

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5 :
:
v. :
: Case No. PERA-C-11-269-E
:
CITY OF PHILADELPHIA :
OFFICE OF THE SHERIFF :

PROPOSED DECISION AND ORDER

On August 17, 2011, the Fraternal Order of Police Lodge No. 5 (FOP) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the City of Philadelphia, Office of the Sheriff (City) violated sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by unilaterally transferring the work of posting a "Petition and Rule" (P&R) notice to properties indicating a tax lien or a delinquency prior to sale.

On August 30, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on November 16, 2011 in Philadelphia. The hearing was held as scheduled at which time the parties were afforded a full opportunity to present evidence and to cross-examine witnesses.

The FOP filed a brief on January 27, 2012 and the City filed a brief on March 12, 2012.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing, makes the following:

FINDINGS OF FACT

1. The City of Philadelphia is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8)
2. The FOP Lodge 5 is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 8)
3. The FOP is the exclusive representative of a bargaining unit that includes the deputy sheriffs of the Office of the Sheriff, City of Philadelphia. (N.T. 112, 128, FOP Exhibit 2)
4. The City of Philadelphia's Office of the Sheriff (Department) provides courtroom security, prisoner transportation, warrant service and civil process service. (N.T. 9)
5. Included in such process service is the service and posting of a Petition and Rule to Show Cause (P&R) for property tax delinquencies. A P&R is the lawsuit that the city uses to collect its unpaid taxes, pursuant to the Municipal Claims and Tax Liens Act, 53 P.S. 7101 et seq. The P&R is served on interested parties for a property where the city is moving to sell for tax delinquency. (N.T. 11, 55-56, City Exhibits 2 and 3)
6. The sheriff's department first attempts actual service of the P&R by a Deputy Sheriff. However, unlike all other civil proceedings where personal service is required, if service of the P&R does not take place after an initial effort, the Deputy Sheriff may immediately "post the property." Posting means nailing the document on the most prominent part of the property. (N.T. 11-12)
7. The posting serves as notice to a defendant and any other interested party that an action is being taken against a property. (N.T. 11)

8. Gary Cardamone is the Department's acting Chief Deputy Sheriff. He has worked in the sheriff's department since 1977, being promoted to deputy sheriff in 1982 and began posting P&R's in 1982. His current duties include overall responsibility for supervising Captains within the Department, who in turn supervise their respective units. (N.T. 9-10)

9. Cardamone testified that deputy sheriffs have performed the work of posting P&Rs since 1982. (N.T. 12-14)

10. Captain Albert Innaurato has been with the Sheriff's Department for 31 years and with the Civil Division since 1998. From that time until July, 2011, Innaurato personally participated, through a number of ranks, in the posting of P&Rs for delinquencies for Sheriff's sales. (N.T. 36-37, 38-40)

11. Innaurato testified that when the P&Rs would arrive from the Law Department, they would be sorted according to geographic location in the City where the property was located. After being logged, they would be distributed to the appropriate Deputy Sheriff according to the assigned area. After service or posting, copies of each P&R are faxed to the appropriate departments, including the Law Department. (N.T. 38-40)

12. Deputies would then record each posting that had taken place in a "docket book." They would send a "return of service" back to the Law Department and an additional copy with the Prothonotary. (N.T. 21-25)

13. The City's Law Department is responsible for beginning and overseeing the legal process against a property whose owners are delinquent with city taxes. Deputy Solicitor James Zwolak is the chief of the tax collection unit of the City's Law Department that handles tax delinquency collection for the city. (N.T. 54)

14. Attorney Zwolak testified that the deputy sheriffs began posting the P&Rs for tax delinquencies in 1994, after the City's Revenue Department stopped doing that function. (N.T. 74-75, 85-87)

15. In 1997, the City enacted an ordinance that allowed the bundling, securitizing and selling all of real estate tax liens on 28,000 properties. In a one time only event, CoreStates Financial bought the bundled liens for \$31 million, securitized the liens and sold bonds for those liens. CoreStates was the trustee for the bondholders. U.S. Bank succeeded CoreStates as the trustee. In 2000 U.S. Bank began selling the properties that were subject to the liens. The bank retained the law firm of Linebarger, Goggan, Blair and Sampson (Linebarger) to do the legal process of notifying those property owners prior to sheriffs sale, including posting their properties. (N.T. 66-69, 86-87, 89-90)

