

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 :

PROPOSED DECISION AND ORDER

On January 30, 2023, Building and Construction Trades Council of Pittsburgh, AFL-CIO (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), (5) and (8) of the Public Employe Relations Act (PERA or Act) when the County failed to comply with a December 19, 2022, arbitration award.

On April 3, 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 June 14, 2023, in Pittsburgh, as the time and place of hearing.

The hearing was continued by the Hearing Examiner and held on August 14, 2023, via Microsoft Teams, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. At the hearing, the Union put on its case in chief. However, the County did not appear, despite numerous notices from the Board and the Hearing Examiner. (N.T. 28-29). On August 14, 2023, the Hearing Examiner sent a letter via email and first-class mail to the parties which gave the County the opportunity to request a second day of hearing. On August 18, 2023, the Hearing Examiner sent a letter to the parties stating that the County did not respond to the August 13, 2023, letter. The Hearing Examiner then closed the record and issued a briefing schedule. The County submitted a post-hearing brief on September 7, 2023. The Union submitted a post-hearing brief on October 17, 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.
2. The Union is an employee organization within the meaning of the Act.
3. The Union represents a unit comprised of building and trades employes of the County and is certified at PERA-R-372-656-W. (Union Exhibit 3).

4. The parties were subject to a collective bargaining agreement with the dates of January 1, 2017 through December 31, 2020. By mutual agreement on July 31, 2020, the parties agreed to extend their collective bargaining agreement through December 31, 2021. The parties then agreed on a successor collective bargaining agreement with the effective dates of March 6, 2022, through December 31, 2024. (Union Exhibit 3, 4, 5).

5. Tim Chelosky was hired by the County as a plumbing inspector in March, 2015. On September 24, 2020, Chelosky was suspended by the County. On October 23, 2020, Chelosky was terminated by the County. The Union filed grievances over the suspension and the termination. The grievances proceeded to a hearing before Arbitrator Gregory Gleason. Gleason issued an award (Gleason Award) on December 19, 2022, which sustained the grievances. The Gleason Award ordered the County to "reinstate [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." (N.T. 8-11; Union Exhibit 1).

6. The County did not appeal the Gleason Award to the Court of Common Pleas. (N.T. 6).

7. The County reinstated Chelosky on February 13, 2023. (N.T. 11).

8. The County has not provided Chelosky with any back pay or benefits pursuant to the Gleason Award. (N.T. 12, 32).

9. The County owes Chelosky \$118,925.35 in net back pay, not including interest. (Union Exhibit 2).

10. Included in the net back pay amount is \$140,582.56 in unpaid wages for the back pay period Chelosky would have earned had he not been terminated by the County. (N.T. 13; Union Exhibit 2, 3 page 35, 4, 5 page 48).

11. Included in the net back pay amount is a credit to the County of (\$4,568.93) reflecting the County's contribution to healthcare at 3.25% of wages. (Union Exhibit 2, 3 page 31).

12. Included in the net back pay amount is \$12,942.72 in healthcare premiums paid by Chelosky to be covered by his wife's healthcare due to being terminated by the County. (N.T. 22-25; Union Exhibit 2, 5, 6, 7).

13. Included in the net back pay amount is \$612.00 reflecting an out-of-pocket medical expense paid by Chelosky during a period he did not have healthcare due to the termination of his County employment. (N.T. 25-26; Union Exhibit 2, 8).

14. Included in the net back pay amount is \$250.00 reflecting the amount Chelosky paid to renew his license. (N.T. 26-28; Union Exhibit 2, 9, 10).

15. Included in the net back pay amount is \$800.00 reflecting a contractual clothing/tool allowance Chelosky would have received had he not been terminated by the County. (N.T. 18; Union Exhibit 2, 3 page 37).

16. Included in the net back pay amount is a credit to the County of (\$31,693.00) reflecting unemployment compensation received by Chelosky. (Union Exhibit 2, 11).

17. During 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. (N.T. 32).

18. The County has not verified if it caused the Retirement Board to provide Chelosky with a full pension credit for the back pay period. (N.T. 31-32).

DISCUSSION

The law regarding this matter is well settled. In determining whether an employer complied with a grievance arbitration award, the Union has the burden of proving 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).

In this case the record clearly shows the Gleason Award exists and that it is final and binding. There is no evidence that the Gleason Award was ever appealed and the County, in its Brief, does not contest that the Gleason Award is final. The County also, in its Brief, does not contest that it owes Chelosky back pay pursuant to the Gleason Award and does not contest that it has not made Chelosky whole. Therefore, the record clearly supports a finding that the County has committed an unfair practice by not complying with an arbitration award.

The Union persuasively showed at the hearing by uncontroverted evidence that Chelosky is owed \$118,925.35 in net back pay, not including interest. The County disputes this amount in its Brief and argues that it must account for interim earnings. However, the uncontroverted evidence in this matter shows that Chelosky had no interim earnings other than unemployment compensation, which is accounted in the calculation of net back pay. The County also argues that Chelosky should not be paid the clothing/tool allowance and license fee since Chelosky was not working for the County at the time and had no need for tools or a license. However, the clothing/tool allowance is bargained-for compensation and properly included. Additionally, the record supports a finding that Chelosky would not have paid \$250 for his license renewal but for the County terminating him. The record also shows that Chelosky's license is related to his employment with the County. Therefore, it is also properly included.

I am also awarding six per cent *per annum* statutory interest calculated from the date the Gleason Award became final, which is

thirty days after the Award was issued, or January 18, 2023. This is the date the unfair practice began. The statutory interest shall continue until the date Chelosky is made whole by the County. The County did not appear at the hearing and there is no record to support any arguments it makes in its Brief regarding statutory interest.

As part of making Chelosky whole, the County shall also ensure that Chelosky has a full pension credit for the back pay period.

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 committed unfair practices in violation of Section 1201(a) (1), (5) and (8) 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 County of Allegheny shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Cease and desist from refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.
4. Take the following affirmative action which the Hearing Examiner finds necessary to effectuate the policies of PERA:
 - (a) Immediately comply with the Gleason Award and make 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 per cent *per annum* calculated from January 18, 2023, until the date the County makes Chelosky whole, and ensuring that Chelosky receives full pension credit

for the period of his suspension and termination through his reinstatement.

(b) Post a copy of this Decision and Order within five (5) days from the effective 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 Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

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 seventeenth day of November, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

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

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AFFIDAVIT OF COMPLIANCE

The County of Allegheny 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 directed therein; that it immediately complied with the Gleason Award and made 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 per cent *per annum* calculated from January 18, 2023, until the date the County made Chelosky whole, and ensured that 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 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