

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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

**FINAL ORDER**

The City of Philadelphia (City) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on August 3, 2010 to a Proposed Decision and Order (PDO) issued on July 15, 2010. In the PDO, the Hearing Examiner found that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in *pari materia* with Act 111 of 1968, by assigning civilian employes to perform bargaining unit work of the police officers represented by the Fraternal Order of Police, Lodge No. 5 (FOP). Following an extension of time granted by the Secretary of the Board, the City filed a brief in support of the exceptions on September 2, 2010. The FOP filed a brief in response to the exceptions on September 24, 2010.

The facts of this case are summarized as follows. In 2005 the City began exploring the use of video surveillance cameras stationed around the City to monitor for criminal activity. Initially, starting in June 2006, ten cameras were installed, and were monitored by a division of the Police Radio Division, called the Differential Police Response Unit (DPR). The DPR encompassed various duties such as operating the telephones and radio, and monitoring the video surveillance cameras. Police officers in the bargaining unit manned the video monitors, and would radio suspicious behavior they observed to officers on the street, who then took appropriate action. Since at least July of 2007, bargaining unit members exclusively performed the work of monitoring the video surveillance cameras.

In July of 2008, the City hired three civilian employes as Service Representatives, who were given the sole task of watching the video surveillance monitors. The Service Representatives were employed full-time and were each assigned to one of the three bargaining unit shifts. As a result, one police officer bargaining unit position was lost on each shift.

Based on the testimony and documentary evidence of record, the Hearing Examiner found that since at least 2007, bargaining unit police officers exclusively performed the duties of monitoring the video surveillance cameras, and therefore the City violated the PLRA by assigning three civilian employes to perform that work full-time in 2008. In addition, the Hearing Examiner noted that even if there would have been substantial competent evidence that civilian Supervisors had previously rotated among the various jobs in the DPR, including video surveillance, the City would have been found to have unlawfully altered the extent to which the video monitoring duties were shared with bargaining unit employes by hiring the Service Representatives in 2008. Accordingly, the Hearing Examiner concluded that the City violated Section 6(1)(a) and (e) of the PLRA, as read in *pari materia* with Act 111.

On exceptions, the City argues that the Hearing Examiner erred in finding that the City's use of video surveillance cameras amounted to a "constant police presence" on the City streets. Initially we note that the City's exception does not affect the outcome of this case. Whether the cameras actually create a constant police presence is irrelevant. As the Board has long held, bargaining unit work of police officers is not limited to just "police" work, but includes any clerical or other non-law enforcement duties assigned to and performed by the police officers. City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). On this record, it is undisputed that bargaining unit police officers performed the duties of monitoring the video surveillance cameras. Accordingly, monitoring the City streets via video surveillance cameras, whether providing a constant police presence or not, is bargaining unit work for the City police officers. See FOP, Lodge No. 9 v. City of Reading, 41 PPER 4 (Final Order, 2009).

With regard to the introduction and use of video surveillance cameras, the Board has expressly recognized that "the issue is obviously not whether the [e]mployer can introduce advanced technology in the workplace, but who will perform the duties associated with the essential function and goals, which have not changed." Fraternal Order of Police Lodge #5 v. City of Philadelphia, 27 PPER 27161 at 369 (Final Order, 1996); see Fraternal Order of Police, Fort Pitt Lodge No. 1 v. City of Pittsburgh, 21 PPER ¶21111 (Final Order, 1990). Indeed, the Board has consistently held that an employer is not excused from its statutory duty to negotiate the assignment of bargaining unit work out of the unit merely because the employer has changed how the work is being performed. Pennsylvania State Police v. PLRB, 912 A.2d 909 (Pa. Cmwlth. 2006).

As the testimony of Captain Lou Campione reflects, in this case, conducting surveillance of the public at large, looking for suspected criminal activity and responding to it, has been a function exclusively assigned to the City police officers. Thus, whether done in person or by remote observation, such as through the use of video surveillance cameras, identifying activity as criminal in nature and determining what would be an appropriate law enforcement response to that activity, are matters and duties within the purview of the bargaining unit police officers. Therefore, on this record, the unilateral assignment of civilian Service Representatives to monitor the City streets looking for suspected violations of the law (even via the video surveillance cameras), and deciding whether the witnessed conduct warrants a police officer's response, is an unlawful assignment of police bargaining unit work to non-bargaining unit personnel.

The City also argues on exceptions that the Hearing Examiner erred in finding that bargaining unit police officers monitored video surveillance cameras in 2005,<sup>1</sup> and have exclusively performed that work since 2007. The City's exceptions in this regard pertain to the Hearing Examiner's credibility determinations.

Generally, in making relevant findings of fact, it is the Hearing Examiner who determines the credibility of the witnesses and weighs the probative value of the evidence presented at the hearing. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 98 (Final Order, 2004). The Board will not disturb the Hearing Examiner's credibility determinations absent the most compelling of circumstances. Hand v. Falls Township, 19 PPER ¶ 19012 (Final Order, 1987); AFSCME District Council 84 v. Department of Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986).

In the PDO, the Hearing Examiner adequately explained the rejection of the City's indirect and conclusive testimony that in the past there were two civilian Supervisors in the DPR who may have monitored the video surveillance cameras. (PDO at 2). Further, there is no credible evidence to establish the extent of the civilian Supervisors' performance of the video surveillance between 2006 and 2007. What the record does establish is that bargaining unit police officers performed video surveillance since at least 2006, and were exclusively performing this duty for at least a year before the Service Representatives were hired in 2008. Indeed, Captain Campione testified without contradiction, that since he became the commanding officer of DPR in July 2007, no civilian Supervisors have been assigned to monitor the video surveillance camera. Upon review of the relevant testimony, there is no compelling basis warranting reversal of the Hearing Examiner's credibility determination and finding of fact that since at least 2007, police officers exclusively performed the work of monitoring the City streets via the video surveillance cameras.

The City however, claims on exceptions that the work of monitoring the video surveillance cameras was never the exclusive work of the bargaining unit police officers. The City bases its claim on Deputy Commissioner Gaittens' stated desire that civilians and police were to be sharing the work of monitoring the cameras. However, Deputy Commissioner Gaittens' belief concerning what should have taken place does not override the record evidence that, in fact, the bargaining unit police officers performed the work.

In addressing a removal of bargaining unit work, the Board places weight on the actual work being performed and the employees' expectations in the continuation of the

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<sup>1</sup> The Hearing Examiner's Finding of Fact 3 is that in 2005 the City decided to install video surveillance cameras. The testimony of the City's witness, Deputy Commissioner John J. Gaittens (N.T. 41), and City Exhibit C-8, indicate that the video surveillance monitoring did not become operational until July 2006.

extent to which the bargaining unit employes perform that work. Fraternal Order of Police Lodge #24 v. City of Jeannette, 36 PPER 68 (Final Order, 2005), affirmed City of Jeannette v. Pennsylvania Labor Relations Board, 890 A.2d 1154 (Pa. Cmwlth. 2006); Wyoming Valley West Education Support Personnel Association v. Wyoming Valley West School District, 32 PPER ¶32008 (Final Order, 2000); Lake Lehman Educational Support Personnel Association v. Lake Lehman School District, 37 PPER 56 (Final Order, 2006). In this regard, the Board has held that the employer's unilateral removal of any amount of work that would have been performed by bargaining unit employes is an unfair labor practice. City of Jeannette, supra; City of Harrisburg v. Pennsylvania Labor Relations Board, 605 A.2d 440 (Pa. Cmwlth. 1992).

Here, the facts as found by the Hearing Examiner are that since at least July 2007, the bargaining unit police officers exclusively performed the work of monitoring the City streets via the video surveillance cameras. Thus, the City police officers had the expectation that any video surveillance monitoring work would be performed by bargaining unit employes. Contrary to the employes' expectations to the work, the commanding officer of the DPR, Captain Campione, credibly testified that as a result of the assignment of a Service Representative to each of the bargaining unit shifts, one less police officer was used to monitor the video surveillance cameras during each shift. When the City assigned three full-time civilian employes to monitor the video surveillance cameras in July 2008, it thereby unilaterally removed bargaining unit work from the City police officers in violation of Section 6(1)(a) and (e) of the PLRA. See City of Allentown, supra; City of Jeannette, supra.<sup>2</sup>

After a thorough review of the exceptions and all matters of record the Hearing Examiner's Findings of Fact are supported by substantial credible evidence of record, and the Hearing Examiner properly concluded that the City violated Section 6(1)(a) and (e) of the PLRA, as read in *pari materia* with Act 111. Accordingly, the City's exceptions shall be dismissed, and the PDO 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 Philadelphia are hereby dismissed, and the July 15, 2010 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 sixteenth day of November, 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.

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<sup>2</sup> Even if we were to assume that to some extent between July 2006 and July 2007, civilian Supervisors employed in the DPR rotated among the various jobs, including monitoring the video surveillance cameras, starting in July 2008, instead of rotating among the various duties in the DPR, the three civilian Service Representatives were each assigned to one of the bargaining unit shifts solely to monitor the video surveillance cameras full-time. Accordingly, the use of civilian Service Representatives since 2008 would have altered the extent to which bargaining unit police officers and civilian employes allegedly shared the work of video surveillance, in violation of Section 6(1)(a) and (e) of the PLRA. Wyoming Valley West School District, supra.

