

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CHESTER COUNTY DETECTIVES :  
BENEVOLENT ASSOCIATION :  
v. : Case No. PF-C-06-83-E  
CHESTER COUNTY and CHESTER :  
COUNTY DISTRICT ATTORNEY'S OFFICE<sup>1</sup> :

**PROPOSED DECISION AND ORDER**

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Chester County Detectives Benevolent Association (Association) on May 24, 2006 alleging that Chester County (County) and the Chester County District Attorney's Office (DA) violated Section 6(1)(a), and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111. On July 5, 2006, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for August 9, 2006, in West Chester, Pennsylvania. A hearing was held on that date during which all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence on the two hearing dates. All parties filed post-hearing briefs.

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

**FINDINGS OF FACT**

1. The County and the DA are employers.
2. The Association is a labor organization.

3. On April 13, 2006 the chief of County detectives distributed an e-mail concerning reassignments within the detectives office. These reassignments were effective April 17, 2006. Detective Sergeant Jeffrey Gordon, who before the memo's issuance was the direct supervisor of the narcotics unit<sup>2</sup> and the Chester County municipal drug task force (MDTF), was made the "administrative sergeant", a newly created position. A lieutenant of detectives filled Gordon's position as direct supervisor of the narcotics unit and the MDTF. Detective sergeants are in the bargaining unit while detective lieutenants are not. According to the Chester County Municipal Drug Task Force Guidelines<sup>3</sup> a detective lieutenant is the commander of the MDTF and a detective sergeant is the immediate supervisor of MDTF personnel. (N.T. 7-15, 17-19, 30, 63, 66; Association Exhibit 2-6).

4. Before April 17, 2006 Gordon was the direct supervisor of the narcotics unit and the MDTF. In that capacity Gordon supervised, scheduled, gave out assignments and ran the other day-to-day operations. MDTF members and narcotics detectives reported directly to Gordon. More specifically, Gordon routinely went out on street operations to supervise controlled narcotics buys by members of the MDTF. He also distributed the money used in controlled buys, reviewed MDTF investigations, and approved MDTF daily activity reports. Before the changes on April 17, 2006, detectives in the narcotics unit and members of the MDTF reported directly to Gordon. After the April 17, 2006, change they report directly to the detective lieutenant. Before the April 17, 2006 change the detective sergeant received and approved all detectives' time sheets. (11, 12, 30, 44, 45, 50, 63, 66, 104, 111, 113, 114; Association Exhibit 4-7).

<sup>1</sup> Caption appears as amended by the Hearing Examiner.

<sup>2</sup> The narcotics unit is sometimes referred to as the Chester County Drug Strike Force. (N.T. 11).

<sup>3</sup> The MDTF guidelines allow the DA's office, as an agent for the Commonwealth Attorney General's office, to fund, coordinate and oversee drug investigations in cooperation with individual municipalities within the County

5. The detective lieutenant became the immediate supervisor of the narcotics unit after April 17, 2006. Also on that date the detective lieutenant became the supervisor of the day-to-day activities of the MDTF. Before the April 17, 2006, memo some of Gordon's MDTF duties were shared on a regular basis with the lieutenant. The detective lieutenant took over the review and approval of detective time sheets from Gordon. Gordon was responsible for the daily, on-going direction of the narcotics detectives until April 17, 2006. After that date the detective lieutenant took over all those responsibilities. Before the April 13, 2006, memo, when Gordon was absent from his duties, the lieutenant occasionally assumed some of Gordon's duties. Since April 17, 2006 the detective lieutenant is the immediate supervisor of the narcotics unit. (N.T. 86, 88, 89, 104, 105, 106, 111, 113, 114, 116, 120, 121).

#### DISCUSSION

In this pas de trois, the Association charges the County and the DA<sup>4</sup> with violations of Section 6(1)(a) and (e) of the PLRA as read with Act 111 because the chief of the County detectives issued a memorandum that the Union alleges removed work from the bargaining unit before any bargaining took place over that removal. The County and the DA argue that because the work was not performed exclusively by bargaining unit members there is no unfair labor practice.

However, work does not have to be exclusively performed by bargaining unit members for an employer to violate Section 6(1)(a) and (e) of the PLRA by unilaterally varying the extent to which members and non-members of the unit have performed the same work. That is precisely what the DA did here. And in doing so he violated the PLRA as read with Act 111. The County did not violate the PLRA under these facts. Lebanon County, 29 PPER ¶ 29005 (Final Order, 1997) (where row officer and county are joint employers, county not operative employer for unfair labor practice where row officer commits acts complained of).

