

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS ASSOCIATION :  
:  
v. : Case No. PF-C-04-123-E  
:  
COMMONWEALTH OF PENNSYLVANIA :  
PENNSYLVANIA STATE POLICE :

**FINAL ORDER**

On January 14, 2008, the Commonwealth of Pennsylvania, Pennsylvania State Police (Commonwealth) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to a Proposed Decision and Order (PDO) issued on December 26, 2007. In the PDO, the Hearing Examiner concluded that the Commonwealth had not complied with a Final Order of the Board, in which the Commonwealth was directed to restore bargaining unit work that it had unilaterally removed from the police bargaining unit represented by the Pennsylvania State Troopers Association (Association). After the Secretary of the Board granted the Commonwealth's request for an extension of time to file a brief in support of its exceptions, the Commonwealth filed its brief on February 13, 2008. On February 28, 2008, the Association filed a brief in response to the Commonwealth's exceptions.

The facts of this case, as found in the initial PDO issued on February 2, 2005, are summarized as follows. From at least 1981 until June 2004, members of the police bargaining unit represented by the Association were assigned by the Commonwealth to supervise Police Communications Operators (PCOs). The PCOs are civilians and are not included in the police bargaining unit. They perform dispatching duties on behalf of the State Police. The supervision of the PCOs by bargaining unit members included evaluating their performance, answering their questions, filling in for them and scheduling them.

In June 2004, the Commonwealth opened the first of five consolidated dispatch centers. At the consolidated dispatch centers, the Commonwealth employed Police Communications Supervisors to supervise the PCOs. The Police Communications Supervisors were represented by the American Federation of State, County and Municipal Employees (AFSCME). Their supervision of the PCOs included evaluating them, answering their questions, filling in for them and scheduling them.

On July 2, 2004, the Association filed a charge of unfair labor practices with the Board alleging that the Commonwealth violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968 by unilaterally transferring bargaining unit work involving the supervision of PCOs to non-members of the bargaining unit. In a PDO issued on February 2, 2005, the Hearing Examiner concluded that the Commonwealth violated the PLRA and Act 111 as alleged by the Association and ordered the Commonwealth to rescind the transfer of the work of supervising PCOs to non-unit personnel, and to reinstate that work to the Association's bargaining unit.

In a Final Order issued on October 18, 2005, the Board affirmed the Hearing Examiner's February 2, 2005 PDO. The Commonwealth appealed to the Commonwealth Court, which affirmed the Board's Final Order on December 14, 2006. See Pennsylvania State Police v. PLRB, 912 A.2d 909 (Pa. Cmwlth. 2006). On July 26, 2007, the Supreme Court denied the Commonwealth's petition for allowance of appeal. See Pennsylvania State Police v. PLRB, 593 Pa. 730, 928 A.2d 1292 (2007).

Thereafter, the Association alleged that the Commonwealth had not complied with the Final Order and requested that it be directed to do so. On October 11, 2007, a compliance hearing was held. In a PDO issued on December 26, 2007, the Hearing Examiner found that the Commonwealth had reclassified the Police Communications Supervisors as Lead PCOs, and had assigned Lead PCOs to answer questions by PCOs, and to substitute for them. Because the Board concluded in the Final Order that answering PCOs' questions and substituting for them is work that was previously performed by members of the Association's bargaining unit, the Hearing Examiner concluded that the Commonwealth has not complied with the Board's Final Order that directed reinstatement of this work to the Association's bargaining unit.

In its exceptions, the Commonwealth argues that the Hearing Examiner erred by 1) finding that the Commonwealth has assigned Lead PCOs to answer questions asked by PCOs; 2) failing to find that members of the Association's bargaining unit are assigned to answer PCOs' questions; 3) failing to conclude that the Association did not meet its burden of proving noncompliance with the Final Order; 4) concluding that the Commonwealth has not complied with the Final Order because Lead PCOs, who are in the same bargaining unit as PCOs, are assigned to fill in for them; (5) concluding that the Commonwealth has not complied with the Final Order because members of the Association's bargaining unit have not filled in for PCOs; and (6) failing to conclude that the Commonwealth complied with the Final Order.

With regard to the issue of whether Lead PCOs answer questions of PCOs, the Commonwealth contends that the compliance hearing record establishes that Association unit members still answer police-related questions from PCOs, and that lead PCOs only answer technical questions regarding use of equipment that did not exist when the Association bargaining unit members supervised the PCOs. The Commonwealth argues that Finding of Fact 8 in the December 26, 2007 PDO is not supported by the testimony cited by the Hearing Examiner because that testimony indicates that when PCOs have asked police-related questions, the Lead PCOs relay those questions to an Association member.

However, the testimony cited by the Hearing Examiner in support of Finding of Fact 8 indicates, consistent with the Commonwealth's own position, that the Lead PCOs answer some questions from PCOs (10/11/2007 N.T. 38-39, 51-52). Although the Commonwealth characterizes these questions as involving "technical" issues relating to use of equipment, there was no distinction drawn in the initial PDO, as made final by the Board and affirmed on appeal, between police-related questions and "technical" questions. Rather, the Board found that the work that was removed from the police bargaining unit members who formerly supervised the PCOs included "answering their questions" (FF 2; February 2, 2005 PDO at 1), and that the work that was unlawfully transferred to the Police Communications Supervisors included answering the questions of PCOs (FF 5; February 2, 2005 PDO at 2). Although the Commonwealth filed exceptions to the initial PDO, it did not except to Findings of Fact 2 or 5, nor raise any issue concerning the nature of questions answered by the Association bargaining unit members or the Police Communications Supervisors to whom the work was unlawfully transferred. Having failed to challenge the Board's findings regarding the scope of duties transferred out of the Association bargaining unit and having failed to prevail on the merits of its appeal from the Board's Final Order, the Commonwealth may not collaterally attack the Board's findings in this compliance proceeding, which involves only the question of whether the Commonwealth has reinstated the duties to the Association's bargaining unit. Accordingly, we find that Finding of Fact 8 in the December 26, 2007 PDO is supported by substantial evidence and that the underlying testimony demonstrates that the Commonwealth has failed to fully restore the function of answering PCOs' questions to the Association bargaining unit.

Turning to the issue of substituting for PCOs, the testimony from the compliance hearing supports the Hearing Examiner's finding that Lead PCOs are substituting for PCOs, whereas previously members of the Association bargaining unit filled in for PCOs. The Commonwealth's assertion that the PCOs and Lead PCOs are in the same bargaining unit is immaterial. The pertinent question is whether the lead PCOs are performing a function that was previously performed by members of the Association bargaining unit. The Board found in the Final Order that Association unit members substituted for PCOs before the Commonwealth began utilizing non-members of the Association unit as substitutes. Therefore, because the Commonwealth is utilizing non-members of the Association unit (Lead PCOs) as substitutes for PCOs, it has not complied with the Board's Final Order.

After a thorough review of the exceptions, the parties' briefs and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

#### **ORDER**

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

**HEREBY ORDERS AND DIRECTS**

that the exceptions filed by the Commonwealth to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed, and the Proposed Decision and Order is hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this seventeenth day of June, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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L. DENNIS MARTIRE, CHAIRMAN

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ANNE E. COVEY, MEMBER

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JAMES M. DARBY, MEMBER

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**AFFIDAVIT OF COMPLIANCE**

The Commonwealth of Pennsylvania, Pennsylvania State Police hereby certifies that it has ceased and desisted from its violations of Sections 6(1)(a) and 6(1)(e) of the Pennsylvania Labor Relations Act, that it has rescinded the transfer of work from the Act 111 bargaining unit to civilian employees, that it has reinstated that work to the Act 111 bargaining unit, that it has posted the Proposed Decision and Order and Final Order as directed and that it has served a copy of this affidavit on the Pennsylvania State Troopers Association.

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

\_\_\_\_\_  
Title