

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY POLICE ASSOCIATION :
 :
 v. : Case No. PF-C-14-42-W
 :
 ALLEGHENY COUNTY :

FINAL ORDER

Allegheny County (County) filed timely¹ exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board), challenging a Proposed Decision and Order (PDO) issued on August 31, 2016. In the PDO, the Board's Hearing Examiner concluded that the County violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read **in pari materia** with Act 111 of 1968, when it chose to reduce its response to out-of-County emergency calls for explosive ordnance disposal to every other month, and the City of Pittsburgh (City) began responding to out-of-County emergency calls during those months not handled by the County. The Allegheny County Police Association (Association) timely filed a response to the exceptions and a supporting brief on October 11, 2016.

The facts found by the Hearing Examiner are summarized as follows. The County maintains a bomb squad known as the Explosive Ordnance Disposal Unit² (County EOD Unit), which was established in 1973. There are currently eight police officers in the County EOD Unit. The work of the County EOD Unit is not full-time and the bargaining unit police officers' participation in the EOD Unit is voluntary and collateral to their patrol duties. The police officers in the County EOD Unit receive five weeks of specialized FBI-operated training in Huntsville, Alabama at the Hazardous Devices School, and receive recertification training every three years at the same facility.

The City maintains its own Explosive Ordnance Disposal Unit (City EOD Unit).

Both the County EOD Unit and the City EOD Unit are part of Region 13. Region 13 is a Federal Emergency Management Agency (FEMA) designation for the thirteen counties in southwestern Pennsylvania. The emergency management of Region 13 is governed by a Board of Directors known as the Southwestern Pennsylvania Emergency Response Group (SPERG). SPERG is funded with federal funds distributed through the Commonwealth of Pennsylvania. The SPERG funding provides the County and City EOD Units with equipment and training.

Between 2003 and 2013, the City's EOD Unit only responded to calls regarding perceived threats from explosives within the geographical limits of the City and did not respond to any out-of-City or out-of-County calls. The County EOD Unit handles calls from outside the City, but within the geographical limits of Allegheny County. Prior to March 31, 2014, the County EOD Unit also responded to the calls from 911 Centers and others outside of the County within Region 13.³

On or about March 1, 2014, Charles Moffatt, the Superintendent of the County Police Department, entered into a Memorandum of Understanding (MOU) with the City that changed

¹ The twentieth day following issuance of the Hearing Examiner's proposed decision was September 20, 2016. Based on the Board's receipt of the exceptions by United States Postal Service Priority Mail on September 21, 2016, it is readily apparent that the exceptions were, of necessity, placed with the United States Postal Service on or before September 20, 2016, and are therefore timely. **Miller v. Unemployment Compensation Board of Review**, 505 Pa. 8, 476 A.2d 364 (1984); **City of Philadelphia**, 46 PPER 64 (Order Directing Remand to Hearing Examiner for Further Proceedings, 2015); **Teamsters Local #764 v. Lycoming County**, 37 PPER 14 (Order of the Board, 2006).

² An EOD Unit responds to calls regarding threats from explosive devices, ordnance and other materials and supports other governmental agencies investigating explosives and explosive materials.

³ When responding to out-of-County emergency calls, the County EOD Unit police officers wear their County police patches and identification. They are governed by the County's standards, protocols and procedures.

the manner in which out-of-County emergency calls would be dispatched. The MOU provides, in relevant part, as follows:

NOW, THEREFORE, the parties do hereby agree as follows:

1. The parties will alternate on a monthly basis in responding to E.O.D. calls received from other counties outside the territorial limits of Allegheny County who are part of the PA Region 13 Task Force. Starting in March 2014, the County Police will respond to all E.O.D. calls received from other counties outside the territorial limits of Allegheny County who are part of the PA Region 13 Task Force for the entire month. In April 2014, the City Police will respond to all E.O.D. calls received from other counties outside the territorial limits of Allegheny County who are part of the PA Region 13 Task Force for the entire month. The process of alternating responses between the County and City Police E.O.D. teams on a monthly basis will continue thereafter until such time that the parties agree to change this arrangement.

2. The City Police will continue to answer all E.O.D. calls within the City limits and that the County Police will continue to answer E.O.D. calls outside the City of Pittsburgh and within the other municipalities in the County.

3. All E.O.D. calls will be dispatched to the appropriate police department thru 911. The parties agree to provide 911 with a schedule identifying the police department who will responding [sic] to E.O.D. calls received from other counties outside the territorial limits of Allegheny County who are part of the PA Region 13 Task Force during a particular month.

The County did not bargain with the Association before entering into the MOU with the City. No one from the SPERG Board of Directors signed the MOU.

On March 31, 2014, Superintendent Moffatt issued a memo to Alvin Henderson, the emergency management coordinator for Region 13, which stated, in pertinent part, as follows:

As of April 1, 2014 the City of Pittsburgh Police E.O.D. personnel will, in addition to Allegheny County Police Department E.O.D. personnel respond to requests outside of Allegheny County.

The City of Pittsburgh Police Department will respond to calls outside of Allegheny during the month of April 2014 and Allegheny County Police Department will respond in May 2014. And the teams will continue to respond on alternating months. (See attached schedule)

Any calls within Pittsburgh City limits will continue to be handled by the City of Pittsburgh's Police Department and Allegheny County Police Department will continue to respond to all other calls within Allegheny County, outside the City of Pittsburgh. The officers will continue to assist each other agency [sic] and respond when necessary.

Effective April 1, 2014, both the County and City EOD Units responded to out-of-County emergency calls for explosive ordnance disposal on an alternating monthly basis.

In its Charge of Unfair Labor Practices, the Association alleged that the County violated its duty to bargain by unilaterally subcontracting County police bargaining unit work to the City police. In the PDO, the Hearing Examiner determined that the County EOD Unit has historically responded to out-of-County emergency calls. Therefore, relying on caselaw concerning the unilateral transfer of bargaining unit work, the Hearing Examiner concluded that the County violated its duty to bargain by not negotiating with its police officers' bargaining representative before agreeing with the City that the County and City EOD Units would respond to emergency calls outside the County within Region 13 on an alternating monthly basis. By way of remedy, the Hearing Examiner ordered the County to rescind the MOU between the County and the City, return the work to the County EOD Unit, and make whole all affected bargaining unit police officers.

Generally, a public employer commits an unfair practice when it subcontracts or otherwise transfers any work that members of the bargaining unit have been performing on an exclusive basis to persons outside the unit without first bargaining with the employee representative. **City of Harrisburg v. PLRB**, 605 A.2d 440 (Pa. Cmwlth. 1992); **FOP, Fort Pitt Lodge No. 1 v. City of Pittsburgh**, 21 PPER ¶ 21111 (Final Order, 1990). However, the County alleges in its exceptions that the Hearing Examiner erred in concluding that it violated Section 6(1)(a) and (e) of the PLRA because the County is not authorized to perform explosive ordnance disposal within political subdivisions outside its jurisdiction unless one of the political subdivisions within Region 13 requests such assistance. Further, the County argues that discontinuance of EOD services is an appropriate exercise of its managerial discretion and would not constitute subcontracting, citing **Fraternal Order of Police, Jefferson Lodge No. 68 v. Brookville Borough**, 27 PPER ¶ 27005 (Final Order, 1995).

It is clear from the facts that all out-of-County emergency calls for assistance are dispatched to either the County or City EOD Units by the various 911 Communication Centers, and not by the County. Indeed, the MOU between the County and the City specifically states that emergency calls will be dispatched to the appropriate police department through the 911 Communication Centers and that the parties will provide the 911 Centers with a schedule identifying the EOD Unit that will respond in a particular month. Therefore, the 911 Communication Centers, and not the County, control the assignment of such emergency calls. **See also** 35 Pa.C.S. § 7335(a) (requests for assistance shall be initiated by the incident commander, authorized designee at the incident location, county 911 center or county emergency manager where incident occurs). Although the parties provided the 911 Communication Centers with a schedule regarding who to dispatch (the County or City EOD Unit) in a particular month, there is no evidence that the County exercises control over the manner in which the 911 Centers dispatch such calls. **See Ellwood City Police Wage and Policy Unit v. Ellwood City Borough**, 29 PPER ¶ 29214 (Final Order, 1998), **aff'd sub nom., Ellwood City Police Wage and Policy Unit v. PLRB**, 731 A.2d 670 (Pa. Cmwlth. 1999) (city did not violate its duty to bargain because police officers lost overtime opportunity due to independent action of district justice); **Pennsylvania State Park Officers Association v. Commonwealth of Pennsylvania, Department of Conservation and Natural Resources**, 38 PPER 20 (Proposed Decision and Order, 2007) (Commonwealth did not violate its duty to bargain because it had no control over how 911 Center dispatched calls to park rangers).

Moreover, as argued by the County, Board caselaw indicates that an employer's determination regarding the level of services that it will provide is a managerial prerogative that need not be bargained with the employee representative. The Supreme Court's decision in **City of Philadelphia v. International Association of Firefighters, Local 22**, 606 Pa. 447, 999 A.2d 555 (2010), is instructive. In that case, the city contested certain provisions in an interest arbitration award that required the city to, among other things, bargain with the union over proposed fire company closures and a pilot program. In vacating these provisions from the award, the Supreme Court concluded that although the provisions were rationally related to the employees' terms and conditions of employment, they unduly infringed upon the city's managerial responsibilities to determine the level of emergency services it deemed necessary, and to select and direct its personnel, and thus were not mandatory subjects of bargaining.

