COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 860	:	
v.	:	Case No. PF-C-07-137-E
DUNMORE BOROUGH	:	

PROPOSED DECISION AND ORDER

On October 11, 2007, the International Association of Fire Fighters, Local 860 (Union) filed a charge of unfair labors with the Pennsylvania Labor Relations Board (Board) alleging that Dunmore Borough (Borough) violated Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111.

On November 5, 2007, 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 matters in dispute without a hearing, and January 7, 2008, in Scranton, was assigned as the time and place of hearing if necessary. The hearing was necessary but was continued twice at the requests of the Union and a third time at the request of the Borough. The hearing was held on November 18, 2008, at which time all parties in interest were afforded an opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties submitted post-hearing briefs

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

1. That Dunmore Borough is an employer within the meaning of Section 3(c) of the PLRA.

2. That the International Association of Fire Fighters, Local 860 is a labor organization within the meaning of Section 3(f) of the PLRA.

3. That the Borough and the Union are parties to a collective bargaining agreement providing for final and binding resolution of grievances arising under the CBA through arbitration. (N.T. 12, Joint Exhibit 2)

4. That a dispute arose between the parties regarding the temporary disability benefits to be awarded fire fighter Michael Snyder under the Heart and Lung Act, 53 P.S. § 637. (N.T. 12, Joint Exhibit 2)

5. That on February 26, 2006, during the performance of his duties, Mr. Snyder was injured while rescuing a boy who had fallen off a cliff alongside PA Route 435. In the midst of the rescue operation, a boulder fell on Mr. Snyder's head, cracking his helmet and causing spinal and back injuries. Mr. Snyder was forced to seek medical care and treatment for the injuries. (N.T. N.T. 13-17, Joint Exhibit 2)

6. That as of the date of the hearing on this unfair labor practice charge, Mr. Snyder had incurred at least $364,772.29 in medical and hospital bills in connection with the February 26, 2006 work injury. (The amount was made up of $223,190.25 in unpaid medical bills, $2,723.07 in out of pocket expenses relating to Mr. Snyder's treatment and $138,858.97 paid by the primary health insurer with a subrogation lien). (N.T. 20, 39, Complainant's Exhibit 1)

7. That the Borough has not paid Mr. Snyder's medical bills, despite the Union's presentation of the bills to the Borough. (N.T. 19, 28, 35-38)

8. That on August 1, 2007, Arbitrator Walter Glogowski issued his award:

> Therefore, after consideration of all testimony, evidence, argument, and discussion listed above, the Arbitrator finds that the Borough of Dunmore did not meet the

burden of proof and does not have the right to discontinue the Heart and Lung benefits to Mr. Snyder.

However, the arbitrator does not view the actions of the Borough as being in "Bad Faith", therefore denies the request for financial restitution of Union Attorney or Arbitrator fees.

(N.T. 12, Joint Exhibit 1)

DISCUSSION

The Union's charge of unfair labor practices alleges that the Borough violated the PLRA and Act 111 by refusing to comply with an arbitration award rendered on August 1, 2007.

Where the refusal to comply with an arbitration award is alleged, the Board's inquiry is limited to determining if an award exists; if the appeal period available to the aggrieved party has been exhausted; and if the parties failed to comply with the award. PLRB v. Commonwealth of Pennsylvania, 478 Pa. 582, 378 A. 2d 475 (1978).

Following the hearing in this unfair labor practice charge, I must conclude that the union has proven all three parts of the test. First, an award exists. On August 1, 2007, an arbitrator issued an award in favor of grievant Mr. Snyder. The award stated that "the Borough does not have the right to discontinue Heart and Lung benefits to Mr. Snyder." (emphasis in original). Second, the Borough did not challenge the award in the courts. Thus, the award is final and binding, satisfying the second part of the test.

As for the third part of the test, it is clear that the Borough is not complying with the award. The Borough has not paid Mr. Snyder's medical and hospital bills which were incurred in connection with an injury at work. At the hearing in this charge, the Union proved that as a result of injuries Mr. Snyder sustained in rescuing a fallen child, Mr. Snyder has incurred significant medical and hospital bills.

The Borough argues that it should not be found to have failed to comply with the award because the arbitrator did not specifically order the payment of medical and hospital bills. The Borough argues that the Board, in determining employer compliance with the award, is restricted to the four corners of the award. See, City of Philadelphia, Office of Housing and Community Development, 24 PPER ¶ 24052, (Final Order, 1993).

The arbitrator clearly stated that the issue in the case was whether the Borough had "the right to deny Michael J. Snyder, a member of the Fire Department, from continuing to receive Heart and Lung Benefits." His answer to that question was the Borough "…does not have the right to discontinue Heart and Lung benefits to Mr. Snyder." (emphasis in original). Heart and Lung benefits refers to the Heart and Lung Act, 53 P.S. § 637, legislation that assists firemen, policemen and other law enforcement employes injured in the performance of their duties. The Heart and Lung Act states, in relevant part,

> (a) Any … fireman or park guard of any county, city, borough, town or township…who is injured in the performance of his duties,… and by reason thereof is temporarily incapacitated from performing his duties, shall be paid by …… the county, city, borough, town or township or municipality by which he is employed, his full rate of salary, as fixed by ordinance or resolution until the disability arising therefrom has ceased. All medical and hospital bills, incurred in connection with any such injury shall be paid by …… such county, township or municipality." (emphasis added by Hearing Examiner).

53 P.S. § 637(a).

Based on the clear language of the statute, the Borough's argument that the arbitration award did not cover medical and hospital bills must be rejected. It is a reasonable interpretation of the award that medical and hospital bills were covered by the arbitration award's direction that the Borough did not have a right to discontinue Mr. Snyder's Heart and Lung benefits. If the Borough's argument was accepted in this case, the

Borough would next be able to stop paying Mr. Snyder his salary while under Heart and Lung Act coverage because "salary" was not specifically mentioned in the arbitration award. The Borough's failure to pay medical and hospital bills is a violation of its duty to comply with the arbitration award, and therefore, an unfair labor practice.

Order

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

1. That Dunmore Borough is an employer within the meaning of the PLRA and Act 111.

2. That the International Association of Fire Fighters, Local 860 is a labor organization within the meaning of the PLRA and Act 111.

3. That the Board has jurisdiction over the parties hereto.

4. That the Borough has committed unfair labor practices in violation of Sections 6(1)(a)and (e) of the PLRA and Act 111.

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the 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 bargain collectively in good faith with the labor organization which is the exclusive representative of employes in an appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the Act:

(a) Pay Michael Snyder's unpaid medical and hospital bills incurred in connection with the injury of February 26, 2006.

(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 pursuant to 34 Pa. Code 95.98(a) within twenty (20) days of the date hereof, this Decision and Order shall be and become absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twentieth day of March, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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THOMAS P. LEONARD, Hearing Examiner