

JATINDER S. KHOKHAR,  
Petitioner

VS.

THE CHARTER BOARD OF THE  
CITY OF READING,  
Respondent

: IN THE COURT OF COMMON PLEAS  
: OF BERKS COUNTY, PENNSYLVANIA

: CIVIL ACTION - LAW

: No. 08-11100

BERKS COUNTY, PA  
MARIANNE R. SUTTON  
PROTHONOTARY

2009 SEP - 8 P 3: 06

RECEIVED  
PROTHONOTARY'S OFFICE

**OPINION, JEFFREY K. SPRECHER, J.**

**September 8, 2009**

Appellant appeals the Order dated June 15, 2009, which denied Appellant's appeal and affirmed the decision of The Charter Board of the City of Reading in its entirety. This Opinion is filed pursuant to Pa. R.A.P. 1925.

**FACTS**

The City of Reading (Reading) is a city of the third class. It is a home rule municipality. Appellant, Jatinder S. Khokhar, has been employed as Property Improvement Division Manager for Reading since May 2, 2005. He was appointed by the Managing Director of that time by letter dated April 7, 2005. Prior to October 2004 the position reported to the Director of the Department of Community Development. An ordinance adopted on October 11, 2004 removed the Property Improvement Division from the Department of Community Development and put it under the Office of the Managing Director.

Reading has a residency requirement for department heads. The City of Reading Charter Board (Board) received two complaints that Appellant was not a city resident. The Board ordinance provides that it may initiate a preliminary investigation on its own motion. Board undertook an investigation. Board presided over an

evidentiary hearing even though neither of the complainants appeared at the hearing. Board issued a final order which imposed penalties on Appellant, including *inter alia*, public censure, an administrative fine, a continuing fine of \$300.00 per pay period, and suspension.

Appellant contends that this order was invalid for various reasons. Appellant waived most of the issues by addressing just two of the issues in his brief. He submits that the Board lacked jurisdiction to address the residency issue and that the imposition of a continuing fine of \$300.00 per pay period was illegal because it is in excess of the amount permitted under the Board ordinance.

The following are the facts gleaned from the record. The Charter requires residency for "heads of departments, offices and agencies" within one year from the commencement of employment. Appellant lists in his statement of financial interest that he resides in Exeter Township. Appellant's wife and children reside in Virginia. Appellant's wife did not want to live in Reading because she did not want their children to attend the Reading School District. Appellant stays in the Exeter Township residence during the week and travels to Virginia on weekends.

Appellant reports directly to the Managing Director of Reading. He does not have anyone else supervising him. Only the Managing Director delegates responsibilities to him. Department heads in the city government report directly to the Managing Director as Appellant does. Appellant oversees three supervisors who manage approximately thirty-seven employees. Appellant admitted that he bears the ultimate responsibility for the operations of his department.

Board determined that the terms “department, office, or agency” are not intended to be formal directive titles but rather descriptive terms intended to illustrate groupings of Reading’s administration. It found that the Codes Division overseen by Appellant is a department, office or agency as stated within the Charter and that Appellant reports directly to the Managing Director without any intervening level of supervision or accountability. Board held that Appellant never complied with the residency requirements. By not complying with the residency requirements, Appellant violated the terms and conditions of his employment and had been ineligible for ongoing employment since May 2, 2006. Appellant’s violation was continuing as long as he remained employed in that capacity. Appellant’s failure to adhere to the terms and conditions of his employment regarding residency constituted a forfeiture of his employment. The Board further considered every pay period in which Appellant remained employed in the same capacity while maintaining residency outside the city as a separate and ongoing violation of the Charter.

Based on the foregoing record, this court denied Appellant’s appeal. Appellant filed a timely appeal.

### **ISSUES**

Appellant raises two issues in his Concise Statement of Errors Complained of on Appeal:

1. Whether this court erred by denying Appellant’s Petition for Review wherein the issue of the Board’s lack of jurisdiction was raised.

2. Whether this court erred by denying Appellant's Petition for Review wherein the issue of the Board's illegal imposition of a continuing fine of \$300.00 per pay period was raised.

### **DISCUSSION**

Appellant first complains that this court erred by denying his Petition for Review wherein the issue of Board's lack of jurisdiction was raised. This complaint is without merit.

This case is analogous to *Mukerji v. Board*, 941 A.2d 102 (Pa. Cmwlth. 2008) which also involved the City of Reading. In that case Adam Mukerji was hired as Director of Community Development, but he never complied with the residency requirement. A law was passed to amend Reading's Administrative Code by deleting references to the Department of Community Development and creating the position of Economic Development Manager. The Economic Development Manager is the head of the Office of Community Development and reports directly to Reading's Managing Director, like the former department head. The new position has the same duties, salary, responsibilities, office location, and staff as the former department head had. One of the purposes of the law was to make Mukerji compliant with the Charter's residency requirements. The Commonwealth Court held that Board had the jurisdiction to hear the case and that the Economic Development Manager is subject to the residency requirement.

In the case *sub judice* Appellant's position is entitled Property Improvement Division Manager. However, it is abundantly clear that he is a department head with the

duties of a department head. He reports directly to the Managing Director. Thus, Board has jurisdiction of the case because he is a department head.

Section 702(a)(iii) of the Charter provides that “the heads of departments, offices, and agencies immediately under the direction and supervision of the Managing Director” are personnel who are exempt from the career service requirements. Since Board found Appellant to be the head of a department, office, or agency, Appellant’s obligation to reside within Reading is not governed by the Personnel Code, but by § 706 of the Charter which governs department heads and requires that “All such heads of departments, offices, and agencies need not be residents of the City at the time of appointment, but after appointment shall reside in the City. City residency shall be required within twelve (12) months of being appointed.” Thus, Board acted within its jurisdiction.

Appellant next contends that this court erred by denying his petition due to Board’s illegal imposition of a continuing fine of \$300.00 per pay period. Appellant argues that the Charter Board Ordinance limits the amount of the fines imposed by Board to an amount “not to exceed \$1000.00 per violation.” This contention is meritless.

The Board stated in its opinion and order that it considered each of the factors set forth in the Charter Board Ordinance in determining sanctions. In the instant case Appellant violated the residency requirement for over two years which constituted approximately 500 separate daily violations. Board found that Appellant conveniently and intentionally ignored the residency requirement. Board further determined that if this issue was left unaddressed, the violation would threaten to weaken the Charter and

the City of Reading and would provide "an untenable precedent for other heads of departments, offices and agencies, and an impermissible precedent for the City to merely rename departments, offices, and agencies, and re-title personnel, so as to try to avoid application of Charter Section 706."

Therefore, the \$300.00 fine was reasonable under the circumstances as explained by Board. Appellant received notice of the continuing fine. It was his decision to remain employed in the same capacity and not abide by the residency requirements. He had the options of obtaining new employment or living within Reading in the same position. Appellant did not do anything but continued the status quo. For these reasons, this fine was not improper and was sustained by this court.

For the foregoing reasons, this court respectfully requests that Appellant's appeal be denied and its order affirmed.

  
JEFFREY K. SPRECHER, J.

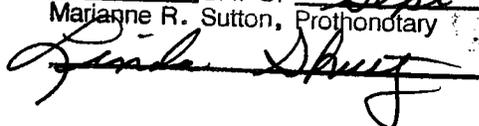
BERKS COUNTY, PA  
MARIANNE R. SUTTON  
PROTHONOTARY

2009 SEP - 8 P 3: 00

RECEIVED  
PROTHONOTARY'S OFFICE

NOTICE IS HEREBY GIVEN OF THE ENTRY OF THIS  
ORDER OR DECREE PURSUANT TO RULE P.C.P. 236  
YOU ARE NOTIFIED THAT THIS ORDER/DOCUMENT  
HAS BEEN FILED IN THE PROTHONOTARY'S OFFICE  
OF BERKS COUNTY AND THIS IS AN EXTRACT FROM  
THE RECORD OF SAID COURT CERTIFIED THIS  
9<sup>TH</sup> DAY OF Sept 20 09

Marianne R. Sutton, Prothonotary

  
Deputy