

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

READING FRATERNAL ORDER OF POLICE :
LODGE NO. 9 :
: :
v. : Case No. PF-C-97-94-E
: :
CITY OF READING :
:

FINAL ORDER

On December 7, 1998, the City of Reading (City) filed Exceptions and Supporting Brief with the Pennsylvania Labor Relations Board (Board) to a proposed decision and order (PDO) issued on November 17, 1998. In the PDO, the hearing examiner concluded that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by unilaterally assigning officers holding supervisory positions within the administrative division (sergeant for records, crime analysis sergeant, sergeant to the chief, and crime identification sergeant) to once-a-month patrol duty at a time other than their normal 8 a.m.-4 p.m. daily shift. On December 15, 1998, the Fraternal Order of Police Lodge #9 (FOP) filed its brief in opposition to the City's exceptions.

After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

12. That each officer would be required to work an 8-hour shift of their choice between 3 p.m. and 3 a.m. for that periodic patrol assignment. (N.T. 14-15; Joint Exhibit 2).

14. That Article III, Section 1 of the parties' collective bargaining agreement provides:

Except as otherwise specifically provided herein, it is understood and agreed that the City retains the exclusive right to manage the business of the Bureau of Police, including, but not limited to, the right to direct the work force, the right to hire, promote, retain, transfer, and assign employees in positions; the right, for proper cause, to suspend, discharge, demote, or take other disciplinary actions against employees; the right to decide job qualifications for hiring, the right to lay off employees for lack of work or funds, the right to make rules and regulations governing safety, the right to determine schedules for work, together with the right to determine the methods, process and manner of performing work; and the right to take any other action necessary to carry out the inherent managerial policies governing the Bureau of Police.

(Joint Exhibit 1A).

DISCUSSION

The essential facts are as follows. The FOP is the exclusive collective bargaining representative of the City's police officers. The City's police department consists of three divisions: uniformed patrol, administration and criminal investigations. The uniformed patrol division has four established shifts or "platoons," including 7 a.m.-3 p.m., 3 p.m.-11 p.m., 7 p.m.-3 a.m., and 11 p.m.-7 a.m. Assignments in the uniformed patrol division are fixed for a period of one year and bid by seniority. The criminal investigations division maintains two shifts, 8 a.m.-4 p.m. and 3 p.m.-11 p.m. (4 p.m.-12 p.m. for vice investigators). Investigators rotate between shifts on a weekly basis. Regular hours for officers in the administrative division are 8 a.m.-4 p.m., Monday through Friday, with the exception of Sergeant Matz in the crime identification unit, whose hours have traditionally been 7 a.m.-3 p.m. with Friday and Saturday off. The positions of administrative sergeant for records, crime analysis sergeant, administrative sergeant to the chief, and crime identification sergeant are each in the administrative division. Prior to May 5, 1997, there had never been any shift for these four administrative positions that occurred between 3 p.m. and 3 a.m.

On May 5, 1997, the City issued a memorandum establishing a policy of periodic patrol assignments for officers in these four administrative positions. For one day each month, these officers were required to perform the duties of the uniformed patrol division. The memorandum stated:

As you have heard, I have decided to assign each of you to perform 8 hours of uniform patrol duties on a periodic basis. The purposes of this duty are to augment our visibility on the street, to keep to (sic) in touch with the problems occurring in our neighborhoods, to monitor patrol operations with an eye toward improvement, and to reinforce the fact that we are all police officers, regardless of our current assignments. I hope you will regard this initiative as an opportunity rather than a burden, and make the most of it.

Two officers will be assigned each week. You may choose any day you want to go on patrol and any hours between 1500 and 0300. If you have a scheduled vacation during your week, arrange to switch with another officer. You have this flexibility so that this duty will not severely impact on your regular duties. Please check in with radio when you begin and end your assignment. You will not be assigned a district or other platoon function. You should not interfere with patrol operations, except in cases of serious problems or emergencies where you feel you must intervene and you are the ranking officer on duty. You can provide back-up and assistance on calls and observe operations as desired. You may use either your assigned vehicle, or a marked or unmarked patrol vehicle, as available.