The County and the DA argue that because the work was not exclusive to the unit there can be no unfair labor practice. That is simply wrong. Some fifteen years ago, in AFSCME, Council 13, AFL-CIO v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992), the Commonwealth Court adopted the Board's then newly enunciated rule on non-exclusivity of bargaining unit work:

In the case *sub judice*, however, the PLRB stated in its final order that even in a situation where a bargaining unit has not performed the work in question exclusively, an employer may nevertheless commit an unfair labor practice if the transfer of work outside of the bargaining unit is not consistent with past practice. . . . The PLRB has administrative expertise in public employee labor relations and this Court will defer to the PLRB's decision to create and apply this rule.

616 A.2d at 138.<sup>5</sup>

As set forth with specificity in the findings of fact, the DA assigned bargaining unit work to non-bargaining unit management employees of the county detectives office. Albeit, when bargaining unit members were absent, management employees had incidentally performed some of the tasks at issue. Nevertheless, by the issuance of the April 13, 2006, memo, the DA materially varied the extent to which members and non-members of the bargaining unit performed the same work. Work regularly performed by unit members was, by the memo's issuance, made work regularly performed by non-unit employees. Such a wholesale reassignment of work cannot be made absent bargaining. City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992); Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 36 PPER 8 (Proposed Decision and Order, 2005), 36 PPER 144 (Final Order, 2006); Wyoming Valley West School District, 32 PPER ¶ 32008 (Final Order, 2000).

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<sup>4</sup> In their briefs, the parties do not differentiate between the County and the DA, but merely refer to both as the County. (Association brief at 2; County and DA brief on second page).

<sup>5</sup> The County and the DA in their brief incorrectly cite the Board's final order in the AFSCME, Council 13 case as 22 PPER ¶ 22186. The correct cite is 22 PPER ¶ 22151.

Row officers such as the DA have a duty to bargain with the Association through their bargaining agents, the Commissioners, over mandatory subjects. Berks County, 29 PPER ¶ 29044 (Final Order, 1998), aff'd sub nom, Troutman v. PLRB, 517 A.2d 192 (Pa. Cmwlth. 1999), 563 Pa. 624, 757 A.2d 932 (2000). When row officers fail to bargain over the transfer of unit work they commit an unfair labor practice. See Lebanon County, *supra*, (row officer's duty to bargain mandatory subjects not limited to contract negotiations but is a continuing duty).

Because the DA unilaterally transferred unit work without bargaining, he has committed an unfair labor practice in violation of Section 6(1)(a) and (e) of the PLRA as read with Act 111. The remedy is for the DA to return the work to the unit.

The Association also alleges that the County and the DA violated the PLRA by removing overtime opportunities as a direct result of the unilateral transfer of bargaining unit work. The record shows that the detective sergeant often worked, *inter alia*, vespertine overtime supervising controlled, undercover narcotics buys at various locations throughout the County. Since overtime is directly concatenated to the unilaterally transferred work, returning the work to the unit will return the overtime to the unit.

While not specifically requested in the Association's general prayer for relief, the condign remedy in this case includes ordering the DA to reimburse bargaining unit members for any lost overtime pay from the April memo's effective date (April 17, 2006) to the reinstatement of work to the unit, where such loss of pay was the direct result of unilaterally removing unit work.

#### CONCLUSIONS

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

1. The County and the DA are employers within the meaning of Section 3(c) of PLRA as read with Act 111.
2. The Association is a labor organization within the meaning of Section 3(f) of the PLRA.
3. The Board has jurisdiction over the parties hereto.
4. The DA has committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA and Act 111.
5. The County has not committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA and Act 111.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

#### HEREBY ORDERS AND DIRECTS

that the DA shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA
2. Cease and desist from refusing to collectively bargain with the representatives of its employes.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the PLRA and Act 111:

(a) Immediately reinstate to the unit the work removed from the unit on April 17, 2006;

(b) Immediately compensate any bargaining unit member who lost overtime pay as a direct result of work unilaterally removed from the unit;

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

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and 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 pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED AND MAILED this tenth day of January, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
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**AFFIDAVIT OF COMPLIANCE**

The Chester County District Attorney's Office hereby certifies that it has ceased and desisted from its violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act and Act 111; that it has reinstated all work to the bargaining unit that was unilaterally removed on April 17, 2006; that it has reimbursed any bargaining unit member who has lost overtime pay directly due to that removal of work; that it has posted the proposed decision and order as directed therein; and that it has served an executed copy of this affidavit on the Chester County Detectives Benevolent Association at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

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

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Signature of Notary Public