

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LANCASTER CITY FIRE FIGHTERS, LOCAL :
UNION 319 :
 :
v. : Case No. PF-C-15-87-E
 :
CITY OF LANCASTER :
 :

PROPOSED DECISION AND ORDER

On November 10, 2015, the Lancaster City Fire Fighters, Local Union 319 (Union or Local 319) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against the City of Lancaster (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 terms of a grievance settlement agreement.

On January 8, 2016, 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 March 14, 2016, in Harrisburg, as the time and place of hearing, if necessary. The hearing was continued on two occasions for the purpose of permitting time for settlement discussions.

The hearing was necessary and was held before the undersigned Hearing Examiner of the Board on August 1, 2016, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The City filed a post-hearing brief on September 30, 2016, while the Union filed a post-hearing brief on October 6, 2016.

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 is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 5-6)
2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 6)
3. The Union is the exclusive bargaining representative for a unit of firefighters employed with the City. (N.T. 7-8)
4. In 2011, the parties executed a settlement agreement, which resolved a grievance concerning the deployment of rapid intervention teams (RITs), which are groups of firefighters that are responsible for the immediate rescue of emergency personnel that become trapped, injured, or incapacitated for any reason during an incident. (N.T. 8-9; Union Exhibits 1 & 2)
5. The grievance settlement agreement provides, in pertinent part, as follows:

In all cases when the Duty Officer of the Fire Bureau determines that the Rapid Intervention Team (RIT) will be called to a fire, the City RIT Team will first be called and then, if determined necessary, RIT Teams from volunteer companies. Volunteer RIT team members will not be permitted to work on any bargaining unit firefighting duties unless a general alarm is first called...

(Union Exhibit 1)

6. The City has a standard operating procedure (SOP) regarding the deployment of RIT teams, which states that the duty officer can request volunteer RIT members to come to an incident on the first alarm. The incident commander is prompted to request volunteer RIT members on the second alarm, at which point the volunteer RIT members are supposed to assemble or stage someplace. There are no restrictions on the use of volunteer RIT members after a general alarm. (N.T. 9-10, 21-22; Union Exhibit 2)
7. The primary purpose of RIT is not to engage in fire suppression duties, which means going in and actively putting out a fire. RIT members may engage in fire suppression duties once an incident is under control and deemed not to be immediately dangerous to life and health. (N.T. 10-11; Union Exhibit 2)
8. On October 7, 2015, there was a fire in the City at 33 East Farnum Street, during which RIT teams from volunteer fire companies assisted in evacuating the building. Evacuating residents from the building is a fire suppression duty, which is bargaining unit work. There was never a general alarm called during the incident. (N.T. 11-13, 16, 24-28; Union Exhibit 3)
9. Local 319 Vice President Scott Slaymaker addressed the issue at the scene with Deputy Chief Haubert, who replied "we know you guys will have to do what you have to do." There were two alarms called on this incident. (N.T. 16-17)
10. The incident commander at the scene of the fire was Battalion Chief Oatman, who was a member of the bargaining unit. The incident commander has discretion regarding what alarm to call. (N.T. 19-20, 23)
11. Fire Chief Timothy Gregg was present for the incident, but did not take command. (N.T. 33)

DISCUSSION

In its charge, the Union alleged that the City violated Section 6(1)(a) and (e) of the PLRA¹ by failing to comply with the provisions of the grievance settlement agreement by permitting volunteer RIT members to perform bargaining unit work in the absence of a general alarm. The City, meanwhile, contends that it cannot be held liable for the use of volunteer RIT members in the absence of a general alarm because it was bargaining unit members who made the decisions in question during the incident, and not any managerial employees.

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 labor 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).

In this case, the Union has sustained its burden of proving that the City failed to comply with the grievance settlement agreement in violation of the PLRA. The record shows that the parties executed a settlement agreement in 2011, which resolved a grievance concerning the deployment of RIT members. The settlement agreement provides, in relevant part, that "[v]olunteer RIT team members **will not be permitted to work on any bargaining unit firefighting duties unless a general alarm is first called...**" (Union Exhibit 1) (Emphasis added).

The record also shows that, on October 7, 2015, there was a fire in the City at 33 East Farnum Street, during which RIT teams from volunteer fire companies assisted in

¹ Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act...(e) To refuse to bargain collectively with the representatives of his employees...43 P.S. § 211.6(1).

evacuating the building. Evacuating residents from the building is a fire suppression duty, which is bargaining unit work. There was never a general alarm called during the incident.

As such, the Union has demonstrated that a grievance settlement exists, which is clear and unambiguous. Indeed, the agreement expressly states that volunteer RIT members are not allowed to perform any bargaining unit work of the firefighters in the absence of a general alarm. Despite this agreement, the record further shows that volunteer RIT members did, in fact, perform such bargaining unit work on October 7, 2015 in the absence of a general alarm. The City does not appear to dispute any of these facts. This was a clear violation of the settlement agreement.

