

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORTHAMPTON COUNTY DEPUTY :
SHERIFF'S ASSOCIATION :
 :
v. : Case No. PERA-C-06-198-E
 :
NORTHAMPTON COUNTY :

PROPOSED DECISION AND ORDER

On May 9, 2006, Northampton County Deputy Sheriff's Association (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Northampton County (County or Respondent) violated Sections 1201(a)(1),(3),(4) and (5) of the Public Employe Relations Act (Act) by unilaterally changing terms and conditions of employment and refusing to provide information to the Association.

On June 12, 2006, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the dispute by mutual agreement of the parties and September 20, 2006 in Bethlehem was assigned as the time and place of hearing, if necessary.

On June 12, 2006, the Association filed an amended charge and on July 5, 2006, the Secretary of the Board issued an amended Complaint and Notice of Hearing.

The hearing was necessary and was held as scheduled, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

At the hearing, the information charge was resolved. The hearing examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That Northampton County is a public employer within the meaning of Section 301(1) of the Act.

2. That the Northampton County Deputy Sheriffs Association is an employe organization within the meaning of Section 301(3) of the Act.

3. On April 19, 2005, the Association was certified as the collective bargaining representative for all full-time and regular part-time deputy sheriffs of Northampton County, pursuant to Nisi Order of Certification PERA-R-04-103-E. (Board Exhibit 1)

4. The Northampton County Sheriff is Jeffrey Hawbaker. Under the Northampton County Home Rule Charter, the sheriff is appointed by the County Executive with the approval of the President Judge of the Court of Common Pleas. Northampton County is the only county in Pennsylvania that does not elect its sheriff. (N.T. 137-138)

5. In June 2005, the Association and the County reached an agreement regarding the process for filling full-time deputy sheriff vacancies. (N.T. 17)

6. The agreement set forth that full-time bargaining unit vacancies would be filled by part-time employees, based on seniority; that employees would not be required to take a test to complete the transfer; and that the change from part-time to full-time status would be a transfer, not a promotion. (N.T. 18-19)

7. The parties did not agree that other rules and conditions of employment were inapplicable when considering employees for a transfer under this agreement. (N.T. 38-39)

8. In February and March of 2006, there were vacancies in the ranks of full-time deputy sheriffs. Sheriff Hawbaker approached the two eligible, most senior part-time employees, Todd Miller and Benjamin Santaliz, and offered them the opportunity to transfer to the full-time positions, pursuant to the terms of the parties' agreement. (N.T. 51, 56, 57)

9. Both employees stated their interest in accepting the full-time positions. (N.T. 51, 58)

10. Messrs. Miller and Santaliz both have full-time employment with East Stroudsburg University and the U.S. Postal Service, respectively. (N.T. 50, 55)

11. When the sheriff asked the employees if they were interested in full-time county employment, he also inquired what they planned to do regarding their already-existing full-time jobs. (N.T. 52, 58)

12. Both men stated their intent to remain in those jobs. (N.T. 52, 58)

13. The sheriff explained that, pursuant to his longstanding policy, they could not have two full-time jobs, and they would have to pick being either a full-time deputy sheriff and transfer to part-time status in their other jobs, or not take the transfer. (N.T. 52, 58)

14. Both men declined the transfer to the full-time deputy sheriff positions. (N.T. 53, 58)

15. Sheriff Hawbaker has held that position since 1998. Since his appointment to the position of sheriff, it has been his policy to prohibit an employe with a full-time position with another employer from taking a full-time position with the sheriff's department, unless the employe retires or assumes a part-time position with the other employer. (N.T. 124-125)

16. That Sheriff Hawbaker testified that he has two reasons for this policy. The first is that the policy will guarantee the appearance of a deputy in the case of an emergency at the Northampton County sheriff's department, where his first allegiance is. The second is to guarantee safety of employes who use firearms. The sheriff testified that it is unsafe to have an employe work eight (8) hours, then drive to work, and then work eight (8) to 10 hours providing courtroom security and carry a firearm. (N.T. 50, 124-125)

17. In November 2005, John Stoffa was elected Northampton County Executive. He was sworn into office January 2006. (N.T. 112)

18. On or about March, 2006, Mr. Stoffa declared his intent to implement a policy requiring that deputy sheriffs park their vehicles at the Northampton County Courthouse at the conclusion of their shifts. (N.T. 25)

19. For many years prior to this date, deputy sheriffs had been allowed to drive their county-provided vehicles to and from home at the conclusion and beginning of their shifts. (N.T. 25)

20. Upon learning of Mr. Stoffa's proposed policy, the Association requested to meet with him. Mr. Stoffa agreed to meet. (N.T. 26)

21. On or about the last week of March 2006, four members of the Association (President David Ruberry, Vice-President Chris Zieger, Secretary Michael Mohn, and Treasurer Patrick Crivellaro), Mr. Stoffa, Victor Mazziotti, the County's Director of Fiscal Affairs, and the Sheriff met to discuss the policy. (N.T. 27)

22. The Association asked that Mr. Stoffa reconsider implementing the policy, and explained how this policy would negatively impact many of the different services the Sheriff's Department performed. (N.T. 28)

23. Mr. Stoffa responded that he was implementing the policy for several reasons, including public perception, the cost of gasoline, and the expense of maintenance. (N.T. 114)

24. He also informed the deputies that he was curtailing the duties of the sheriff's department to only those listed in the County's Administrative Code, and therefore it would be unnecessary for cars to be taken home to perform duties not listed. (N.T. 114)

25. According to the Sheriff Hawbaker, the deputies are not first responders, i.e. a public employe who responds to a 911 dispatch call for an accident or a major crime. (N.T. 148)

26. On or about April 3, 2006, Mr. Stoffa implemented the vehicle policy. (N.T. 25)

27. Since that date, only deputy sheriffs assigned to on-call duty--that is, duty that is specifically assigned by the sheriff--have been taking County vehicles home. (N.T. 104, 129)

28. That at any time, the County has four deputies and an officer on-call while they are off duty. (N.T. 44)

29. That the County's fleet of sheriff's vehicles consist of between six and seven marked vehicles and 17 or 18 unmarked vehicles with police packages and municipal plates. (N.T. 87)

30. That on or about May 4, 2006, the County announced that it was creating the position of acting sergeant of the civil division in the sheriff's department and that the next person on the seniority list for promotion would be appointed to the position. (N.T. 67)

31. Upon learning of the sheriff's intent, Mr. Ruberry approached the sheriff and asked to engage in collective bargaining over Ms. Coia's appointment. (N.T. 34)

32. On or about May 8, 2006, the sheriff announced that he was appointing Darlene Coia to the position of acting sergeant. (N.T. 34, 67)

33. The sheriff declined to meet with the Association. Subsequently, on May 8, 2006, the Sheriff temporarily appointed Ms. Coia to the position of acting sergeant until Mr. Ruberry returned to duty. (N.T. 35, 135, 137 Sheriff's Exhibit 3)

DISCUSSION

The Association's charge of unfair practices alleges that the County violated several sections of PERA when it unilaterally acted in three instances to change terms and conditions of employment of employes in the sheriff's department: establishing a method of transferring part-time employes to full-time status; adopting a new policy governing the personal use of county vehicles and temporarily appointing Darlene Coia to the rank of sergeant.

The employes in the sheriffs department are employes in a unit certified at PERA-R-04-103-E under the Public Employe Relations Act. 43 P.S. 1101.1201 et seq.

As the charging party, the Association bears the burden of proving by substantial and legally credible evidence each of the allegations of its charge. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d. 1069 (1977)

The first allegation to be discussed is that the County's actions violated Section 1201(a)(5) of the Act. The Board will find an employer in violation of Sections 1201(a)(5) of the Act if the employer unilaterally changes a mandatory subject of bargaining under Section 701 of the Act. Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A. 2d 946 (1978). If, however, the employer changes a matter of inherent managerial policy under Section 702 of the Act, then no refusal to bargain may be found. Council 13, AFSCME v. PLRB, 479 A. 2d 683 (Pa. Cmwlth. 1984).

Under Section 701 of PERA, the public employer has a duty to bargain over wages, hours and other terms and conditions of employment, including all mandatory subjects of bargaining. 43 P.S. 1101.701. On the other hand, under Section 702 of PERA, public employers are not required to bargain over matters of inherent managerial policy, which shall include but not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. 43 P.S. 1101.702. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives. 43 P.S. 1101.702.

As stated in PLRB v. State College Area School District, 461 Pa. 494, 337 A. 2d 262 (1975),

"...[W]here an item of dispute is a matter of fundamental concern to the employes' interest in wages, hours or other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under section 701 simply because it may touch upon basic policy. It is the duty of the Board in the first instance and the courts thereafter to determine whether the impact of the issue on the interest of the employe in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole. If it is determined that the matter is one of inherent managerial policy but does affect wages, hours and terms and conditions of employment, the public employer shall be required to meet and discuss such subjects upon request by the public employe's representative pursuant to section 702."

337 A.2d at 268.

The three County decisions the Association contends were mandatory subjects of bargaining will now be analyzed against the State College test.

Outside Employment Policy

The dispute arose when the sheriff offered full time status to two part-time deputies but withdraw the offer because the employes would not give up their other full-time employment. The Association frames this issue as a unilateral determination of transfer rights for part-time employes who are seeking full-time positions. The County, on the other hand, frames the dispute as whether the sheriff has managerial prerogative to apply his existing policy against full time outside employment to the cases of the deputies who were offered full time status.

Looking at the respective interests under the State College Area School District balancing test, the Association points out the income lost to the employes by not being able to take a full time position. For its part, the county points out that the policy promotes at least two valid managerial interests: of guaranteeing the availability of deputies in an emergency and promoting a safe work environment by ensuring that employes who must carry firearms are not fatigued from their other employment.

Several PERA cases on outside employment guide us. In Abington Transportation Association v. Abington School District, 570 A.2d 108 (Pa. Cmwlth. 1990), the Court affirmed the Board's conclusions that that several work rules, including one banning outside employment of school bus drivers, were mandatory subjects of bargaining. The court reasoned that the interest of the employes in outside employment income outweighed the District's interest in the drivers' availability for work or ability to perform the work.

In SEIU v. Bucks County, 25 PPER ¶ 25036 (Final Order, 1994) the Board found an outside employment work rule was a managerial prerogative because the interests of the public employer in preserving government integrity outweighed the interests of the employes when the county social services agency prevented children and youth caseworkers from outside employment that conflicted with their county employment. In Chester County,

33 PPER ¶ 33160 (Proposed Decision and Order, 2002), the hearing examiner found that the employer's ban on outside employment that created a conflict of interest was a valid managerial prerogative because it promoted integrity in government.

In the present case, the County has presented two managerial concerns that outweigh the employees' interests. As the protector of county property and the insurer of the safety of the county workforce, especially the courts, the sheriff's policy is designed to guarantee that deputies will be available in case of emergencies. If the sheriff had to call the employees who were committed to a full-time job elsewhere, their appearance in an emergency could not be guaranteed. Additionally, the sheriff testified credibly that the policy promotes a safe workplace by employing alert deputies who will not expose the county to the risk of a firearm accident caused by fatigue from another full time job. The sheriff's policy has been in place for several years and was established with the particular needs of the sheriff's department in mind. The County's interests here are similar to the interest in promoting governmental integrity in Bucks County, supra. and Chester County, supra. Accordingly, the sheriff's outside employment policy is a managerial prerogative and the sheriff's decision not to offer full-time employment to deputies who have full-time jobs elsewhere is not an unfair practice.

Vehicle Use Policy

Effective April 1, 2006, the County implemented a policy in which deputy sheriffs were required to station the sheriff's department vehicles at the County Courthouse or other County facilities at the end of the work day. The new policy ended a practice of the County allowing bargaining unit members to take sheriff's vehicles home at the end of their shift. However, those deputies who are on call are allowed to continue to take their vehicles home during their time off-duty.

The Association argues that the use of the employer's vehicles is a mandatory subject of bargaining, citing Plumstead Township v. Pennsylvania Labor Relations Board, 713 A.2d 730 (Pa. Cmwlth. 1998). However, in Fraternal Order of Police, Conference of Pa. Liquor Control Board Lodgers v. Pennsylvania Labor Relations Board, 751 A.2d 726 (Pa. Cmwlth. 2000), the Commonwealth Court held that Plumstead was inapplicable because it involved a unit governed by Act 111 while the liquor law enforcement officers were governed by PERA. The Court noted that the PLRB's dismissal of the charge was based on the application the PERA analysis of State College balancing test and that the Board correctly decided that the vehicle take home policy affecting the liquor law enforcement officers in that case was not a mandatory subject of bargaining.

Applying the State College balancing test, the same result will be reached in the present case. The County has changed the scope of the sheriff's deputies' duties. Consequently, they do not have the same need to have immediate access to a car when they are off duty. For those deputies who are on-call, the new policy permits them to have a county vehicle at home. The deputies testified that there are emergencies requiring them to be called in but it was unclear how frequently the need arose for calling in deputies in addition to those on the call-in list. It appears that the managerial interests in controlling use of the county vehicles, with its accompanying costs, outweighs the employees' interests in having the vehicles at home with them. The change in policy does not represent an unfair practice.

Promotion of Darlene Coia

The ultimate selection of candidates for positions, including evaluation of qualifications and standards for promotion, remains a managerial prerogative within the employer's right to select, direct and discipline personnel. Fraternal Order of Police, State Conference of Liquor Law Enforcement Lodges v. Commonwealth of Pennsylvania, 32 PPER ¶ 32083 (Final Order, 2001). When the County moved Darlene Coia into the vacancy for the acting sergeant of the civil division, the Association framed the dispute as the county unilaterally establishing criteria for transfers. However, the present dispute is one over the qualifications for the promotion of an employee to acting sergeant. The matter is not a mandatory subject of bargaining. The County has not committed an unfair practice by appointing Darlene Coia to the position of acting sergeant.

Other Alleged Statutory Violations

The Association has also charged the County's three decisions discussed above violated Sections 1201(a)(1), (3) and (4) of the Act. Section 1201(a)(1) of the Act prohibits a public employer from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the Act. Section 1201(a)(3) prohibits a public employer from discriminating against an employee because of the exercise of protected rights. Section 1201(a)(4) of the Act prohibits a public employer from discriminating against an employee because "he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

The Association did not present evidence to support finding a violation of any of these three subsections of 1201. Accordingly, the Association has not carried the requisite burden of proof. St. Joseph's Hospital, supra. These charges will also be dismissed.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That Northampton County is a public employer within the meaning of Section 301(1) of the Act.
2. That the Northampton County Deputy Sheriffs Association is an employee organization within the meaning of Section 301 (3) of the Act.
3. That the Board has jurisdiction over the parties hereto.
4. That the County has not committed unfair practices within the meaning of Sections 1201(a)(1),(3),(4) and (5) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the charge of unfair practices filed to the above case number is dismissed and the complaint issued thereon rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fourth day of May, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner