

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, FORT PITT :
LODGE No. 1 :
 :
v. : Case No. PF-C-23-18-W
 :
CITY OF PITTSBURGH :

PROPOSED DECISION AND ORDER

On March 1, 2023, the Fraternal Order of Police, Fort Pitt Lodge No. 1 (Union or FOP) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (PLRB or Board) against the City of Pittsburgh (City or Employer) alleging 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, when the City failed to implement an arbitration award regarding healthcare for surviving spouses of deceased bargaining-unit members.

On May 10, 2023, 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 July 21, 2023, in Pittsburgh, as the time and place of hearing.

The hearing was necessary and held on July 21, 2023, in Pittsburgh, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union submitted a post-hearing brief on September 5, 2023. The City submitted a post-hearing brief on October 6, 2023. On December 12, 2023, upon motion from the Union, the Hearing Examiner reopened the record to admit additional exhibits FOP 1 and 2. The Union filed an amended post-hearing brief on December 22, 2023.

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. 20; Joint Exhibit 2, 15).

2. The Union is a labor organization under Act 111 as read *in pari materia* with the PLRA. The Union is the exclusive bargaining unit representative of City of Pittsburgh police officers. (N.T. 20; Joint Exhibit 2, 15).

3. At all times relevant for this matter, the parties were subject to a collective bargaining agreement (CBA) with the effective dates of January 1, 2019, through December 31, 2022. (Joint Exhibit 2, 15).

4. On March 15, 2022, Arbitrator Christopher Miles issued an award (Miles Award) over a dispute between the parties over healthcare for surviving spouses of deceased bargaining unit members. The Miles Award states in relevant part:

AWARD

The class action grievance filed in this matter is sustained. Based upon the particular circumstances presented in this case, it is found that the City violated the clear and unambiguous provisions of Section 14 of the Agreement when it discontinued the healthcare coverage for the surviving spouses upon the death of the retiree. Section 14 requires the City to contribute towards the continued medical insurance coverage for a Police Officer retiree and his/her spouse. As a remedy for this violation, the City is directed to make restitution to the adversely affected survivors who are not otherwise excluded from coverage.

(Joint Exhibit 3).

5. On April 18, 2022, the City filed an appeal of the Miles Award in the Court of Common Pleas of Allegheny County. (Joint Exhibit 4, 15).

6. On August 30, 2022, Judge Hertzberg of the Allegheny County Court of Common Pleas issued an order which denied the City's appeal. (Joint Exhibit 6, 15).

7. On September 29, 2022, the City filed an appeal of the Court of Common Pleas decision to the Commonwealth Court. (Joint Exhibit 8, 15).

8. On October 3, 2022, Judge Hertzberg denied the City's Emergency Motion for Stay and directed the City to comply with the Miles Award. (Joint Exhibit 9, 15).

9. On March 29, 2023, the City filed an Application for Stay of Trial Court Order Affirming Arbitration Award Reforming a Public Labor Contract with the Commonwealth Court. (Joint Exhibit 11, 15).

10. On June 7, 2023, the Commonwealth Court denied the City's Application for Stay of Trial Court Order Affirming Arbitration Award Reforming a Public Labor Contract. (Joint Exhibit 12, 15).

11. On July 7, 2023, the City filed an Application Pursuant to 42 Pa.C.S. § 762, Pa.R.A.P. 1702(C) and 3315 for Appropriate Relief and Review of Commonwealth Court's Denial of Appellant's Application for Stay of Trial Court Order Affirming Arbitration Award Reforming a Public Labor Contract by Augmenting Terms About Retirement Healthcare Benefits with the Supreme Court. (Joint Exhibit 13, 15).

12. On November 6, 2023, Judge McCullough issued a Commonwealth Court opinion and order affirming the August 30, 2022, order of the Court of Common Pleas which denied the City's appeal of the Miles Award. (FOP Exhibit 1).

13. On November 27, 2023, the Supreme Court denied the City's Application for Stay. (FOP Exhibit 2).

14. On January 22, 2023, Michael Mares, Sr., a retired police officer, passed away. On January 23, 2023, Michael Mares, Jr., contacted the City regarding continued healthcare coverage for his mother, the widow of Michael Mares, Sr. Mares, Jr., was told by the City that healthcare for his mother would cease on January 31, 2023. The City has not complied with the Miles Award. (N.T. 10, 15; Joint Exhibit 1).

