

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :  
CAPITOL CITY LODGE NO. 85 :  
 : CASE NO. PF-C-11-102-E  
 v. :  
 :  
 COMMONWEALTH OF PENNSYLVANIA :

**PROPOSED DECISION AND ORDER**

On August 5, 2011, the Fraternal Order of Police, Capitol City Lodge, No. 85 (Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania (Commonwealth) violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. On August 30, 2011, the Secretary of the Board (Secretary) issued a Complaint and Notice of Hearing designating a hearing date of January 23, 2012, in Harrisburg. On August 31, 2011, the Union filed an amended charge alleging violations of Section 6(1)(a) and (e) of the PLRA and Act 111, limiting the issues. On September 7, 2011, the Secretary issued an Amended Complaint and Notice of Hearing for January 23, 2012. After several granted continuance requests and counsel change for the Union, the hearing was held on June 5, 2013. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. The Union filed its post-hearing brief on August 16, 2013, and the Commonwealth filed its post-hearing brief on September 26, 2013.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. The Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4)
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 4)
3. In 2009, the Commonwealth closed the Pittsburgh State Office Building, located at 300 Liberty Avenue in Pittsburgh, and leased space for Commonwealth agencies in three other buildings. The Capitol Police, who were assigned to the Pittsburgh State Office Building, were transferred to the Piatt Place Building (Piatt) and the Chamber of Commerce Building (Chamber) in Pittsburgh, between November 2009 and early 2010, where they provided security and police services. (N.T. 12-14)
4. The Tuesday after Memorial Day 2011, Capitol Police Officers attended a mandatory meeting during which they were informed that they would be furloughed unless they accepted a transfer. On June 10, 2011, the Commonwealth issued a furlough notice. The Capitol Police officers were given the choice to take a furlough or a transfer to Harrisburg. The last day in Pittsburgh was June 24, 2011, and the first day in Harrisburg was June 27, 2011. (N.T. 25-26, 28 39; Complainant Exhibit 2)
7. On June 15, 2011, the Commonwealth issued an email to tenants and employes in the Piatt and Chamber buildings that Capitol Police services will be shut down on June 15, 2011, after the daytime shift. (N.T. 31; Complainant Exhibit 3)
8. In the Chamber Building, the Capitol Police had a closed-in dispatch office inside of the Penn Dot License Center on the first floor. The office received active alarms and emergency calls. After the Capitol Police were removed from the Chamber Building, the alarms and emergency calls were forwarded to Capitol

Police Headquarters in Harrisburg. Private security personnel have been providing security services since before the Capitol Police were assigned to the Chamber and Piatt buildings. (N.T. 15, 24, 34-35, 52-53; Complainant Exhibit 1)

9. The Department of Public Welfare had its own security in Piatt. Vital Statistics also had their own private security. Private security did not respond to floors patrolled by the Capitol Police. (N.T. 17, 35, 53)
10. Workers Compensation had its own private security on the second floor of the Chamber Building. Capitol Police did not provide security for Workers Compensation. (N.T. 18)
11. The Piatt and Chamber buildings provided their own private security at the building entrances. (N.T. 19)
12. Capitol Police responded to calls to handle irate individuals, fist fights, individuals who would not leave the premises, judges' duress calls and threatening phone calls. Pittsburgh City Police responded to such calls prior to the assignment of Capitol Police in 2009, and City Police currently respond to such calls. (N.T. 20, 52, 54, 58, 81, 83)
13. Since the Capitol Police were transferred out of the Piatt and the Chamber Buildings, on June 27, 2011, a private security officer has been stationed at a desk in the center of the Penn Dot Licensing Center, not the dispatch office. The Capitol Police did not direct the private security guard to be stationed at the desk in the Chamber Building, Penn Dot Licensing Center. The Capitol Police did not execute any written agreements to provide security services at either the Piatt or Chamber buildings. (N.T. 36, 61-62, 66)

