

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION :
OF FIRE FIGHTERS LOCAL 1400 :
 :
v. : Case No. PF-C-10-62-E
 :
CITY OF CHESTER¹ :

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the International Association of Fire Fighters Local 1400 (Union) on April 30, 2010, alleging that the City of Chester (City) violated Section 6(1)(a), (c), and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.²

On May 14, 2010, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for August 18, 2010, in Media, Pennsylvania. In lieu of a hearing, the parties entered into a series of factual stipulations. Each party filed a post-hearing brief.

The Examiner, on the basis of the stipulations and exhibits presented at the hearing and from all other matters and documents of record makes the following:

FINDINGS OF FACT

1. The Union is a labor organization.
2. The City is a political subdivision of the Commonwealth of Pennsylvania and an employer.
3. The parties stipulated and agreed that on September 24, 2008, an arbitrator issued an award sustaining the contractual grievance filed by the Union and requiring the City to pay a 3% wage increase plus a \$500.00 bonus, retroactively to January 1, 2007. (Stipulations, ¶ 1, Exhibit A, filed August 31, 2010).
4. The parties stipulated and agreed that, by Order dated June 30, 2009, the Delaware County Court of Common Pleas set aside the arbitration award, in response to the City's Petition to Set Aside Arbitration Award. After a timely appeal by the Union to Commonwealth Court, an Opinion by the Court of Common Pleas followed on August 24, 2009, further explaining the Order. (Stipulations, ¶ 2, 3, Exhibit B and C).
5. On March 22, 2010, Commonwealth Court issued an Opinion and Order that "affirm[ed] the common pleas order, as modified." (Stipulations, ¶ 4, Exhibit D).
6. The parties stipulated and agreed that on April 21, 2010, the City filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania. (Stipulations, ¶ 4, Exhibit E, F; ¶ 5, Exhibit E, F).
7. The parties stipulated and agreed that the City has not paid bargaining unit members as the Commonwealth Court ordered.³ (Stipulations, ¶ 6).

DISCUSSION

The Union filed this charge of unfair labor practices alleging that the City has violated Section 6(1)(a), (c), and (e) of the PLRA. The factual basis for this claim is

¹ The caption appears as amended by the Secretary.

² The Union, in its post-hearing brief, recites that the charge alleges only violations of Section 6(1)(a) and (e). The charge form, however, alleges violations of Section(6)(a), (c), and (e).

³ The stipulation as submitted refers to "members of the Union," as having not been paid, but Union membership is not an issue here.

that the City has appealed from a Commonwealth Court order to pay bargaining unit members a 3% wage increase, and has not paid that increase during the pendency of the City's appeal to the Supreme Court of Pennsylvania.

According to the Union, the City has violated the PLRA because "notwithstanding the absence of a stay, the City has not complied with the terms of the [Commonwealth Court] Order."

Despite the Union's argument otherwise, there is an automatic stay under Pennsylvania Rule of Appellate Procedure 1736.⁴ Because the City has the protection of that automatic stay, there is no violation of the PLRA, and this charge is dismissed.

The Union's argument is clearly stated in its post-hearing brief;

This case, however, involves one of first impression: whether the City is obliged to comply with those portions of an Act 111 [grievance] arbitration award which [were] *vacated* by the Court of Common Pleas but, in substance, confirmed by the Commonwealth Court and then was the subject of a petition for allowance of appeal with the [Pennsylvania] Supreme Court.

(Union's post hearing brief at 2).

The Union's argument, while novel, is clearly answered in the Appellate Rules. It is only when the grievance arbitration award is *confirmed* by the Court of Common Pleas, that the protections of an automatic stay are stripped away.

Pa. R.A.P. 1736 sets forth the grounds for an automatic supersedeas to issue, and the Board has opined on its applicability in the grievance arbitration setting. As the Board explained in City of Philadelphia, 32 PPER ¶ 32102 (Order Directing Remand to Secretary for Further Proceedings, 2001):

"[I]n 1987 the Rules of Appellate Procedure were amended and the Amendment to Rule 1736 fundamentally altered the protections provided to employers . . . Pa.R.A.P. 1736 provides as follows:

(a) General Rule. No security shall be required of

[2] Any political subdivision . . . except in any case in which a common pleas court has affirmed an arbitration award in a grievance or similar personnel matter . . .

(b) Supersedeas Automatic. Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party.

The note following the rule more fully explains the amendment:

The 1987 amendment eliminates the automatic supersedeas for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.

Thus, once an arbitration award has been affirmed by a common pleas court, the award becomes enforceable. The aggrieved employer has been stripped of its ability to delay compliance with the award by seeking further redress in subsequent appeals. The Commonwealth Court explained that Pa.R.A.P. 1736(a) (2) 'expressly negates an automatic supersedeas for a political subdivision in an appeal from an arbitration award.' Commonwealth, Dep't of the Auditor General v. AFSCME, Council 13, 573 A.2d 233, 234 (Pa. Cmwlth. 1990). See also . . . Cheltenham Township Police Ass'n v. Cheltenham Township, 21 PPER ¶ 21026 (Final Order, 1989); City of Philadelphia, Office

⁴ Pa.R.A.P. 1736.

32 PPER at 267.

The rub for the Union is that the Court of Common Pleas *vacated* the grievance arbitration award. Consequently, by a plain reading of the appellate rule, the exception to the automatic stay does not apply. The City has a stay.

The appellate rule is more stenotic than the Union argues it should be. The Union wants the appellate rule to be that a court affirmance of the arbitration award, at any appeal level, eliminates the automatic stay.⁵ That is not, however, what the appellate rule says. Because Pa.R.A.P. 1736 only lifts the automatic stay when the Court of Common Pleas affirms a grievance arbitrator's award, and that is not what happened here, the City has a stay, and this charge is dismissed.

CONCLUSIONS

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

1. The City is a political subdivision under Act 111, and an employer under Section 3(c) of the PLRA.

2. The Union is a labor organization within the meaning of Section 3(f) of the PLRA as read with Act 111.

3. The Board has jurisdiction over the parties hereto.

4. The City has not committed unfair labor practices in violation of Section 6(1)(a), (c), and (e) of the PLRA as read with Act 111.

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 charge of unfair labor practices filed to the above case number is dismissed and the complaint issued thereon rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98 within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania this seventeenth day of December, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner

⁵ In this case, the Commonwealth Court did affirm the award, but with modification. The Court of Common Pleas vacated the award; Commonwealth Court reinstated part of the arbitrator's award. (Stipulations, ¶ 4, Exhibit D).