

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS ASSOCIATION :  
:  
v. : Case No. PF-C-05-109-E  
:  
COMMONWEALTH OF PENNSYLVANIA :  
PENNSYLVANIA STATE POLICE :

**PROPOSED DECISION AND ORDER**

On August 16, 2005, the Pennsylvania State Troopers Association (PSTA) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices alleging that the Commonwealth of Pennsylvania, Pennsylvania State Police (Commonwealth), violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 (Act 111) when it issued Special Order 2005-50. On September 29, 2005, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on November 29, 2005. On July 14, 2009, after four unobjected to continuances, including an extended one for settlement discussions, the hearing examiner held the hearing and afforded the parties a full opportunity to present evidence and to cross-examine witnesses. On March 5, 2010, after further settlement discussions and another unobjected to continuance, the hearing examiner held a second day of hearing and afforded the parties a full opportunity to present evidence and to cross-examine witnesses. On April 16, 2010, each party 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. The PSTA is the exclusive representative of a bargaining unit that includes members of the Pennsylvania State Police (PSP). (N.T. 10)
2. From January 2004 through July 2, 2005, members of the PSP were not paid by the Commonwealth for holidays that occurred while the member was suspended. (N.T. 45-47, 54-56; Commonwealth Exhibit 5)
3. On July 15, 2005, the commissioner of the PSP (Colonel Jeffrey B. Miller) issued Special Order 2005-50 providing in relevant part that "[i]f a suspension without pay falls on a holiday, personnel shall not be given consideration as to holiday pay or compensatory time." (Joint Exhibit 3)

**DISCUSSION**

The PSTA has charged that the Commonwealth committed unfair labor practices under sections 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111 when it issued Special Order 2005-50. As set forth in the specification of charges, the PSTA alleges that "Special Order 2005-50 adds a new provision" to the parties' disciplinary process: "If a suspension without pay falls on a holiday, personnel shall not be given consideration as to holiday pay or compensatory time."<sup>1</sup> According to the PSTA, in adding

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<sup>1</sup> In its brief, the PSTA contends that the Commonwealth also committed unfair labor practices by adding two other new provisions to the parties' disciplinary process: (1) that "the imposed period of suspension without pay shall be served on consecutive work days" and (2) that "[a]ny suspension without pay of ten days or less shall be served in the same pay period" (Joint Exhibit 3). A close review of the charge does not reveal that the PSTA alleged that the Commonwealth committed unfair labor practices by adding either of those provisions to the parties' disciplinary process, however. Thus, whether or not the Commonwealth committed any such unfair labor practices is not before the Board and may not be addressed. See Iroquois School District, 37 PPER 167 (Final Order 2006)(the Board only has jurisdiction to find the violations alleged in a charge); Commonwealth of Pennsylvania (Liquor Control Board), 22 PPER ¶ 22009 (Final Order 1991), citing PHRC v. United States Steel Corporation, 458 Pa. 559, 325 A.2d 910 (1974)(same).

that provision to the parties' disciplinary process, the Commonwealth changed a term and condition of employment for employees without bargaining.

The Commonwealth contends that the charge should be dismissed because Special Order 2005-50 did not add a new provision to the parties' disciplinary process. In the alternative, the Commonwealth contends that even if it did the charge should be dismissed because the addition was to a matter of inherent management policy rather than to a term and condition of employment for employees.

A close review of the record reveals that for at least 18 months before it issued Special Order 2005-50 the Commonwealth did not pay members of the bargaining unit for holidays that occurred while the members were suspended (findings of fact 2-3). Thus, in providing that "[i]f a suspension without pay falls on a holiday, personnel shall not be given consideration as to holiday pay or compensatory time" (finding of fact 3), Special Order 2005-50 did not add a new provision to the parties' disciplinary process. Accordingly, the charge must be dismissed for lack of proof that the Commonwealth changed the parties' disciplinary process when it issued Special Order 2005-50. See Commonwealth of Pennsylvania, Pennsylvania State Police, 36 PPER 101 (Final Order 2005)(no unfair labor practice found where there was no change to past practice).

The PSTA contends that the charge should be sustained because the Commonwealth did not prove that it did not change past practice. As the PSTA points out, the Commonwealth introduced various rules and regulations (Management Directive 505.7 Amended, Manual M530.7 Amended and Administrative Regulation 4-5) dealing with pay during suspensions that were in effect prior to Special Order 2005-50 (Commonwealth Exhibits 2-4) but for lack of record-keeping was not able to establish that practice followed policy for one member of the bargaining unit (Lt. Diane Stackhouse) in particular or for others in general more than 18 months prior to its issuance of Special Order 2005-50 (N.T. 55-56). The Commonwealth, however, was under no obligation to prove that it did not change past practice; rather, the PSTA as the charging party had the burden of proving that the Commonwealth changed past practice. Moreover, as reflected in findings of fact 2-3, the Commonwealth introduced documentary evidence (Commonwealth Exhibit 5) establishing that for at least eighteen months prior to Special Order 2005-50 it did not pay members of the bargaining unit for holidays that occurred while the members were suspended. Although the PSTA presented testimony by its vice president and chairman of its grievance board (Cpl. Joseph Sarkis) that "I've never seen a situation where a member suffered a -- a day off, an extra day off, due to a suspension period being -- coinciding with or abutting up against a holiday until after this special order" (N.T. 31), the record does not show that he would have been aware of all such situations. Thus, the Commonwealth's documentary evidence is un rebutted, and the PSTA's contention is without merit.

#### CONCLUSIONS

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

1. The Commonwealth is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.
2. The PSTA is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties.
4. The Commonwealth has not committed unfair labor practices under sections 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 PLRA as read in pari materia with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint rescinded.

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 fourth day of May 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner