

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :  
LODGE #9 :  
 :  
 v. : Case No. PF-C-97-142-E  
 :  
CITY OF READING :

**FINAL ORDER**

On December 17, 1998, the Fraternal Order of Police, Lodge #9 (FOP) timely filed Exceptions and Brief In Support Thereof with the Pennsylvania Labor Relations Board (Board) to a proposed decision and order (PDO) issued on December 3, 1998. In the PDO, the hearing examiner dismissed a charge of unfair labor practices in which the FOP alleged that the City of Reading (City) had violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111. In its charge, the FOP had alleged that the City violated the PLRA by unilaterally transferring bargaining unit work relating to the enforcement of certain parking violations to employees of the Reading Parking Authority (Authority). The hearing examiner dismissed the charge of unfair labor practices finding that the City retained no control over the work of parking enforcement by Authority employees. After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED FINDINGS OF FACT

4. That prior to May 1997, uniformed police officers of the City of Reading police department solely and exclusively performed the duties of issuing citations for handicap space violations and driveway violations on a citywide basis. These officers solely and exclusively issued citations for any other parking violations that occurred outside three downtown zones and 13 residential zones wherein certain non-uniformed city personnel, referred to as "meter maids," also issued citations for meter violations, overtime parking violations, yellow curb violations and residential permit parking violations. (N.T. 10-15, 24-27, 36-37, 46-47, 51)

6. That in May 1997 the city council, by ordinance, Bill No. 897, transferred certain former non-uniformed City personnel, including meter maids, to the Reading Parking Authority. (N.T. 48). Ordinance 897 provides in part:

SECTION 1. In accordance with the Pennsylvania Parking Authorities Law, 53 Pa. C.S. §345, the City of Reading hereby authorizes and empowers the Reading Parking Authority to develop, administer and enforce a system of on-street parking regulations, subject to and limited by the provisions set forth in this Ordinance.

SECTION 2. The authority given by the city of Reading herein shall be for a period of two (2) years, beginning with the effective date hereof. At the expiration of such period, the authority shall expire unless extended by further Ordinance.

SECTION 3. Revenues collected from the administration and enforcement of the said on-street parking regulations shall be paid to the Reading Parking Authority, including revenues from parking meters and fines for violations that have been enforced by the Reading Parking Authority and funds received from the minor judiciary and the judiciary.

SECTION 4. Nothing in this Ordinance shall prohibit the Police Department of the City of Reading from enforcing parking violations throughout the City of Reading. The revenue from violations issued by the Police shall be paid to the Reading Parking Authority acting as agent for the City of Reading. One hundred percent (100%) of such revenues shall be paid over to the General Fund of the City of Reading without reduction.

SECTION 5. In consideration of the revenues being collected by the Reading Parking Authority under Section 3 of this Ordinance, the Reading Parking Authority shall pay to the General Fund of the City of Reading the following sums in equal monthly installments:

- a. Three Hundred and Fifty Thousand Dollars (\$350,000) for the first year of the term of the authority granted hereunder.
- b. Four Hundred Thousand Dollars (\$400,000) for the second year of the term of the authority granted hereunder.

SECTION 6. Edwin Kutz and all parking enforcement officers currently employed by the City of Reading shall become employees of the Reading Parking Authority for purposes of supervision and discipline during the term of the authority granted hereunder. Said personnel, however, shall be paid by the City of Reading and the Reading Parking Authority shall reimburse the City of Reading for all salaries, wages and benefits paid by the City to said persons.

SECTION 7. Employees of the Reading Parking Authority so designated and authorized by the Reading Parking Authority including but not limited to parking enforcement officers are hereby authorized to issue violations, citations and summonses for enforcement of the on-street parking plan and compliance with local ordinances, including but not limited to Article 505 of the City of Reading Codified Ordinances, as well as relevant state statutes regarding parking violations in accordance with the authority granted hereunder.

(Exhibit C-1).

7. That prior to May 1997 meter maids did not write handicap space violations, driveway violations or perform citywide (i.e., beyond the three downtown

zones and 13 residential zones) enforcement of residential permit parking zone rules or yellow curb violations. (N.T. 28, 36-37, 51-52)

8. That prior to May 1997 meter maids were responsible for three downtown zones and 13 residential zones primarily in the center of the city. Sergeants in the traffic enforcement unit of the City of Reading police department supervised the meter maids. (N.T. 24-28)

#### DISCUSSION

The essential facts of this case are as follows. The FOP is the exclusive collective bargaining representative of the City's police officers. Prior to May 1997, the City's uniformed police officers solely and exclusively performed the duties of issuing citations for handicap space violations, driveway violations as well as any other parking violations that occurred outside the three downtown zones and 13 residential zones primarily located in the center of the City wherein certain non-uniformed city personnel, referred to as "meter maids," worked. (Amended FF 4). Within these three downtown zones and 13 residential zones, the meter maids were limited to issuing citations for meter violations, overtime parking violations, yellow curb violations and residential permit parking violations. (Amended FF 4, 7, 8). Sergeants in the traffic enforcement unit of the City of Reading police department supervised the meter maids. In May 1997, the city council, by ordinance, Bill No. 897, transferred the meter maids to the Authority, which was established by ordinance in the 1950's. Pursuant to Ordinance 897, the meter maids are now authorized to perform city-wide parking enforcement, including the enforcement of those parking violations formerly performed solely and exclusively by the City's uniformed officers, including handicap space and driveway violations. As employees of the Authority, the meter maids are no longer supervised by uniformed employees of the City's police department. The FOP filed an unfair labor practice charge alleging the illegal removal of bargaining unit work.

In the PDO, the hearing examiner determined that the work of parking enforcement (including handicap space violations and driveway violations)<sup>1</sup> was exclusively performed by the City's police officers prior to Ordinance 897. However, he concluded that the FOP offered no evidence to show that the City retained financial or supervisory control over the parking enforcement work of the meter maids, who are now employees of the Authority. The hearing examiner therefore found no illegal transfer of bargaining unit work and dismissed the FOP's charge.

A union seeking to prove that an employer has committed an unfair labor practice by unilaterally transferring bargaining unit work outside the unit must show that the work in question has been performed exclusively by the bargaining unit. AFSCME, Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992). In this case, prior to May 1997 the work of enforcing handicap violations and driveway violations on a citywide basis was solely and exclusively performed by employees of the City's police bargaining unit. Moreover, prior to May 1997 the City's police officers solely and exclusively issued citations for any other parking violations that occurred outside the three downtown zones and 13 residential zones wherein the meter maids were authorized to enforce certain parking violations. Within the three downtown zones and 13 residential zones, the meter maids were limited to issuing citations for meter violations, overtime parking violations, yellow curb violations and residential permit parking violations. Only after the passage of Ordinance 897 were the meter maids authorized to issue citations for handicap space violations, driveway violations or for any parking violations on a citywide basis. Under the circumstances, the FOP met its burden

to show the exclusivity of the work at issue; the question remains as to whether the City transferred bargaining unit work in violation of its bargaining duty.

The unilateral transfer of bargaining unit work violates an employer's obligation to bargain in good faith and therefore constitutes an unfair labor practice. County of Bucks v. PLRB, 465 A.2d 731 (Pa. Cmwlth. 1983). Typical examples of an illegal transfer of bargaining unit work occur where the employer decides to use unpaid volunteers, PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978), other non-bargaining unit employees of the employer, City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992); City of Clairton v. PLRB, 528 A.2d 1048 (Pa. Cmwlth. 1987), or a subcontractor, Borough of Geistown v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996); Midland Borough School District v. PLRB, 560 A.2d 303 (Pa. Cmwlth. 1988) to do bargaining unit work. However, this case does not involve the use of volunteers, non-bargaining unit employees of the employer, or a subcontractor.

In this case, the City has, via Ordinance 897, transferred the meter maids, who were employees of the City, to the employ of the Authority. Municipal authorities such as the Parking Authority here are "independent agencies of the Commonwealth . . . [and] [a]s a result . . . are not viewed as arms" of the municipalities that created them. Commonwealth v. Lucas, 534 Pa. 293, 295, 632 A.2d 868, 870 (1993) (citations omitted). As a matter of law the Authority is an entity separate and apart from the City that created it. Thus, the situation here is not at all like the cases where the employer uses volunteers under its supervision or other non-bargaining unit employees of the employer to do bargaining unit work. On its face then, this situation may appear to resemble a subcontracting situation where the employer/former provider pays the subcontractor/new provider in exchange for the performance of the work at issue (*quid pro quo*). Borough of Geistown, supra. Indeed, pursuant to the Parking Authority Law of June 5, 1947, P.L. 458, as amended, 53 P.S. § 341, the City via Ordinance 897 authorized the Authority to develop, administer and enforce a system of on-street parking regulations, which includes the parking enforcement duties formerly performed exclusively by the City's police officers. Unlike the subcontractor situation, however, the City does not pay the Authority to perform parking enforcement services on a citywide basis. Rather, the Authority pays the City specific sums under Section 5 of Ordinance 897 in exchange for the grant of the authority to develop and administer parking regulations throughout the city. Moreover, under Section 6 of the ordinance the Authority reimburses the City for all salaries, wages and benefits paid by the City to the meter maids. The flow of money here is therefore moving in a direction opposite of what normally occurs in a subcontracting case. This financial relationship makes this case rather unique.

In its exceptions, the FOP contends that the financial arrangement between the City and the Authority here shows that the City maintains financial control such that this case should be considered an illegal transfer of bargaining unit work. The FOP also points out that the Authority acts as the City's agent for purposes of collecting revenue generated by the enforcement of parking violations by the City's police officers, 100% of which will then be paid over to the City's general fund (Section 4). However, the mere fact that parking enforcement generates revenue for the City is not determinative of whether or not this case involves an illegal transfer of bargaining unit work. The City's grant of authority to the Parking Authority to enforce citywide parking regulations here is closely akin to the grant of a revenue generating license by a municipality to another entity. In exchange for the license, which exists for a period of two years in this case (Section 2 of Ordinance 897), the Authority is to, in turn, generate revenue for the City and pay that revenue to the City in specific

amounts. Any amount of revenue generated by the Authority over and above those set amounts and the amounts required for the reimbursement of the meter maids salaries, wages and benefits presumably remains with the Authority. Therefore, the financial relationship between the City and the Authority is not dispositive of whether the City illegally transferred the work at issue.

Although the financial arrangement between the City and the Authority is rather unique, the FOP contends that the City's police officers continue to enforce parking regulations on a citywide basis and therefore this is a classic case of an illegal transfer of unit duties. Where the public employer transfers provision of a service to an alternative provider pursuant to an economic arrangement and does not permanently and completely cease to provide the service at issue, an unfair labor practice will be found. AFSCME, supra; County of Bucks, supra; Commonwealth of Pennsylvania, supra; (Capitol Police), supra. On the other hand, where a public employer ceases to provide police services and a successor provider thereafter provides such services by operation of law and not under the direction of the former provider pursuant to some economic arrangement<sup>2</sup> between the employer and the alternate provider, the employer has no obligation to collectively bargain with the representative of its employees prior to terminating the service. See, e.g., PLRB v. Perkiomen Township, 14 PPER ¶ 14259 (Final Order, 1983). Although the City authorized the Authority by way of ordinance to enforce citywide parking regulations, the City has not ceased enforcement of parking regulations and is not out of the business of parking enforcement. Indeed, at the expiration of two years the work will by operation of the ordinance revert to the City.

As the FOP points out, the situation here is unlike the cases relied upon by the hearing examiner in the PDO wherein the employers went out of the business of providing the services at issue. Capitol Police, supra (Commonwealth's decision to cease having capitol police provide police coverage of non-capitol complex buildings not an illegal transfer of bargaining unit work where local police forces take over services by operation of law); Penn Township, 29 PPER ¶ 29134 (Proposed Decision and Order, 1998) (no illegal transfer of bargaining unit work where township ceased sewer operations, which were taken over by the township's sewer authority); City of York, 28 PPER ¶ 28051 (Proposed Decision and Order, 1997) (sale of city's parking garages, meters and related facilities to city's general authority showed city no longer in the parking business). The work of citywide parking enforcement is now shared by police officers and the meter maids now employed by the Authority. Because the Authority's parking enforcement officers (including the meter maids) are now doing some of the parking enforcement work throughout the City that was previously done exclusively by uniformed police officers, the police officers are no longer doing all the work for which they bargained. Therefore, the City illegally transferred bargaining unit work in violation of Section 6(1)(a) and (e) of the PLRA and Act 111. City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992). Accordingly, the Board will sustain the FOP's exceptions and set aside the PDO consistent with this decision.

It is the Board's usual policy to direct restoration of the status quo ante in unfair labor practice matters involving removal of bargaining unit work. Specifically, the City shall be directed to rescind Section 7 of Ordinance 897 to the extent it authorizes employees of the Reading Parking Authority to perform citywide parking enforcement, including handicap space violations, driveway violations as well as any other parking violations outside those zones where the meter maids were previously restricted, restore the status quo ante and return the bargaining unit work to the police bargaining unit. The Board's remedial order is restricted to those parking enforcement functions previously performed exclusively by the FOP unit (see amended finding of fact 7 above). Consistent

with the above discussion, should the City seek to remove bargaining unit work in the future, it shall be the City's obligation to seek out the FOP and satisfy its collective bargaining obligation prior to any future decision to remove bargaining unit work. FOP v. City of Philadelphia, 21 PPER ¶ 21042 (Final Order, 1990); PLRB v. Garnet Valley School District, 8 PPER ¶ 365 (Final Order, 1977). In the event that the City may wish to comply with the Board's order and not further seek to remove bargaining unit work, the City shall not be directed to offer to negotiate with the FOP.

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

#### CONCLUSIONS

That CONCLUSIONS numbers 1 through 4 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 5 of the Proposed Decision and Order is hereby vacated and set aside and the following additional conclusion is made:

5. That the City has committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA and Act 111.

#### 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 City shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA and Act 111.

2. Cease and desist from refusing to bargain collectively with the representative of its employees.

3. Take the following affirmative action which the Board finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Rescind Section 7 of Ordinance 897 to the extent it authorizes employees of the Reading Parking Authority to perform citywide parking enforcement, including handicap space violations, driveway violations as well as any other parking violations outside those zones where the meter maids were previously restricted, restore the status quo ante and return the bargaining unit work which was previously performed exclusively by the police bargaining unit to the police bargaining unit;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of this date hereof satisfactory evidence of compliance with this Decision and Order by completion

and filing of the attached Affidavit of Compliance.

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 twenty-first day of June, 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.

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :  
LODGE #9 :  
v. : Case No. PF-C-97-142-E  
CITY OF READING :

**AFFIDAVIT OF COMPLIANCE**

The City of Reading (Employer) 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 Section 7 of Ordinance 897 to the extent it authorizes employes of the Reading Parking Authority to perform citywide parking enforcement, including handicap space violations, driveway violations as well as any other parking violations outside those zones where the meter maids were previously restricted, restored the status quo ante and returned the bargaining unit work which was previously performed exclusively by the police bargaining unit to the police bargaining unit; 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 Association at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public

<sup>1</sup> The hearing examiner also concluded that parking enforcement in the 13 residential permit-parking zones was exclusively performed by City police officers. However, the record shows that the meter maids also issued citations for residential permit parking violations that occurred in the 13 residential zones and therefore this work was not solely and exclusively that of the City's police officers. Moreover, the FOP conceded in its unfair labor practice charge that bargaining unit personnel did not solely and exclusively perform permit-parking violations within certain areas of the City. The Board has accordingly amended Findings of Fact 4, 7 and 8.

<sup>2</sup> That the City consummated the economic relationship in an ordinance rather than a more typical subcontract of service does not change the nature of the action taken or the analysis.