

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5 :
 :
 v. : Case No. PF-C-11-99-E
 :
 CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On July 28, 2011, the Fraternal Order of Police Lodge No. 5 (FOP) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the City of Philadelphia (City) 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 provisions of a grievance arbitration award involving Officer Michael Mills. On August 8, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on September 19, 2011. The hearing examiner held the hearing and afforded the parties a full opportunity to present evidence and to cross-examine witnesses. Neither party filed a brief.

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

FINDINGS OF FACT

1. The FOP is the exclusive representative of a bargaining unit that includes police officers employed by the City. (Stipulation)

2. On June 14, 2011, an arbitrator sustained in part and denied in part a grievance the FOP filed on behalf of Officer Mills. By way of remedy, the arbitrator ordered in relevant part as follows:

"1. The Grievant's demotion and transfer are rescinded.

2. The Grievant is to be promptly reinstated to his former rank of Sergeant and to his former assignment at the Police Detention Unit.

3. For his violation of Section 4.15, of the Disciplinary Code, the Grievant is to receive a 5 day disciplinary suspension. Because the violations of 4.15 occurred over three (3) years ago, the suspension is a paper suspension resulting in no lost time or lost time or loss of pay.

4. All reference to the Section 1.00 and 1.75 violations and any associated discipline are to be removed from the Grievant's file and replaced with a record of the Section 4.15 violation and the resulting five (5) day paper suspension."

(Stipulation)

3. On June 23, 2011, the arbitrator amended the remedy to provide in relevant part as follows:

"1. The Grievant's demotion is rescinded.

2. The Grievant is to be promptly reinstated to his former rank of Sergeant and assigned as the City determines appropriate.

3. For his violation of Section 4.15, of the Disciplinary Code, the Grievant is to receive a 5 day disciplinary suspension. Because the violations of 4.15 occurred over three (3) years ago, the suspension is a paper suspension resulting in no lost time or lost time or loss of pay.

4. All reference to the Section 1.00 and 1.75 violations and any associated discipline are to be removed from the Grievant's file and replaced with a record of the Section 4.15 violation and the resulting five (5) day paper suspension."

(Stipulation)

3. The City has not sought to vacate the award. (Stipulation)

4. As of the date of the hearing, the City had not complied with the foregoing provisions of the award. (Stipulation)

DISCUSSION

The FOP has charged that the City 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 provisions of a grievance arbitration award involving Officer Mills. The record shows that the award exists, that the City has not sought to vacate the award and that the City has not complied with certain of provisions of the award (findings of fact 2-4). An employer commits 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 provisions of an unappealed grievance arbitration award. City of Philadelphia, 27 PPER ¶ 27202 (Final Order 1996). The City, therefore, must be found to have committed the unfair labor practices charged.

CONCLUSIONS

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

1. The City 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 hereto.

4. The City has committed unfair labor practices under sections 6(1)(a) and (e) 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 City shall:

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

2. Cease and desist from refusing to bargain collectively with the representatives of its employes.

3. Take the following affirmative action:

(a) Comply with the provisions of the award.

(b) Pay on any monies due Officer Mills under the award interest at the simple rate of six per cent per annum from the date the award was no longer appealable to the date the monies are paid to him;

(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 decision and 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-third day of September 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

