

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE #5 :
 :
 v. : Case No. PF-C-98-40-E
 :
 CITY OF PHILADELPHIA :
 :

FINAL ORDER

On April 8, 1999, the City of Philadelphia (City) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO) entered on March 19, 1999. The PDO concluded that the City engaged in unfair labor practices in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by unilaterally assigning police bargaining unit work to non-unit personnel. Pursuant to an extension granted by the Secretary of the Board, the City filed a brief in support of its exceptions on May 10, 1999. Also pursuant to an extension granted by the Secretary, the Fraternal Order of Police Lodge No. 5 (FOP) filed a brief in response to the City's exceptions on June 11, 1999.

The essential facts of this case are as follows. The FOP is the bargaining representative of a unit of City police officers, which includes police graphic artists. The work performed by the police graphic artists has included enlarging street maps provided by the City's planning department. The enlarged maps were then posted on walls at police stations to keep track of crime patterns. Members of the bargaining unit stuck pins in the maps to denote where crimes had been occurring.

In November 1997 the City hired two civilians to work in the newly created mapping unit of the police department. The City created the mapping unit and hired the civilians as part of its effort known as COMPSTAT to computerize its crime statistics for analysis. In early 1998, the civilians began to generate maps of criminal activity within the City. One step in the process of creating these maps was the civilians' development of customized software to retrieve crime information from the City's 911 system and place it in a database. The relevant information was then drawn from the database to produce the particular crime map. The civilians also began development of an "intranet" to permit police department personnel throughout the City to access the crime information database and generate their own maps of criminal activity. The City did not bargain with the FOP over its use of civilians to perform this work.

The hearing examiner found that the City's use of the two civilians to produce crime maps without prior bargaining with the FOP was a unilateral transfer of police bargaining unit work and an unfair labor practice. The City initially excepts to several findings of fact by the hearing examiner. However, our review of the record discloses that the challenged findings are supported by substantial evidence. Therefore, these findings will not be disturbed.

The City also excepts to the hearing examiner's conclusion that it unilaterally removed work from the police bargaining unit. The City essentially contends that the work performed by the civilians was never

performed by police officers and therefore is not bargaining unit work. The City further contends that no employe is performing the graphical work at issue, but rather the graphics are produced by a computer.

The Board has held that introduction of technology is generally a matter of managerial prerogative, but is not license to unilaterally transfer bargaining unit work to non-unit personnel. City of Philadelphia, 27 PPER ¶ 27161 (Final Order, 1996). Where non-unit personnel perform work through use of new technology that is substantially equivalent to work previously performed by the bargaining unit on an exclusive basis, the Board will find a duty to bargain over assignment of such work out of the unit. Id. See also City of Pittsburgh, 21 PPER ¶ 21111 (Final Order, 1990).

The FOP is the complainant in this matter and therefore had the burden of proof. City of Philadelphia, 23 PPER ¶ 23152 (Final Order, 1992). Our review of the record reveals that the FOP failed to prove that the work performed by the civilians is substantially equivalent to work previously performed exclusively by the members of the bargaining unit.¹ Therefore, we must sustain the City's exception to the conclusion in the PDO that it transferred bargaining unit work to non-unit personnel.

The end product produced by the unit members and the civilians is similar in that both the pin maps and the maps produced for the COMPSTAT program may be characterized as crime maps. However, we cannot find on this record that the work performed to produce these maps is substantially equivalent. It is undisputed that one necessary step in the production of the maps for the COMPSTAT program was the civilians' development of customized software to retrieve crime data from the City's 911 system, and that the unit members had never performed such work. Furthermore, the record is unclear on the issue of whether the civilians actually plot the crime data on the map (a task that is arguably similar to the unit members' placement of the pins on the pin maps). Indeed, the testimony by the FOP's sole witness during its case in chief seems to indicate that the process of plotting crime data on the COMPSTAT maps is automated and not performed by anyone. For example, when asked on direct examination to explain the process used to generate these maps, the FOP's witness testified as follows:

"Q. And then what would you do?

A. Actually, it's just a matter of pushing a button. The program is set up, I guess, you just push a button and it puts the locations where they are on the map, where the crimes are committed."

(N.T. 21).

If, as the testimony of the FOP's own witness suggests,² the crime data is automatically plotted by a computer on the maps generated by the civilians, then they do not perform work that is substantially equivalent to the work previously performed by the unit members. Rather, that work has

¹ As noted by the City in its brief in support of exceptions, the record does not indicate whether the police department has discontinued pin-mapping.

² The FOP called an additional witness on rebuttal, but he did not offer any testimony on this issue. Nor did the City's sole witness offer any insight regarding the actual process used to generate the COMPSTAT maps.

been eliminated through automation. An employer need not bargain over its decision to introduce automation into the workplace (although it may have a duty to bargain over the impact or effects of automation on the bargaining unit). See, e.g., NLRB v. Columbia Tribune Publishing Company, 495 F.2d 1384 (8th Cir. 1974); Newspaper Printing Corporation v. NLRB, 625 F.2d 956 (10th Cir. 1980). Because we are unable to discern from the record whether the civilians actually plot crime data on maps or whether a computer automatically performs this function when a particular map is requested, we cannot find that the City has transferred bargaining unit work to non-unit personnel. Accordingly, we must dismiss this portion of the FOP's unfair practice charge for failure to meet its burden of proof.

The FOP also alleged in its unfair practice charge that the City refused to bargain over the impact of assigning the work at issue to civilians. However, where a refusal to bargain over the impact or effects of a managerial decision is alleged, the complainant must prove that the decision had impact on employe wages, hours and working conditions that is severable from the managerial decision itself and that after this impact was realized, the complainant requested impact bargaining but the employer refused. Commonwealth, Pennsylvania State Police, 28 PPER ¶ 28183 (Final Order, 1997); Womelsdorf Borough, 28 PPER ¶ 28165 (Final Order, 1997); City of Philadelphia, 28 PPER ¶ 28100 (Final Order, 1997). The FOP has neither identified severable impact of the City's decision to assign the work at issue to the civilians, nor proven on the record that it made a request to impact bargain which was refused by the City. Therefore, we must also dismiss this portion of the FOP's unfair practice charge.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions in part, sustain the exceptions in part and set aside the proposed decision and order consistent with the above discussion.

CONCLUSIONS

That CONCLUSIONS Numbers 1 through 3 inclusive, as set forth in the proposed decision and order, are hereby affirmed and incorporated herein by reference and made a part hereof.

That CONCLUSION Number 4 of the proposed decision and order is hereby vacated and set aside and the following additional conclusion is made:

5. That the City has not committed unfair labor practices in violation of Section 6(1)(a) or (e) of the PLRA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the proposed decision and order in the above-captioned matter be and the same are hereby dismissed in part and sustained in part, that the Order on pages 5-6 of the proposed decision and order be and the same is hereby vacated and set aside and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the charge of unfair labor practices is dismissed and the complaint issued thereon is rescinded.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, Chairman John Markle, Jr., Members L. Dennis Martire and Edward G. Feehan, this twenty-first day of December, 1999. 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.