16. In 2003, the City contracted with Linebarger to foreclose on additional tax delinquent properties. In 2008, Linebarger began foreclosing on those properties. (N.T. 90)

17. Sometime after 2003, the City contracted with Goehring, Rutter and Boehm (GRB) to do similar work as Linebarger for the tax delinquent properties. (N.T. 54-55)

18. The City's Law Department retained one-third of the City's real estate tax delinquency portfolio. The other two-thirds are assigned to the law firms, Linebarger and GRB. (N.T. 54-55)

19. In July, 2011, the City's Law Department, which had, for at least 16 years, provided the monthly P&Rs for its tax delinquencies to the Sheriff's Department to post, stopped providing the P&Rs to the Sheriff's Department. (N.T. 15, 41)

20. The City contracted with a private company, Philadelphia Writ Service (PWS) to post the P&Rs. As part of its contract, PWS also completes an Affidavit of Service/Affidavit of Posting. It does this filing electronically with the Prothonotary's

office, doing so electronically, whereas the Sheriff's Deputies had filed a hard copy manually. (N.T. 16, 25, 59)

21. The City did not negotiate or discuss the transfer of the posting duties with the FOP prior to making the change. (N.T. 17)

22. Before the transfer of the posting duties, the Deputy Sheriffs served 737 P&Rs in 2010 and 844 P&Rs in 2011. (N.T. 42, 51, FOP Exhibit 1)

DISCUSSION

The FOP's specification of charges alleges that in July, 2011, the City of Philadelphia, Office of the Sheriff, committed unfair practices under sections 1201(a)(1) and (5) of PERA by contracting with a private company to do work which had been performed solely and exclusively by Sheriff's Deputies. The specification of charges alleges, "For at least twenty (20) years, Sheriff's Deputies were responsible for the posting a 'Petition and Rule' (P&R) notice to properties indicating a tax lien or a delinquency prior to sale."

A public employer commits an unfair practice in violation of Section 1201(a)(1) and (5) when it unilaterally transfers work exclusively performed by bargaining unit members to non-members of the bargaining unit. PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978).

A party asserting an unfair practice must prove the elements of the alleged violation by substantial and legally credible evidence. St. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

Deputy Sheriffs have been exclusively responsible for posting the City of Philadelphia Law Department's P&Rs for tax delinquency sales for at least 16 years. Chief Deputy Gary Cardamone testified that the Sheriffs Department had posted P&Rs since 1982. Deputy City Solicitor James Zwolak, who began work for the City in 1988, testified that the process first began in 1994. Both witnesses were credible. However, even taking Zwolak's testimony as the more accurate recollection of when the deputy sheriffs began posting properties, that would mean that the posting of P&Rs has been the exclusive work of the bargaining unit for the past 16 years. That is a sufficient length of time to establish that the work of posting P&Rs had been exclusive to the Deputy Sheriffs.

In 2011, the City transferred the work of posting the Law Department's P&Rs for tax delinquencies to a private company, Process Writ Service (PWS). The City made the decision to transfer the work of posting P&Rs to PWS without bargaining or discussing the matter with the FOP.

The City's first defense is that the Pennsylvania Municipal Claims and Tax Liens Act, 53 Pa.C.S.A. 7101 et seq. gives the City Law Department the authority to collect delinquent taxes and to follow certain procedures for notice prior to sale that it deems are appropriate. The City points out that nothing in that statute requires the City's Sheriffs Department to serve or post sheriffs sale notices. While that may be true, it begs the question in this case, of whether the City Law Department has, in fact, used the Sheriffs' Department as the exclusive means of posting P&R notices. Therefore, the state law's silence on the role of the sheriffs department in posting P&Rs is irrelevant to the question of whether there has been an unlawful transfer of bargaining unit work.

The City's second defense is that the work of posting the properties prior to sheriffs sale was not the exclusive work of the deputy sheriffs. The City cites two privatization efforts in which the City contracted with law firms to do the legal work for property tax delinquency collection as examples of posting being done by private entities and not the deputy sheriffs.

