

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUILDING AND CONSTRUCTION TRADES :
COUNCIL OF PITTSBURGH, AFL-CIO :
 :
v. : Case No. PERA-C-23-37-W
 :
ALLEGHENY COUNTY :

FINAL ORDER

Allegheny County (County) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on December 7, 2023, challenging a Proposed Decision and Order (PDO) issued on November 17, 2023. The County excepts to the Hearing Examiner's conclusion that the County violated Section 1201(a)(1), (5) and (8) of the Public Employee Relations Act (PERA) by failing to comply with a December 19, 2022 arbitration award sustaining a grievance filed by the Building and Construction Trades Council of Pittsburgh, AFL-CIO (Union) on behalf of Tim Chelosky. The Union filed a timely response to the exceptions on December 27, 2023.

The facts relevant to the exceptions are as follows. The Union filed grievances over the County's suspension and termination of bargaining unit employee Mr. Chelosky. The grievances proceeded to arbitration under Section 903 of PERA. On December 19, 2022, Arbitrator Gregory Gleason issued an award (Gleason Award), which sustained the grievances and ordered the County to "reinstatement [Mr. Chelosky] to his former position as a plumbing inspector and make him whole in all ways including but not limited to lost wages, lost benefits, and seniority since September 24, 2020." (FF 5). The County did not appeal the award to the Court of Common Pleas. (FF 6). The County reinstated Mr. Chelosky on February 13, 2023, but has not provided Mr. Chelosky with any back pay or benefits pursuant to the Gleason Award. (FF 7 and 8). Mr. Chelosky testified at the hearing on August 14, 2023, that during the period between when he was suspended and when the County returned him to work, he was not otherwise employed and did not have additional earnings, other than unemployment compensation. (FF 17).

On exceptions the County argues that the Hearing Examiner erred in concluding that it unlawfully delayed payment under the Gleason Award because the Union had not produced Mr. Chelosky's tax return as proof that he did not have interim wages during 2022. For purposes of the alleged unfair practice for failure to comply with a grievance arbitration award, the complainant need only establish that an award exists, the award is final and binding, and that the employer failed or refused to properly implement the award. State System of Higher Education v. PLRB, 528 A.2d 278 (Pa. Cmwlth. 1987). There is no dispute on exceptions as to any of these dispositive elements of the unfair practice.

Moreover, during the hearing on August 14, 2023, Mr. Chelosky testified, under oath, as follows:

Q. And then from the period when you were terminated to when you were reinstated to employment, were you able to obtain alternative employment?

A. No.

Q. So do you have any - any earnings during that period of time personally?

A. No.

(N.T. 32). Further Mr. Chelosky's 2020 and 2021 tax returns, submitted as Exhibit 11, evidence the full amount, and exhaustion, of unemployment compensation benefits received by Mr. Chelosky. Mr. Chelosky's unequivocal testimony, and tax returns of record, are substantial evidence supporting the Hearing Examiner's Finding of Fact that "[d]uring the period between when he was suspended and when the County returned him to work, Chelosky was not otherwise employed and did not have additional earnings, other than unemployment compensation." (FF 17). See Stroudsburg Area School District v. PLRB, 37 PPER 17 (Monroe County Court of Common Pleas, 2005), *affirmed*, 889 A.2d 152 (Pa. Cmwlth. 2005).

Moreover, despite the Hearing Examiner's invitation, the County did not request a second day of hearing to cross-examine Mr. Chelosky's testimony, either immediately following the August 14, 2023 hearing nor in the County's post-hearing brief. 34 Pa. Code §95.98(a)(2) ("[n]o reference may be made in the statement of exceptions to any matter not contained in the record of the case"). Nor did the County except to Finding of Fact 17, or request a remand on exceptions for taking of additional testimony. 34 Pa. Code §95.98(a)(3) ("[a]n exception not specifically raised shall be waived"); 34 Pa. Code §95.98(f)(2) (on exceptions the Board may reopen the record for the taking of further testimony and evidence).

Therefore, the County's exceptions, based on the assertion that the Union has not proven that Mr. Chelosky had no earnings in 2022, are refuted by the record evidence, have been waived by the County's failure to preserve the issue before the Hearing Examiner or on exceptions, and moreover, do not excuse the County's refusal to pay any backpay for 2020 or 2021 under the Gleason Award. Accordingly, the Hearing Examiner did not err in concluding that the Gleason Award is final and binding, and that the County violated Section 1201(a)(1), (5) and (8) of PERA by refusing to comply with the arbitrator's backpay award.

The County also challenges the Hearing Examiner's award of six percent interest from January 18, 2023, when the Gleason Award became final. The award of remedial relief for an unfair practice is within the discretion of the Board. PLRB v. Martha Company, 59 A.2d 166 (Pa. 1948). The award of interest on back pay owed is appropriate remedial relief. Lycoming County v. PLRB, 943 A.2d 333 (Pa. Cmwlth. 2007). On this record, however, the purposes and policies of PERA would be served by directing the payment of interest commencing with August 14, 2023, the date of Mr. Chelosky's uncontested testimony before the Board regarding his unemployment compensation and lack of interim earning. Accordingly, the County's exceptions are sustained in part, and the PDO is modified to direct statutory interest of six percent per annum calculated from August 14, 2023, until the date the County pays Mr. Chelosky the \$118,925.35 in net back pay under the Gleason Award. In all

other respects the PDO is affirmed and made final only as modified herein with respect to statutory interest.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner properly concluded that the County violated Section 1201(a)(1), (5) and (8) of PERA by refusing to comply with the terms of the Gleason Award by paying Mr. Chelosky \$118,925.35 in net back pay. Further, appropriate remedial relief includes the County's payment of statutory interest of six percent per annum from August 14, 2023, until the date the County makes Mr. Chelosky whole with regard to the net back pay. Accordingly, the Board shall sustain the exceptions in part, and dismiss the exceptions in part, making the Proposed Decision and Order final as modified herein.

ORDER

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 sustained in part, and dismissed in part, and the Proposed Decision and Order issued on November 17, 2023, shall be, and the same is, hereby made absolute and final as modified herein.

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, this twentieth day of February, 2024. 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

BUILDING AND CONSTRUCTION TRADES :
COUNCIL OF PITTSBURGH, AFL-CIO :
v. : Case No. PERA-C-23-37-W
ALLEGHENY COUNTY :

AFFIDAVIT OF COMPLIANCE

Allegheny County hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1), (5) and (8) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as modified by the Final Order and as directed therein; that it immediately complied with the Gleason Award and made Mr. Chelosky whole in all ways including, but not limited to, by paying him \$118,925.35 in net back pay with statutory interest of six percent *per annum* calculated from August 14, 2023, until the date the County made Mr. Chelosky whole, and ensured that Mr. Chelosky received full pension credit for the period of his suspension and termination through his reinstatement; that it has posted a copy of the Proposed Decision and Order and Final Order as directed therein; and that it has served an executed 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