

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NEWSPAPER GUILD OF GREATER
PHILADELPHIA, LOCAL 10
1329 Buttonwood Street
Philadelphia, Pennsylvania 19137

Plaintiff,

v.

PHILADELPHIA NEWSPAPERS, LLC
400 North Broad Street
Philadelphia, Pennsylvania 19130

Defendant.

Civil Action No.

COMPLAINT

1. This Complaint is an action to confirm and enforce a labor arbitration award under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. § 185.

JURISDICTION AND VENUE

- 2. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 185.
- 3. Venue is proper in this judicial district as both parties reside and conduct their business here, and the dispute arose here. This Court is the proper venue pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. The Plaintiff, Newspaper Guild of Greater Philadelphia, Local 10, AFL-CIO (“Guild”), is a labor organization within the meaning of Section 152(5) of the National Labor

Relations Act (“NLRA”), 29 U.S.C. § 152(5), and maintains an office and does business at 1329 Buttonwood Street in Philadelphia, Pennsylvania.

5. The Defendant, Philadelphia Newspapers, LLC. (“Philadelphia Newspapers”), is an employer within the meaning of Section 152(2) of the NLRA, 29 U.S.C. § 152(2), and maintains offices and does business at 400 North Broad Street in Philadelphia, Pennsylvania.

BACKGROUND

6. The Guild and Philadelphia Newspapers are, and have been at all material times to this action, parties to a collective bargaining agreement (“Agreement”) which establishes the wages, hours and terms and conditions of employment for a bargaining unit of employees employed by Philadelphia Newspapers and represented by the Guild.

7. Article 26, Section 26.1 of the Agreement provides, that employees can only be discharged for “good and reasonable cause.” The applicable Article and Section of the Agreement is attached hereto as Exhibit A.

8. Stephen A. Smith was employed as a General Sports Columnist with the Philadelphia Inquirer. He was terminated by Philadelphia Newspapers on January 25, 2008.

9. The Guild filed a grievance pursuant to the grievance-arbitration procedure in the Agreement, alleging that Philadelphia Newspapers had violated Article 26, Section 26.1 of the Agreement.

10. The parties were unable to resolve the grievance, and it was referred for arbitration to Arbitrator Richard R. Kasher, Esquire, pursuant to the Agreement. The grievance-arbitration procedure of the Agreement is attached hereto as Exhibit B.

11. Hearings were held before Arbitrator Kasher on April 24, and May 14, 2009. After the presentation of testimony and the submission of briefs Arbitrator Kasher issued his

decision and Interim Award on August 31, 2009, setting aside the discharge. The Interim Award provided:

The grievance is sustained in accordance with the above findings. The parties are directed to meet and discuss the appropriate remedy in this case. In the event they are unable to reach an accord within 60 days, this arbitrator has retained jurisdiction and will fashion the appropriate remedy.

A copy of the Opinion and Award are attached hereto as Exhibit C.

12. In accordance with the Arbitrator's direction, the parties met to discuss the "appropriate remedy" in this case. Their efforts in that regard were unsuccessful. As a result, both parties requested that the Arbitrator intercede. On October 7, 2009, Arbitrator Kasher issued a Second Interim Award that provided:

[I]f at this time, either those representing Mr. Smith or those representing the Employer believe that further efforts to agree upon a remedy for the violation of the collective bargaining agreement have reached impasse status, then I will be prepared to issue an award expeditiously. If either party determines that there is an impasse... then I will direct each party to present me with a one paragraph proposed award. I may decide to accept one of those proposed awards, however, I will retain the authority to fashion an award that I believe will be just and proper.

A true and correct copy of Arbitrator Kasher's October 7, 2009 Second Interim Award is attached as Exhibit D.

13. The Guild informed the arbitrator that the parties were at impasse on an appropriate remedy and, on October 27, 2009, Arbitrator Kasher issued a Final Award in the case that provides:

Award:

The Newspaper directed to reinstate Mr. Smith within the next fifteen (15) days to his position as a General Sports Columnist at the Philadelphia Inquirer or the Philadelphia Daily News, and Mr. Smith shall have the option to declare his preference. Mr. Smith will occupy a "protected beat."

The Newspaper is further directed, in accordance with Guild Exhibit No. 1, the March 10, 2005 agreement between the Philadelphia Inquirer and Mr. Smith, to continue Mr. Smith's salary at \$225,000.00.

Additionally, the Inquirer will continue to promote Mr. Smith's columns "to the best advantage of both parties", and will continue his health and dental benefits through the Guild as accorded a full-time employee and "any other benefit accorded a full-time Guild member..."

Insofar as Ms. Smith's entitlement to back pay is concerned, he was demoted without "good and reasonable cause" on or about August 21, 2007. Had Mr. Smith accepted this reassignment he would have earned approximately \$110,000 per year. It is also clear, as noted in the August 31, 2009 Opinion and Interim Award in this case, that Mr. Smith failed to declare his intentions regarding returning to work. Therefore his claim for back pay will be mitigated to the extent that the Inquirer shall compensate him in the amount of \$100,000 in terms of back pay.

Arbitrator Kasher's Final Award is attached in its entirety as Exhibit E.

14. On or about November 11, 2009, Philadelphia Newspapers partially complied with the Award by reinstating Mr. Smith. To date, Philadelphia Newspapers has failed and refused to comply with the balance of the Arbitrator's Award, which requires it to "continue to promote Mr. Smith's columns to the best advantage of both parties" in that the Employer has refused to publish Mr. Smith's columns. Philadelphia Newspapers has also refused to pay Mr. Smith the back pay directed by the Arbitrator and to reimburse him for the cost of his medical and dental insurance.

15. Philadelphia Newspapers' refusal to comply with the terms of the Award is unlawful and without justification and constitutes a clear violation of the collective bargaining agreement and Section 301 of the Labor-Management Relations Act.

REMEDY

16. By virtue of the refusal of Philadelphia Newspapers to comply with the Arbitrator's Award, the Guild has been denied the relief to which it is entitled to under the Award, and Philadelphia Newspapers has failed to meet its obligations to adhere to final and binding arbitration as required by the collective bargaining agreement.

WHEREFORE, the Guild respectfully requests judgment in its favor and the issuance of an Order providing that:

A. Judgment be entered in favor of the Guild and against Philadelphia Newspapers;

B. Philadelphia Newspapers be ordered to immediately comply with the Arbitration Award by doing the following:

(1) Publish and promote Stephen A. Smith's columns;

(2) Pay Stephen A. Smith back pay in the amount of \$100,000.00;

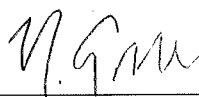
(3) Reimburse Stephen A. Smith for the cost of his medical insurance from the date of his termination to the date of his reinstatement;

(4) Reimburse the Guild for all costs together with reasonable attorney's fees incurred in enforcing this Arbitration Award; and

(5) Such other relief as this Court shall deem just and proper.

Respectfully submitted,

FREEDMAN AND LORRY, P.C.



NEAL GOLDSTEIN

Pa. Attorney I.D. No. 17589

Validation of Signature Code:

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Dated: December 11, 2009