

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS ASSOCIATION :
: :
v. : Case No. PF-C-04-31-E
: :
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :

FINAL ORDER

On July 19, 2004, the Commonwealth of Pennsylvania, Pennsylvania State Police (Commonwealth) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated June 29, 2004. In the PDO, the Hearing Examiner concluded that the Commonwealth did not engage in unfair labor practices in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111, and dismissed as premature the charge filed by the Pennsylvania State Troopers Association (Union), which alleged that the Commonwealth unlawfully removed dispatch supervisory duties from the bargaining unit. On August 12, 2004, the Union timely filed a brief in response to exceptions.

Members of the bargaining unit of Pennsylvania State Troopers have supervised civilian dispatchers at 81 state police stations for the past 23 years. The supervisory duties included preparing the schedules of the civilian dispatchers, preparing their performance evaluations, discussing their performance and physically monitoring them. In the mid-1990's, the Commonwealth began developing plans for a technologically advanced incident information management system under which dispatching is to take place at only five consolidated dispatch centers (CDC). On November 4, 2004, the Commonwealth filed a unit clarification petition with the Board to include the position of police communications supervisor in a non-police bargaining unit represented by AFSCME. The Board assigned Case No. PERA-U-02-541-E to the petition. The Commonwealth did not notify the Union of the filing of the petition. Also, the Commonwealth represented to the Board on its petition that no other employe organization claimed to represent the employes in that classification. Consequently, the Board did not notify the Union of the filing of the petition and the Union did not intervene. By memorandum dated November 19, 2002, the Commonwealth directed its troop commanders and station commanders to post the petition at each communications desk in each station for a period of five days.

On November 15, 2002, the Board issued a nisi order of unit clarification including the classification of police communications supervisor in AFSCME's bargaining unit. The Union did not file exceptions to the nisi order of unit clarification. By memorandum dated December 10, 2002, the Commonwealth directed its troop commanders and station commanders to post the nisi order of unit clarification at the communications desk in each station for a period of five days. On December 18, 2003, the parties met to negotiate issues regarding the CDCs. No agreements were reached. As of the date of the hearing, the

Commonwealth had hired and trained police communications supervisors to work at CDCs, however, the Commonwealth had yet to open a CDC.

In its exceptions, the Commonwealth contends that the Hearing Examiner erred for the following reasons: (1) by determining that the unit clarification petition in Case No. PERA-U-02-541-E, which placed police communications supervisors into the non-police AFSCME unit, was not a defense to the charge in this case; (2) by failing to find that the Union waived its right to protest the alleged transfer of work when it failed to intervene in the unit clarification petition proceeding; and (3) by determining that the Union lacked an opportunity to intervene in the unit clarification proceeding.

The Union's charge alleged that the Commonwealth engaged in unfair labor practices by unilaterally transferring the duties of dispatch supervisor from the police bargaining unit to non-bargaining unit civilian employes. The Hearing Examiner made a finding of fact wherein he determined that "the Commonwealth had yet to open a consolidated dispatch center." (F.F. 12). Finding of Fact No. 12 is supported by substantial, competent evidence of record. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942). Consequently, Finding of Fact No. 12 also supports the Examiner's conclusion that the charge was prematurely filed because the Commonwealth had not transferred any bargaining unit work to non-unit employes and, therefore, the factual predicate for the charge does not exist. Neither party has challenged that determination. Accordingly, the Board will not disturb that conclusion.

Although the Examiner dismissed the charge as premature, he addressed the Commonwealth's defenses. The Board and its hearing examiners do not have jurisdiction to entertain premature claims that are not ripe for adjudication. Commonwealth v. Ryan, 459 Pa. 148, 327 A.2d 351 (1974) (holding that tribunals lack subject matter jurisdiction over premature claims where the act complained of has not actually occurred and the impact cannot be properly assessed even though the tribunal has competence to adjudicate cases of that particular class).¹ The Supreme Court, in Ryan, stated the following:

A major purpose of [the collective bargaining statutes] is to encourage the peaceful resolution of labor disputes between public employers and their employees through orderly procedures of collective bargaining. Resort to the courts [or in this case, the Board] may frustrate this statutory purpose. The pendency of a suit . . . , even though not immediately brought on for hearing, can shorten tempers, harden bargaining positions, and distract attention from the negotiating process.

¹ The Commonwealth Court has approved the practice of alternatively addressing the merits of a case that has been dismissed on jurisdictional grounds. Fraternal Order of Police, Fort Pitt Lodge No. 1 v. PLRB, 553 A.2d 469, 471 n.2 (Pa. Cmwlth. 1988). Albeit dicta, the alternative discussion affords substantive review without remand, in the interest of judicial and administrative economy, if the jurisdictional dismissal is reversed. Accordingly, the Examiner did not err in discussing the Commonwealth's position. However, the Examiner's discussion remains dicta in this case, due to the conclusiveness of the jurisdictional dismissal and, therefore, does not bind the parties or the Board.

Ryan, 459 Pa. at 158, 327 A.2d at 356, n.6. Unable to assess the effect on the bargaining unit of a transfer of duties that has not occurred, the Board and its Examiner lacked jurisdiction to entertain the charge and the merits of the Commonwealth's defenses, which include an argument that the civilian supervisory duties are not substantially similar to the bargaining unit supervisory duties. Accordingly, the Examiner's discussion of the Commonwealth's defenses does not support the Examiner's conclusion, and it is not binding on the parties. The Board, therefore, is unable to grant relief to the Commonwealth and the exceptions must be dismissed as moot. Krenzel v. SEPTA, 840 A.2d 450 (Pa. Cmwlth. 2003) (stating that a matter is moot where, as here, there is no meaningful relief to be ordered).

After a thorough review of the exceptions, brief in support, and all matters of record, the Board shall dismiss the exceptions and affirm the Hearing Examiner's conclusion that the Commonwealth did not engage in 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, L. Dennis Martire, Chairman, and Anne E. Covey, member, this twenty-first day of September, 2004. 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.