

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALIQUIPPA-HOPEWELL FOP LODGE #26 and :
ERIC McPHILOMY :
 :
v. : Case No. PF-C-15-70-W
 :
CITY OF ALIQUIPPA :

PROPOSED DECISION AND ORDER

On August 19, 2015, Aliquippa-Hopewell FOP Lodge #26 (Union) and Eric McPhilomey (McPhilomy) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Aliquippa (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.

On September 11, 2015, 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 December 14, 2015, in Pittsburgh as the time and place of hearing, if necessary.

The hearing was necessary. A hearing was held on December 14, 2015, in Pittsburgh, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The City submitted a post-hearing brief in support of its case on January 26, 2016. The Union submitted a post-hearing brief in support of its charge on February 4, 2016.

The Hearing Examiner, based on all matters of record, makes the following:

FINDINGS OF FACT

1. The City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 4).
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 4).
3. On July 1, 2015, the parties executed a Settlement Agreement and Release (Agreement) which settled a grievance filed by McPhilomy over his termination from the City and, at the time of initial settlement, was pending hearing on April 29, 2015. The grievance was processed pursuant to the collective bargaining agreement (CBA) for the calendar years 2008 through 2012, which remains in effect pending Act 111 interest arbitration. (N.T. 6-7; Exhibit 3, page 1, Exhibit 1).
4. Pursuant to the Agreement, the City promised to reinstate McPhilomy and place him in good standing with an effective resignation date of July 1, 2015. As of the date of the hearing, the Union had no confirmation that McPhilomy's status had been classified as "in good standing" with a resignation date of July 1, 2015. (N.T. 7; Exhibit 3, pages 1-2).
5. Pursuant to the Agreement, the City promised to provide a neutral letter of reference upon request. As of the date of the hearing, McPhilomy had not yet requested a letter of reference. (N.T. 8; Exhibit 3, page 2).
6. Pursuant to the Agreement, the City promised to remove all mention of the termination from McPhilomy's personnel file and acknowledge that he was in "good standing" with the City at the time of his resignation. As of the date of the hearing, the Union had no confirmation that the City had taken such steps. (N.T. 8; Exhibit 3, page 2).

7. Pursuant to the Agreement, McPhilomy retained all of the pension rights and benefits that he is entitled to receive under the terms of the City's Police Pension Plan, the 3rd Class City Code and applicable Pennsylvania law. Specifically, McPhilomy is entitled to a refund of all of his contributions to the pension plan and the City promised to facilitate the refund of all of McPhilomy's contributions and not to contest his right to any benefits afforded to retired or separated police officers in good standing under Pennsylvania or Federal law. As of the date of the hearing, the City had not provided to McPhilomy and the Union the proper forms necessary to effectuate the refund of McPhilomy's pension funds. (N.T. 8-9; Exhibit 3, page 2).
8. Pursuant to the Agreement, the City promised to pay McPhilomy all vacation leave he had unused for 2014 and 2015. McPhilomy had three unused days in 2014, and eighteen unused days in 2015. As of the date of the hearing, the City has not paid McPhilomy his unused vacation leave. (N.T. 7, 9; Exhibit 3, page 2).
9. Vacation benefits, including payment for unused time, are provided for in the CBA. McPhilomy is entitled to twenty-one days of pay at \$17.53 an hour for eight hour days and forty hour weeks which totals \$2,945.04. (N.T. 9; Exhibit 1, article VII).
10. Pursuant to the Agreement, the City promised to pay McPhilomy his longevity earned to the date of his resignation. This would include the longevity bonus for years 2014 and 2015. As of the date of the hearing, the City has not paid McPhilomy his longevity bonus for 2014 and 2015. (N.T. 7, 9; Exhibit 3, page 3).
11. Longevity is provided for in the CBA. Under the CBA, McPhilomy is entitled to \$630.00 for 2014 and 2015. (N.T. 9; Exhibit 1, Article XI).
12. Pursuant to the Agreement, the City promised to pay McPhilomy his education incentive for 2015 and any unpaid incentive for 2014. As of the date of the hearing, the City had not paid McPhilomy his education incentive for 2014 and 2015. (N.T. 7, 9; Exhibit 3, page 3).
13. An education incentive is provided for in the CBA. Under the CBA, McPhilomy is entitled to an education incentive of \$850.00 for 2014 and 2015. (N.T. 9; Exhibit 1, Article XIV).
14. Pursuant to the Agreement, the City promised to pay McPhilomy his uniform allowance for 2015. As of the date of the hearing, the City had not paid McPhilomy his uniform allowance for 2015. (N.T. 7, 9; Exhibit 3, page 3).
15. A uniform allowance is provided for in the CBA. Under the CBA, McPhilomy is entitled to a benefit of \$500.00 for 2015. (N.T. 7; Exhibit 1, Article XVII).
16. Pursuant to the Agreement, the City promised to classify the time McPhilomy missed from the date of his suspension to the date of his resignation as "unpaid administrative leave". As of the date of the hearing, the Union had received no written clarification that the City had in fact done so. (N.T. 10; Exhibit 3, page 3).
17. Pursuant to the Agreement, the City promised to carry McPhilomy's non-vested benefits, including health care, dental care, and vision care, through the date of his resignation. The City ceased funding McPhilomy's health care on or about May 22, 2015, even though McPhilomy's date of resignation was July 1, 2015. (N.T. 10; Exhibit 3, page 3).

DISCUSSION

The Board has consistently held that an employer's refusal to comply with a grievance settlement at a lower stage in the grievance procedure is an unfair practice. **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); **City of Philadelphia**, 40 PPER 134 (Proposed Decision and Order, 2009). In this matter the Union has presented substantial and legally credible evidence that the Agreement exists and that the City had not complied with the terms of the Agreement. The Union proved that the City has **not**: provided confirmation that it has classified McPhilomy to be "in good standing" and resigned as of July 1, 2015; performed the actions necessary to secure McPhilomy his pension refund; paid McPhilomy unused vacation for 2014 and 2015, longevity for 2014 and 2015, education incentive for 2014 and 2015, and a uniform allowance for 2015; and, confirmed that the time McPhilomy spent suspended has been classified as "unpaid administrative leave." Further, the City prematurely cancelled his health care benefits. At the hearing on December 14, 2015, the City did not contest that it had not complied with the Agreement that was fully executed July 1, 2015. This is a delay of approximately five and a half months and is unreasonable. Moreover, the City has not raised any defense for its actions or even an adequate explanation or justification. In fact, the City has offered no explanation or justification for its unreasonable delay. The City has violated Section 6(1)(a) and (e) of the PLRA, as read *in pari materia* with Act 111.

At the hearing and in its brief, the Union requested that the City reimburse McPhilomy for time spent attending court hearings. However, nothing in the Agreement indicates the City promised to reimburse McPhilomy for these expenses.

At the hearing and in its brief, the Union also requests that the City be ordered to provide McPhilomy with a neutral letter of reference in a timely fashion pursuant to the Agreement. However, at the hearing, it was determined that McPhilomy had never requested a letter of neutral reference from the City. Therefore, in this rare case, the City has not specifically failed to comply with this term of the Agreement and I will not specifically order them to comply with it.

In its brief, the City argues that longevity for 2015 should be prorated since McPhilomy retired on July 1, 2015. However, neither the Agreement nor the CBA reference proration of longevity bonuses. Therefore I will award the full 2015 longevity amount to McPhilomy.

As a remedy, the City will be ordered to generally comply with the Agreement. Specifically, the City will be ordered to immediately pay McPhilomy the unused vacation time for 2014 and 2015 (\$2,945.04), the longevity for 2014 and 2015 (\$630.00), education incentive for 2014 and 2015 (\$850.00), and his clothing allowance for 2015 (\$500.00). The subtotal of these amounts is \$4,925.04. The City will also be ordered to immediately effectuate the payment of McPhilomy's pension reimbursement. In addition the City will be ordered to immediately confirm in writing that it has classified McPhilomy to be "in good standing" and resigned as of July 1, 2015, and time McPhilomy spent suspended has been classified as "unpaid administrative leave." The City will also be responsible for any costs incurred by McPhilomy which are related to the City prematurely ending McPhilomy's healthcare coverage. Finally, the City shall pay to McPhilomy 6% interest *per annum* on all amounts due to McPhilomy, including the total amount of the pension reimbursement, from July 1, 2015, to the date of payment.

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 Aliquippa is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. Aliquippa-Hopewell FOP Lodge #26 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 Aliquippa 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 Hearing 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 comply with all terms of the Agreement;
 - (b) Immediately take all actions necessary to process McPhilomy's pension reimbursement;
 - (c) Immediately pay to McPhilomy \$4,925.04;
 - (d) Immediately confirm in writing to McPhilomy that that the City has classified McPhilomy to be "in good standing" and resigned as of July 1, 2015, and that time McPhilomy spent suspended has been classified as "unpaid administrative leave";
 - (e) Immediately pay to McPhilomy any costs incurred by him which are related to the City prematurely ending his healthcare coverage;
 - (f) Immediately pay to McPhilomy interest of 6% *per annum* upon any unpaid monetary amount, including his pension reimbursement, from July 1, 2015, to the date of payment;
 - (g) 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;
 - (h) 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
 - (i) 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 seventeenth day of February, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

Stephen A. Helmerich, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Labor Relations Board

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ERIC McPHILOMY

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AFFIDAVIT OF COMPLIANCE

The City of Aliquippa 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 complied with all terms of the Agreement; that it has immediately taken all actions necessary to process McPhilomy's pension reimbursement; that it has immediately paid to McPhilomy \$4,925.04; that it has immediately confirmed in writing to McPhilomy that that the City has classified McPhilomy to be "in good standing" and resigned as of July 1, 2015, and time McPhilomy spent suspended has been classified as "unpaid administrative leave"; that it has immediately paid to McPhilomy any costs incurred by him which are related to the City prematurely ending his health care coverage; that it has immediately paid to McPhilomy interest of 6% per annum upon any unpaid monetary amount, including his pension reimbursement, from July 1, 2015, to the date of payment; 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