

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
LODGE #85 :
 :
v. : Case No. PF-C-08-79-E
 :
COMMONWEALTH OF PENNSYLVANIA :

FINAL ORDER

The Fraternal Order of Police, Lodge No. 85 (FOP) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 24, 2009, challenging a Board Hearing Examiner's July 6, 2009 Proposed Decision and Order (PDO) dismissing its Charge of Unfair Labor Practices filed against the Commonwealth of Pennsylvania (Commonwealth). In its Charge of Unfair Labor Practices, the FOP alleged that the Commonwealth violated Act 111 and Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by unlawfully removing bargaining unit work from the Capital Police when a Department of General Services (DGS) maintenance employe gave access to a contractor into the Scranton State Office Building on Saturday, May 10, 2008. The Commonwealth filed a brief in response to the FOP's exceptions on August 17, 2009.

The crux of the FOP's exceptions is that the Hearing Examiner's conclusion that the Commonwealth did not remove work exclusively performed by the bargaining unit is not supported by substantial evidence. The Hearing Examiner's uncontested Findings of Fact establish the following.

The Capitol Police are responsible for providing building security Monday through Friday, from 6:00 a.m to 8:00 p.m., in the Scranton State Office Building and the Samter Building. The FOP was aware that the State Office Building was accessed on weekends by DGS maintenance employes, State Workers Insurance Fund (SWIF) employes or Labor and Industry Office of Information Technology (OIT) employes without the assistance of the Capitol Police. At the request of SWIF or OIT, the Capitol Police have been called in to work weekends and evenings to provide security. On those occasions, contractors have also been present in the building.

DGS maintenance employes have also granted contractors access to the State Office Building when necessary, including on weekends. Peter Butwick, a DGS plumber, has granted contractors access to the State Office Building on at least three weekend occasions. Patrick Connors, the building foreman, has also granted contractors access to the State Office Building on weekends and holidays. The testimony of Butwick and Connors is corroborated by Renee Quinn, DGS Building Administrator, who testified that the Capital Police were not called in by DGS on those occasions even though DGS employes were allowing contractors to have access to the buildings. (N.T. 66-68).

On Saturday, May 10, 2008, Patrick Connors assigned DGS Electrician Tom Cavanaugh to work overtime at the Scranton State Office Building to assist in the repair of the building's high voltage electrical switch gear. As part of Mr. Cavanaugh's duties on May 10, 2008, he granted access to the contractors who were called in to do the high voltage work. As in the past, with DGS maintenance projects, DGS officials did not call the Capitol Police to work on the May 10, 2008 project.

Based on the testimony and documentary evidence, the Hearing Examiner found that the act of granting access to the Scranton State Office Building and the Samter Building was not exclusively performed by the Capital Police bargaining unit employes, and that DGS employes, SWIF employes and OIT employes also granted contractors access into the buildings. Because there was no demonstrated change in the exclusive quantity of work performed by the bargaining unit, the Hearing Examiner concluded that the Commonwealth did not unlawfully remove work from the bargaining unit on May 10, 2008, when Tom Cavanaugh, a DGS electrician, allowed contractors to access the Scranton State Office Building.

As the Board has recognized in Girard Federation of Teachers, Local 2099, PaFT, AFT, AFL-CIO v. Girard School District, 33 PPER ¶ 33193 (Final Order, 2002):

An employer commits an unfair practice if it unilaterally transfers work that is exclusively performed by the bargaining unit. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978); AFSCME Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992). The Board has repeatedly emphasized, however, that the transfer of bargaining unit work violation will only be found if it is also proven that the work had been exclusively performed by the bargaining unit. AFSCME, Council 13, supra (affirming the Board's consistent holdings requiring unions to demonstrate that the work in question has been performed exclusively by the bargaining unit); PSSU Local 668 SEIU v. Commonwealth of Pennsylvania, Department of Public Welfare, 27 PPER 27188 (Final Order, 1996) (holding that where the work at issue has been traditionally performed by both outside workers and bargaining unit workers, no bargaining obligation arises unless additional work is assigned to the outside workers); AFSCME, Council 13 v. Commonwealth of Pennsylvania, Department of Agriculture, 22 PPER 22186 (Final Order 1991) (opining that it is proper to assess the prior history regarding the work assignment at issue to determine whether the work has been exclusively performed by the bargaining unit); AFSCME, Council 13 v. Commonwealth, Department of Transportation, 22 PPER 22091 (Final Order, 1991)(holding that where there is a pattern or past practice of subcontracting the work at issue, the employer does not have a duty to bargain the subcontracting of that work which historically was not exclusively performed by the bargaining unit); York Paid Firefighters Ass'n, Local 627, IAFF v. City of York, 19 PPER 19037 (Final Order, 1988) (holding that where the paid firefighters shared duties and equipment with the volunteer firefighters, the assignment of the operation of a new vehicle to the volunteers did not constitute the removal of work giving rise to a bargaining violation).

Girard School District, 33 PPER at 450. Thus, a complainant fails to establish an unlawful removal of bargaining unit work where bargaining unit and non-bargaining unit employes continue a practice of sharing the work at issue and there is no showing of a reduction in quantity of work performed by the bargaining unit employes. Girard School District, supra.

Upon review of the record, the Hearing Examiner's finding that the work of granting contractors access to the Scranton State Office Building on weekends and holidays was performed by both DGS maintenance employes and the Capital Police, is supported by substantial evidence. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942)(substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the finding). Accordingly, on these facts, the Hearing Examiner did not err in concluding that the FOP failed to establish that the Commonwealth unlawfully removed bargaining unit work when a DGS employe granted a contractor access to the Scranton State Office Building on Saturday, May 10, 2008. Girard School District, supra. After a thorough review of the exceptions and all matters of record, we shall sustain the Hearing Examiner's conclusion that the Commonwealth did not violate Act 111 or Section 6(1)(a) and (e) of the PLRA, and shall dismiss the FOP's exceptions and make the PDO final.

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 Fraternal Order of Police, Lodge No. 85 are hereby dismissed, and the July 6, 2009 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 fifteenth day of September, 2009. 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.