

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MUHLENBERG TOWNSHIP POLICE :
LABOR ORGANIZATION :
:
v. : Case No. PF-C-97-119-E
:
MUHLENBERG TOWNSHIP :

FINAL ORDER

On February 16, 1999, the Muhlenberg Township Police Labor Organization (Union) filed a timely Statement of Exceptions and Supporting Brief with the Pennsylvania Labor Relations Board (Board) to the proposed decision and order (PDO) entered on January 27, 1999. In the PDO, the hearing examiner dismissed a charge of unfair labor practices in which the Union alleged that Muhlenberg Township (Township) had violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111. In its charge, the Union had alleged that the Township committed unfair labor practices when it refused the Union's request to bargain over the effects of the Township's decision to contract with a contiguous borough, which disbanded its own police force, to provide police services. The hearing examiner concluded that the additional police duties required of the Township's police officers did not involve a mandatory subject of bargaining and that the remaining alleged effects of the police coverage contract with the borough involved changes that were time-barred under Section 9(e) of the PLRA. The Secretary of the Board granted the Township's request for an extension of time in which to file a response to the Union's exceptions. On March 26, 1999, the Township filed its brief in opposition to exceptions.

The essential facts of this case as found by the hearing examiner are as follows. The Township and the Union were parties to a collective bargaining agreement effective by its terms January 1, 1997 to December 31, 1998. This collective bargaining agreement includes specifically negotiated sections covering overtime, scheduling, indemnity provisions for officers by the Township in civil and criminal actions, as well as disability provisions for officers. The Township completely surrounds Temple Borough (Borough), which is one square mile in size. In April or May 1997, the Borough disbanded its police force which had been in existence for the previous twenty consecutive years. During that 20-year period, the Township had provided police coverage for the Borough on the midnight shift, weekends, and holidays and to cover vacation periods for Borough police officers. On June 1, 1997, the Township entered into an agreement with the Borough to provide complete police coverage on a 24-hour, seven days a week basis. Since the agreement was entered into between the Township and Borough, the Township's police force has the additional responsibility of providing police protection to the residents, handling emergencies and generally patrolling the Borough. The workload of the Township's police officers has increased because of the addition of the Borough to the Township's patrol area. When the agreement with the Borough expired, a new agreement for police coverage was to take effect on January 1, 1998. When the Township and Borough entered into the agreement in June 1997, the Union requested that the Township hire additional officers and pay current officers more per hour until new officers were hired. The Township refused the request.

In January 1997, the Township established a rotating schedule, which officers continued to work under the Township's June 1997 agreement with the Borough. Also, the Township's chief of police issued a memorandum, effective January 1, 1997, which set forth new guidelines that "apply to all officers when requesting vacation, personal holidays and compensation time" (FF 10). The chief's memorandum also described the limited circumstances under which officers would be permitted to work split shifts; the chief's goal was to reduce or eliminate the split shift. The memorandum also set the new goal of three officers per shift and informed officers that no future vacations, personal holidays or "comp" days would be granted when to do so would leave less than three officers working on any given shift. Since the issuance of the memorandum, the chief has not turned down any prescheduled vacation except in cases where other officers called in sick or officers requested non-prescheduled vacations. The chief has also disapproved prescheduled vacation requests when to grant such requests would render the Township short on manpower, which the chief determines within his own discretion.

The Union has filed three separately enumerated exceptions to the PDO. In its first exception, the Union contends that the hearing examiner erred in failing to hold that the Township's unilateral implementation of an agreement to provide police services to the Borough was an unfair labor practice. Specifically, the Union contends that the Township entered into the agreement with the Borough to provide police coverage without bargaining its impact on officers' working conditions. The alleged impact issues specifically identified by the Union in its exceptions include increased responsibilities for bargaining unit members. Moreover, the Union alleges that as a result of the agreement with the Borough, the Township has unilaterally issued a minimum manpower policy, schedule and shift changes and restricted the use of vacation, personal leave and comp time for its officers.

In the PDO, the hearing examiner concluded that any increased responsibility for police officers as a result of the Township's agreement to provide the Borough with 24-hour police coverage is essentially an allegation of increased workload and therefore under Pennsylvania Social Services Union v. PLRB, 503 Pa. 236, 469 A.2d 150 (1983) and Cornell School District, 14 PPER ¶ 14147 (Court of Common Pleas of Allegheny County, 1983) the Township had no obligation to bargain with the Union. In reaching this conclusion, the hearing examiner noted that the number of police calls in a given period, like the caseload for Commonwealth social workers, Pennsylvania Social Services Union, is determined by society rather than the employer and therefore the employer cannot be required to bargain over increased workload. Furthermore, the Township contends there would be no bargaining obligation here had the Township's population increased by 2,000 people, so the same result should obtain where the Township takes on the additional task of providing police coverage for the roughly 2,000 person Borough, which is completely surrounded by the Township.

Although the Board agrees with the hearing examiner's conclusion that the imposition of greater workload on employes is a matter of managerial prerogative, Cornell School District, the Board recognizes that this is not a case where the Township's increased workload is a result of societal trends as was the case in Pennsylvania Social Services Union. In Pennsylvania Social Services Union, the Supreme Court held increased caseloads for Commonwealth social workers was a matter of managerial prerogative not subject to bargaining. In reaching this holding the Supreme Court recognized that the caseload of a Commonwealth social welfare agency might greatly vary from time to time and from county to county, depending on ever-changing and unpredictable social and economic trends in soci-

ety and not by virtue of managerial decisions made by the Commonwealth's Department of Welfare. Quoting from the Board's final order in that case, the Court recognized that:

Cases are generated from society to a governmental agency without a significant amount of control on the part of the public employer as to the cases which will constitute the workload of a given agency. The only means by which a public employer may adjust a social services workload are means which impact heavily on management prerogatives.

469 A.2d at 154. Thus, the Court concluded that control over caseload is directly determinative of managerial policy in the areas of standards of service and selection and direction of personnel. In Pennsylvania Social Services Union the employer for purposes of collective bargaining was the entity charged by law with providing mandated social welfare services regardless of the staffing levels and societal trends that generated the level of total agency caseload. Unlike situations where society determines caseloads, the increased workload on the Township's police officers in this case is not a matter determined by society. Rather, the Township voluntarily agreed to provide 24-hour police coverage to the Borough and entered into an agreement to that effect. Thus, society was not the cause of the officers' increased workload, as was the case in Pennsylvania Social Services Union. Indeed, if for example the Township's own population had increased or decreased by 2,000 residents, then the Board would agree that society caused the increased/decreased workload on its officers because the Township is the ultimate provider of police services. However, the increased workload was occasioned by a voluntary decision of the Township and the hearing examiner's reliance on society as the cause of the increased workload here is misplaced.

Nonetheless, the Board agrees that increased work load in general is a matter of managerial prerogative. In Cornell School District, the Court of Common Pleas of Allegheny County affirmed the decision of the Board, which held that an employer's decision to reduce its workforce and eliminate positions is managerial prerogative, provided those positions are truly eliminated and not transferred to non-bargaining unit members. To the extent that other remaining bargaining unit members now performed the work of those former employes, the court concluded that the employer had no obligation to bargain. Cornell School District. The same result should obtain where the public employer accepts responsibility for providing additional police coverage to a contiguous municipality, which increases the workload of bargaining unit members. Whether an employer chooses to take on additional work by agreement with its neighbor is a matter of managerial policy and indeed the Township's decision to enter into the June 1997 agreement with the Borough was managerial prerogative. See Brookville Borough, 27 PPER ¶ 27005 (Final Order, 1995); City of Allentown, 27 PPER ¶ 27212 (Proposed Decision and Order, 1996).

In Brookville Borough, the Board concluded that the employer's unilateral termination of a contract for the provision of police services to a school district was managerial prerogative. The Board recognized as it had on prior occasions that a public employer may discontinue the provision of certain public and municipal services that are discretionary as an appropriate function of the employer's management of the quality and quantity of public services. The same reasoning should be applied where an employer takes on additional responsibility. Indeed, the decision to undertake additional responsibilities or withdraw from such an undertaking involves similar managerial concerns and it would be inconsistent to declare differing standards for each decision. Although the increased workload that flows from that decision to provide police coverage is a matter of

managerial policy as well (indeed, the two are inextricably linked), the impact of the increased workload on wages, hours and working conditions is negotiable. City of Philadelphia (First Responder I) v. PLRB, 588 A.2d 67 (Pa. Cmwlth.), appeal denied, 528 Pa. 632, 598 A.2d 285 (1991).

In our decision in First Responder I, 21 PPER ¶ 21014 (Proposed Decision and Order, 1989), 21 PPER ¶ 21075 (Final Order, 1990), which Commonwealth Court affirmed, 588 A.2d 67, the Board concluded that the employer's decision to implement a first responder program for its fire officers was a matter of managerial policy. Even though the program increased the officers' workload, which in turn raised safety concerns, the Board expressly concluded that the increased workload was not a mandatory subject of bargaining. However, the Board held that the union's workload and safety concerns did warrant impact bargaining with respect to staffing level issues identified in International Association of Firefighters, Local 669 v. City of Scranton, 429 A.2d 779 (Pa. Cmwlth. 1981) as mandatory subjects, including staffing per piece of equipment and at fire stations, as well as deployment of staff to fires. The Township would likewise have an obligation to bargain with the Union here over the impact of the increased workload on particular wage, hour and working condition matters.

The Union contends that the hearing examiner erred in determining that the only issue for which the Union sought bargaining was increased workload. However, contrary to the Union's assertions, the hearing examiner did not conclude that the Union only sought to bargain with the Township over increased workload. Rather, the hearing examiner found that the other alleged impact issues identified by the Union arose from the chief's memorandum of January 1997 and these alleged impact issues were time barred. Once the hearing examiner determined these issues were untimely, the only alleged impact issue remaining was increased workload. Moreover, Officer Dougherty, the president of the Union, testified that after the Township entered into the police coverage agreement with the Borough in June 1997 he requested that the Township bargain over "manpower and a monetary award" until additional officers were hired (FF 9; N.T. 45). Thus, even if the alleged impact issues other than increased workload were related to the June 1997 agreement, the Union only demanded bargaining over the increased workload.¹ Hence the right to bargain over any other alleged impact issues was waived.

The remaining alleged impact issues, including the minimum manpower policy, schedule and shift changes, and the restricted use of vacation, personal leave and comp time, arose out of the chief's January 1, 1997 memorandum and were unrelated to the June 1997 agreement between the Township and the Borough. The Union filed its unfair labor practice charge in July 1997. Therefore, any allegations based on these alleged impact issues are beyond the six-week limitations period of Section 9(e) of the PLRA and are time-barred. As the hearing examiner found in findings of fact 8 and 10 of the PDO, the record evidence showed that any change in the scheduling of officers' work hours resulted from the chief's January 1997 memorandum and not from the agreement between the Township and the Borough to provide police coverage for the Borough. The Union filed no exceptions to the findings in the PDO and thus any claim that the alleged impact issues resulted from the agreement between the Township and Borough are waived. 34 Pa. Code § 95.98(a)(3) (exceptions not specifically raised before the Board are waived). Instead of excepting to the hearing examiner's findings, the Union ignores those findings and asserts that the police services agreement with the Borough changed officers' shift schedules and also affected vacation and leave requests. However, the evidence of record clearly shows that these alleged issues resulted from the January 1997 memo and not from the June 1997 agreement. The Union did not file a timely challenge to the policy set forth in the January

1997 memorandum and any claim relating to the memorandum cannot now be raised in the Union's exceptions. Therefore, the Union's first two exceptions must be dismissed.

In its final exception, the Union argues more generally that the Township did not satisfy its obligation to impact bargain during the collective bargaining process. The Union contends that the contract to provide police services "clearly concerns" mandatory subjects of bargaining under Section 1 of Act 111. (Union's brief, p. 8). Despite these allegations, however, the Union fails to identify any specific impact issues related to the police services agreement other than those already addressed above. The Board will not speculate as to what those alleged impact issues may be. The only other alleged impact issue identified by the Union relates to whether the officers are covered by the Township's workers compensation insurance when responding to calls within the Borough. However, the hearing examiner correctly determined that the Union must first discover whether it is covered and then approach the Township for bargaining if coverage is not available. It has been the Board's consistent position that with regard to impact bargaining over a matter of managerial prerogative, the collective bargaining representative must assess actual "wage, hour and working condition" impact after the employer implements the matter of managerial prerogative and file charges at that time if the employer refuses the union's request to bargain such impact. International Association of Firefighters, Local 22 v. City of Philadelphia (First Responder II), 28 PPER ¶ 28100 (Final Order, 1997).² The Union is speculating as to possible impact issues rather than those impact issues that are separately identifiable mandatory subjects. City of Wilkes-Barre v. PLRB, 29 PPER ¶ 29240 (Final Order, 1998).

The Union further points out that the detailed plan to implement an agreement for police services with the Borough was not presented by the Township to the Union in a bargaining posture and therefore the Union was in no position to resolve alleged impact issues. However, this argument ignores the fact that the Township had no obligation to present the Union with its agreement prior to its implementation because the agreement to provide police services to the Borough involved a matter of managerial prerogative. Based on its exceptions, it is apparent that the Union would require the Township to bargain with the Union over alleged impact issues prior to its decision to implement a matter of managerial prerogative. Such a position is untenable and ignores the fact that impact issues, which may involve mandatory subjects of bargaining, arise out of a managerial decision over which the employer has no obligation to bargain. Accordingly, the Union's final exception must be dismissed.

After a thorough review of the exceptions and brief in support, the brief in opposition to exceptions and all matters of record, the Board shall dismiss the exceptions and make the proposed decision and order final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the proposed decision and order in the above-captioned matter be and the same are hereby dismissed and the proposed decision and order be and the same is hereby 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 twenty first day of June, 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.

¹ Officer Dougherty further testified that the Union wanted more men and to
be paid in the meantime for the additional responsibilities (N.T. 45). However,
an employer's decision as to the total number of persons on its police force is a
matter of managerial prerogative. City of Scranton.

² On May 1, 1998, Commonwealth Court affirmed our final order in an unpublished
decision at No. 1000 C.D. 1997.