

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WYOMING BOROUGH POLICE DEPARTMENT :
 :
 v. : Case No. PF-C-10-59-E
 :
 WYOMING BOROUGH :

PROPOSED DECISION AND ORDER

On April 28, 2010, the Wyoming Borough Police Department (Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices, under the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111, and therein alleged that that Wyoming Borough (Borough) violated Section 6(1)(a) and (e) of the PLRA by refusing to comply with a grievance arbitration award ordering the reinstatement of John P. Broda.

On May 13, 2010, the Secretary of the Board issued a letter informing the Union that the Board was unable to process its charge because the charge failed to allege a date that falls within the six-week limitations period. The Secretary of the Board gave the Union an opportunity to amend its charge within twenty days. On May 27, 2010, the Union timely amended its charge.

On June 16, 2010, the Secretary of the Board issued a complaint and notice hearing directing that a hearing be held on August 25, 2010. After two continuances, the hearing was held on August 30, 2010, in Harrisburg. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed post-hearing briefs.

The Borough stipulated and agreed to certain selected paragraphs contained in the Union's amended specification of charges, yielding findings of fact 1 through 9 herein. (N.T. 4-5). The Borough did not stipulate to paragraph numbers 9, 10, 11 and 13 in the amended specification of charges. The examiner, based upon the stipulations and all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The Borough is a public employer and political subdivision under Act 111, as read in pari materia with the PLRA. (N.T. 4).
2. The Union is a labor organization under Act 111, as read in pari materia with the PLRA. (N.T. 4).
3. The Union and the Borough are parties to a collective bargaining agreement that contains a grievance and arbitration mechanism to resolve grievance disputes, including matters of discipline. (N.T. 4; Joint Exhibit 1).
4. In 2006, the Borough discharged then Officer Broda. The Union processed a grievance to arbitration protesting the discharge, pursuant to the collective bargaining agreement. (N.T. 4; Joint Exhibit 1).
5. On November 27, 2006, the grievance arbitrator, Robert Kyler, issued an award (Kyler Award) ordering the following:

The Grievant shall be returned to work within two (2) weeks of the date of this award. He shall receive no back pay and no benefits for the period of time he was on suspension and termination.

(N.T. 4; Police Exhibit 1).
6. The Borough appealed the Kyler Award to the Luzerne County Court of Common Pleas, which affirmed the Kyler Award. (N.T. 4).

7. The Borough appealed from the Common Pleas Court to the Commonwealth Court of Pennsylvania, which also affirmed the Kyler Award on February 8, 2008. (N.T. 4, 21).

8. The Kyler Award became final and unappealable on or about March 11, 2008. (N.T. 4, 21, 38).

9. To date the Borough has refused to implement the terms of the Kyler Award. (N.T. 4).

10. Robert Boyer is—and at all times relevant hereto was—the Mayor of Wyoming Borough. (N.T. 16, 54).

11. On or about April 9, 2008, Joseph Mangin, on behalf of the Union, spoke with Mayor Boyer about an investigatory interview that the Mayor scheduled for Broda at 7:00 p.m. on April 10, 2008. The Mayor informed Mr. Mangin that the interview concerned new matters unknown to the Borough at the time of Broda's original termination. A few hours later, Mr. Mangin telephoned the Mayor and proposed that Broda would resign and the Borough could give Broda back pay from the date of the Kyler Award to the date of Broda's resignation. The Mayor agreed to honor any financial obligations owed to Broda without committing the Borough to any specific dollar amount. The Mayor believed that the Kyler Award created financial liability for the Borough prospectively. (N.T. 15-16, 19-20, 57, 59-70, 81-82).

12. On April 10, 2008, Broda communicated his resignation to the Borough effective April 11, 2008, in exchange for backpay. (N.T. 19, 23, 32, 34, 38, 47-48; Police Exhibit 1; Respondent Exhibit 1).

13. From April 2008 through December 1, 2009, the parties actively communicated about a back pay amount to pay Broda. The letters from the Borough's solicitor establish that, throughout the period, the Borough acknowledged that it was planning to determine a back pay amount to give to Broda. (N.T. 21-24; Police Exhibit 1).

14. On October 10 and December 1, 2009, the parties met to discuss the resolution of Broda's backpay. (N.T. 67, 70; Police Exhibit 1, March 15, 2010 letter).

15. On March 15, 2010, the Union outlined its backpay calculation for Broda, but the Borough did not respond. (N.T. 21-22; Police Exhibit 1).

16. The Borough has not paid any money to Broda nor has the Borough reinstated him. (N.T. 20, 31, 71).

17. In late 2008, during backpay negotiations, the Mayor represented to Union representative Mangin that the Borough wished to defer the financial burden and delay some payments until the next tax year of 2009. During the same discussion, the Mayor represented to Mangin that he was having difficulty with obtaining Borough Council's approval for any payment to Broda. (N.T. 24-25; Police Exhibit 1).

18. At no time between April 2008 and March 2010 did the Mayor or any other Borough representative indicate or represent that it would not pay Broda some backpay amount. The Mayor indicated to Mr. Mangin that he may be able to obtain Council approval if the Union lowered the backpay amount sought. (N.T. 26-27; Police Exhibit 1).

19. Act 120 certification is the basic police officer certification. If an individual lacks such a certification, he/she cannot be a police officer. (N.T. 24-25).

20. When an Act 120 certification lapses, an officer may be recertified by taking updates within two years. Beyond two years, the officer must take an exam in Harrisburg for recertification. (N.T. 27).

21. On December 21, 2007, Broda was arrested and charged with crimes for which a potential prison sentence in excess of two years applied. (N.T. 41-43, 47-49; Respondent Exhibit 2).

22. Broda entered and was accepted into the Accelerated Rehabilitative Disposition (ARD) program on June 18, 2008. Broda signed his ARD application agreeing to the terms set

by Judge Burke of the Court of Common Pleas of Luzerne County, which included the revocation of Broda's Act 120 certification. (N.T. 45-46; Respondent Exhibit 2).

23. The docket entries for Broda's criminal charges and ARD disposition in the Luzerne County Court of Common Pleas shows the ARD conditions imposed by the Court on Broda. Those conditions include the revocation of Broda's Act 120 certification. (N.T. 74; Respondent Exhibit 2, Page 6 of 7).

24. The transcript of Broda's ARD proceeding provides as follows:

THE COURT: Commonwealth versus John Broda.

MS. KACMARSKI: This is case 839 of 2008, Commonwealth versus John Broda. This is the time for him to be accepted into the ARD program.

THE COURT: Mr. Broda, if the Court accepts the Commonwealth's recommendation to place you in the program and you comply with all terms and conditions of the program, at the end of the term, the charges will be dismissed. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And conversely, if you violate and the ARD is revoked, you're going to face prosecution. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: In order to be accepted into the program, you must agree to waive your rights under Statute of Limitations, Rule 600, and the right to a speedy trial. Do you understand those rights and agree to waive them?

THE DEFENDANT: Yes.

THE COURT: What are the specific recommendations?

MS. KACMARSKI: The Defendant is to be placed into the program for a period of six months, to pay all court costs, to pay restitution to the victim, Frank Keris, K-e-r-i-s, to perform 15 hours of community service, to write a letter of apology to the Wyoming Borough, as well as the victim, and to revoke the Act 120 certificate so that he would no longer be able to work in law enforcement.

THE COURT: Is there an amount on the restitution?

MS. KACMARSKI: I don't have an exact amount.

....

THE COURT: And I will order the Defendant be placed in the program pursuant to the terms and conditions indicated by the Commonwealth.

Make sure you do your community service, get your letters of apology by and through counsel. And, also, you understand, you've got to file a revocation on your own behalf regarding your Act 120 certificate. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Based on the submissions, so ordered.

MR. SKLAROSKY: Thank you, Judge.

THE COURT: And that's it.

MR. SKLAROSKY: Thank you.

THE COURT: Mr. Broda, I don't have to tell you it's an opportunity to wipe the slate clean.

THE DEFENDANT: Right.

(Respondent Exhibit 3; pages 2-4).¹

DISCUSSION

The Union seeks the enforcement of the Kyler Award which reinstated Broda as a Borough police officer, as of December 11, 2006, without backpay or benefits for the time of his suspension and termination before that date.

¹ During the hearing, the parties agreed that the record would remain open for the submission of Respondent Exhibit 3 at a later date and that the Union would have an opportunity to lodge any objections to Respondent Exhibit 3. The Borough submitted Respondent Exhibit 3 with its post-hearing brief, and I have not received any objections from the Union to the Exhibit.

The Board has jurisdiction to determine whether an employer's alleged failure to comply with a grievance arbitration award constitutes an unfair labor practice. Wilkens Township Police Dep't v. PLRB, 707 A.2d 1202 (Pa. Cmwlth. 1998); FOP, Lodge 5 v. City of Philadelphia, 30 PPER ¶ 30204 (Final Order, 1999). "When an unfair labor practice charge alleges a party's refusal to comply with a grievance arbitration award, the Board must first determine whether an arbitration award exists, then, whether the appeal process has been exhausted, and, if so, whether the employer failed to comply with the award." City of Philadelphia v. PLRB, 759 A.2d 40, 42 (Pa. Cmwlth. 2000). Accord, Fraternal Order of Housing Police v. Philadelphia Housing Authority, 38 PPER 79 (Final Order, 2007). The party alleging non-compliance with the grievance arbitration award (in this case, the Union) has the burden of proving that the respondent has indeed failed to comply with the arbitrator's decision and order. FOP, Lodge 5 v. City of Philadelphia, 30 PPER ¶ 30204 (Final Order, 1999).

The Board may not review the merits of a grievance arbitration award, when determining compliance. City of Philadelphia, 759 A.2d at 42. However, the Board may reasonably interpret a grievance award to determine whether an employer has complied with it, "'[s]o long as [the Board's] interpretation of the arbitrator's award is supported by the record, not violative of constitutional rights, or contrary to law.'" Wilkens Township, 707 A.2d at 1204 (quoting Crawford Central Sch. Dist. v. PLRB, 618 A.2d 1202, 1206 (Pa. Cmwlth. 1992)).

Here, it is undisputed that the Kyler Award exists and the appeals process has been exhausted. Indeed, the parties agree that the Kyler Award became enforceable on March 11, 2008. Moreover, the Borough stipulated and agreed that it has refused to implement the Kyler Award and reinstate Broda. The Union, therefore, has established a prima facie case. The Borough, however, presents three defenses to the charge and its admitted refusal to comply with the Kyler Award: (1) the charge is untimely filed; (2) Broda's post-Kyler Award Act 120 revocation prevents the Borough from reinstating him; and (3) Broda voluntarily resigned.

1. The Charge is Timely Filed

The Borough argues that the Kyler Award became final and binding on March 11, 2008, and the charge was not filed until April 28, 2010, which is over two years from the acts which gave rise to the charge. (Borough Post-hearing Brief at 4). Alternatively, the Borough maintains that, on October 12, 2009, the Borough clearly stated in a letter to the Complainant's attorney that "Mr. Broda is no longer an officer for the Borough of Wyoming and has no right to return to work." (Police Exhibit 1, October 12, 2009 letter). Based on this letter, the Borough argues that, as of October 12, 2009, the Complainant was on notice that negotiations were no longer going to be successful, yet the Complainant waited another six months to file a charge. (Borough Post-hearing Brief at 4-5). The Borough also contends that the record does not support the Union's position that negotiations continued well into 2010.

In Philadelphia Housing Authority, *supra*, a case decided under the Public Employees Relations Act, the Board reiterated the general rule that the statute of limitations "commences to run when the complainant knew or should have known of the acts alleged to be an unfair practice." Philadelphia Housing Authority, 38 PPER at 217. The Board further opined that, in a charge case alleging the refusal to comply with an arbitration award, "the statute of limitations does not accrue immediately with the issuance of the award, but 'begins to run when a party takes a "firm and unyielding stance" that it will not comply with the award.'" Id. at 217.

Police Exhibit 1 contains a series of letters exchanged between the parties documenting an ongoing discussion about the payment of backpay to Broda for the period of time from the issuance of the Kyler Award to the exhaustion of the appeals. The record is clear that Broda made a deal with Mayor Boyer, through Union representative Mangin, that he would not return to work, as arbitrator Kyler ordered, in exchange for backpay owed to him from the date of the Kyler Award. Letters from the Borough's solicitor, from April 2008 through October 12, 2009, as well as the Mayor's testimony, establish the Borough's commitment pay backpay to Broda. The Union's letter dated March 15, 2010, memorialized a meeting between the parties that occurred on December 1, 2009. Although this was the last date of record that the parties discussed or negotiated Broda's backpay, given the

lengthy time that discussions had been pursued by both parties up to that point, it was reasonable for the Union to believe that such negotiations were still ongoing into 2010. The Borough did not at any time present to the Union the requisite "firm and unyielding stance" that it would not pay any backpay to Broda pursuant to the December 11, 2006 reinstatement order of the Kyler Award until the Borough refused to answer the Union's March 15, 2010 letter outlining its backpay calculations for Broda.

The Borough also argues that the October 12, 2009, letter from the Borough's solicitor (expressly informing the Union that, due to Broda's resignation, he had no right to return to work) placed the Union on notice as of that date that the Borough refused to comply with the Kyler Award. However, the Kyler Award creates two obligations on the part of the Borough in this case: (1) reinstatement by December 11, 2006 and (2) if not reinstated by that date, backpay flowing from the ordered December 11, 2006 reinstatement. Broda's relinquishment of his right to return to work was always contingent upon—and in exchange for—the Borough honoring its second obligation to pay backpay owed. As long as the Borough continued to discuss backpay owed, as it subsequently did on December 1, 2009, the Union and Broda were not on notice to seek enforcement at the Board. Enforcing the Kyler Award through unfair labor practice litigation was unnecessary when the Borough remained willing to pay Broda the backpay owed as a result of the Kyler Award, which reinstated Broda as of December 11, 2006. Indeed Broda, at all times since April 11, 2008, was seeking to have the backpay, not the reinstatement. Therefore, the Borough's expression, on October 12, 2009, that Broda would not be reinstated was merely a consistent reaffirmation of both parties' positions during the entire duration of settlement discussions. Accordingly, the Union's charge was timely filed on April 28, 2010, because at no time did the Borough expressly refuse to pay Broda backpay or refuse to discuss the matter until it ignored the Union's March 15, 2010 letter.

2. The Post-award Judicial Revocation of Broda's Act 120 Certification Bars Reinstatement After June 18, 2008

The Borough argues that the Borough is unable as a matter of law to comply with the Kyler Award because Broda cannot be reinstated as a police officer without his Act 120 certification. (Borough's Post-hearing Brief at 6-7). The Borough maintains that, under the Municipal Police Officers' Education and Training Program, a police officer is ineligible for compensation unless the officer is duly certified by the Municipal Police Officers' Education and Training Commission (Commission). 53 Pa.C.S. § 2167. Moreover, any person who authorizes the payment of salary to an uncertified officer may be fined or imprisoned and the municipality may suffer other financial losses, such as the loss of state funds. (Borough Post-hearing Brief at 6-7). The Borough also argues that the Commission's regulations require that police officers must be free of convictions of disqualifying criminal offenses to obtain and maintain a certification. 37 Pa. Code §203.14 A disqualifying criminal offense is defined as "[a] criminal offense for which more than 1 year in prison can be imposed as punishment." 37 Pa. Code § 203.1. A conviction is defined as "[a]n adjudication of guilt including the imposition of a sentence." 37 Pa. Code § 203.1. Based on these statutory and regulatory provisions, the Borough argues that "[i]t is uncontested that on June 18, 2008, Mr. Broda was convicted of a crime which carried a sentence of more than 1 year in prison. He was clearly convicted because he was entered into the ARD program." (Borough Post-hearing Brief at 7).

Contrary to the Borough's argument, however, Broda was not convicted of a crime. Judge Burke of the Luzerne County Court of Common Pleas clearly accepted Broda into the ARD program. (F.F. 22-24). A defendant's admission into an ARD program does not constitute a conviction. Commonwealth v. Ferguson, 377 Pa. Super., 246 546 A.2d 1249 (1988); In Commonwealth v. Fegley, 371 Pa. Super. 593; 538 A.2d 895 (1988), the Superior Court opined that "[a]cceptance of ARD is not the equivalent of a conviction, nor does successful completion of the program result in an acquittal." Id. at 598, 538 A.2d at 897. ARD programs are regarded as convictions only for determining the proper progressive sentencing for future offenses. Commonwealth v. Pledger, 934 A.2d 715 (Pa. Super. 2007). Although, the offenses with which Broda was charged may have carried sentences that exceeded one year in prison if convicted, the law does not recognize ARD as a conviction. Therefore, the Commission could not suspend or revoke Broda's Act 120 certification based on the fact that he entered into an ARD program for offenses that would otherwise be disqualifying criminal offenses. Indeed the record does not indicate what if any action the Commission has taken with respect to Broda's certification.

However, Judge Burke of the Luzerne County Court of Common Pleas has in fact made the revocation of Broda's certification a condition of his successfully completing ARD. Judge Burke did not suspend Broda's certification; he made permanent revocation a condition of his ARD. The following dialogue exchanged between the prosecutor and the Court during Broda's ARD hearing:

THE COURT: What are the specific recommendations?

MS. KACMARSKI: The Defendant is to be placed into the program for a period of six months, to pay all court costs, to pay restitution to the victim, Frank Keris, K-e-r-i-s, to perform 15 hours of community service, to write a letter of apology to the Wyoming Borough, as well as the victim, and to revoke the Act 120 certificate so that he would no longer be able to work in law enforcement.

(F.F. 24) (emphasis added). The recommendation clearly states that conditions of ARD preclude Broda from ever being able to work in law enforcement, hence the permanent revocation of his certification. Based on the prosecutor's submission, Judge Burke ordered that Broda be placed in the program "pursuant to the terms and conditions indicated by the Commonwealth." (F.F. 24). Judge Burke further stated to Broda: "[m]ake sure you do your community service, get your letters of apology by and through counsel. And, also, you understand, you've got to file a revocation on your own behalf regarding your Act 120 certificate. Do you understand that? To which Broda responded in the affirmative. (F.F. 24) (emphasis added).

In Dougherty v. Borough of Meshoppen, 612 A.2d 595 (Pa. Cmwlth 1992), the Commonwealth Court stated the following:

Certainly, the certification requirement provided for in Act 120 is more than a mere technicality as it reflects the legislature's clear intention that in order for a police officer in this Commonwealth to be qualified for service, he or she must obtain certification from the Commission by either completing a basic training course or obtaining a waiver of basic training within one year of the date of employment.

Id. at 597. The Board has applied Dougherty and held that a public employer is unable to reinstate a police officer pursuant to an arbitration award when that officer does not possess a valid Act 120 certification nor can the employer pay backpay to the employe for any period of time that the officer lacked a certification. Philadelphia Housing Authority, 38 PPER at 217-218.

In PLRB v. School District of Bristol Township, 11 PPER ¶ 11203 (Final Order, 1981), the Board stated the following:

We will not require compliance with an arbitrator's award no matter what the cost or intervening or changed circumstances. Not before the arbitrator at the time of issuance of his award was the need to subsequently effectuate a transfer to meet personnel requirements elsewhere in the School District due to changed circumstances. The Grievant should not be placed in a better position than he would have been in without improper denial of his transfer.

Bristol Township, 11 PPER at 357. In Bristol Township, the Board held that post-award events not before the arbitrator for consideration could justify non-compliance with the award. Such is the case here.

Arbitrator Kyler could not have known and could not have considered, in his November 2006 award, that Broda would be charged with multiple criminal offenses that would result in the imposition of ARD conditions that included the permanent revocation of his Act 120 certification, thereby precluding him from lawfully being reinstated as a police officer in the Borough. The post-award, Court-ordered certification revocation constitutes an intervening event that significantly changed circumstances and precluded Broda's reinstatement after June 18, 2008. Philadelphia Housing Authority, supra. However, it does not affect the backpay liability for the Kyler Award ordered reinstatement prior to June 18, 2008. An employer does not diminish its backpay liability

by appealing an arbitration award and refusing to reinstate the employe as directed in the award during the appeal process. Otherwise, employers could eliminate or reduce backpay merely by appealing an award, unless the award is vacated by the courts. Such a policy would render an affirmed award meaningless and encourage frivolous appeals. Two courts affirmed the Kyler Award. Broda, providing he retained his certification, would have been working for and receiving salary and benefits from the Borough after December 11, 2006. Accordingly, the Borough is correctly posits that it is unable to comply with the reinstatement obligation imposed by the Kyler Award, but remains obligated to comply with the financial obligations flowing from Broda's pre-June 18, 2008 right to reinstatement under that Award.

3. Neither Unissued Suspension Nor Resignation Limits Backpay

The Borough also argues that Broda voluntarily resigned on April 10, 2008, effective April 11, 2008, without entering into a settlement agreement with the Borough. (Borough Post-hearing Brief at 9). The Borough contends that, although Broda claims to have been enticed into resigning in exchange for backpay, the record shows that Broda resigned due to the pending charges against him. (Borough's Post-hearing Brief at 9). Therefore, argues the Borough, the only backpay amount it could be liable for is from March 11, 2008 to April 11, 2008, and even that period should be further diminished to zero "due to the fact that the Borough had the right to suspend[] Mr. Broda without pay during this time," (Borough Post-hearing Brief at 10), as a result of the pending criminal charges against him.

The Borough did not, at any time, reinstate Broda to Borough employment. (F.F. 16). Therefore, although Broda submitted a resignation letter, he did not have a position from which to resign. To the extent that Broda expressed his intent to voluntarily relinquish his right to reinstatement per the Kyler Award, the record clearly shows that his intent to remain separated from Borough employment was contingent upon the Borough's payment of backpay for the post-Kyler Award time period, which he never received. There is substantial evidence in the record establishing that the Mayor and Mr. Mangin had a meeting of the minds regarding the fact that Broda's "resignation" was in exchange for the backpay already, independently owed. Accordingly, the April 11, 2008 resignation is not a date that ends the Borough's backpay liability because Broda was not reinstated and the Borough's failure to honor its obligations voided any "resignation." Also, as previously stated, March 11, 2008 is not the effective date of the Kyler Award. The effective date of the Kyler Award is December 11, 2006, and that is the date from which backpay must be measured.

The Borough correctly notes that it could have suspended Broda after the enforceability date of March 11, 2008 of the Kyler Award for the criminal charges against him that occurred while the Kyler Award was on appeal. However, because the Borough did not actually either reinstate or suspend him, it never gave the Union an opportunity to grieve and arbitrate the inchoate suspension. It is unknown whether a grievance arbitrator would have overturned such a suspension and awarded backpay for that period of time. Therefore, it is mere speculation to assume that Broda would not be entitled to backpay for the period following March 11, 2008, just like it would be too speculative to assume that a grievance would have been filed had Broda actually been suspended. By not actually suspending Broda, the Borough left intact his right to backpay through June 18, 2008. Obviously, possessing the desire or the cause to suspend an employe does not affect the employment relationship and the pay of the employe as does an actual suspension, and Broda remained entitled to reinstatement at that time.

Accordingly, the Borough has engaged in unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA, as read in pari materia with Act 111, and the Kyler Award will be partially enforced to the extent that the Borough is liable for the backpay owed Broda for the period of time between December 11, 2006 and June 18, 2008, provided Broda maintained an Act 120 Certification during that time period, plus interest. However, Broda is not, at this time, entitled to reinstatement.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The Borough is a public employer and a political subdivision within the meaning of Act 111, as read in pari materia with the PLRA.

2. The Union is a labor organization within the meaning of the PLRA, as read in pari materia with Act 111.

3. The Board has jurisdiction over the parties hereto.

4. Wyoming Borough has committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA, as read in pari materia with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Borough shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA.

2. Cease and desist from refusing to bargain collectively with the exclusive bargaining representative of its police employes.

3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111, as read in pari materia with the PLRA:

(a) Immediately pay John P. Broda and make him whole for all wages and benefits that he would have earned from December 11, 2006 to the date of the revocation of his Act 120 certification on June 18, 2008, including but not limited to wage and longevity increases received by the bargaining unit during the backpay period, out of pocket dental, medical and optical expenses for himself and responsible family members, holiday pay and accrued sick and vacation time;

(b) Immediately pay Mr. Broda interest at the rate of six percent per annum on any and all backpay owed. Interest shall be computed from December 11, 2006 to until the date of actual payment;

(c) 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 employes and have the same remain so posted for a period of ten (10) consecutive days; and

(d) 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.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventh day of April, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WYOMING BOROUGH POLICE DEPARTMENT :
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 :
 v. : Case No. PF-C-10-59-E
 :
 WYOMING BOROUGH :

AFFIDAVIT OF COMPLIANCE

Wyoming Borough hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act, as read in pari materia with Act 111; that it has paid backpay to Mr. Broda for the period of time between December 11, 2006 and June 18, 2008; that it has paid Mr. Broda interest at the rate of six percent per annum on the backpay owed from December 11, 2006 until the date of actual payment; that it has posted a copy of the proposed decision and order in the manner prescribed therein; 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