

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF	:	
FIREFIGHTERS, LOCAL 60	:	
	:	
v.	:	Case No. PF-C-06-119-E
	:	
CITY OF SCRANTON	:	

PROPOSED DECISION AND ORDER

On July 17, 2006, the International Association of Firefighters, Local 60 (Union or Complainant) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Scranton (City) violated Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by failing to comply with the terms of an interest arbitration award.

On August 30, 2006, the Secretary of the Board issued a Complaint and Notice of hearing in which the matter was assigned to a conciliator for the purpose of resolving the dispute by mutual agreement of the parties and November 1, 2006 in Scranton was assigned as the time and place of hearing, if necessary.

The hearing was necessary, and was held as scheduled at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the City of Scranton is an employer within the meaning of Section 3(c) of the Pennsylvania Labor Relations Act.
2. That the International Association of Firefighters, Local 60 is a labor organization within the meaning of Section 3(f) of the Pennsylvania Labor Relations Act.
3. That the Union is the exclusive bargaining representative of all employees of the city's fire bureau and is party with the City to a collective bargaining agreement that was in effect at all times relevant to this case. (N.T. 7-9, Joint Exhibit 1)
4. That Article XXI of the CBA contains a grievance and arbitration procedure that ends in "final and binding" arbitration. (N.T. 7-9, Joint Exhibit 1).
5. That in 2004, a dispute arose between the parties over the manner in which the bargained for salaries were to be paid that year, a year with 27 pay dates, rather than 26. When the dispute remained unresolved through the grievance procedure, it was submitted to final and binding arbitration. (N.T. 7-9, Joint Exhibit 1)
6. That James Darby, Esquire was mutually selected to serve as the grievance arbitrator to resolve the dispute. On November 11, 2005 2004, Arbitrator Darby issued his award in which he sustained, in part, and denied, in part, the Union's grievance. The Award stated:

The grievance is sustained in part and denied in part.

The City's reduction of employees' bi-weekly wages to address the 27th pay date in 2004, by dividing the employees' base wage rate by 27, rather than 26, violated the collective

bargaining agreement. As a remedy, the City must make whole, with backpay and all applicable benefits owed during the backpay period any bargaining unit member whose hourly wage was reduced in 2004. The backpay award must include interest as set forth in Article XXI, Section 7 of the Agreement.

The City's conduct did not constitute "bad faith" conduct as that term is used and described in Article XXI, Section 7 of the Agreement.

The awarding of a make-whole remedy is not prohibited by the City's Revised Recovery Plan.

The Arbitrator will retain jurisdiction over this matter for the purpose of resolving any disputes concerning the calculation and implementation of this remedy.

(N.T. 7-9, Joint Exhibit 1)

8. That the City appealed the Award to the Lackawanna County Court of Common Pleas. On July 10, 2006, the Court of Common Pleas entered an order denying the City's Petition to Review and Vacate the Award. (N.T. 10, Joint Exhibit 5)

9. That on August 8, 2006, the City filed an appeal with the Pennsylvania Commonwealth Court. On April 2, 2007, the Commonwealth Court filed an order affirming the Common Pleas decision. (N.T. 7-9, Joint Exhibit 1)

10. That the City has not complied with any provision of the Darby Award. (N.T. 11)

DISCUSSION

The Union's charge of unfair labor practices alleges that the City violated the PLRA and Act 111 by refusing to comply with an arbitration award dated November 11, 2005, sustaining a grievance that the City failed to properly pay firefighters in 2004. There is no dispute that the City has not complied with the Award. The Award is set forth in the Findings of Facts above.

It is well established that an employer's refusal to comply with an arbitration award constitutes an unfair labor practice in violation of the PLRA and Act 111. Pottstown Police Officers Association v. PLRB, (634 A.2d 711, Pa. Cmwlth. 1993).

The City argues that its appeal of the Darby Award acts as a supersedeas and stay of the implementation of the award. However, the Pennsylvania Rules of Appellate Procedure and PLRB decisions dispose of this argument. Pennsylvania Rule of Appellate Procedure 1736 provides in pertinent part as follows:

(a) General Rule - No security shall be required of

(1) 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 ordered pursuant to this chapter, the taking of an appeal by any parties specified in Subdivision (a) of this rule shall operate as a supersedeas in favor of such party.

The Pennsylvania Labor Relations Board in City of Philadelphia, 32 PPER ¶ 32102 (Final Order, 2001) described the effect of Rule 1736 in the following terms:

Once an 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.

See also Teamsters Local 429 v. Lebanon County, 37 PPER ¶ 25 (Proposed Decision and Order, 2006) and E.B. Jermyn Lodge No. 2, Fraternal Order of Police v. City of Scranton, 37 PPER ¶ 150, (Final Order, 2006).

The City took full advantage of the automatic stay upon the finality of the grievance arbitration award through the initiation of judicial proceedings in Lackawanna County Court of Common Pleas. With the award affirmed at that level, the award became fully enforceable. Furthermore, subsequent to the unsuccessful effort to vacate the Award at the Common Pleas level, the City was also unsuccessful in the Commonwealth Court in obtaining a stay of the effect of the Order. City of Scranton v. Firefighters Local Union No. 60, (Unreported Decision, No. 1550 CD 2006, April 2, 2007). Accordingly, there is no stay of the Award.

The City also argues that it is excused from complying with the arbitration award because of its distressed city status under The Municipalities Financial Recovery Act (Act 47), Act of July 10, 1987, P.L. 246, as amended, 53 P.S. 11701.101-11701.501. However, the Commonwealth Court addressed this argument and rejected it. City of Scranton v. Firefighters Local Union No. 60 supra. The Commonwealth Court reasoned that because the collective bargaining agreement at issue was executed prior to the adoption of the city's Act 47 Plan, Section 252 of Act 47 cannot relieve the City of its obligations under the pre-existing CBA.

For all of the reasons above, it must be concluded that the City's refusal to comply with the Darby award is an unfair labor practice in violation of Section 6(1)(a) and (e) of the PLRA.

CONCLUSIONS

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

1. That the City of Scranton is an employer within the meaning of Section 3 (c) of the PLRA.
2. That the International Association of Firefighters, Local 60, is a labor organization within the meaning of Section 3(f) of the PLRA.
3. That the City of Scranton has committed unfair labor practices in violation of Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, 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 Act.
2. Cease and desist from refusing to bargain collectively in good faith with a labor organization which is the exclusive representative of employees in the police unit.
3. Take the following affirmative action:

(a) Immediately comply with each and every provision of Arbitrator Darby's Award dated November 11, 2005.

(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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fourth day of May, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner