

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY SECURITY GUARDS ASSOCIATION :
 :
 v. : Case No. PERA-C-06-518-E
 :
BUCKS COUNTY :

PROPOSED DECISION AND ORDER

On October 20, 2006, the Bucks County Security Guards Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that Bucks County (County) violated sections 1201(a)(1) and 1201(a)(5) of the Public Employe Relations Act (Act) by "unilaterally promulgat[ing] a policy, which eliminated the Aetna HMO Health Plan," and by "unilaterally promulgat[ing] a policy, which changed the manner in which bargaining unit members were scheduled to qualify for carrying a firearm."¹ On November 30, 2006, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on January 25, 2007, if conciliation did not resolve the charge by then. On December 18, 2006, the County filed an answer denying that it had committed any of the unfair practices charged. The hearing was held as scheduled. Each party was afforded a full opportunity to present evidence and to cross-examine witnesses. On March 21, 2006, each party filed a brief by hand-delivery or deposit in the U.S. Mail.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On October 26, 2005, the Board certified the Association as the exclusive representative of a bargaining unit comprised of security guards employed by the County. (Case No. PERA-R-05-293-E)
2. Prior to October 26, 2005, the County offered a health maintenance organization by Aetna (Aetna HMO) as a health care plan option for the security guards. (N.T. 54, 59-60, 69-70, 100, 105)
3. In October 2006, the County eliminated the Aetna HMO as a health care plan option for the security guards. (N.T. 53-54)
4. The County did not bargain with the Association before eliminating the Aetna HMO as a health care plan option for the security guards. (N.T. 53)
5. Under the County's firearms policy, its security guards are required to successfully complete firearms training/qualification twice each year. If they do not meet the minimum qualification standard, they are subject to an initial suspension of five days and subsequent termination. (Association Exhibit 1)
6. On October 12, 2006, the County posted a work schedule under which the security guards were assigned to firearms training/qualification for an eight-hour shift. (N.T. 21, 23, 35, 40, 43, 74)
7. On October 13, 2006, the County reposted the work schedule to assign the security guards to firearms training/qualification for four hours, with the remaining

¹The Association also alleged that the County "retaliat[ed] against the bargaining unit members for their organizing efforts" and committed unfair practices in violation of sections 1201(a)(3) and 1201(a)(4), but the Association does not argue as much in its brief. Any argument not presented to a hearing examiner is waived. SSHE, 32 PPER ¶ 32118 (Final Order 2001). Thus, the allegation that the County "retaliat[ed] against the bargaining unit members for their organizing efforts" will not be addressed, and the charge as filed under sections 1201(a)(3) and 1201(a)(4) will be dismissed.

four hours of their shift to be spent on duty "unless they [had] a problem with the range." (N.T. 17-21, 40, 74; Association Exhibit 2)

8. When security guards were unable to qualify during the time scheduled for firearms training/qualification in the past, the County afforded them additional time to qualify. (N.T. 27-29, 33-34, 93-94)

DISCUSSION

The Association has charged that the County committed unfair practices under sections 1201(a)(1) and 1201(a)(5) by "unilaterally promulgat[ing] a policy, which eliminated the Aetna HMO Health Plan," and by "unilaterally promulgat[ing] a policy, which changed the manner in which bargaining unit members were scheduled to qualify for carrying a firearm." According to the Association, the County was under an obligation to bargain before it promulgated the policies because it changed mandatory subjects of bargaining when it promulgated them.

The County contends that the charge should be dismissed because it had the managerial right to promulgate the policies, because it did not change the status quo when it promulgated the policies and because the Association did not request bargaining over the elimination of the Aetna HMO as a health care plan option for the members of the bargaining unit.

The alleged unilateral elimination of the Aetna HMO

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(5) if it unilaterally changes a mandatory subject of bargaining, Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978), but not if it unilaterally changes a matter of inherent managerial policy, Joint Bargaining Committee of PSSU and PESEA v. PLRB, 503 Pa. 236, 469 A.2d 150 (1983), and not if it does not change past practice. Clarks Summit Borough, 29 PPER ¶ 29216 (Final Order 1998). Health care benefits are a mandatory subject of bargaining. Cumberland Valley School District, supra. If an employer wishes to change a mandatory subject of bargaining, it must request bargaining and bargain with the exclusive representative of its employees before making the change. Snyder County Prison Board v. PLRB, 912 A.2d 356 (Pa. Cmwlth. 2006).

