

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FOP LOCAL 19 :  
 : Case Nos. PF-C-18-111-E  
 v. : PF-C-19-66-E  
 : PF-C-21-3-E  
 : PF-C-21-22-E  
 CITY OF CHESTER : PF-C-21-62-E

**PROPOSED DECISION AND ORDER**

On October 15, 2018, the Fraternal Order of Police Lodge 19 (FOP or Union) filed a charge of unfair labor practices, as amended on November 9, 2018, with the Pennsylvania Labor Relations Board (Board) against the City of Chester (City or Employer), alleging that the City violated Section 6(1) (a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by failing to comply with a September 14, 2018 grievance settlement agreement, which resolved a number of outstanding grievances. The charge was docketed at PF-C-18-111-E.<sup>1</sup> On December 18, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing in PF-C-18-111-E, assigning the charge to conciliation, and directing a hearing.

On November 25, 2019, the FOP filed a second charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1) (a) and (e) of the PLRA, as read with Act 111, by failing to comply with an October 18, 2019 grievance settlement agreement relative to compensation for court time appearances. The charge was docketed at PF-C-19-66-E. On December 16, 2019, the Secretary issued a Complaint and Notice of Hearing in PF-C-19-66-E, assigning the charge to conciliation, and directing a hearing.

On January 13, 2021, the FOP filed a third charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1) (a) and (e) of the PLRA, as read with Act 111, by failing to comply with an August 25, 2020 grievance settlement agreement related to contractual educational benefit payments. The charge was docketed at PF-C-21-3-E. On February 9, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing in PF-C-21-3-E, assigning the charge to conciliation, and directing a hearing.

On March 31, 2021, the FOP filed a fourth charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1) (a) and (e) of the PLRA, as read with Act 111, by failing to comply with a February 18, 2021 grievance settlement agreement, which granted

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<sup>1</sup> The FOP filed a second amended charge on January 7, 2020, alleging that the City violated Section 6(1) (a) and (e) of the PLRA, as read with Act 111, by failing to comply with a November 26, 2019 grievance settlement agreement. The Board deemed the January 7, 2020 filing as an amendment to the charge filed at PF-C-18-111-E because both the September 2018 and November 2019 grievance settlement agreements related predominantly to the payment of overtime wages. However, the Board initially docketed the January 7, 2020 filing as PF-C-18-11-E, which was a typographical error and which has since been corrected to PF-C-18-111-E.

the FOP viewing privileges only to the "PlanIt" scheduling system.<sup>2</sup> The charge was docketed at PF-C-21-22-E. On April 28, 2021, the Secretary issued a Complaint and Notice of Hearing in PF-C-21-22-E, assigning the charge to conciliation, and directing a hearing.

On July 1, 2021, the FOP filed a fifth charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1)(a) and (e) of the PLRA, as read with Act 111, by failing to comply with a number of grievance settlement agreements dated May 26, 2021. The charge was docketed at PF-C-21-62-E. On July 30, 2021, the Secretary issued a Complaint and Notice of Hearing in PF-C-21-62-E, assigning the charge to conciliation, and directing a hearing.<sup>3</sup>

The hearings were continued multiple times until the charges were eventually consolidated and continued indefinitely on August 10, 2022, at the request of both parties.

On November 4, 2022, the consolidated charges were scheduled for hearing on February 6, 2023, at the FOP's request. On November 16, 2022, the City filed a "Suggestion of Bankruptcy" with the Board, indicating that the City had filed a voluntary petition for relief under Chapter 9 of title 11 of the United States Code (Bankruptcy Code) in the United States Bankruptcy Court for the Eastern District of Pennsylvania. The City averred that, pursuant to Section 362(a) of the Bankruptcy Code, the filing of the voluntary petition in the Chapter 9 case operates as a stay of the commencement or continuation of any and all judicial, administrative, or other actions or proceedings against the City that were or could have been commenced before the petition date to recover any claims against the City that arose before the petition date, as well as the enforcement of a judgment obtained against the City before the petition date. On November 17, 2022, the FOP filed a response opposing the City's motion for an automatic stay.

During a November 18, 2022 prehearing conference, the parties were directed to file briefs in support of their respective positions regarding the bankruptcy averments by December 12, 2022. On December 9, 2022, the briefing schedule was extended to January 6, 2023, at the request of the parties. The Board received the parties' briefs in support of their respective positions regarding the bankruptcy averments on January 6, 2023. On January 30, 2023, I issued an Order Denying the City's Motion for Automatic Stay, concluding that the City's bankruptcy filing did not operate as an automatic stay of the Board's proceedings and directing that the hearing scheduled for February 6, 2023 remain on the docket. The Order Denying the City's Motion for Automatic Stay was deemed interlocutory pursuant to the Board's regulations.

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<sup>2</sup> The FOP alleged a number of other violations of grievance settlement agreements by the City in its charge. However, the FOP indicated in its prehearing filings that these remaining allegations have since been complied with and resolved. See FOP brief opposing automatic stay at p. 6-7.

<sup>3</sup> The charge docketed at PF-C-21-62-E was originally assigned to Hearing Examiner Jack Marino, but was subsequently reassigned to the undersigned hearing examiner following a request for consolidation by the parties. The FOP has since withdrawn all allegations contained in the charge docketed at PF-C-21-62-E in its prehearing filings. See FOP brief opposing motion for automatic stay at p. 6-7.

The parties subsequently agreed to proceed by way of joint stipulations of fact in lieu of appearing before the Board for an evidentiary hearing on the consolidated charges. The Board received the duly executed joint stipulations of fact on February 3, 2023. The parties also each filed post-hearing briefs in support of their respective positions on March 6, 2023.

The Hearing Examiner, on the basis of all matters and documents of record, makes the following:

#### FINDINGS OF FACT

1. The City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (Joint Exhibit 5)<sup>4</sup>

2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA. (Joint Exhibit 5)

3. The FOP is the exclusive bargaining representative for a unit of police employees working at the City. (Joint Exhibit 5)

4. The FOP and the City are parties to a collective bargaining agreement (CBA) that expired on December 31, 2021, but continues in effect under the status quo pursuant to law. (Joint Exhibit 5)

5. On September 14, 2018 and November 26, 2019, the FOP and the City agreed to resolve several outstanding grievances filed between 2016 and 2018 related to unpaid overtime compensation and education benefits. (Joint Exhibit 5)

6. On October 15, 2018, the FOP filed a charge of unfair labor practices docketed at PF-C-18-111-E, as amended on January 7, 2020, alleging that the City failed to meet its obligations under the September 14, 2018 and November 26, 2019 grievance settlement agreements, respectively. (Joint Exhibit 5)

7. To date, the City has complied with the grievance settlement agreements at issue in PF-C-18-111-E except for the settlements of Grievances 2018-20, 2018-53, and 2018-54. All three of these grievances involved overtime issues with Officer Jackson; in total the settlements for all three involved the payment of 20 hours of overtime pay to be paid at the overtime rate. To date, the City has not paid these settlements. (Joint Exhibit 1, 5)

8. On October 18, 2019, the FOP and the City agreed to resolve a grievance related to payment of Court Time for officers as Premium Time. (Joint Exhibit 2, 5)

9. On November 25, 2019, the FOP filed a charge of unfair labor practices docketed at PF-C-19-66-E alleging that the City has failed to properly compensate employees for court appearances from the date of the settlement agreement through the date of the charge filed on November 25, 2019. (Joint Exhibit 5)

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<sup>4</sup> The Joint Stipulation of Facts has been marked as Joint Exhibit 5. The parties also attached four other exhibits to the joint stipulations, which have marked as Joint Exhibits 1 through 4, respectively.

10. While the City has complied with the prospective terms of this agreement, it has not made employees whole for court appearances at issue prior to the settlement. (Joint Exhibit 5)

11. On August 25, 2020, the FOP and the City agreed to resolve a grievance related to the nonpayment of education benefits to several officers for years 2017, 2018, 2019, and 2020. Under the agreement, the City was required to make the affected officers whole by December 31, 2020. (Joint Exhibit 3, 5)

12. On January 13, 2021, the FOP filed a charge of unfair labor practices docketed at PF-C-21-3-E alleging that "[a]s of January 1, 2021, the City has made none of the promised payments." (Joint Exhibit 5)

13. To date, the City has not complied with the settlement agreement dated August 25, 2020 as it relates to the payment of educational benefits owed to officers in 2017, 2018, 2019, and 2020. (Joint Exhibit 5)

14. On February 18, 2021, the FOP and the City agreed to settle grievance 2021-007 related to the City granting a member of the FOP viewing privileges of the "Plan It" scheduling system for the purpose of reviewing information pertaining to potential grievance matters. (Joint Exhibit 4, 5)

15. On March 31, 2021, the FOP filed a charge of unfair labor practices docketed at PF-C-21-22-E alleging that the City failed to comply with the February 18, 2021 settlement of grievance 2021-007. (Joint Exhibit 5)

16. To date, the City has not complied with the settlement; however, it continues to work with the FOP to designate and grant a member of the FOP's executive board viewing only access to the "Plan It" scheduling system. (Joint Exhibit 5)

17. On November 10, 2022, the City filed for bankruptcy pursuant to Chapter 9. (Joint Exhibit 5)

#### DISCUSSION

The FOP argues that the City violated Section 6(1)(a) and (e) of the PLRA<sup>5</sup> and Act 111 by refusing to comply with the various grievance settlement agreements between the parties dated October 18, 2019, November 26, 2019, August 25, 2020, and February 18, 2021. The City, on the other hand, defends the multiple charges on the grounds of an alleged inability to pay due to its status as a financially distressed municipality and subsequent bankruptcy proceedings.

Where a grievance has been resolved through a settlement, a public employer violates its duty to bargain when it refuses to comply with the grievance settlement agreement. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Rockview SCI, 47 PPER 43 (Final Order, 2015). Where there is a settlement

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<sup>5</sup> Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act...(e) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section seven (a) of this act." 43 P.S. § 211.6.

agreement, the Board will determine (1) if a meeting of the minds on the settlement actually exists; (2) whether the parties' intent is apparent from the settlement agreement; and (3) whether the party has failed to comply with the agreement's provisions. AFSCME District Council 47 Local 2187 v. City of Philadelphia, 36 PPER 124 (Final Order, 2005). The burden is on the complainant to establish by substantial evidence that the respondent has failed or refused to comply with the terms of the settlement agreement. Rockview SCI, *supra*.

In this case, the FOP has sustained its burden of proving that the City failed to comply with the various grievance settlement agreements at issue. First of all, the City does not dispute that a meeting of the minds on each of the settlements exists, that the parties' intent is apparent from the various settlement agreements, and that the City failed to comply with the provisions of the various agreements. In fact, the City has stipulated that it has not complied with the various agreements, including the October 18, 2019 settlement agreement regarding the payment of court time as premium time, to the extent the City has not made employees whole for court appearances at issue prior to the settlement.<sup>6</sup> Likewise, the City stipulated that it failed to comply with the November 26, 2019 settlement agreement regarding the payment of 20 hours of overtime pay to Officer Jackson. Similarly, the City stipulated that it failed to comply with the August 25, 2020 settlement agreement regarding the nonpayment of education benefits to several officers in 2017, 2018, 2019, and 2020. Further, the City stipulated that it failed to comply with the February 18, 2021 settlement agreement related to the City granting a member of the FOP viewing privileges of the "Plan It" scheduling system for purposes of reviewing information pertaining to potential grievance matters.

While the City does not dispute that it failed to comply with all four grievance settlement agreements at issue, the City nevertheless maintains that it was somehow excused from its obligation to comply therewith based on an alleged inability to pay. To that end, the City points to its alleged status as a financially distressed municipality, along with its recent bankruptcy filing, as support for such a proposition.

In Teamsters Local Union 205 v. City of McKeesport, 17 PPER ¶ 17041 (Final Order, 1986), the Board opined as follows:

The contractual defense of impossibility of performance was addressed by the Pennsylvania Supreme Court in International Brotherhood of Firemen and Oilers, Local 1201 v. Board of Education of School District of Philadelphia, 500 Pa. 474, 457 A.2d 1269 (1983) (Firemen and Oilers). Therein, the parties' contract called for wage and benefit increases for bargaining unit members. However, the School District lacked sufficient funding. In an effort to balance the budget, as required by law, the School District refused to pay the bargained-for wage and benefit increases.

Following a union grievance, the arbitrator, who recognized that proven impossibility of performance may excuse performance, found

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<sup>6</sup> As set forth in the Findings of Fact above, the parties stipulated that the City has complied with the prospective terms of the October 18, 2019 agreement only. However, the City does not contend that the settlement agreement only requires the City's compliance on a prospective basis only.

that the School District failed to demonstrate that it could not pay the wage and benefit increases out of existing revenues. Therefore, the arbitrator ordered payment. On appeal, [the] Commonwealth Court held that the arbitrator wrongly imposed the burden of proof on the School District to show impossibility. [The] Commonwealth Court remanded the case to the arbitrator so that the union might be given the opportunity to establish the occurrence of condition precedent, i.e. sufficient funding. In reversing the Commonwealth Court, the Supreme Court relied on its holding, in Moore v. Whitty, 299 Pa. 58, 149 A. 83 (1930), that a party wishing "to be excused from performance on the basis of a subsequently occurring condition has a duty to so provide in the contract and will not be excused otherwise if performance is lawful and possible in itself." 457 A.2d at 1271. The Court determined that in Firemen and Oilers the arbitrator had properly placed the burden of proving impossibility on the District, rather than requiring the union to establish the condition precedent. The Court stated that regardless of the School District's home rule charter status:

The District was required to establish impossibility of performance and failed to do so in the absence of a showing that it attempted performance by all possible means. Furthermore, there is nothing in the agreement stating that a balanced budget or any particular level of funding is a condition precedent to the payment of the agreed on salary increase. We find that the District had a duty to make such a provision in the agreement if it wished to be excused. 457 A.2d at 1271.

In the instant matter, the City likewise failed to establish impossibility of performance by showing that it attempted performance by all possible means. There is simply no support for such a conclusion in the joint stipulations. Indeed, the stipulations show that the City was actually able to comply with a number of the settlement agreements, which are no longer at issue. In addition, the record is devoid of any language in the settlement agreements that a balanced budget or some other sufficient level of funding was a condition precedent to the payments of overtime and premium wages or education benefits called for in the agreements. What is more, the February 18, 2021 settlement agreement does not even provide for the payment of any funds, but rather that the City grant an FOP member viewing privileges for the "Plan It" scheduling system. As a result, the City's inability to pay or impossibility of performance defense must be rejected.

Nor is it a defense to any of the charges that the City is allegedly classified as a financially distressed municipality. Section 252(a) of the Municipalities Financial Recovery Act (Act 47) provides that "...[a] collective bargaining agreement or arbitration settlement executed after the adoption of a recovery plan shall not in any manner violate, expand or diminish its provisions." 53 P.S. § 11701.252.

Here, there is no evidence that the City has been designated a financially distressed municipality under Act 47, much less that the City adopted a recovery plan under Act 47 prior to the execution of the settlement agreements or that the settlement agreements somehow violate, expand or diminish the provisions of the alleged plan. As such, the City's alleged status as a financially distressed municipality under Act 47 does not relieve the City from its bargaining obligation to comply with the grievance

settlement agreements. Accordingly, it must be concluded that the City has violated Section 6(1)(a) and (e) of the PLRA and Act 111 by failing to comply with the agreements.

#### CONCLUSIONS

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

1. The City is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.

2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA.

3. The Board has jurisdiction over the parties hereto.

4. The City has committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA.

#### 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 employes in the exercise of the rights guaranteed in the PLRA and Act 111;

2. Cease and desist from refusing to bargain with the representatives of its employes;

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately comply with the October 18, 2019, November 26, 2019, and August 25, 2020 grievance settlement agreements by tendering full backpay to Officer Jackson for 20 hours of lost overtime wages, as well as the make-whole payments to various employes for premium time wages and education benefits due, together with six (6%) percent per annum interest, along with all other benefits or emoluments of employment those employes were entitled to pursuant to the settlement agreements, including but not limited to any out of pocket medical expenses and pension contributions;

(b) Immediately comply with the February 18, 2021 grievance settlement agreement by granting a member of the FOP viewing privileges of the "Plan It" scheduling system for the purpose of reviewing information pertaining to potential grievance matters;

(c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(d) 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; and

(e) Serve a copy of the attached Affidavit of Compliance upon the Union.

**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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 25<sup>th</sup> day of April, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak  
John Pozniak, Hearing Examiner



COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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**AFFIDAVIT OF COMPLIANCE**

The City hereby certifies that it has ceased and desisted from its violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act; that it has immediately complied with the October 18, 2019, November 26, 2019, and August 25, 2020 grievance settlement agreements by tendering full backpay to Officer Jackson for 20 hours of lost overtime wages, as well as the make-whole payments to various employes for premium time wages and education benefits due, together with six (6%) percent per annum interest, along with all other benefits or emoluments of employment those employes were entitled to pursuant to the settlement agreements, including but not limited to any out of pocket medical expenses and pension contributions; that it has immediately complied with the February 18, 2021 grievance settlement agreement by granting a member of the FOP viewing privileges of the "Plan It" scheduling system for the purpose of reviewing information pertaining to potential grievance matters; 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 Union 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