

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, FORT PITT :
LODGE No. 1 :
v. : Case No. PF-C-23-70-W
CITY OF PITTSBURGH :

PROPOSED DECISION AND ORDER

On August 3, 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 the discipline of a bargaining-unit member police officer.

On September 29, 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 November 29, 2023, in Pittsburgh, as the time and place of hearing.

The hearing was necessary and held on November 29, 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 December 8, 2023. The City submitted a post-hearing brief on February 9, 2024. I did not consider the additional evidence proffered by the City attached to its Brief as "Appendix B".

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. 12).

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. 12; Union Exhibit 1).

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. (N.T. 27; Union Exhibit 1).

4. On December 19, 2022, Arbitrator Christopher Miles issued an award (Miles Award) over a discipline grievance filed on behalf of bargaining-unit member Thomas Mignogna. The City terminated Mignogna's employment on August 18, 2022 for alleged violations of Bureau of Police rules and regulations. The Miles Award states in relevant part:

. . . For this reason, the Board of Arbitrators finds that the City had just cause to discipline Sgt. Mignogna in the form of a five (5) day suspension (already served) in order to correct and impress upon the Grievant the need to properly account for all time worked Consequently, the grievance filed on behalf of Sgt. Mignogna is sustained in part. He shall be reinstated to his position of Sergeant and made whole. In this regard, the record reflects that prior to his termination the Grievant was on Worker's Compensation and receiving Heart and Lung benefits. When he was terminated, his Heart and Lung benefits ceased. Therefore, Sgt. Mignogna shall be made whole for the difference in the benefits he has received from Worker's Compensation and those he would have received from the Heart and Lung Act.

AWARD

The grievance filed on behalf of Sgt. Thomas Mignogna is sustained in part and denied in part. A majority of the Tripartite Board of Arbitrators finds that the City did not have just cause, in accordance with the provisions of the [CBA], to terminate the employment of the Grievant for violating Bureau of Police Rules and Regulations. However, it is found that the City had just cause to discipline Sgt. Mignogna for failing to properly account for all of the time he worked the Bike Trail Outreach Patrol on March 17 and March 31, 2022. Therefore, the discipline is reduced to a five (5) day suspension (already served). The Grievant shall therefore be reinstated to his position as Sergeant and he shall be made whole as set forth above in the Decision.

(Union Exhibit 3).

5. After the Miles Award was issued, the City appealed the Miles Award to the Allegheny County Court of Common Pleas. (N.T. 33).

6. On July 18, 2023, Judge McVay of the Allegheny County Court of Common Pleas issued an order which denied the City's appeal. (Union Exhibit 3).

7. On August 27, 2023, Judge McVay of the Allegheny County Court of Common Pleas issued a Pa.R.A.P. 1925(b) Opinion supporting his July 18, 2023 order. (Union Exhibit 5).

8. On September 13, 2023, Judge McVay of the Allegheny County Court of Common Pleas issued an order denying the City's Motion to Stay Pending Appeal. Judge McVay wrote in his Order "Denied as I don't find that the [City] has met its burden for a stay [on] the 4 prongs of success on the merits, irreparable harm, harm as to other interested parties or adverse effect on public interest." (Union Exhibit 4).

9. On September 27, 2023, Mignogna wrote a letter to Lee Schmidt, Director of the City's Department of Public Safety, which tendered Mignogna's

resignation and announced his retirement from the Bureau of Police effective August 29, 2022. (N.T. 52-53,99; Union Exhibit 10).

10. Mignogna thereafter applied for a disability pension which was awarded by the Pension Board. (N.T. 42-45, 58-59).

11. As of the date of the hearing, the City has not complied in any way with the Miles Award. (N.T. 41, 70).

12. The parties extended and modified the terms of the CBA via a Tentative Agreement with the effective dates of January 1, 2023 to December 31, 2025. (N.T. 49-50; Union Exhibit 13).