A schedule is attached. Please let me know about the positive and negative issues that arise during these assignments. We will evaluate it in a few months.

Based on the City's memorandum, each of the officers in these administrative

positions was required to work an 8-hour shift of their choice between 3 p.m. and 3 a.m. for that periodic patrol assignment. The collective bargaining agreement between the parties provided that the City has "the exclusive right to manage the business of the Bureau of Police, . . . the right to direct the work force, . . . the right to determine schedules for work, together with the right to determine the methods, process and manner of performing work." The City did not bargain with the FOP before issuing the memorandum.

The City raises a number of arguments in its exceptions to the PDO. One of the City's arguments is that the hearing examiner erred in concluding that the periodic patrol assignment for the administrative positions involves a mandatory subject of bargaining under Act 111. Under Section 1 of Act 111, police officers have the right through their designated bargaining representative to collectively bargain with their public employer concerning the "terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits." 43 P.S. § 217.1. In order to determine whether a particular subject is mandatorily bargainable for an Act 111 employer, the Board must determine whether the subject at issue is "rationally related" to the officers' duties. City of Clairton v. PLRB, 528 A.2d 1048 (Pa. Cmwlth. 1987). However, employers are not required to bargain subjects that are not rationally related to officers' duties, but are more reasonably related to employers' managerial and policy-related concerns. City of Philadelphia v. PLRB, 588 A.2d 67 (Pa. Cmwlth.), appeal denied, 528 Pa. 632, 598 A.2d 285 (1991). Indeed, even though a subject may affect employe wages, hours or working conditions, that subject may nonetheless be deemed managerial prerogative. Delaware County Lodge No. 27, FOP v. PLRB, 722 A.2d 1118 (Pa. Cmwlth. 1998). (citing Frackville Borough Police Dept. v. PLRB, 701 A.2d 632 (Pa. Cmwlth. 1997)).

In the PDO, the hearing examiner determined that the periodic patrol assignments in this case are a mandatory subject of bargaining because the reasons offered by the City for the periodic assignments, including improving police visibility on the street, maintaining contact with the community, monitoring patrol operations and reinforcing the overall policing mission of the department, do not substantially outweigh the officers' interests in the potential disruption of personal lives and loss of outside employment. In reaching this conclusion, the hearing examiner relied on Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993) (employer's change from a rotating shift to a steady shift scheduling system involved mandatory subject of bargaining) and Indiana Borough v. PLRB, 695 A.2d 470 (Pa. Cmwlth. 1997) (borough's decision to change from steady shift system of scheduling to rotating shifts mandatorily bargainable).

The FOP contends that this case deals with the hours of certain bargaining unit members and that Upper Saucon and Indiana Borough apply here because the City has taken what had truly been a fixed scheduling system and instituted a rotation, albeit one which only changes once a month. However, the City asserts that this is not a case where the employer unilaterally changed the entire shift schedule of the affected employes and instead was only a periodic assignment of individual officers that occurred once per month. The City argues that the May 5, 1997 memorandum is a continuation of its managerial right to schedule its supervisory personnel in the most efficient manner for the department and the better overall protection of the public. The City stresses that any disruption the periodic assignment will have on these officers' personal lives and/or outside employment may be minimized by the flexibility in the periodic schedule.

