

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE :
TROOPERS ASSOCIATION :
 :
 v. : Case No. PF-C-03-96-E
 :
 COMMONWEALTH OF PENNSYLVANIA :
 PENNSYLVANIA STATE POLICE :

FINAL ORDER

The Pennsylvania State Troopers Association (PSTA) filed timely exceptions and a supporting brief on March 30, 2005, with the Pennsylvania Labor Relations Board (Board) challenging the Amended Proposed Decision and Order (PDO) issued March 17, 2005, dismissing its Charge of Unfair Labor Practices filed against the Commonwealth of Pennsylvania, Pennsylvania State Police (Commonwealth).¹

On August 27, 2003, the PSTA filed a charge alleging that the Commonwealth unilaterally changed terms and conditions of employment in violation of Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by implementing Field Regulation 3-3 (FR 3-3) without bargaining with the PSTA. The offending portion of FR 3-3 provided:

Integrity Matters: It is essential that all members recognize the importance of being truthful in every situation. Members are advised that any conduct which demonstrates a lack of truthfulness, integrity, or credibility, in matters related to their employment, will be critically reviewed with an emphasis on assessing that individual's suitability to remain a member of the Pennsylvania State Police. Any member who knowingly provides false information concerning matters that can be related to their duties as a member of the Pennsylvania State Police, either verbally or in writing, can anticipate their dismissal from the Department as prescribed by this regulation; FR 1-2, Duty Requirements; and the Collective Bargaining Agreements between the Commonwealth of Pennsylvania and the Pennsylvania State Troopers Association (PSTA).

Initially, the Secretary of the Board declined to issue a complaint noting that "integrity matters" are typically within the scope of management prerogative. Council 13, American Federation of State County and Municipal Employees v. PLRB, 479 A.2d 683 (Pa. Cmwlth. 1984). PSTA filed exceptions clarifying the charge, and the matter was remanded for issuance of a complaint.

¹ The Commonwealth has not filed a timely brief in response to the exceptions.

Following a hearing on March 24, 2004, the hearing examiner issued a PDO on July 7, 2004, finding the above provision vague and overbroad necessitating bargaining before its implementation. However, due to a docketing error, the July 7, 2004 PDO was issued without the benefit of the Commonwealth's post-hearing brief which had been filed with the Board on June 2, 2004. Accordingly, the Board remanded the case back to the hearing examiner on October 19, 2004, to issue an amended PDO after consideration of the Commonwealth's arguments. On March 17, 2005, the hearing examiner issued an amended PDO dismissing PSTA's charge of unfair labor practices on the finding that FR 3-3 did not change the Commonwealth's consideration of truthfulness and integrity in disciplinary matters.

In its exceptions and supporting brief, the PSTA argues that the hearing examiner was bound by the law of the case to reach the same conclusion in the amended PDO as he reached in the initial July 7, 2004 PDO. However, in remanding the PDO for consideration of the Commonwealth's post-hearing brief, the Board noted that the legal and factual arguments made by the Commonwealth were not afforded adequate consideration, necessitating a reevaluation of the entire decision including the conclusions reached therein. By the terms of the Board's Order Directing Remand, the July 7, 2004 PDO was remanded for reconsideration with direction to issue an amended PDO upon review of the Commonwealth's brief. Accordingly, the hearing examiner was not bound, as a matter of law, to reach the same result.

PSTA also challenges Findings of Fact 5 - 9 in the amended PDO as not supported by substantial evidence. A hearing examiner's findings of fact will be sustained by the Board where there is substantial evidence in the record to support the finding. Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942). Here each of Findings of Fact 5 through 9 is supported by reference to the testimony or exhibit where the support may be found in the record. Accordingly, each finding is adequately supported by substantial evidence and thus will not be disturbed.

PSTA claims that the hearing examiner should have concluded that FR 3-3 unlawfully changed the *status quo* with regard to consideration of an officer's integrity in disciplinary matters. However, Robert Titler, Department Disciplinary Officer for the Commonwealth, testified that FR 3-3 did not in any way alter the level of truthfulness and integrity expected of Pennsylvania State Troopers. (N.T. 59). He testified that FR 3-3 has not changed the manner in which misconduct and disciplinary matters are reviewed, and that truthfulness has always been a consideration in recommending discipline. (N.T. 59, 62). Furthermore, Mr. Titler answered PSTA's concern that FR 3-3 would be used where a trooper is found less credible than another witness when testifying in a court proceeding. Mr. Titler indicated that consistent with prior disciplinary matters, the trier of fact's credibility determinations would not necessarily result in discipline unless the trooper made a false statement or had a reputation of not being truthful. (N.T. 68). There is nothing in the record to refute Mr. Titler's testimony that conduct evidencing a lack of credibility while testifying under oath was always a consideration in disciplinary matters. Accordingly, the hearing examiner did not err in finding that the revisions to FR 3-3 regarding "integrity matters" has not affected

the review of truthfulness in disciplinary matters. (Findings of Fact 6 and 9).²

PSTA also claims that FR 3-3 is overly broad, vague and ambiguous requiring the Commonwealth to negotiate the changes to FR 3-3 with the PSTA. As explained by Mr. Titler, FR 3-3 addresses "conduct evidencing a lack of truthfulness, integrity or credibility", which was unchanged from the standard used prior to the amendments to FR 3-3, and that the Commonwealth has always regarded a false statement or a reputation for not being truthful as a basis for discipline. The consistent meaning and application of "conduct evidencing a lack of truthfulness, integrity or credibility" supports the hearing examiner's determination that the revision to FR 3-3 was not overbroad or vague.

As properly noted by the hearing examiner, the mere codification of an unwritten work rule, where there has been no change to a mandatory subject of bargaining, is not an unfair labor practice. Fraternal order of Police, Lodge No. 5 v. City of Philadelphia, 31 PPER ¶31023 (Final Order, 1999). Here, because FR 3-3 did not effect any change to the manner in which misconduct was assessed or reviewed with regard to a trooper's truthfulness or integrity, the hearing examiner did not err in finding no unilateral change to a mandatory subject. Accordingly, after a thorough review of the exceptions and all matters of record, the hearing examiner did not err in finding no unlawful unilateral change to a mandatory subject of bargaining occasioned by the revision to FR 3-3, and dismissing the PSTA's charge under Section 6(1)(a) and (e) of the PLRA.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions are dismissed and the Amended Proposed Decision and Order of March 17, 2005, be and hereby is 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 seventeenth day of May, 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.

² We note that insofar the charge involves any claims that a trooper should not be subject to mandatory discharge for false testimony under oath, the current interest arbitration award between the parties issued December 22, 2004, addresses this issue, requiring a trooper's dismissal for "the commission of a serious act of deception during a criminal, civil or administrative investigation or proceeding, when under a specific, official obligation to be truthful, involving intentional (1) lying; (2) fabrication; (3) misleading acts or words; (4) civil or criminal fraud; or (5) perjury."