

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :  
LODGE NO. 7 :  
 :  
 v. : Case No. PF-C-07-110-W  
 :  
 CITY OF ERIE :

**PROPOSED DECISION AND ORDER**

On July 26, 2007, the Fraternal Order of Police, Lodge NO. 7 (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Erie (City) independently violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111.<sup>1</sup> In its specification of charges, the Union alleges that the City intimidated and coerced employees in the exercise of their protected rights and discriminated against Detective Sergeant Christopher Lynch when it refused to promote Lynch to the rank of lieutenant after the City placed Lynch in the position of Auto Theft Investigator/Grant Coordinator (ATIGCO), pursuant to a grievance arbitration award (Award).

On August 9, 2007, the Secretary of the Board issued a complaint and notice of hearing directing an October 17, 2007 hearing in Pittsburgh, Pennsylvania. After one continuance at the request of the Union, and without objection from the City, the hearing was held on January 9, 2008. During the hearing, both parties in interest were afforded a full opportunity to present testimony and documentary evidence and cross-examine witnesses. Both parties filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. The City is a public employer and political subdivision under Act 111 as read in pari materia with the PLRA. (N.T. 3).

2. The Union is a labor organization under Act 111 as read in pari materia with the PLRA. (N.T. 3).

3. Effective May 1, 2006, Lieutenant Stephen Franklin was promoted to the rank and position of Chief of Police of the City of Erie Police Department and consequently left a vacancy in his position as the ATIGCO. At that time, Lynch was the administrative head of the crime scene identification unit. (N.T. 9, 17, 47).

4. The collective bargaining agreement (CBA) between the Union and the City requires the posting of position vacancies for a period of not less than ten (10) consecutive days. The City receives grant money from the Auto Theft Prevention Authority for the ATIGCO position. During the contractual posting period, Chief Franklin temporarily assigned Detective Sergeant John Ayers to the ATIGCO position, which is permitted by the CBA, to avoid the City's receipt of grant money for a vacant position. (N.T. 20, 62-63; Joint Exhibit 1, Article XVII).

5. Chief Franklin posted the vacant ATIGCO position pursuant to Article XVIII of the CBA. Four officers applied for the position and three officers were chosen to receive interviews by a panel of three commanding officers in the Department, none of whom was Chief Franklin. The three officers interviewed were Detective Sergeant Lynch, Detective Sergeant Ayers and Sergeant Edward Noble. (N.T. 9-10, 33-34, 64; Joint Exhibit 3 at 1-2).

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<sup>1</sup> Other than asserting a right to relief under Section 6(1)(e) in its Charge and post-hearing brief, the Union does not advance a specific argument to support the conclusion that the City violated that Section. Therefore, that cause of action is waived and the examiner need not address that issue. An argument not made to a hearing examiner is waived. AFSCME, Council 13 v. State System of Higher Education, 32 PPER ¶ 32118 (Final Order, 2001).

6. Two of the three panel members recommended that the Department assign Ayers to the ATIGCO position and one recommended Lynch. By personnel Order Number 22-06, dated May 19, 2006, Chief Franklin informed the Department that Ayers was permanently appointed as the new ATIGCO, effective June 1, 2006.<sup>2</sup> Chief Franklin, with the approval of the Mayor, has the authority to determine job assignments and promotions, not the panel. On May 23, 2006, Chief Franklin issued Personnel Order Number 24-06, therein announcing the promotion of Ayers to Lieutenant. (N.T. 10, 50, 64, 67, 76; Joint Exhibit 3 at 3-4).

7. After the appointment of Ayers to the ATIGCO position, but before Lynch grieved Ayers' appointment, Lynch requested a promotion to the rank of lieutenant and was denied. Chief Franklin's reason for the denial was that there were too many lieutenants in the Department at the time and past practice dictated that he promote Ayers to lieutenant as the new ATIGCO. Chief Franklin indicated that he had no choice but to promote Ayers to lieutenant as the new ATIGCO. Chief Franklin also informed Detective Sergeant John Michael Barber, Union President, that he could not delay promoting Ayers to lieutenant until Lynch's grievance was resolved because it has been a past practice that a lieutenant run the ATIGCO Unit, thereby requiring him to immediately promote Ayers. Chief Franklin did not indicate to either Barber or Lynch that Lynch's skills, qualifications, or past work performance were the reasons for denying him the promotion. (N.T. 10-12, 21-23, 56, 68, 77-79).

8. Lieutenant Dave Grassi was the first full-time officer to hold the ATIGCO position when it was created in 1997. Then-Lieutenant Franklin joined Grassi in the ATIGCO Unit as support. In 2004, when Lieutenant Grassi retired, Franklin assumed control over the ATIGCO Unit, and Lieutenant McCall joined the ATIGCO Unit as support. Lieutenants Grassi and Franklin were lieutenants before they were permanently assigned to the ATIGCO position. Then-Lieutenant Franklin held the ATIGCO position from 2004 until April, 2006 when then-Detective Sergeant Ayers was temporarily assigned to the position, for approximately six weeks, until Ayers was permanently assigned to the position, at which time he was promoted to the rank of lieutenant. All officers permanently assigned to the position of ATIGCO since its inception were lieutenants. (N.T. 11-15, 19-20, 49-50; Joint Exhibit 3 at 3).

9. By Award dated April 24, 2007, the grievance arbitrator ordered the City to transfer Lynch to the ATIGCO position. After the City assigned Lynch to the position, Lynch requested a promotion to the rank of lieutenant, and Chief Franklin denied the request. Chief Franklin has granted 12-15 promotions since he became Chief on May 1, 2006. (N.T. 17, 55, 76; Joint Exhibit 2 at 13, Joint Exhibit 3 at 6).

10. Chief Franklin and Ayers are friends who have gone to lunch together a lot over the past several years. When Chief Franklin called Ayers to the Chief's office to inform Ayers of his promotion to lieutenant, Ayers thought the Chief was calling for him to go to another lunch. (N.T. 35, 44-45).

#### DISCUSSION

The Union contends that "the City of Erie . . . unlawfully discriminated against Detective Sergeant Lynch by failing to promote him to Lieutenant following the issuance of an Act 111 grievance arbitration award sustaining his contractual grievance." (Union Brief at 1). The Union specifically claims that, prior to the Award, the City "intended to utilize a Lieutenant to perform the Auto Theft Investigator/ Grant Coordinator job" and that "appointment to the position created the basis for the promotion." (Charge, ¶ 10). The Union also maintains that the City's refusal to promote Lynch to the rank of lieutenant, after he obtained the ATIGCO position through the exercise of his protected right to arbitrate Chief Franklin's initial selection of Ayers, independently violates Section 6(1)(a) of the PLRA. (Charge ¶ 8).

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<sup>2</sup> Personnel Order No. 22-06 provides that the effective date of Ayers' new assignment to the ATIGCO position was July 1, 2006, however, the Chief testified that this was a typographical error and that Ayers was reassigned to the ATIGCO position effective June 1, 2006. (N.T. 65).

## DISCRIMINATION, SECTION 6(1)(c)

In a discrimination claim under Section 6(1)(c) of the PLRA, the claimant has the burden of proving that the employe engaged in protected activity, that the employer was aware of this activity, and that the employer took adverse action against the employe that was motivated by the employe's engaging in that known protected activity. Duryea Borough Police Department v. PLRB, 862 A.2d 122 (Pa. Cmwlth. 2004); FOP, Lodge 5 v. City of Philadelphia, 38 PPER 184 (Final Order, 2007). Motive creates the offense. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). Because direct evidence of anti-union animus is rarely presented, or admitted by the employer, the Board and its examiners may infer animus from the evidence of record. Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996).

