

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WILKES-BARRE POLICE :
BENEVOLENT ASSOCIATION :
 :
v. : Case No. PF-C-07-130-E
 :
CITY OF WILKES-BARRE :

PROPOSED DECISION AND ORDER

On October 3, 2007, the Wilkes-Barre Police Benevolent Association (Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices, under the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111, and therein alleged that that the City of Wilkes-Barre (City) violated Section 6(1)(a) and (e) of the PLRA by unilaterally transferring exclusively performed bargaining unit work to non-unit employes. The Union specifically alleged that, on or about September 5, 2007, the City unilaterally transferred the work of providing security--which includes patrolling and checking lots and garages as well as escorting citizens and workers between the hours of 5:00 p.m. and 3:00 a.m.--in and around parking facilities in the downtown area of the City.

On November 1, 2007, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing was to be held on November 30, 2007, in Harrisburg, Pennsylvania. On November 30, 2007, I issued a letter granting the Union's request for an indefinite continuance for the purpose of permitting settlement discussions. By letter dated March 21, 2008, the Union informed me that the charge had not been settled and requested that I schedule the matter for hearing. By letter dated April 1, 2008, I scheduled a hearing for Wednesday, May 28, 2008 in Wilkes-Barre, Pennsylvania. By letter dated April 11, 2008, the City requested a continuance due to a prior commitment. Consequently, I scheduled the hearing for June 17, 2008, in Wilkes-Barre. However, both parties' attorneys had conflicts on that date, and I again rescheduled the hearing for Friday, August 29, 2008, in Wilkes-Barre, Pennsylvania. The hearing was actually held on August 29, 2008. During the hearing, both parties in interest were afforded a full opportunity to present testimony and documentary evidence, and cross-examine witnesses. Both parties filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The City is a public employer and political subdivision under Act 111 as read in pari materia with the PLRA. (N.T. 56-57; City Exhibit 1; PF-U-80-104-E).
2. The Union is a labor organization under Act 111 as read in pari materia with the PLRA, that is recognized by the City. (N.T. 56-57; City Exhibit 1; PF-U-80-104-E).
3. At all times prior to September 5, 2007, police officers patrolled the parking garage known as "Park and Lock Central" (PLC). The PLC garage is operated by the City's Parking Authority (Authority). The PLC employs a full-time attendant until 8:00 p.m. to collect money for daily parking; he is not a City employe. (N.T. 5-6).
4. Police officers patrol inside and outside the PLC garage. On patrol, police officers look for any suspicious activity, crimes, disorderly conduct or vandalism. These patrols are part of normal police officer patrol duties. Prior to September 5, 2007, no other City employes or City employed parking enforcement attendants (PEAs) patrolled or monitored the PLC after the full-time Authority employe departed at 8:00 p.m. (N.T. 6-7, 10).
5. The City employs three civilian, non-Act 111 PEAs within the police department to enforce parking laws and policies on City streets. The PEAs are in a bargaining unit represented by Laborers Local 1310. Prior to September 5, 2007, these duties did not include enforcing parking rules in or patrolling of Authority operated lots and garages, including the PLC. (N.T. 7-8, 17, 57).

6. The City began using PEAs on February 24, 2000. In a prior unfair labor practice case between the parties, the Board concluded that the City unilaterally transferred bargaining unit work from the police unit to the PEAs when the City assigned parking enforcement duties, historically and exclusively performed by the bargaining unit, to the PEAs. As a result of that unfair labor practice litigation, the parties bargained the transfer of parking enforcement duties to the PEAs and entered into a Memorandum of Understanding, dated July 12, 2002, (Memorandum) wherein the Union agreed that the City could transfer the work in exchange for certain amendments to the parties' collective bargaining agreement. (N.T. 43; City Exhibit 3; City of Wilkes-Barre, 32 PPER ¶ 32137 (Final Order, 2001)).

7. The Memorandum provides, in relevant part, as follows:

2) The Police Benevolent Association agrees that the City of Wilkes-Barre may utilize civilian employees, who are not members of the Police Benevolent Association, in addition to PBA bargaining unit members, to perform parking enforcement duties. The PBA agrees not to file a grievance, unfair practice, or any other charges against the City of Wilkes-Barre relative to the use of civilian employees performing parking enforcement duties[.]

(City Exhibit 3)(emphasis added).

8. The written job description for the PEAs has been amended on occasion since the City's Human Resources Director composed it prior to the employment of the PEAs in 2000. Currently, that job description provides, in relevant part, as follows:

HOURS OF WORK:

a. Seven and one-half (7.5) hour work day, five days a week with various hours of work between the hours of 8:00 a.m. and 6:00 p.m., Saturday, Sunday and holiday work required; two consecutive days off per week but days off can vary; one (1) hour paid lunch period.

DUTIES:

- a. Observes parked vehicles and generates tickets for violations of local and state parking laws.
- b. Assists in the collection of money from parking meters.
- c. Assists in the repair of inoperative meters and in the installation of new meters.
- d. Assists in the annual timing of meters.
- e. Represents the City at Magistrate hearings on parking ticket appeals.
- f. Records tickets written and records
- g. Explains parking policy and other laws to the public and also gives directions and other assistance to the public as requested.
- h. Assists in counting and recording revenue collected from meters, taking same to bank for deposit.
- i. Performs errands such as daily mail pickup or routine delivery as required.
- j. Maintains confidentiality of all materials/information.
- k. Other related duties as assigned.

OTHER:

. . . .
. . . .

c. Successful applicant will be required to wear a uniform provided by the City.

(N.T. 61-62; City Exhibit 4).

9. The PEAs' pre-September 2007 enforcement duties were limited to ticketing individuals for parking violations and/or ensuring that the public pay for parking. PEAs did not perform security work or escort City residents. PEAs did not provide any presence at the Authority operated PLC. (N.T. 14, 38, 44).

10. In 2007, the City began a construction project known as the "intermodal" project. The intermodal facility is going to be a transportation center where local, county buses will be available on the ground floor, along with coach or long distance buses, and the upper floors will provide public parking. The intermodal transportation center is being built behind the Provincial Towers, which is a privately owned high-rise apartment building with many elderly tenants. (N.T. 62-64; City Exhibit 5).

11. The Provincial Towers Building contains an underground parking garage with approximately one hundred parking spaces for residents. The intermodal construction created unsafe access to the underground parking garage below the Provincial Towers and thereby displaced the parking for the Provincial Towers residents. (N.T. 62-68; City Exhibit 5).

12. The City obtained temporary replacement parking for the displaced Provincial Towers residents in nearby parking facilities. The PLC garage is located adjacent to the Provincial Towers. The PLC garage is where the City secured twelve handicap parking spaces for the residents. The City also obtained parking spaces for Provincial Towers residents at a new parking garage which is next door and underneath the Movies-14 Theater. The City obtained additional parking at the surface lot across the street from the Provincial Towers on South Main Street (hereinafter the "Y" Lot as it is known because it is near the YMCA). (N.T. 20, 67-71; City Exhibit 5).

13. On September 5, 2007, the PEAs received additional duties due to the intermodal construction project. The City assigned PEAs to work overtime hours between 7:00 p.m. and 3:00 a.m. Sunday through Wednesday and between 5:00 p.m. and 3:00a.m. Thursday through Saturday to be assigned in four-to-five hour increments. Those times were subsequently changed, and the PEAS were assigned hours between 6:00 p.m. and 10:00 p.m. Sunday through Thursday and between 6:00 p.m. and midnight on Fridays and Saturdays. Only one PEA works at a time. (N.T. 8-10, 19, 24, 73; City Exhibit 6).

14. After September 5, 2007, the PEAs park on the first level of the PLC between the entrance and the exit to the garage. The PEAs walk through and patrol the PLC garage. They also patrol the area from the PLC garage to the movie theater. They patrol on foot and by car around Provincial Towers. They are specifically required to escort residents of Provincial Towers from the parking facilities to the apartment building and help the residents carry packages during their escorts. The PEAs are stationed in uniform at the PLC and paid to look out for unlawful or inappropriate conduct. PEAs are instructed to notify the police of security threats or inappropriate conduct. As of the date of the hearing, the PEAs had been performing these additional duties for almost one year. (N.T. 9-10, 17, 19, 27, 31-32, 47, 72, 73, 75; City Exhibits 4 & 6).

15. The written Parking Enforcement Assignment (Assignment) provides that the PEAs' additional duties, in relevant part, are as follows:

. . . .

3. Parking Enforcement uniforms and City-issued ID must be worn;
4. Duties:
 - Patrol, on foot and by vehicle, the following areas:
 - i. Park and Lock Central (South Main Street)
 - ii. Theater Garage (East Northampton Street)
 - iii. Lot 6 (across from YMCA)
 - iv. Walkway between Theater and Central Garages
 - v. Park and Lock East (across from City hall) only when there is an event at the Kirby Center
 - While on patrol, notify Police Department if any of the following are observed:
 - i. Loitering
 - ii. Drinking of alcoholic beverages
 - iii. Skateboarding
 - iv. Bike riding
 - v. Other prohibited behavior
 - Escort Provincial Towers residents from Theater Garage to Provincial Towers Building
5. Sign in for shift in Police Department

6. Coordinate with Watch Commander on duty; contact WC by radio when police assistance is required [.]

The City did not bargain with the Union over the assignment of these duties to the PEAs. (N.T. 51; City Exhibit 6).

16. Chief Dessoye understands the term "escort" to include accompanying Provincial Towers residents while they walk from their parking space to the apartment building. He defines the term "patrol" to mean moving through an area to identify or discover certain conduct. PEAs do not have training in security or confronting problems. (N.T. 31-35, 39-40).

17. Prior to September 5, 2007, City police officers regularly patrol the PLC on foot and bicycles and in vehicles. A canine officer would conduct foot patrols of the garage for security purposes and to identify any vandalism. Police officers have historically escorted citizens for safety reasons upon request. (N.T. 44-46).

18. During the post-September 5, 2007 time frame, the City employed and stationed a per-diem employe at the front entrance of Provincial Towers to assist residents with their packages before they park their car at one of the off-site garages or lots. (N.T. 71).

DISCUSSION

The Union asserts that the assigned work is in the nature of security that has been historically and exclusively performed by police officers in the bargaining unit. The Union specifically contends that the police officers exclusively and regularly patrolled the interior and exterior of the PLC by car and by foot, looking for suspicious activity, crime, disorderly conduct and vandalism, after the PLC garage attendant employed by the Authority left at 8:00 p.m., and regularly provided escorts to City residents for bank runs and domestic purposes. (Union's Brief at 5-7). The Union argues that the City unlawfully transferred bargaining unit work from the police bargaining unit on and after September 5, 2007, when it directed the PEAs to patrol in and around the PLC garage and escort Provincial Towers residents from their parking spaces in vicinity lots and garages to the apartment building between 6:00 p.m. and 10:00 p.m., Sunday through Thursday, or between 6:00 p.m. and midnight, Fridays and Saturdays.

The City characterizes the post-September 5, 2007 work assignment for PEAs as traditional parking enforcement duties permitted by the Memorandum. The City maintains that the escorting of Provincial Towers residents is permitted by the PEAs' written job description which requires the PEAs to perform "[o]ther related duties as assigned." (F.F. 8; City Exhibit 4). Also, the City argues that the new job assignment given to the PEAs to escort Provincial Towers residents expressly dictated that the PEAs were supposed to report untoward or criminal activity to the Police Department and not engage in any crime prevention. (City's Brief at 18). The City contends that, therefore, the new work is not in the nature of security and that "parking attendants act no differently than would a private citizen witnessing unlawful or inappropriate behavior would act." (City's Brief at 18). Accordingly, the City contends that (1) the work has not been exclusively performed by the bargaining unit since 2002; (2) the City already bargained the removal of the work; and (3) the City has a contractual privilege for assigning the patrolling and escorting work to the PEAs. (City's Brief at 14-20). The City emphasizes that the PEAs' additional work assignments were part and parcel of parking enforcement and not security related duties traditionally performed by law enforcement. (City's Brief at 17).

The Board, in Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman Sch. Dist., 37 PPER 56 (Final Order, 2006), employed the following legal analysis for the removal of bargaining unit work:

The Commonwealth Court has held that "a public employer commits an unfair practice when it transfers any bargaining unit work to non-members without first bargaining with the unit." City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992) (emphasis original). In establishing an unfair practice for the removal of bargaining unit work, a union has the burden of proving that the employer unilaterally transferred or assigned work exclusively

performed by the bargaining unit to a non-unit employe(s). City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). Even where bargaining unit and non-unit employes have both performed similar duties, a union can satisfy the exclusivity requirement by proving that the bargaining unit members exclusively performed an identifiable proportion or quantum of the shared duties such that the bargaining unit members have developed an expectation and interest in retaining that amount of work. AFSCME, Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992); City of Jeanette v. PLRB, 890 A.2d 1154, 1159 (Pa. Cmwlth. 2006). Therefore, a public employer commits an unfair practice by altering the manner in which work has been traditionally assigned or by varying "the extent to which members and non-members of the bargaining unit have performed the same work." Wyoming Valley West Educ. Support Personnel Ass'n v. Wyoming Valley West Sch. Dist., 32 PPER ¶ 32008, 28-29 (Final Order, 2000) (citing AFSCME, supra).

Lake Lehman, 37 PPER at 179.

The PEAs' pre-September 2007 enforcement duties were limited to ticketing individuals for parking violations and/or ensuring that people paid for parking. The PEAs did not perform security work or escort City residents. In 2007, the City began a construction project known as the "intermodal" project. The intermodal facility is going to be a transportation center that is being built behind the Provincial Towers, which is a privately owned high-rise apartment building with many elderly tenants. The intermodal construction created unsafe access to the underground parking garage below the Provincial Towers and thereby displaced the parking for the Provincial Towers residents. The PEAs did not provide any presence at the PLC until the City made parking arrangements for the residents of Provincial Towers. On September 5, 2007, the PEAs' received additional duties due to the intermodal construction project. The City assigned PEAs to work overtime hours between 6:00 p.m. and 10:00 p.m., Sunday through Thursday, and between 6:00 p.m. and midnight, Fridays and Saturdays.¹ However, prior to September 5, 2007, police officers regularly patrol the PLC on foot and bicycles and in vehicles. A canine officer would conduct foot patrols of the garage for security purposes and to identify any vandalism. Also, police officers have escorted citizens upon request for safety reasons throughout the relevant time period.

The Assignment expressly provides that, as of September 5, 2007, the PEAs are required to wear their PEA uniforms and their City-issued ID while performing their nighttime escort and patrol duties. They must conduct both foot and vehicle patrols of the PLC, the Theater Garage, the Y Lot, the walkway between the Movies-14 Theater and PLC Garages and the Park and Lock East (when there is an event at the Kirby Center). Specifically, the PEAs are directed to notify the Police Department if they observe any criminal conduct while on patrol. The Assignment expressly requires PEAs to look for loitering, consumption of alcoholic beverages, skateboarding, bicycle riding and other prohibited behavior. Also while on patrol, the PEAs are required to escort Provincial Towers residents from the garages to the Provincial Towers Building and contact the police watch commander when police assistance is required. In fulfillment of the Assignment, the PEAs are stationed in uniform at the PLC and paid to look out for unlawful or inappropriate conduct. The PEAs now park on the first level of the PLC between the entrance and the exit to the garage. They also walk through and patrol the PLC garage. They also patrol the area from the PLC garage to the movie theater. They patrol on foot and by car around Provincial Towers. PEAs are instructed to notify the police of security threats or inappropriate conduct. As of the date of the hearing, the PEAs had been performing these additional duties for almost one year. The duties assigned to the PEAs on September 5, 2007, were exclusively and historically performed by the bargaining unit police officers, and the City did not bargain with the Union over the assignment of these duties to the PEAs. Accordingly, the City has unlawfully removed bargaining unit work.

Although the City argues that this new work assignment is not in the nature of security because "parking attendants act no differently than would a private citizen

¹ The PEAs were originally assigned to work overtime hours between 7:00 p.m. and 3:00 a.m. Sunday through Wednesday and between 5:00 p.m. and 3:00 a.m. Thursday through Saturday in four-to-five hour increments.

witnessing unlawful or inappropriate behavior would act," (City's Brief at 11 & 18), the analogy is inapposite. The distinguishing factor is that, unlike private citizens, the PEAs are paid and directed by the City to patrol and escort City residents, which was exclusively performed by police officers before September 5, 2007. Chief Dessoye defined the term "patrol" to mean moving through an area to identify or discover certain conduct. The fact that PEAs are not armed or trained to intervene in criminal conduct discovered by the PEA while on patrol does not sufficiently differentiate the patrol and escort work from the patrol and escort work historically and exclusively performed by the bargaining unit. Patrolling for the purpose of discovering illegal or inappropriate conduct is the same for the PEAs as it is for the bargaining unit. The fact that the bargaining unit officer has the ability to intervene, and the PEAs do not, merely emphasizes the fact that the patrol work is an identifiable and quantifiable part of the broader work and responsibilities of the bargaining unit of police officers much in the same way that parking enforcement duties were performed by the bargaining unit before the Memorandum, even though the police officers were performing myriad other duties. Indeed, the PEAs are not comparable to unpaid citizens who are not on patrol and directed by the City to discover and report inappropriate conduct. They are acting more like individual police officers, as paid City employees, who are directed to patrol for the purpose of discovering illegal conduct and who call for police back-up before that individual police officer engages the perpetrator of the conduct.

The City maintains that the purpose of the escort service provided by the PEAs was merely to help elderly residents of Provincial Towers with their groceries and packages. Chief Dessoye defined the term "escort" to include accompanying Provincial Towers residents while they walk from their parking space to the apartment building. However, the act of providing City paid and directed employees in uniform with City ID to accompany elderly residents at night is clearly a security function. The City stations a City-paid, per-diem employee at the front entrance to Provincial Towers during the day to assist the tenants with packages. The residents drop off their groceries and packages at that location before they park off site and the per-diem employee helps with those packages. If the City was not interested in providing security, they would maintain the daytime package-assist service at night. There is no reason why the residents could not drop off their packages at the front entrance to the apartment building at night, as they do during the day, unless they needed the security of a City-paid uniformed escort to walk with them from the off-site parking facility to the apartment building. The escort service provided by the PEAs is a nighttime security function.

The PEAs' pre-September 2007 parking enforcement duties did not include nighttime patrols and escorting. The PEAs' enforcement duties were limited to ticketing individuals for parking violations and/or ensuring that people pay for parking. The PEAs' pre-September 2007 written job description makes no reference to patrolling for any reason other than inspecting and discovering parking violations, not the full panoply of inappropriate conduct referenced in the September 5, 2007 Assignment. (F.F. 8). Accordingly, the substantial evidence of record supports the conclusion that the post-September 5, 2007 duties of patrolling for inappropriate behavior and escorting City residents assigned to the PEAs was exclusively performed bargaining unit work that has not previously been included as part of the PEAs' parking enforcement duties.

The City alternatively argues that the Memorandum is evidence that it "fulfilled its obligation to bargain with the [Union] regarding the use of civilians to perform parking enforcement duties." (City Brief at 14). This argument is premised on the City's conclusion that "duties performed by parking attendants pursuant to the job assignment at issue are related to parking enforcement." (City's Brief at 15). However, the substantial evidence of record supports the opposite conclusion (i.e., the newly assigned duties are not related to the parking enforcement duties expressly denoted on the written job description and actually performed by the PEAs). Neither the Memorandum nor the pre-September 2007 job description evidences that the City bargained with the Union over the transfer of security, escort and patrol work (for the purpose of discovering non-parking-related behavior).

In a related argument, the City contends that it "had a 'sound arguable basis' for its position that the assignment of the duties set forth in City Exhibit #6 (the job assignment) was permissible pursuant to the July 12, 2002 Memorandum of Understanding,

and acted in accordance with its interpretation." (City Brief at 18). In Fraternal Order of Police v. SEPTA, 35 PPER 73 (Final Order, 2004), the Board articulated the defense of contractual privilege in the following manner:

In Jersey Shore Area Educ. Ass'n v. Jersey Shore Area Sch. Dist., 18 PPER ¶ 18117 (Final Order, 1987), the Board adopted the rule set forth in NCR Corp., 271 N.L.R.B. 1212, 117 L.R.R.M. 1062 (1984) and Vickers, Inc., 153 N.L.R.B. 561, 59 L.R.R.M. 1516 (1965), "whereby a refusal to bargain charge will be dismissed if the employer establishes a sound arguable basis for the claim that its action was contractually privileged." Ellwood City Police Wage and Policy Unit v. Ellwood City Borough, 28 PPER ¶ 28200, at 433 (Final Order, 1997). The Commonwealth Court has sanctioned the Board's adoption and application of the affirmative defense of contractual privilege. Pennsylvania State Troopers Ass'n v. PLRB (PSTA I), 804 A.2d 1291 (Pa. Cmwlth. 2002); Pennsylvania State Troopers Ass'n v. PLRB (PSTA II), 761 A.2d 645 (Pa. Cmwlth. 2000). "The defense calls for the dismissal of such charges where the employer establishes a 'sound arguable basis' in the language of the parties' collective bargaining agreement, or other bargained for agreement, for the claim that the employer's action was permissible under the agreement." PSTA II, 761 A.2d at 651. "An employer's interpretation need not necessarily be the correct interpretation in order to provide a valid defense, so long as there is a 'sound arguable basis' for its interpretation and a 'substantial claim of contractual privilege.'" Jersey Shore, 28 PPER at 340. In this regard, the Board "will not enter the dispute to serve the function of arbitrator in determining which party's interpretation is correct." Id. at 341 (quoting NCR Corp., 117 L.R.R.M. at 1063).

SEPTA, 35 PPER at 229. The defense of contractual privilege in this case, however, is not available to the City. There is nothing in either the Memorandum or the pre-September 2007 job description that even references or hints at assigning nighttime escort and non-parking enforcement patrol to the PEAs. The Memorandum merely recites that the parties agree that the City may assign "parking enforcement duties" to the PEAs. However, the patrol and escort duties assigned to the PEAs in September 2007 are not parking enforcement related duties, as bargained. There is no reasonable interpretation of the term "parking enforcement duties" that provides a sound arguable basis for assigning patrol duties to the PEAs for the specific purpose of discovering and reporting non-parking, inappropriate or criminal conduct and providing residential escort services for nighttime security.

Nor does the inclusion of the term "other related duties as assigned," (City Exhibit 4, ¶ K), in the pre-Memorandum job description provide a sound arguable basis for assigning non-parking related patrol and escort work to the PEAs. The Commonwealth Court and the Board have held that vague, boilerplate language in an agreement does not provide the employer with a contractual privilege to unilaterally alter mandatory subjects of bargaining. Also, such language does not constitute the requisite clear and unmistakable waiver of an employer's bargaining obligations and a union's approval of the employer's right to change the subject. Crawford County v. PLRB, 659 A.2d 1078, 1082 (Pa. Cmwlth. 1995); Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993) (stating that in order to find a waiver of bargaining rights, the language relied upon must show a clear and unmistakable waiver); Fairview Township Police Ass'n v. Fairview Township, 31 PPER ¶ 31019 (Final Order, 1999). Although the pre-Memorandum job description would provide a basis for the parties' understanding of the then existing and intended job duties of the PEAs at the time of the execution of the Memorandum, the clause found in Paragraph K of the job description, providing for "other related duties as assigned," does not contain any indication that the Union unequivocally agreed to permit the City to assign non-parking patrol, escort and security duties to the PEAs.

Accordingly, the City has engaged in unfair labor practices in violation of Section 6(1)(a) and (e) as charged by unilaterally assigning the bargaining unit work of patrolling for and reporting non-parking-related conduct as well as providing escort service to City residents for security reasons.

CONCLUSIONS

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

1. The City is a public employer and a political subdivision within the meaning of Act 111 as read in pari materia with the PLRA.
2. The Union is a labor organization within the meaning of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The City of Wilkes-Barre has committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA as read in pari materia with 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 City of Wilkes-Barre shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA and Act 111.
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 not 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 Act 111 as read in pari materia with the PLRA:
 - (a) Immediately return to the bargaining unit of police officers the duties of patrolling, watching or observing non-parking related conduct, in parking and other facilities in the vicinity of Provincial Towers, and escorting residents of Provincial Towers and immediately discontinue the assignment of those duties to the PEAs.
 - (b) 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 employes 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 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 twenty-eighth day of January, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WILKES-BARRE POLICE :
BENEVOLENT ASSOCIATION :
 :
 v. : Case No. PF-C-07-130-E
 :
 CITY OF WILKES-BARRE :

AFFIDAVIT OF COMPLAINT

The City of Wilkes-Barre hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act as read in pari materia with Act 111; that it has returned to the bargaining unit of police officers the duties of patrolling, watching or observing non-parking related conduct in parking and other facilities in the vicinity of Provincial Towers and escorting residents of Provincial Towers and discontinued assigning those duties to the PEAs; that it has posted a copy of the proposed decision and order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

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

Signature of Notary Public