

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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

**PROPOSED DECISION AND ORDER**

On June 12, 2008, the Fraternal Order of Police, Lodge #85, (FOP or Complainant) filed a Charge of Unfair Labor Practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania (Commonwealth or Respondent) alleging that the Commonwealth violated Sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act as read in pari materia with Act 111.

On June 27, 2008, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties. September 17, 2008, in Scranton was scheduled as the time and place of hearing, if necessary.

A hearing was necessary but was continued to October 23, 2008 and again to December 10, 2008. The hearing was held on the rescheduled date, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence

The 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 parties stipulated and agreed that the Commonwealth of Pennsylvania is an employer within the meaning of Section 3 (c) of the PLRA as read in pari materia with Act 111. (N.T. 5)
2. That the parties stipulated and agreed that the Fraternal Order of Police, Lodge #85 is a labor organization within the meaning of Section 3(f) of the PLRA as read in pari materia with Act 111. (N.T. 5)
3. That the FOP Lodge #85 is the exclusive representative of the Capitol Police officers. (N.T. 5, 23, 76, Respondent Exhibit 1)
4. That the Commonwealth and FOP Lodge #85 are parties to a collective bargaining agreement covering wages, hours and terms and condition of employment for the Capitol Police officers within the classification included under the certification of the Pennsylvania Labor Relations Board, docketed at PF-R-4-C, as amended. (N.T. 23, 76, Respondent's Exhibit 1)
5. That the Capitol Police officers are responsible for providing building security to the two Commonwealth owned buildings in Scranton: the Scranton State Office Building (SSOB) and the Samter Building. (N.T. 8, Complainant Exhibits 1, 2 and 3)
6. That the SSOB and the Samter Building are managed by the Department of General Services (DGS). (N.T. 53, 62)
7. That the SSOB houses approximately 35 different Commonwealth agencies, including employes of the Department of Labor and Industry (L&I)'s Bureau of Labor Law Compliance, L&I's Office of Information Technology (OIT) and the State Workers Insurance Fund (SWIF), the Department of Public Welfare, Department of State and the Public Utility Commission. Approximately 700 employes work there. (N.T. 62)

8. That the regular hours of employment of the Capitol Police in Scranton are Monday through Friday, 6:00 a.m to 8:00 p.m. (N.T. 9)

9. That the security work at the SSOB may include the opening and closing of the building at the beginning and end of a shift. (N.T. 7, 39, Complainant's Exhibit 1)

10. That in the past, the Capitol Police have also worked weekends and evenings to provide security at the SSOB for certain assignments. Some of these assignments have been for an extended time. An example of this was the period of May, 2004 to July, 2007, when the Capitol Police worked on a 24/7 basis providing security and granting contractors and employes access to the SSOB during a major revamping of the SWIF computer hardware. The Commonwealth paid the Capitol Police overtime for these occasions pursuant the collective bargaining agreement. (N.T. 11, 14-15, 64, Respondent Exhibit 1)

11. That on Saturday, May 10, 2008, SSOB building foreman, Patrick Connors, assigned DGS electrician, Tom Cavanaugh, to work overtime at the SSOB to assist in the repair of the building's high voltage electrical switch gear. Connors sought and obtained approval for Mr. Cavanaugh's work and for paying him overtime from Renee Quinn, the SSOB building manager. (N.T. 29, 30-31, 35, 68-69)

12. That as part of Mr. Cavanaugh's duties on May 10, 2008, he granted access to the SSOB to the contractors who were called in to do the high voltage work. (N.T. 29-30, 32-34, 69)

13. That Mr. Cavanaugh was at the SSOB on May 10, from 7:00 a.m to 9:30 p.m. (N.T. 35)

14. That DGS officials did not call the Capitol Police to work on the May 10 project. (N.T. 19)

15. That prior to May 10, 2008, the FOP accepted the procedure by which SSOB could be accessed on weekends by DGS maintenance employes, SWIF employes or L&I Office of Information Technology employes without the assistance of the Capitol Police. (N.T. 12-14)

16. That Peter Butwick is a DGS plumber at the SSOB. Prior to May 10, 2008, he has granted contractors access to the SSOB on at least three weekend occasions. (N.T. 42-47, Respondent Exhibits 3 and 4)

17. That Patrick Connors has been the SSOB building foreman since 1995. Prior to May 10, 2008, Mr. Connors has granted contractors access to the SSOB on weekends and holidays. (N.T. 53-57, Respondent Exhibit 5)

#### DISCUSSION

FOP Lodge #85, representing the Capitol Police, has charged the Commonwealth of Pennsylvania with unilaterally transferring bargaining unit work of police and security services at the Scranton State Office Building on weekends, thereby violating its duty to bargain. As presented at the hearing, the specific allegation is that the Department of General Services allowed maintenance employes to grant contractors access to the SSOB on weekends rather than directing the Capitol Police to do this work.

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).

The Commonwealth defends the charge by pointing out that the work of granting access to the SSOB on weekends was not exclusively that of the Capitol Police. The Commonwealth introduced evidence showing that before the May 10, 2008 incident that triggered the charge, other Commonwealth employes granted access to the SSOB on weekends, nights and holidays.

The FOP concedes that other Commonwealth employees granted access to SSOB. But the FOP argues that these were exceptions, limited to DGS maintenance personnel and L&I Office of Information and Technology employees who enter the building via a card reader to do their own work late at night or to assist SWIF with computer issues. The FOP asserts that these exceptions were not relevant to the precise work at issue in this case, granting access to contractors.

The Commonwealth rebutted the FOP's contention that there was exclusivity with regard to the precise work of granting access to contractors. The Commonwealth produced testimony from Peter Butwick, a DGS plumber, that on at least two occasions he granted access to Carrier Corp. technicians on weekends to do emergency work to the building's chiller. Another occasion, on May 3, 2008, Butwick granted access to a contractor to help him repair a broken sewer pipe. Additionally, the Commonwealth produced testimony from Patrick Connors, the SSOB building foreman for 13 years, that he has granted access to contractors on weekends and holidays.

Given this record, the Complainant, FOP Lodge #85, has not sustained its burden of proving that the work of granting contractors weekend access to the Scranton State Office Building was exclusive to the Capitol Police. Accordingly, because the work in question was not exclusive to the bargaining unit, there can be no finding that the Commonwealth unilaterally transferred bargaining unit work when it allowed maintenance employees to grant contractors weekend access to the SSOB.

#### CONCLUSIONS

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

1. That the Commonwealth of Pennsylvania is an employer within the meaning of Section 3(c) of the PLRA as read in pari materia with Act 111.
2. That the FOP Lodge #85 is a labor organization within the meaning of Section 3(f) of the PLRA as read in pari materia with Act 111.
3. That the Board has jurisdiction over the parties hereto.
4. That the Commonwealth has not committed unfair labor practices in violation 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 Act, the examiner

#### HEREBY ORDERS AND DIRECTS

that the charge of unfair labor practices is dismissed and the complaint rescinded

#### 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 become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this sixth day of July, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner