

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
LODGE NO. 5 :
 :
 v. : Case No. PF-C-98-64-E
 :
CITY OF PHILADELPHIA :

FINAL ORDER

On February 16, 1999, the Fraternal Order of Police, Lodge No. 5 (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the proposed decision and order (PDO) entered on January 27, 1999. In the PDO the hearing examiner concluded that the City of Philadelphia (City) did not engage in unfair labor practices contrary to Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by failing to comply with the Union's request for information regarding whether the City relied upon citizen complaints against police officers as a criterion for promotions or transfers. Pursuant to an extension granted by the Secretary of the Board the City filed a brief in response to the FOP's exceptions on March 29, 1999. The essential facts of this case as found by the hearing examiner are as follows. The Union represents a bargaining unit of police officers employed by the City. On February 19, 1998, the Union became aware of a newspaper article which quoted a management employe of the police department as stating that citizen complaints were considered in making appointments to the department's highway patrol unit. The City had previously assured the Union that citizen complaints were not considered by the department when reviewing applications for promotion or transfer. On February 24, 1998, the Union sent the City a letter requesting information regarding the extent to which citizen complaints are relied upon in considering requests for promotion or transfer. The City did not respond to the Union information request. The current collective bargaining agreement between the City and the Union contains the following language:

- L. Transfers
 - a. Transfers shall be for the purpose of maintaining essential manpower requirements. Transfers may be part of the formal disciplinary system that is subject to the procedures contained in Article XIX. Transfers shall not be made on the basis of personal animus. all transfers shall be personally communicated by the transferred employee's commanding officer of the unit from which the employee was transferred.
 - b. Transfers between the Police Department and District Attorney's Office shall not be unreasonably denied.

The hearing examiner stated in the PDO that an employer has a duty to provide information requested by the Union which is relevant to its policing of the collective bargaining agreement even where no grievances are pending citing Bristol Township, 27 PPER ¶ 27046 (Proposed Decision and Order, 1996). The hearing examiner further stated that the Board's standard for relevancy is a liberal discovery type standard that allows the Union to obtain a broad range of

potentially useful information citing Commonwealth of Pennsylvania, Department of Public Welfare, 17 PPER ¶ 1717125 (Final Order, 1986), aff'd, 527 A.2d 1097 (Pa. Cmwlth. 1987). However, the hearing examiner determined that the information requested concerns a non-mandatory subject of bargaining (criteria for promotions or transfers) and stated that where an employer has no duty to bargain over a decision it also has no duty to supply information upon which the decision was based citing Commonwealth of Pennsylvania, 19 PPER ¶ 19138 (Final Order, 1988), Bostum Division UOP and Independent Union of Boston, 272 NLRB No. 153, 117 LRRM 1429 (1980) and Kroger Company v. NLRB, 399 F.2d 455 (6th Cir. 1968).

The Union excepts to the hearing examiner's consideration of whether the information request concerns a mandatory subject of bargaining and contends that this is an issue which was raised sua sponte by the hearing examiner and was not raised by the parties. The FOP contends that the actual issue in this case is whether the Union has requested information which is relevant to its policing of the collective bargaining agreement. The Union points out that the collective bargaining agreement contains the above-quoted language regarding transfers and also contains language regarding promotions.¹ The Union argues that because the collective bargaining agreement addresses promotions and transfers its request for information regarding the City's use of citizen complaints in making decisions regarding promotions and transfers is necessarily relevant to its policing of the agreement.

However, where the employe representative charges the employer with failing to meet its statutory obligation to provide information the employe representative has the burden of demonstrating that the requested information is relevant to its enforcement of the collective bargaining agreement or formulation of a collective bargaining proposal. See, e.g., Commonwealth of Pennsylvania, supra; Crestwood School District, 26 PPER ¶ 26073 (Proposed Decision and Order, 1995); Reading School District, 23 PPER ¶ 23140 (Proposed Decision and Order, 1992). The Union never explains how information regarding the City's use of citizen complaints in making decisions regarding promotions or transfers is relevant to enforcement of the cited contractual provisions which in no way restrict the City's ability to rely on such complaints in making promotions or transfers. Nor are we able to discern any potential relevance. Therefore, even under the liberal discovery type standard of relevance which the Board applies in cases involving information requests the Union has failed to meet its burden of proof. Compare City of Philadelphia, 19 PPER ¶ 19180 (Proposed Decision and Order, 1988) (information requested by union regarding list of non-unit police officers assigned to civilian work sites relevant to union's attempt to determine whether city was in violation of contractual provision prohibiting assignment of police officers to perform work of civilians represented by union).

After a thorough review of the exceptions and all 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 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 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 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.

¹ The collective bargaining agreement provision cited by the Union states as follows:

"Examination and Promotions:

Effective for examinations announced after January 1, 1997, the City shall establish and publish a 'source list' for each objective-type promotional examination. There shall be a 'source list' for each rank. The City, in its sole discretion, shall have the right to change each 'source list' from time to time, however; (a) the City shall provide reasonable notice of any such changes in advance of any examination that will be subject to the changed 'source list;' and (b) in no event shall such modification of a 'source list' take place less than one hundred twenty (120) days prior to the examination for the affected class. A promotional examination shall be announced at least ninety (90) days prior to the date that it is given."