COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5	:	
	:	
v.	:	Case No. PF-C-06-85-E
	:	
CITY OF PHILADELPHIA	:	

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) on May 30, 2006, by the Fraternal Order of Police Lodge 5 (Union) alleging that the City of Philadelphia (City) engaged in unfair labor practices contrary to the provisions of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On June 22, 2006 the Secretary of the Board issued a complaint and notice of hearing setting forth Juky 13, 2006, 2006 in Philadelphia, Pennsylvania as the date and location for the hearing. The hearing was held on July 13, 2006, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Neither party filed a post-hearing brief.

The hearing examiner, on the basis of the testimony 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.

3. The parties have a grievance procedure that culminates in grievance arbitration. (N.T. 5)

4. The Union makes information requests after the first-step grievance meetings in order to make an informed decision about whether or not to take each case to arbitration. (N.T. 5-7)

5. The Union filed three grievances concerning the City’s actions against the following bargaining unit members: Michael J. Frisco, John J. McCloskey, and Carmelo Oquendo. (N.T. 14, 15; Union Exhibit 4)

6. For each of the grievances filed, the Union made an information request on the City. These requests were made on April 10, 2006. Getting no response, the Union renewed its requests for information on April 28, 2006. As of July 13, 2006 the Union had not received any information pursuant to the three requests. (N.T. 14, 15; Union Exhibit 4)

DISCUSSION

The Union charges the City with violating Section 6(1)(a) and (e) of the PLRA, as read with Act 111, when the City refused to respond to information requests concerning active grievances filed by the Union on behalf of bargaining unit members. The City defends its recalcitrance by arguing that the Union gets the information at the arbitration since the information can be, and is, subpoenaed at the arbitration (N.T 47). The City also pleads short-handedness, asserting that there’s only one individual to handle all the Union’s requests for information and the “best is done to keep up.” (N.T. 47, 48).

The law is well settled that an employer is obligated to provide a Union with requested information that will be useful to the Union in processing a grievance. Commonwealth Court has approved the Board's adoption of a liberal discovery type standard of relevancy for union requested information. See, Commonwealth v. Commonwealth, PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987), citing, NLRB v. Acme Industrial Company, 385 U.S. 432, 64 LRRM 2069 (1967); City of Reading, 21 PPER ¶ 21119 (Proposed Decision and Order, 1990). A delay of as little as two weeks in responding to a request for relatively simple information by an employer has been ruled an unfair labor practice. Capital Area Steel & Door Company v. NLRB, 89 F.3rd 692 (10th Cir. 1996).

The City offers no legally sufficient reasons for its failure to comply with the Union's requests for information. Aside from arguing that the Union can get the requested information later in the process and by other means, the City highlights the fact that it has but one employe who does his best to answer these information requests. The measure of the City's timely response to information requests is not determined, however, by the number of employes it assigns to that task. Rather, it is measured by balancing the intricacies of the information requests against the time taken to respond. These simple information requests were made in early April and renewed later that month. There is simply no adequate reason offered by the City for its procrastination. More than two months after these requests were made the City has not answered a single one. Because of its inaction, the City has violated Section 6(1)(a) and (e) of the PLRA as read with Act 111. To the extent there are outstanding information requests for grievances not yet settled, or otherwise resolved, the City shall immediately respond.

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 within the meaning of Section 3(c) of PLRA.

2. The Union is a labor organization within the meaning of Section 3(f) of the PLRA.

3. The Board has jurisdiction over the parties hereto.

4. The City has committed unfair labor practices within the meaning 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 employes in the exercise of the rights guaranteed in the PLRA

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

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately answer all information requests made by the Union that remain outstanding;

(b) Post a copy of this decision and order within five (5) days from the 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 pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED AND MAILED this seventh day of September, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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AFFIDAVIT OF COMPLIANCE

The City of Philadelphia hereby certifies that it has ceased and desisted from its violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act and Act 111; that it has responded to all information requests made by the Union that remain outstanding; that it has posted the proposed decision and order as directed therein; and that it has served an executed copy of this affidavit on the Fraternal Order of Police Lodge No. 5 at its principal place of business.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public