COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SHOEMAKERSVILLE BOROUGH POLICE ASSOCIATION	:	
v.	:	Case No. PF-C-07-10-E
SHOEMAKERSVILLE BOROUGH	:	

PROPOSED DECISION AND ORDER

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Shoemakersville Borough Police Association (Union) on January 19, 2007, alleging that Shoemakersville Borough (Borough) violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On February 9, 2007, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for February 26, 2007, in Harrisburg, Pennsylvania. This case was consolidated with a companion charge, PF-C-06-151-E[1], and both charges were heard on February 26, 2007. Both parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Borough filed a post-hearing brief, while the Union chose to close on the record.

The 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.

FINDINGS OF FACT

1. The Union is a labor organization.

2. The Borough is a political subdivision of the Commonwealth of Pennsylvania.

3. The Union filed two grievances, pursuant to the parties' collective bargaining agreement, concerning Chief Ronald Yocum, a bargaining unit member. The first grievance alleged the Borough's refusal to pay Yocum what the Union determined was the correct pay under the Heart and Lung Act, based upon the pay rates in the collective bargaining agreement. The second grievance alleged that the Borough terminated Yocum without just cause. (N.T. 15-21; Union Exhibit 1).

4. On May 30, 2006 the arbitrator issued one opinion and award sustaining both the Union's grievances. The award stated:

> On the basis of the record as a whole and for the reasons discussed, the grievances are sustained as follows: The Grievant is to be reinstated immediately with full credit for seniority, longevity, vacation and pension. The Grievant is to receive full back pay but for a sixty day period. The Grievant is to be compensated for the loss of any benefits. He is also to be compensated for the pay differential from the Act 111 Award (term January 1, 2004 through December 31, 2004) that he had been denied while on Heart and Lung. The undersigned retains jurisdiction for 90 days to resolve any contested issues raised in the implementation of this award.

(Union Exhibit 1, p. 21).

5. The Borough sought to vacate the award by appeal to the Court of Common Pleas of Berks County. On November 15, 2006 that court denied the Borough's appeal. The parties stipulated that there was no further appeal taken by the Borough. (N.T. 21; Union Exhibit 2).

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[1] A Proposed Decision and Order in that case was issued on July 11, 2007, wherein the charge was dismissed and the complaint rescinded.

6. The Borough has not complied with any of the mandates of the May 30, 2006 grievance award. (N.T. 20-22).

DISCUSSION

The Union charges the Borough with violating the above referenced sections of the PLRA because it has not yet complied with a grievance arbitration award issued on May 30, 2006. The Borough petitioned the Court of Common Pleas of Berks County to vacate the award, but the Court denied that petition on November 15, 2006.

The Borough, in its post-hearing brief, answers the Union's charge by stating, "The Borough has, at no point refused to pay backpay [sic] to Yocum, but has endeavored to reach agreement as to the exact amount due." (Borough's brief at 22). While that may be the Borough's argument, the Borough never put any evidence on the record to support that bald assertion. Since the Borough has offered absolutely no reason of record why it has not complied with the grievance arbitration award in question, and a reasonable period of time for compliance has elapsed, the Borough has violated Section 6(1)(a) and (e) of the PLRA as read with Act 111.

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 the nature and complexity of the compliance required under the award; the length of time before compliance occurred; the employer's ability to comply with the award including legitimate obstacles to compliance; steps taken by the employer toward compliance; and 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 May 30, 2006[2] and as of February 26, 2007 hearing, the Borough had not complied. 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).

The award in question merely required the Borough to compute an amount of back pay and to compute a pay differential because the Borough had incorrectly calculated Yocum's Heart and Lung Act benefits.[3] The Borough offers no record evidence as to why it has not yet complied with the award. Given the simple nature of the award's mandates and the complete lack of any explanation by the Borough for its noncompliance, I am constrained to find a violation of Section 6(1)(a) and (e) of the PLRA as read with Act 111. The Borough's unexplained recalcitrance also requires that interest be awarded to Yocum from November 15, 2006, on all amounts due, until Yocum is actually paid the correct amount.

CONCLUSIONS

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

1. The Borough is an employer within the meaning of Section 3(c) of the PLRA as read with Act 111.

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[2] The Borough did seek to vacate the award, nevertheless, on November 15, 2006, the court upheld the award's validity. (Union Exhibit 2).

[3] While the grievance arbitration award in question also directed the Borough to reinstate Yocum to his job as chief, the intervening fact that the Borough went out of the business of supplying police services rendered that directive nugatory. *See* Shoemakersville Borough Police Association v. Shoemakersville Borough, PF-C-06-151-E, issued July 11, 2007. Consequently, the Borough's liability for back pay to Yocum under the award ceases on the date the Borough completely and permanently went out of the police business. The interest on that amount, however, continues to accrue until Yocum is correctly paid the appropriate amount owed.

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 Borough has not committed unfair labor practices within the meaning of Section 6(1)(c) of the PLRA as read with Act 111.

5. The Borough 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 Borough 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 Yocum the amounts required by the May 30, 2006 arbitration award, plus 6% *per annum* interest on those amounts, calculated from November 15, 2006, until Yocum is actually paid the correct amount;

(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 sixteenth day of July, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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Timothy Tietze, Hearing Examiner