COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE QUEEN CITY LODGE NO. 10	:	
v.	:	Case No. PF-C-02-94-E
CITY OF ALLENTOWN	:	

FINAL ORDER

On May 27, 2003, the City of Allentown (City) timely filed with the Pennsylvania Labor Relations Board (Board) exceptions, and a supporting brief, to the Proposed Decision and Order (PDO) issued May 6, 2003, concluding that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by unilaterally removing the work of the court liaison officer from the bargaining unit.[1] On June 16, 2003, the Fraternal Order of Police, Queen City Lodge No. 10 (Union) filed a brief in opposition to the exceptions.

In the late 1970's, the City's police department (Department) created the position of Court Liaison Officer (CLO). The CLO is responsible for working with the Lehigh County District Attorney's office and other state, county and federal government agencies to coordinate the appearance and testimony of City police officers in various court proceedings, including criminal trials, motions court, sentencing hearings, Protection From Abuse hearings, Children and Youth hearings and civil cases. The first person to hold the position was a civilian who was not in the Act 111 police bargaining unit. The second person to hold the position of CLO was a park officer who was also not in the Act 111 bargaining unit. The third CLO held the position between 1983 or 1984 and 1989, and he was also a park officer who was not in the Act 111 bargaining unit. In 1989, the position of CLO was assigned to a police officer in the Act 111 bargaining unit represented by the Union. From 1989 to 2002, the CLO position was held by a police officer who was a member of the Union. On May 22, 2002, Chief Stephen L. Kuhn announced a reorganization of the Department, which included a reassignment of the CLO duties to a civilian. On June 10, 2002, Jeffrey Mertz, the last police officer to hold the CLO position, was removed and the CLO work was transferred to a civilian without bargaining with the Union.

In its exceptions, the City claims that the Examiner erred by failing to find that the CLO position consists solely of clerical, non-police duties and by concluding that the work of the CLO was bargaining unit work when those clerical duties do not constitute "police work." As recognized by the City in its brief, the Examiner is only obligated to set forth those findings necessary to support his conclusion. He is not required to summarize the evidence, make unnecessary findings of fact or make findings that would support another conclusion, even if there is substantial evidence to support such findings. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988); AFSCME v. Dep't Public Welfare, 18 PPER ¶ 18028 (Final Order,

[1] May 26, 2003 was a legal holiday.

1986). Contrary to the City's argument, however, determining whether job duties constitute bargaining unit work is mutually exclusive of whether those same job duties constitute police work. Bargaining unit work is not synonymous with the City's subjective determination of what constitutes legitimate enforcement or police work for which Act 111 police officers are trained at the police academy, as argued by the City. Police officers routinely perform administrative duties that do not directly involve law enforcement activity for which the officer was trained at the academy but are nevertheless necessary and incident to the enforcement functions of the police department.

In City of Clairton v. PLRB, 528 A.2d 1048 (Pa. Cmwlth. 1987), the Commonwealth Court affirmed the Board and held that the city could not unilaterally reassign the dispatching duties performed by police officers, which arguably are not traditional enforcement duties for which police officers are trained at the academy, to the firemen in response to a fiscal crisis and a concern for public safety requiring more police officers on the street. Also, in City of Bethlehem v. PLRB, 621 A.2d 1184 (Pa. Cmwlth. 1993), the Commonwealth Court held that the employer could not unilaterally replace a sergeant performing and supervising dispatching duties with a civilian. The Bethlehem Court opined that "any management action concerning police and fire personnel is bargainable when that action has a rational relationship to their duties." Id. at 1186 (emphasis original).

In Fraternal Order of Police, Haas Memorial Lodge No. 7 v. City of Erie, 19 PPER ¶ 19188 (Final Order, 1988), the union filed an unfair labor practice charge against the employer for unilaterally removing work performed by members of the bargaining unit. The employer advanced the two identical arguments as the City advances herein, and claimed that the police officers in the position of traffic court administrator performed largely clerical duties, thereby acting as clerks rather than police officers. The Board rejected those arguments, relying on the Commonwealth Court's holding in City of Clairton, supra, and held that determining whether certain job duties and classifications should be included within the bargaining unit is a proper subject for the Board's unit clarification procedure. In this regard, the Board stated that "[i]t is the duty of the Board, and not the right of the employer unilaterally, to determine the appropriateness of a bargaining unit." City of Erie, 19 PPER at 455. By arguing that the duties of the CLO are clerical rather than enforcement in nature, the City is attempting to usurp the role of the Board in defining the composition of the bargaining unit.

The City relies on Fraternal Order of Police Lodge No. 85 v. Commonwealth, 29 PPER ¶ 29148 (Final Order, 1998), to support its argument that a union must establish that the work unilaterally removed was police work and not just any work. The Commonwealth case, however, is inapposite to this case. As the Examiner properly recognized in the PDO, the operative fact in that case was that the security guards assigned to staff booths to discourage pedestrian traffic in construction areas was never performed by the bargaining unit. Although, as emphasized by the City in its brief, the Board in that case refers to the fact that those security guards were neither empowered to perform nor actually performed police work, the Board's decision turned on the fact that the work at issue was not performed by the bargaining unit before. The nature of the work was only considered by the Board because it had never been done by bargaining unit members. Therefore, to determine whether the new work was of the type that should be deemed bargaining unit work required an analysis of the type

of work performed. However, where, as here, a union establishes on the record that the particular duties at issue were in fact performed by members of the bargaining unit, an analysis of whether the work is of the type that should be deemed included, which was necessary in Commonwealth, is not necessary or relevant. Accordingly, the Examiner was correct in concluding that Commonwealth turned on the fact that the particular job duties at issue were not performed by bargaining unit members before.

The Board has found no authority, and the City has cited none, to support the City's contention that an employer's subjective determination that the nature of the duties of a particular position that have been exclusively performed by the bargaining unit warrants the employer's unilateral removal of that work from the bargaining unit. In this case, the City does not have the right to subjectively determine that the nature of the work performed by the CLO does not constitute legitimate police or enforcement work, for which officers are trained at the academy, and unilaterally remove that work. In any case where an employer transfers work away from a bargaining unit of police officers, it could be argued that the work does not require the training and enforcement expertise of a police officer. Obviously, a public employer would not reassign the duties of arrest to untrained civilian employes. The administrative details incident to law enforcement are no less police work than the arrest itself. Accordingly, the City's proposed finding that the CLO's duties constitute clerical, non-police work is not necessary to a conclusion that the CLO work did or did not constitute bargaining unit work.

The City next argues that Examiner erred in concluding that it violated its duty to bargain the transfer of the CLO work outside the bargaining unit because the work had not been "historically and exclusively" performed by the bargaining unit. The City argues that a union can only meet its burden of proving that the work was historically and exclusively performed by the bargaining unit if it proves that the work was not ever done by even one person outside the unit since the inception of the position or the work. We disagree.

In an unfair practice claim against a public employer for unilaterally removing bargaining unit work, the union has the burden of establishing that the work in question was exclusively performed by a member or members of the bargaining unit. City of Clairton, supra; AFSCME Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992). In City of Erie, supra, the public employer also argued that the duties of the traffic court administrator were not always performed by police officers in the bargaining unit and that, at the time of the union's certification, a non-unit employe performed those duties. The Board, in City of Erie, held the following:

> [R]egardless of whether the position of traffic court administrator was bargaining unit work at the time the [union] was certified in 1983, it certainly became bargaining unit work when sergeant Robinson assumed the position in July of 1986. Therefore, the [c]ity could not unilaterally remove the work performed by Sergeant Robinson from the unit and transfer it to a civilian.

City of Erie, 19 PPER at 455 (emphasis added). In City of Erie, the work was removed in January of 1988. In this case, the court liaison work was exclusively performed by bargaining unit members since 1989, a period of approximately thirteen years. Indeed the Commonwealth Court has adopted

the position of this Board and the National Labor Relations Board that where bargaining unit and non-bargaining unit employes perform the same duties, a union can meet its burden of proving that the bargaining unit exclusively performed the work by proving that the employer changed the quantity, manner or proportion of the work historically performed by bargaining unit members. AFSCME, Council 13, supra. A public employer commits an unfair labor practice if it transfers or removes any part of the work outside the unit. City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992). Accordingly, Commonwealth Court and Board precedent is in direct contravention to the City's argument that a union must establish that the duties in question were not at any time performed by employes outside the bargaining unit in the distant past. Certain jobs or job functions can and often do become bargaining unit work as recognized by the Board in City of Erie, supra.

After a thorough review of the exceptions, brief in support, brief in opposition and all matters of record, the Board shall dismiss the exceptions and affirm the Hearing Examiner's conclusion that the City committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA.

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 absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Anne E. Covey, member, this fifteenth day of July, 2003. 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.

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AFFIDAVIT OF COMPLIANCE

The City of Allentown hereby certifies that it has ceased and desisted from it violation of Section 6(1)(a) and (e) of the PLRA and Act 111; that it has rescinded the practice of assigning non-bargaining unit employes to the performance of court liaison work previously performed by the police bargaining unit employes; that it has restored the status quo ante and returned to the bargaining unit the work which was previously performed exclusively by the police bargaining unit employes; that it has posted a copy of the proposed decision and order as directed therein; that it has posted a copy of the Final Order in the same manner; and, that it has served an executed copy of this affidavit on the Fraternal Order of Police, Queen City Lodge #10 at its principal place of business.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public