

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS ASSOCIATION :
:
v. : Case No. PF-C-04-123-E
:
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :

FINAL ORDER

On February 16, 2005, the Commonwealth of Pennsylvania, Pennsylvania State Police (PSP or Commonwealth) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated February 2, 2005. In the PDO, the Hearing Examiner concluded that the Commonwealth engaged in unfair labor practices in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111, by unilaterally transferring the work of supervising police communications operators (PCO) from the police unit to non-bargaining unit civilian employees. On March 23, 2005, the Commonwealth timely filed its brief in support of exceptions in compliance with the extension granted by the Board Secretary. On April 18, 2005, the Pennsylvania State Troopers Association (Union) filed a brief in opposition to the Commonwealth's exceptions.

The parties agreed to incorporate by reference the notes of testimony from a related hearing held on April 27, 2004, in Case No. PF-C-04-31-E, from which the Examiner made findings of fact herein. (PDO at 1). The same Examiner issued a proposed decision and order in that case dismissing the charge as premature. The findings of fact in Case No. PF-04-31-E are also part of the discussion below.

PCOs are civilian employees of the PSP who receive calls, dispatch the police officers of the PSP and perform filing and other clerical duties. The PCOs have been utilizing radios, telephones, paper forms and reports, and a single-monitor computer at eighty-one separate PSP stations to perform these duties. Since at least 1981, the PSP has assigned police officers in the bargaining unit to supervise the PCOs. The supervision included scheduling and evaluating the PCOs, answering their questions and substituting for them. In the mid-to-late 1990's, the Commonwealth began planning for the implementation of a technologically advanced incident information management system for the PSP under which dispatching would take place at 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. Although the petition was posted at each communications desk in each station, the Commonwealth did not notify the Union of the petition and represented to the Board on its petition that no other employe organization claimed to represent the employees in that classification. Consequently, neither the Commonwealth nor the Board notified the Union of the filing of the petition. 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.

Beginning in November 2002 and into the next year, the Union's president informed the Commonwealth's chief negotiator for the PSP that the Union wanted to negotiate use of civilian PCO supervisors to replace bargaining unit members at the CDCs. The Commonwealth's chief negotiator took the position that the Commonwealth was under no obligation to bargain with the Union over the use of civilian PCO supervisors and no agreements were reached.

On June 5, 2004, the Commonwealth opened the first of the five consolidated dispatch centers with civilian PCO supervisors, represented by AFSCME. The PCOs at the CDC perform dispatching and filing services for the PSP, as they previously did at the stations, except, at the CDC, the PCOs use automated computer equipment and processes. As

before, the supervision of PCOs at CDCs includes evaluating and scheduling the PCOs, answering their questions and substituting for them. A PCO supervisor at a CDC must be certified in the use of a computer aided dispatching system by the Association of Public Safety Communications Officers and by the Pennsylvania Emergency Management Agency. State police officers in the bargaining unit are also capable of being certified.

In its exceptions, the Commonwealth contends that the Examiner erred in concluding that the Commonwealth transferred bargaining unit work. The Commonwealth argues that the nature of the supervisory work is not "equivalent" to the supervisory duties at the stations due to the introduction of advanced computerized technology, which changed the supervisory duties and which requires advanced training and certification. In this regard, the Commonwealth also argues that the Examiner erred in failing to find as fact that the work done by police communications supervisors at CDCs is not "equivalent" to the work performed by the police unit members.

As recognized by the Examiner, the Board rejected the identical argument on a similar record in FOP, Lodge 1 v. City of Pittsburgh, 21 PPER ¶ 21111, (Final Order, 1990) and in FOP, Lodge 5 v. City of Philadelphia, 27 PPER ¶ 27161 (Final Order, 1996). The Board, in City of Philadelphia, opined as follows:

A similar argument was made by the Employer in City of Pittsburgh. In City of Pittsburgh, the employer began utilizing civilian employee[s] to perform the dispatch of incoming emergency calls for police, fire, and emergency medical services, who used a computer-aided dispatch system. Previously, the employer did not have a centralized, computerized dispatch system. The dispatch of police calls was handled by police officers who used a less technologically advanced system. The employer, who had not bargained the removal of the dispatch work with the police union, argued that it was not required to bargain. The employer reasons that the duties performed by the civilian dispatchers were not the same as those performed by the former police dispatchers due to the centralization and computerization of the dispatch system, and thus no bargaining unit work was removed. The Board rejected this argument. Reasoning that the essential function of both the police and civilians was to dispatch emergency calls, and that civilians were dispatching the incoming police emergency calls formerly dispatched by the bargaining unit, the Board concluded that the employer removed work from the bargaining unit.

