

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF :  
TEAMSTERS, LOCAL UNION NO. 249 :  
 :  
v. : CASE NO. PERA-C-22-325-W  
 :  
ALLEGHENY COUNTY :

**PROPOSED DECISION AND ORDER**

On December 12, 2022, International Brotherhood of Teamsters, Local Union No. 249 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Allegheny County (County or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) when the County: (1) failed to respond to information requests regarding merit increases for Allegheny County Court of Common Pleas (Court or Courts) employes in the bargaining unit; and (2) refused to bargain over merit increases for Court employes in the bargaining unit.

On February 1, 2023, the Secretary of the Board issued a complaint and notice of hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating April 21, 2023, via Microsoft Teams, as the time and manner of hearing.

The hearing was continued by the Hearing Examiner and held on May 23, 2023, in Pittsburgh, PA. The Union submitted a post-hearing brief on July 28, 2023. The County submitted a post-hearing brief on September 27, 2023.

The Hearing Examiner, based upon all matters of record, makes the following:

**FINDINGS OF FACT**

1. The County is a public employer within the meaning of the Act. (N.T. 6-7).
2. The Union is an employee organization within the meaning of the Act. (N.T. 6-7).
3. Tammy Sabo is the Secretary/Treasurer of the Union. She has been an officer in the Union for over 12 years. Part of her job includes representing the bargaining unit of Court employes. (N.T. 14-16).
4. The Union's Court employe unit includes non-professional Court-appointed employes. There are many classifications of employes in the Court bargaining unit including clerical staff, community monitors, and court reporters. There are over 500 employes in the unit. (N.T. 16).

5. The County and the Union were subject to a collective bargaining agreement (CBA) with effective dates of January 1, 2017 through December 31, 2020. In December, 2020, the CBA was extended by the parties through December 31, 2021. On or about April 25, 2022, the County and the Union agreed to a Tentative Agreement which extended and modified the previous CBA through December 31, 2024. The parties agreed to integrate the various changes into a new CBA. That process was ongoing at the time of the hearing. (N.T. 18-26; Union Exhibit 1, 2, 3, 4).

6. At some point before August 15, 2022, Kathleen Patterson, who works for the Court in human resources, called Steve Pilarski, County Manager, and told him that the Courts had reviewed their budgets and noticed that one of their employe divisions had not been correctly applying the Court's merit increase plan. Patterson and Christopher Conners, the Court Administrator, later called Pilarski and told him the Court was trying to evenly apply its merit increase program, which had been haphazard with respect to employes in the family division. Pilarski's understanding of the Court's plan was that the Court wanted employes hired at 80% to 85% of the top salary for the position. Then the employe would receive increases up to 100% of the top wage. Any further wage increases after that would come from increases negotiated in a CBA. Pilarski communicated the content of these phone calls to Sabo. (N.T. 92-94, 105-108).

7. Pilarski asked Patterson for a copy of the merit increase policy, but Patterson did not provide a copy to Pilarski. (N. T. 107-108).

8. On or about August 15, 2022, President Judge of the Court, Kim Berkeley Clark, sent some, but not all, bargaining-unit members a letter which states in relevant part:

Dear Employee,

I am pleased to advise you that you will receive a merit increase effective August 1, 2022. This increase will be reflected in your August 19<sup>th</sup> paycheck. This is a merit increase but the amount is also based on your years of services.

These increases are part of a merit raise plan developed by Court Administration. I extend my sincere thanks to Kathy Patterson for all of her work in creating and developing this plan. . . .

Sincerely,

Judge Clark

(N.T. 30; Union Exhibit 5).

9. One of the bargaining-unit members who received the above letter from Clark forwarded it to Sabo. When Sabo read it, she contacted Pilarski about it and had a conversation. In response to the conversation, on August 17, 2022, Pilarski sent Sabo an email that

attached a list of the bargaining-unit members who would be receiving the pay increases referenced by Clark. (N.T. 31).

