

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 491 :  
 :  
 v. : Case No. PF-C-04-132-W  
 :  
 MASONTOWN BOROUGH :

**FINAL ORDER**

On December 19, 2005 Teamsters Local 491 (Union) timely filed exceptions with the Pennsylvania Labor Relations Board (Board), to a Proposed Decision and Order (PDO) issued November 28, 2005. In the PDO, the Hearing Examiner dismissed the Union's charge and concluded that Masontown Borough (Borough) did not engage in unfair practices within the meaning of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by unilaterally terminating the practice of off-duty bargaining unit members being provided commuter transportation to work in Borough police cruisers by on-duty bargaining unit members at the beginning and end of their shifts.<sup>1</sup> On January 5, 2005, the Borough filed its response to the Union's exceptions.

Since the early 1970's, Borough police officers have used Borough police cruisers to provide commuter transportation for other officers to and from their residences at shift change. Although this practice originally included officers who lived outside the Borough, it was later limited to officers who lived in the Borough. A former police chief encouraged the behavior to minimize the number of vehicles in the vicinity of the police station, which had limited parking available for employees' vehicles, police cruisers and residents' vehicles on the same street. In 1984, the Borough Council and Mayor instructed the chief of police to order the police officers not to use police vehicles to transport off-duty officers at shift change. The Union grieved the order. Following a meeting with the Union and the chief, the Borough decided not to enforce the order. The chief informed the officers that the driving of officers to and from work would continue, as long as it was limited to officers living within the Borough. In 1995 or 1996, the Borough disseminated a memorandum again ordering an end to the transportation of officers at shift changes, but after a few days, the memorandum was withdrawn and the transporting continued until June, 2004.

On June 22, 2004, the Borough issued a memorandum to all employees that Borough vehicles were not to be used to provide commuter transportation for employees.<sup>2</sup> By letter dated July 1, 2004, the Union requested the rescission of the memorandum and bargaining. By letter dated July 8, 2004, the Borough informed the Union that it eliminated the practice in response to concerns from its insurance carrier about the Borough's liability resulting from transporting off-duty officers. Only two out of six officers currently employed by the Borough live in the Borough and benefited from the use of police cruisers for commuter transportation. In the collective bargaining history of the Union and Borough, the parties have never reduced to writing any understanding concerning the use of police vehicles for employee commuter transportation.

In its exceptions, the Union argues that the Examiner erred by relying on Cheltenham Township v. Cheltenham Township Police Dept., 312 A.2d 835 (Pa. Cmwlth. 1973) and by concluding that the commuting scheme for officers residing in the Borough was not a mandatory subject of bargaining. As the Examiner properly noted, a matter constitutes a mandatory subject of bargaining where it bears a rational relationship to employees' duties. The matter constitutes a managerial prerogative where it does not bear a rational relationship to employees duties or where management's interests substantially outweigh

<sup>1</sup> The Union withdrew the following two allegations and causes of action: that the Borough discriminatorily issued a disciplinary letter to one of the Borough police officers; and that the Borough refused to process a grievance complaining of that discipline. (N.T. 7).

<sup>2</sup> Although no exception was filed to Finding of Fact No. 11, the year in which the memorandum was issued is obviously 2004, not 2204.

the interests of the employees. Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993). In Douglass Township Police Officers v. Douglass Township, 36 PPER 160 (Final Order, 2005), the Board opined that it "'properly relies on precedent to determine whether a matter constitutes a mandatory subject rather than reinventing the wheel by applying the rational relationship test merely to arrive at the same result as the established precedent.'" Douglas Township, 36 PPER at 472 (quoting Wilkes-Barre, 33 PPER at 192 (citing Teamsters Local 77 & 50 v. PLRB, 786 A.2d 299 (Pa. Cmwlth. 2001))). The Union does not contest the Examiner's reliance on precedent in lieu of a separate rational relationship analysis. Rather the Union contends that the Examiner should have relied on Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998), rather than Cheltenham, supra.

The Union contends that Cheltenham is distinguishable because, in that case, the Commonwealth Court concluded that the transportation of officers to and from their residences at shift change was merely a convenient, private chauffeur service whereas here the transportation service ameliorated a problem of limited parking in the vicinity of the police station. However, the employer's purpose for providing commuter transportation to its officers is not a relevant inquiry because Cheltenham held that, as a matter of law, such activity is not rationally related to the officers' duties. The Borough's interest in serving a public interest in parking only becomes relevant if the transportation matter were rationally related to officers' duties and the burden then shifted to the Borough to establish that its interests substantially outweigh the interests of employees. However, under that analysis, the Borough's interests and purposes are relevant to defeat, not advance, the Union's position. Accordingly, the Borough's purposes for previously endorsing the use of Borough vehicles for commuter transportation for the two officers are not relevant and do not distinguish Cheltenham from this case.

The Union contends that this case is more like Plumstead Township, supra. In Plumstead, the Court held that the employer's provision of police cruisers to off duty officers constituted a mandatory subject of bargaining. A determinative factor in Plumstead was that the department's standard operating procedures required the police officers to respond to police emergencies while off duty. Another operative factor was that the record established that marked cruisers and the equipment contained therein conveyed to the public the identity of law enforcement, which thereby fostered public cooperation and provided necessary equipment to facilitate a safe and effective response to emergencies where off duty officers were expected to respond pursuant to their manual's standard operating procedures. Therefore, Plumstead did not involve what this court characterized as a "chauffeur" service where officers were dropped off at their residences. Cheltenham, 312 A.2d 838. Accordingly, the Plumstead Court properly affirmed the Board's conclusion that the past practice of permitting officers to take cruisers home was rationally related to the officers' duties and was negotiable because it directly related to safety working conditions under Section 1 of Act 111.

The operative facts of Plumstead are not present on this record. The record in this case does not establish that the Borough, at any time, required officers to respond to police emergencies while they were off duty and the chauffeur service merely provided public resources solely for private purpose as in Cheltenham. Without this operative fact, this case is analogous to the chauffeur service in Cheltenham and is distinguishable from Plumstead, which is inapposite.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Hearing Examiner's conclusion that the Borough 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, Anne E. Covey, Member, and James M. Darby, Member, this eighteenth day of April, 2006. 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.