

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY SECURITY GUARDS ASSOCIATION :
 :
 v. : Case No. PERA-C-09-201-E
 :
BUCKS COUNTY :

PROPOSED DECISION AND ORDER

On June 3, 2009, the Bucks County Security Guards Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that Bucks County (County) had violated sections 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by unilaterally transferring bargaining unit work to non-members of the bargaining unit. On June 18, 2009, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on October 14, 2009, if conciliation did not resolve the charge by then. On June 30, 2009, the County filed an answer to the charge. The hearing was held as scheduled. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On or about December 10, 2009, the County filed a brief by deposit in the U.S. Mail. On December 11, 2009, the Association filed a brief by hand-delivery.

The hearing examiner, on the basis of the evidence presented at the hearing, makes the following:

FINDINGS OF FACT

1. On October 26, 2005, the Board certified the Association as the exclusive representative of a bargaining unit that includes security guards employed by the County. (County Exhibit 1)
2. The security guards thereafter provided security for the County on an exclusive basis until the County began using security guards employed by Tri-County Security to provide security at a domestic relations office in Bristol after May 1, 2009. (N.T. 8-16, 18-19, 21-23, 25-26, 28-29)
3. The County did not bargain with the Association over the use of the security guards employed by Tri-County Security to provide security at the domestic relations office in Bristol. (Answer ¶ 5)

DISCUSSION

The Association has charged that the County committed unfair practices under sections 1201(a)(1) and (5) by transferring bargaining unit work to non-members of the bargaining unit. According to the Association, the transfer occurred when the County began using security guards employed by Tri-County Security to provide security at a domestic relations office in Bristol. In the Association's view, the County was under an obligation to bargain before it began using those security guards because members of the bargaining unit had been providing security for the County on an exclusive basis before then.

The County has answered that the charge should be dismissed because members of the bargaining unit have not provided security on an exclusive basis outside of Doylestown and because the parties' collective bargaining agreement does not address the transfer of bargaining unit work to non-members of the bargaining unit. The County also contends that the charge should be dismissed because members of the bargaining unit were not providing security at the domestic relations office in Bristol when the Board certified the Association as the exclusive representative of the bargaining unit, because the County leases the building in which the domestic relations office is located and because it will have to create two new positions to continue providing security at the domestic relations office in Bristol if the Association prevails on the charge.

An employer commits unfair practices under sections 1201(a)(1) and (5) if it unilaterally transfers to non-members of a bargaining unit work that members of the bargaining unit had been performing on an exclusive basis. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978); City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004)(construing analogous provisions of the Pennsylvania Labor Relations Act as read in pari materia with Act 111 of 1968).

As set forth in findings of fact 1-2, the record shows that members of the bargaining unit provided security for the County on an exclusive basis for a number of years until the County began using security guards employed by Tri-County Security to perform security at a domestic relations office in Bristol after May 1, 2009. As set forth in finding of fact 3, the record also shows that the County did not bargain with the Association over the use of the security guards employed by Tri-County Security to provide security at the domestic relations office in Bristol.

On that record, it is apparent that the County unilaterally transferred bargaining unit work to non-members of the bargaining unit when it began using the security guards employed by Tri-County Security to provide security at the domestic relations office in Bristol. Thus, the County has committed the unfair practices charged.

None of the County's defenses to the charge has merit.

In a case involving work at a location where no one performed it before, as here, the focus is on whether or not members of the bargaining unit had been providing that kind of work on an exclusive basis elsewhere. Commonwealth of Pennsylvania, 40 PPER 47 (Proposed Decision and Order 2009), rev'd on another ground, 40 PPER 89 (Final Order 2009). Thus, the fact that members of the bargaining unit have not provided security for the County on an exclusive basis outside of Doylestown is irrelevant, as is the fact that members of the bargaining unit were not providing security at the domestic relations office in Bristol when the Board certified the Association as the exclusive representative of the bargaining unit and as is the fact that the County leases the building in which the domestic relations office is located.

The unilateral transfer of bargaining unit work to non-members of the bargaining unit is a statutory violation. Mars Area School District, supra. Thus, the fact that the collective bargaining agreement does not address the transfer of bargaining unit work to non-members of the bargain unit also is irrelevant.

Although an employer may not unilaterally transfer bargaining unit work to non-members of the bargaining unit, it has the statutory right to determine the level of services it provides. Thus, in a case where no member of the bargaining unit was laid off as the result of the employer's transfer of bargaining unit work to non-members of the bargaining unit, as here, the customary relief does not include an order to hire additional employes to perform the work. Commonwealth of Pennsylvania, Pennsylvania State Police, 36 PPER 144 (Final Order 2005). Whether or not the County will have to create two additional positions to continue providing security at the domestic relations office at Bristol is, therefore, entirely up to the County even though the Association has prevailed on the charge.

The Association has requested make whole relief for lost pay and benefits. Make whole relief is available where employes lose pay or benefits. Lake-Lehman School District, 37 PPER 56 (Final Order 2006). Given that members of the bargaining unit had not been providing security at the domestic relations office in Bristol, there is no basis for finding that any member of the bargaining unit lost any pay or benefits. The Association's request, is therefore, denied.

CONCLUSIONS

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

1. The County is a public employer under section 301(1) of the PERA.

2. The Association is an employe organization under section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The District has committed unfair practices under sections 1201(a)(1) and (5) of the PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the County shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in article IV of the PERA.

2. Cease and desist from refusing to bargain collectively in good faith with an employe organization 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:

- a. Rescind the assignment to Tri-County Security of the work of providing security at the domestic relations office in Bristol;

- b. Reinstate to the bargaining unit the work of providing security at the domestic relations office in Bristol;

- c. Post a copy of this decision and order within five 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 consecutive days; and

- d. Furnish to the Board within twenty 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 eighteenth day of December 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner