

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :  
ASSOCIATION :  
v. : Case No. PF-C-07-156-E  
COMMONWEALTH OF PENNSYLVANIA :  
PENNSYLVANIA STATE POLICE :

**FINAL ORDER**

The Pennsylvania State Troopers Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on April 10, 2008 to a Proposed Decision and Order (PDO) issued on March 21, 2008. In the PDO, the Board Hearing Examiner concluded that the Commonwealth of Pennsylvania, Pennsylvania State Police (PSP) did not violate Act 111 of 1968 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by implementing a new scheduling system for patrol troopers. The PSP filed a timely brief in response to the exceptions on May 1, 2008.

The facts found by the Hearing Examiner are based on stipulations of the parties, and testimony presented at the hearing by the PSP. The Hearing Examiner's findings that are relevant to the exceptions being raised by the Association, are summarized as follows. The Association is the exclusive representative of a bargaining unit that is comprised of approximately 4300 sworn members of the PSP, approximately 2700 of whom are patrol corporals, patrol troopers and crime troopers. Prior to December 1, 2007, scheduling responsibilities for all bargaining unit members were performed on a station-by-station basis. On December 1, 2007, the Commonwealth partially implemented a scheduling system known as professional shift allocation management (PRO-SAM) for the scheduling of patrol troopers. PRO-SAM utilizes set scheduling matrixes based on staffing needs, and schedules patrol troopers to shifts based on data indicating when crimes and automobile accidents occur. Under PRO-SAM, all patrol troopers work a 21-day schedule with every third weekend off. The PRO-SAM was implemented in Troops D and E on December 1, 2007, with the intent to implement the same scheduling system statewide for all 2700 patrol troopers.

The Hearing Examiner found that the PRO-SAM was only for scheduling of patrol troopers, and not for the entire bargaining unit. The Hearing Examiner noted that the PRO-SAM system did not alter the length of the work-week or work-day for the patrol troopers, nor did it eliminate the practice of taking a car home between "double back" shifts,<sup>1</sup> trading or switching workdays or shifts, or requesting days off. The Hearing Examiner determined that the interests of the PSP in providing adequate police coverage during high crime periods or when accidents occur, substantially outweighed the troopers' asserted interests in scheduling. Thus, the Hearing Examiner concluded that PSP's implementation of PRO-SAM was a matter of managerial prerogative.

The Association argues on exceptions that the Hearing Examiner erred in failing to find certain proposed facts. A Board hearing examiner however, need not summarize all of the evidence presented, but must make the necessary findings of fact that are relevant to the conclusions needed to be reached in the proposed decision and order. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975).

The Association asserts that the Hearing Examiner should have found that that the PSP adopted the PRO-SAM system of scheduling to correct bias and favoritism in scheduling, but did not attempt to investigate or discipline the employees responsible for preparing schedules. In assessing unfair labor practices, if it is determined that the issue at hand is one of managerial prerogative, the Board does not decide whether the employer has chosen the best means of effectuating that managerial policy. Reading Fraternal Order of Police Lodge #9 v. City of Reading, 30 PPER ¶130121 (Final Order,

<sup>1</sup> "Double-back shifts" are where troopers are scheduled for two shifts with only eight hours off between shifts.

1999). Although correcting favoritism and bias in scheduling may have been a beneficial side effect of PRO-SAM, the PSP based its implementation on the stated interests of, inter alia, providing adequate police coverage. The proposed finding regarding concerns of favoritism and bias in scheduling is not necessary for the determination that implementation of PRO-SAM was a matter of managerial prerogative. Also, whether the PSP may have had other means of achieving its managerial policy goal, such as through disciplinary procedures, is not a matter to be decided by the Board.

The Association also alleges that the Hearing Examiner should have found 1) that the PSP did not engage in bargaining regarding the PRO-SAM system; 2) that PRO-SAM scheduling affected approximately 2500 employees out of the 4300 employees in the bargaining unit; and 3) that the PRO-SAM system changed the schedules of those bargaining unit members who worked a steady ten days on and four days off on the midnight shift. Upon review of the PDO, each of these three proposed findings are subsumed within the Hearing Examiner's Findings of Fact in the PDO. The Hearing Examiner's Findings are supported by record evidence and will not be disturbed.

As regards the Hearing Examiner's conclusions, the Association argues that the Hearing Examiner erred in relying on City of Reading, supra, to find that the PSP's interests in implementation of the PRO-SAM scheduling system for patrol troopers substantially outweighed the bargaining unit members' interest in scheduling. The Association contends that the Hearing Examiner erred in failing to follow Commonwealth Court cases that have held that changes to the system of scheduling are a mandatory subject of bargaining. Indiana Borough v. PLRB, 695 A.2d 470 (Pa. Cmwlth. 1997); Upper Saucon Township v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993).

A matter is deemed a mandatory subject of bargaining under Section 1 of Act 111 if it bears a rational relationship to the employees' duties. South Park Township Police Association v. PLRB, 789 A.2d 874 (Pa. Cmwlth. 2002). However, Section 1 of Act 111 does not render all of the employer's ability to regulate its police force subject to the collective bargaining process. A policy that is essential for the proper and efficient functioning of a police force will remain within the purview of the employer. FOP Rose of Sharon Lodge No. 3 v. PLRB, 729 A.2d 1278 (Pa. Cmwlth. 1999). For an issue to be deemed a managerial prerogative and, thus, not a mandatory subject of bargaining, a managerial policy concern must substantially outweigh any impact an issue will have on the employees. Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998).

Notably, City of Reading, Indiana Borough and Upper Saucon are all consistent in their application of the Act 111 test for determining whether changes to police officers' scheduling is a mandatory subject of bargaining. Each case recognizes that the employer has a managerial interest in the direction of personnel, which is essential for the proper and efficient provision of police services.

In Indiana Borough, the Board found that the employer's managerial interest in directing its personnel did not outweigh the impact on employees' lifestyle, outside employment, sleep patterns, and ability to effectively work as a team. Given these stated interests of the employees, the Commonwealth Court held that "[w]hile the policy concerns which the [employer] sought to address are legitimate, there are substantial facts of record to support the Board's conclusion that these managerial policy concerns do not substantially outweigh the impact which the change in shift system had on the officers in question." Indiana Borough, 695 A.2d at 474.

Similarly in Upper Saucon Township, the Board hearing examiner found a managerial interest in strengthening the level of police services on Saturdays, but also recognized that there were substantial changes to the officers' work schedules impacting the employees. The record established that the shift changes affected the officers' ability to schedule days off, eliminated Saturdays as a regular day off, assigned permanent days based on seniority, assigned permanent shifts, and impacted the officers' safety by assigning two officers per shift instead of three. In Upper Saucon the hearing examiner concluded that "[t]he necessity for added work force on Saturdays does not substantially outweigh the dramatic impact that the schedule changes have on the police officers." Upper Saucon Township, 23 PPER ¶23001 at 4 (Proposed Decision and Order, 1991).

City of Reading is distinguishable from Indiana Borough and Upper Saucon in that City of Reading involved periodic assignments as opposed to a change in the shift scheduling system. Nevertheless, the Board applied the same Act 111 test for bargaining, finding that the employer's interest in directing the workforce in order to provide police services substantially outweighed any impact the periodic assignments had on the employees in that case. The Board noted that the employer's direction that administrative officers work one patrol duty per month other than their regularly scheduled shift, did not change the administrative officers' daily shift of 8 a.m. to 4 p.m. on Mondays through Fridays, nor their regularly scheduled hours, and that the administrative officers could schedule the once-per-month assignment at a date of their choosing. The Board also recognized that the impact that these periodic assignments may have had on the officers' personal lives and outside employment generally would not negate the employer's substantial interest in the direction of the workforce.

Although this matter involves PSP's shift scheduling system, the evidence of record is more akin to City of Reading than Indiana Borough or Upper Saucon Township. The Association alleged that prior to December 1, 2007 and the implementation of the PRO-SAM, Association members were permitted to take a PSP car home between "double-back" shifts; some members in the criminal investigation unit worked daylight shifts with weekends off; bargaining unit members were permitted to switch work days or shifts, and could request days off; and that some Association members worked steady midnight shifts. However, the record evidence established that after implementation of the PRO-SAM, patrol troopers could still take cars home between "double-back" shifts, could still switch work days and shifts, could still request and take days off, and would still be permitted to work midnight shifts. There was no evidence, and thus no finding of fact, that the employees who worked daylight in the criminal investigation unit were patrol troopers affected by the scheduling system.<sup>2</sup> Moreover, the PSP offered credible testimony that PRO-SAM effectuated no changes to the provisions concerning scheduling in the collective bargaining agreement.<sup>3</sup>

The only evidence of impact on this record is found in Finding of Fact 4 that "[p]rior to December 1, 2007, "steady midnighters" worked a schedule of ten days on and four days off." However, there is no other evidence as to how many troopers worked steady midnight shifts, nor how the change from a steady ten days on and four days off shift to a 21-day rotating schedule with every third weekend off, affected those "steady midnighters". This minimal evidence of impact on scheduling of the "steady midnighters", standing alone,<sup>4</sup> cannot negate the PSP's asserted and substantial interests in scheduling patrol troopers to assure adequate coverage at times when police services are likely to be needed. See City of Reading, supra.

Although scheduling of employees is rationally related to employee duties, the PSP has asserted a compelling interest in the implementation of the PRO-SAM as a means of directing patrol troopers to shifts when police coverage is most needed. On this record, the PSP's managerial policy of providing for the proper and efficient provision of police services substantially outweighs the impact that the PRO-SAM scheduling has on the bargaining unit employees. After a thorough review of the exceptions and all matters of record, we concur with the hearing examiner's assessment that the PSP did not violate Act 111 and Section 6(1)(a) and (e) of the PLRA by implementing the PRO-SAM system of scheduling patrol troopers. Accordingly, we shall dismiss the exceptions filed by the Association, and make the PDO final.

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<sup>2</sup> The Association has not challenged the Hearing Examiner's failure to make a finding regarding the employees in the criminal investigation unit who worked daylight shifts.

<sup>3</sup> In fact, the Hearing Examiner found that had the PSP given 24-hour notice of the shift changes consistent with the express language of the collective bargaining agreement, it would have established a contractual privilege defense to the charge of unfair labor practices. The PSP has not excepted to the hearing examiner's determination in the PDO that it failed to establish a contractual defense.

<sup>4</sup> As the Board noted in City of Reading, impact on personal lives occasioned by changes in shift assignments will not alone negate the employer's interests in directing employees for the proper and efficient functioning of a police force.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Pennsylvania State Troopers Association are hereby dismissed, and the March 21, 2008 Proposed Decision and Order, be and hereby is 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 twentieth day of May, 2008. 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.