

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

E.B. JERMYN LODGE NO. 2 OF THE :
FRATERNAL ORDER OF POLICE :
 :
v. : Case No. PF-C-05-101-E
 :
CITY OF SCRANTON :

PROPOSED DECISION AND ORDER

On July 15, 2005, Fraternal Order of Police, E.B. Jermyn Lodge 2 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Scranton (City) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by failing to comply with an arbitration award.

On August 4, 2005, the Secretary, upon review of the Specifications of Charges, declined to issue a complaint and dismissed the charge. On August 22, 2005, the Union filed timely exceptions and on October 18, 2005, the Board issued an Order Directing Remand to Secretary for Further Proceedings directing the Secretary to issue a complaint. On November 30, 2005, the Secretary of the Board issued a Complaint and Notice of hearing in which the matter was assigned to a conciliator for the purpose of resolving the dispute by mutual agreement of the parties and January 26, 2006 in Scranton was assigned as the time and place of hearing, if necessary.

The hearing was necessary, but was continued to March 29, 2006 and again to June 6, 2006, and was held before Thomas P. Leonard, Esquire, a hearing examiner of the Board, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the City of Scranton is an employer within the meaning of Section 3(c) of the Pennsylvania Labor Relations Act.
2. That the Fraternal Order of Police, E.B. Jermyn Lodge 2 (Union) is a labor organization within the meaning of Section 3(f) of the Pennsylvania Labor Relations Act.
3. That the Union is the exclusive bargaining representative of police officers employed by the City, and is party with the City to a collective bargaining agreement (C-1) that was in effect at all times relevant to this case. (N.T. 7, 13, Complainant's Exhibit 1)
4. That Article XX of the CBA contains an extensive grievance and arbitration procedure that ends in "final and binding" arbitration. (N.T. 7, 13, Complainant's Exhibit 1)
5. That in January 2003 a dispute arose between the parties with regard to the City's determination to terminate the employment of numerous clerical employes that are known to the parties as the Strategic Implementation ("SIT") clericals. In that grievance the Union asserted that the continued employment of those SIT clerks was mandated by the terms of the parties' collective bargaining agreement. When the grievance remained unresolved, it was submitted to final and binding arbitration. (N.T. 7, 13, Complainant's Exhibit 1)
6. That Robert Light was mutually selected to serve as the grievance arbitrator to resolve the dispute. On September 13, 2004, Arbitrator Light issued his award in which he found that the City's "complete failure" to employ the designated number of additional SIT clerical employes specifically described in Paragraph X of the SIT Agreement violates

the agreement and does not violate the City's obligations under Act 47. Accordingly, he sustained the grievance of the Union challenging that conduct on the part of the City. (N.T. 7, 13, Complainant's Exhibit 1)

7. That Arbitrator Light's Award stated:

The City violated the Collective Bargaining Agreement by failing to maintain the number of Clerks specifically provided in Paragraph XI (G) of the SIT Agreement. As the appropriate remedy:

1. The City's complete failure to employ the designated number of *additional* (italics in original) SIT clerical employes specifically described in Paragraph X(F) of the SIT Agreement violates that agreement and does not violate the City's obligations under Act 47. The grievance of Lodge No. 2 of the Fraternal Order of Police challenging that failure is granted.

2. In order to remedy the violations of Paragraph are (sic) herein before stated, the City of Scranton is hereby directed to immediately take the following action:

A. Immediately employ not less than the additional SIT clerical positions of one "Clerk/Typist Detective-Evening" (Article XI, section G (3)), two additional SIT Clerks in "Records Administration" (Article XI, Section G(4)), one SIT Clerk for "Deputy Chief/Captain" (Article XI, Section G(6)), and four additional SIT Clerks for the "Desk" (Article Xi, Section G(7)) to perform the functions described in Paragraph X of the SIT Agreement and to equip those employes with office space and equipment to perform the functions within the Police Department envisioned by the SIT Agreement; and

B. Until such time as the underlying contractual language is modified to otherwise provide, the City shall continue to employ the number of additional SIT clerks as provided in the SIT Agreement and completely equip those employes with office space and equipment to perform the functions within the Police Department envisioned by the SIT Agreement; and

C. Make the FOP whole for the failure to continuously employ the eleven additional SIT clerical employes described in Article XI (G) of the SIT Agreement by paying to the members of the FOP bargaining unit who were on payroll at any time on and after February 14, 2003 (the date of the grievance) the full cash value of the wages and fringe benefits that would have been paid to the eleven additional SIT clericals that the City failed to employ during the duration of the January 1, 1999 contract.

D. In making those payments, the following conditions shall apply:

1. For purposes of computing the back pay it shall be assumed that each clerical thus employed was compensated at the then-prevailing arithmetic average of all SIT clerical classifications within the City.

2. The back payment due under this Order shall include not only the wage computed in accordance with (B) above, but also the full City cost of health insurance at the family level and the cash value of all other fringe benefits payable under the collective bargaining agreement between the City and IAM Lodge No. 2462.

3. The back pay shall be computed from the date that the City failed to employ the full complement of eleven additional SIT clerks starting with the duration of the agreement (January 1, 1999) until the appropriate number of clerical employes are actually on the payroll and shall include interest computed in accordance with Article XX(9) of the collective bargaining agreement between the City and FOP.

4. The back pay shall be distributed to FOP bargaining unit members who were on payroll with the City at any time on and after February 14, 2003 (including those on temporary work-related disability during that period) until such time as the City actually employs the appropriate number of clerical employees required by the SIT Agreement. Each full month of service shall equal one unit. Each member's entitlement to the back pay shall be determined by dividing the total amount payable by the total number of units and then multiplying that member's units by the result.

5. The City's failure to constantly employ the additional clerical employees as explicitly required by Paragraph XI of the SIT Agreement, as amended on May 14, 1999, is hereby declared to be in bad faith as provided in Article XX, Section (9) of the parties' collective bargaining agreement. Accordingly, the City is further directed to pay the FOP for reasonable attorney's fees that it incurred in these proceedings. Said payment shall be made pursuant to a schedule of attorneys' fees to be presented to the City within thirty days of the parties' receipt of this Award. To the extent that the fees are not paid within thirty days after the date of such presentation, they shall thereafter bear interest in a matter (sic) to be computed with Article XX, Section 9 of the collective bargaining agreement.

6. The Arbitrator shall retain jurisdiction over this matter solely and exclusively for the purpose of resolving any disputes with respect to the implementation of this Award.

7. The Arbitrator's full fee in the amount of \$6,013.60 shall be due and owing upon receipt of this Opinion and Award and shall be payable as follows: one half by the City and one half by Lodge No. 2, FOP, and it is deemed to be part of this Award.

Robert E. Light, Arbitrator
Dated: September 13 2004

(N.T. 8, 13 Complainant's Exhibit 3)

8. That the City appealed the Award to the Lackawanna County Court of Common Pleas and the Commonwealth Court. Both courts affirmed the Award. (N.T. 17-19, 22-23, Respondent's Exhibits 1-8)

9. That the City has not complied with any provision of the Light Award. (N.T. 11)

DISCUSSION

The FOP's charge of unfair labor practices alleges that the City violated the PLRA and Act 111 by refusing to comply with an arbitration award dated September 13, 2004 sustaining a grievance that the City failed to comply with an agreement regarding Strategic Implementation ("SIT") clerks. There is no dispute that the City has not complied with the Award. The Award is set forth in the Findings of Facts above.

It is well established that an employer's refusal to comply with an arbitration award constitutes an unfair labor practice in violation of the PLRA and Act 111. Pottstown Police Officers Association v. PLRB, (634 A.2d 711, Pa. Cmwlth. 1993).

The City argues that its appeal of the Light Award acts as a supersedeas and stay of the implementation of the award. However, the FOP points out that the Pennsylvania

Rules of Appellate Procedure and Board decisions dispose of this argument. Pennsylvania Rule of Appellate Procedure 1736 provides in pertinent part as follows:

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

(1) 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 ordered pursuant to this chapter, the taking of an appeal by any parties specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party.

The Pennsylvania Labor Relations Board in City of Philadelphia, 32 PPER ¶ 32102 (Final Order, 2001) described the effect of Rule 1736 in the following terms:

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.

See also Teamsters Local 429 v. Lebanon County, 37 PPER ¶ 25 (Proposed Decision and Order, 2006).

The city took full advantage of the automatic stay upon the finality of the grievance arbitration award that is imposed by law through the initiation of judicial proceedings in Lackawanna County Court of Common Pleas. However, subsequent to the unsuccessful effort to vacate the Award at that level, the City was also unsuccessful in the Commonwealth Court in obtaining a stay of the effect of the Order. Accordingly, there is no stay of the Award.

The City also argues that it is excused from complying with the arbitration award because of its distressed city status under The Municipalities Financial Recovery Act (Act 47), Act of July 10, 1987, P.L. 246, as amended, 53 P.S. 11701.101-11701.501. However, on July 20, 2006, the Commonwealth Court affirmed the Court of Common Pleas decision holding that the City's Act 47 status did not excuse the City from complying with the Light Award. City of Scranton v. E.B. Jermyn Lodge No. 2, Fraternal Order of Police, 903 A.2d 129 (Pa. Cmwlth. 2006)

Accordingly, it must be concluded that the City's refusal to comply with the Light Award is an unfair labor practice in violation of Section 6(1)(a) and (e) of the PLRA.

CONCLUSIONS

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

1. That the City of Scranton is an employer within the meaning of Section 3 (c) of the PLRA.
2. That the E. B. Jermyn Lodge 2, Fraternal Order of Police, is a labor organization within the meaning of Section 3(f) of the PLRA.
3. That the City of Scranton has committed unfair labor practices in violation of Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, 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 Act.
2. Cease and desist from refusing to bargain collectively in good faith with a labor organization which is the exclusive representative of employes in the police unit.
3. Take the following affirmative action:
 - (a) Immediately comply with each and every provision of Arbitrator Light's Award dated September 13, 2004.
 - (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 its employes and have the same remain so posted for a period of ten (10) consecutive days; and
 - (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.

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 thirtieth day of October, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner