COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCALS 77 AND 250	:	
	:	
v.	:	Case Nos. PERA-C-98-471-E
	:	PERA-C-99-2-E
PENNSYLVANIA TURNPIKE COMMISSION	:	

FINAL ORDER

On August 4, 1999, Teamsters Local Union 77 and Teamsters Local Union 250 (Unions) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the hearing examiner's July 19, 1999 proposed decision and order (PDO) in the above-referenced case numbers. The PDO concluded that the Pennsylvania Turnpike Commission (Commission) did not commit unfair practices within the meaning of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) when it abolished a field clerk position and did not bargain over the effects of that decision. The Commission timely filed its response and brief in opposition to the Unions' exceptions on August 24, 1999.

These charges concern the abolishment of a light duty field clerk position that was created in 1983 for employes who were injured and on workers' compensation. At that time, the Commission met with the Unions to discuss the conditions under which field clerk positions would be offered and to negotiate the rate of pay (FF 3, PDO at 2). At its creation, the field clerk position required a minimum of physical effort, was sedentary in nature, and was designed to assist the rehabilitation of employes who were suffering from industrial injury. In July 1993, the parties entered into a memorandum of agreement that outlined the rights, duties and obligations concerning the field clerk program. The agreement delineated which employes would be eligible, their rates of pay, their benefits, and other issues. (FF 4, PDO at 2). Five years later, the Commission decided to abolish the position in order to effectively manage the costs of workers' compensation, based upon changes to the Workers' Compensation Act of 1996 (Act 57) (FF 5, PDO at 4).

Pursuant to Memoranda of Understanding between the parties that filling or vacating field clerk positions shall be at the sole discretion of the Commission, the Commission notified the Unions that the position was prospectively eliminated as of September 1, 1998, and that no individuals would be placed into the position after that date. It further informed the Unions that field positions occupied by employes who were injured on or after June 24, 1996 would be eliminated on November 1, 1998 and be reinstated to a temporary total disability status with a corresponding increase in workers' compensation benefits. All positions filled by employes with injury dates prior to June 24, 1996 would be abolished as they became vacant. The Commission's notice instructed the Unions to direct all questions concerning this action and its impact on individual employes to Ms. Patricia A. Raskauskas (FF 5-6, PDO at 4). The Unions made no contact with the Commission or Ms. Raskauskas, because they regarded that it was useless to do so, as the Commission had already decided to abolish the field clerk position (FF 7, PDO at 5).

The Unions' charged that the Commission violated its collective bargaining obligation enforceable under Section 1201(a)(1) and (5) of PERA by refusing to bargain over its decision to eliminate the field clerk position, and by refusing to bargain over the effects of that decision on employe terms

and conditions of employment. The hearing examiner determined that no unfair practices occurred, as the Commission was under no obligation to bargain over this decision because it was a managerial prerogative. (relying on Shillington Borough, 22 PPER ¶ 22074 (Final Order, 1991)(a light duty policy is a managerial prerogative and therefore and not a mandatory subject of collective bargaining).
The hearing examiner also determined that the Unions waived whatever right they may have had to effects bargaining, and further concluded that there was no severable impact of the decision on employe terms and conditions of employment. (citing Womelsdorf Borough, 28 PPER ¶ 28165 (Final Order, 1997) and City of Wilkes-Barre, 29 PPER ¶ 29240 (Final Order, 1998)).

In their exceptions, the Unions assert that the components of the field clerk program, as well as the decision to abolish the program, are mandatory subjects of collective bargaining under Act 57, PERA and the balancing test of State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975). They further assert that the hearing examiner improperly relied on Shillington Borough, supra to find that abolishing the program was a managerial prerogative, and that such reliance superceded the balancing test of State College, supra.

After a thorough review of the record, the Board finds the decision to abolish the field clerk position to be a managerial prerogative, for the reasons set forth in the PDO. The hearing examiner properly relied on Shillington Borough, supra and Bern Township, 30 PPER ¶ 30061 (Final Order, 1999). Shillington concluded that the creation of a light duty position was a managerial prerogative, and Bern Township concluded that Act 57 does not mandate bargaining over a light-duty position. The elimination of the light duty position relates to the same interests of the employer and likewise is a managerial prerogative (PDO at 6). The Board will not find a violation of Section 1201(a)(1) or (5) if the employer unilaterally changes a managerial prerogative. City of Pittsburgh v. PLRB, 539 Pa. 535, 653 A.2d 1210 (1995).

