

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
LODGE NO. 5 :
 :
v. : Case No. PF-C-06-168-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 October 30, 2006, 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.

On November 16, 2006, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for December 1, 2006, in Philadelphia, Pennsylvania. On that date a hearing was held at which time both parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. In lieu of viva voce testimony the parties entered into a series of factual stipulations. Neither party filed a post-hearing brief.

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 parties stipulated and agreed the Union is a labor organization. (N.T. 10).
2. The parties stipulated and agreed the City is a political subdivision of the Commonwealth of Pennsylvania. (N.T. 10).
3. The parties stipulated and agreed that on September 19, 2006, the parties entered into a settlement agreement pursuant to a grievance filed by the Union on behalf of Officer Wayne Hunter, an employee suspended for 20 days. That settlement agreement, *inter alia*, called for the City to rescind 10 days of the original 20-day suspension. Hunter would receive a 10-day suspension on the charge of neglect of duty. The settlement agreement also called for the City to withdraw all of the other original charges brought against Hunter. In return, the Union agreed to withdraw the grievance. (N.T. 10, 11).
4. As of December 1, 2006, the City had not fully complied with the award. (N.T. 10, 11).

DISCUSSION

The Union charges the City with violating Section 6(1)(a) and (e) of the PLRA as read with Act 111 when the City failed to comply with the tenets of a settlement agreement the parties' entered into pursuant to a grievance filed by the Union on behalf of Officer Wayne Hunter. Hunter had been suspended for 20 days on various charges. The settlement agreement called for the suspension to be reduced by 10 days in return for Hunters plea to the single charge of neglect of duty. Upon that basis the Union agreed to withdraw the underlying grievance. The agreement was entered into on September 19, 2006. As of the date of this hearing Hunter had yet to receive a check for that portion of the original suspension period reduced in the settlement agreement.

An employer's refusal to comply with a grievance settlement arrived at a lower stage in the grievance process is an unfair practice. Moshannon Valley School District v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991); Ambridge Area School District v. Ambridge Area Education Association, PSEA/NEA, 670 A.2d 1207 (Pa. Cmwlth. 1996). More than two months is simply too long a time to comply, considering the simple nature of the City's task, which was merely to pay Hunter for 10 days work. Therefore, the City has violated Section

6(1)(a) and (e) of the PLRA as read with Act 111. The City is ordered to pay Hunter for the 10 days rescinded suspension plus interest from the date of the settlement agreement until Hunter is actually paid.

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 Hunter the amount required by the September 19, 2006, settlement agreement plus 6% *per annum* interest on that amount, calculated from September 19, 2006, until Hunter is actually paid;

(b) Immediately comply with all other requirement of the September 19, 2006, settlement agreement not already complied with;

(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 sixth day of February, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

Timothy Tietze, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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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 complied with all requirements of September 19, 2006, settlement agreement, including paying Hunter all monies due plus 6% *per annum* interest on the amount due, from September 19, 2006, until Hunter is actually paid; 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.

Signature of Notary Public