The Board will give weight to several factors upon which an inference of unlawful motive may be drawn. In PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978), the Board opined that "[t]here are a number of factors the Board considers in determining whether anti-union animus was a factor in the [adverse action against] the Complainant." Id. at 380. These factors include the entire background of the case, including any anti-union activities or statements by the employer that tend to demonstrate the employer's state of mind, the failure of the employer to adequately explain its action against the adversely affected employe, the effect of the employer's adverse action on other employes and protected activities, and whether the action complained of was "inherently destructive" of important employe rights. Centre County, 9 PPER at 380. The close timing of an employer's adverse action alone is not enough to infer animus, but when combined with other factors can give rise to the inference of anti-union animus. PLRB v. Berks County, 13 PPER ¶ 13277 (Final Order 1982); City of Philadelphia, supra; Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004); AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry, 16 PPER ¶ 16020 (Final Order, 1984). Evidence that the employer has failed to adequately explain its adverse actions or that it has set forth shifting reasons for an adverse action can support an inference of anti-union animus and may be part of the union's prima facie case. Stairways, supra; Teamsters Local 312 v. Upland Borough, 25 PPER ¶ 25195 (Final Order, 1994). Montgomery County Geriatric and Rehabilitation Center, 13 PPER ¶ 13242 (Final Order, 1982), aff'd, Montgomery County v. PLRB, 15 PPER ¶ 15089 (Court of Common Pleas of Montgomery County, 1984). However, mere suspicion is insufficient to sustain a discrimination charge. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974).

Only if the union establishes a prima facie case that an employer's adverse action against an employe was motivated by the employe's protected activity does the burden shift to the employer. West Shore Educ. Ass'n v. West Shore Sch. Dist., 23 PPER ¶ 23031 (Final Order, 1992). In such instances, the employer may rebut the union's prima facie case in one of two ways: (1) an employer may prove that the action complained of was taken for legitimate business reasons and not unlawful motive; or (2) the employer may prove that, despite evidence of unlawful motive, the employer would have taken the same action anyway because the legitimate business reason was the overriding, proximate cause of the adverse employment action and not the unlawful motive. Upland Borough, supra. West Shore Sch. Dist., supra; Teamsters Local Union No. 32 v. Washington Township Mun. Auth., 20 PPER ¶ 20128 (Final Order, 1989). The latter is otherwise known as a "dual motive" case. Indiana Area Educ. Ass'n v. Indiana Area Sch. Dist., 34 PPER 133 (Final Order, 2003). In either defensive posture, an employer's insubstantial or pretextual explanation for adverse action coupled with close timing of that adverse action to protected activity can establish a prima facie case and a sufficient evidentiary of basis to find a violation of Section (6)(1)(c). Colonial Food Service Educ. Personnel Ass'n v. Colonial Sch. Dist., 36 PPER 88 (Final Order, 2005); Lehigh Area School District v. PLRB, 27 PPER ¶ 27001 (Pa. Cmwlth., 1996).

In this case, it is undisputed that Lynch engaged in protected activity by arbitrating a grievance challenging the selection of Ayers over Lynch for the ATIGCO position, and that the City knew of that activity. The City participated in the grievance and arbitration proceedings, received the Award and complied with the Award by placing Lynch into the ATIGCO position and transferring Ayers to another position. Therefore, the

first two of the three necessary elements of the discrimination standard have been satisfied. Duryea Borough, supra. The remaining issue, therefore, is whether the Union established that the City refused to promote Lynch to the rank of lieutenant after assuming the duties of the ATIGCO because an arbitrator ordered the City to assign Lynch to that position rather than Lynch having been voluntarily selected by Chief Franklin, i.e., whether the reason for the City's refusal is Lynch's protected activity, which constitutes unlawful motive. The substantial evidence of record regarding the entire background of the case establishes a prima facie case of discrimination.

The Union established that, before the Charge in this case was filed, Chief Franklin represented to both Lynch and the Union that the rank of lieutenant went with the ATIGCO position. In the Spring of 2006, Chief Franklin denied Lynch a promotion to lieutenant while he was the administrative head of the crime scene identification unit. Chief Franklin's reason for this denial was that there were too many lieutenants in the Department and past practice dictated that he promote Ayers to lieutenant as the new ATIGCO. (F.F. 7). Chief Franklin also told the Union President that he could not delay promoting Ayers to lieutenant until Lynch's grievance was resolved because it had been a past practice that a lieutenant run the ATIGCO Unit thereby requiring him to promote Ayers. (F.F. 7). Chief Franklin himself corroborated these facts and admitted representing to the Union and Lynch that Ayers was promoted because it was consistent with past practice that a lieutenant run the ATIGCO Unit. However, Chief Franklin attempted to limit the plain meaning of his statements to the Union and Lynch by testifying at the hearing that "it was to [Ayers] knowledge and experience that I spoke of as him being a lieutenant in that unit." (N.T. 68). The examiner, however, does not credit Chief Franklin's above-quoted explanation. Ayers' "knowledge" and "experience" has nothing to do with Chief Franklin's prior assertion that he was promoting Ayers because it was consistent with past practice that a lieutenant holds the ATIGCO position.

During this pre-Charge period, Chief Franklin did not indicate to either the Union or Lynch that his reasons for denying Lynch a promotion related to Lynch's skills, qualifications, or work performance. (F.F. 7). Clearly Chief Franklin believed that the officer permanently assigned to the ATIGCO must be a lieutenant. Although Chief Franklin testified at the hearing that only the positions of Chief and shift supervisor were associated with required ranks, the examiner does not credit this testimony, which is belied by Chief Franklin's pre-Charge representations to Lynch and the Union regarding the ATIGCO position. The examiner finds that the Department's policy and practice are that an officer permanently assigned to the ATIGCO position must minimally hold the rank of lieutenant. Chief Franklin's shifting explanation, which changed only after the Charge was filed, along with the timing of the adverse action of refusing to promote Lynch with respect to Lynch's protected activity, supports a strong inference of unlawful motive. Moreover, our Supreme Court has held that a negative inference against the employer is proper where the work performance or habits of the employee are not mentioned as the reason for the adverse action at the time the action was taken. PLRB v. Fabrication Specialists, 477 Pa. 23, 383 A.2d 802 (1978).

Another factor supporting the Charge is that Chief Franklin, in line with his stated position that the permanently assigned officer in the ATIGCO position be a lieutenant, immediately promoted Ayers who was Chief Franklin's first choice for the position, thereby, demonstrating the Departmental position that a lieutenant hold that position. Indeed, Ayers' promotion to lieutenant was effective on the first day that he assumed the position and duties of the ATIGCO. Also, Chief Franklin and Ayers were friends who had often met for lunch during he past several years. The Award placing Lynch in the ATIGCO position forced the displacement of Ayers, Chief Franklin's friend, who Chief Franklin believed to be better suited for the ATIGCO position. The Award, therefore, negatively affected Ayers, the Chief's friend, and undermined the Chief's choice for the position. Therefore, the close timing, coupled with other factors such as the past practice that a lieutenant fill the ATIGCO position and the fact Ayers was promoted to lieutenant, effective the first day on the job, the displacement of Chief Franklin's friend and first choice for the position, the multitude of promotions freely given since Franklin's ascension to Chief, as well as the shifting explanation by Chief Franklin, yields the conclusion that Chief Franklin denied Lynch's promotion because Lynch obtained the ATIGCO position by arbitration.

Having established a prima facie case of discrimination, the burden shifts to the City to rebut the same. This is not a dual motives case and the City steadfastly denies the claim of unlawful motive. Rather the City defends the Charge by arguing that it refused to promote Lynch because of his job performance not because he engaged in protected activity by arbitrating the City's decision not to initially assign him to the ATIGCO position. The City's proffered reason, that Lynch's inadequate job performance precludes him from consideration for the rank of lieutenant, is not relevant to, nor is it a legitimate business reason defense to rebut, the Union's established claim that the rank of lieutenant goes with the position of ATIGCO. Since the rank goes with the position, job performance is of no moment where the arbitrator placed Lynch in the position. On the one hand, Lynch may not have been chosen by Chief Franklin for the position because of his job performance, although there is no pre-charge evidence to support that claim. On the other hand, Ayers may have been chosen for the position because Chief Franklin appreciated Ayers' job performance. But the rank goes with whomever holds the position. Once the arbitrator placed Lynch in the position, albeit against Chief Franklin's wishes, the City was obligated, pursuant to past practice as recognized by Chief Franklin, to promote Lynch to the rank of lieutenant. Lynch's job performance is not relevant because the rank goes with the job as shown by the promotion of Ayers and Chief Franklin's representations to the Union.

The City also maintains that the interview panel disclaimed guarantees of a promotion during the candidate interviews, which supports its position that the rank of lieutenant does not go with the ATIGCO position. However, the understanding of members of the panel regarding the rank requirements for the ATIGCO are not at issue or relevant to the determination here. The panel members were not authorized to hire or promote the candidates for the ATIGCO position. The record clearly shows that Chief Franklin determines the assignments and rankings within the Department. (F.F. 6). There is no evidence that the panel was relaying the official position of Chief Franklin, the Mayor or the Department. Without evidence that the panel had authority from Chief Franklin or the Mayor to represent that promotions were not guaranteed, such representations constitute hearsay that is not competent, veritable evidence, i.e., substantial evidence, to support a finding of fact that a promotion was not guaranteed or to address the question of whether the rank of lieutenant went with the ATIGCO job.

The City also argues that, by referring to "past practice," Chief Franklin was referring to the fact that, although lieutenants historically held the ATIGCO position, they were already lieutenants going into the job. The City further contends that there was not a past practice of a sergeant being promoted to lieutenant once he became head of the ATIGCO. However, the City's attempt to redefine the plain meaning of "past practice" by offering a different subjective meaning on the part of Chief Franklin is ill-founded. The City's argument ignores the fact that the clear purpose of promoting Ayers from the rank of sergeant to the rank of lieutenant upon becoming the head of the ATIGCO was to comply with the past practice and demonstrates its existence, not to break from the past practice or demonstrate its non-existence. Notwithstanding the City's argument, that the record shows that the skill set required for the ATIGCO position did not require a lieutenant for the job, the record demonstrates that Chief Franklin believed that there was a past practice of having a lieutenant head the ATIGCO Unit regardless of whether that person utilized or needed all of the skills associated with that rank. Ayers was selected for the position because of his work performance, but he was promoted simply because he became the ATIGCO. If Ayers were promoted because of his consistently good work performance, as argued by the City, he would have been promoted well before he was selected for the ATIGCO.

Moreover, even if it were relevant to consider Lynch's alleged poor job performance, the City did not establish, with substantial, competent evidence, specific factual instances or bases to support such a bald, conclusory assertion. The only evidence of record that remotely relates to Lynch's job performance is that Lynch was one of a "half-dozen officers" involved with the unit for approximately eight months in 1997 when the auto theft grant program was just beginning. (N.T. 48). Chief Franklin testified that he and Grassi "were informed at that time that the officers who were in control of working that operation with that grant were failing miserably." (N.T. 48). According to Chief Franklin, then Deputy Chief Tobin requested that Grasso and Franklin assume control of the unit. This testimony by Chief Franklin, however, does not specifically identify Lynch as one of the

"officers who were in control" of the Unit. It also does not identify Lynch's performance as contributing to the poor overall performance of the Unit, which was comprised of a half-dozen officers. Therefore, although not a relevant consideration to rebut the Union's prima facie case of discrimination, the examiner does not accept the City's conclusory assertion, that Lynch's job performance is such that he is not qualified for promotion to the rank of lieutenant, in the absence of substantial, competent evidence to support such a conclusion. The City's attempt to raise and argue job performance for the first time at the hearing without having previously indicated to Lynch that his job performance was the reason for denying him promotions to the rank of lieutenant is disingenuous and patently transparent. The examiner does not credit the testimony that Lynch's job performance was at all inadequate or the proximate cause of denying him the promotion.

The examiner, therefore, also finds that the City's proffered explanations for its adverse employment action of refusing to promote Lynch are shifting, inadequate and pretextual. The finding that the City's explanation is inadequate further supports the Union's prima facie case of discrimination. Upland, supra; Stairways, supra. Therefore, the City's pretext here is another factor supporting the conclusion that the City unlawfully discriminated against Lynch, and the Union's charge and allegation that the City violated Section 6(1)(a) is hereby sustained.

