

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE CORRECTIONS
OFFICERS ASSOCIATION

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF CORRECTIONS,
GREENSBURG SCI

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Case No. PERA-C-14-357-E

FINAL ORDER

The Commonwealth of Pennsylvania, Department of Corrections, Greensburg SCI (Commonwealth) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on October 28, 2016, challenging a Proposed Decision and Order (PDO) issued on October 11, 2016. In the PDO, the Board's Hearing Examiner concluded that the Commonwealth violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) regarding a grievance settlement agreement concerning Corrections Officer Reed Moore. The Pennsylvania State Corrections Officers Association (Association) filed a response to the exceptions on November 8, 2016. Pursuant to extensions of time granted by the Secretary of the Board, the Commonwealth filed a brief in support of the exceptions on November 28, 2016, and the Association filed a brief in response to the exceptions on December 15, 2016. After a thorough review of the record, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

14. On August 30, 2013, Reed Moore received a lump sum payment of \$28,313.45 from the Commonwealth. That amount allegedly included both reimbursed taxes on restored leave per the terms of the parties' settlement agreement, and payment for unused leave to which he was entitled pursuant to the parties' CBA due to his retirement. Moore was unable to determine whether he was paid the correct amounts due under the settlement of his Heart and Lung Act claim because he did not receive statements detailing the reclassification of Heart and Lung Act leave, the restoration of leave utilized for the period of October 10, 2012 through July 26, 2013, and the reimbursement of taxes on the restored leave that was required to be paid under the grievance settlement. (N.T. 24-28; Union Exhibit A; Union Exhibit K; Union Exhibit L).

17. On February 6, 2014, Association counsel specifically asked Human Resource Analyst Donna Gelsinger the following questions by email:

1. What was the total amount of leave hours used by CO Moore for 10/10/2012 to 7/26/2013, and thus, were they ... all refunded as [Heart and Lung Act leave]?
2. What is the [monetary] amount of the refunded taxes on the [monetary] value of leave used from 10/10/2012 (DOI) to 7/26/2013 that was converted to [Heart and Lung Act leave]?
3. What were his leave balances as of 10/9/2012, and thus, what amounts of leave were added for 10/10/2012 to 7/26/2013?

As of the time of the hearing, Gelsinger did not recall having responded to the email. (N.T. 62; Union Exhibit H).

DISCUSSION

The facts of this case are summarized as follows. The Association is the exclusive bargaining representative for a unit of corrections officers and forensic security employees who are employed by the Commonwealth. The Association and the Commonwealth were

parties to a collective bargaining agreement (CBA) effective from July 1, 2011 to June 30, 2014.

Reed Moore began working for the Commonwealth as a Corrections Officer on June 12, 2000. On May 11, 2011, Mr. Moore suffered an injury, which he alleged was related to work. Mr. Moore used leave when he was off work for the injury and the payments he received while on leave were subject to taxes. On November 29, 2012, Mr. Moore filed a grievance for the payment of Heart and Lung Act benefits related to the alleged work injury and also filed a claim for workers' compensation benefits. Following the Commonwealth's denial of Heart and Lung Act benefits, the Association filed a Heart and Lung Act appeal on November 30, 2012 on behalf of Mr. Moore, which proceeded to grievance arbitration on January 9, 2013.

On August 6, 2013, the parties executed a Compromise and Release Agreement, which resolved Mr. Moore's claim for workers' compensation benefits.¹ On that same day, the parties also executed a "Settlement Agreement, General Release, and Waiver of All Claims", which resolved Mr. Moore's claim for Heart and Lung Act benefits. The settlement agreement, among other things, states as follows:

[Commonwealth] agrees to reclassify/re-code as "Heart & Lung Act leave" any and all leave time utilized by [Mr. Moore] from October 10, 2012 to July 26, 2013. Accordingly, said leave time will be restored to [Mr. Moore] in full, and [Mr. Moore] will be reimbursed any taxes paid on said restored leave.

Mr. Moore retired from his service with the Commonwealth on July 26, 2013. Mr. Moore's retirement entitled him to receive payment for unused leave under the parties' CBA.

On August 30, 2013, Mr. Moore received a lump sum payment of \$28,313.45 from the Commonwealth. That amount allegedly included both payment for reimbursed taxes on restored leave per the terms of the parties' settlement agreement, and payment for Mr. Moore's unused leave to which he was entitled under the parties' CBA due to his retirement. Mr. Moore did not receive a statement from the Commonwealth detailing the reclassification of Heart and Lung Act leave, the restoration of leave utilized for the period of October 10, 2012 through July 26, 2013, and the reimbursement of taxes on the restored leave. Because he was unable to access his pay records and leave balance following his retirement, Mr. Moore contacted the Association to verify his leave to determine whether the Commonwealth had properly reimbursed him under the settlement agreement.

At the request of Mr. Moore and the Association, the Commonwealth provided documentation in the form of pay statements and other information. Mr. Moore and the Association met with Donna Gelsinger (Human Resource Analyst 3 and Supervisor of the Workers' Compensation Disability Unit), in an attempt to discern whether he was correctly reimbursed leave and taxes per the settlement agreement. Mr. Moore stated that even after these conferences, he was not able to determine the correct level of Heart and Lung benefits that he previously used, whether he received reimbursement of taxes, and whether he received the proper amount of leave to which he was entitled upon separation from employment. On February 6, 2014, Association counsel emailed Ms. Gelsinger to ask her: 1) what was the total amount of leave hours used by Mr. Moore for October 10, 2012 to July 26, 2013, and whether they were all refunded as Heart and Lung Act leave; 2) what was the monetary amount of the refunded taxes on the monetary value of leave used from October 10, 2012 to July 26, 2013 that was converted to Heart and Lung Act leave; and 3) what were the leave balances as of October 9, 2012, and what amounts of leave were added for October 10, 2012 to July 26, 2013? Ms. Gelsinger did not recall responding to the Association's February 6, 2014 email.

¹ On August 9, 2013, a Workers' Compensation Judge circulated a Decision and Order approving the Compromise and Release Agreement. The parties do not dispute that Mr. Moore received the workers' compensation payments to which he was entitled pursuant to the Compromise and Release Agreement between the parties. Therefore, Mr. Moore's workers' compensation benefits are not at issue in this matter.

The Association filed its Charge of Unfair Practices on October 29, 2014, alleging that the Commonwealth violated Section 1201(a)(1) and (5) of PERA by "failing to abide by and implement the terms of the [Workers' Compensation Compromise and Release]/Global Grievance Arbitration Settlement Agreement, including making improper deductions, not providing the proper back pay/leave/[Heart and Lung Act] calculations, not providing methods to independently confirm the calculations and improper restoration of benefits...." After continuances requested by both parties, a hearing was held before the Board's Hearing Examiner on July 22, 2016, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

The Hearing Examiner concluded in the PDO that the Commonwealth violated Section 1201(a)(1) and (5) of PERA because the Commonwealth did not adequately explain how it calculated the amounts due when issuing the lump sum payment to Mr. Moore, as demonstrated by its failure to answer the Association's specific questions regarding calculation of the amount due under the grievance settlement. Accordingly, the Hearing Examiner ordered the Commonwealth to, among other things, immediately discuss the grievance settlement with the Association, provide a detailed explanation concerning the exact amounts distributed, answer the Association's inquiries to show compliance with the settlement agreement and comply with the settlement agreement, including the payment of six percent interest.

In its exceptions, the Commonwealth alleges that the Hearing Examiner erred in concluding that it violated Section 1201(a)(1) and (5) of PERA because the Association failed to establish that the Commonwealth did not comply with the settlement agreement. The Commonwealth further alleges that the Hearing Examiner erred in concluding that the Heart and Lung settlement agreement required the payment of unused leave following Mr. Moore's retirement because that is a separate matter governed by the parties' CBA.

Section 1201(a)(5) of PERA provides that "public employers, their agents or representatives are prohibited from ... [r]efusing to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative." 43 P.S. §1101.1201(a)(5). The Hearing Examiner found that the Commonwealth violated its obligation to discuss the grievance settlement with the Association in good faith as required by Section 1201(a)(5) of PERA. While the Commonwealth essentially contends that the Association's Charge is limited to alleging noncompliance with the grievance settlement,² review of the Charge indicates that the Association specifically alleged that the Commonwealth violated Section 1201(a)(1) and (5) of PERA by "not providing the proper back pay/leave/[Heart and Lung Act] calculations [and] not providing methods to independently confirm the calculations...." Further, the duty to bargain in good faith under Section 1201(a)(5) of PERA notably includes the express statutory obligation to discuss grievances with the exclusive representative, as well as the duty to provide information that is relevant to the exclusive representative's role as employee bargaining representative. **Commonwealth of Pennsylvania, Department of Corrections, Muncy SCI v. PLRB**, 541 A.2d 1168 (Pa. Cmwlth. 1988); **Commonwealth of Pennsylvania v. PLRB (Pannacci)**, 527 A.2d 1097 (Pa. Cmwlth. 1987); **AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Public Welfare, Philadelphia State Hospital**, 17 PPER ¶ 17052 (Proposed Decision and Order, 1986).

Indeed, directly on point here, in **Philadelphia State Hospital** the Hearing Examiner concluded that the Commonwealth violated Section 1201(a)(1) and (5) of PERA by refusing

² Where a grievance has been resolved through a settlement, a public employer violates its duty to bargain under Section 1201(a)(1) and (5) of PERA when it refuses to comply with a grievance settlement agreement. **Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Rockview SCI**, 47 PPER 43 (Final Order, 2015). Where there is a settlement agreement, the Board will determine (1) if a meeting of the minds on the settlement actually exists; (2) whether the parties' intent is apparent from the settlement agreement; and (3) whether the party has failed to comply with the agreement's provisions. **AFSCME District Council 47 Local 2187 v. City of Philadelphia**, 36 PPER 124 (Final Order, 2005). The burden is on the complainant to establish by substantial evidence that the respondent has failed or refused to comply with the terms of the settlement agreement. **Rockview SCI, supra**.

to provide information relevant to the employee representative's policing of a grievance settlement to determine if the Commonwealth had complied with the settlement. Moreover, as indicated in **Pannacci**, the employer's duty to provide information includes the duty to respond to relevant questions posed by the employee representative even where the information is not currently in written form. Here, Ms. Gelsinger testified that as of the date of the hearing, she could not recall responding directly to Association counsel's February 6, 2014 email. Accordingly, the Hearing Examiner did not err in finding that the Commonwealth violated its duty to bargain by not providing specific responses to the questions posed by the Association, which are relevant to its policing of the grievance settlement.

On the other hand, the record shows that discussions regarding compliance with the grievance settlement were ongoing, even after filing of the Charge. Thus, to the extent that the charge of unfair practices alleges a failure to comply with the settlement agreement, no unfair practice may be found at this time. **See Fraternal Order of Housing Police v. Philadelphia Housing Authority**, 38 PPER 79 (Final Order, 2007). The settlement agreement at issue states that the Commonwealth will "reclassify/re-code as 'Heart & Lung Act leave' any and all leave time utilized by [Mr. Moore] from October 10, 2012 to July 26, 2013" and that "said leave time will be restored to [Mr. Moore] in full, and [Mr. Moore] will be reimbursed any taxes paid on said restored leave."³ Mr. Moore's statement that he could not discern whether the Commonwealth properly converted his leave to Heart and Lung Act benefits for the period of October 10, 2012 through July 26, 2013, restored the leave used, and paid the correct amounts due under the settlement agreement is not substantial evidence to demonstrate noncompliance with the settlement agreement. **Harbaugh v. PLRB**, 528 A.2d 1024 (Pa. Cmwlth. 1987) (witness speculation is not substantial evidence). Indeed, it appears that due to the lack of answers to its questions, the Association has yet to determine the amounts due to Mr. Moore under the settlement agreement and whether the Commonwealth complied with the terms of the agreement. Therefore, the Commonwealth's exceptions shall be sustained in part and the PDO shall be modified to the extent that it concludes that the Association established, on this record, that the Commonwealth failed to comply with the grievance settlement and directs relief related thereto.

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board shall dismiss the Commonwealth's exceptions in part, sustain the Commonwealth's exceptions in part, and modify the Proposed Decision and Order consistent with the above discussion.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Commonwealth of Pennsylvania, Department of Corrections, Greensburg SCI are hereby dismissed in part and sustained in part, that the Order on page 6 of the October 11, 2016 Proposed Decision and Order is hereby modified in accordance herewith, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the Commonwealth shall:

1. Cease and desist from interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of the Act.

³ The Association acknowledged and the Hearing Examiner specifically found that Mr. Moore was entitled to payment of unused leave pursuant to the parties' CBA due to his retirement from service with the Commonwealth, and not through any express provision of the settlement agreement. (FF 12).

2. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employees in the appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

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

- (a) Upon demand, discuss the grievance settlement with the Association, including providing responses to the Association's reasonable inquiries regarding the grievance settlement calculations.
- (b) Post a copy of the Proposed Decision and Order and Final Order within five (5) days from the date hereof in a conspicuous place readily accessible to the bargaining unit 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 Final Order by completion and filing of the attached Affidavit of Compliance; and
- (d) Serve a copy of the attached Affidavit of Compliance upon the Association.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this sixteenth day of May, 2017. 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.

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AFFIDAVIT OF COMPLIANCE

The Commonwealth hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (5) of the Public Employe Relations Act; that it has, upon demand, discussed the grievance settlement with the Association, including providing responses to the Association's reasonable inquiries regarding the grievance settlement calculations; that it has posted a copy of the Proposed Decision and Order and Final Order as directed; and that it has served a copy of this affidavit on the Association 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