COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY PRISON EMPLOYEES INDEPENDENT UNION	:	
v.	:	Case No. PERA-C-15-106-W
ALLEGHENY COUNTY	:	

PROPOSED DECISION AND ORDER

On April 20, 2015, the Allegheny County Prison Employees Independent Union (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Allegheny County (County or Employer), alleging that the County violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) by unilaterally removing bargaining unit work.

On May 5, 2015, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating December 16, 2015, in Pittsburgh, as the time and place of hearing, if necessary. The hearing was continued to April 13, 2016 due to the Commonwealth's ongoing budget impasse.

A hearing was necessary and was held before the undersigned Hearing Examiner of the Board on April 13, 2016, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties each filed timely post-hearing briefs in support of their respective positions.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The County is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3)

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3)

3. The Union is the exclusive bargaining agent for a unit of corrections officers who work at the County jail, excluding corporals, sergeants, lieutenants, captains, and any rank other than corrections officers. (Union Exhibit 2)

4. The Union and County are parties to a collective bargaining agreement (CBA), which was amended by the terms of several subsequent interest arbitration awards, the most recent of which is for the period of July 1, 2014 through June 30, 2019. (N.T. 21; Union Exhibit 2)

5. The corrections officers are primarily responsible for the care, custody, and control of inmates at the County jail. (N.T. 11)

6. The corrections officers have specific jobs which they perform within the jail, including that of escort officer. The escort officers are responsible for escorting inmates from one area of the jail to another. The escort officer position is a bid job, meaning that bargaining unit employes apply for it based on seniority. (N.T. 12-16, 25-28; Union Exhibit 3, 4, 5)

7. There are times when a sergeant is present while a corrections officer escorts an inmate, including situations where an inmate has to be seen for medical treatment or taken to the disciplinary housing unit (DHU). There are also times where sergeants have escorted an inmate alone without an escort officer being present, which

has occurred during lockdowns of the entire jail, fights between inmates, and in medical emergencies. (N.T. 30-33, 35-36, 44-46, 54-57, 70-72, 76-79, 87-88)

8. In April 2015, Sergeant Richard Lee performed an escort of an inmate alone without any corrections officer present. Lee recalled that the inmate had to undergo medical treatment because he was having chest pains and the escort officer was either on break or taking care of something else inside the jail. (N.T. 46-48)

9. The County did not bargain with the Union before Lee escorted an inmate alone in April 2015. (N.T. 34)

DISCUSSION

The Union has alleged that the County violated Section 1201(a)(1) and (5) of the Act[1] by unilaterally removing bargaining unit work in April 2015 when Sergeant Lee performed an escort of an inmate by himself without any corrections officer present.

It is well settled that the removal of bargaining unit work is a mandatory subject of bargaining and an employer commits an unfair practice when it fails to bargain with the exclusive representative before transferring bargaining unit work to an employe outside the unit. **Hazleton Area Education Support Personnel Ass'n v. Hazleton Area School District**, 37 PPER ¶ 30 (Proposed Decision and Order, 2006) citing **Midland Borough School District v. PLRB**, 560 A.2d 303 (Pa. Cmwlth. 1989); **PLRB v. Mars Area School District**, 389 A.2d 1073 (Pa. 1978). The removal of ***any*** bargaining unit work is a per se unfair labor practice. **City of Harrisburg v. PLRB**, 605 A.2d 440, 442 (Pa. Cmwlth. 1992)(emphasis in original). There is no threshold amount of bargaining unit work that needs to be diverted; even a de minimis amount is actionable under PERA. **Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman School District**, 37 PPER 56 (Final Order, 2006). Nor does it matter whether the removal of bargaining unit work resulted in the termination or layoff of bargaining unit employes, or whether the unit members lost pay; instead, the analysis is whether the unit lost work. **Tredyffrin-Easttown School District**, 43 PPER 11 (Final Order, 2011). An employer also commits an unfair practice by altering a past practice concerning the extent to which bargaining unit employes and non-bargaining unit personnel had previously shared work. **Tredyffrin-Easttown School District**, 43 PPER 11 (Final Order, 2011). However, an employer is under no obligation to bargain over the transfer of bargaining unit work to non-members of the bargaining unit in exigent circumstances. **Reynolds Education Ass'n, PSEA/NEA v. Reynolds School District**, 37 PPER 111 (Proposed Decision and Order, 2006) *citing* **City of Jeanette v. PLRB**, 890 A.2d 1154 (Pa. Cmwlth. 2006). The complainant in an unfair practices proceeding has the burden of proving the charges alleged. **St. Joseph's Hospital v. PLRB**, 373 A.2d 1069 (Pa. 1977).

In this case, the Union has not sustained its burden of proving that the County violated the Act by unilaterally removing bargaining unit work. The record shows that the work at issue involved the escort of an inmate, which Lee performed by himself without any corrections officer present in April 2015. However, the record also shows that the work of escorting inmates within the County jail was not exclusively performed by the bargaining unit. To the contrary, there are times when a sergeant is present while a corrections officer escorts an inmate, including situations where an inmate has to be seen for medical treatment or taken to the DHU. There have also been times where sergeants have escorted an inmate alone without an escort officer being present, which has occurred during lockdowns of the entire jail, fights between inmates, and in medical emergencies.[2] Lee testified that the escort he performed by himself in April 2015 was an incident where an inmate was having chest pains and needed to be taken for a medical evaluation. Deputy Warden Simon Wainwright testified credibly that an inmate complaining of chest pains is considered a medical emergency at the County jail. (N.T. 76, 84). As a

[1] Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act...(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

[2] Union President Eric Paul acknowledged that non-bargaining unit employes can escort inmates in cases of a medical emergency. (N.T. 39)

result, the record does not show that the County altered the past practice concerning the extent to which bargaining unit employes and non-bargaining unit personnel had previously shared the work of escorting inmates throughout the jail. Accordingly, I am unable to discern any violation of the Act.

Furthermore, the very work at issue here involved exigent circumstances wherein an inmate was complaining of chest pains. Indeed, Wainwright described how the County must treat such complaints as if a heart attack is imminent because every second that is delayed could result in the loss of life. (N.T. 74). The record further shows that the escort officer was either on break or taking care of something else inside the jail during this April 2015 incident. As such, the County was under no obligation to bargain over the transfer of bargaining unit work to non-bargaining unit employes in such circumstances. Therefore, the charge under Section 1201(a)(1) and (5) of the Act must be dismissed.

CONCLUSIONS

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

1. The County is a public employer within the meaning of Section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The County has not committed unfair practices in violation of Section 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 charge is dismissed and the complaint rescinded.

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 17th day of June, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner