

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CATASAUQUA POLICE OFFICERS :
ASSOCIATION :
 :
v. : Case No. PF-C-15-24-E
 :
CATASAUQUA BOROUGH :

FINAL ORDER

The Catasauqua Police Officers Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on February 19, 2016, challenging a Proposed Decision and Order (PDO) issued on February 1, 2016. In the PDO, the Board's Hearing Examiner concluded that Catasauqua Borough (Borough) did not violate Section 6(1)(a) or (e) of the Pennsylvania Labor Relations Act (PLRA), as read **in pari materia** with Act 111 of 1968, when it placed Officer Donald Stratton on administrative duty and required him to undergo a psychological examination after being involved in a fatal shooting. The Borough timely filed a responsive brief to the exceptions on March 11, 2016.

The facts of this matter are summarized as follows. The Association is the exclusive bargaining representative of the police officers employed by the Borough. The Association and the Borough are parties to a collective bargaining agreement effective from January 1, 2014 through December 31, 2016.

Officer Stratton has been a patrolman with the Borough for five years. For approximately two and a half years, Officer Stratton has been working a regularly scheduled shift, Monday through Friday, from 12:00 a.m. to 8:00 a.m.

On February 23, 2015, Officer Stratton and his partner, Officer Scott Rothrock, assisted the Whitehall police department in apprehending a suspect who had allegedly stabbed his girlfriend. During the incident, the suspect stabbed Officer Rothrock. Thereafter, Officer Stratton, along with a state trooper who was also assisting in the incident, both fired at the suspect, who was killed.

After the shooting, Officer Stratton went to the Pennsylvania State Police Bethlehem Barracks for an interview with a state police trooper and a county detective. He voluntarily gave up his service weapon to the trooper and contacted Association President Detective Christopher Wittik. Officer Stratton then was driven to the Borough headquarters where he was given another service weapon and ammunition. At that point, Officer Stratton declined an opportunity to speak with an officer from an emotional support group. About an hour later, Officer Stratton decided to speak with a trooper involved with the emotional support group. Thereafter, Borough Police Chief Douglas Kish ordered Officer Stratton to report to work the next morning at 8:00 a.m. for day shift.

On February 24, 2015, Officer Stratton worked the 8:00 a.m. to 4:00 p.m. shift. He performed filing duties, moved boxes and took phone calls, but did not perform his regular patrol duties. Officer Stratton did not wear his full uniform and, instead, wore tactical pants with a polo top along with his new service weapon. Officer Stratton worked on an administrative duty basis, which consisted of day shift Monday through Friday, for approximately two weeks following the incident.

During that two week period, Officer Stratton was interviewed by the State Police and County detectives regarding the fatal shooting incident. Ultimately, the District Attorney's Office determined that Officer Stratton's actions on February 23, 2015 were lawful and he was not charged with a crime. Also during that period, Chief Kish directed Officer Stratton to undergo a psychological examination. After the examination, the doctor released Officer Stratton to return to his regular duties.

Officer Stratton was subsequently returned to his regular patrol duties, Monday through Friday, on the 12:00 a.m. to 8:00 a.m. shift. On March 2, 2015, the Association served the Borough Mayor and Council President with a request to bargain over the creation of an "Administrative Leave/Duty policy following a Critical Incident." The Borough did not respond to the Association's request for bargaining.

The Association filed its Charge of Unfair Labor Practices on April 6, 2015, alleging that the Borough violated Section 6(1)(a) and (e) of the PLRA and Act 111 by failing to bargain over its decision to place Officer Stratton on administrative duty after the fatal shooting incident and requiring him to undergo a psychological examination.¹ A hearing was held before the Board's Hearing Examiner on November 9, 2015, during which all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

In the PDO, the Hearing Examiner determined that the Borough's placement of Officer Stratton on administrative duty after the fatal shooting incident, which required him to work a different shift, was within its managerial prerogative. The Hearing Examiner further determined that the Association failed to demonstrate that it had requested bargaining over a severable impact of the Borough's administrative duty policy or that the Borough refused such a request. Therefore, the Hearing Examiner concluded that the Borough did not violate Section 6(1)(a) or (e) of the PLRA.

In its exceptions, the Association does not challenge the Hearing Examiner's conclusion that the Borough's placement of Officer Stratton on administrative duty was within its managerial prerogative, but contends that the Hearing Examiner erred in concluding that the Association failed to establish that it requested bargaining over the impact of that policy on the severable issues of the police officers' wages, hours and working conditions. Where a public employer is charged with violating its duty to bargain over the impact of implementation of a managerial prerogative, the employee representative must demonstrate that (1) the employer lawfully exercised its managerial prerogative; (2) there is a demonstrable, severable impact on wages, hours or working conditions as a result of implementation of the managerial prerogative; (3) the employee representative made a demand to bargain over the demonstrable impact; and (4) the employer refused the employee representative's demand to bargain. **Lackawanna County Detectives' Association v. PLRB**, 762 A.2d 792 (Pa. Cmwlth. 2000).

The Association's March 2, 2015 letter states, in relevant part, as follows:

Please be advised that on behalf of the Catasauqua Police Association, the bargaining representative for the Catasauqua Police Department, we wish to notify you of our intention to commence bargaining over the inclusion of an Administrative Leave/Duty policy following a Critical Incident to be inserted into the current collective bargaining agreement.

On February 23, 2015, Officer Donald Stratton was placed on Administrative Duty by Chief Kish following an officer involved shooting. The current contract does not contain an Administrative Duty policy and therefore, we move to commence bargaining over the terms and conditions of such policy.

(Association Exhibit 1). The Association's request clearly evidences its intent to engage in collective bargaining over the creation of an Administrative Duty policy, not its impact. Indeed, the request fails to state what, if any, impact the administrative duty policy has on the police bargaining unit members. Furthermore, the request does not contain any language indicating that the Association wished to bargain over any severable impact that the administrative duty policy may have had on the officers' wages, hours or

¹ The Association also alleged that the Borough violated Section 6(1)(a) and (e) of the PLRA by unilaterally implementing a smoking ban in all Borough vehicles. At the November 9, 2015 hearing, the parties settled this issue and the Association withdrew this portion of its Charge.

working conditions. On this record, the Association failed to establish that it had identified and requested to bargain over a severable impact that the administrative duty policy had on the officers' wages, hours or working conditions.

Accordingly, the Hearing Examiner properly concluded that the Borough did not violate its duty to bargain under Section 6(1)(a) and (e) of the PLRA. After a thorough review of the 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 by the Catasauqua Police Officers Association are dismissed and the February 1, 2016 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, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this twenty-first day of June, 2016. 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.