13. The City does not pay Heart and Lung benefits to retired employees. (N.T. 100).

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 July 18, 2023. This is the date the Miles Award became final and binding pursuant to Pennsylvania law. The City argues in its Brief at pages 5-7 that the Miles Award is not final. However, the City

provided no evidence of a stay or supersedeas at the hearing and has not thereafter petitioned to reopen the record to enter evidence of a stay or supersedeas. The fact that the City has not complied is not contested.

Therefore, the record clearly shows that the City has committed an unfair practice by refusing to implement an arbitration award. I now turn to what relief to include in this Proposed Decision and Order. The record shows that the City terminated Mignogna's employment on August 18, 2022. The record further shows that Mignogna resigned and retired from the Bureau of Police with the effective date of August 29, 2022, and thereafter applied for and received a disability pension. With these facts in mind, and following the Miles Award, the City may comply with the Miles Award by making him whole by paying Mignogna the "difference in the benefits he has received from Worker's Compensation and those he would have received from the Heart and Lung Act" for the time period of August 19, 2022 to August 29, 2022 while accounting for the 5 days suspension. I find that the City does not have to now reinstate Mignogna or return him to full Heart and Lung benefits as it is clear he retired and resigned effective August 29, 2022.

The Union urges me to order the City to reinstate Mignogna or to return him to full Heart and Lung benefits. The Union's attorney argued in his opening statement:

[T]he city granted his disability pension, recently started paying him pension payments going forward, I think he's received one or two payments, and one of those payments was a retroactive payment of pension back to that August 22 date. The Union's position, however, is that since the [Miles Award] was in his favor, the [Miles Award] requested that he go - that he be put back to work or put on Heart and Lung Sergeant Mignogna should have been returned back to that work status or put on Heart and Lung, which would have allowed him to continue to gain wages, which would have carried him over into 2023's contract for a higher wage rate. And then whenever he applied for disability pension, his pension would have been calculated at that level.

(N.T. 16). Robert Swartzwelder is President of the Union. His testimony on cross examination by the City's attorney further elucidates the Union's position:

A: So he took a pension that has not been properly calculated. The parties had come to the agreement in January of 2023 of an 8.7 percent increase in a double longevity payment. And so it was the first time in the history of the FOP since I've been a member that we made a strong change to the pension document. And Mr. Mignogna, to my knowledge, is not receiving either of those benefits, either his double longevity payment, which would raise his pension up an additional \$5,000, nor did he receive the increase in sergeant salary, nor did he receive the 8.7 payroll increase that would calculate over the life of his pension pretty substantially.

Q. So the only thing that you know at this time is that Mr. Mignogna retired?

A. Right. He retired with a pension that has not been properly calculated.

Q. And when you say, quote, that has not been properly calculated, end quote, you're referring to what you believe he's entitled to under the new collective bargaining agreement.

A. Correct.

(N.T. 58-59).

Thus, the Union is advocating for an order from me that would get Mignogna's employment date into at least the year 2023 by ordering the City to return Mignogna back to work at his position as Sergeant or to return him to full Heart and Lung benefits. Union's Brief at 15-17, 26. The parties are now subject to a successor agreement to the CBA which includes more lucrative retirement benefits and wages. However, the record in this matter is black and white that Mignogna retired effective August 29, 2022. I find that any order from me to the City to reinstate Mignogna or return him to full Heart and Lung benefits at this time would be unsupported by the record and *ultra vires*. While it is clear that the Union disputes the calculation of Mignogna's disability pension, that particular issue is not before the Board at this time.

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 by making Mignogna whole by paying him the difference in the benefits he has received from Worker's Compensation and those he would have received from the Heart and Lung Act for the time period of August 19, 2022 to August 29, 2022 while accounting for the 5 days suspension along with six percent *per annum* interest calculated from August 29, 2022.

(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 thirteenth day of March, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

Stephen A. Helmerich, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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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 by making Mignogna whole by paying him the difference in the benefits he has received from Worker's Compensation and those he would have received from the Heart and Lung Act for the time period of August 19, 2022 to August 29, 2022 while accounting for the 5 days suspension along with six percent *per annum* interest calculated from August 29, 2022; 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