

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SOUTH PARK TOWNSHIP :
POLICE ASSOCIATION :
 :
v. : Case No. PF-C-00-20-W
 :
SOUTH PARK TOWNSHIP :

FINAL ORDER

On October 31, 2000, South Park Township (Township) filed with the Pennsylvania Labor Relations Board (Board) timely exceptions and a supporting brief to an October 12, 2000 Proposed Decision and Order (PDO). In the PDO, the Hearing Examiner concluded that the Township violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by: (1) requiring police officers who make court appearances during their scheduled daylight shift to report to the police station prior to going to court and to return to the station following the court appearance to work the remainder of the shift; and (2) requiring police officers who make court appearances during off-duty time to report to the station prior to making the court appearance and to return to the station following the appearance to work the minimum number of hours for which they were being paid overtime compensation under the parties' collective bargaining agreement (CBA). The Hearing Examiner further concluded that the Township did not violate the PLRA or Act 111 by: (1) requiring that police officers appear in full uniform for all court appearances; (2) changing the way in which vacation leave is granted; or (3) changing the employee evaluation process. On November 20, 2000 the South Park Township Police Association (Association) filed a response to the exceptions and a brief in support.

After a thorough review of the record and exceptions, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

5. That prior to the December 27, 1999 order, there was no formal or written policy covering the reporting procedures for on-duty, daylight court appearances. Prior to that Order, officers used their own discretion in deciding whether to report to the station prior to or following a court appearance. (N.T. 15, 17-18, 26-27, 29, 45, 47, 85, 101.)

6. That prior to the December 27, 1999 order, some officers returned to the station following a court appearance to complete supplemental reports, but most officers completed them during their next scheduled shift. (N.T. 19, 27, 30, 85, 101.)

7. That the officers used their discretion regarding reporting to the station prior to or following court appearances for at least the last ten years. (N.T. 17-19, 27-28, 30, 45, 85, 101.)

16. That the parties' collective bargaining agreement provides, inter alia:

Section 6 Work Period and Hour Regulations

The work week shall consist of any five workdays in the calendar week from Sunday through Saturday. The work day shall be any eight consecutive hours within the period of midnight to midnight of the calendar day. . .

(N.T. Joint Exhibit 1).

17. That the parties' collective bargaining agreement provides, inter alia:

Section 6.5 Call Out Compensation

In the event that an employee is called out during a non-scheduled work shift, the employee shall be compensated at a minimum of four hours at one and one half times his base salary rate . . .

Section 6.8 Court Compensation

An Employee otherwise not scheduled to work who must attend a hearing before any court or original Jurisdiction on the business of the Township shall be compensated at time and one-half his base salary rate for the time actually spent with a minimum of one hour for an appearance. A minimum of four (4) hours shall be paid at time and one-half his base salary rate for appearance in any State or Federal court unless the time exceeds four hours, then time and one-half will be paid for actual hours spent on the business of the Township . . .

Section 8 Holidays

The Township shall grant to all full-time Police Employees covered by this Agreement twelve (12) additional vacation days with eight hours pay at their base salary rate . . .

Section 8.1 Personal Days

Four personal days will be granted to all Police Employees under this Agreement . . .

Section 9 Vacation

All eligible full-time regular Police Employees . . . shall be entitled to receive the following vacations with pay at their base salary rate . . .

Section 13 Jury Duty

Any employee who has been called for jury duty shall be excused from work for each such day on which he serves or reports to serve and shall be compensated by the Township, at his regular base salary rate . . .

Section 14 Bereavement Pay

In case of death in the immediate family, four (4) consecutive days with pay, if such are the employee's regular scheduled work days, will be granted . . .

Section 21.1 Sick Leave Benefits

All Current full-time Police Employees . . . receive seventeen (17) work days in each calendar year as sick leave . . .

Section 21.7 Sick Leave Bonus

An employee who does not take a sick leave day during any consecutive one-hundred eighty two (182) day period . . . shall be paid the equivalent of eight (8) hours of his then base salary rate . . .

(N.T. Joint Exhibit 1).

DISCUSSION

This case arises out of a December 27, 1999 written order from the Township, which provides in pertinent part regarding court appearances:

All officers scheduled for court on their daylight shift shall report to the police station by 0730 hours in full uniform. Upon return from court they shall complete all necessary court supplement reports and submit them. All evidence to be returned to the evidence room. The officer will be permitted to leave at the completion of his tour of duty at 1530 hours.

All officers scheduled for court at "OVERTIME" shall report to the police station in full uniform. Upon return from court they shall complete all necessary court supplement reports and submit them. Any officer completing court prior to the minimum required hours will complete the minimum hours before being permitted to leave the police station.

