

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :
ASSOCIATION :
v. : Case Nos. PF-C-08-27-E
: PF-C-08-106-E
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :

FINAL ORDER

The Commonwealth of Pennsylvania, Pennsylvania State Police (PSP) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on June 8, 2010, challenging an Amended Proposed Decision and Order (PDO) issued on May 19, 2010. In the PDO, the Hearing Examiner found that the PSP violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by unilaterally issuing Special Order 2008-51, which the Hearing Examiner found contained vague and overbroad language. Following an extension of time granted by the Secretary of the Board, the PSP timely filed a brief in support of its exceptions on July 7, 2010. The Pennsylvania State Troopers Association (PSTA) filed a brief in opposition to the exceptions on July 22, 2010.

The Hearing Examiner's Findings of Fact are not in dispute and, for purposes of the exceptions, are summarized as follows. The PSTA is the exclusive representative of a bargaining unit that includes troopers, corporals, sergeants, lieutenants, captains and majors in the Pennsylvania State Police. Motor carrier enforcement officers (MCEOs) and motor carrier enforcement supervisors (MCESS) are civilian employees of the State Police and are not included in the PSTA bargaining unit.¹ On July 11, 2008, the PSP issued State Police Department Directive Special Order 2008-51, which provides in part that, "[b]ecause MCEOs and MCESS are visible representatives of the Department, they shall stop to assist disabled motorists, remove immediate hazards from the roadway, and assist at the scene of crashes where there is an absence of police officers or other qualified first responders."

Following a hearing, and submission of post-hearing briefs, the Hearing Examiner found that the PSTA failed to establish that the PSP directed MCEOs and MCESS to perform PSTA bargaining unit work when assisting disabled motorists, removing immediate hazards from the roadway, or assisting at the scene of crashes. The PSTA did not file exceptions to the Hearing Examiner's conclusion that it failed to prove a removal of bargaining unit work. The Hearing Examiner found, however that Special Order 2008-51, insofar as it states that MCEOs "shall stop to assist disabled motorists," and "assist at the scene of crashes..." is vague and overbroad, and therefore the issuance of the rule by the PSP violated Section 6(1)(a) and (e) of the PLRA.

With respect to employer-issued work rules, the Board has recognized that through negotiations with the employees' representative, broadly-worded work rules may be narrowed down to identify what is expected of employees, so that employees are on notice of conduct for which they may be subject to discipline. Fairview Education Association v. Fairview School District, 22 PPER ¶22135 (Final Order, 1991); Fraternal Order of Police Lodge No. 9 v. City of Reading, 29 PPER ¶9146 (Final Order, 1998). Accordingly, the Board has held that work rules that are vague and overbroad are mandatory subjects of bargaining to be negotiated with the employees' bargaining representative. Abington Transportation Association v. PLRB, 570 A.2d 108 (Pa. Cmwlth. 1990).

In its exceptions, the PSP contends that the provisions of Special Order 2008-51 that were found to be vague and overbroad only apply to MCEOs and MCESS, who are not bargaining unit employees represented by the PSTA, and therefore the Hearing Examiner erred in finding an unfair labor practice on the charge filed by the PSTA. The PSTA responds by asserting that PSTA bargaining unit employees are impacted by Special Order 2008-51 because they must now rely upon the undefined assistance of MCEOs and MCESS. However, there is no requirement in Special Order 2008-51 that PSTA bargaining unit employees rely on undefined assistance of MCEOs and MCESS. Special Order 2008-51 provides that MCEOs and MCESS "shall stop to assist disabled motorists, remove immediate hazards from the roadway, and assist at the scene of crashes where there is an absence of police officers or other qualified first responders."

¹ MCEOs and MCESS have limited authority under the vehicle code to inspect commercial vehicles.

In opposing the exceptions, the PSTA also asserts that Special Order 2008-51 permits or mandates MCEOs and MCESSs to perform investigatory functions historically performed by PSTA bargaining unit members. However, the Hearing Examiner in this case specifically rejected the PSTA's claim of an unlawful removal of bargaining unit work, and no exceptions were filed to that determination. Further the Hearing Examiner stated, as follows:

Moreover, to the extent the PSTA presented competent evidence of non-unit employees performing unit work, it merely showed isolated, non-unit employees taking it upon themselves to perform bargaining unit work. There was no showing that the Commonwealth instructed them to do so. Quite the opposite; when the Commonwealth discovered that an MCEO had performed unit work, he was given a counseling memorandum the same day and admonished not to do so in the future.

(Amended PDO at 4).

On this record, the Hearing Examiner found that the PSTA failed to establish that MCEOs and MCESSs were performing PSTA bargaining unit work as a result of Special Order 2008-51. Thus, there is no evidence that the PSTA bargaining unit employees were impacted by the directives for MCEOs to "stop to assist disabled motorists," and "assist at the scene of crashes...." As such, we are compelled to agree with the PSP that the provisions of Special Order 2008-51 found to be vague and overbroad by the Hearing Examiner do not apply to the PSTA bargaining unit employees. It must be noted that our decision here does not foreclose the possibility that Special Order 2008-51 may, as applied, actually cause a removal of PSTA bargaining unit work in the future. However, as it stands on this record, the directive in Special Order 2008-51 that MCEOs "shall stop to assist disabled motorists," and "assist at the scene of crashes..." is not a work rule directed at, or applicable to, PSTA bargaining unit employees. To the extent that the language of Special Order 2008-51 is vague and overbroad, it is so as to the MCEOs and MCESSs. However, the MCEOs affected by Special Order 2008-51 are not in the PSTA bargaining unit, nor are the MCEOs or MCESSs party to this proceeding.

Accordingly, after a thorough review of the exceptions and all matters of record we shall sustain the PSP's exceptions, and dismiss the PSTA's charges of unfair labor practices under Section 6(1)(a) and (e).

CONCLUSIONS OF LAW

CONCLUSIONS numbers 1 through 3, as set forth in the Amended Proposed Decision and Order, are affirmed and incorporated herein by reference and Conclusion number 4 is vacated and set aside and the following additional conclusion is made:

5. The Commonwealth has not committed unfair labor practices under Section 6(1)(a) and 6(1)(e) of the PLRA.

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 Commonwealth of Pennsylvania, Pennsylvania State Police are hereby sustained, and the May 19, 2010, Amended Proposed Decision and Order, be and hereby is vacated and set aside consistent with this order.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the charges of unfair labor practices filed by the Pennsylvania State Troopers Association in the above captioned cases are dismissed and the complaints issued thereon are rescinded.

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 seventeenth day of August, 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.