbitration award in a grievance or similar personnel matter

(b) Supersedeas Automatic. Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party.

¹ The Court of Common Pleas issued an Opinion on August 24, 2009, further explaining its June 2009 Order.

² On January 20, 2011, the Pennsylvania Supreme Court denied the City's Petition for Allowance of Appeal. Thereafter, On February 4, 2011, the IAFF filed a request for a remand to the Hearing Examiner for further proceedings. On February 25, 2011, the IAFF also filed a Charge of Unfair Labor Practice, docketed at Case No. PF-C-11-31-E, alleging that the City's non-compliance with the September 24, 2008 arbitration award is an unfair labor practice. A Complaint and Notice of Hearing was issued on the Charge at Case No. PF-C-11-31-E on March 4, 2011. In light of the now timely and pending Charge at Case No. PF-C-11-31-E, the IAFF's request for a remand of this case is dismissed as moot.

The note following the rule explains as follows:

The 1987 amendment eliminates the automatic supersedeas for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.

As a general matter, in the absence of a stay of an arbitration award, the award is immediately enforceable before the Board. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 39 PPER 9 (Final Order, 2008); Lycoming County v. PLRB, 943 A.2d 333 (Pa. Cmwlth. 2007). However, under the express provisions of Pa. R.A.P. 1736, unless the court of common pleas has affirmed the award, there is an automatic supersedeas of the award during any subsequent appeals taken by a political subdivision. Elizabeth Forward School District v. PLRB, 613 A.2d 68 (Pa. Cmwlth. 1992).

There is no dispute that the initial appeal of the September 24, 2008 grievance arbitration award resulted in the Order of the Court of Common Pleas vacating and setting aside the award. Because the Court of Common Pleas did not affirm the award, under Pa. R.A.P. 1736, the City had an automatic supersedeas while it sought further appellate review.³ Thus, by operation of Pa. R.A.P. 1736, the City had an automatic supersedeas of the award during the pendency of its Petition for Allowance of Appeal in the Pennsylvania Supreme Court. Elizabeth Forward School District, *supra*.

The IAFF argues on exceptions that we should disregard the express words of Pa. R.A.P. 1736, and instead look to the spirit of the Appellate Rules and Act 111. However, the Statutory Construction Act provides that "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S. §1921(b); see also, City of Philadelphia, *supra*. (wherein the Board noted that Pa. R.A.P. 1736 was consistent with the policy of prompt enforcement of arbitration awards under Act 111). Accordingly, the Board must reject the IAFF's request that we ignore the clear words of Pa. R.A.P. 1736 that require an affirmance of the arbitration award by the Court of Common Pleas in order to negate the City's automatic supersedeas.

We have thoroughly reviewed the PDO, and agree with the Hearing Examiner's cogent discussion and analysis of the application of Pa.R.A.P. 1736 to the facts of this case. After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the IAFF's Charge of Unfair Labor Practices seeking immediate enforcement of the September 24, 2008 grievance arbitration award was premature because the award was stayed by operation of Pa. R.A.P. 1736 during the City's Petition for Allowance of Appeal to the Pennsylvania Supreme Court. Accordingly, the IAFF's exceptions shall be dismissed, and the PDO made final.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by International Association of Fire Fighters, Local 1400 are hereby dismissed, and the December 17, 2010 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this seventeenth day of May, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.

³ We note that the Commonwealth Court likewise did not simply reinstate the arbitration award, but instead affirmed only part of the award. Accordingly, even were we to accept the IAFF's argument that under the Appellate Rules we may look to the Commonwealth Court's disposition of the matter, independent of the disposition by the court of common pleas, here even the Commonwealth Court's decision would not have amounted to an affirmance of the award necessary to eliminate the automatic supersedeas.