As set forth in findings of fact 1-3, the record shows that after the Board certified the Association as the exclusive representative of a bargaining unit comprised of the County's security guards the County eliminated the Aetna HMO as a health care plan option for them, so it is apparent that the County changed a mandatory subject of bargaining. As set forth in finding of fact 6, the record also shows that the County did not bargain with the Association before eliminating the Aetna HMO as a health care plan option for the security guards. Thus, the record shows that the County committed unfair practices in violation of sections 1201(a)(1) and 1201(a)(5) as charged.

The County contends that the charge should be dismissed because it had the managerial right to eliminate the Aetna HMO as a health care plan option for the security guards. The County points out that it realized a substantial savings when it eliminated the Aetna HMO as a health care plan option for the security guards (N.T. 101) and that the security guards had the option of enrolling in another health maintenance organization with coverages and benefits better than those under the Aetna HMO (N.T. 102-104). According to the County, on those facts, the elimination of the Aetna HMO as a health care plan option for the security guards had a greater impact on its financial interests than on their interest in health care and thus was a matter of inherent managerial policy under the balancing test set forth in PLRB v. State College Area School District, 461 Pa. 494, 507, 337 A.2d 262, 268 (1975). In Cumberland Valley School District, supra, however, the court held that health care benefits are a mandatory subject of bargaining. The County's contention is, therefore, without merit. See also Palmyra Area School District, 26 PPER ¶ 26087 (Final Order 1995), aff'd, 27 PPER ¶ 27032 (Court of Common Pleas of Lebanon County 1995)(an employer committed unfair practices in violation of sections 1201(a)(1) and 1201(a)(5) by changing the administrator of its health care plan); Kennett Consolidated School District, 18 PPER ¶ 18060 (Final Order 1987), aff'd, 20 PPER ¶ 20088 (Court of Common Pleas of Chester County 1989)(an employer committed unfair practices in violation of sections 1201(a)(1) and 1201(a)(5) by changing the health care coverages for its employees even though the change in coverages may have been beneficial for the employees).

The County also contends that the charge should be dismissed because it did not change the status quo when it eliminated the Aetna HMO as a health care plan option for the security guards. As the County points out, when the Board certified the Association as the exclusive representative of the bargaining unit, the security guards were subject to the County's personnel practices and procedures manual for non-represented employees under which their health care plan was "provided by an HMO carrier as determined by the County" (N.T. 99-100; Employer Exhibit 1). According to County, it therefore retained the right to unilaterally determine the HMO carrier for the security guards even after the Board certified the Association as the exclusive representative of the bargaining unit and thus did not change the status quo when it eliminated the Aetna HMO as a health care plan option for them. The County also points out that in Connecticut Light and Power Company v. NLRB, 476 F.2d 1079 (2nd Cir. 1973), the court held that an employer was under no obligation to bargain over a change in health insurance carriers where the coverages and benefits did not change. In addition, the County submits that Palmyra Area School District, supra, is distinguishable on the facts because it did not become self-insured as the employer in that case did.

The County's contention is without merit. Once the Board certifies an exclusive representative for a bargaining unit, an employer is obligated to bargain before it changes any of the terms and conditions of employment for the employees in the unit. Lawrence County Housing Authority, 5 PPER 39 (Final Order 1974). As a matter of law, then, the County did not have the right to unilaterally determine the HMO carrier for the security guards after the Board certified the Association as the exclusive representative of the bargaining unit. Moreover, as set forth in findings of fact 1-2, when the Board certified the Association as the exclusive representative of the bargaining unit, the County offered the Aetna HMO as a health care plan option for the security guards, so it is apparent that the County changed the status quo when it eliminated the Aetna HMO as a health care plan option for them. Furthermore, as the Board explained in Palmyra Area School District, supra, the holding in Connecticut Light and Power Company, supra, is inconsistent with Pennsylvania law as set forth in City of Philadelphia v. FOP, Lodge No. 5, 561 A.2d 1312 (Pa. Cmwlth. 1989), appeal den'd, 527 Pa. 653, 593 A.2d 424 (1989), where the court emphasized the importance of an insurance carrier. As the Board also explained in Palmyra Area School District, supra, under Philadelphia Housing Authority v. PLRB, 620 A.2d 594 (1993), petition for allowance of appeal den'd, 536 Pa. 634, 637 A.2d 294 (1993), an employer changes the status quo if it alters any of the terms and conditions of employment for its employees. Thus, the County's reliance on Connecticut Light and Power Company, supra, is misplaced, and its attempt to distinguish Palmyra Area School District, supra, on the facts is unavailing.

