

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, LODGE 5

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Case No. PF-C-15-37-E

v.

CITY OF PHILADELPHIA

FINAL ORDER

The City of Philadelphia (City) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on March 21, 2016,¹ challenging a Proposed Decision and Order (PDO) issued on February 29, 2016. In the PDO, the Board's Hearing Examiner concluded that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read **in pari materia** with Act 111 of 1968, by failing to comply with a grievance arbitration award ordering the City to rescind the modification to its take home vehicle policy and to make all affected police bargaining unit members whole.² The Fraternal Order of Police, Lodge 5 (FOP) timely filed a response and brief in opposition to the exceptions on April 11, 2016.

The facts of this case are summarized as follows. The parties' dispute arose following issuance of an interest arbitration award in 2009 that eliminated the residency requirement for the City's police officers. On November 22, 2010, the FOP filed a grievance alleging that the City violated the parties' collective bargaining agreement by modifying its longstanding take home vehicle policy to require police officers who elect to move outside of the City's boundaries to leave the vehicles at the City facility closest to the officer's home for their daily commute and on non-working days. The FOP requested that all bargaining unit members directly and indirectly affected by the modified policy be made whole. The parties were unable to resolve the grievance and, after several continuances, the matter proceeded to arbitration on November 20, 2014.

On April 3, 2015, the arbitrator issued an award sustaining the FOP's grievance stating, in relevant part, as follows:

- A. The City's unilateral modification of the Take Home Policy to restrict the use of the City-provided vehicles to the City's border is in violation of Article II(A) of the collective bargaining agreement. The City was, and is, required by virtue of the Recognition Clause to bargain with the Fraternal Order of Police with respect to the modification of any such term and condition.
- B. For the foregoing reasons, the grievance of the Fraternal Order of Police challenging the City's unilateral modification of the Take Home Policy is granted.
- C. The City is directed to immediately take the following action:
 1. Issue a notice advising bargaining unit members that the City will immediately cease and desist from attempting to enforce the City's unilateral modification of the Take Home Policy.
 2. Advise members of the bargaining unit that they may take the vehicle to their residence as defined by the collective bargaining agreement.

¹ The twentieth day following issuance of the Hearing Examiner's proposed decision was Sunday, March 20, 2016, and is therefore excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b).

² The Hearing Examiner also concluded that the City did not violate Section 6(1)(c) of the PLRA. No exceptions were filed by the FOP concerning the Hearing Examiner's dismissal of its Charge under Section 6(1)(c). 34 Pa. Code § 95.98(a)(3).

3. Make whole all affected bargaining unit members by the payment of the IRS approved cents per mile for each mile that each affected bargaining member was required to drive as a result of the unilateral modification by the City of the Take Home Policy.
- D. The Arbitrator shall retain jurisdiction over this matter for the sole and exclusive purpose of resolving any disputes that may arise with respect to the implementation of the remedy.

The City did not appeal the April 3, 2015 arbitration award.

The City has complied with the award as it relates to commanders (officers holding the rank of captain or higher) by making those officers whole with regard to payment of mileage and rescinding the restrictions on their take home vehicles. However, the City has not made any payments to police bargaining unit members who hold a rank below captain. Nor has the City permitted bargaining unit members below the rank of captain to take vehicles to their homes if they elect to live outside the City boundaries.

The FOP filed a Charge of Unfair Labor Practices on May 11, 2015, alleging that the City violated Section 6(1)(a), (c) and (e) of the PLRA and Act 111 by failing to comply with the grievance arbitration award directing the City to rescind its modification of the take home vehicle policy for all affected police bargaining unit members, and to make those unit members whole. A hearing was held before the Board's Hearing Examiner on October 23, 2015, during which all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs. The Hearing Examiner concluded in the PDO that the City failed to comply with the arbitration award in violation of Section 6(1)(a) and (e) of the PLRA when it refused to rescind its take home vehicle policy as it relates to police officers below the rank of captain and to make those officers whole. By way of remedy, the Hearing Examiner ordered the City to comply with the arbitration award by applying its terms and relief to all members of the bargaining unit who were afforded take home vehicles, including those officers below the rank of captain.

Initially, the City alleges in its exceptions that the Board lacks jurisdiction to interpret the award where the arbitrator retains jurisdiction. However, the Board is not divested of jurisdiction over a Charge of Unfair Labor Practices merely because the parties could have also proceeded before an arbitrator. **Millcreek Township School District v. PLRB**, 631 A.2d 734 (Pa. Cmwlth. 1993), **appeal denied**, 537 Pa. 626, 641 A.2d 590 (1994)(citing **PLRB v. General Braddock Area School District**, 380 A.2d 946 (Pa. Cmwlth. 1977)). Indeed, where the complainant alleges a refusal to comply with a grievance arbitration award, the cause of action is in the nature of an unfair labor practice for a refusal to bargain in good faith under Section 6(1)(e) of the PLRA. 43 P.S. § 211.6(1)(e). The Board's inquiry for an alleged refusal to comply with a grievance arbitration award is limited to determining (1) whether an award exists; (2) whether an appeal of the award has been filed or stay of the award issued; and (3) whether the respondent has failed to comply with the provisions of the award. **East Hempfield Township Police Association v. East Hempfield Township**, 38 PPER 138 (Final Order, 2007); **Teamsters Local 401 v. Hazle Township**, 38 PPER 157 (Final Order, 2007). The complainant bears the burden of establishing that the respondent has failed to comply with the arbitration award. **McCandless Police Officers Association v. Town of McCandless**, 30 PPER ¶ 30141 (Final Order, 1999).

In determining whether the respondent has failed to comply with a grievance arbitration award, the Board's review of the award is limited to ascertaining the arbitrator's intent from the four corners of the award. **Hazle Township, supra; AFSCME, Local 1971 v. City of Philadelphia, Office of Housing and Community Development**, 24 PPER ¶ 24052 (Final Order, 1993). However, the Board does not review the merits of the grievance and will not add to the award or fill gaps or holes in the award. **AFSCME, District Council 47, Local 2187 v. City of Philadelphia**, 36 PPER 124 (Final Order, 2005). Where the meaning and intent of the award is apparent, an employer's failure to comply with a grievance arbitration award is an unfair labor practice. **Id.**

There is no dispute that an award exists and that the appeal period has passed without an appeal of the award. Thus, the only issue before the Board on exceptions is whether the City has complied with the provisions of the arbitration award by rescinding the modified take home vehicle policy for commanders (rank of captain or above), but not for police officers below the rank of captain. In that regard, the City alleges that the Hearing Examiner erred in concluding that it did not comply with the arbitration award because the award only applied to commanders, and the City made those officers whole and rescinded the restrictions on their take home vehicles. The City further alleges that the FOP failed to establish before the arbitrator and the Board that the take home vehicle policy applied to officers other than commanders.

Upon review of the award, the arbitrator specifically found that certain officers below the rank of captain may also be provided with take home vehicles depending upon the position that they hold. In the portion of the award setting forth the "Facts," the arbitrator stated, in relevant part, as follows:

The bargaining unit in this case is comprised of Patrol Officers, Corporals, Detectives, Sergeants, Lieutenants, Captains, Staff Inspectors, Inspectors, and Chief Inspectors. "Commanders" within the unit are comprised of all ranks from Captain and above, with **approximately 180** such Commanders. It was explained that Commanders have been assigned a City car and take that car home at the end of their shifts. These Commanders are compensated differently from the remainder of the bargaining unit and receive no overtime and only a limited capped amount of compensatory time. They respond to any emergency that might occur within the area of their responsibility at all hours of the day and night. For many, many years, vehicles have been assigned to these Officers (City cars) and these Commanders were permitted to take home these cars at the end of their shifts. ***In addition to the Commanders***, some other Police Officers who are required to immediately respond to crime scenes from their homes, such as Homeland Security Officers, certain Detectives, and members of the Highway Patrol also are required to immediately respond to crime scenes and the like from their homes. There are **approximately 200** Police Officers that are and have historically been assigned these cars by the City.

(Union Exhibit 3 at 2-3)(emphasis added). Clearly, the arbitrator did not limit his decision to only commanders, but recognized that police officers below the rank of captain in certain positions, such as Homeland Security and Highway Patrol, who were also provided take home vehicles, should be made whole if they were denied the ability to take those vehicles to their homes. Indeed, in discussing the scope of the grievance, the arbitrator found that there are approximately 180 commanders and that there are approximately 200 police officers below the rank of captain who could be affected by the City's modification of the take home vehicle policy. As noted by the arbitrator, police officers below the rank of captain are provided with take home vehicles in certain instances specific to their assignment and only when a commander of that officer's unit deems it necessary.³ Further, the arbitrator ordered the City to notify the bargaining unit members that it was rescinding the modification to the take home vehicle policy and to "make whole all affected bargaining unit members."

A review of the four corners of the award demonstrates that the arbitrator declined to limit the requested relief to just commanders, but granted relief to "all affected bargaining unit members." The relief directed in the award does not expressly create a contractual right for officers below the rank of captain to be granted take home vehicles. Indeed, the only clear requirement in the award is that if the City provides police bargaining unit members of any rank with a take home vehicle, those bargaining unit members must be permitted to take the vehicles to their homes. Further, the relief granted by the arbitrator provides that if any bargaining unit member, including police officers below the rank of captain, was previously granted a take home vehicle but had to leave the vehicle at a City facility, the bargaining unit member must be compensated for use of a personal vehicle for travel between his or her home outside of the City and the City facility. Accordingly, the Hearing Examiner properly concluded that the

³ These officers typically have positions that require a quick response time such as members of the bomb squad, SWAT units, highway patrol and the internal affairs unit.

City violated Section 6(1)(a) and (e) of the PLRA when it failed to apply the relief ordered in the arbitration award to police bargaining unit members below the rank of captain to the extent any were affected by the City's modified take home vehicle policy.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the City of Philadelphia are dismissed and the February 29, 2016 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this sixteenth day of August, 2016. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

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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 April 3, 2015 arbitration award by applying its terms and relief to all members of the bargaining unit affected by the City's modified take home vehicle policy, including those police officers below the rank of captain; that it has paid six percent interest on any amounts due; that it has posted a copy of the Proposed Decision and Order and Final Order as directed; and that it has served an executed copy of this affidavit on the Fraternal Order of Police, Lodge 5 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