The first privatization effort began in 1997. The City engaged in a one-time bundling and securitizing 28,000 existing tax liens. The securitization resulted in municipal bonds being created. After three years, the trustee for the municipal bonds

hired the law firm of Linebarger, Goggan, Blair and Sampson to sell the properties that had the liens on them. The law firm arranged for its own service and posting of those properties, pursuant to the Municipal Claims and Tax Liens Act, supra. The deputy sheriffs played no role in those postings. The foreclosing of the lien properties from the 1997 securitization is ongoing, with approximately 3,000 properties remaining to be foreclosed.

The second privatization effort occurred in 2003. The City again contracted with Linebarger as well as another law firm, Goehring, Rutter and Boehm (GRB), to assist it in the collection of additional property tax delinquencies that were not part of the 1997 securitization. The City gave the law firms two-thirds of the tax delinquent properties. The City Law Department retained control of one-third of the tax delinquency properties.

The deputy sheriffs are making no claim to the work of the posting the lien sale properties from the 1997 securitization. Therefore, Linebarger's use of private entities to post those properties from the 1997 securitization cannot serve to defeat the sheriffs' claim of exclusivity for posting properties for delinquent tax sales.

As for the second privatization of collection work, the post-1997 tax delinquency work, the deputy sheriffs have no claim to the work that the private law firms do, because that has not been City work since the 2003 contract with the law firms. The City has no control over the way the private law firms do that work, from how they file the initial petition to how they serve and post properties subject to sale. As discussed above, state law now permits a private entity to post properties for foreclosure for city tax delinquencies.

However, for the one-third of the tax delinquency portfolio still under the City Law Department's control, the City has, since at least 1994, exclusively used the deputy sheriffs to post properties. Accordingly, for this part of the tax delinquency collection work, the deputy sheriffs have a valid claim that the work of posting these properties is exclusively their work. The City's defense that the work of posting City Law Department P&Rs is not the exclusive work of the deputy sheriffs is dismissed.

The City's third defense is that the City's transfer of the work to PWS provides more convenience to the City Law Department and furthers the City's goal of increasing the monthly tax sales from 75 to 200 a month. The City offered testimony to show that using PWS to post the P&Rs works better since PWS uses an electronic filing system to send copies of the service documents to the Prothonotary. The City points out that this use of technology is a managerial right that should not be the subject of a charge.

While a public employer has a managerial right to introduce new technology, the right of the employer to do so is not a license to unilaterally transfer bargaining unit work to non-unit personnel. Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, 36 PPER ¶ 144 (Final Order, 2005).

The City did not introduce new technology. Rather, the City hired private law firms to perform the same work of posting properties as was done by the sheriff's deputies. The law firms happened to have technology that could be used for e-filing the copies of the affidavit of service and posting, which is only one step in the process of a sheriff's sale. The employer made no attempt to alter the Sheriff's Department's practices in order to make its operations more efficient and productive. The City did not ask the Department to convert to e-filing or explore the possibility of upgrading its equipment. Therefore, this defense is dismissed.

The FOP has met its burden of proving that the City unilaterally transferred work of posting City Law Department petitions and rules for tax delinquency sales to a private entity, Process Writ Service, and violated its duty to bargain with the exclusive bargaining representative of the deputy sheriffs, the FOP.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The City of Philadelphia is a public employer under section 301(1) of PERA.
2. The Fraternal Order of Police, Lodge 5 is an employe organization under section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The City has committed unfair practices in violation of Sections 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA the Examiner

HEREBY ORDERS AND DIRECTS

that the City shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in PERA. 111.
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Cease and desist from transferring bargaining unit work, including but not limited to the work of posting City Law Department petitions and rules for tax delinquency sales.
4. Take the following affirmative action:
 - (a) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and
 - (b) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-first day of June, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner
COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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AFFIDAVIT OF COMPLIANCE

The City of Philadelphia hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (5) of PERA; that it has ceased and desisted from transferring bargaining unit work, including but not limited to the work of posting City Law Department petitions and rules for tax delinquency sales; that it has posted a copy of the proposed decision and order as directed and that it has served an executed copy of this affidavit on the FOP.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public