10. After Clark's letter, Sabo began hearing from many bargaining-unit members who did not receive the letter from Clark and asking why they did not get a pay increase. (N.T. 33).

11. Sabo had three or four conversations with Pilarski in August and September, 2022, over Clark's letter. During these phone conversations, Sabo asked Pilarski for information about the merit increase program mentioned in Clark's letter. She asked him what the merit was based on, how much the increase was, how it was determined, and so forth. She also requested to bargain on the issue of the merit increases mentioned in Clark's letter. With respect to the requests for information, Pilarski told Sabo he would get back to her. Pilarski did not respond to Sabo's request to bargain. Pilarski specifically told Sabo to contact Kathleen Patterson. (N.T. 36-39).

12. Sabo talked to Patterson on the phone in late August or early September, 2022. Patterson told Sabo that she is not required to talk to Sabo and that the phone call was a courtesy. Patterson was upset that the bargaining-unit members were not happy since Patterson believed the merit increase plan was supposed to be positive. Sabo explained that she had bargaining-unit members contacting her who wanted answers and that she needed to represent them. (N.T. 39-40).

13. After talking to Patterson, Sabo immediately called Pilarski and told Pilarski that she did talk to Patterson, they had a conversation, and did not get any information from Patterson. Pilarski said he would get back to Sabo. (N.T. 40).

14. On September 27, 2022, Sabo sent Pilarski a letter which states in relevant part:

RE: [Union] and Allegheny Court Employees Request  
for Information and to bargain on merit pay  
increases

Dear Steve,

As you know, [the Union] reached a new [Tentative Agreement, see Finding of Fact #5] after negotiations. Since then, it recently came to my attention that the [Court] unilaterally implemented so-called "merit" increases for some, but not all, court employees represented by [the Union]. This occurred without bargaining or even discussing this matter with the Union. As a result, it is a mystery to the Union how the County determined who would and who would not receive the increases, or the amount of the increases.

As a Union Officer, I am committed to serving as a strong advocate for all the Union's members. To that end, I aim to be informed regarding their

terms and conditions of employment and any policies implemented by their employers. I have repeatedly requested information related to this matter including how the "merit" raises were determined and implemented, how much the increases were, and who did not receive an increase and the reason for that decision. I have received little response from the County aside from a list of some employees [the merit increases] apply to without any amounts listed.

To fulfill the Union's responsibilities to represent membership, the Union is requesting the following information:

- a list of who received the "merit" increases and the amount of the increase for each employee
- a list of individuals who did not receive a "merit" increase and the reasons why
- any performance or employee reviews or other documentation related to the "merit" increases
- a description of how the "merit" increases were designed and implemented including any relevant documentation.

In addition, by this letter, the Union is formally requesting to bargain over this change in the terms and conditions of employment for [Union] members at the County Courts. . . .

Sincerely,

Tammy M. Sabo  
Secretary-Treasurer, Local 249

(N.T. 41; Union Exhibit 7).

15. Sabo did not receive a response to this letter. She followed up with Pilarski by email dated November 2, 2022. Pilarski did not respond to this follow-up email. Sabo followed up again with Pilarski by email dated December 7, 2022. The instant charge was filed on December 12, 2022. (N.T. 44-46; Union Exhibit 7).

16. On December 14, 2022, Pilarski responded to Sabo by forwarding an email from Patterson to Pilarski dated December 13, 2022. In this email from Patterson to Pilarski, Patterson states in relevant part:

RE: 1601 Union Salary

Hi Steve,

The Courts have been reviewing salaries under all unit ID's. During this time, we provided salary increases to 1601 employes based on their years of service and merit as stated in the attached

memo that was provided to the employees. The only employees that did not receive an increase were those at their maximum salary and another employee that was under suspension.

The Courts have always maintained salary progressions without the involvement or discussions with the unions. Increases have been a process under the Courts discretion. The only salary increases stated within the 1601 union contract are the .35 at 8 years of service, .25 at 30 years of service and longevity payments.

We have also attached a report that provides the employees' salary after the increase was implemented with their years of service. . . .

Kathy Patterson  
Court Human Resources

(N.T. 46; Union Exhibit 8).

17. Attached to Patterson's email to Pilarski, which he forwarded to Sabo, is a populated spreadsheet entitled "Family Adult 1601 Salary List 8/1/22". This spreadsheet has columns including employe name, job title, unit ID (1601), date of hire, years of service, and new monthly salary. This spreadsheet does not include all the bargaining unit members. (N.T. 55; Union Exhibit 8).

18. After Sabo received the forwarded email from Patterson, Sabo had another conversation with Pilarski where she explained she still did not have enough information. Pilarski did not provide any further information. (N.T. 47-48).

19. The Court has historically provided pay increases to new hires at six months of services and at one year of service. This increase is based off a performance evaluation which occurs at six months and one year of service. The Union is aware of these increases though they are not in the CBA. These increases are sometimes called progressions. The Court has additional merit increase plans besides progressions. (N.T. 52-57, 78-79, 110; County Exhibit 1).

20. The Union filed a grievance over merit increases on December 11, 2013. At issue was "Whether the County violated the Agreement in refusing to implement the Grievant's merit wage increase following her completion of six months of employment with a satisfactory rating?" The grievance ended with an award issued by Arbitrator Minnick on January 29, 2015, denying the grievance (Minnick Award). (County Exhibit 1).

21. Arbitrator Minnick determined the following regarding merit increases issued by the Court:

There is very little dispute as to the facts giving rise to this grievance. Within the County's Court system, there is a non-standard policy concerning merit wage increases. The

policy is not applied consistently across all Court Divisions and the bargaining unit employees working in those Divisions. Rather, a different merit wage increase policy is utilized throughout the Court system. The policy is non-contractual, with no reference to it in the parties' collective bargaining agreement.

(County Exhibit 1).

22. The unilateral implementation of merit wages was addressed during 2013-2014 bargaining between the parties, culminating in an interest arbitration award. As noted by Arbitrator Minnich:

The Union acknowledges that there is no contractual requirement that bargaining unit members receive a merit wage increase. Indeed, the Agreement is entirely silent on the issue, with no language addressing merit bumps or the requirements needed to receive the bump. The Union's proposal to add such language during the most recent interest arbitration process was rejected by the Interest Arbitrator.

(County Exhibit 1).

#### **DISCUSSION**

In its Charge, the Union asserts that the County violated Section 1201(a)(1) and (5) of the Act when the County: (1) failed to respond to information requests regarding merit increases for Court employees in the bargaining unit; and (2) refused to bargain over merit increases for Court employees in the bargaining unit.

With respect to the charge that the County refused to bargain the changes to the merit increases announced in the August 15, 2022, letter from President Judge Clark, the Union in this matter did not include the Court in its charge and therefore the bargaining charge with respect to the unilateral implementation of the merit increases must be dismissed. Section 1620 of the County Code reads, in relevant part:

That with respect to representation proceedings before the Pennsylvania Labor Relations Board or collective bargaining negotiations involving any or all employees paid from the county treasury, the board of county commissioners shall have the sole power and responsibility to represent judges of the court of common pleas, the county and all elected or appointed county officers having any employment powers over the affected employees. The exercise of such responsibilities by the county commissioners shall in no way affect the hiring, discharging and supervising rights and obligations with respect to such employees as may be vested in the judges or other county officers.

16 P.S. § 1620. Under the plain language of Section 1620, county commissioners are the representatives of the county courts, and its employes, for representation proceedings and collective bargaining negotiations only, while the power to hire, discharge, and supervise court employees is expressly and exclusively reserved to the court. See Teamsters Loc. 771 v. PLRB, 760 A.2d 496, 500 (Pa. Commw. Ct. 2000). Commissioners are merely the representative for purposes of bargaining and not the sole public employer which can be charged with the commission of unfair practices under Section 6 of PLRA or Article XII of PERA. See Lebanon County, 29 PPER ¶ 29005 (Final Order, 2004), Commonwealth ex rel Bradley v. PLRB, 479 Pa. 440 (1978).

Moving to this matter, the appropriate respondents are the public employers of the employes in the bargaining unit who are, jointly, the County and the Court. The record shows that the Union's charge in this matter did not include the Court as a party. The record shows that the merit increases at issue were an action by the Court, announced by letter from the President Judge. The County did not implement the merit increase program announced in Judge Clark's August 15, 2022, letter. Nevertheless, the charge filed by the Union in this matter did not include the Court. In unfair practice charges regarding activity after the negotiation of a collective bargaining agreement involving the collective bargaining duty, it is necessary for a complainant to charge the public employer which allegedly committed the acts complained of, rather than the county where the county was not an actor in the commission of the unfair practice. See Lebanon County, *supra*. Therefore, to the extent the Union did not charge the Court, the bargaining charge over the alleged unilateral implementation of the merit increase program by the Court must be dismissed.

Though I find above that the charge should be dismissed due to failure to charge the Court, I will here also address the Union's argument that the County committed an unfair practice when Pilarski refused to bargain after Sabo's demand. I find that there is no unfair practice as the record in this matter shows that the County did not implement a new merit increase program which would trigger the obligation to bargain over a mandatory subject of bargaining. The record shows that the County did not do anything with respect to the Court's merit increase program. The record also shows that the merit increase program is not new. The record shows that the Court has for quite some time increased the wages of its employes based on merit using its discretion. The record in this matter weighs towards the conclusion that the merit increase program implemented by the Court is more properly considered to be part the broad wage structure defined by the Union and County when the parties negotiated the CBA.

Further, a review of the collective bargaining documents in the record does not show any contractual merit increase program that the County is contravening. The record does not contain salary schedules containing agreed-upon step increases for any of the bargaining-unit members in question. The only reference to general salary increases are at 8 and 30 years of service and annual raises for all employes. There are notably no references in the collective bargaining documents to starting salaries for bargaining-unit employes. I infer from the history of the parties and from the record as a whole that the

collective bargaining documents in this case are purposely vague as to starting salary levels and merit increases to allow the Court space to perform its statutory power to hire and direct its employees. The record shows that the County was also acting within this bargained for space as well and the County, therefore, did not commit an unfair practice when it refused to bargain the issue with the Union.

This inference is supported by the Minnich Award which found:

The Union acknowledges that there is no contractual requirement that bargaining unit members receive a merit wage increase. Indeed, the Agreement is entirely silent on the issue, with no language addressing merit bumps or the requirements needed to receive the bump. The Union's proposal to add such language during the most recent interest arbitration process was rejected by the Interest Arbitrator.

Nothing in this record shows that the subsequent collective bargaining language between the parties has changed enough from the time of the Minnich Award to lead me to a different conclusion. If the Union desires to have bargained-for language over merit increases and salary schedules for court employes, it will have to bargain for them as part of the collective bargaining process for a successor agreement to the current agreement which runs through December 31, 2024.

Moving to specific Union arguments, the Union argues in its Brief that the charge should not be dismissed and that the County is the proper party and cites Jefferson County Court Appointed Employees Association v. PLRB, 985 A.2d 697 (Pa. 2009) ("Jefferson County"). I find the Union's reliance on this case misplaced. Jefferson County stands for the two propositions that a county can present the courts with a budget and allow the judiciary to operate within the budget and that the court in that case did not violate PERA when it abided by a grievance process provided for in a collective bargaining agreement. The Supreme Court in Jefferson County states "As a co-equal and independent branch of government, the Judiciary has the right to decide how to square its operating needs within the budget allocated to it." Jefferson County, *supra*. There is no evidence in this case that the Courts were acting outside of the budget set by the County. The record shows that the Courts were paying bargaining-unit employes less than the maximum salary as defined by the CBA and then used various methods to move employe's salaries up to the maximum CBA salary (but not over). In the language of Jefferson County, the Court here was squaring its operating needs within the budget allocated to it.

