

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
LODGE 27 DELAWARE :
 : Case. No. PF-C-10-96-E
 v. :
 :
 SPRINGFIELD TOWNSHIP :

PROPOSED DECISION AND ORDER

On June 21, 2010, the Fraternal Order of Police Delaware County Lodge No. 27 (FOP) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the Township of Springfield (Township) violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) by refusing to comply with the terms of agreements the parties entered into in settlement of a grievance and of a prior charge. On July 9, 2010, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 19, 2010, if conciliation did not resolve the charge by then. The hearing examiner held the hearing as scheduled.

At the conclusion of the FOP's case-in-chief, the hearing examiner, with the understanding that the Township wanted to present testimony as to the reasoning behind its adoption of the civil service regulations, invited the Township to make an offer of proof (N.T. 6). The Township, citing section 8(f) of the PLRA, first moved to dismiss the charge for lack of prosecution by the FOP because the FOP had not presented any testimony in support of the charge (N.T. 6-7). The Township allowed, however, that the FOP had presented documentary evidence in support of the charge (N.T. 7). The hearing examiner denied the motion. Id. The Township then made an offer

"to present Chief Daly to testify to the history of the civil service rules and regulations in Springfield Township, his dealings with those rules and regulations, the changes that have been implemented, the timeline in which he shared them with the FOP and the response or lack thereof from the FOP and the rationale behind the changes in the civil service rules and regulations."

Id. The FOP objected to the offer as irrelevant. Id. The hearing examiner sustained the objection. Id. During its closing, the Township renewed its motion to dismiss the charge for lack of prosecution by the FOP (N.T. 10).

On November 5, 2010, the FOP filed a brief by deposit in the U.S. Mail. On November 8, 2010, the Township filed a brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the evidence presented at the hearing, makes the following:

FINDINGS OF FACT

1. The FOP is the exclusive representative of a bargaining unit comprised of police officers employed by the Township. (FOP Exhibits B and C; Township Exhibits 1-2)

2. On February 1, 1996, the parties entered into an agreement in settlement of a grievance. The agreement provides in pertinent part as follows:

"5. Article VI-Competitive Examination, shall be further modified by adding a new Section 2 which will provide as follows:

Section 2 - Detective

B. When the Chief of Police determines that a new appointment to the rank of Detective is necessary or after a Patrol Officer(s) has been assigned as an acting Detective for a period of more than sixty (60) cumulative calendar days, the Chief of Police shall post a sign-up list for officers interested in applying for an appointment to the rank of Detective. In order to be eligible to apply, an officer must have completed four (4) years of service as a Springfield Township Police Officer by the date on which the Chief posts a sign-up list."

(FOP Exhibit C)

3. On March 6, 1996, the parties entered into an agreement in settlement of a charge of unfair labor practices (Case No. PF-C-95-112-E). The agreement provides in pertinent part as follows:

"1. The Rules and Regulations of the Civil Service Commission of the Township of Springfield, approved by the Township's Board of Commissioners on April 11, 1995 (referred to as 'Draft #7') shall be modified to provide as follows:

A. Paragraph (d) of Section 3.6 - General Qualifications - Police Department applicants for promotion to Sergeant and Lieutenant shall be revised to state as follows:

'(d) All applicants for promotion in rank shall have, at the time of application, continuous prior service with the Police Department of the Township of Springfield as follows:

(1) An applicant for promotion to the rank of Sergeant shall have held for at least four (4) years the rank of Patrolman within the Police Department;

(2) An applicant for promotion to the rank of Lieutenant shall have held for at least four (4) years the rank of Sergeant within the Police Department;

(B). Paragraphs (a), (b) and (c) of Section 4.2 - General Examination Requirements for Police Sergeant or Police Lieutenant shall be deleted and replaced with the following new paragraphs:

'(a) The examination for Police Sergeant and Police Lieutenant shall consist of:

- (1) Written Examination 65%
- (2) Oral Examination 35%"

(FOP Exhibit B)

4. On May 11, 2010, the Township amended its civil service regulations to provide in pertinent part as follows:

"4.1 General examination requirements.

(a) The examination for the position of police officer, detective and sergeant will consist of a written and oral examination which will be graded on a scale of 100 points. The written examination will account for 45% of the final grade and the oral examination will account for 55% of the final grade, provided that the applicant meets the minimum passing score established herein.

(b) The examination for the position of lieutenant will be prescribed by the Commission.

(c) Written examinations are pass/fail examinations and shall be graded on a one-hundred point scale. All applicants will be given written notice of their test results.

(i) Minimum passing score. For each examination, the Commission shall determine the number of questions to be answered correctly which shall be the minimum passing raw score. The minimum passing score shall be set at 70%. Applicants who fail to achieve the minimum passing score on the written examination shall not proceed with any further examination.

* * *

5.4 Higher civil service promotions.

Civil service promotions to ranks above that of police officer, except to the position of Chief of Police, shall be restricted to members of the Police Department as hereinafter specified as to experience requirements. For consideration to higher promotion above the rank of police officer, the member participating in such competitive examination must have completed any probationary period in their current rank.