The County further contends that the charge should be dismissed because the Association did not request bargaining over its elimination of the Aetna HMO as a health care plan option for the security guards. The County points out that it sent to a representative of the Association (Officer James Whitaker) advance notice of its elimination of the Aetna HMO as a health care plan option for the security guards but never heard from the Association until the Association filed the charge (N.T. 104, 119; Employer Exhibit 4). The County submits that the Association should not be allowed to "play the game of 'gotcha'" under the circumstances (brief at n. 7). In Snyder County Prison Board v. PLRB, supra, however, the court held that the obligation to request bargaining in a case of this nature is the employer's, not the exclusive representative's. The County's contention is, therefore, without merit.²

² Although the County does not argue the point, it is noted that if the record shows that the exclusive representative of a bargaining unit had notice that the employer intended to change a mandatory subject of bargaining and that the exclusive representative had all the information it needed to bargain the matter but did not request bargaining before the employer changed the mandatory subject of bargaining, the Board will find that the employer committed unfair practices but as an exception to the general rule will not direct restoration of the status quo as a remedy. Garnet Valley School District, 8 PPER 365 (Final Order 1977). The record does not show that the Association had all the information it needed to bargain over the elimination of the Aetna HMO, however, so the exception to the general rule does not apply. See Lancaster County, 24 PPER ¶ 24054 (1993) (restoration of the status quo was an appropriate remedy where the union had advance notice that the employer intended to subcontract bargaining unit work but did not have all the information it needed to bargain before the employer subcontracted the work).

The alleged unilateral change to the manner in which bargaining unit members were scheduled to qualify for carrying a firearm

The Association contends that the County committed unfair practices by "unilaterally promulgat[ing] a policy, which changed the manner in which bargaining unit members were scheduled to qualify for carrying a firearm." According to the Association, the County did so when it scheduled the security guards for firearms training/qualification in October 2006. As the Association points out, after the County initially scheduled the security guards for firearms training/qualification for an eight-hour shift (Association Exhibit 3), it scheduled them for four hours of firearms training/qualification and directed them to return to their posts for the remaining time of their shift (Association Exhibit 2). As the Association further points out, under the County's firearms policy, the security guards are subject to termination if they do not qualify to carry a firearm (Association Exhibit 1). The Association would have the Board find on those facts that the number of hours scheduled for firearms training/qualification has a greater impact on the interest of the security guards in maintaining employment than on whatever interest the County may have in the matter and thus is a mandatory subject of bargaining under the balancing test set forth in State College Area School District, supra.

As set forth in finding of fact 7, however, the record shows that the County scheduled the security guards for four hours of firearms training/qualification "unless they [had] a problem with the range." As set forth in finding of fact 8, the record shows that in the past the County afforded security guards additional time to qualify if they were unable to qualify during the time scheduled for firearms training/qualification, so it is apparent that the County did not change past practice. Thus, even assuming without deciding that the number of hours scheduled for firearms training/qualification is a mandatory subject of bargaining, there is no basis for finding that the County committed the unfair practices charged.³

CONCLUSIONS

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

1. The County is a public employer under section 301(1) of the Act.
2. The Association is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. The County has committed unfair practices under sections 1201(a)(1) and 1201(a)(5) of the Act.
5. The County has not committed unfair practices under sections 1201(a)(3) and 1201(a)(4) 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 County shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

³ Although the Association does not argue the point, it is noted that the County had the managerial right to direct the security guards to return to their posts for the duration of their shift once they finished their firearms training/qualification. See South Park Township Police Association v. PLRB, 789 A.2d 874 (Pa. Cmwlth. 2002)(employer had the managerial right to direct its police officers to return to duty following court appearances that ended before their shifts did).

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the Act:

(a) Reinstate the Aetna HMO as a health care plan option for the security guards;

(b) Make the security guards whole for any losses sustained by them as the result of its elimination of the Aetna HMO as a health care plan option for them;

(c) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its security guards and have the same remain so posted for a period of ten (10) consecutive days; and

(d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this order by completion and filing of the attached affidavit of compliance.

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 order shall be final.

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

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

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April 4, 2007

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BUCKS COUNTY
Case No. PERA-C-06-518-E

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Neil A. Morris, Esquire
Bucks County Commissioners

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY SECURITY GUARDS ASSOCIATION :
:
v. : Case No. PERA-C-06-518-E
:
BUCKS COUNTY :

AFFIDAVIT OF COMPLIANCE

The County hereby certifies that it has ceased and desisted from its violations of sections 1201(a)(1) and 1201(a)(5) of the Act, that it has reinstated the Aetna HMO as a health care plan option for its security guards, that it has made its security guards whole for any losses sustained by them as the result of its elimination of the Aetna HMO as a health care plan option for them, that it has posted a copy of the proposed decision and order as directed and that it has served a copy of this affidavit on the Association.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public