The Union cites Washington County v. PLRB, 72 A.3d 830 (Pa. Commw. Ct. 2000) in its brief. The Union's reliance on this case is also misplaced. Washington County dealt with a County's failure to implement an arbitration award that extended the workday by one-half hour. The court in Washington County refused to schedule the employees to work the extra time. Washington County is distinguishable from this case as the Union in this matter does not have a final arbitration award in its favor. The issue in this case is whether the County committed an unfair practice by refusing to bargain the issue of the



Court's merit increases to bargaining-unit employees, and not over, for example, an arbitration award that says the County violated the CBA. While it is true that the County "control[s] the financial terms of employment" and is responsible for "negotiation and implementation of employee wages and benefits", Washington County, supra, I concluded above that the Court's merit increase program, as found on this record, is a proper action by the Court within the bargaining relationship of the parties. Thus, in this case, the question is not over the implementation of wages by the County. The record shows that wages are being paid by the County without the Union showing that the Court committed unfair practices in its determination of wages for its employees.

With respect to the Union's charge over the County's failure to adequately respond to information requests, the law is clear that an employer is obligated to provide relevant information requested by the union, which the union needs to intelligently carry out its grievance handling and collective bargaining functions. AFSCME Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Dept. of Corrections, 17 PPER ¶ 17072 (Proposed Decision and Order, 1986), 18 PPER ¶ 18057 (Final Order, 1987). The standard for relevance is a liberal discovery type standard that allows the union to obtain a broad range of potentially useful information. Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987). Under federal cases which the Board has found persuasive, information that pertains to employees in the bargaining unit is presumptively relevant. North Hills School District, 29 PPER ¶ 29063 (Final Order, 1998); NLRB v. U.S. Postal Service, 888 F.2d 1568 (11th Cir. 1989); NLRB v. Pfizer, Inc., 763 F.2d 887 (7th Cir. 1985). If the record contains substantial and legally credible evidence that the union requested relevant information and the employer improperly denied the request, the employer must be found in violation of its bargaining obligation. AFSCME Council 13, supra.

In this matter the Union's information requests were relevant as they dealt with explicit terms and conditions of employment (merit raises) for bargaining-unit members. However, the record also shows that the information the Union requested is in control of the Court and not the County. As the Court's collective bargaining agent, the County has an obligation to go to the Court and request the information sought by the Union here. Teamsters Local Union No. 764 v. Northumberland County, 52 PPER 62 (Proposed Decision and Order, 2021); United Mine Workers of America District v. Fayette County, 36 PPER 72 (Proposed Decision and Order, 2005); PSSU v. Lehigh County, 22 PPER ¶ 22106 (Proposed Decision and Order, 1991). The record in this matter shows the County adequately discharged this duty when Pilarski generally took Sabo's calls and told her as much as he knew from his conversations with Court representatives. Additionally, on August 17, 2022, Pilarski sent Sabo an email attaching a list of the bargaining-unit members who would be receiving the pay increases referenced by Judge Clark. Pilarski also sent an information request to Patterson and, on December 15, 2022, forwarded Patterson's response to Sabo. The Court never provided Pilarski with a copy of the merit increase policy and, therefore, he could not provide one to Sabo. On this record, the County has not committed an unfair practice with respect to the Union's information requests.

**CONCLUSIONS**

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

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 not 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 PERA, the Hearing Examiner

**HEREBY ORDERS AND DIRECTS**

that the charge is dismissed and the complaint rescinded.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

**SIGNED, DATED AND MAILED** at Harrisburg, Pennsylvania, this fourteenth day of November, 2023.

**PENNSYLVANIA LABOR RELATIONS BOARD**

          /s/ Stephen A. Helmerich            
STEPHEN A. HELMERICH, Hearing Examiner