

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
READING LODGE NO. 9 :
 :
v. : Case No. PF-C-08-164-E
 :
CITY OF READING :

FINAL ORDER

The City of Reading (City) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on October 13, 2009 to a September 23, 2009 Proposed Decision and Order (PDO). In the PDO, the Hearing Examiner concluded that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by hiring civilian employes to perform police bargaining unit work without having negotiated with the Fraternal Order of Police, Reading Lodge No. 9 (FOP). On November 5, 2009, the FOP filed a brief in response to the City's exceptions. The facts as found by the Hearing Examiner, and relevant to the exceptions, are summarized as follows.

Bargaining unit police officers are responsible for looking for and responding to criminal activity in the City of Reading. In performing this duty, the bargaining unit police officers have in the past used the mobile command vehicle, which is a modified Winnebago with a video surveillance camera operated exclusively by bargaining unit police officers.

Starting in November 2008, the City began installing video surveillance cameras on various streets in the City. By early December 2008, nineteen of the planned twenty-five cameras had been installed. The Chief of Police, William Heim, has ultimate decision-making authority regarding the placement of the cameras. The first twenty-five cameras were to be installed in a ring around the City's downtown area.

In mid-December 2008, the City hired a civilian supervisor, and four part-time civilians for the new Video Surveillance Unit (VSU). The VSU civilian employes generate and maintain written logs of suspicious activity observed on the monitors, detailing the type of suspected activity, location, time and camera number, and may contact bargaining unit police officers to report criminal activity they see taking place in the City. The VSU employes may assume manual control of the cameras with a joystick to investigate suspicious activity, and are able to zoom in or out, focus in on a license plate, and follow a subject from one camera range to another.¹ In sum, the part-time civilian personnel in the VSU monitor the City for criminal activity via the video surveillance cameras.

The City argues on exceptions, as it did before the Hearing Examiner, that monitoring of video cameras was never exclusively performed by bargaining unit police officers and consequently there can be no unlawful removal of bargaining unit work. The Hearing Examiner found, however, that the bargaining unit work at issue was the police officers' duties of monitoring the City for criminal activity, and that police officers had in the past used video surveillance equipment to perform those duties. Accordingly, the Hearing Examiner determined that monitoring the City streets for criminal activity, albeit through the use of surveillance cameras, was the work of the bargaining unit police officers. Therefore, the Hearing Examiner concluded that the City had a statutory obligation to bargain with the FOP before assigning the work to non-bargaining unit employes.

Generally, the assignment of any work performed by bargaining unit employes to non-bargaining unit personnel requires negotiation with the representative of the affected bargaining unit. City of Jeannette v. PLRB, 890 A.2d 1154 (Pa. Cmwlth. 2006). However,

¹ The City also installed separate monitors in the vice unit and in the criminal investigations unit so that the bargaining unit police detectives and officers could utilize the camera system. Bargaining unit police officers, detectives and investigators take precedence over the civilians when they wish to assume manual control of a camera.

where the introduction of technology makes the employees' work obsolete through automation, there is no duty to bargain the elimination of that bargaining unit work. Fraternal Order of Police Lodge #5 v. City of Philadelphia, 31 PPER ¶31022 (Final Order, 1999), affirmed unreported, 32 PPER ¶32090 (Pa. Cmwlth. 2001). Also, where an employer creates an entirely new public service that was never performed by bargaining unit employees, the employer does not commit an unfair labor practice by retaining outside contractors to perform the new service. See Keystone Central Educational Support Personnel Association v. Keystone Central School District, 28 PPER ¶28184 (Proposed Decision and Order, 1997) (employer eliminated service of nonprofessional, one-on-one assistants for special needs students and contracted for professional wrap around assistants).

However, where the employer merely modifies the manner of providing a public service and hires non-bargaining unit personnel to continue the service previously performed by the bargaining unit employees, the public employer is not excused from its statutory obligation to negotiate with the representative of the bargaining unit before assigning that work outside of the unit. Fraternal Order of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh, 22 PPER ¶22150 (Final Order, 1991). This is so even if bargaining unit employees would have additional duties or need training to continue to perform the public service in the manner as modified by the employer. Pennsylvania State Police v. PLRB, 912 A.2d 909 (Pa. Cmwlth. 2006) (finding of an unlawful removal of bargaining unit work of supervising call center was sustained despite the fact that employees would have needed training in the new manner of operating call center).

Indeed, Fort Pitt Lodge No. 1 is a ready example of application of this labor policy, and a case similar to that presented here. In Fort Pitt Lodge No. 1, the city used police officers to patrol the city's safety training academy when light duty officers were not available. Without bargaining with the police officers' union, the city retained an outside contractor to use video surveillance to monitor the academy when light duty officers were not available. The Board stated:

the fact remains that prior to the City's entering into the subcontract, police officers on overtime performed the work function of monitoring the public safety training academy for intruders when officers on light duty were not available. This work is now performed by employees of the subcontractor. Although the employees of the subcontractor rely on an electronic security system rather than their own observations (as did the police officers), they now perform the function of monitoring the academy building which was previously performed by police officers. Therefore, the City was obligated to bargain before subcontracting this work and its failure to do so was an unfair labor practice.

Fort Pitt Lodge No. 1, 22 PPER at 342.

Fort Pitt Lodge No. 1 is no different than this case. Prior to the City's hiring of civilian VSU employees, police officers performed the work function of monitoring the city streets for criminal activity. This work is now performed by civilian, non-bargaining unit employees who rely on an electronic video surveillance system. Regardless of their use of video surveillance cameras, the fact remains that the civilian VSU employees are performing the function of monitoring the City streets for criminal activity, which was work that had been exclusively performed by the City's police officers. Therefore, the City was obligated to bargain before assigning this work outside the bargaining unit and its failure to do so was an unfair labor practice. See Fort Pitt Lodge No. 1, supra.

Moreover, prior to November 2008, whenever video surveillance cameras were used to monitor the City streets for crime, they were operated by bargaining unit police officers. Indeed, before the installation of the stationary cameras, the only monitoring of the streets for criminal activity via video surveillance was done by the City police assigned to the mobile command unit. The City's installation of twenty-five stationary cameras, versus the prior single mobile camera, does not lessen the fact that whenever the City operated video surveillance cameras to monitor the City for criminal activity, it was exclusively performed by bargaining unit police officers. Furthermore, even if watching a video surveillance monitor for criminal activity is arguably a "non-law enforcement" duty, this does not negate the fact that it is bargaining unit work. City of

Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004) (purely clerical duties unrelated to any law enforcement function were police bargaining unit work when duties were exclusively performed by police). Accordingly, on this record, the Hearing Examiner did not err in finding that the City unlawfully removed bargaining unit work, previously and exclusively performed by the City police officers.

The City also argues that the Hearing Examiner misconstrued its cost data evidence as an inappropriate economic hardship defense. See Midland Borough School District v. PLRB, 560 A.2d 303 (Pa. Cmwlth. 1989) (the unilateral removal of bargaining unit work for economic reasons is an unfair practice). The City contends that it offered evidence of the differences between the costs and wages of civilian and bargaining unit police officers to show that the video surveillance cameras would not have been installed if monitoring the cameras was believed to be bargaining unit work.

If it is not an assertion of an economic hardship defense, this argument is pure speculation, and evidences the City's misunderstanding of its collective bargaining obligation. The City's bargaining obligation was, and is, to negotiate whether the work is even to be performed by bargaining unit employes, and if so, what are the wages, hours and working conditions for those duties. Contrary to the City's misconceptions, there is nothing in the PDO or Board's directives depriving the City of an opportunity to bargain with the FOP concerning who will in the future perform the work, and if so under what pay, hours and conditions. Indeed, although irrelevant for purposes of this unfair labor practice charge, the City's cost analysis is surely relevant and pertinent in fulfilling its good faith bargaining obligation with the FOP.

In view of the City's commission of an unfair labor practice by failing to fulfill its bargaining obligation, the Board will not require the FOP to negotiate out from under the City's unlawful *fait accompli*. Snyder County Prison Board v. PLRB, 912 A.2d 356 (Pa. Cmwlth. 2006). The City must be directed to first reinstate the *status quo*, by either ceasing operation of the VSU, or assigning the video surveillance duties to bargaining unit employes. The City may then, if it chooses, fulfill its statutory bargaining obligation with the FOP. Thus, on this record, the Hearing Examiner appropriately directed the City to prospectively cease assigning the work to non-bargaining unit employes.

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the City violated Section 6(1)(a) and (e) of the PLRA and Act 111 by failing to bargain with the FOP concerning assignment of duties to monitor the City streets for criminal activity via video surveillance cameras. Nor did the Hearing Examiner err in directing the City to cease assigning that work to non-bargaining unit employes. Accordingly, the City's exceptions shall be dismissed and the PDO shall be made 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 City of Reading are hereby dismissed, and the September 23, 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 nineteenth day of January, 2010. 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.

