

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
LODGE 12 CAPITAL POLICE :
 :
v. : Case No. PF-C-10-61-E
 :
CITY OF HARRISBURG¹ :

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Capital City Lodge No. 12, Fraternal Order of Police (Union) on April 29, 2010, alleging that the City of Harrisburg (City) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On May 14, 2010, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for August 4, 2010, in Harrisburg, Pennsylvania. After a series of postponements, the hearing was held on November 19, 2010, at which time all parties in interest were afforded the opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Each party filed a post-hearing brief.

The Examiner, on the basis of the stipulations and exhibits presented at the hearing and from all other matters and documents of record makes the following:

FINDINGS OF FACT

1. The Union is a labor organization.
2. The City is a political subdivision of the Commonwealth of Pennsylvania and an employer.
3. In 1997, the City offered, *inter alia*, all bargaining unit employees a direct deposit option for paychecks. (N.T. 22, 37-40; City Exhibit 1).
4. In March of 2010, the City, through the City Controller and the City Treasurer, unilaterally stopped the automatic deposit option for, *inter alia*, all bargaining unit members. (N.T. 16-18, 21-22, 24, 37, 42-43).

DISCUSSION

The Union charges the City with violating Section 6(1)(a) and (e) of the PLRA as read with Act 111 when it unilaterally stopped the direct deposit of paychecks for bargaining unit members.

The City attempts to avoid liability by passing the buck to the City Controller and City Treasurer. According to the City, it committed no unfair practices because these other two entities made the unilateral change. And, to further that argument, the City moves to join the City Controller and the City Treasurer as indispensable and necessary parties.² The City Controller and the City Treasurer argue that they are not joint employers and, therefore, cannot be joined.

Joining the City Controller and City Treasurer, however, is unnecessary, since both offices are part of the City, and it is the City's responsibility to take whatever actions are necessary to ensure that these offices comply with the Board's orders.

Moreover, as part of the City, the City Controller and the City Treasurer are bound to take the steps necessary to comply with the PLRA and Act 111. 53 P.S. § 41402, titled

¹ The caption appears as amended by the Secretary.

² I tentatively granted that motion to join both the City Controller and the City Treasurer at the close of the hearing. (N.T. 75). After reading the parties' briefs, I am persuaded that these two parties are necessary to effectuating a complete resolution of this controversy, to the extent that they need to be joined at all.

"Governing Personnel;" Reed v. Harrisburg City Council, ____ Pa. ____, 995 A.2d 1137 (2010) (officers or persons having ultimate control are part of the City's governing body).

Under Board law, whether or not an employer uses direct deposit to pay employes is a mandatory subject of bargaining. Teamsters Local 384 v. Owen J. Roberts Scholl District, 35 PPER 5 (Proposed Decision and Order, 2004). Because the City, through the City Controller and the City treasurer, unilaterally changed a mandatory subject of bargaining, the City has violated the PLRA as read with Act 111.

The City, which includes the City Controller and the City Treasurer, is therefore ordered immediately to reinstitute the *status quo ante* by offering direct deposit to all members of the bargaining unit. Upper Moreland Township School District, 31 PPER ¶ 31106 (Final Order, 2000).

Moreover, even if the City Controller and the City Treasurer were not part of the City of Harrisburg, they would be necessary parties to this action because their presence is essential if the Board is to resolve completely this controversy and to render complete relief. (N.T. 27). York-Adams County Constables Association v. Court of Common Pleas of York County, 474 A.2d 79 (Pa. Cmwlth. 1984). (N.T. 27).

CONCLUSIONS

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

1. The City, which includes the City Controller and the City Treasurer, is a political subdivision under Act 111, and consequently an employer under Section 3(c) of the PLRA.
2. The Union is a labor organization under Section 3(f) of the PLRA, as read with Act 111.
3. The Board has jurisdiction over the parties.
4. The City, which includes the City Controller and the City Treasurer, has committed unfair labor practices under Section 6(1)(a) and 6(1)(e) of the PLRA.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the PLRA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the City, which includes the City Controller and the City Treasurer, shall:

1. Cease and desist from interfering with, 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 representative of its employes.
3. Take the following affirmative action which the Hearing Examiner finds necessary to effectuate the policies of the PLRA:
 - (a) Immediately return to the *status quo ante* of offering automatic deposit to all bargaining unit members;
 - (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 its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(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.

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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourth day of January, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Timothy Tietze, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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CAPITAL POLICE :
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AFFIDAVIT OF COMPLIANCE

The City hereby certifies that it has ceased and desisted from its violation of Section 6(1) (a) and (e) of the Pennsylvania Labor Relations Act and Act 111; that it has returned to the *status quo ante* of offering automatic deposit to all bargaining unit members; 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