#### INDEPENDENT SECTION 6(1)(a)

An employer commits an unfair labor practice within the meaning of section 6(1)(a) of the PLRA if the employer's actions, "in light of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employes have been shown, in fact to have been coerced." Northwestern Educ. Ass'n v. Northwestern Sch. Dist., 16 PPER ¶ 16092 (Final Order, 1985). Although evidence of motive is not necessary, it is probative of whether a violation of this Section occurred. Faculty Federation of the Community College of Philadelphia, Local 2026 v. Community College of Philadelphia, 20 PPER ¶ 20194 (Proposed Decision and Order, 1989). After the complainant makes a prima facie case of a violation, the burden shifts to the respondent to establish that it acted on a legitimate reason, which justified any interference with the employes' exercise of their statutory rights. Id. Under the totality of the circumstances in this case, the examiner concludes that refusing to promote Lynch to the rank of lieutenant immediately after an arbitrator ordered the City to assign Lynch to the ATIGCO position, which carried with it the rank of lieutenant, would tend to intimidate or coerce a reasonable police officer in the bargaining unit regarding the exercise of his/her protected statutory and contractual rights. The Chief's reaction to the Award and his refusal to promote Lynch has a significant effect on bargaining unit members given the unique and obviously close relationship between Ayers and Chief Franklin. As a result of the City's unfair labor practices in this case, bargaining unit members have been chilled in exercising their present and future right to grieve their complaints where the matters complained of may unfavorably affect or involve a friend of Chief Franklin. Also, as mentioned above, the City's defenses do not constitute legitimate business reasons to justify this negative effect on employe rights. Therefore, the Charge that the City independently violated Section 6(1)(a) is hereby sustained.

#### CONCLUSIONS

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

1. The City is a public employer and a political subdivision within the meaning of Act 111 as read in pari materia with the PLRA.
2. The Union is a labor organization within the meaning of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The City of Erie has committed unfair labor practices within the meaning of Section 6(1)(a) of the PLRA as read in pari materia with Act 111.

5. The City of Erie has committed unfair labor practices within the meaning of Section 6(1)(c) of the PLRA as read in pari materia 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 of Erie shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA.

2. Cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111 as read in pari materia with the PLRA:

(a) Immediately promote Detective Sergeant Christopher Lynch to the rank of Lieutenant;

(b) Pay Christopher Lynch and make him whole for all lost wages and benefits that he would have earned as a lieutenant from the date of his assignment to the position of Auto Theft Investigator/Grant Coordinator to the date of promotion to the rank of lieutenant, including but not limited to wage increases received by the bargaining unit during the backpay period and any other lost benefits or accoutrements and terms and conditions of employment enjoyed by officers of the rank of lieutenant, including any differentials in holiday pay and the accrual of sick and vacation time, as well as pension contributions during the backpay period.

(c) Pay interest at the simple rate of six percent per annum on any and all backpay, including differentials in holiday and vacation pay as well as vacation accruals, due Christopher Lynch from the date of his assignment to the position of Auto Theft Investigator/Grant Coordinator until the effective date of promotion to the rank of lieutenant;

(d) 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

(e) 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 ninth day of April, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :  
LODGE NO. :  
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 v. : Case No. PF-C-07-110-W  
 :  
CITY OF ERIE :

**AFFIDAVIT OF COMPLAINT**

The City of Erie hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act as read in pari materia with Act 111; that it has immediately promoted Detective Sergeant Christopher Lynch to the rank of Lieutenant consistent with paragraph 3(a) of the order; that it has paid Christopher Lynch and made him whole for all lost wages and benefits consistent with paragraph 3(b) of the order; that it has paid interest at the simple rate of six percent per annum on any and all backpay consistent with paragraph 3(c) of the order; that it has posted a copy of the decision and order in the manner prescribed in the order; and that it has served a copy of this affidavit on the Union 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