COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, LODGE NO. 5	:	
v.	:	Case No. PF-C-08-78-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 June 12, 2008, 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 July 9, 2008, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for August 24, 2008, in Philadelphia, Pennsylvania. After a series of unopposed continuance requests a hearing was held on February 20, 2009 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* evidence 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. 4).

2. The parties stipulated and agreed the City is a political subdivision of the Commonwealth of Pennsylvania. (N.T. 4).

3. The parties stipulated and agreed that Arbitrator Kathrine Hogan, on January 23, 2007, issued an arbitration award pursuant to a grievance filed by the Union on behalf of Officer Anthony Gainer, a discharged employe. That arbitration award ordered, *inter alia*, the City to return Gainer to his position with the police department, make Gainer whole for all lost emoluments of employment, and expunge his employment record. (N.T. 4).

4. On August 3, 2007, the City complied with the award. (N.T. 4-5).

DISCUSSION

It has long been established that the failure to comply with the terms of a grievance arbitration award occurs only after exhaustion of appellate rights and the expiration of a reasonable or expressly provided time period for compliance. Commonwealth of Pennsylvania, 8 PPER ¶ 233 (Nisi Decision and Order, 1977). To determine whether a particular lapse of time is a reasonable period for compliance with an arbitration award, the Board will consider such factors as: 1) The nature and complexity of the compliance required under the award, 2) The length of time before compliance occurred, 3) The employer's ability to comply with the award including legitimate obstacles to compliance, 4) Steps taken by the employer toward compliance and 5) The employer's explanation or lack thereof for the delay. City of Philadelphia, 19 PPER ¶ 19069 at 185 (Final Order, 1988); Commonwealth of Pennsylvania (Department of Community Affairs), 19 PPER ¶ 19165 (Proposed Decision and Order, 1998); Commonwealth of Pennsylvania (Office of Administration), 17 PPER ¶ 17151 (Proposed Decision and Order, 1986).

The arbitration award here was issued on January 3, 2007, yet was not complied with until August 3, 2007. Such a delay is unreasonable, given the simple nature of the award. City of Philadelphia, 27 PPER ¶ 27093 (Proposed Decision and Order, 1996), 27 PPER ¶

27202 (Final Order, 1996)(delay of five months in paying a simple arbitration award is an unfair labor practice)

The City has violated Section(6)(1) (a) and (e) of the PLRA as read with Act 111. By way of remedy, the City is ordered to pay Gainer 6% *per annum* interest from the date of the award until the City's compliance on August 3, 2007.

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, as read with Act 111.

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 employes 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 employes.

3. Take the following affirmative action:

(a) Immediately tender to Gainer 6% *per annum* interest on the arbitration award amount, from the date the award issued to August 3, 2007;

(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 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 twentieth day of August, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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Timothy Tietze, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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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 paid Gainer 6% *per annum* interest on the amount due, from the date the arbitration award was issued to August 3, 2007; 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.

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Signature of Notary Public