

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :  
LODGE No. 5 :  
v. : Case No. PF-C-10-16-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 February 8, 2010, 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 when it allegedly refused to comply with a grievance settlement.

On February 24, 2010, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for May 14, 2010, in Philadelphia, Pennsylvania, at which time all parties in interest were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence. The parties elected to enter into a series of factual stipulations in lieu of *viva voce* evidence. 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

1. The Union is a labor organization within the meaning of Section 3(f) of the PLRA and Act 111.
2. The City is a political subdivision of the Commonwealth of Pennsylvania and an employer within the meaning of Section 3(c) of the PLRA and Act 111.
3. The parties stipulated and agreed that on January 15, 2010, they entered into a settlement agreement pursuant to a grievance filed by the Union under the collective bargaining agreement, on behalf of Officer Linda Marter-Burns, a suspended bargaining unit member. That agreement called for the City, *inter alia*, to reduce her ten-day suspension to a five-day suspension and make her "whole for the five-day suspension within sixty days of the execution of this Agreement." (N.T. 4).
4. The parties stipulated and agreed that the City has not complied with the settlement agreement as of May 14, 2010. (N.T. 3-4).

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). Here the City admits, some five months after the agreement was signed, it still has not complied with its terms, even though it expressly promised to pay Marter-Burns within sixty days of the agreement's signing. Even when taking into consideration the few, simple calculations necessary for the City to compute the appropriate dollar amount due Marter-Burns, five months is simply too long. The City has violated Section 6(1)(a) and (e) of the PLRA as read with Act 111.

The condign remedy shall be for the City immediately to pay Marter-Burns the amounts due under the parties' settlement agreement. The City shall also pay 6% *per annum* interest on the outstanding amount from January 15, 2010, to the date of payment.

Moreover, the City is ordered, to the extent it has not done so, to comply with the remaining tenets of the settlement agreement immediately.

#### CONCLUSIONS

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

1. That the City is an employer within the meaning of Section 3(c) of the PLRA.
2. That the Union is a labor organization within the meaning of Section 3(f) of the PLRA.
3. That the Board has jurisdiction over the parties hereto.
4. That the City has committed unfair labor practices in violation 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 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 bargain collectively with the representative of its employees.
3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:
  - (a) Immediately pay Marter-Burns the applicable amount due under the parties' settlement agreement, plus interest of 6% *per annum* from January 15, 2010, until the amount is paid and to comply with all other tenets of the settlement agreement not fulfilled;
  - (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 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 fifth day of October 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 PLRA and Act 111; that it has paid Marter-Burns the applicable amount due under the parties' settlement agreement, plus 6% *per annum* interest from January 15, 2010, until the amount is paid; that it has complied with all other requirements of that settlement agreement; that it has posted the proposed decision and order as directed therein; and that it has served a copy of the affidavit on the Union at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED to before me  
The day and year first aforesaid

\_\_\_\_\_  
Signature of Notary Public