

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5 :
 :
 v. : Case No. PF-C-11-38-E
 :
 CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On March 11, 2011, the Fraternal Order of Police Lodge No. 5 (FOP) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the City of Philadelphia (City) violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) by refusing to comply with the provisions of a grievance arbitration award involving Officer Gerald Smith. On March 29, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on August 1, 2011. The hearing examiner held the hearing and afforded the parties a full opportunity to present evidence and to cross-examine witnesses. Neither party has filed a brief.

The hearing examiner, on the basis of the stipulations presented by the parties at the hearing, makes the following:

FINDINGS OF FACT

1. The FOP is the exclusive representative of a bargaining unit that includes police officers employed by the City. (Stipulation)

2. On February 2, 2011, an arbitrator issued an award sustaining a grievance the FOP filed on behalf of Officer Smith and providing in relevant part as follows:

"The City is hereby directed to reinstate the grievant and make him whole with respect to his lost salary, benefits and the record of his discharge shall be expunged."

(Stipulation)

3. The City has not sought to vacate the award. (Stipulation)

4. The City has not complied with the provisions of the award. (Stipulation)

DISCUSSION

The FOP has charged that the City committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by refusing to comply with the provisions of a grievance arbitration award involving Officer Smith. The record shows that the City has not sought to vacate the award and has not complied with its provisions. The City, therefore, must be found to have committed the unfair labor practices charged. See City of Philadelphia, 27 PPER ¶ 27202 (Final Order 1996) (an employer commits unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by refusing to timely comply with the provisions of an unappealed grievance arbitration award; the remedy is to include interest at the simple rate of six per cent per annum on any back pay due from the date the award was no longer appealable to the date the back pay is paid).

CONCLUSIONS

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

1. The City is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.

2. The FOP is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.

3. The Board has jurisdiction over the parties hereto.

4. The City has committed unfair labor practices under sections 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 as read in pari materia with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the City shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA as read in pari materia with Act 111.

2. Cease and desist from refusing to bargain collectively with the representatives of its employees.

3. Take the following affirmative action:

(a) Comply with the provisions of the award.

(b) Pay Officer Smith the back pay directed in the award with interest at the simple rate of six per cent per annum from the date the award was no longer appealable to the date the back pay is paid.

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this third day of August 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

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Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

The City hereby certifies that it has ceased and desisted from its violations of section 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111, that it has complied with the provisions of the award, that it has paid Officer Smith the back pay directed in the award with interest at the simple rate of six percent per annum from the date the award was no longer appealable to the date the back pay was paid, that it has posted a copy of the proposed decision and order as directed and that it has served an executed copy of this affidavit on the FOP.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public