

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
LODGE NO. 5 :
 :
 v. : Case No. PF-C-07-58-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 March 12, 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 settlement agreement.

On April 24, 2007, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for July 2, 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).

2. The parties stipulated and agreed that the City is a political subdivision of the Commonwealth of Pennsylvania. (Complaint, averment 1).

3. The parties stipulated and agreed that the Union filed a grievance alleging that the City violated the parties' collective bargaining agreement when it suspended Detective Brian Kelly for fifteen days. The Union pursued the grievance to binding grievance arbitration. The parties executed a settlement agreement on February 13, 2007, before the actual arbitration hearing. That settlement agreement included, *inter alia*, that Kelly's suspension be reduced to seven days, and that Kelly "be made whole for any losses incurred for the difference of eight (8) days." (Complaint, averment 4).

4. The parties stipulated and agreed that the City issued a check to Kelly, pursuant to the settlement agreement, on May 17, 2007.¹ (City's brief at 1; Union's brief at 1).

DISCUSSION

As a general matter, an employer's refusal to comply with a grievance settlement at a lower stage in the grievance procedure is an unfair practice. Moshannon Valley School District v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991); Zelienople Borough, 27 PPER ¶ 27024 (Final Order, 1995); New Eagle Borough, 25 PPER ¶ 25026 (Proposed Decision and Order, 1994). Eventual compliance, determined to be untimely, also violates the PLRA. FOP Lodge No. 5 v. City of Philadelphia, 38 PPER 72 (Proposed Decision and Order, 2007).

The criteria developed by the Board to determine whether an employer has timely complied with a grievance arbitration award are equally applicable to the determination

¹ In point of fact, the City asserts that May 17, 2007, is the payment date. While the Union's brief states that May is the payment month, it goes on to state "[t]he exact date [of payment] is unknown." (Union's brief at 1). I have used the City's date for purposes of fashioning the remedy, however, for purposes of finding a violation of the Act, any payment date in May is simply much too late.

of whether an employer has timely complied with a settlement agreement. To determine timeliness the Board will consider such factors as, 1) the nature and complexity of the compliance required under the agreement, 2) the length of time before compliance occurred, 3) the employer's ability to comply with the agreement 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 settlement agreement here was signed on February 13, 2007. It required but a simple calculation of the usual deductions from an agreed upon eight days of back pay. Nevertheless, the City took until May 17, 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 a settlement agreement must pass before any payment therein agreed to can be paid. 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 after a settlement agreement is finalized 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 agreement. 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 agreement and merely forwarded it to the Police Department's Labor Relations Unit. That Unit just told the Police Department Finance Office to pay Kelly for eight days of back pay minus standard deductions. 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 agreement 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 eight days of back pay for Kelly, 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 ninety-three days, over thrice that time, is eminently reasonable.

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

The City has 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 Kelly 6% *per annum* interest on the back pay amount from the date of the February 13, 2007, settlement agreement until May 17, 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 employees 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 employees.
3. Take the following affirmative action:
 - (a) Immediately tender to Kelly 6% *per annum* interest on the back pay amount pursuant to the February 13, 2007, settlement agreement calculated to May 17, 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 employees, 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 thirtieth day of November, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

Timothy Tietze, Hearing Examiner

