

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5 :
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 v. : Case No. PF-C-14-10-E
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 :
 CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On January 27, 2014, the Fraternal Order of Police Lodge 5 (FOP or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Philadelphia (City or Employer), alleging that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111 by failing to comply with the provisions of a grievance settlement within a reasonable amount of time.

On February 6, 2014, 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 6, 2014, in Harrisburg as the time and place of hearing, if necessary. The hearing was subsequently moved to June 5, 2014 in Harrisburg at the joint request of the parties, so that it could be consolidated with a number of other pending charges.

The hearing was necessary and was held on June 5, 2014, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties made closing arguments on the record in lieu of submitting post-hearing briefs in support of their respective positions.

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

FINDINGS OF FACT

1. The City of Philadelphia is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 6-7)
2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 6-7)
3. The FOP filed a grievance on behalf of Police Officer Aquil Byrd, protesting his discharge from the City's Police Department, which resulted in a December 18, 2013 Settlement Agreement between the FOP and the City. (N.T. 9-10, 17-18; Joint Exhibit 1)
4. The Settlement Agreement provides, in pertinent part, as follows:
 - (1) The City agrees to reinstate Byrd to his position of Police Officer. Byrd will not be entitled to any back pay. The period between his dismissal and reinstatement shall be treated as an unpaid leave of absence.
 - (2) Byrd's accrued leave shall be restored absent any payments made to Byrd by the City, and longevity will be calculated as if the dismissal did not occur.
 - (3) The Grievant may, to the extent that he may be permitted by applicable rules and regulations, purchase at his own expense any pension-related benefit that would have accrued during the period between his termination and reinstatement.

(4) In consideration of the foregoing, the FOP and Byrd agree to withdraw the grievance and demand for arbitration in this matter.

(Joint Exhibit 1).

5. In the weeks following the execution of the Settlement Agreement, FOP Vice President John McGrody learned that the City had not started the reinstatement process for Byrd. As a result, McGrody initially placed several phone calls to the City's Labor Relations Unit and ultimately spoke with the Police Deputy Commissioner Richard Ross. McGrody also followed up on his conversation with a February 3, 2014 letter to Ross, addressing the FOP's concerns regarding Byrd's reinstatement. (N.T. 21-25; FOP Exhibit 1)
6. The City did not reinstate Byrd until February 24, 2014, at which time he was placed on the City's payroll. Byrd did not receive any back pay, but rather was paid prospectively from February 24, 2014. (N.T. 10)
7. Byrd did not receive a paycheck until the first pay period in April 2014, at which time he was paid retroactively for the period between February and April of 2014. (N.T. 26-27, 54; FOP Exhibit 3)

DISCUSSION

In its charge, the FOP alleged that the City violated Section 6(1)(a) and (e) of the PLRA by failing to comply with the provisions of the Settlement Agreement, despite the passage of a reasonable amount of time. The City, meanwhile, contends that it did comply with the provisions of the Settlement Agreement in a reasonable amount of time, given that it was approximately two months. The City points out that there were a number of obstacles to reinstatement here, including an alleged ambiguity in the Agreement along with a necessary medical examination.

As a general matter, an employer's refusal to comply with a grievance settlement at a lower stage in the grievance procedure is an unfair practice. **Fraternal Order of Police, Lodge 5 v. City of Philadelphia**, 43 PPER 123 (Proposed Decision and Order, 2010) *citing* **Moshannon Valley School District v. PLRB**, 597 A.2d 229 (Pa. Cmwlth. 1991); **Zelienople Borough**, 27 PPER ¶ 27024 (Final Order, 1995); **New Eagle Borough**, 25 PPER ¶ 25026 (Proposed Decision and Order, 1994). Eventual compliance, determined to be untimely, also violates the PLRA. **City of Philadelphia, supra, citing Fraternal Order of Police, Lodge 5 v. City of Philadelphia**, 38 PPER 72 (Proposed Decision and Order, 2007).

The Board's criteria for determining whether an employer has timely complied with a grievance arbitration award is equally applicable to the determination of whether an employer has timely complied with a settlement agreement. **City of Philadelphia**, 43 PPER 123 (Proposed Decision and Order, 2007). In determining timeliness, the Board will consider such factors as: (1) the nature and complexity of the compliance required under the agreement; (2) the length of time before compliance occurred; (3) the employer's ability to comply with the agreement; (4) the steps taken by the employer toward compliance; and (5) the employer's explanation or lack thereof for the delay. *Id. citing City of Philadelphia*, 19 PPER ¶ 19069 (Final Order, 1988); **Commonwealth of Pennsylvania (Department of Community Affairs)**, 19 PPER ¶ 19165 (Proposed Decision and Order, 1998); **Commonwealth of Pennsylvania (Office of Administration)**, 17 PPER ¶ 17151 (Proposed Decision and Order, 1986).

In this case, the Settlement Agreement was executed on December 18, 2013. However, the City did not comply by reinstating Byrd until February 24, 2014, which was more than two months later. Further, the City did not actually issue Byrd any paychecks until even more time had passed. This delay was unreasonable in light of the simple terms of the Settlement Agreement. Indeed, the City was only required to reinstate Byrd to his position of Police Officer. Byrd was not entitled to any back pay. Although the City maintains that there were obstacles to reinstatement here, I find this argument unpersuasive. The City presented no evidence establishing how or why Byrd's reinstatement was held up due to a purported necessary medical evaluation. Nor did the City indicate

how or why the alleged ambiguity in the Settlement Agreement prevented Byrd's reinstatement. The City presented testimony regarding a purported ambiguity surrounding how a 30-day suspension was going to be treated, (N.T. 70), but it was not clear how or why this precluded an earlier reinstatement. In fact, the Settlement Agreement says nothing whatsoever regarding a 30-day suspension; it simply mandates that Byrd be reinstated without back pay. As a result, the City has committed unfair labor practices in violation of the PLRA.

Finally, the City contends that even if it did violate the PLRA, any award of back pay should be limited to back pay going forward from 30 days following execution of the Settlement Agreement, as the City believes that is a reasonable period for compliance. However, the Board's practice in cases involving an unreasonable delay is to award payment from the date of the award or settlement until compliance. **Fraternal Order of Police, Lodge 5 v. City of Philadelphia**, 41 PPER 122 (Proposed Decision and Order, 2010); **Fraternal Order of Police, Lodge 5 v. City of Philadelphia**, 41 PPER 125 (Proposed Decision and Order, 2010). Accordingly, the City will be directed to pay Byrd his regular wages from December 18, 2013 until February 24, 2014, plus six (6%) percent per annum interest on the amount.

CONCLUSIONS

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

1. The City of Philadelphia is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Board has jurisdiction over the parties hereto.
4. The City of Philadelphia has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the City shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and Act 111;
2. Cease and desist from refusing to bargain with the representatives of its employes;
3. Take the following affirmative action:
 - (a) Immediately pay Byrd his regular wages from December 18, 2013 until February 24, 2014, plus six (6%) percent per annum interest on the amount, and to comply with all other tenets of the Settlement Agreement;
 - (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 employes 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 with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this eleventh day of July, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

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Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

The City of Philadelphia hereby certifies that it has ceased and desisted from its violations of Section 6(1) (a) and (e) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order as directed therein; 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