

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
LODGE 9 :
 :
v. : Case No. PF-C-08-119-E
 :
CITY OF READING :

PROPOSED DECISION AND ORDER

On September 11, 2008, the Fraternal Order of Police, Lodge 9 (FOP or Complainant) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Reading (City or Respondent) violated Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111.

On November 7, 2008, the Secretary of the Board issued a complaint and notice of hearing in which the matter was assigned to a hearing on December 11, 2008, in Reading. The hearing was continued to March 5, 2009 and again to March 25, 2009, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

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

FINDINGS OF FACT

1. That the City of Reading (City) is an employer within the meaning of Section 3(c) of the Pennsylvania Labor Relations Act.
2. That the Fraternal Order of Police, Lodge 9 (FOP) is a labor organization within the meaning of Section 3(f) of the Pennsylvania Labor Relations Act.
3. That the FOP is the exclusive bargaining representative of police officers employed by the City.
4. That the City and the FOP are parties to a collective bargaining agreement (CBA) covering the wages, hours and terms and conditions of employment of the police officers of the City of Reading for the period of 2007 to 2011. (N.T. 8, 54, Union Exhibit 1)
5. That the CBA covers all police employes except for the Chief of Police, Deputy Chief of Police and Inspectors. (N.T. 8, 56, Union Exhibit 1)
6. That the CBA also covers a position in the crimes analysis unit. (N.T. 8, 56, Union Exhibit 1, p. 10)
7. That over the years the City has employed officers in the crimes analysis unit. In 1997, the crime analysis unit had three police employes, including a sergeant. However, there is no one currently holding the positions of either police officer in crimes analysis or sergeant crimes analysis. (N.T. 99, 106, 112)
8. That the City's job description for the police officer assigned to crime analysis has the following "specific duties and responsibilities: analyze police reports; produce crime bulletins, memorandums, and distribute 'HOT' information as needed; submit fingerprint comparisons; assist in creating yearly budget for Crime Analysis Unit; assist in maintaining Crime Victim Compensation information; maintain an up-to-date knowledge of PA laws and Department policies; give occasional talks to various civic groups; assist in developing new unit procedures and amending current ones; keep a liaison with the Patrol Division and Investigative Sections; assist in maintaining a log for Women in Crisis;

assist in keeping supplies current; submit A.B.A.R. requests; assist all officers requesting information from the Crime Analysis Unit; extract pertinent information from police reports and contact cards; develop, produce, and distribute information for Directed Patrol; initiate Tactical Action Plans and Perform Supervisor's duties in his absence." (N.T. 103, 120, City Exhibit 7)

9. That the City's job description for Sergeant/Criminal Investigator, Crime Analysis Unit Supervisor includes the following "specific duties and responsibilities: analysis of police reports; communicate directives and other information to personnel; supervise and assist in producing Crime Bulletins; submit fingerprint comparisons; supervise the quality of work by subordinates; attend schools and other training seminars; create yearly budget for Crime Analysis Unit; maintain time sheets and payroll forms; maintain Crime Victim Compensation information; maintain an up-to-date knowledge of laws and Department policies; order supplies necessary for the proper function of the Unit; give occasional talks to various civic groups; maintain log on the organization known as Women in Crisis; assist Criminal Investigations Section with needed information; maintain a liaison with the Patrol Division; set goals and standards for proper function of the unit and develop new unit procedures and amend current ones. (N.T. 105, 120, City Exhibit 8)

10. That William Heim holds the position of Chief of Police. He has held this position since 2006, returning from a six year period employed elsewhere. Earlier, he had served as the chief from 1997 to 2000. (N.T. 99, 106-108)

11. That the negotiations leading up to the present agreement included a demand by the city to move the crimes analysis unit position out of the bargaining unit and allow civilians to do more crime analysis work beyond the collection and reporting of crime data. Heim wanted the civilians to go through police reports to develop ways of looking at possible suspects and develop tactical plans for reducing crime. This was part of Chief Heim's strategy called Problem Oriented Policing, which has the goal of crime reduction. Heim wanted to make crime analysis an entirely civilian function. (N.T. 8, 14, 93-94, 96-97)

12. That in July, 2008, the city eventually dropped this demand as part of a settlement of the contract dispute. The parties then entered into the present collective bargaining agreement. (N.T. 8, 14, 97-98)

13. That for over 25 years, the city has employed civilians in the police department records area. The employes are not in the police bargaining unit. They are represented by AFSCME. They receive direction from the police employes on the collection, retention and retrieval of documents in the office. (N.T. 98-103, City Exhibits 2, 3, 4, 5 and 6)

14. That the city currently employs a records office supervisor, two civilian assistants and eight civilian records office clerks. (N.T. 98, 100, 101, 120, City Exhibits 2,3,4,5 and 6)

15. That the records office systems administrator supervisor is Pamela Eisenhart. She is included in the first level supervisors unit represented by AFSCME. She has worked in the records office since 1976, holding a series of increasingly more responsible positions until assuming her current supervisory position. (N.T. 77)

16. That in 1999, the City of Reading revised its records management system. The current system is built that system (N.T. 78)

17. That in 2003, the city made significant enhancements to police record management by contracting with Omega Crime Mappers System, Inc. to develop a system that computerized record filing and that allowed the retrieval of police data and records. (N.T. 59, 116)

18. That the 2003 enhancements allowed record searches that were formerly done manually by police officers to be to be placed in computer storage as an electronic file system that was accessible by all police officers. This also included the replacing of push pin maps with a computer program called Crime View, a G.I.S. program that allowed the making of hot spot maps that provided a graphic description of where crime was being committed in the city. (N.T. 61-64, City Exhibit 1)

19. Ms. Eisenhart is the administrator of the police department's records management system, a software system where the city enters all information from police reports and collects data from these reports and stores this data. (N.T. 78)

20. That since August, 2008, Ms. Eishenhart's supervisor has been Deputy Chief Mark Talbot. Talbot became Deputy Chief in November, 2007. (N.T. 89)

21. That when Ms. Eisenhart's office had been downstairs in the records office, her supervisors were Sergeant Bruce Monteiro, then Sergeant Jeffrey Wise. (N.T.89)

22. That at the direction of Deputy Chief Talbot Ms. Eisenhart does several types of duties involving police records. These duties include the collecting of data from police reports, extracting data from the crime reports and making files of the data. She has also developed hot spot maps which show the location of crimes throughout the city. (N.T. 61, 74, 75, 83-84, 115-117)

23. That Ms. Eisenhart's duties did not change when she moved from the records office to the second floor. (N.T. 84)

24. That as of the date of this hearing Ms. Eisenhart maintains a computerized record management system with at least 16 different file folders made up of data that has been collected from police reports and other sources. These files are named Weekly Maps, Monthly Maps, Quadrant Reports, Other Reports (an Excel spread sheet listing MOs of certain crimes, RHS Report (Reading High School), Active Warrants, RPD Most Wanted, Repeat Contacts and Calls, State Parole & JPO Cases, Power Point Presentations, District Crime Reports; Pictures-Students, Community Policing, Gang Bulletins and Parolees. These file folders are located on what is referred to as the Ginger drive. (N.T. 22, 54, 88, Union Exhibit 3)

25. That the first time Ms. Eisenhart developed hot spot maps for use by the police department was in November, 2007. She did this at the direction of Deputy Chief Talbot. She sent emails to the entire department about the availability of the hot spot maps on the Ginger drive. (N.T. 15-16, 75-76)

26. That Sergeant Thomas Kampe and Sergeant Valerie Fisher were the last two persons who held positions in the crime analysis unit. Sgt. Fisher held the position for a short while before she left the position sometime in 2007. (N.T. 40)

27. Sergeant Kampe did not generate weekly hot spot maps. (N.T. 90)

28. Sergeant Fisher did generate weekly hot spot maps for a short time before she left. (N.T. 72, 96)

29. That prior to this, the Information Technology department of Reading city government created these hot spot maps. (N.T. 95)

30. Talbot started receiving the hot spot maps in 2003 or 2004 when he was an investigative sergeant. (N.T. 58, 64-65)

31. That Ms. Eishenhart does not analyze this data. She testified that, for example, she does not look for patterns of crimes in terms of either mode of operation (MO) or suspect description. She also does not develop a plan or strategy to combat the crime to keep it from happening again, such as directing a patrol to an area or areas. (N.T. 84-86)

32. That under the computerization of the departments records, all officers can have access to a variety of crime data in file folders on the Ginger drive described above. Now, every week, officers can access the Ginger drive to receive an updated account of crime that is occurring within the city. Depending on what information they need, they can find data by district or type of crime. (N.T. 44-45)

33. Also, the weekly hot spot maps came from this file folder. (N.T. 64, 120, City Exhibit 1)

34. The crime analysis unit position is now vacant. (N.T. 112)

35. That Deputy Chief Talbot testified that civilians also do daily bulletins. They have done this since before 1997. (N.T.70-71)

36. That on August 8, 2008, Pamela Eisenhart moved into a new office closer to the police administration. Her duties did not change as part of this move. (N.T. 83-84, 114, Union Exhibit 5)

Discussion

The FOP's charge of unfair labor practices alleges that the City has violated its duty to bargain by unilaterally transferring the work of crime analysis from the police bargaining unit to civilian employees in violation of Section 6(1)(a) and (e) of the PLRA and Act 111.

The Board will find an employer in violation of Sections 6(1)(a) and 6(1)(e) of the PLRA if the employer unilaterally transfers any bargaining unit work to non-members of the bargaining unit. City of Harrisburg v. PLRB, 605 A.2d 440, 442 (Pa. Cmwlth. 1992), City of Philadelphia, 27 PPER ¶ 27161 (Final Order, 1996). Bargaining unit work is work performed by members of the bargaining unit on an exclusive basis over time. City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004), FOP Lodge 85 v. Commonwealth of Pennsylvania, 40 PPER ¶90 (Final Order, 2009) and City of York, 19 PPER ¶ 19037 (Final Order, 1988)

In a case such as the present one in which technology is part of the alleged transfer of the bargaining unit work, the Board has held that introduction of technology is generally a matter of managerial prerogative, but is not a license to unilaterally transfer bargaining unit work to non-unit personnel. City of Philadelphia, 27 PPER ¶27161 (Final Order, 1996). Where non-unit personnel perform work through use of new technology that is substantially equivalent to work previously performed by the bargaining unit on an exclusive basis, the Board will find a duty to bargain over assignment of such work out of the unit. *Id.* See also City of Pittsburgh, 21 PPER ¶21111 (Final Order, 1990).

The FOP, as the complainant, bears the burden of proving the elements of the alleged violations by substantial and legally credible evidence. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A. 2d 1069 (1977). Substantial evidence means evidence that does more than just create a suspicion of the existence of the fact necessary to establish each element of the unfair practice charge. Township of Upper Makefield, 10 PPER ¶ 10299 (Nisi Order of Dismissal, 1979).

According to the specification of charges, the present charge was triggered by the FOP's discovery that on August 8, 2008, the City unilaterally assigned the crime analysis duties to a non-unit employe. The FOP contends that in August 2008, Pamela Eisenhart, a civilian and the record system administrator, began doing crime analysis duties that had been exclusive to the police unit. The FOP alleges that Ms. Eisenhart is now doing two specific crime analysis duties that were police duties.

Throughout the hearing, the City attempted to argue that Ms. Eisenhart is not doing crime analysis duties because she is not performing duties that are normally associated with the word "analysis", such as interpreting information, looking for patterns of crime or developing links to possible suspects. However, the FOP is not making that contention. The FOP is only contending that, using language from the job descriptions as to crime analysis, Ms. Eisenhart now is performing two police duties. The FOP alleges that she 1) produces crime bulletins, memorandums, and distribute 'HOT' information as needed ("hot spots maps") and 2) extracts pertinent information from police reports and contact cards (the parties refer to these generically as "reports").

