COMMONWEALTH OF PENNSYLVANIA Pennsylvania Labor Relations Board

NORTH CORNWALL TOWNSHIP : POLICE ASSOCIATION :

:

v. : Case No. PF-C-01-12-E

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NORTH CORNWALL TOWNSHIP

FINAL ORDER

On December 3, 2001, the North Cornwall Township Police Association (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated November 13, 2001. In the PDO, the Hearing Examiner concluded that North Cornwall Township (Township) did not violate Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by unilaterally altering officers' work schedules from ten hours to eight hours per shift because the parties' collective bargaining agreement (CBA) provided a sound arguable basis for this action.

In its exceptions, the Union argues that the Hearing Examiner erred in failing to find as fact that Article 4 (overtime) and Article 9 (holiday) of the CBA were intended to apply to overtime and holiday only and do not provide a contractual basis for unilaterally switching the length of officers' shifts from ten hours to eight hours. Accordingly, the Union contends that the CBA does not contain any provisions allowing the Township to make such unilateral changes and the conclusion that the Township possessed a contractual privilege to return officers to eight-hour shifts is in error.

As recognized by the Hearing Examiner in this case, the Board, in Jersey Shore Area Educ. Ass'n v. Jersey Shore Area Sch. Dist., 18 PPER ¶ 18117 (Final Order, 1987), long ago adopted the contractual privilege doctrine as set forth in NCR Corp., 271 N.L.R.B. 1212, 117 L.R.R.M. 1062 (1984) and Vickers, Inc., 153 N.L.R.B. 561, 59 L.R.R.M. 1516 (1965). Also, the Commonwealth Court has expressly approved the Board's consistent application of the contractual privilege doctrine. Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645, 650-52 (Pa. Cmwlth. 2000) (citing Ellwood City Wage and Policy Unit v. Ellwood City Borough, 28 PPER ¶ 28200 (Final Order, 1997); Delaware County Lodge #27 of the Fraternal Order of Police on behalf of the Members of the Police Force of the Borough of Prospect Park v. Prospect Park Borough, 27 PPER ¶ 27222 (Final Order, 1996); Jersey Shore, supra). In NCR Corp., the National Labor Relations Board (NLRB) held that when an employer is charged with unilaterally implementing a change that affects a mandatory subject of bargaining, the charge will be dismissed if the employer had a sound arguable basis for its interpretation of a

contractual provision upon which it based its unilateral action. 1 NCR, supra. The employer's interpretation need not be the correct interpretation to invoke the contractual privilege defense, Jersey Shore, supra, and the Board need not endorse either of two equally plausible interpretations. NCR Corp., supra. In Vickers, Inc., the NLRB reasoned that it "is not the proper forum for parties seeking an interpretation of their collective-bargaining agreement." Vickers, 59 L.R.R.M. at 1518. The contractual privilege defense is viable when "an employer has a sound arguable basis for ascribing a particular meaning to his contract and his action is in accordance with the terms of the contract as he construes it." Id. Neither this Board nor the NLRB will exercise jurisdiction or enter into the dispute "to serve the function of arbitrator in determining which party's interpretation is correct." Jersey Shore, 18 PPER at 341 (quoting NCR Corp., 117 L.R.R.M at 1063).

After reviewing the contract, the Board agrees with the Hearing Examiner's conclusion that Articles 4 and 9 of the CBA are ambiguous and, on their face, provide a sound arguable basis that the CBA contemplated permitting the Township to unilaterally change the length of the patrol officers' shifts from ten hours to eight hours. The Board only concludes that the facial ambiguity of the relevant provisions of the CBA provides a sound arguable basis supporting the Township's interpretation such that the unilateral action at issue does not constitute a clear repudiation of the CBA or otherwise rise to the level of a statutory violation. The Board makes no judgment as to the proper interpretation of the parties' CBA, which should be appropriately reserved for the grievance/arbitration procedure. Accordingly, the Board is not endorsing the Township's interpretation nor is it concluding that the Township's interpretation is correct.

We find this case similar in material respects to Minersville Area Sch. Serv. Personnel Ass'n v. Minersville Area Sch. Dist., 18 PPER ¶ 18025 (Final Order, 1986). In Minersville, the parties' collective bargaining agreement identified three shifts and premium pay for work on the least desirable shift but no employes were currently assigned to work that shift when the agreement was negotiated. During the summer months, the school district determined that its needs required performance of bargaining unit work during the least desirable shift and assigned bargaining unit employes to that shift. The union alleged a unilateral change in terms and conditions of employment and charged the employer with an unfair practice. The Board dismissed the charge finding essentially that the employer satisfied its collective bargaining duty where it negotiated the contract establishing the shift and establishing premium pay for work on the shift. The subsequent assignment of employes to the shift was an exercise of the employer's managerial prerogative to direct employes. The Board's position regarding the negotiability of work shifts is essentially that the employer has an obligation to negotiate the framework (shift times, wages, etc.) but that the assignment of employes to work particular shifts to meet the employer's needs in discharging its public function

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¹ The question of whether changing the length of the officers' shifts constitutes a mandatory subject of bargaining is not an issue presented here on exceptions.

² The Board has historically relied on case authority decided under PERA in deciding issues under Act 111 where the policies are the same.

is, as a general matter, managerial prerogative. Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993) (holding that the framework for shift times and schedules are negotiable); Southpark Township Police Ass'n v. Southpark Township, 32 PPER ¶ 32078 (Final Order, 2001) (holding that, once shift schedules and hours are negotiated, the public employer has a managerial prerogative to direct personnel to work the entire length of those shifts and perform the work the public employer deems necessary to perform its public function). Here the Township and the Union negotiated both 10-hour and 8-hour shifts in the contract and the Union alleged that the Township violated its bargaining duty by subsequently assigning employes to the 10-hour shift negotiated in the contract. Like Minersville, we find that once the matter at issue is incorporated into the contract, the assignment of employes to that shift is a matter of direction of personnel.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Decision and Order of the Hearing Examiner.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111 of 1968, 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 that the Proposed Decision and Order be and the same is hereby made final and absolute.

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 nineteenth day of February, 2002. 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.