#### DISCUSSION

At the hearing, the Union limited its issue in dispute to the alleged unilateral transfer of exclusively performed police/security work of the Capitol Police Officers assigned to the Commonwealth leased premises at the Piatt Place Building and the Chamber of Commerce Building, in Pittsburgh. (Union's Post-hearing Brief at 3-4). The Commonwealth contends that the Union failed to prove that the Commonwealth transferred the work at issue or entered into any *quid pro quo* arrangement with private security to continue providing police and security services, post June 27, 2011, at either Piatt or Chamber. (Commonwealth's Post-hearing Brief at 4). At the close of the Union's case in chief, the Commonwealth moved for dismissal of the charge for failing to establish a *prima facie* case that the Commonwealth transferred bargaining unit work. (N.T. 68). The Commonwealth renewed its motion in its post-hearing brief. (Commonwealth's Post-hearing Brief at 4-5). I agree with the Commonwealth and the motion is granted.

The Board will find an unfair practice when an employer unilaterally transfers any bargaining unit work. **City of Harrisburg v. PLRB**, 605 A.2d 440 (Pa. Cmwlth. 1992). The Union has the burden of proving by substantial credible evidence that the Commonwealth unilaterally transferred exclusively performed bargaining unit work to non-unit employees. **City of Allentown v. PLRB**, 851 A.2d 988 (Pa. Cmwlth. 2004). In **Pennsylvania State Park Officers' Association v. Commonwealth of Pennsylvania (Pennsylvania Historical and Museum Commission)**, 28 PPER ¶ 28227 (Final Order, 1997), the Board expressly concluded that it "would be compelled to find no unfair practice . . . [where] there is no evidence that [the Commonwealth] has entered into a *quid pro quo* with an alternate provider and/or directs non-unit employees in performance of the work at issue." **Museum Commission**, 28 PPER at 495. Additionally, speculation is not substantial evidence. **Haverford Township**, 27 PPER ¶ 27130 (Final Order 1996).

In ruling on a motion to dismiss for failure to establish a *prima facie* case, I am initially limited to evaluating the Union's case-in-chief only, and not the record as a whole. **Brock v. Lincoln University Chapter, American Ass'n of University Professors**, 22

PPER ¶ 22158 at 351 (Final Order, 1991). The record demonstrates that, as of June 27, 2011, the Commonwealth ceased providing police/security services in Commonwealth leased buildings in Pittsburgh. The record also establishes that, since June 27, 2011, Pittsburgh City Police have been providing police services to those locations by operation of law.

Additionally, the record shows that private security personnel exist at the Piatt and the Chamber buildings. However, the record does not establish that they are performing the same duties as the Capitol Police or that they are performing any duties at the direction of the Capitol Police. The record also lacks evidence of any agreement between the Capitol Police and any private security provider to provide services previously provided by Capitol Police Officers at Piatt or Chamber. Commonwealth agencies utilized private security at the Piatt and Chamber Buildings before, during and after the Capitol Police were assigned to those locations. Beyond mere speculation, the fact that they are still there does not establish that they are performing the work exclusively performed by the Capitol Police Officers or that they are performing any duties at the direction of the Capitol Police.

Accordingly, the Commonwealth's motion to dismiss is granted and the complaint is hereby dismissed.

#### CONCLUSIONS

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

1. The Commonwealth is a public employer within the meaning of Act 111, as read in **pari materia** with the PLRA.
2. The Union is a labor organization within the meaning of the PLRA as read in **pari materia** with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has **not** committed unfair labor practices within the meaning of Section 6(1)(a), (c) or (e) of the PLRA as read in **pari materia** with Act 111.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

#### HEREBY ORDERS AND DIRECTS

That the Commonwealth's Motion to Dismiss the charge is granted, the charge is dismissed, the complaint is rescinded and that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this sixth day of August, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO  
Hearing Examiner