After due consideration, the Board concludes that the interests advanced by the City in its May 5, 1997 memorandum (i.e., to keep the officers in the administrative division in touch with the problems faced by uniformed patrol officers,

to monitor patrol operations with an eye toward improvement and to increase visibility on the streets) bear a more direct relationship to its core managerial policy concerns and is therefore less rationally related to the potential disruption of the administrative officers' personal lives and outside employment. The Board recognized in City of Philadelphia, 28 PPER ¶ 28048 (Final Order, 1997), where the employer reorganized its supervisory hierarchy within its homicide division, that an employer has the responsibility to establish and maintain the organizational structure of the department and to exercise its discretion to select and direct its personnel. The exercise of such discretion is essential to the employer's achievement of its policy goals and objectives and to its ability to establish and maintain the quality and level of police service it deems appropriate. Id. See also City of Allentown, 27 PPER ¶ 27212 (Proposed Decision and Order, 1996) (employer's decision to assign police officers to security detail at art exhibit sponsored by another city agency matter of managerial prerogative as to how to allocate police services). The same principles apply equally to the facts of this case. It is an appropriate exercise of managerial authority for a public employer to have its officers in the administrative division perform patrol duty once a month in order to keep in touch with the issues faced by the officers on the street.

Moreover, Upper Saucon and Indiana Borough do not control this case. Rather, those cases hold that an employer has an obligation to bargain with the representative of its police officers regarding a change in its bargaining unit-wide-system of scheduling, which implicates the shift selection and scheduling of officers within the bargaining unit as a whole. The purpose of collective bargaining between an employer and the representative of a bargaining unit of its employes is to establish and set forth the terms that will govern the wages, hours and working conditions of the employes in that unit. J.I. Case Co. v. NLRB, 321 U.S. 332 (1944). The periodic assignment in this case did not alter the City's system of scheduling work hours for officers within the unit. More specifically, the officers in the administrative division continue to work the same number of hours under the periodic assignments and they still work their daily shift, 8 a.m.-4 p.m., Monday through Friday. Thus, this case is not Upper Saucon or Indiana Borough. The once per month evening assignments did not increase these officers' regularly scheduled hours, which the Board has recognized as a mandatory subject of bargaining. Hazleton Area School District, 15 PPER ¶ 15170 (Final Order, 1984) (employer's refusal to reduce summer hours of secretarial employes during summer as had been done the previous seven years involved mandatory subject of bargaining).

Under the FOP's position here, a public employer cannot direct certain officers to work a different shift even though the employer perceives a need for better visibility on the streets and increased police protection. In other words, an employer cannot direct certain officers to patrol the streets during a time of increased criminal activity or time of crisis if those officers do not normally work those hours unless the employer first bargains with the union. Such a position ignores managerial prerogative and unduly burdens public employers in fulfilling their obligation to provide citizens with adequate police protection. Although an employer certainly has an obligation to bargain with the representative of its employes over the number of hours in a regular shift, the wages paid for those hours, including premium pay for overtime and shift differentials, and its system of scheduling shifts, the employer is not required to bargain over decisions regarding direction of personnel, especially where such decisions have minimal impact on employe interests.¹

Furthermore, the interests advanced by the officers here as being effected by the periodic assignments (i.e., potential disruption of personal lives and

loss of outside employment) have not been held to outweigh an employer's interests in directing its work force. Disruption of one's personal life is an inevitable consequence of employer direction of the work force and employer restrictions and indeed prohibitions on outside employment have in fact been upheld as matters of managerial prerogative. AFSCME v. PLRB, 479 A.2d 683 (Pa. Cmwlth. 1984); City of Reading, 27 PPER ¶ 27259 (Final Order, 1996); and Caln Township, 27 PPER ¶ 27180 (Final Order, 1996). In AFSCME v. PLRB, Commonwealth Court affirmed the Board in holding that a public employer's interests in increasing honesty and integrity of public employes and enhancing public perception of that integrity is vital, and is fulfilled by the imposition of an approval requirement for secondary employment. Similarly, in City of Reading, which also involved a secondary employment approval requirement, the Board determined that the approval requirement was more reasonably related to the employer's interests in enforcing its work rules prohibiting outside employment than to employe interests in privacy and avoiding discipline. Finally, in Caln Township the employer's prohibition on the use of uniforms by its employes when performing outside employment was upheld as a legitimate exercise of managerial prerogative even though the union argued such prohibition restricted officers' outside employment.²

Even if the Board concluded that the City's periodic patrol assignment for these administrative officers involved a mandatory subject of bargaining (which we do not), the FOP's argument here must fail. Article III, Section 1 of the parties' collective bargaining agreement specifically reserves to management the right to manage the business of its police department, to determine work schedules, to direct its work force and to determine how the work will be performed. Based on such language, no argument can be made that the City waived its managerial right to direct its administrative officers to perform periodic patrol work and indeed this provision shows evidence of negotiation over the issue. Thus, the City's actions here would have arguably fit within the management rights of the collective bargaining agreement.

The FOP contends that the City does not set forth in what manner its interests here will be served by the periodic assignments and therefore it cannot be said that the asserted managerial interests substantially outweigh the interests of the affected officers. In City of Philadelphia, 28 PPER ¶ 28048 (Final Order, 1997), however, the Board noted that this argument misses the point. Specifically, the Board stated that "[w]hat is relevant and dispositive ... is that the establishment of policy in the areas of organizational structure and direction of personnel is entrusted to the Employer, without the attendant burden of showing that its exercise of discretion" is the best means of achieving its goal. 28 PPER at 105. It is not the public employer's burden to show the wisdom of its exercise of managerial policy to the satisfaction of the union or for that matter, the Board. The appropriate inquiry is whether the matter bears a rational relationship to the interests of the public employer or the union, regardless of whether it best effectuates those interests. Thus, the FOP's contention is without merit. Based on the Board's conclusion that this case does not involve a mandatory subject of bargaining under Act 111, the Board will sustain the City's exceptions to the PDO. Therefore, the hearing examiner's finding of a violation of Section 6(1)(a) and (e) of the PLRA and Act 111 must be reversed.³

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 sustain the exceptions and set aside the Proposed Decision and Order consistent with the above discussion.

CONCLUSIONS

That CONCLUSIONS numbers 1 through 3 inclusive, as set forth in the Proposed Decision and Order, are hereby affirmed and incorporated herein by reference and made a part hereof.

That CONCLUSION number 4 of the Proposed Decision and Order is hereby vacated and set aside and the following additional conclusion is made:

5. That the City has not committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA and Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act, 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 sustained in part as set forth above, that the Order on page 5 of the Proposed Decision and Order be and the same is hereby vacated and set aside, and

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the charge is dismissed and the complaint issued thereon is rescinded.

SIGNED, SEALED, DATED and MAILED this twenty-fifth day of May, 1999.

PENNSYLVANIA LABOR RELATIONS BOARD

JOHN MARKLE JR., CHAIRMAN

L. DENNIS MARTIRE, MEMBER

EDWARD G. FEEHAN, MEMBER

¹ Although the City's argument implies a *de minimis* defense, the Board has specifically rejected such a defense. City of Bethlehem, 23 PPER ¶ 23058 (Final Order, 1992) *aff'd*, 621 A.2d 1184 (Pa. Cmwlth. 1993). The Board's conclusion here reaffirms the rejection of a *de minimis* defense and instead rests on the determination that the periodic patrol assignment for the officers in this case is within the City's managerial prerogative to direct personnel and to determine

the level of police services.

² The Board also recognized that the charging party is required to prove the elements of its charge by substantial evidence. Caln Township (citing St. Joseph's Hosp. v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977)). The Board determined in Caln Township that the union failed to show that the prohibition in fact restricted officers' outside employment and therefore the union did not meet its burden of proof. In this case, however, the FOP alleges only potential loss of outside employment. The Board may not base a finding of an unfair labor practice on mere speculation. Harbaugh v. PLRB, 528 A.2d 1024 (Pa. Cmwlth. 1987).

³ In view of our disposition of this matter, we need not address the other arguments raised in the City's exceptions.