COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, LODGE NO. 5	:	
v.	:	Case No. PF-C-09-75-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 8, 2009, 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 14, 2009, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for August 14, 2009, in Philadelphia, Pennsylvania. A series of granted continuance requests moved the hearing to November 13, 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. 5).

2. The parties stipulated and agreed the City is a political subdivision of the Commonwealth of Pennsylvania. (N.T. 5).

3. The parties stipulated and agreed that a grievance filed by the Union on behalf of Officer Tamika Rowland was resolved by a written settlement agreement signed, *inter alia*, by the Union on May 22, 2009. The settlement agreement called for the City to reduce Rowland's twenty-four-day suspension to a twelve-day suspension, and to make her "whole whole for any losses incurred as a result of this adjustment." (N.T. 5).

4. On October 30, 2009, the City complied with the agreement. (N.T. 5).

DISCUSSION

As a general matter, an employer's refusal to comply with a grievance settlement at a lower stage in the grievance procedure is an unfair practice. Moshannon Valley School District v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991); Zelienople Borough, 27 PPER ¶ 27024 (Final Order, 1995); New Eagle Borough, 25 PPER ¶ 25026 (Proposed Decision and Order, 1994). Eventual compliance, determined to be untimely, also violates the PLRA. FOP Lodge No. 5 v. City of Philadelphia, 38 PPER 72 (Proposed Decision and Order, 2007).

The criteria developed by the Board to determine whether an employer has timely complied with a grievance arbitration award are equally applicable to the determination of whether an employer has timely complied with a settlement agreement. To determine timeliness the Board will consider such factors as, 1) the nature and complexity of the compliance required under the agreement, 2) the length of time before compliance occurred, 3) the employer's ability to comply with the agreement including legitimate obstacles to compliance, 4) the 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 settlement agreement was signed on May 22, 2009, and was not complied with until October 30, 2009. 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 Rowland 6% *per annum* interest from the date of the agreement to October 30, 2009.

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 Rowland 6% *per annum* interest on the amount described in the settlement agreement from May 22, 2009, to October 30, 2009;

(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 thirtieth day of September, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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Timothy Tietze, Hearing Examiner

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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 Rowland 6% *per annum* interest on the amount of the settlement agreement from May 22, 2009, to November 30, 2009; 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