COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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| FRATERNAL ORDER OF POLICE, LODGE NO. 5 | : | |
| v. | : | Case No. PF-C-07-8-E |
| CITY OF PHILADELPHIA | : | |

**PROPOSED DECISION AND ORDER**

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Fraternal Order of Police, Lodge No. 5 (Union) on January 17, 2007, alleging that the City of Philadelphia (City) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111, because it had not timely complied with a grievance arbitration award.

On April 4, 2007, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for May 25, 2007, in Philadelphia, 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 factual stipulations presented and from all other matters and documents of record, makes the following findings of fact.

FINDINGS OF FACT

1. The parties stipulated and agreed that the Union is a labor organization. (Complaint, averment 1; Union's and City's briefs, p.1).

2. The parties stipulated and agreed that the City is a political subdivision of the Commonwealth of Pennsylvania. (Complaint, averment 1; Union's and City's briefs, p.1).

3. The parties stipulated and agreed that Arbitrator Kathrine Hogan, on December 11, 2006, issued an arbitration award pursuant to a grievance filed by the Union on behalf of Officer Jerry Moore, protesting his five day suspension and transfer. That arbitration award ordered, *inter alia*, the City to rescind the five-day suspension and make Moore whole for "all lost contractual benefits, including back pay for the period of the five-day suspension." (Complaint, averment 3; Union's and City's briefs, p.1).

4. The parties stipulated and agreed that the City has not sought to overturn the award, and that the City issued a check to Moore, pursuant to the award, on March 30, 2007. (Complaint, averment 4; Union's and City's briefs, p.1).

DISCUSSION

It has long been established that the failure to comply with the terms of a grievance arbitration award occurs only after exhaustion of appellate rights and the expiration of a reasonable or expressly provided time period for compliance. Commonwealth of Pennsylvania, 8 PPER ¶ 233 (Nisi Decision and Order, 1977). To determine whether a particular lapse of time is a reasonable period for compliance with an arbitration award, the Board will consider such factors as, 1) the nature and complexity of the compliance required under the award, 2) the length of time before compliance occurred, 3) the employer's ability to comply with the award including legitimate obstacles to compliance, 4) the steps taken by the employer toward compliance, and 5) the employer's explanation or lack thereof for the delay. City of Philadelphia, 19 PPER ¶ 19069 at 185 (Final Order, 1988); Commonwealth of Pennsylvania (Department of Community Affairs), 19 PPER ¶ 19165 (Proposed Decision and Order, 1998); Commonwealth of Pennsylvania (Office of Administration), 17 PPER ¶ 17151 (Proposed Decision and Order, 1986).

The arbitration award here was issued on December 11, 2006. It required but a simple calculation involving reimbursement for a five-day disciplinary suspension. Nevertheless, the City took until March 30, 2007, to make that simple calculation and tender payment. Such a delay is unreasonable, given the simple nature of the award. City of Philadelphia, 27 PPER ¶ 27093 (Proposed Decision and Order, 1996), 27 PPER ¶ 27202 (Final Order, 1996)(delay of five months in paying a simple arbitration award is an unfair labor practice).

The City, in its brief, recited a serpentine series of steps through which it alleges an arbitration award must pass before it is ripe for payment. Because there is no factual, record evidence concerning those steps, argued by the City in its brief, I have not relied upon them in this decision.

Even if those steps the City sets forth in its brief were of record they would not supply a sufficient basis for the delay. The City's assertion is that when an award is issued it is sent to the Mayor's Office of Labor Relations. That office then sends a copy to the Police Department's Labor Relations Unit which "must determine what must be done to comply with the arbitrator's award." The Police Department Labor Relations Unit then "writes a memo instructing the Police Department's Finance Office what must be done." The Police Finance Office then "does the calculations to determine how much money is owed." The Police Finance Office then "writes a memo to the City's Central Finance, part of the Personnel Department, instructing them how much money is owed." It is only then, according to the City, that a check can be issued.

Simply put, the Mayor's Office of Labor Relations got the award and merely forwarded it to the Police Department's Labor Relations Unit. That Unit just told the Police Department Finance Office to pay Moore for the five-day suspension. The Finance Office did the simple calculation and sent the dollar amount to the City's Central Finance Office and that office only made out the check.

If it took the Mayor's Office of Labor Relations seven days to merely forward the award to the Police Labor Relations Unit, and if it took the Police Labor Relations Unit seven days to simply tell the Police Department's Finance Office to figure out five day's pay for Moore, and if it took the Police Department's Finance Office seven days to make that simple calculation and merely pass that dollar amount on to the City's Central Finance Office, and if it took the Finance Office seven days to just write out the check, the check would have issued in twenty-eight days. And even that would have been an inordinate amount of time to accomplish such a simple task. Nevertheless, the City argues without blushing that more than thrice that time, one hundred nine days, is eminently reasonable.

There is simply no excuse for the breathtaking delay here. Instead of deciding what would be a reasonable amount of time to comply with this elementary award, then tailoring its procedures to meet that time, the City argues that however long it takes to process the award under the City's convoluted (and evidently snail-paced) procedure is reasonable simply because the procedure takes that long. The relative simplicity of an award is inversely proportional to the time that is reasonable for payment; the more simple the award, the less time allowed.

The City has clearly violated Section (6)(1)(a) and (e) of the PLRA as read with Act 111. By way of remedy, the City is ordered to pay Moore 6% *per annum* interest on the back pay amount from the date of the December 11, 2006, award until March 30, 2007.

## 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 the 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 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 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 and Act 111.

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

3. Take the following affirmative action:

(a) Immediately tender to Moore 6% *per annum* interest on the back pay amount pursuant to the December 11, 2006, grievance award, calculated from the date of that award to March 30, 2007;

(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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-first day of November, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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Timothy Tietze, Hearing Examiner

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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 paid Moore 6% *per annum* interest on the amount due pursuant to the December 11, 2006, arbitration award calculated from the date of that award to March 30, 2007; that it has posted a copy of 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.

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Signature of Notary Public