The FOP contends that an example of the first category of unlawfully transferred work is found in City Exhibit 1, which includes a printout of crime statistics by type and occurrence and a hot spot map of location of crimes. The FOP contends that an example

of the second category of unlawfully transferred work is found at Union Exhibit 3, which is a series of reports in file folders on a computer drive. Some of these file folders appear to be the results of mundane data collection. Nevertheless, the FOP correctly argues that this is police bargaining unit work if it can show that this is work that police in crime analysis unit did exclusively in the past. City of Harrisburg, supra.

The last two incumbents in the position from which the work was allegedly transferred, Sergeant Thomas Kampe and Sergeant Valerie Fisher, did not testify. Without the testimony of police officers who actually worked in crime analysis, the Board is left without the best evidence of which of their work duties was actually transferred to civilians. Instead FOP Lodge President Troy Heiser and Vice-President Thomas McDougal, testified as to their observations of the alleged transfer of the work. Heiser admits there is confusion as to what is being done because of new software. But it was his opinion that the volume of reports showing up on the Ginger drive increased since August, 2008 because of Ms. Eisenhart's work. McDougal testified that he was not certain what Ms. Eisenhart did, but that prior to August, 2008, he did receive emails from her about weekly updates to hot spot maps on the Ginger drive.

For the City, Ms. Eisenhart, Deputy Chief Talbot and Chief Heim testified. Their testimony was that Ms. Eisenhart and other civilians had been doing the crime analysis duties at issue here well before August, 2008. Since the 2003 introduction of the new software, she and other records clerks put this data on a computerized record system. Employees in the information technology department also did similar work. By 2007, this data was being put on the system's Ginger drive, which could be opened by all officers simply by clicking a button to find a variety of data. During the period of time when Sergeant Kampe and Sergeant Fisher were holding the positions in crime analysis, it is not clear what work Kampe and Fisher were doing to the exclusion of civilians.

The City's defense is the work at issue was not transferred from the unit because it has not been exclusively police work for some time. The City contends that the distribution of crime analysis work has not changed. Ms. Eisenhart's crime analysis work is work that was either done by civilians in the past or done by both civilians and police, and therefore not exclusive to the police bargaining unit. The City argues that the more advanced crime analysis work of interpreting the reports, deciding what reports to look for and deciding how to deploy police based on the reports is still police work.

The City admits that as one of its proposals in the most recent negotiations, it did seek to have all the work of crime analysis transferred to civilians. But the City withdrew this request from its list of bargaining demands at the end of negotiations. The City also acknowledges that in August, 2008, Ms. Pamela Eisenhart, the civilian records supervisor, moved her office from the basement to the second floor of city hall near the police department. The City argues that Ms. Eisenhart is doing the same kind of work she did when she was downstairs in the records department, but perhaps generating more reports. It has not shown that Pam Eisenhart is performing new crime analysis duties beyond what she was doing before August, 2008. The city points out that civilians have always been involved the collection, retention and retrieval of crime data. Civilians issued bulletins. At one point, the Information Technology department was making hot spot maps.

Reviewing all of the evidence, it must be concluded that the FOP did not support its burden of proving that the police work of crime analysis at issue in this case was exclusive to the police bargaining unit. The FOP did not prove that the work that was allegedly transferred-listing crimes, making hot spot maps and making reports from police records-was exclusive to the police bargaining unit prior to August, 2008. Accordingly, the city did not commit an illegal transfer of bargaining unit work that can serve as the basis of finding a violation of the City's obligation to bargain over the transfer of such work.

Conclusions

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

1. That the City of Reading is an employer within the meaning of the PLRA and Act 111.

2. That the Fraternal Order of Police, Lodge No. 9, is a labor organization within the meaning of the PLRA and Act 111.

3. That the Board has jurisdiction over the parties hereto.

4. That the City has not committed unfair labor practices in violation 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 examiner

Hereby Orders and Directs

that the charge of unfair labor practices filed to the above case number is rescinded and the complaint dismissed.

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 at Harrisburg, Pennsylvania, this twenty-ninth day of October, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner