COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5   :
                                     :
          v.   :
                                     : Case No. PF-C-11-170-E
                                     :
CITY OF PHILADELPHIA   :

PROPOSED DECISION AND ORDER

On December 21, 2011, the Fraternal Order of Police Lodge No. 5 (FOP) filed charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Philadelphia, (City) violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act, as read in pari materia with the Policemen and Firemen Collective Bargaining Act (Act 111) by failing to comply with a grievance arbitration settlement agreement that called for the reinstatement of a police officer.

On January 17, 2012, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on May 15, 2012 in Harrisburg. The hearing was continued to May 22, 2012, at the request of the City without objection from the FOP At that time, the parties were afforded a full opportunity to present evidence and cross-examine witnesses.

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

FINDINGS OF FACT

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

2. The FOP Lodge 5 is a labor employe organization within the meaning of Section 3(f) of the PLRA as read in pari materia with Act 111.

3. The FOP is the exclusive bargaining representative for employes of the City of Philadelphia employed by the Police Department.

4. In its capacity as bargaining representative, FOP Lodge 5 pursued to binding arbitration a grievance contending that the City violated the collective bargaining agreement when it terminated Officer Joseph Sulpizio. (N.T. 15, Joint Exhibit 1)

5. The grievance was settled between the parties before proceeding to hearing before an arbitrator. (N.T. 15, Joint Exhibit 1)

6. On November 18, 2011, the parties signed a settlement agreement that provided in relevant part:

> 1. The City will reinstate Sulpizio to his
>   Position of Police Officer, and he shall be
>   returned to a numbered police district.
>
> 2. The period from March 27, 2011 until Sulpizio
>   is placed on the payroll shall be deemed a leave
>   of absence without pay.
>
> 3. Sulpizio shall not be entitled to back pay or
>   lost overtime opportunities during his period of
>   leave of absence without pay.

4. Prior to reinstatement, Sulpizio must meet the
   pre-hiring conditions of new Police Department
   hires.

5. In consideration of the foregoing, the FOP and
   Sulpizio agree to withdraw the grievance and demand
   for arbitration in this matter.

   (N.T. 15, Joint Exhibit 1)

7. The parties stipulated and agreed that as of November 18, 2011, Sulpizio owed approximately $4,500 to the City Water Department. (N.T. 23)

8. On November 22, 2011, the City Revenue Commissioner Keith J. Richardson sent Sulpizio a letter informing him that it had informed the Office of Human Resources that he had outstanding water and sewer charges owed to the City. The letter went on to state, "As a condition of employment, the City of Philadelphia requires that any person offered employment must be current on all debts, taxes, fees, judgments, claims and other obligations due to the City." (N.T. 17, 25, Joint Exhibit 2)

9. Sulpizio was reinstated on January 25, 2012. (N.T. 7)

10. Sulpizio and the City "worked out" an agreement to pay the water department bill before he was reinstated. (N.T. 7)

11. City of Philadelphia Civil Service Regulation 11.14 states in relevant part,

> 11.14 PAYMENT AGREEMENT AND PAYROLL
> DEDUCTION REQUIRED FOR APPOINTMENT.
> As a condition of employment with the City,
> any person offered employment on or after the
> effective date of the effective date of this
> regulation shall be required to certify that
> such person either is fully current on all debts,
> taxes, fees, judgments, claims and other
> obligations due and owing to the City; or
> has voluntarily entered into a payment agreement
> with the City.
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> ****
>
> Failure to enter into a payment agreement shall
> result in the cancellation of the appointment
> and removal from certification. The name of
> the eligible candidate with be returned to the
> eligible list.

(N.T. 24, Joint Exhibit 3)

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 failing to comply with the provisions of a grievance settlement agreement. On November 18, 2011, the FOP and the City settled a grievance involving Officer Joseph Sulpizio. As of the date of the filing of the charge, December 21, 2011, the City had not yet reinstated Sulpizio, as was required by one provision of the grievance settlement agreement. Sulpizio was not reinstated until January 25, 2012. The FOP seeks backpay for the five week period of time from December 19, 2011 (the end of the thirty day period for the City to appeal the settlement agreement) until January 25, 2012.

An employer commits unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 when it fails to comply with the provisions of a grievance settlement. Springfield Township, 42 PPER 20 (Final Order 2011).

A party asserting an unfair practice must prove the elements of the alleged violation by substantial and legally credible evidence. St. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

In order to determine whether the City has failed to comply with the terms of the settlement agreement, it is necessary to examine the agreement. The terms of this settlement agreement are clear, with each party promising to carry out certain obligations. Of relevance to this dispute, the City is obligated to reinstate Officer Sulpizio as a police officer. Sulpizio has one obligation: "*Prior* to reinstatement, Sulpizio must meet the pre-hiring conditions of *new* Police Department hires." (emphasis added by hearing examiner).

The FOP contends that settlement agreement says nothing about Sulpizio paying a city water and sewer bill and that the city should not have delayed Sulpizio's reinstatement on account of that bill. However, the agreement clearly states in paragraph 4 that Sulpizio must meet the pre-hiring conditions of a new hire. The City's Civil Service regulations clearly state that one pre-hiring condition is that that "such person either is fully current on all debts, taxes, fees, judgments, claims and other obligations due and owing to the City; or has voluntarily entered into a payment agreement with the City." (Civil Service Regulation 11-14).

Given the clear language of the settlement agreement and the Civil Service regulation, the City was permitted to delay Sulpizio's reinstatement until he either paid the water and sewer bill or made a payment agreement with the City. The facts show that once Sulpizio fulfilled his obligation, the City reinstated him. The FOP has not met its burden of proving that the City failed to comply with the terms of the grievance settlement agreement.

CONCLUSIONS

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

1. The City of Philadelphia 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 not committed unfair labor practices in violation of 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 PERA the 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 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 thirtieth day of July, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner