

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, FORT :  
PITT LODGE NO. 1, :  
 :  
 v. : Case No. PF-C-23-18-W  
 :  
CITY OF PITTSBURGH :

**FINAL ORDER**

The City of Pittsburgh (City) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on January 24, 2024, challenging a Proposed Decision and Order (PDO) issued on January 4, 2024.<sup>1</sup> In the PDO, the Board's Hearing Examiner concluded that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read in *pari materia* with Act 111, by failing to implement an arbitration award requiring the continuation of healthcare for surviving spouses of retired bargaining unit officers. Pursuant to an extension of time granted by the Secretary, the City filed a supporting brief on March 22, 2024. The Fraternal Order of Police, Fort Pitt Lodge No. 1 (Union) filed a response to the exceptions on January 31, 2024, and a brief in opposition to the exceptions on March 28, 2024.

The salient facts of this case are summarized as follows. The City and the Union were signatories to a collective bargaining agreement (CBA), effective January 1, 2019, through December 31, 2022. (FF 3). On March 15, 2022, Arbitrator Christopher Miles issued an award (Miles Award) over a dispute between the parties concerning healthcare coverage for surviving spouses of retired bargaining unit officers. The Miles Award provides, in pertinent part, as follows:

The class action grievance filed in this matter is sustained. Based upon the particular circumstances presented in this case, it is found that the City violated the clear and unambiguous provisions of Section 14 of the Agreement when it discontinued the healthcare coverage for the surviving spouses upon the death of the retiree. Section 14 requires the City to contribute towards the continued medical insurance coverage for a Police Officer retiree and his/her spouse. As a remedy for this violation, the City is directed to make restitution to the adversely affected survivors who are not otherwise excluded from coverage.

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<sup>1</sup> Although the City's exceptions were received by the Board by email after the close of business on January 24, 2024, the exceptions are deemed timely under Section 95.98 of the Board's Rules and Regulations. 34 Pa Code 95.98; 34 Pa. Code § 95.42 ("[w]hen ... an order of the Board requires the filing of ... exception[s] ... the document shall be received by the Board ... before the close of business of the last day of the time limit, if any, for the filing. Exceptions to this requirement will be at the discretion of the Board"); 34 Pa. Code § 91.5 (Board's Rules and Regulations "are to be liberally construed").

(FF 4).

Thereafter, on April 18, 2022, the City filed an appeal of the Miles Award to the Allegheny County Court of Common Pleas, which was denied on August 30, 2022. (FF 5, 6). On September 29, 2022, the City filed an appeal to the Commonwealth Court, as well as an Emergency Application for Stay in the trial court. (FF 7).<sup>2</sup> Judge Hertzberg, of the Allegheny County Court of Common Pleas, dismissed the Application for Stay on October 3, 2022, and directed the City to comply with the Miles Award. (FF 8).<sup>3</sup>

On January 22, 2023, retired City of Pittsburgh Police Officer Michael Mares, Sr., passed away. On January 23, 2023, the City informed Officer Mares' surviving spouse that her healthcare coverage would end on January 31, 2023. (FF 14). The City does not notify the Union when it cancels a surviving spouse's medical benefits. (FF 15).

On March 1, 2023, the Union filed a Charge of Unfair Labor Practices with the Board, alleging that the City violated Section 6(1)(a) and (e) of the PLRA by failing to abide by the Miles Award which prohibited the City's unilateral elimination of healthcare coverage for the surviving spouse of a retired bargaining unit officer. On May 10, 2023, the Secretary issued a Complaint and Notice of Hearing, assigning this matter to a Hearing Examiner. A hearing was held before the Hearing Examiner on July 21, 2023, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

On January 4, 2024, the Hearing Examiner issued a PDO, concluding that the City's refusal to abide by the Miles Award was a violation of its obligation to bargain in good faith pursuant to Section 6(1)(a) and (e) of the PLRA. In particular, the Hearing Examiner found that the Miles Award was final, and binding, once affirmed by the Allegheny County Court of Common Pleas on August 30, 2022. Further, the Hearing Examiner held that the Union's charge was timely because it was filed within six weeks of learning that the City discontinued the healthcare coverage of the surviving spouse of retired Officer Mares. Finally, the Hearing Examiner held that the Union had sustained its evidentiary burden of proving that the City did not comply with the Miles Award.

The City does not challenge any of the Hearing Examiner's findings of fact in its exceptions. Therefore, the Hearing Examiner's findings of fact are conclusive. FOP Lodge #5 v. City of Philadelphia, 34 PPER 22 n.3 (Final Order, 2003). The City also does not except to the Hearing Examiner's conclusion that the Miles Award was final and binding and that the City

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<sup>2</sup> On March 29, 2023, the City filed an Application for Stay of Trial Court Order Affirming Arbitration Award with the Commonwealth Court, which was denied on June 7, 2023. (FF 9, 10). On July 7, 2023, the City filed with the Pennsylvania Supreme Court an Application for Stay of Trial Court Order Affirming Arbitration Award. (FF 11). The Pennsylvania Supreme Court denied the City's Application for Stay on November 27, 2023. (FF 13).

<sup>3</sup> On November 6, 2023, by Opinion and Order, the Commonwealth Court affirmed the August 30, 2022, Order of the Allegheny County Court of Common Pleas, which denied the City's appeal of the Miles Award. (FF 12).

failed to comply with the Award when it discontinued healthcare coverage for the surviving spouse of retired Officer Mares. 34 Pa. Code § 95.98(a)(3) (“[a]n exception not specifically raised shall be waived”).

Rather, the sole basis of the City’s exceptions is that the Charge filed by the Union in this matter is untimely.<sup>4</sup> Section 9(e) of the PLRA provides that “[n]o ... charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the ... charge.” 43 P.S. § 211.9(e). A charge will be considered timely if it is filed within six weeks of when the charging party knew or should have known that an unfair labor practice was committed. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 39 PPER 100 (Final Order, 2008); Mount Joy Township Police Association v. Mount Joy Township, 29 PPER ¶ 29184 (Proposed Decision and Order, 1998). The nature of the unfair labor practice claim alleged frames the limitations period for that cause of action. Officer of Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001).

The City claims that the Union was required to file its Charge within six weeks of August 30, 2022, when the Miles Award was affirmed by the Allegheny Court of Common Pleas and became enforceable. The City further asserts that, at a minimum, the Union knew or should have known that the City was not complying with the Miles Award on September 29, 2022, when it filed its appeal of the Allegheny County Court of Common Pleas decision affirming the Award. Thus, the City contends that, pursuant to Section 9(e) of the PLRA, the Board did not have jurisdiction to entertain the instant Charge because it was not timely filed within the six-week statute of limitations.

Here, the unfair labor practice alleged in the Union’s Charge was the City’s repudiation of the Miles Award on January 23, 2023, when the City informed the surviving spouse of Officer Mares that her healthcare benefits would cease effective at the end of the month. Contrary to the City’s assertion, the Union was not required to file its Charge when the Miles Award was affirmed by the Allegheny Court of Common Pleas or when the City filed its appeal of the Court of Common Pleas decision. Rather, the Union was required to file its Charge when it became aware of the alleged unfair labor practice, *i.e.*, the City’s repudiation of the Miles Award by failing to continue healthcare benefits to surviving spouses of retired officers after their death. See, Upper Gwynedd Township, *supra*. In that respect, the Hearing Examiner found that the City does not notify the Union when it cancels a surviving spouse’s medical benefits and that “the Union had knowledge that the City was not complying with the Miles Award on January 23, 2023, when the City told Michael Mares, Jr., that his mother’s healthcare coverage would be canceled on January 31, 2023.” (PDO at 4).

The City’s brief cites to Shamokin Police Officers’ Association v. City of Shamokin, 49 PPER 6 (2017), where the Board *sua sponte* raised the issue of timeliness, for the proposition that “a Union cannot revive a defunct cause of action by claiming a continuing obligation where the employer has already taken action constituting an unfair practice.” (City’s Brief at 3). However, unlike the facts here, the union in that case filed its charge well past the

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<sup>4</sup> In its brief in support of exceptions, the City withdrew its exceptions concerning the Hearing Examiner’s decision that it violated Section 6(1)(a) and (e) of the PLRA by failing to comply with the Miles Award.

six-week statute of limitations after the employer's alleged unilateral change of a retiree's benefits. Whereas here, the Union timely filed its charge within six weeks of the City's failure to comply with the Miles' Award by cancelling the insurance of the surviving spouse of Officer. Thus, the Union's Charge filed on March 1, 2023, was filed within six weeks of January 23, 2023, when the Union became aware of the City's decision to cease providing benefits to the surviving spouse of Officer Mares as required under the Miles Award.

At the heart of the City's exceptions is its claim that the inferences made by the Hearing Examiner as to when the Union knew or should have known that the City was not complying with the Miles Award were not reasonable. However, the City does not point to any actual fact of record to support this claim. Rather, the City points only to its own repeated attempts to obtain a stay of the Award as "evidence" that the Union should have been on notice that the City was not complying with the Award. Not only has the City failed to cite to any legal authority that appellate litigation of an arbitration award, without more, amounts to the type of legal notice required by Section 9(e) of the PLRA, it has failed to present any compelling reasons to overturn the Hearing Examiner's credibility determinations and inferences. E.B. Jermyn Lodge No. 2 of the FOP v. City of Scranton, 38 PPER 104 (Final Order, 2007). Therefore, the Hearing Examiner properly found that the Union's Charge was timely, and the City's exceptions concerning timeliness are dismissed.

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Hearing Examiner properly concluded that the City violated Section 6(1)(a) and (e) of the PLRA, as read in *pari materia* with Act 111, when it refused to abide by the Miles Award, which directed it to continue to provide healthcare coverage to the surviving spouses of retired City police officers. Accordingly, the Board shall dismiss the City's exceptions and make the Proposed Decision and Order final.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by the City of Pittsburgh are dismissed, and the January 4, 2024, Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this twentieth day of August, 2024. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE,  
FORT PITT LODGE NO. 1

v.

CITY OF PITTSBURGH

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Case No. PF-C-23-18-W

**AFFIDAVIT OF COMPLIANCE**

The City of Pittsburgh hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act; that it has complied with the Proposed Decision and Order and Final Order, as directed herein by immediately restoring the healthcare coverage of the surviving spouses of retired officers, restoring the status quo ante, and making all surviving spouses whole pursuant to the Miles Award with six percent per annum interest; that it has posted a copy of the Proposed Decision and Order and Final Order; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

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Signature/Date

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Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public