

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 :

**FINAL ORDER**

The City of Scranton (City) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 20, 2006. The City's Exceptions challenge an October 30, 2006 Proposed Decision and Order (PDO) finding that it violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by failing to comply with a grievance arbitration award. On December 4, 2006, the E.B. Jermyn Lodge No. 2 of the Fraternal Order of Police (Union) filed a brief in opposition to the exceptions.

The facts are briefly stated as follows: The Union filed a Charge of Unfair Practices on July 15, 2005 stating that, on September 13, 2004, an arbitrator sustained the Union's grievance. The Charge further alleged that this grievance arbitration award was upheld by the Lackawanna County Court of Common Pleas on June 22, 2005. As set forth in the arbitration award, the grievance was filed after the City did not comply with an agreement to provide certain Strategic Implementation clerks (SIT clerk) to assist police officers.<sup>1</sup> The arbitrator found that the City violated a provision of the collective bargaining agreement (SIT Agreement) mandating assignment of SIT clerks to assist the bargaining unit members with paperwork and other clerical work after a reduction in the total complement of the police force. As a remedy, the arbitrator ordered the City to hire additional SIT clerks and to take other actions in order to make the Union whole for this violation. A complaint was issued and, following requests for continuance from both the City and the Union, a hearing was held on June 6, 2006. In the PDO, the Hearing Examiner found that the City violated Section 6(1)(a) and (e) of the PLRA by failing to comply with the arbitration award. In the PDO, the Hearing Examiner further noted that, on July 20, 2006, the Commonwealth Court of Pennsylvania affirmed the decision of the Lackawanna County Court of Common Pleas.

The City argues in its exceptions to the PDO that the determination that it committed an unfair labor practice should be reconsidered in light of the fact that it has filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania seeking to review the Commonwealth Court's decision. The City further argues that it has a strong position and that it is entitled to a final determination of the Court of highest jurisdiction in the Commonwealth before it is forced to comply with an award which the City claims may cause irreparable damage.

Pennsylvania Rule of Appellate Procedure (Pa. R.A.P.) 1736 provides, in relevant part, that:

- (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

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<sup>1</sup> The arbitration award explains that SIT clerks assist police officers with clerical duties, such as transcription of interviews by detectives, typing probable cause affidavits for arrests, typing arrest warrants, preparation of search warrants and maintenance of confidential files within the Detective Division. The arbitration award further explains that the City wanted to "civilianize" certain clerical functions in order to have more police officers on the streets.

Subdivision (a) of this rule shall operate as a supersedeas in favor of such party.

*Note:* ... 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 a grievance 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, Department of the Auditor General v. AFSCME, Council 13, 573 A.2d 233, 234 (Pa. Cmwlth. 1990).

The City essentially argues that it should be excused from complying with the arbitration award because it meets the requirements for a supersedeas pending appeal.<sup>2</sup> However, this is an argument that the City should make before a Court of appropriate jurisdiction, not this Board. The City has cited no authority, and this Board can find none, to support its argument that it should be excused from complying with the arbitrator's award because it has filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania seeking a review of the Commonwealth Court's decision upholding an arbitration award within the meaning of Pa. R.A.P. 1736. Therefore, the City's exceptions are dismissed.<sup>3</sup>

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Hearing Examiner's conclusion that the City violated Section 6(1)(a) and (e) of the PLRA.

#### **ORDER**

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111 of 1968, the Board

#### **HEREBY ORDERS AND DIRECTS**

that the exceptions filed by the City are hereby dismissed, and the October 30, 2006 Proposed Decision and Order be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this twenty-third day of January, 2007. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

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<sup>2</sup> The test for whether an applicant is entitled to a supersedeas pending appeal was set forth by the Supreme Court in Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983). To receive a supersedeas, the applicant must show that: 1) it is likely to prevail on appeal, 2) it will suffer irreparable injury if a supersedeas is not granted, 3) the issuance of a supersedeas will not substantially harm interested parties and 4) the issuance of a supersedeas will not adversely effect the public interest.

<sup>3</sup> The City also argues in its exceptions that the Hearing Examiner did not address the fact that it had a "protective order" from the Commonwealth Court at the time of the unfair practice hearing. The City does not address this issue in its Brief. However, the May 25, 2006 Order to which the City refers granted in part and denied in part the City's application for stay and supersedeas and waiver of security requirement. Specifically, the Order states, in relevant part, that: "The application is granted in part and denied in part. The application is granted insofar as the City of Scranton is permitted to continue its appeal before the Commonwealth Court without posting security. It is the intention of this Order that the waiver of security requirement apply only to what remains of the proceedings before the Commonwealth Court. The ruling is not intended to prejudice any collateral proceedings ..." (City's Exhibit No. 13). The City does not explain how this Order which only exempts the City from posting security would excuse it from complying with the arbitration award.

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**AFFIDAVIT OF COMPLIANCE**

The City of Scranton (City) hereby certifies that it has ceased and desisted from its violations of Sections 6(1)(a) and (e) of the PLRA and Act 111; that it has complied with each and every provision of Arbitrator Light's Award dated September 13, 2004; that it has posted a copy of the Proposed Decision and Order and Final Order as directed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

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Signature/Date

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Title

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

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Signature of Notary Public