

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALIQUIPPA-HOPEWELL FOP LODGE #26 and :
ANGELO LEWIS :
 :
v. : Case No. PF-C-15-64-W
 :
CITY OF ALIQUIPPA :

PROPOSED DECISION AND ORDER

On August 5, 2015, Aliquippa-Hopewell FOP Lodge #26 (Union) and Angelo Lewis (Lewis) 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 August 27, 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 November 13, 2015, in Pittsburgh as the time and place of hearing, if necessary.

The hearing was necessary. A hearing was held on November 13, 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. In lieu of testimony at the hearing, the parties agreed to submit joint exhibits and stipulated facts by January 15, 2016. The Complainant submitted exhibits and a Summary of the Case with its brief on January 15, 2016. The City agreed to consider the exhibits as joint exhibits and agreed that the Complainant's Summary of the Case should be entered as stipulated facts.

The 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. (Summary of the Case (Summary) ¶2).
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (Summary ¶1).
3. The City and the Union entered into a collective bargaining agreement (CBA) for the calendar years 2008 through 2012, which remains in effect pending Act 111 interest arbitration. (Summary ¶3, Joint Exhibit 1).
4. Until his retirement on May 26, 2015, Lewis was a Police Officer employed by the City and a member of the bargaining unit. (Summary ¶4).
5. On October 1, 2014, Lewis was terminated from employment by the City by a vote at the regularly scheduled council meeting. Notwithstanding the vote to terminate Lewis' employment on October 1, 2014, the City sent Lewis a letter dated October 2, 2014, informing him that he had been suspended pending termination. (Summary ¶5).
6. Lewis grieved the discipline and processed said grievance through the parties' CBA grievance procedure. (Summary ¶6).
7. Prior to a scheduled arbitration hearing, the parties executed a written settlement agreement (Agreement) and cancelled the arbitration hearing. (Summary ¶8; Joint Exhibit 4).

8. The Agreement was executed by all parties on May 19, 2015. (Summary ¶9; Joint Exhibit 5).

9. The Agreement provides in relevant part:

The City hereby acknowledges receipt and acceptance of Lewis' notice of intention to vest his pension under applicable law prior to the date of his resignation. The City agrees to waive the thirty (30) days prior notice of intention to vest requirement pursuant to Section 4302.1. Lewis shall be entitled to the pension rights and benefits he is entitled to receive (such as a Section 4302.1. Limited Vested benefit due to his age and years of service) pursuant to the terms of the City's Police Pension Plan, the 3rd Class City Code and applicable Pennsylvania Law. The City agrees not to contest Lewis' right to benefits that are afforded to a retired/separated police officer in good standing under Pennsylvania or Federal Law.

. . .

The City agrees to "make Lewis whole", specifically the City agrees to pay Lewis for back pay wages from October 1, 2014 until May 6, 2015; pay Lewis any and all unused vacation leave he earned to the date of his resignation, in full, both for year 2015 and any unused prior to this year, incident to his separation on May 6, 2015; and pay Lewis any longevity earned to the date of his forthcoming resignation, in full, incident to his separation on May 6, 2015, (this includes any unpaid for 2014).

. . .

[T]he parties will cooperate and diligently work in good faith to execute the agreement as soon as possible. Any and all monetary payments and other obligations of the City under this Agreement shall be fully tendered and completed within thirty (30) days of the full execution of the written settlement agreement.

(Joint Exhibit 4).

10. On July 2, 2015, Lewis received a "make whole" payment amount of \$4,840.48. The payment was not itemized. (Summary ¶14).
11. On July 2, 2015, Counsel for Complainant emailed Respondent's counsel and requested an itemization of the payment, including deductions. There was no response from Respondent's Counsel. (Summary ¶15; Joint Exhibit 8).
12. On July 22, 2015, counsel for Complainant again emailed Respondent's counsel requesting an itemization of the payment and information regarding payment of Lewis' pension. Lewis had not received any information about the calculation and receipt of his pension. (Summary ¶16).
13. On July 22, 2015, Respondent's counsel provided to Lewis an itemization of the "make whole" payment. The itemization contained errors including deducting vacation time from the "make whole" payment in violation of the Agreement. (Summary ¶17; Joint Exhibit 9).
14. On August 4, 2015, Complainant's counsel again emailed Respondent's Counsel about the "make whole" issues and pension issues. (Summary ¶18).
15. At the hearing, November 15, 2015, the parties agreed that the City had complied with all of the "make whole" provisions of the Agreement with the exception of arranging the processing of Lewis' pension payments. (Summary ¶20).

DISCUSSION

The Union alleges that the City has not complied with the Agreement and seeks enforcement of the Agreement on behalf of bargaining unit member Lewis

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 P 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. Specifically, the City has not processed Lewis' pension and he has received no pension payments as provided for by the Agreement. At the hearing on November 13, 2015, the City did not contest that it had not fully complied with the Agreement that was fully executed May 19, 2015. This is a delay of approximately six months and is unreasonable. Moreover, the City has not raised any defense for its actions or even an adequate explanation or justification. It has simply failed to fully comply after nearly half a year, multiple inquiries by the Union, a charge before the Board, and a hearing. The City has violated Section 6(1)(a) and (e) of the PLRA as read *in pari materia* with Act 111.

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 including, but not limited to, taking all actions necessary to pay Lewis his proper pension proceeds in accordance with the Agreement;
 - (b) Immediately pay to Lewis interest of 6% per annum upon any unpaid monetary amount from May 19, 2015, to the date of payment;

- (c) 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 employees and have the same remain so posted for a period of ten (10) consecutive days;
- (d) 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
- (e) 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 eighth day of February, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

Stephen A. Helmerich, Hearing Examiner

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Pennsylvania Labor Relations Board

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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 (c) 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 including, but not limited to, taking all actions necessary to pay Lewis his proper pension proceeds in accordance with the Agreement; that it has paid to Lewis interest of 6% per annum upon any unpaid monetary amount from May 19, 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