

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES :
INDEPENDENT UNION :
 :
v. : Case No. PERA-C-18-105-W
 :
ALLEGHENY COUNTY :

FINAL ORDER

This matter arose on May 7, 2018, when Allegheny County Prison Employees Independent Union (Union) filed a Charge of Unfair Practices, as amended on June 1, 2018, with the Pennsylvania Labor Relations Board (Board) alleging that Allegheny County (County) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). On June 20, 2018, a Complaint and Notice of Hearing was issued by the Secretary of the Board directing that a hearing be held on October 26, 2018. The hearing was held as scheduled and, on April 3, 2019, the Hearing Examiner issued a Proposed Decision and Order (April 3, 2019 PDO). In the April 3, 2019 PDO, the Hearing Examiner concluded that the County violated Section 1201(a)(1) and (5) of PERA by delaying the return of Corrections Officer Jack Theis to his previous position contrary to the remedy ordered in the October 4, 2017 grievance arbitration award concerning his discharge. As a remedy, the Hearing Examiner ordered the County to make Officer Theis whole by providing him with full back pay and seniority benefits from October 8, 2017 to the date of his reinstatement on March 4, 2018, along with six percent interest. The County did not file exceptions to the April 3, 2019 PDO and, therefore, that decision became final and binding on April 23, 2019. 34 Pa. Code § 95.98(b).

On May 26, 2020, the Union filed a request for a compliance hearing with the Board. A compliance hearing was held on September 21, 2020, 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.

On February 4, 2021, the Hearing Examiner issued a Proposed Decision and Order (February 4, 2021 PDO), concluding that the County failed to comply with the remedy ordered in the April 3, 2019 PDO by deducting unemployment compensation benefits from the calculation of back pay owed to Officer Theis.¹ Therefore, the Hearing Examiner ordered the County to reimburse Officer Theis for the amount of unemployment compensation benefits deducted from his back pay amount. On February 24, 2021, the County filed timely exceptions and a

¹ The Hearing Examiner also concluded that the County mistakenly deducted an extra \$41.08 as part of a healthcare contribution from Officer Theis' back pay calculation and ordered the County to reimburse Officer Theis for that amount. The County has not excepted to the Hearing Examiner's decision concerning repayment of the \$41.08 deducted as a healthcare contribution. 34 Pa. Code § 95.98(a)(3) ("[a]n exception not specifically raised shall be waived").

Memorandum of Law with the Board challenging the February 4, 2021 PDO. The Union filed a response to the exceptions on March 2, 2021.

The relevant facts of this matter are summarized as follows. In January 2017, after his discharge from County employment, Officer Theis applied for unemployment compensation benefits, which he began receiving in February 2017. (FF 9). The County appealed the grant of unemployment compensation benefits and obtained a favorable order discontinuing those benefits for Officer Theis. Officer Theis received a total of \$5,680² in unemployment compensation benefits before they were discontinued in February 2017. The Office of Unemployment Compensation Benefits ruled that Officer Theis owes \$5,680 as a no-fault overpayment. (FF 10).

On October 4, 2017, a grievance arbitration award was issued granting the Union's grievance concerning Officer Theis' discharge, stating as follows:

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 [Officer Theis] should be reinstated with full seniority and benefits, effective the next work week.

(FF 4). The first work week after the date of the arbitration award began on October 8, 2017. (FF 5). However, the County did not return Officer Theis to work until March 4, 2018. (FF 7, 11).

After issuance of the April 3, 2019 PDO, the County issued a check in the amount of \$10,772.89 to Officer Theis as back pay for the period between October 8, 2017 and his return to work on March 4, 2018. (FF 11). The County calculated the total gross back pay amount owed to Officer Theis as \$30,720.41. From this amount, the County deducted \$11,360 for unemployment compensation benefits, which incorrectly doubled the actual amount of benefits received by Officer Theis. (FF 12). The County also deducted a healthcare premium contribution of \$808.11 from the back pay amount paid to Officer Theis. The parties' collective bargaining agreement provides for a 2.5% deduction for healthcare contribution from a bargaining unit member's wages. The County mistakenly deducted an extra \$41.08 from Officer Theis' back pay for healthcare contributions. (FF 13).

Initially, the County alleges that the Hearing Examiner's Finding of Fact 10 which states, in relevant part, that the Office of Unemployment Compensation Benefits "ruled that [Officer] Theis owes ... \$5,680.00 as a 'no fault overpayment'" is not supported by the record because Officer Theis was not required to repay the benefits. For purposes of the exceptions, the Hearing Examiner's Findings of Fact will be sustained by the Board where

² The Board notes that Finding of Fact 10 contains a typographical error stating that Officer Theis received \$5,650 of unemployment compensation benefits. However, the testimony cited by the Hearing Examiner, and the record as a whole, indicates that the amount of unemployment compensation benefits received by Officer Theis was \$5,680. Therefore, Finding of Fact 10 is hereby amended to reflect the correct amount of unemployment compensation benefits received by Officer Theis.

there is substantial evidence in the record to support the finding. Pennsylvania State Rangers Association v. Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, 45 PPER 1 (Final Order, 2013). Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942). A review of the record supports the Hearing Examiner's finding that Officer Theis owes the Office of Unemployment Compensation Benefits \$5,680 as a no-fault overpayment of benefits. Further, it is of no moment that the Office of Unemployment Compensation Benefits provided Officer Theis a choice of repaying the benefits immediately or permitting the Office to recoup the benefits from future unemployment compensation payments. Therefore, the Hearing Examiner's relevant finding is supported by the record and the County's exception thereto is dismissed.

Further, the County does not dispute in its exceptions that it incorrectly deducted double the amount of unemployment compensation benefits received by Officer Theis and acknowledges that he should be reimbursed for \$5,680. However, the County alleges that the Hearing Examiner erred in concluding that the \$5,680 of unemployment compensation benefits actually received by Officer Theis in February 2017 should not be deducted from his back pay calculation because the County is entitled to setoff that amount, citing PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). In that case, the Commonwealth Court affirmed the Board's determination that the employer violated Section 1201(a)(1) and (3) of PERA when it discharged an employee for engaging in protected union activities. The Court further held that the Board's remedy awarding the employee back pay with deductions for any earnings received during his discharge included deductions for unemployment compensation benefits.

Here, the Hearing Examiner held in the April 3, 2019 PDO that the County violated Section 1201(a)(1) and (5) of PERA by failing to timely reinstate Officer Theis to his previous position. Accordingly, the Hearing Examiner ordered the County to pay Officer Theis back pay from October 8, 2017 (the date he should have been reinstated) to March 4, 2018 (the date he was reinstated). A review of the record shows that Officer Theis did not receive unemployment compensation benefits during the period of time that back pay was due pursuant to the April 3, 2019 PDO. Rather, Officer Theis received unemployment compensation benefits in February 2017. Therefore, the County's reliance on the decision in Stairways is misplaced because that case concerned an offset for unemployment compensation benefits earned during the period when back pay was ordered, which is not the case here.³

The County further alleges that the Hearing Examiner's decision is contrary to the October 4, 2017 arbitration award that ordered Officer Theis be reinstated without back pay and that his receipt of unemployment compensation benefits between the time of his discharge and issuance of the

³ The County also relies on a Board Hearing Examiner's decision in FOP Lodge 85 v. Commonwealth of Pennsylvania, Department of General Services, 38 PPER 162 (Proposed Decision and Order, 2007), to support its assertion that it is entitled to a setoff of the unemployment compensation benefits received by Officer Theis. However, as in Stairways, the Hearing Examiner's decision concerns a setoff for unemployment compensation benefits received during the time when the arbitrator awarded back pay to the affected employee. As such, the Hearing Examiner's decision in FOP Lodge 85 is inapplicable to this case.

award constitutes a windfall. As previously stated, contrary to the County's assertion, the back pay ordered by the Hearing Examiner in the April 3, 2019 PDO does not include the period of time in February 2017 when Officer Theis received unemployment compensation benefits. Indeed, the back pay owed to Officer Theis from October 8, 2017 through March 4, 2018 is due to the County's unfair practice of delaying the return of Officer Theis to his position contrary to the terms of the arbitration award. Further, the fact that Officer Theis received unemployment compensation benefits during the time the arbitrator deemed to be an unpaid suspension is due to the failure of the Office of Unemployment Compensation Benefits to recoup that amount and not the Hearing Examiner's order in the April 3, 2019 PDO. Accordingly, the Hearing Examiner properly found that the County failed to comply with the remedy in the April 3, 2019 PDO when it deducted unemployment compensation benefits from the calculation of back pay owed to Officer Theis.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Allegheny County are hereby dismissed, and the February 4, 2021 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member this twentieth day of April, 2021. 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.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES	:	
INDEPENDENT UNION	:	
	:	
v.	:	Case No. PERA-C-18-105-W
	:	
ALLEGHENY COUNTY	:	

AFFIDAVIT OF COMPLIANCE

Allegheny County hereby certifies that it has ceased and desisted from its violations of Sections 1201(a)(1) and (5) of the Public Employee Relations Act; that it has recalculated the back pay amount owed to Officer Theis by eliminating any deductions for unemployment compensation and including the \$41.08 to reflect the miscalculated healthcare insurance contribution and recalculating the interest owed and immediately paying such amount to Officer Theis; 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 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