The City argues that it cannot be held liable for the use of volunteer RIT members in the absence of a general alarm here because bargaining unit members made the decisions in question during the incident, and not any managerial employees.² Specifically, the City contends that a lieutenant, who is in the bargaining unit, directed the volunteer RIT members to perform the bargaining unit work in question. The City cites **PSSU Local 668 SEIU, AFL-CIO v. Chester County Court of Common Pleas**, 33 PPER ¶ 33147 (Proposed Decision and Order, 2002), wherein the Hearing Examiner relied on **Teamsters Local 771 v. PLRB**, 760 A.2d 496 (Pa. Cmwlth. 2000) and **United Mine Workers of America, Region 1 v. Blair County**, 32 PPER ¶ 32048 (Final Order, 2001), as support for its argument. The City's argument is without merit.

First of all, the Hearing Examiner's decision in **Chester County Court of Common Pleas** is not controlling. In that case, the Hearing Examiner dismissed the charge against the County because the record revealed that agents of the Court rather than the County took the actions complained of in the charge. In the instant case, however, there is no other employer that is responsible for the actions complained of in the charge. The lieutenant on the fire ground and the incident commander who had discretion regarding what alarm to call were both agents of the City. Indeed, the City's own Fire Chief, Gregg, conceded that Oatman was in command at the fire on October 7, 2015 and full discretion to call for whatever alarm he needed. (N.T. 34, 36-37). Further, Gregg admitted that the lieutenant is required to follow protocol and notify command before taking action, such as directing the volunteer RIT members onto the scene. (N.T. 40-41). As a result, it is of no consequence that the decision to use volunteer RIT members to perform bargaining unit work in the absence of a general alarm could have come from bargaining unit members, and not managerial employees of the City.^{3 4} The City agreed to a settlement of a grievance, which requires a general alarm before volunteer RIT members can be permitted to perform bargaining unit work, knowing that a bargaining unit member could determine the dispatch of volunteers. The City should not be permitted to disavow its bargain now, See **Perroz v. Fox Chapel Borough**, 143 A.3d 520, 528 (Pa. Cmwlth. 2016), especially when it acknowledges that the employees in question were acting within their scope of authority to make decisions on the fire ground.⁵ In any event, the Chief and Deputy Chief, who are managerial employees, were both present at the fire and could have presumably taken command at any time. Accordingly, the City has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA.

CONCLUSIONS

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

² The City has not argued that it was precluded from complying with the settlement agreement because of an emergency or some type of exigent circumstances. Indeed, Gregg characterized the fire as "minor" and stated that it did not warrant a general alarm for 30 extra firefighters. (N.T. 36).

³ Gregg testified that after the October 7, 2015 fire, he called Mike Reese, who is either the chief or deputy chief of the Willow Street fire company, and asked if they engaged at the fire in question. Gregg testified that Reese told him Lieutenant Hamrick, who is in the bargaining unit, directed them to use the elevator. (N.T. 35). Although there was no objection lodged to this testimony, it is clearly a hearsay statement, which has not been corroborated by other competent evidence of record. Therefore, I am unable to rely on this testimony as substantial competent evidence.

⁴ As the Union correctly notes, Act 111 units are unique in that supervisors are not excluded from the bargaining unit. **Fraternal Order of Police, Star Lodge No. 20 v. PLRB**, 522 A.2d 697 (Pa. Cmwlth. 1987).

⁵ It matters not that Gregg testified that Hamrick did not follow protocol by notifying command before taking the action at issue, as Gregg conceded that he had discussions with Hamrick afterwards and "got out the SOPs" to remind everyone of the protocol. (N.T. 42).

1. The City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The Union 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 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 comply with the 2011 grievance settlement agreement by compensating the bargaining unit members who lost work on October 7, 2015 with the appropriate backpay, plus six (6%) percent per annum interest, and to comply with the settlement agreement in all other respects;
 - (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 25th day of October, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LANCASTER CITY FIRE FIGHTERS, LOCAL :
UNION 319 :
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 v. : Case No. PF-C-15-87-E
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 CITY OF LANCASTER :

AFFIDAVIT OF COMPLIANCE

The City hereby certifies that it has ceased and desisted from its violation of Section 6(1) (a) and (e) of the Pennsylvania Labor Relations Act; that it has immediately complied with the 2011 grievance settlement agreement by compensating the bargaining unit members who lost work on October 7, 2015 with the appropriate backpay, plus six (6%) percent per annum interest, and that it has complied with the settlement agreement in all other respects; 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