(a) Experience requirements shall be as follows:

<u>Promotions to</u>	<u>Qualifications</u>
Lieutenant	Sergeant
Sergeant	Police Officer (4 years)
Detective	Police Officer

* * *

(e) Promotion Procedure:

* * *

(iii) The Commission shall thereupon certify to the Board of Commissioners for civil service promotion from the eligible list, for each vacancy which is to be filled, the names of the three persons thereon who have received the highest score. The Board of Commissioners, upon review and recommendation from the Chief of Police with sole reference to the merits and fitness of the candidates, shall make a civil service promotion from the names certified. When a civil service promotion is made from the names certified, the names of the eligibles not promoted, unless stricken off for cause, shall be returned to the eligible list."

(FOP Exhibit D)

5. The Township did not reach agreement with the FOP before amending the civil service regulations. (N.T. 6)

DISCUSSION

The FOP has charged that the Township committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by refusing to comply with the terms of agreements the parties entered into in settlement of a grievance and of a prior charge. According to the FOP, the refusal occurred when the Township unilaterally amended its civil service regulations governing the promotion of bargaining unit members to eliminate a four-year experience requirement for promotion to detective or to lieutenant as set forth in the grievance agreement and the charge agreement respectively and to change the formula for weighting written and oral test scores as set forth in the charge agreement. The FOP also contends that the amendments changed the agreements by adding a minimum passing score for promotion and by including a recommendation from the chief of police in the promotion process.

Reiterating a motion to dismiss denied by the hearing examiner at the hearing but raised again in its closing argument, the Township initially contends that the charge should be dismissed for lack of prosecution by the FOP. In the alternative, the Township contends that the charge should be remanded for it to present testimony in defense of the charge. The Township also contends that the charge should be dismissed because the amendments changed matters of inherent managerial prerogative and thus did not have to be bargained with the FOP, because intransigence on the part of the FOP thwarted a good faith attempt by the Township to bargain the changes to the agreements wrought by the amendments to the civil service regulations, because the agreements in settlement of the grievance and of the charge are not binding in perpetuity and because the agreements are silent as to a minimum passing score for promotion.

An employer commits unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 if it refuses to comply with the terms of an agreement in settlement of a grievance, West Norriton Township, 29 PPER ¶ 29182 (Final Order 1998); Zelienople Borough, 27 PPER ¶ 27024 (Final Order 1995), citing Moshannon Valley School District v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991) (construing analogous provisions of the Public Employee Relations Act (PERA)), or in settlement of a charge. Avery v. PLRB, 509 A.2d 888 (Pa. Cmwlth. 1986) (construing analogous provisions of the PERA); New Castle Township, 25 PPER ¶ 25101 (Final Order 1994).

With the applicable law in mind, the Township's two procedural contentions will be addressed as a threshold matter. Neither has merit.

The Township initially contends that the charge should be dismissed for lack of prosecution by the FOP. Citing section 8(f) of the PLRA, which provides that complaints "shall be prosecuted before the board or its examiner, or both, by the representative of the labor organization or employe filing the charge," the Township reiterates the motion to dismiss it first made after the FOP rested its case-in-chief without presenting any testimony and then made during its closing argument. The Township seems to believe that a complaint must be supported by testimony in order to be prosecuted. The Township overlooks, however, that a complaint may also be supported by documentary evidence, especially as here where the complaint is that the terms of two written documents (the agreements in settlement of the grievance and of the prior charge) were changed in a third written document (the amended civil service regulations). Thus, it is apparent that the FOP did prosecute the charge at the hearing. Accordingly, the Township's motion to dismiss must be denied again.

The Township alternatively contends that the charge should be remanded so it may present testimony in defense of the charge. According to the offer of proof the Township made at the hearing, it wants to present testimony as to the history of and its dealings with the civil service regulations, the changes to them, its dealings with the FOP and the rationale behind the changes to the civil service regulations. Under the law as set forth above, however, the dispositive issue in a charge of this nature is whether or not the employer has unilaterally changed an agreement of the parties. In that regard, there is no dispute that the agreements of the parties and the amendments to the civil service regulations are as set forth in FOP Exhibits B-D. Moreover, in a case of this nature, the employer's motivation is irrelevant. Plumstead Township, 28 PPER ¶ 28220 (Final Order (1997), aff'd on other grounds sub nom. Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998). Furthermore, as explained below, whether or not the FOP was intransigent also is irrelevant. Thus, neither the history of the rules and regulations, nor the Township's dealings with them, nor the Township's rationale for changing them provides a defense to the charge.

As to the merits of the charge, the record shows that in settlement of a grievance the parties agreed to a four-year service requirement for promotion to detective (finding of fact 2) and that in settlement of a prior charge the parties agreed to a four-year service requirement for promotion to lieutenant and to a 65%/35% weighting for the written/oral examinations for promotion (finding of fact 3). The record also shows that the Township subsequently amended its civil service regulations to provide (1) for no service requirements for promotion to detective or to lieutenant, (2) for a 45%/55% weighting for the written/oral examinations for promotion, (3) for a minimum passing

score to be considered for promotion and (4) for a recommendation by the chief of police (finding of fact 4). The record further shows that the Township amended the civil service regulations without obtaining the agreement of the FOP (finding of fact 5).

Application of the law to the facts of record leads to the conclusion that the Township has committed unfair labor practices in violation of sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 by refusing to comply with the terms of the agreements in settlement of the grievance and of the charge insofar as they provide for service requirements for promotion to detective and to lieutenant and for a 65%/35% weighting for the written/oral examinations for promotion. As noted, the Township amended the civil service regulations to provide for no service requirements for promotion to detective or to lieutenant and for a 45%/55% weighting to be given to the written/oral examinations for promotion. Thus, to that extent, it is apparent that the Township has refused to comply with the terms of the agreements.

Notably, however, neither agreement contains a term prohibiting a minimum passing score or a recommendation by the chief of police, so to the extent that the Township amended the civil service regulations to provide for a minimum passing score to be considered for promotion and for a recommendation by the chief of police, the charge must be dismissed for lack of proof.

With the exception of its contention relating to the minimum passing score to be considered for promotion, none of the Township's contentions in defense of the charge has merit.

The Township contends that the charge should be dismissed because the amendments to the civil service regulations changed matters of inherent managerial prerogative (criteria for promotions) which it was not obligated to bargain. The Township cites FOP Rose of Sharon Lodge No. 3 v. PLRB, 729 A.2d 1278 (Pa. Cmwlth. 1999), Borough of Hamburg, 37 PPER 121 (Final Order 2006), and Commonwealth of Pennsylvania, Pennsylvania State Police, 34 PPER 5 (Proposed Decision and Order 2002), in support of its contention. None of those cases dealt with violations of an agreement in settlement of a grievance or of a charge as here. Those cases are, therefore, inapposite, and the Township's reliance on them is misplaced. See also City of Allentown, 27 PPER ¶ 27250 (Final Order 1996) (employer was bound by the terms of an agreement even though the terms involved matters of inherent managerial prerogative).

The Township next contends that the charge should be dismissed because intransigence on the part of the FOP thwarted a good faith effort by the Township to bargain the changes to the agreements wrought by the amendments to the civil service regulations. The Board, however, has no jurisdiction to redress an exclusive representative's refusal to bargain in good faith. City of Erie, 29 PPER ¶ 29236 (Final Order 1998). If an employer is unable to reach agreement with an exclusive representative, its only recourse is to submit the matter to interest arbitration. City of Bethlehem, 23 PPER ¶ 23058 (Final Order 1992), aff'd on other grounds, 621 A.2d 1184 (Pa. Cmwlth. 1993). Thus, no matter how intransigent the FOP may have been or how much the Township may have acted in good faith, the Township had no right to amend the civil service regulations unilaterally.

The Township last contends that the charge should be dismissed because the agreements in settlement of the grievance and of the charge were not binding in perpetuity. In the absence of changed circumstances or a term providing otherwise, however, settlement agreements are binding for an indeterminate period of time. SSHE (Edinboro University), 32 PPER ¶ 32080 (Order Denying Application for Supersedeas 2001). No changed circumstance is apparent on the record. Moreover, a close review of the agreements shows that neither references an expiration date. Thus, the agreements are binding on the Township unless and until the FOP agrees otherwise or an Act 111 interest arbitration award provides otherwise.

CONCLUSIONS

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

1. The Township is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.

2. The FOP is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.

3. The Board has jurisdiction over the parties.

4. The Township has committed unfair labor practices under sections 6(1)(a) and (c) of the PLRA as read in pari materia with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in pari materia with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Township shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed in the PLRA as read in pari materia with Act 111.

2. Cease and desist from refusing to bargain collectively with the representative of its employees.

3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the PLRA as read in pari materia with Act 111:

(a) Rescind the amendments to the civil service regulations to the extent that they eliminated the four-year service requirements for promotion to detective and to lieutenant and the 65%/35% weighting for the written/oral examinations for promotion as set forth in the agreements of the parties in settlement of the grievance and of the prior charge;

(b) Make whole any employe who lost a promotional opportunity as a result of those amendments to the civil service regulations;

(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 its employes and have the same remain so posted for a period of ten (10) consecutive days; and

(d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this order by completion and filing of the attached affidavit of compliance.

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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fourth day of November 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
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AFFIDAVIT OF COMPLIANCE

The Township hereby certifies that it has ceased and desisted from its violations of sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111, that it has rescinded the amendments to the civil service rules and regulations as directed, that it has made whole any employee who lost a promotional opportunity as a result of its unfair labor practices, that it has posted a copy of the proposed decision and order as directed and that it has served a copy of this affidavit on the FOP.

Signature/Date

Title

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

Signature of Notary Public