15. The City does not notify the Union when the City cancels a surviving spouse's medical benefits. (Joint Exhibit 3, page 6).

DISCUSSION

The Union charges that the City committed an unfair labor practice when it failed to comply with the Miles Award. The law regarding this matter is well settled. In determining whether an employer complied with a grievance arbitration award, the Union has the burden of proving that an award exists, the award is final and binding, and that the employer failed or refused to properly implement the award. State System of Higher Education v. PLRB, 528 A.2d 278 (Pa. Cmwlth. 1987).

In 1987, Rule 1736 of the Rules of Appellate Procedure was amended to eliminate the automatic *supersedeas* or stay for political subdivisions on appeals from the common pleas court which has affirmed an arbitration award in a grievance. Pa.R.A.P. 1736. Thus, once an arbitration award has been affirmed by a common pleas court, the award becomes enforceable and the aggrieved employer has been stripped of its ability to delay compliance with the award by seeking further redress in subsequent appeals. City of Philadelphia, 32 PPER ¶ 32102 (Order Directing Remand to Secretary for Further Proceedings, 2001); City of Pittsburgh, PERA-C-20-141-W (Final Order, 2023).

Parties cannot collaterally attack arbitration awards in unfair labor practice enforcement proceedings before the PLRB. City of Pittsburgh, PERA-C-20-141-W (Final Order, 2023); PLRB v. Commonwealth, 387 A.2d 475 (Pa. Cmwlth. 1978).

The relief provided in an arbitration award that has been affirmed on appeal is effective dating back to the date of the award or another effective date expressly provided in the award. Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 39 PPER 9 (Final Order, 2008); Wyoming Borough Police Department v. Wyoming Borough, 43 PPER 22 (Final Order, 2011); Allegheny County Prison Employees Independent Union v. County of Allegheny, 50 PPER 70 (Proposed Decision and Order, 2019).

In this matter, the record is clear that the Miles Award exists, that it is final and binding, and that the City has not complied. The fact that the Miles Award exists is not contested. With respect to whether it is final and binding, the record shows that the Allegheny County Court of Common Pleas affirmed the Miles Award on August 30, 2022. This is the date the Miles Award became final and binding pursuant to Pennsylvania law. The fact that the City has not complied is not contested.

Moving to the City's arguments in its defense, the City first argues on page 4-5 of its Brief that the Union's charge was untimely. The PLRA limits the Board's jurisdiction to charges filed within six weeks of the offense. 42 P.S. § 211.9(e). The City argues on page 6 of its Brief: "It is undisputed that the City has never complied with the [Miles] Award. Accordingly, the City's failure to comply with the [Miles] Award started as soon as the Court of Common Pleas denied its appeal on August 30, 2022." The City argues on page 5 of its Brief: "The Union, however, did not file an enforcement charge until 7 months after common pleas disposition of the City's appeal [of the Miles Award]. The Union should have filed a charge on or before October 11, 2022. Compliance with the stricture of the Act mandates dismissing the Complaint." On pages 4-6 of its Brief, the City

argues that the Miles Award explicitly requires the City to make restitution to all eligible surviving spouses for the out-of-pocket healthcare costs they incurred due to the City canceling their healthcare. The import of the City's argument is that since they have never been in compliance with the Miles Award, which included restitution of costs to surviving spouses whose healthcare the City canceled, the Union should have filed within six weeks of the Court of Common Pleas decision because City was immediately not complying with the Award as soon as the Court of Common Pleas order was entered into the docket.

To resolve the issue of timeliness, I rely on the Board's policy of notice to the Union in such disputes. The date of notice to the union (i.e. the time the union knew or should have known of the employer's alleged unfair labor practice) triggers the statute of limitations. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001); Warminster Township Police Benevolent Ass'n, Inc. v. Warminster Township, 31 PPER ¶ 31097 (Proposed Decision and Order 2000) (citing Throop Borough, 25 PPER ¶ 25063 (Final Order, 1994) (FOP, Haas Memorial Lodge #7 v. PLRB, 696 A.2d 873 (Pa. Cmwlth. 1997) ("The limitations period for filing of unfair labor practice charges is triggered when the complainant has a reason to believe that an unfair practice has occurred."), appeal denied, 553 Pa. 693, 717 A.2d 1030 (1998).

The record contains the undisputed and stipulated facts that on January 23, 2023, Michael Mares, Jr., contacted the City regarding continued healthcare coverage for his mother, the widow of Michael Mares, Sr. Mares, Jr., was told by the City that healthcare for his mother would cease on January 31, 2023. The charge was filed on March 1, 2023. March 1st is within six weeks of January 23rd. These facts were included in Joint Exhibit 1 which the City agreed to include into the record.

In this matter, I infer that the Union had knowledge that the City was not complying with the Miles Award on January 23, 2023, when the City told Michael Mares, Jr., that his mother's healthcare coverage would be canceled on January 31, 2023. The City would like me to infer that the Union had knowledge that the City was not complying with the Miles Award before January 23, 2023. I do not have sufficient evidence in this matter to support such an inference. I infer that that the City would not necessarily have notified the Union if it made restitution to surviving spouses pursuant to the Miles Award. During the arbitration hearing before Arbitrator Miles, the City's witness, Jamie Warnock, testified that the City does not notify the Union when the City cancels a surviving spouse's medical benefits. There is thus a history of the City not notifying the Union with respect to City transactions with surviving spouses. Therefore, the lack of notice of the payments to surviving spouses after the Court of Common Pleas order would not necessarily put the Union on notice that the City was refusing to comply. I will not find here, where the Union lacks a direct connection to beneficiaries of the Miles Award (i.e., the surviving spouses are not active Union members), that the Union has an affirmative duty to monitor compliance with arbitration awards sufficient to infer notice to the Union triggered by the City's failure to immediately make restitution to surviving spouses. The charge is timely.

The City next argues, in the alternative, at page 6 of its Brief that the Miles Award is not final. This has been discussed above and the Miles Award became final after the Court of Common Pleas denied the City's appeal on August 30, 2022.

At pages 6-7 of its Brief, the City attempts again to argue that the Miles Award is not final and binding and cites the Pennsylvania Supreme Court in Borough of Lewistown v. PLRB, 735 A.2d 1240 (Pa. 1999), for the proposition that an appeals process must be exhausted prior to an award being deemed final and binding. However, as discussed above, once an arbitration award has been affirmed by a common pleas court, the award becomes enforceable and the aggrieved employer has been stripped of its ability to delay compliance with the award by seeking further redress in subsequent appeals.

Finally on pages 9-10 of its Brief, the City argues that the charge should be dismissed because the Union did not meet its evidentiary burden. Under this heading the City makes two arguments. First the City argues that surviving spouses of deceased police officers are not employees recognized under the Act or related to the Union. It is not clear to me why this fact would invalidate a charge under the Act to enforce an arbitration award. The Union filed the grievance and prosecuted the arbitration, not the surviving spouses. Regardless, the City cites no case law to support its idea. The Union in this matter had the burden of showing an award existed, that it is final, and that the City did not comply. The Union did so. The Board has jurisdiction over the Union and the City. That is sufficient to order the City to enforce the Miles Award. Second, the City cites recent cases that it alleges address the rights of surviving spouses under collective bargaining agreements where statutory rights exist. The City then argues that no statutory rights existed for the surviving spouses in this matter and thus the charge must be dismissed. These arguments are collateral attacks on the Miles Award and are not allowed in an unfair labor practice proceeding regarding enforcement of the Miles Award. City of Pittsburgh, PERA-C-20-141-W (Final Order, 2023); PLRB v. Commonwealth, 387 A.2d 475 (Pa. Cmwlth. 1978).

CONCLUSIONS

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

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 and Act 111.

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 employees in the exercise of the rights guaranteed in the PLRA and Act 111.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the Hearing Examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately comply with the Miles Award including, but not limited to, making all surviving spouses whole pursuant to the Miles Award with six percent *per annum* interest calculated from the date of the Miles Award.

(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 fourth day of January, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

 /s/ Stephen A. Helmerich
Stephen A. Helmerich, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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AFFIDAVIT OF COMPLIANCE

The City of Pittsburgh 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 immediately complied with the Miles Award including, but not limited to, making all surviving spouses whole pursuant to the Miles Award with six percent *per annum* interest calculated from the date of the Miles Award; 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

Title

Date

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public