City of Philadelphia, 27 PPER at 369. The Philadelphia decision further provided that "the Board readily agrees that the introduction of technology is generally a matter of managerial prerogative. The issue is obviously not whether the Employer can introduce advanced technology in the workplace, but who will perform the duties associated with the essential function and goals, which have not changed." Id.

The Commonwealth may certainly introduce new technology as part of its core managerial function to improve police services with advanced dispatching equipment and techniques. However, the new computerized, consolidated technology did not change the fact that the PSP continues to require employe dispatchers to operate dispatching equipment, albeit advanced equipment, and supervisory personnel to supervise these functions. Indeed, Findings of Fact numbers 2 & 5 demonstrate that the essential duties of the police supervisors in the bargaining unit at the stations are the same as those of the civilian police communications supervisors at the CDCs. The new technology did not displace the need for supervisors performing essential supervisory functions. This case is closely analogous to City of Pittsburgh where the Board rejected the position advanced by the Commonwealth here. "Where non-unit personnel perform work through use of new technology that is substantially equivalent to work previously performed by the bargaining unit on an exclusive basis, the Board will find a duty to bargain over assignment of such work out of the unit." FOP, Lodge 5 v. City of Philadelphia, 31 PPER ¶ 31022 at 55 (Final Order, 1999). Therefore, the PSP simply replaced the Act 111, police supervisors with civilian supervisors. Accordingly, the record supports the Examiner's conclusion that the civilian communications supervisor's duties are equivalent to the duties performed by the Act 111 supervisors.

The Commonwealth argues that the Board's decision in City of Philadelphia, 31, PPER ¶ 31022 (Final Order, 1999), should govern the disposition here. In the City of Philadelphia case, the graphic artists in the police unit enlarged street maps of the city generated by the city's planning department. These enlarged street maps were placed on the walls at various police stations throughout the city so officers could place pins in the maps at locations where crimes were committed. The city created a new computerized mapping unit to enhance its criminal analysis capability. The city hired civilian computer analysts to write software programs for the new mapping unit that would automatically record the location of criminal activity throughout the city from 911 data and to establish an intranet for citywide access to that information. The Board concluded that the city did not unlawfully transfer bargaining unit work because the work of the civilian computer analysts was not substantially equivalent to the map enlargement work formerly done by the bargaining unit. The civilians developed and maintained software applications and operations whereas the bargaining unit members merely placed pins on maps.

In the City of Philadelphia pin mapping case, the employer introduced new technology that displaced the bargaining unit work. In this case, the new technology merely serves as a better tool for employes to perform essentially the same functions. The Board, in City of Philadelphia, noted that the "process of plotting crime data on the [new] maps is automated and not performed by anyone." Id. "The work has been eliminated through automation." Id. (emphasis added). Contrary to City of Philadelphia, however, the communications supervisors here merely utilize improved equipment to accomplish essentially the same tasks. Although the new technology may reduce the number of PCO supervisors needed throughout the Commonwealth, the consolidated system does not eliminate, through automation, the need for supervisors and that residual work remains with the police bargaining unit until the Commonwealth bargains the transfer or the Board approves it after a unit clarification proceeding.

The Hearing Examiner was required to set forth only those facts that were necessary to support his decision. He was not required to summarize all the evidence presented, make findings that are unnecessary or make findings that would support another decision, 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, 1986). The Examiner found that the supervisory functions of the dispatchers remained the same despite the introduction of technology. After reviewing the record and the PDO, the Board concludes that the Examiner indeed made those findings that were necessary to support his conclusion that the functions of the communications supervisors remained substantially equivalent despite the introduction of technology. The Examiner did not omit any necessary findings and the contrary finding proposed by the Commonwealth (that the PCO supervisor work at the CDCs is not equivalent) is neither supported by the record nor necessary to support the Examiner's conclusions.

The Commonwealth also contends that the Examiner erred in concluding that a prior Board unit clarification in another bargaining unit did not permit the PSP to unilaterally remove the work of the communications supervisor from the police unit to a civilian unit. The Examiner properly relied on Wilkes-Barre Police Benevolent Ass'n v. City of Wilkes-Barre, 32 PPER ¶ 32137 (Final Order, 2001), in rejecting the Commonwealth's argument. In Wilkes-Barre, the Board similarly clarified a white-collar non-professional unit to include parking meter attendants who would issue tickets for parking violations, which were job duties exclusively performed by the police unit. In rejecting the same argument as the Commonwealth advances here, the Board held, as already quoted by the Examiner, the following:

The unilateral removal of bargaining unit work is mutually exclusive of the Board's analysis of whether certain job descriptions may share a community of interest with other positions already in a bargaining unit such that the newly created position should be included in that unit. The Board's unit clarification order merely approved the inclusion of the position of parking attendant in the white-collar nonprofessional unit, if non-police officers were lawfully assigned to perform those duties. The order did not address the manner in which the parking attendants

would acquire those duties and responsibilities nor did it sanction the unilateral removal of those duties from the bargaining unit of police officers.

Wilkes-Barre, 32 PPER at 338 (emphasis added). In this case, the Commonwealth and AFSCME jointly filed a petition for unit clarification to include the position of communications supervisor in the non-police unit. 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. However, as stated in Wilkes-Barre, "the order did not address the manner in which the [civilian PCO supervisors] would acquire those duties and responsibilities nor did it sanction the unilateral removal of those duties from the bargaining unit of police officers." Id. Accordingly, the Examiner properly concluded that a prior Board unit clarification to include PCO supervisors in the non-police bargaining unit did not permit or excuse the PSP's unilateral removal of the work of the PCO supervisor from the police unit.

The Commonwealth also argues that the Board and the Commonwealth Court have held that when the work does not belong in a police bargaining unit it can be removed by filing a petition for unit clarification, which it did. However, the PSP has omitted an important distinguishing factor that is determinative in using a unit clarification proceeding to remove work. In FOP Queen City Lodge No. 10 v. City of Allentown, 34 PPER 90 (Final Order 2003), aff'd, City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004), the Board held, and the Commonwealth Court agreed, that a public employer may not unilaterally remove bargaining unit work and that the employer must either bargain with the union or file a petition for unit clarification for the unit from which the employer seeks to remove the work, regardless of the employer's opinion of whether the work properly belongs in the unit. Allentown, supra. Therefore, the Commonwealth should have filed a petition for unit clarification for the police unit and proved with record evidence before the Board that the duties of the PCO supervisor did not properly belong in the police unit. The Commonwealth may not unilaterally remove work from the police unit by obtaining permission from another unit and its union to accept or receive the work. It is the unit that has the work, and therefore maintains an interest in keeping that work, that must either agree to the removal through bargaining or must participate with the employer in a unit clarification proceeding before the Board.

In its brief the Commonwealth relies on City of Clairton v. PLRB, 528 A.2d 1048 (Pa. Cmwlth. 1987), to support its argument that the unit clarification petition jointly filed in the non-police unit excuses its unilateral removal of work from the police unit. In City of Clairton, the Commonwealth Court approved the Board's position that a public employer "could file a unit clarification request to bring the dispatcher role before the PLRB, but could not unilaterally redefine the bargaining unit by removing therefrom positions or functions performed by unit members. City of Clairton, 528 A.2d at 1049. City of Clairton is consistent with Allentown, supra, and Wilkes-Barre, supra, in that these cases require the employer to bring the unit clarification proceeding before the Board so, absent bargaining, the Board may decide, not the employer unilaterally, whether the work may be removed from the bargaining unit that has been performing it and therefore which has the interest in retaining it. Any removal of the work without approval from the union representing the unit that has been performing the work or from the Board after a unit clarification proceeding involving the representative of the unit performing the work constitutes an unlawful unilateral transfer.

The Commonwealth also contends that the Union waived its right to protest the alleged unilateral transfer of work because it failed to intervene in the joint unit clarification petition filed by the Commonwealth and AFSCME for the non-police unit. This argument fails for two reasons. First The Commonwealth did not notify the Union of the petition. Indeed, the Commonwealth represented to the Board on its petition that no other employe organization claimed to represent the employes in that classification, i.e., PCO supervisors. Based on the information provided, the Board did not notify the Union of the filing of the petition. Also, any failure to participate in a proceeding involving another unit and its union does not prejudice the right of this Union to bring an unfair labor practice charge for the unlawful, unilateral removal of bargaining unit work from the police unit represented by the Union. Wilkes-Barre, supra (permitting the police union to prosecute an unfair practice charge for removing bargaining unit work to a non-police unit

after the police union withdrew from unit clarification proceedings in the non-police unit). Accordingly, the Union did not waive any rights to challenge the Commonwealth's unilateral removal of bargaining unit work from the Act 111 unit simply because it did not participate in a unit clarification proceeding involving another bargaining unit. Those proceedings simply did not relieve the PSP of its obligation to bargain the removal of the work or file a unit clarification petition with the Board for the Act 111 unit.

The Commonwealth also claims that the Examiner erred when he directed the Commonwealth to reinstate the work of communications supervisor to the bargaining unit rather than limiting the remedy to a bargaining order. The Examiner, however, thoroughly and properly analyzed the remedy issue in his PDO. The Board, therefore, adopts the Examiner's analysis supporting his conclusion that the Commonwealth must rescind the transfer of the work of the communications supervisors and reinstate that work to the Act 111 bargaining unit of the PSP and the Commonwealth's exception to the remedy ordered by the Examiner is dismissed. Also, the Board has aptly opined the following:

Restoration of the status quo ante is the usual and customary remedy directed by the Board where an employer takes unlawful unilateral action, including removal of bargaining unit work. . . . Indeed, if the status quo is not restored, then the Union is forced to attempt to bargain out from under [a] fait accompli and the employer, having already achieved the result it desires, has little or no incentive to consider union proposals that are inconsistent with its prior unilateral change.

Teamsters Local 429 v. Lebanon County, 30 PPER ¶ 30002 (Final Order, 1998)(citing Appeal of Cumberland Valley Sch. Dist., 483 Pa. 134, 394 A. 2d 946 (1978); IAFF v. Easton, 20 PPER 20098 (Final Order, 1989)). The limited remedy proposed by the Commonwealth, i.e., a bargaining order only, would nullify the purpose and effectiveness of the unfair labor practice proceeding before the Board. In affirming the Board's remedy of restoring the status quo and in rejecting an employer's attempt to avoid such a remedy, the Lebanon County Court of Common Pleas stated the following:

[T]he limited remedy suggested by the [employer] would 'vitiating the purpose of this entire proceeding' and would create a significant advantage for the [employer] in the bargaining process. If the status quo is not restored, the [employer] will achieve the result it desires even though the means used to achieve it have been found to be an unfair labor practice. Such a result cannot, and will not, be countenanced.

Palmyra Area Sch. Dist. v. PLRB, 27 PPER ¶ 27032 at 69 (Court of Common Pleas of Lebanon County, 1995).

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, Pennsylvania State Police engaged 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 eighteenth day of October, 2005. 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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Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

The Commonwealth of Pennsylvania, Pennsylvania State Police hereby certifies that it has ceased and desisted from its violations of Sections 6(1)(a) and 6(1)(e) of the Pennsylvania Labor Relations Act, that it has rescinded the transfer of the work of supervising police communications operators from the Act 111 bargaining unit to civilian supervisors, that it has reinstated that work to the Act 111 bargaining unit, that it has posted the proposed decision and order as directed and that it has served a copy of this affidavit on the Pennsylvania State Troopers Association.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
The day and year aforesaid.

Signature of Notary Public