

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DC 47 LOCAL 2187, AFL-CIO :
:
: Case No. PERA-C-17-352-E
v. :
:
CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On December 13, 2017, the American Federation of State, County, and Municipal Employees District Council 47, Local 2187 (AFSCME or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the City of Philadelphia (City or Employer), alleging that the City violated Section 1201(a) (1) and (5) of the Public Employe Relations Act (PERA or Act) by refusing to comply with the terms of a grievance settlement agreement.

The parties litigated the charge, and on January 9, 2019, the Hearing Examiner issued a Proposed Decision and Order (PDO), finding that the City committed unfair practices, as alleged. The City did not file exceptions to the PDO, and on April 11, 2019, AFSCME filed a notice with the Board, alleging the City had not complied with the PDO. On April 23, 2019, the Board's Chief Counsel forwarded a letter to the City, inquiring about the status of compliance, and enclosing an affidavit of compliance. The City did not file an affidavit of compliance thereafter or at any other time. On December 9, 2019, AFSCME filed a notice with the Board, alleging the City had still not complied with the PDO and requesting the Board take action to compel compliance.

On December 11, 2019, the Board scheduled a compliance hearing for March 27, 2020, which was continued to May 8, 2020 at the request of AFSCME and without objection by the City. The hearing was subsequently continued again due to the ongoing Covid-19 pandemic.

The hearing eventually ensued virtually on December 7, 2020, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. AFSCME filed a post-hearing brief on February 12, 2021. The City filed a post-hearing brief on February 23, 2021.

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

That Findings of Fact 1 through 14 as set forth in the Proposed Decision and Order are hereby incorporated by reference.

15. The January 9, 2019 PDO directed the City to "[i]mmediately comply with the grievance settlement agreement by tendering full back pay to [Lauren] Glazer from the date of the original discharge, less the 30-day suspension, with six (6%) percent per annum interest, through May 9, 2017, along with all other benefits or emoluments of employment she was entitled to

pursuant to the settlement agreement for the back pay period, including but not limited to pension contributions." (Union Compliance Exhibit 1)

16. The January 9, 2019 PDO contained an Affidavit of Compliance, which provided as follows: "[t]he City hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has immediately complied with the grievance settlement agreement by tendering full back pay to Glazer from the date of the original discharge, less the 30-day suspension, with six (6%) percent per annum interest, through May 9, 2017 along with all other benefits or emoluments of employment she was entitled to pursuant to the settlement agreement for the back pay period, including but not limited to pension contributions; 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." (Union Compliance Exhibit 1)

17. On January 16, 2020, the City requested that Glazer provide a W-9, along with a verification of any earnings or unemployment compensation benefits she received during the period at issue to process her back pay and interest payments. Glazer's attorney provided the requested documents by March 2, 2020. (N.T. 7, 10, 13; Union Compliance Exhibit 2)

18. Glazer received a check from the City for a gross amount of \$66,228.21 on December 5, 2020. (N.T. 11)

19. The City acknowledged that the check was for back pay only, offset by any earnings she received. The City admitted that the interest still remains outstanding. (N.T. 8)

DISCUSSION

AFSCME has petitioned the Board for a compliance hearing in this matter to determine whether the City has complied with the January 9, 2019 PDO. AFSCME contends that the City has not complied with the January 9, 2019 PDO because the interest remains outstanding. AFSCME further maintains that the Board should award attorney fees and costs because the City did nothing to comply with the PDO until AFSCME sought a compliance hearing in December 2020 and that, as the prevailing party, AFSCME should not have to incur additional expenses just to compel the unsuccessful party to comply with its legal obligations.¹ The City, for its part, admits that it has not complied with the January 9, 2019 PDO to the extent that the interest remains outstanding; however, the City opposes any award of attorney fees and costs.

AFSCME has clearly sustained its burden of proving that the City has failed to comply with the January 9, 2019 PDO. Indeed, the City has admittedly still not paid the interest in accordance with the PDO, which directed the City to "[i]mmediately comply with the grievance settlement agreement by tendering full back pay to Glazer from the date of the original discharge, less the 30-day suspension, **with six (6%) percent per annum interest**, through May 9, 2017, along with all other benefits or emoluments of

¹ AFSCME does not argue in its post-hearing brief that the City's December 5, 2020 payment to Glazer represented a shortfall in any way, aside from the outstanding interest. In fact, AFSCME concedes in its post-hearing brief that the City's payment to Glazer was "consistent with the settlement agreement reached on January 31, 2017." See AFSCME post-hearing brief at 2.

employment she was entitled to pursuant to the settlement agreement for the back pay period, including but not limited to pension contributions.” (Emphasis added). The City points to the ongoing global pandemic as a justification for its failure to pay interest in accordance with the PDO. However, the Covid-19 pandemic does not excuse the City from its legal obligation here. The pandemic did not even reach the United States until sometime around March of 2020, which was well over a year following the January 9, 2019 PDO. Therefore, the City will be directed to immediately comply with the PDO by paying Glazer the six (6%) percent per annum interest on the back pay amount, which continued to accrue until December 5, 2020.

With regard to AFSCME’s request for costs and attorney fees, the Board has long held that it lacks statutory authority to impose such a remedy. AFSCME District Council 85 v. Erie County, 37 PPER 171 (Proposed Decision and Order, 2006) *citing* Northampton Township, 35 PPER 138 (Final Order, 2004); City of Reading, 26 PPER ¶ 26082 (Final Order, 1995). AFSCME relies on Teamsters Local 429 v. Reading School District, 35 PPER 90 (Proposed Decision and Order, 2004) for the proposition that costs and attorney fees may be awarded when it is a remedial measure under the circumstances. However, as the hearing examiner noted in Erie County, *supra*, that decision does not expressly provide for a remedy of attorney fees, and even if it had, it was a proposed decision of a Board hearing examiner that was not appealed to the Board. Thus, it does not override the above-cited Board decisions directly on point. Erie County, *supra*. The Board’s remedial powers in unfair practice litigation do not extend to the assessment of costs and attorney fees. City of Reading, 26 PPER ¶ 26082 (Final Order, 1995). As such, I am unable to award the payment of costs or attorney fees notwithstanding the City’s dilatory conduct here.

CONCLUSIONS

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

That conclusions 1 through 4 as set forth in the Proposed Decision and Order dated January 9, 2019 are hereby incorporated by reference.

5. The City is not in compliance with the January 9, 2019 Proposed Decision and Order.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

HEREBY ORDERS AND DIRECTS

That the City shall:

(a) Immediately comply with the January 9, 2019 PDO by paying Glazer the six (6%) percent per annum interest on the back pay amount, which continued to accrue until December 5, 2020;

(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 its employees, 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 pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this 29th day of March, 2021.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

The City hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has immediately complied with the Proposed Decision and Order by paying Glazer the six (6%) percent per annum interest on the back pay amount, which continued to accrue to December 5, 2020; 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