

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMBRIDGE POLICE OFFICERS AND
POLICY UNIT

v.

AMBRIDGE BOROUGH

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: Case No. PF-C-99-73-W
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FINAL ORDER

On June 14, 1999, a charge of unfair practices was filed by the Ambridge Police Officers and Policy Unit (Union) in which it alleged that the Borough of Ambridge (Employer) had committed unfair practices in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111. In support of the charge the Union alleged that the Employer had unilaterally implemented a light duty policy and imposed it on Police Officer Mann which resulted in a change of shifts and consequent denial of shift differential pay. The Union further alleged that another officer (Thompson) who also had a work related injury was not required to perform light duty work. The Union alleged that the imposition of light duty on Officer Mann violated the Employer's duty to bargain in violation of 6(1)(a) and (e) of the PLRA and further that the Employer violated its collective bargaining duty over the impact of establishing light duty.

By letter dated July 26, 1999, the Secretary informed the Union that a complaint would not issue on the charge of unfair practices. The Secretary determined that the Board had previously held that the establishment of a light duty policy is a managerial prerogative and does not require prior bargaining before adoption of a light duty policy. Shillington Borough, 22 PPER ¶ 22074 (Final Order, 1991). The Secretary further determined that the obligation to bargain the impact of a matter of managerial prerogative arises after the management prerogative issue is implemented by the public employer, negotiable wage, hour and working condition impact thereafter arises as a consequence of the exercise of managerial prerogative, the union demands to bargain over the demonstrable impact and the public employer refuses the bargaining demand. Because the Union did not demonstrate allegations of a demand to bargain the impact of the light duty policy, no cause of action was stated for refusal to bargain the impact of the policy.

Thereafter, on August 13, 1999, timely exceptions were interposed by the Union to the Secretary's dismissal of the charge of unfair practices. Initially the Union argues that adoption of light duty is a mandatory subject of collective bargaining. The Board has recently reaffirmed its determination in Shillington, holding that establishment of light duty for police employees for purposes of Act 111 remains a matter of managerial prerogative requiring no bargaining obligation prior to a public employer's establishment of a light duty policy. Bern Township Police Association v. Bern Township, 30 PPER ¶ 30061 (Final Order, 1999). Accordingly we reject the Union's contention that adoption of light duty under these circumstances constitutes a unilateral change in violation of the Employer's duty to bargain.

In the charge of unfair practices as amended in the exceptions, the Union seeks to avoid this result by claiming that the Employer's action resulted in modification of the shift assignment and pay differential for officer Mann. As regards the Employer's obligation to negotiate regarding shifts, the Union correctly notes that the Board has stated that the establishment of a shift scheduling system is a mandatory subject of collective bargaining. The Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth, 1993); Indiana Borough v. PLRB, 695 A.2d 470 (Pa. Cmwlth, 1997). However an appropriate balance must be struck between the employees' right to negotiate over an overall shift scheduling and compensation system (including such matters as the hours per shift, overtime, shift differentials, etc.) and the public employer's managerial prerogative to direct the workforce including the right to assign and direct individual employees to particular shifts within the negotiated and established contractual framework for the establishment and compensation of shifts. See e.g. Reading Fraternal Order of Police Lodge 9 v. City of Reading, 30 PPER ¶ 30121 (Final Order, 1999). The public employer's duty to negotiate a framework for the establishment of shifts, compensation, overtime, etc. does not extend to negotiating with the union over every assignment of an employee to work a shift or overtime once the framework is established. As the Board has noted in the above case law once the framework is negotiated and established, the public employer possesses the managerial right to direct its workforce, including the assignment of employees to work a particular shift or perform overtime in response to the needs of the public employer in performing the public function at issue.

The Union's arguments in support of the charge and exceptions suggests that a public employer must not only negotiate the framework set forth in a typical collective bargaining agreement identifying shifts and compensation but must also negotiate with the union over the assignment of an individual to a particular shift regardless of the managerial needs of the public employer in performing the governmental service at issue. In this case the Union argues that the officer on light duty was removed from a rotating to steady shift which will result in reduced compensation because light duty will eliminate a shift pay differential.

That the Employer has not instituted a generalized schedule change regarding light duty is buttressed by the attachments to the exceptions. In its memorandum to the Employer dated May 13, 1999, the Union states that officers Guido and Thompson were assigned light duty while Mann was not (Attachment A).¹ In its response the Employer states that officers were called only when light duty work was available. (Attachment B). This exchange of correspondence demonstrates individual direction of employees due to availability of work rather than a broad, unit wide alteration of work schedules.

We find that the Employer's right to assign officer Mann to light duty as a matter of managerial prerogative does not indirectly create an obligation to bargain over this assignment. The natural and normal consequence of the managerial right to direct and assign personnel is the loss of pay differential. The Union loses sight of the fact that officer

¹ For purposes of issuance of a complaint, the Board assumes the factual allegation in the charge as amended in the exception as accurate. PSSU Local 668 v. PLRB, 481 Pa. 81, 392 A2d 256 (1978).

Mann is in the status of light duty due to a work related injury which the union acknowledges has resulted in the inability of Officer Mann to perform the normal duties of a police officer. Because the Employer's needs are such that the performance of light duty is not required during shifts where there exists pay differential for performing the normal duties of a police officer, the management right to assign light duty necessarily results in the loss of additional compensation in the nature of a shift pay differential. As the supporting documentation in the exceptions reveals, the Employer's assignment of Officer Mann to the steady shift is a product of the Employer's personnel needs which take into consideration Officer Mann's light duty status work limitations.

The Union's notion of the Employer's bargaining obligation regarding light duty essentially nullifies the management prerogative status of light duty. The Union essentially contends that even were light duty to be regarded as a matter of managerial prerogative, a public employer may not assign an officer to light duty without prior negotiations where the natural and normal consequence of light duty for a police officer will result in reassignment from rotating shifts on the street to fixed shifts in the station house. The Union's contentions opposing a light duty assignment would essentially allow the union to force the employer to negotiate indirectly over the establishment of light duty by preventing its application in fact, thus indirectly nullifying the managerial nature of light duty.

The Union further excepts that the Secretary erred in failing to find a cause of action for failure to negotiate over the impact of the establishment of a light duty policy. The Secretary correctly stated that the obligation to negotiate over the impact of a unilaterally promulgated matter of managerial prerogative arises following management's lawful imposition of a matter of managerial prerogative, a demonstrable wage, hour or working condition impact regarding matters mandatorily negotiable, and a demand by the union to negotiate those matters which is refused by the employer. In an effort to cure the Union's failure to allege these facts in support of the impact bargaining claim, the Union has attached an exchange of correspondence between the Union and the Employer regarding the implementation of light duty regarding Officer Mann. Under date of May 13, 1999, the Union alleges that it corresponded with the Employer regarding questions about the light duty assignment stating in part as follows:

"Being that the current situation with Officer Mann is causing him a financial hardship, due to his particular circumstances, the Bargaining Unit requests that you respond to us in this matter by May 20, 1999. If we do not hear from you by then, we will be forced to file an Unfair Labor Practice in this matter."

The Employer responded (Appendix B to exceptions) to this request by answering certain of the questions concluding the letter with the statement that any additional or unanswered questions should be referred to the Employer for reply. Based on this exchange of correspondence the Union claims that it has stated a cause of action against the Employer for refusal to bargain in good faith over impact of the light duty policy. By this correspondence the Union seeks to demonstrate a demand to bargain and a refusal by the Employer. However our review of this correspondence does not lead to this result. Even were the Board to construe the request for information set forth in the Union's memorandum as a bargaining demand

rather than a request for information, the Employer's response of May 21, 1999, addressed the concerns set forth in the Union's memorandum and invited any remaining unresolved questions. We do not perceive in this correspondence as any refusal to bargain. Accordingly we do not find in the charge as amended in the exceptions a prima facie cause of action for refusal to bargain over the impact of the establishment of a light duty policy.

After a thorough review of the charge of unfair practices as amended in the exceptions the Board shall dismiss the exceptions and affirm the Secretary's decision declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions be and the same are dismissed and the Secretary's decision not to issue a complaint be and the same is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this nineteenth day of October, 1999. 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.