Similarly, in **Brookville Borough**, the borough discontinued its contract with the local school district for the provision of police services at certain school functions. Because such work had been exclusively performed by the borough's police officers, the police bargaining representative filed a charge of unfair labor practices with the Board alleging that the borough violated its duty to bargain over removal of the work from the police bargaining unit. However, the Board concluded that the employer's decision to cease such services for the school district was within its managerial authority to determine the level of police services that it deemed necessary to provide. Therefore, the Board held that the employer did not violate its duty to bargain under Section 6(1)(a) and (e) of the PLRA.

Likewise, in **Muhlenberg Township Police Labor Organization v. Muhlenberg Township**, 30 PPER ¶ 30142 (Final Order, 1999), the Board found that a township was not required to bargain with its police officers' collective bargaining representative over its agreement to provide police services to a neighboring municipality. In finding no violation under Section 6(1)(a) and (e) of the PLRA, the Board stated in relevant part:

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.

30 PPER at 318.

Here, this case presents a similarly unique situation where the County, along with the City, elected to be members of Region 13 and to provide explosive ordnance disposal assistance to municipalities within the thirteen counties encompassing Region 13. The record reflects that the out-of-county EOD work currently being performed by the City EOD Unit in this case is not done on behalf of the County or County residents. Instead, the City is performing the EOD services at issue on behalf of other governmental entities outside the County. The City's managerial decision to provide such services to out-of-County governmental entities does not raise a bargaining obligation between the County and the bargaining representative of the County's police officers. Similarly, the County cannot bargain with its police officers' representative over the decision of other governmental agencies within Region 13 to utilize the EOD services of the City as opposed to the County. **See Fraternal Order of Police, Lodge #85 v. Commonwealth of Pennsylvania**, 22 PPER ¶22013 (Final Order, 1990) ("the record shows that the Commonwealth has entered into no such quid pro quo with any municipal police department and that patrol services through municipal police is at the direction of the municipal employer and not the Commonwealth").

As in **Muhlenberg Township**, the County's decision to provide out-of-county EOD assistance fell within its managerial authority to determine the level of services its EOD Unit would provide to out-of-County municipalities.⁴ Likewise, the County's decision to reduce its provision of EOD services outside of its geographical boundaries is also within its managerial discretion. **Id.**; **Brookville Borough**, *supra*; **see also Police Benevolent Association of Wilkes-Barre v. City of Wilkes-Barre**, 29 PPER ¶ 29224 (Proposed Decision and Order, 1998) (issue of whether detectives were assigned on call opportunities concerned employer's managerial right to determine level of service); **Bensalem Township**

⁴ The City has the same managerial right to decide to provide EOD services to out-of-County municipalities. If the County were made to bargain the level of services to be provided by the City, doing so would unduly interfere in the City's managerial decision to provide EOD services to out-of-County municipalities.

Police Benevolent Association v. Bensalem Township, 36 PPER 19 (Proposed Decision and Order, 2005) (same). Consistent with the above caselaw, to require the County to bargain its decision to provide out-of-county EOD services on an alternate monthly basis would unduly infringe upon the County's managerial discretion to determine the level of EOD services it deems necessary to provide within Region 13 outside of its geographical boundaries. **See City of Philadelphia, supra**. Thus, we conclude that under the circumstances of this case, the County need not bargain with its police officers' representative over the decision to reduce the level of EOD services that it will provide within Region 13.

As such, the Hearing Examiner erred in concluding that the County violated its duty to bargain under Section 6(1)(a) and (e) of the PLRA. After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board shall sustain the County's exceptions, set aside the Proposed Decision and Order consistent with the above discussion, and vacate the conclusion in the PDO that the County violated Section 6(1)(a) and (e) of the PLRA.

CONCLUSIONS

CONCLUSIONS numbers 1 through 3 inclusive in the Proposed Decision and Order are affirmed and incorporated herein by reference.

CONCLUSION number 4 is vacated and set aside and the following additional conclusion is made:

5. The County has not committed unfair practices within the meaning of Section 6(1)(a) and (e) of the PLRA.

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 Allegheny County are hereby sustained, that the Order on pages 6-7 of the PDO is vacated, that the Charge of Unfair Practices be and hereby is dismissed, and the Complaint issued thereon is rescinded.

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 March, 2017. 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.