

Commonwealth of Pennsylvania  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :  
LODGE NO. 5 :  
 :  
v. : Case No. PF-C-08-130-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 3, 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 October 20, 2008, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for January 6, 2009, in Philadelphia, Pennsylvania. After a series of granted continuance requests the hearing was scheduled and held on July 10, 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 and one joint exhibit. Neither party filed a post-hearing brief.

The Examiner, on the basis of the stipulations and exhibits presented at the hearing and from all other matters and documents of record makes the following:

FINDINGS OF FACT

1. The parties stipulated and agreed the Union is a labor organization. (N.T. 4-6).
2. The parties stipulated and agreed the City is a political subdivision of the Commonwealth of Pennsylvania. (N.T. 4-6).
3. The parties stipulated and agreed that Arbitrator Stanley Aiges, on August 27, 2008, issued an arbitration award pursuant to a grievance filed by the Union on behalf of Officer Gary Averbukh, a terminated employe. That arbitration award ordered the City to reinstate Averbukh "promptly" without back pay, but with vacation, holiday and sick pay "as though he had been continuously employed." (N.T. 4-6).<sup>1</sup>
4. The City did not reinstate Averbukh until October 14, 2008. (N.T. 4; Joint Exhibit 1).
5. On March 6, 2009, the arbitrator issued a clarification of his original award, in which he set August 24, 2008, as the latest date the City could have reinstated Averbukh and still complied with the original arbitration award. (N.T. 5; Joint Exhibit 1).

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).

<sup>1</sup> To be more precise, Aiges issued a bench decision at the arbitration hearing on August 5, 2008, ordering Averbukh reinstated "promptly." Then, on August 11, 2008, Aiges issued a brief decision confirming the bench decision. An amended award was issued on August 27, 2008, because of an omission in the August 11 decision. (Joint Exhibit 1).

The arbitration bench decision here was made on August 5, 2008, and the City did not comply until October 14, 2008. Such a delay is unreasonable, given the simplicity 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 make Averbukh whole for all emoluments of employment from August 25, 2008, to November 14, 2008, including 6% *per annum* interest on that amount from August 25, 2008 to when Averbukh 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, 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 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 make Averbukh whole for all emoluments of employment from August 25, 2008, to November 14, 2008, including 6% *per annum* interest from August 25, 2008 to when Averbukh is actually paid;
  - (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 eighth day of July, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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Timothy Tietze, Hearing Examiner

