

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
E.B. JERMYN LODGE NO. 2 :
: :
v. : Case No. PF-C-09-97-E
: :
CITY OF SCRANTON : :

FINAL ORDER

The Fraternal Order of Police, E.B. Jermyn Lodge No. 2 (FOP) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on April 14, 2011 challenging the remedy issued by the Hearing Examiner in a March 25, 2011 Proposed Decision and Order (PDO). In the PDO, the Hearing Examiner concluded that the City of Scranton (City) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read in *pari materia* with Act 111, but denied reinstatement of the *status quo ante* and limited the remedy for the unfair labor practice to a cease and desist order. Following an extension of time granted by the Secretary of the Board, the FOP filed a brief in support of the exceptions on May 16, 2011. The City has not filed a response to the exceptions. The facts of this case are not in dispute, and are summarized as follows:

For many years, the processing of individuals who had been arrested in the City was performed by bargaining unit police officers of the Scranton Police Department. Processing included transporting the arrested individual to police headquarters, where they were searched and the booking process would begin. The individual was photographed, fingerprinted, and formally charged. Once the charges were completed, the magistrate was contacted and the arrestee was transported to the magistrate for arraignment. Depending on the magistrate's determination, the arrestee was either detained, released on bail, or released on his or her own recognizance. If the arrestee was ordered to be detained, or could not post bail, bargaining unit police officers would transport them to the Lackawanna County prison. In those situations, the Scranton police would return to the prison to transport the prisoner back to the Lackawanna County courthouse for a preliminary hearing. After the preliminary hearing, Scranton police were responsible for transporting the prisoner back to the prison.

In 2005, the Scranton police began to make use of the Lackawanna County Processing Center (CPC), located in the Lackawanna County Courthouse, for processing of arrested individuals between Fridays at 4:00 p.m to Sundays at 4:00 a.m. The CPC had much of the same equipment as Scranton police headquarters, including automated fingerprint systems and photo machines. Initially, the Scranton police officers were solely responsible for the processing of arrestees at the CPC. At some point, County employees began to perform fingerprinting and photography work at the CPC.

In July 2008, the City stopped processing prisoners at the CPC, and all processing was again performed at Scranton police headquarters exclusively by Scranton police officers.

On December 31, 2008, Chief David Elliott entered into a memorandum of understanding with the Lackawanna County District Attorney to use the CPC and the CPC employees for the processing of arrestees. Thereafter, on July 1, 2009 Chief Elliott issued Order 09-022, which stated as follows:

Effective Wednesday, July 1, 2009, the Scranton Police Department will be utilizing the Lackawanna County Processing Center from 8:00 a.m. Wednesday's until Sunday's at 8:00 a.m.

When an arrest is made in the City of Scranton the arresting officer will have their prisoner transported to police headquarters. At headquarters the transport officer will be required:

1. to complete a booking sheet

2. Search the prisoner and turn over any contraband seized to arresting officer:
3. Complete a property record of the prisoner
4. Detain prisoner in cell area until charges are complete, and when needed, any interview by the arresting officer(s) are complete.

Once the prisoner has all paperwork complete, the transport officer will take the prisoner to the Lackawanna County Processing Center. Upon arrival at the processing, the transport officer will have the receiving officer at the Center or Supervisor of Center sign a transfer of custody form (08-040). Once the form has been signed the transport officer is free to return to service.

If an arrest is made by an officer for a summary violation (i.e. Public Drunkenness) and the arresting officer has a copy of the booking sheet with them, they may complete the form and issue the citation to the offender. Once the paperwork is complete they may take the offender to the processing center, however a transfer of prisoner form (08-040) must be completed and signed by Processing Center personnel before going back in service.

Chief Elliott's July 1, 2009 memorandum was issued without any discussion or negotiation with the FOP. Subsequently, the City of Scranton's use of the CPC was expanded to include the processing of all arrested individuals.

On May 3, 2010, the Lackawanna County Court of Common Pleas issued an Order requiring the processing of arrested individuals to be done at the CPC, "consistent with the policies set forth in the Operations and Procedures Manual for the Lackawanna County Central Processing Center[,]" which provided that the CPC is staffed with employes of the Lackawanna County Sheriff and District Attorney.

Based on the above facts, the Hearing Examiner found that the City committed an unfair labor practice for its July 1, 2009 unilateral decision to transfer the work of processing arrested persons to the CPC employes. However, the Hearing Examiner determined that the May 3, 2010, Order of the Court of Common Pleas that directs that persons arrested be processed by the CPC precluded the typical Board remedy of restoration of the *status quo ante*, and return of the work to the bargaining unit police officers.

The FOP argues on exceptions that the Hearing Examiner erred in failing to reinstate the work of processing arrested individuals to the bargaining unit police officers. Initially, we note that the remedy for an unfair labor practice is discretionary with the Board. Pennsylvania Labor Relations Board v. Martha Company, 359 Pa. 347, 59 A.2d 166 (1948).

Here, the Hearing Examiner found that the May 3, 2010 directive to use the CPC was imposed by Order of the Court of Common Pleas of Lackawanna County, and therefore the decision to use the CPC was that of the non-employer County Court, not the City as the employer. Relying on Ellwood City Police Wage and Policy Unit v. Pennsylvania Labor Relations Board, 731 A.2d 670 (Pa. Cmwlth. 1999), the Hearing Examiner determined that the consequential effect of the May 3, 2010 County Court Order on the bargaining unit work for the City police officers was not an unfair labor practice committed by the City. Consistent with Ellwood City Police Wage and Policy Unit, the Hearing Examiner also recognized that a remedy that would require the City to restore the work to the bargaining unit, contrary to the Court Order, could not be awarded in this case.

The FOP argues that Ellwood City Police Wage and Policy Unit is distinguishable because in that case the Board had rejected a past practice argument regarding the cooperation between the city and district magistrates with regard to police officers' schedules. However, in Ellwood City Police Wage and Policy Unit, the Board and the Commonwealth Court found no unfair labor practice because any impact on the mandatory subject of employee scheduling was caused by a decision of a non-employer third-party. The

same is true here with regard to the processing of prisoners, where it was the action of the Court of Common Pleas in issuing the May 3, 2010 Order that eliminated the City's ability to process prisoners internally and required the use of the CPC and its employes.

Moreover, the Hearing Examiner's reliance on Ellwood City Police Wage and Policy Unit is consistent with the Board's holding in AFSCME District Council 87 v. Luzerne County, 35 PPER 126 (Final Order, 2004). In that case, the Board recognized that the county had not removed bargaining unit work of the employes of the juvenile detention center where the Court of Common Pleas, not the Commissioners, issued an order closing the juvenile detention center and transferring the detainees to a private facility. The Board in Luzerne County clearly recognized, as the Hearing Examiner did here, that the Board is powerless to impose a remedy contrary to an Order of the Court of Common Pleas that was issued not as the public employer, but in the Court's judicial capacity concerning matters of judicial administration within its jurisdiction.

Here, the May 3, 2010 Order of the Court of Common Pleas was issued by the Court, governed the administration of justice within Lackawanna County, and expressly directed as follows:

It shall be required that each individual arrested for violation of any offense which occurs in the confines of Lackawanna County... be processe[d] at the Lackawanna County Central Processing Center.... This rule shall apply to all law enforcement agencies within Lackawanna County, and shall be followed notwithstanding any internal booking procedures used or employed by any individual jurisdiction or law enforcement agencies throughout Lackawanna County.

(Respondent Exhibit 2). Contrary to the FOP's assertions in its brief, the May 3, 2010 Order of the Court of Common Pleas requires the City to use the CPC and the CPC employes for processing of all arrested individuals. The FOP's contention in its exceptions that the City has the independent authority to ignore the May 3, 2010 Order, and process arrestees internally, is meritless.¹ A plain reading of the Court's May 3, 2010 Order proves otherwise. Indeed, as the FOP acknowledged before the Hearing Examiner, "the Court Order of May 3, 2010 arguably divests the City of control over the work and, consequently, may limit the remedy available to the FOP...." (Complainant's Post Hearing Brief at 10 n.2). On this record, the Hearing Examiner did not err in limiting the remedy to a cease and desist order against the City for its July 1, 2009 unfair labor practice. Accordingly, after a thorough review of the exceptions and all matters of record, we shall dismiss the FOP's exceptions and make the PDO final.²

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 Fraternal Order of Police, E.B. Jermyn Lodge No. 2 are hereby dismissed, and the March 25, 2011 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, and James M. Darby, Member, this sixteenth day of August, 2011. 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 Notably, the example cited by the FOP to support this proposition was the City's internal processing of arrestees in July 2008, almost two years prior to the Court's May 3, 2010 Order.

² Because the City filed the Affidavit of Compliance on April 13, 2011, evidencing that it has ceased and desisted from its unfair labor practice committed on July 1, 2009 and this Final Order does not modify the PDO, the City shall not be required to file an additional Affidavit of Compliance.