All court appearances including Summary Appeals, Pre-trial and District Justice court shall be done in full uniform. No civilian clothes permitted.

(PDO, F.F. 4, Exhibit P-1.) Prior to the order, officers used their own discretion in deciding whether to report to the police station prior to or following court appearances; they were not required to work the minimum number of hours for overtime compensation; they were permitted to complete supplemental reports on their next scheduled shift; and they were permitted to wear civilian clothes.

The Association filed a Charge of Unfair Labor Practices regarding the order and the alleged changes to established past practices between the parties concerning: (1) the reporting time for officers scheduled to work daylight; (2) requiring officers to report to the station before making a court appearance; (3) requiring officers scheduled to work daylight to return to the station to complete supplemental reports following court appearances; (4) requiring off-duty officers to return to the station and work a minimum number of hours in order to receive the contractual off-duty court time compensation; and (5) requiring officers to wear full uniforms to all court appearances.¹

In its exceptions, the Township argues that the Hearing Examiner erred in concluding that the Township violated the PLRA and Act 111 when it modified the requirements for daylight shift and off-duty court appearances. The Board will first address the exceptions regarding court appearances of officers scheduled to work the daylight shift.

Court Appearances During Scheduled Daylight Shift

The Hearing Examiner concluded that the officers' ability to take time off from work with pay is rationally related to his or her duties, and thus a mandatory subject of bargaining, citing City of Clairton v. PLRB, 528 A.2d 1048 (Pa. Cmwlth. 1987). He further concluded that the Township's order did not constitute a managerial prerogative because its managerial interests did not outweigh the officers' interest in paid time off, citing Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993).

Section 1 of Act 111 grants police officers the right to bargain collectively with their employer concerning the "terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits." 43 P.S. § 217.1. The Hearing Examiner interpreted as "other benefits" the officers' practices of: (1) reporting directly to the court at the time of the proceeding, rather than reporting to the station; (2) taking the remainder of a scheduled shift off with pay when a court appearance ends before the daylight shift is scheduled to end; and (3) completing supplemental

¹ The Association also charged the Township with violating the PLRA and Act 111 by issuing orders regarding vacation time and performance evaluations. The Hearing Examiner effectively dismissed these charges and the Association has filed no exceptions. Thus, the vacation and evaluation issues are not before the Board.

reports during a subsequent shift, rather than immediately following the court proceeding.

The Township asserts that it exercised its managerial prerogative to direct personnel when it issued the order requiring daylight shift officers to report to the station prior to court appearances, to return to the station following court appearances that end prior to 3:30 p.m. and to complete supplemental reports during that time. The Township relies on FOP, Liquor Control Board Lodges v. Pennsylvania State Police, 28 PPER ¶ 28183 (Final Order, 1997), wherein the Board concluded under the Public Employee Relations Act (PERA) that "directing employees to report for work at a different location, is not a mandatory subject of bargaining because . . . direction of personnel is a matter of inherent managerial policy." Id., at 401. Although the Hearing Examiner distinguished this case, the Board finds it to be analogous and reaches the same result under Act 111. The Township lawfully exercised its managerial prerogative when it directed its police officers to report to the police station for their regularly scheduled daylight shift, prior to attending any court proceedings scheduled during that shift. See also, FOP, Lodge 36 v. Township of Exeter, 26 PPER ¶ 26078 (Final Order, 1995), where the Board concluded that the employer did not commit an unfair labor practice when it changed its prior practice of permitting officers to begin work in their police cruisers and radio dispatch their start times from remote locations and required them to report to the station and punch a time clock.

Likewise, if the court proceeding ends before the officer's shift ends, the Township may exercise its managerial prerogative to direct its officers to return to the station to perform police work, including completing supplemental reports, until their scheduled shift ends. There is no more fundamental managerial right than the employer's right to direct personnel by assigning work to its employees during their scheduled hours of employment. In FOP, Lodge 5 v. City of Philadelphia, 29 PPER ¶ 29142 (Final Order, 1998), the Board explained that "we specifically hold that a public employer under Act 111 has the managerial right to direct the work force to perform duties identified by the public employer without prior bargaining with the union over management's right to assign the performance of those duties." Id., at 340. See also Reading Order of Police Lodge #9 v. City of Reading, 30 PPER ¶ 30120 (Final Order, 1999), where the Board held that it was a managerial prerogative to schedule supervisory personnel to perform patrol duty that was previously not required of them, where the officers continued to work the same number of regularly scheduled hours. The record reflects that the parties already negotiated what the officers' work week and hour requirements would be (F.F. 16.) and it is the Township's managerial right to assign the officers' duties during those hours. See also Ellwood City Police Wage and Policy Unit v. PLRB, 731 A.2d 670 (Pa. Cmwlth. 1999), where the Commonwealth Court affirmed the Board's conclusion that it was not an unfair labor practice to request that the district justice schedule police officers' court appearances during their regularly scheduled workdays.

The Association argues that "an Officer's ability to take time off from work with pay is rationally related to his/her duties" (Association, Br. at 7) and that officers "had the benefit of using that paid time off for personal reasons." The Board rejects this argument. The Board does not find as a matter of law that employees may

not be paid if they are not on duty. The parties in the bargaining process frequently agree to paid time off from work, such as breaks, compensatory time, vacation, personal, stand-by and reporting pay. Indeed, the record reflects that the parties have negotiated for several situations where police officers are to be paid while they are not on duty (call out minimum compensation, off-duty court minimum compensation, holidays, personal days, vacation, jury duty, bereavement, sick days and sick bonuses)(F.F. 17). An important distinction between such negotiated pay for non-working time and this case, is that the parties have not agreed that officers be paid for not working their entire scheduled shifts on court appearance days. Indeed, the parties' CBA reflects that it is on-duty time. The Board finds that taking time off during a regularly scheduled shift under these circumstances is not rationally related to the officers' duties under City of Clairton, supra. While the parties may agree to payment for such off-duty time as vacation, sick and personal days (and the CBA reveals that they have already done so), there is no basis for finding that the Township is required to pay an officer to take time off during a regularly scheduled shift, merely because the officer appeared in court that day. The court appearance itself qualifies as only one duty of the officer's job. A court appearance does not discharge an officer from completing any other duties that the employer assigns during the remainder of his/her shift. The Association cites no contrary authority and the Board finds none.

Instead, the Association explains that there was an "established practice wherein an officer's day in court (on daylight shift) counted as the officer's day of work . . . the officer was then paid for a full eight (8) hour shift unless the appearance lasted longer, in which case the officer would qualify for overtime pay" (Association, Br. at 4.) As the Commonwealth Court explained in Ellwood City, supra, there are four situations in which evidence of past practice is used:

- (1) to clarify ambiguous language;
- (2) to implement contract language which sets forth only a general rule;
- (3) to modify or amend apparently ambiguous language which has arguably been waived by the parties;
- (4) to create or prove a separate enforceable condition of employment which cannot be derived from the express language of the agreement.

Id., 731 A.2d at 672. The Association attempted to prove that a past practice existed between the parties which created a separate enforceable condition of employment, whereby officers were permitted to substitute a court appearance for a full day of work and still be compensated for their regularly scheduled eight-hour shift.

As discussed above, the alleged past practice is not provided for in the parties' CBA. A past practice is a non-contractual practice that has developed between parties as the normal and proper response to a recurring type of situation in the workplace. County of Allegheny v. Allegheny County Prison Employes Independent Union, 476 Pa. 27, 381 A.2d 849 (1977); Juniata-Mifflin Counties Area Vo-Tech Sch., 547 Pa. 495, 691 A.2d 924 (1997). The Association failed to prove the alleged past practice. To the contrary, the record reveals that the individual officers used their own discretion regarding whether to report to the

station prior to or following a court appearance during a regularly scheduled shift and when to complete supplemental reports. (F.F. 5-6) In fact, Deputy Chief McDonough testified that he was never permitted to go directly home following a court appearance. (F.F. 5-6; N.T. 101.)

While an employer may commit an unfair labor practice by unilaterally changing a past practice concerning a mandatory subject of bargaining, York City Employes Union v. City of York, 29 PPER ¶ 29138 (Proposed Decision and Order, 1998), aff'd, 29 PPER ¶ 29135 (Final Order, 1998), as discussed above, this practice is not a mandatory subject of bargaining. The Township's direction of personnel is a managerial prerogative, City of Philadelphia v. PLRB, 588 A.2d 67 (Pa. Cmwlth. 1991) and in order to succeed on a past practice argument, the past practice must pertain to a mandatory subject of bargaining. Plainfield Township Policemen's Ass'n v. PLRB, 695 A.2d 984 (Pa. Cmwlth. 1997); Pennsylvania State Troopers Ass'n v. Pennsylvania State Police, 30 PPER ¶ 30125, p. 274 (Proposed Decision and Order, 1999)(citing District 1199C, Nat'l Union of Hosp. and Health Care Employes v. Temple University, 23 PPER ¶ 23034 (Final Order, 1992)). Thus, the Township's exceptions pertaining to the daylight shift court appearances are sustained and the corresponding portions of the Association's charge are dismissed.

Off-Duty Court Appearances

The Township next excepts to the Hearing Examiner's conclusion that it committed an unfair practice by requiring police officers who make court appearances during off-duty time to report to the station prior to and following the court appearance and to work the minimum number of hours for which they are being paid overtime compensation. The Board and the Commonwealth Court have previously addressed the issue of off-duty court appearances and overtime compensation. Unlike a court appearance during a regularly scheduled shift, off-duty court appearances "require off duty officers to upset their non-work time and come into the court to testify." FOP, Lodge 19 v. City of Chester, 22 PPER ¶ 22006 (Proposed Decision and Order, 1990). To compensate the officers for giving up their off-duty time to perform this assigned duty, the parties negotiated a minimum compensation for court appearances in their CBA. For district justice hearings, the officers are entitled to a one (1) hour minimum overtime payment and for other court appearances, the officers are entitled to a four (4) hour minimum overtime payment. In Allegheny County Police Ass'n v. County of Allegheny, 514 A.2d 964 (Pa. Cmwlth. 1986), the Commonwealth Court reinstated an arbitration award granting officers a similar four-hour minimum overtime compensation payment for off-duty court appearances. In City of Chester, supra the Hearing Examiner found that the reason for the minimum "was for the inconvenience to the officer who attended district justice hearings while off duty. If the officer had to attend . . . while on vacation, the inconvenience would be even greater." Id., at 18. Like City of Chester, the CBA evidences the parties' agreement that the Township would compensate the officers with a minimum payment for the inconvenience of attending a court proceeding while off-duty. The language of the CBA does not support the Township's argument that the officers must work the entire minimum number of hours for which they are being compensated. The Board finds

that compensation for the inconvenience of making a court appearance during an officer's day off constitutes a benefit under Section 1 of Act 111 that is rationally related to the officer's duties and is thus a mandatory subject of bargaining. City of Clairton, supra. This decision is consistent with New Britain Township Police Benevolent Ass'n v. New Britain Township, 29 PPER ¶ 29049 (Proposed Decision and Order, 1998), wherein the employer's payment of the minimum overtime compensation for off-duty court appearances, regardless of the length of the appearance, was found to be a benefit under Section 1 of Act 111. The Board reaches the same result as in New Britain, that the "ability to be paid after being released from court is a bargained-for 'incentive' for officers who must, in essence, give up their time off to testify in court." Id.

The Township argues that by requiring the officers to work the entire four-hour period for which they are being compensated, it is merely exercising its managerial prerogative to direct its workforce. However, unlike directing its officers to complete their entire scheduled daylight shift, the Township's interests in this instance do not outweigh the officers' interest in being compensated for giving up time off to perform for the Township. Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993). The Board, consistent with the parties' CBA, draws a distinction between an officer making a court appearance during the course of a regularly scheduled shift and an officer giving up a vacation day, a personal day, or a day off to make a court appearance. In the former situation, the court appearance is one of the many duties the officer may be directed to perform during his/her regularly scheduled shift. However, in the latter situation, the court appearance is the sole reason the officer is sacrificing his/her time off. Compensation for that sacrifice is a mandatory subject of bargaining that the parties have negotiated into their CBA. The fact that a court appearance may not require the minimum one-hour or four-hour timeframe for which the officer is being compensated, does not change the fact that it is the officer's sacrifice of time for the appearance itself that is being compensated. If the court appearance does not last the minimum number of hours, the Township is still obligated to pay the minimum amount. The Township's assignment of additional duties in order to occupy the entire one-hour or four-hour period without engaging in collective bargaining with the Association constitutes a violation of Section 6(1)(a) and (e) of the PLRA and Act 111. The Township's exceptions regarding off-duty court appearances are thus dismissed.

After a thorough review of the exceptions, briefs and all matters of record, the Board shall sustain the exceptions in part, dismiss the exceptions in part, and set aside the Proposed Decision and Order consistent with the above discussion.

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 to the Proposed Decision and Order in the above-captioned case be and the same are hereby sustained in part and dismissed in part, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

That paragraphs numbered 1, 2, 3b, 3c, 3d and 3e as set forth in the Order on page 7 of the Proposed Decision and Order, are hereby affirmed and incorporated herein by reference and made a part hereof.

That paragraph number 3a is hereby vacated and set aside.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle, Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this twenty-seventh day of March, 2001. 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

SOUTH PARK TOWNSHIP :
POLICE ASSOCIATION :
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AFFIDAVIT OF COMPLIANCE

South Park Township 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 rescinded the portion of the order of December 27, 1999 requiring off-duty officers to work the entire minimum period to receive overtime compensation for off-duty court appearances, that it has compensated officers for those days worked, that it has posted the Proposed Decision and Order and Final Order as directed and that it has served a copy of this affidavit on the South Park Township Police Association 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