The Unions argue that because Shillington Borough, supra was decided under Act 111, not PERA, it does not apply. This argument is flawed. As the hearing examiner explained, if a matter is a managerial prerogative under Act 111, then it a fortiori is a management prerogative under PERA (PDO at 6). Under the caselaw, for a matter to be a managerial prerogative under Act 111, its impact on the employer's interests must substantially outweigh its impact on the employes' interests. Delaware County Lodge No. 27 v. PLRB, 722 A.2d 1118 (Pa. Cmwlth. 1998)(emphasis added). Under PERA, the impact need only have a greater impact on the employer's interest than on the employes' interests to be managerial prerogative. State College Area School District, supra (emphasis added). Thus, it is not relevant to this analysis that Shillington Borough was decided under Act 111. Light duty programs were determined to be managerial prerogative under Act 111's "substantially outweighs" test, and are likewise managerial prerogative under the State College test. In their brief, the Unions assert that under the State College test, the field clerk program clearly rises to the level of a mandatory subject of bargaining; however, the Board does not reach the same conclusion.

The Unions argument that the 1996 amendments to Act 57 (Act 57) mandate collective bargaining over light duty programs such as the field clerk program is without merit. Act 57 reads as follows:

> (a) Any employer and the recognized or certified and exclusive representative of its employes may

> agree by collective bargaining to establish certain binding obligations and procedures relating to workers' compensation: Provided, however that the scope of the agreement shall be limited to:
>
> . . .
>
> (5) the creation of a light duty, modified job or return to work program;
>
> . . .
>
> (b) Nothing contained in this section shall in any manner affect the rights of an employer or its employes in the event that the parties to a collective bargaining agreement refuse or fail to reach agreement concerning the matters referred to in clause (a).

77 P.S. § 1000.6 (emphasis added). The Unions contend that when sections (a) and (b) are read together, it is evident that bargaining over the terms of a light-duty program is mandatory. The Board does not reach the same conclusion. Consistent with the Board's decision in Bern Township, supra the hearing examiner concluded that Act 57 does not mandate collective bargaining over light duty positions. If Act 57 were intended to do so, it would have been evidenced by stronger language such as "shall" or "must". Rather, Act 57 merely provides that the parties may bargain over matters such as light duty positions. The amendments to Act 57 do not alter the Board's position regarding the bargaining obligation over light-duty position. The language of Act 57, in conjunction with the fact that PERA does not mandate collective bargaining over light duty positions, support the finding that the Commission did not commit an unfair practice by abolishing the position without bargaining. The Commission's decision was a managerial prerogative.

The Unions properly point out that when a managerial decision has an impact on the terms and conditions of employment, the Board requires the parties to engage in impact bargaining. City of Philadelphia v. PLRB, 588 A.2d 67 (Pa. Cmwlth. 1991). However, the Board will not find the failure to bargain to be an unfair practice if the exclusive representative of the bargaining unit waives its right to effects bargaining, Womelsdorf Borough, 28 PPER ¶ 28165 (Final Order, 1997), Perkiomen Township, 15 PPER ¶ 14195 (PDO, 1983), or if there is no severable impact of the decision on employe terms and conditions of employment to be bargained. City of Wilkes Barre, 29 PPER ¶ 29240 (Final Order, 1998).

The Unions do not contest the finding of fact that the Unions did not contact the Commission with a request for effects bargaining, (FF 7, PDO at 5). In an effects bargaining situation, an employer's obligation to bargain impact arises "on demand" from the employe representative once the wage, hour or working condition impact is known. City of Philadelphia, 28 PPER ¶ 28100 (Final Order, 1997). Oftentimes that impact is not known or discernable until the managerial policy is implemented and the impact of that decision filters down to employe working conditions. Id. The Unions were notified of the

Commission's decision to eliminate the field clerk program on September 9, 1998, and the first unfair practice charge was filed with the Board on October 20, 1998.

Presumably, the impact on wages, hours and working conditions was known immediately, or shortly after communication that the program was being eliminated. However, the Unions never made a demand upon the Employer to bargain over the impact of this decision on the wages, hours, or working conditions of the represented employes. Absent such a request, a cause of action for refusal to impact bargain does not occur. The Unions argue that they met this obligation by filing an unfair practice charge against the Commission. However, filing a charge with the Board is not synonymous with demanding impact bargaining with the Commission. As the hearing examiner noted, the Unions present no authority that a timely filed charge constitutes a request to effects bargain. The Board finds no merit in such a proposition.

The Unions argue that a demand on the Commission was useless, as it had already made the decision. They further argue that the Commission precluded any demand for impact bargaining when it directed all questions concerning the decision and its impact on individual employes to Ms. Raskauskas. The Board does not agree with the Unions' characterization of this direction as "an obvious attempt by the Commission to evade its obligation to bargain with the Unions . . . ." (Unions br. at 14). As discussed above, an employer's obligation to bargain does not arise until the union has made a demand to effects bargain. City of Philadelphia, supra. Further, under Womelsdorf Borough, supra the Commission could not have refused to effects bargain unless, and until the Unions requested it (PDO at 8). The alleged uselessness of contacting the Commission is mere speculation in which the Board will not take part. It is the Unions' obligation to approach the Employer with any perceived negotiable impact issue after a managerial decision is made. Id.

After a thorough review of the exceptions and matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, 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, and the 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, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this nineteenth day of October, 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.