

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5 :
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 :
 v. : Case No. PF-C-14-56-E
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 :
 CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On May 29, 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 a March 31, 2014 arbitration award.

On June 6, 2014, the Secretary of the Board issued a Complaint and Notice of Hearing, designating September 12, 2014, in Harrisburg as the time and place of hearing, if necessary. The hearing was subsequently continued to October 17, 2014 at the City's request and without objection from the FOP.

The hearing was necessary and was held on October 17, 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 Board received the notes of testimony on October 31, 2014.

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. 5)
2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 5-6)
3. The FOP filed a grievance on behalf of Police Officer Kristine Amato, protesting her January 28, 2013 discharge from the City's police department. The parties were unable to resolve the grievance, and as a result, the matter proceeded to arbitration. (N.T. 12-13; Union Exhibit 1)
4. On March 31, 2014, Arbitrator James Darby issued an award, which provides, in pertinent part as follows:

The grievance is sustained in part and denied in part.

The City did not have just cause to terminate the Grievant, Police Officer Kristine Amato. As a remedy, the Grievant shall be reinstated to service with her time off treated as a disciplinary suspension without pay. The Grievant's reinstatement is conditioned upon her satisfying all of the applicable certifications and requirements of her position. Additionally, if she has not already done so, the Grievant shall reimburse the City \$899.85, representing the amount of IOD (injured on duty) time she improperly received. Any future abuse of leave time by the Grievant will justify her termination.

(Union Exhibit 1)

5. Danielle Sullivan is a human resources professional in the police department's office of personnel. She has served in that role since September 2012. Her duties include reinstating employees pursuant to arbitration awards. Sullivan received the March 31, 2014 award in this case. There are several steps involved with the reinstatement process, including approval or clearance from internal affairs, the police board of inquiry, and the commanding officer, as well as assignment by the Commissioner. In this case, there was an inadvertent glitch or misinterpretation of the award's language, which had to be resolved between the police department appointments division and the central office of human resources. (N.T. 6-8)
6. The City did not reinstate Amato until June 9, 2014, at which time she was placed in the City's payroll. Amato did not receive any compensation from the issuance of the March 31, 2014 award until June 9, 2014. (N.T. 13-14)
7. At the time of the hearing in this matter, the City was taking \$100.00 from Amato's paycheck during each two-week pay period to satisfy the arbitrator's requirement that she repay the City \$899.85. As of October 17, 2014, the majority of that amount was already repaid. (N.T. 14-15)

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 March 31, 2014 arbitration award. The FOP pointed out at the hearing that it took the City more than two months to comply, and while the City's delay may not have been intentional, that is not relevant under the law. The City, meanwhile, contends that its ability to comply with the award was hampered by the various checks and balances, approvals, and clearances that the police department has to satisfy before an officer can be reinstated.

It is well settled that the failure to comply with the terms of a grievance arbitration award occurs only after exhaustion of appellate rights and the expiration of a reasonable or expressly provided time period for compliance. **Fraternal Order of Police, Lodge 5 v. City of Philadelphia**, 41 PPER 142 (Proposed Decision and Order, 2010) *citing Commonwealth of Pennsylvania*, 8 PPER ¶ 233 (Nisi Decision and Order, 1977). Eventual compliance, determined to be untimely, violates the PLRA. **Fraternal Order of Police Lodge 5 v. City of Philadelphia**, 41 PPER 123 (Proposed Decision and Order, 2010) *citing Fraternal Order of Police, Lodge 5 v. City of Philadelphia*, 38 PPER 72 (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 award; (2) the length of time before compliance occurred; (3) the employer's ability to comply with the award including legitimate obstacles to compliance; (4) the steps taken by the employer toward compliance; and (5) the employer's explanation or lack thereof for the delay. **City of Philadelphia**, 41 PPER 142 (Proposed Decision and Order, 2010) *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 Arbitrator issued his award on March 31, 2014. However, the City did not comply by reinstating Amato until June 9, 2014, which was more than two months later. This delay was unreasonable in light of the simple terms of the award. Indeed, the City was only required to reinstate Amato to her position of Police Officer. Amato was not entitled to any back pay. The City's proffered reason for the delay here, namely that various checks and balances precluded an earlier reinstatement, is not persuasive. There was simply no mystery to the award, and the City has not argued that reinstatement was delayed because of any applicable certification. What is more, the City had made arrangements with Amato to recoup the \$899.85 set forth in the award. The Board has held that more than two months is an unreasonable delay in the case of a simple award. **Fraternal Order of Police v. City of Philadelphia**, 41 PPER 89 (Proposed Decision and Order, 2010). 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 in some way to a date later than the first day following the award, as the City believes there were mitigating factors with regard to its ability to comply. 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 Amato her regular wages from March 31, 2014 until June 9, 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 Amato her regular wages from March 31, 2014 until June 9, 2014, plus six (6%) percent per annum interest on the amount, and to comply with all other directives of the March 31, 2014 arbitration award;
 - (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 thirteenth day of January, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5

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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