

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :  
LODGE NO. 5 :  
 :  
 v. : Case No. PF-C-08-115-E  
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 CITY OF PHILADELPHIA :

**PROPOSED DECISION AND ORDER**

A charge of unfair labor practices was filed with the Pennsylvania Labor Relations Board (Board) by the Fraternal Order of Police, Lodge No. 5 (Union) on September 5, 2008, alleging that the City of Philadelphia (City) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read with Act 111.

On October 8, 2008, the Secretary of the Board issued a complaint and notice of hearing wherein a hearing was set for November 10, 2008, in Philadelphia, Pennsylvania. After a series of granted continuance requests the hearing was held on May 11, 2009, when both parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Each party filed a post-hearing brief.

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

FINDINGS OF FACT

1. The Union is a labor organization under Act 111 as read in *pari materia* with the PLRA.
2. The City is a public employer and political subdivision of the Commonwealth of Pennsylvania under Act 111 as read in *pari materia* with the PLRA.
3. In 2005, the City decided to install cameras at various high crime locations in Philadelphia. These cameras were remotely viewed, essentially having constant police presence at camera locations. These cameras were monitored by a division of the Police Radio Division, called the Differential Police Response Unit (DPR). Officers in the bargaining unit manned the monitors. These officers would radio suspicious behavior they observed on the monitors to officers on the street, who then took appropriate action. Since at least July of 2007, bargaining unit members exclusively performed this work. The number of active cameras has grown from ten to ninety-one. (N.T. 6, 7, 8, 10, 11, 12, 18, 23-24, 41-42).
4. In July of 2008, the City hired three civilian employees titled Service Representatives in DPR. These three were given the task of watching the monitors for the cameras in the high crime areas. The Service Representatives were assigned one to each shift. Two fluctuate between shifts, and one is assigned permanently to the night shift. One bargaining unit position was lost on each shift. The City did not bargain with the Union before hiring and assigning work to these three, non-bargaining unit employees. (N.T. 8-9, 10-11, 12, 16).

DISCUSSION

The Union charges that the City with violated Section 6(1)(a) and (e) of the PLRA, as read with Act 111, when it unilaterally hired three civilians to perform work traditionally done by bargaining unit members.

The City parries this charge by alleging that years before the charge was filed, it was the City's intention to have civilians involved "right from the start[.]" (City's post-hearing brief at 6). Moreover, the City alleges that, in the past, two civilian supervisors had responsibilities that "were no different" than those of bargaining unit members. (City's post-hearing brief at 2).

Neither of these defenses saves the day for the City. Because the City unilaterally transferred bargaining unit work when it hired three Service Representatives to do work performed by bargaining unit members, it has violated Section 6(1)(a) and (e) of the PLRA as read with Act 111.

The genesis of this unfair practice is the City's decision to install remote cameras on its streets to help the police monitor crime. Since at least 2007, bargaining unit members have exclusively watched those camera monitors. In July of 2008, however, the City hired three Service Representatives and gave them the task of watching the camera monitors. In doing so, the City unilaterally transferred bargaining unit work in violation of the PLRA as read with Act 111. Lake Lehman Educational Support Personnel Association v. Lake Lehman School District, 37 PPER 56 (Final Order, 2006).

The City's assertion that the Union was "told that the task of monitoring the cameras would be 'shared work,' or performed by civilian employees and [police] officers[,]" does not meet the Board's definition of bargaining over a mandatory subject. The law is clear that an employer cannot simply present its bargaining representative with a *fait accompli*, and still meet its bargaining obligation. Teamsters Local 764 v. Snyder County, Snyder County Prison Board, 36 PPER 96 (Final Order, 2005). The employer must affirmatively introduce the subject into the bargaining process, Jersey Area School District, 18 PPER ¶ 18061 (Proposed Decision and Order, 1987), 18 PPER ¶ 18116 (Final Order, 1987), something the City clearly did not do here.

The City also points to some vague and conclusory hearsay testimony that in the past there were three "supervisors," two of whom worked in the DPR unit that monitored the remote cameras.<sup>1</sup> Nevertheless, Captain Lou Campione, who has commanded the DPR since July of 2007, testified that, since at least July of 2007, only bargaining unit members monitored those remote cameras.

Even if I accepted as fact that there were three supervisors who at one time in the past rotated through the DPR section and two of whom occasionally monitored the remote cameras, the City has still violated Section 6(1)(a) and (e) of the PLRA as read with Act 111 by altering the manner in which shared work has been traditionally assigned. The City has now hired three full-time non-bargaining unit employees who replaced bargaining unit members, everyday in every shift. AFSCME District Council 13 v. PLRB, 616 A.2d 135 (Pa. Cmwlth. 1992); Wyoming Valley West School District, 32 PPER ¶ 32008 ((Final Order, 2000).

The City has, therefore, violated Section 6(1)(a) and (e) of the PLRA as read with Act 111. The remedy is that the City must immediately return the work now performed by the three Service Representatives back to the bargaining unit.

#### CONCLUSIONS

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

1. The City is a public employer and a political subdivision within the meaning of Act 111 as read in *pari materia* with the PLRA.
2. The Union is a labor organization within the meaning of the PLRA as read in *pari materia* with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The City has committed unfair labor practices within the meaning 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 PLRA and Act 111, the Hearing Examiner

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<sup>1</sup> (N.T. 23-24, 54, 55)

HEREBY ORDERS AND DIRECTS

that the City shall

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in the PLRA.

2. Cease and desist from refusing to bargain collectively with the exclusive bargaining representative of its employes.

3. Take the following affirmative action, which the Hearing Examiner finds necessary to effectuate the policies of Act 111 as read in *pari materia* with the PLRA:

(a) Immediately return the work performed by the Service Representatives back to the bargaining unit;

(b) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

(d) Furnish to the Board within twenty (20) 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 (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifteenth day of July, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, Hearing Examiner

