

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FOP, LODGE NO. 26 :  
 :  
 v. : Case No. PF-C-09-56-W  
 :  
 CITY OF ALIQUIPPA :

**PROPOSED DECISION AND ORDER**

On May 1, 2009 the Fraternal Order of Police, Lodge No. 26 (FOP or Complainant) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Aliquippa (City or Respondent) violated Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111.

On May 18, 2009, the Secretary of the Board issued a complaint and notice of hearing directing the matter to a pre-hearing conciliation for the purpose of seeking resolution of the matters in dispute and setting August 24, 2009 in Pittsburgh as the time and place of hearing if necessary.

Conciliation did not resolve the dispute. In lieu of a hearing the parties chose to submit the matter on written stipulations. On August 19, 2009, the parties submitted a stipulation and statement of the issues.

The examiner, on the basis of the written stipulations and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. That the parties stipulated that the FOP, Lodge 26 is the exclusive representative of the City of Aliquippa's police officers pursuant to Act 111 of 1968, 43 P.S. 217.1 et seq., and the Pennsylvania Labor Relations Act, 43 P.S. 211.1 et seq.

2. That the parties stipulated that the City of Aliquippa, a City of the Third Class, is a municipal corporation and political subdivision of the Commonwealth and the public employer of the Complainant's members within the meaning of Act 111 and the PLRA.

3. That the parties stipulated that the Respondent and the Complainant are parties to a collective bargaining agreement setting forth wages, benefits and other terms and conditions of employment.

4. That the parties stipulated that their collective bargaining agreement contains a provision at Article XV, Section 1.B which states:

"A grievance is defined as a dispute concerning the interpretation, application, or alleged violation of a specific term or provision of this Agreement."

(Article XV, Section 1.B)

5. That the parties stipulated that their collective bargaining agreement contains a provision at Article XXV, Section B.3, that states:

"Whether or not just cause exists for disciplinary action or discharge may be the subject of a grievance. However, no grievance may be processed on any disciplinary or discharge action taken by the Employer if the employee requests a hearing pursuant to the Third Class City Code, the local agency law or otherwise, or initiates legal action pursuant to State or Federal law challenging the Employer's action."

(Article XXV, Section B.3)

6. That the parties stipulated that on March 27, 2009, Complainant's member, John Martin, was provided notice of the City's intent to suspend him without pay for a period of ten days for alleged misconduct.

7. That the parties stipulated that on March 30, 2009, the Complainant filed a grievance contesting the discipline imposed. The parties were unable to resolve the grievance and on April 27, 2009 the Complainant requested a list of arbitrators from the American Arbitration Association pursuant to the parties' Agreement. On April 28, 2009, a list was served on the Complainant and Respondent.

8. That on April 29, 2009, the present Charge was filed for the Respondent's refusal to strike arbitrators from the list.

#### DISCUSSION

The Union's charge of unfair labor practices alleges that the City violated the Pennsylvania Labor Relations Act and Act 111 when it refused to strike arbitrators as part of the process for submitting a grievance to arbitration.

The Union asserts that it is entitled to grieve and arbitrate the disciplinary suspension on behalf of one of its members pursuant to the provisions of the collective bargaining agreement cited in the findings of fact. The collective bargaining agreement clearly provides that the Union has the right to file a grievance over "disciplinary action" There was disciplinary action in the present case, by the Department against officer John Martin, who received a ten day suspension.

The City asserts that the sole and exclusive remedy for an aggrieved employe who has been suspended for ten (10) days or less is an action in assumpsit against a Third Class City employer pursuant to the provisions of Section 4408 of the Third Class City Code, 53 P.S. § 39408, which provides:

§ 39408. Suspension and discharge; reduction of employees; appeals

All employees subject to civil service shall be subject to suspension by the director of the department for misconduct, or violation of any law of this Commonwealth, any ordinance of the city, or regulation of the department, pending action by the city council upon the charges made against any of such employees. On hearing before the city council, where they may be represented by counsel, they may be fined or suspended for a period not exceeding thirty days with our without pay, or they may be discharged by city council, if found guilty of the charges made against them. The director of each such department may, for misconduct or violation as aforesaid, suspend any employee of such department for a period of ten days, with or without pay, without preferring charges and without a hearing of council; but no employee shall be suspended more than one time for the identical or same violation or act of misconduct.

Any civil service employee aggrieved by the action of the council in fining, suspending or discharging him shall have the right to appeal by petition to the court of common pleas within thirty days after the suspension or after the receipt of written notice of such action by council which it shall be the duty of council to give and the court shall hear the charges made against him de novo. The issue before the court shall be whether the action of the council shall be affirmed or be modified in any respect or whether the charges should be dismissed or whether the suspension made by the director shall be affirmed or rescinded. Where any such employe has been suspended and the charges are dismissed or the suspension rescinded on appeal, he shall receive full compensation for the entire period of suspension."

In addition, the City also asserts that the holdings in Appeal of Petrilla, 66 Pa. D.& C. 2d 134 (Luzerne CCP, 1974), Loftus v Carbondale, 175 A.2d 85 (Pa. 1961) and Gray v. McKeesport, 1 A.2d 834 (Pa. Super. 1938) affirm the City's interpretation of 53 P.S. § 39408.

The City's argument in defense of the charge is not persuasive. First, the City's interpretation of the Third Class City Code does not square with a plain reading of the statute. The City argues that the Third Class City Code provides for a court appeal as the exclusive remedy for an employe who is contesting a ten day suspension. However, the

plain language of the Third Class City Code sets forth the court appeal as "a right to appeal" in the event of an unfavorable hearing following the police employee's election of a Council civil service hearing. The statute does not require that there be a civil service hearing, or that, in the event of a court appeal from the civil service hearing, that these be the exclusive remedies for police employees contesting a ten day suspension.

Second, the City's reliance on the Third Class City Code is not appropriate where a collective bargaining agreement provides for the right to file a grievance over discipline, such as in the present case. The cases that the City cites are not relevant to the case at bar because they merely explained the right to appeal an adverse employer decision and did not answer the question of whether there was a right to arbitrate a grievance when the parties have a collective bargaining agreement with a grievance arbitration provision in place.

Furthermore, the City's argument that the present dispute over discipline should proceed to a civil service hearing and then to a court for any appeal is contrary to the holding of our Supreme Court in Township of Sugarloaf v. Bowling, 799 A.2d 913 (Pa. 2000) that an arbitrator and not a court has the jurisdiction to determine whether an issue is arbitrable.

In this case, where the Union filed a request to arbitrate the grievance of the officer's ten day suspension, the City should have proceeded to strike arbitrators and then proceeded to arbitrate the grievance. The City's refusal to proceed to arbitrate the grievance is an unfair labor practice.

#### CONCLUSIONS

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

1. That the City of Aliquippa is an employer within the meaning of the PLRA and Act 111.
2. That the Fraternal Order of Police, Lodge No. 26 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.

#### ORDER

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 employees in the exercise of the rights guaranteed in the PLRA and Act 111.

2. Cease and desist from refusing to bargain collectively with the representatives of its employees, including the processing of grievances;

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

(a) Proceed to strike arbitrators from the American Arbitration Association list for the grievance over John Martin's discipline;

(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 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 thirteenth day of October, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner