

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY RANGERS
BENEVOLENT ASSOCIATION

v.

BUCKS COUNTY

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Case No. PF-C-12-54-E

PROPOSED DECISION AND ORDER

On April 23, 2012, the Bucks County Rangers Benevolent Association (Association or Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices, under the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111, and therein alleged that the County of Bucks (County) violated Section 6(1)(a) and (e) of the PLRA by unilaterally transferring exclusively performed bargaining unit work to non-unit employees. The Union specifically alleged that, prior to April 2, 2012, bargaining unit employees provided police services to the exterior and interior locations of certain Bucks County properties. The Union further alleged that, following that date, the County unilaterally transferred the bargaining unit work of providing police services inside the Free Library, the Lower Bucks Government Services Building (GSB) and the Bucks County Emergency Homeless Shelter (Shelter) to the Bristol Township Police Department.

On June 7, 2012, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on January 7, 2013, in Harrisburg, Pennsylvania. On October 24, 2012, I granted the Union's request to continue the case indefinitely due to possible settlement through pending Act 111 proceedings. On July 10, 2013, I issued a letter granting the Union's request to reschedule a hearing, because the parties were unable to settle the matter, and designated January 17, 2014, as the new hearing date. On January 9, 2014, I granted the County's request for a continuance and rescheduled the hearing for May 16, 2014. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On January 15, 2015, the Union filed its post-hearing brief. On February 24, 2015, the County filed its post-hearing brief.

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

FINDINGS OF FACT

1. The County is a public employer and political subdivision pursuant to Act 111 and the PLRA. (N.T. 8).
2. The Association is a labor organization pursuant to Act 111 and the PLRA. (N.T. 8).
3. The County owns property in the southern part of the County called Queen Anne Park, which contains open spaces, parking areas and a complex of several buildings (Complex). The Complex is several acres within Queen Anne Park and is comprised of the GSB, the Library, the Shelter and the Bucks County District Attorney Warehouse (DAW or Thiokol Building). (N.T. 10-11, 39)
4. Queen Anne Park lies within both Middletown Township and Bristol Township. The GSB, the Library and the Shelter are in Bristol Township. (N.T. 10-11)
5. The County Rangers are the primary law enforcement providers for properties within the County park system. These properties include, for example, lands, historical properties and farmlands. The Rangers assist the public with vehicle lock-outs, rapes, sexual assaults, burglaries and suicides on County property and in County parks. (N.T. 13)
6. All Rangers are required to complete Act 120 training and an annual MPOETC training course. Rangers have full police powers within their jurisdiction. They enforce the Vehicle Code, the Crimes Code, the Cosmetic Act and County ordinances. (N.T. 14-15)
7. Ranger Eric Vesdel has patrolled the Complex and responded to calls there on a daily basis. Rangers have responded to alarms and vehicle lock-outs. They have apprehended wanted subjects. They have handled traffic violations and burglaries in and around the Complex, and they have handled domestic violence incidents at the Shelter. (N.T. 15-16)
8. Before and since March 2012, the Rangers have responded to emergency calls at the Thiokol Building. There has been no change in law enforcement duties with respect to the Thiokol Building. (N.T. 39)
9. Prior to March 2012, Bucks County 9-1-1 dispatched Rangers to the buildings in the Complex for emergency calls and police services at the buildings within the Complex. 9-1-1 dispatched Rangers by radio between the hours of 7:00 a.m. until midnight, and dispatched Rangers by telephone between midnight and 7:00 a.m. The Rangers have exclusively performed law enforcement services in the fields and open spaces outside the buildings. (N.T. 18, 26-28, 59).
10. Until March 30, 2012, the Bristol Township Police Department would only respond if the Rangers requested assistance. The Rangers were solely responsible for handling and prosecuting an incident from arrest to the filing of charges and criminal complaints. Bristol Township Officers did not respond to incidents at the buildings within the Complex unless they had to provide support. (N.T. 61, 66)

11. On March 30, 2012, Chief Steven Long issued a memo advising the Rangers that they would no longer respond to police or emergency calls inside the Library, the GSB or the Shelter, but would continue to provide police services on the grounds and parking lots surrounding these buildings. (N.T. 43 76-78, 133, 108; Association Exhibit 1)

12. Chief Long's memo provided, in relevant part, as follows:

2. LOWER BUCKS GOVERNMENT SERVICES COMPLEX: As you know, there have been a lot of high-level discussions regarding the coverage of the Lower Bucks Government Services Building and the Library. Those conversations led into a larger discussion involving all of the buildings in the complex. From Executive Director Mitchell, the following was the outcome of those discussions/meetings. **The Rangers will continue to be responsible for all of the county owned grounds and parking lots around the buildings in the complex. However, effective Monday, 02 April 2012; the Rangers are not responsible for the Library, the Lower Bucks Government Services building; and are now no longer responsible for the Bucks County Emergency Homeless Shelter.** The Rangers will continue to be responsible for the District Attorney's warehouse and impound lot; and the maintenance buildings near the driveway leading out to Woodbourne Road. Executive Director Mitchell will be notifying the Bucks County Emergency Communications Center to dispatch the Bristol Township Police Department to any calls at the Library, LBGSB, and the Shelter. Lt. John Godzieba (Bristol Twp. PD) and I spoke this afternoon and he was informed of the decision.

(Association Exhibit 1)(emphasis original)

13. William Mitchell is the Executive Director of the Bucks County Parks and Recreation Department. On April 2, 2012, Director Mitchell emailed Dennis Forsyth, the Director of Operations at the County 9-1-1 Center, and informed him that Bristol Township Police should be contacted to respond to emergency calls inside the Library, the GSB and the Shelter. (N.T. 97, 108-110, 119, 132, 146; County Exhibit 3)

14. In the email, Mr. Mitchell stated, in relevant part, as follows:

This e-mail is to formally notify you that effective today (April 2, 2012), the Bucks County Park Rangers will no longer respond to calls or complaints dealing with inside of the following buildings located in the lower government services complex:

1. The Bucks County Emergency Homeless Shelter
2. The Bucks County Library
3. The Bucks County Lower Government Services Building

The Rangers will continue to respond to calls for service in the parking lots and grounds around the buildings. The Rangers will continue to respond to complaints at the District Attorney's warehouse (Thiokol) and the maintenance buildings located along Queen Anne Park.

(County Exhibit 3)

15. Inside the Shelter, Rangers have executed warrants and have handled incidents and investigations involving: harassment, fraud, sexual assault, aggravated assault, threats by communication, a riot involving multiple parties and other fights, drug equipment violations and suicide attempts. (N.T. 150-152)

16. Inside the Library, Rangers have responded to incidents and investigations involving: assaults, theft, wanted persons, drugs and arson. (N.T. 152-153)

17. Inside the GSB, Rangers have responded to incidents and investigations involving: assault, drugs and suicide. (N.T. 153-155)

18. Ranger Zuchero reviewed the 9-1-1 dispatch records for calls that were received for the Lower Bucks Government Services Complex. In the "Alert System," the calls were designated as "Queen Anne Park Homeless," "Queen Anne Park Library" or "Queen Anne Park Government." Ranger Zuchero's research revealed the number of calls dispatching Rangers to those individual properties from 2002 through 2014. (N.T. 54-58)

19. In 2002, the Alert System started half-way through the year. In that year, three calls dispatching Rangers to the Shelter were recorded. In 2004, 17 calls were recorded; 2005-27; 2006-21; 2007-24; 2008-61; 2009-72; 2010-66; 2011-99; 2012-74; 2013-30.¹ Rangers responded to 511 calls to the Shelter. Between 2002 and 2013, there were 70 after-hours calls to the Shelter requiring Rangers to respond. Since 2010, Ranger Zuchero personally responded to 63 calls and 27 after-hours calls at the Shelter. (N.T. 58-60)

20. Ranger Zuchero also determined that the Rangers responded to 137 calls at the Library between 2002 and 2013, of which 34 were after hours. Ranger Zuchero personally responded to 22 calls, 3 of which were after hours. Ranger Zuchero has made several arrests at the Library. (N.T. 62)

¹ For an abbreviated time after the memo reassigning police services at the GSB, the Library and the Shelter, Rangers occasionally responded to emergencies and provided police services due to a "dual dispatch" policy temporarily in place at the time. (N.T. 58, 82-84; Association Exhibit 2).

21. At the GSB between 2002 and 2013, Ranger Zuchero determined that Rangers responded to 90 calls at the GSB, of which 5 were after hours. Ranger Zuchero has personally responded to 12 calls to the GSB since 2010. (N.T. 66)

22. Since March 2012, the dispatch protocol has changed and County 9-1-1 now notifies Bristol Township Police Department to respond to incidents at the Library, the GSB and the Shelter instead of first notifying the Rangers. Rangers are no longer responding or being dispatched to calls inside any of the three Complex buildings in Queen Anne Park. (N.T. 71, 73-74, 135-136)

23. There has been no bargaining or agreement with the Union over the County's changes to the first responder protocol at the Library, the GSB and the Shelter. (N.T. 85, 90)

24. Director Mitchell admitted that the Rangers were the primary police source for inside the Library, the GSB and the Shelter. Chief Long also admitted that the Rangers provided police services inside the Library, the GSB and the Shelter. The County does not dispute that Rangers responded to police incidents and emergencies inside all three buildings prior to March 30, 2012. (N.T. 106-107, 124, 159-160)

25. Director Mitchell and Chief Long both credibly testified that Director Mitchell only became aware that Rangers were providing police services inside the buildings at Queen Anne Park when an incident involving Ranger Tom came to his attention. Ranger Tom was dispatched to the GSB to check on a fire alarm when he discovered that a Bucks County Security Guard was already inside the building. Ranger Tom and the Guard had a negative interaction which resulted in complaints filed against Ranger Tom by the Director of Courthouse Security and the Prothonotary's Office. Chief Long contacted Director Mitchell to explain the incident resulting in Director Mitchell's learning that Rangers were inside the buildings. (N.T. 102-108, 129-130)

DISCUSSION

In this case, there is no dispute that the Rangers provided police services and performed police duties inside the Library, the GSB and the Shelter. (N.T. 159-160). They also performed those same duties on the grounds and parking areas around those three buildings and the Thiokol Building, but that work remains unchanged. The County argues that it did not "reassign" or "transfer" the Ranger's bargaining unit work, as charged by the Association. The County maintains that "it ceased providing police services to the buildings in the [C]omplex." (County's Post-hearing Brief at 2). The County contends that because the County ceased providing police services, Bristol Township had a statutory obligation to assume the police function in the buildings located in Bristol Township. (County's Post-hearing Brief at 2).

The County relies on the Board's decision in **Fraternal Order of Police, Lodge No. 85 v. Commonwealth of Pennsylvania (Capitol Police)**, 22 PPER ¶ 22013 (Final Order, 1990) for the proposition that the County had a managerial right to instruct its Rangers to cease providing police services inside the buildings in the Queen Anne Park Complex. In **Capitol Police**, as here, the essential facts were undisputed. The Commonwealth employed Capitol Police to patrol state-owned and state-leased buildings used by the Commonwealth throughout the City of Harrisburg and the greater Harrisburg area. Many of the Commonwealth's leased buildings are in municipalities around Harrisburg that maintain their own independent municipal police departments. The union, in **Capitol Police**, claimed that the Commonwealth refused to bargain in good faith when it directed the Capitol Police to cease patrolling Commonwealth leased premises that those bargaining unit officers had previously and historically patrolled. When the Commonwealth directed its Capitol Police officers to cease patrolling the leased premises beyond the Capitol Complex in Harrisburg, the municipal police departments, by operation of law, assumed responsibility for performing those duties. The union, in **Capitol Police**, claimed that the Commonwealth's decision was "tantamount to a decision by the [C]ommonwealth to subcontract bargaining unit work." **Capitol Police**, 22 PPER at 29.

The key fact in **Capitol Police**, as here, is that the provision of services with an alternative provider occurred by operation of law and not by some other financial arrangement or quid pro quo with the previous provider to continue services. **Capitol Police, supra**. The record in this case lacks substantial competent evidence establishing a quid pro quo arrangement between the County and Bristol Township for the provision of police services inside the Library, the Shelter and the GSB.² The County, as did the Commonwealth in **Capitol Police**, merely notified the Bristol Township Police Department that the County would no longer provide police services inside those buildings. As the Board held in **Capitol Police**, such notification does not constitute a request or a quid pro quo arrangement.

The **Capitol Police** Board poignantly stated as follows:

In determining whether a bargaining obligation arises over the removal of bargaining unit work, **the central inquiry is whether the employer remains the ultimate provider of such services through an alternative means or whether the employer ceases responsibility for the provision of the public service and any successor provider performs the services as a result of a statutorily imposed power or duty independent of any relationship with the employer.** In this case, the record shows that the successor provider of the public service provided police patrol services in the normal course of the provision of such services within its geographical and jurisdictional boundaries and not pursuant to a quid pro quo with the Commonwealth.

Capitol Police, 22 PPER at 30 (emphasis added).

² I am unable to rely on Ranger Vesdel's testimony alleging that the County reimburses Bristol Township for police services at unidentified housing properties. I am also unable to rely on his testimony alleging that the County increased those reimbursements when the County ceased providing police services inside the Library, GSB and Shelter. Ranger Vesdel was uncertain and equivocal in giving this testimony and, by his own admission, he did not possess first-hand knowledge of this information. He testified that this information was his "understanding" as a tax payer without explaining how he came to that "understanding." The testimony, therefore, is not competent. (N.T. 44-45).

In this case, as in **Capitol Police**, the provision of police services inside the Library, the Shelter and the GSB are provided at the direction of another employer, the Bristol Township Police Department, pursuant to a statutory obligation on the part of the Bristol Township Police Department. 42 Pa.C.S. § 8952. The County is not maintaining or providing those police services by and through the Bristol Township Police Department. The County did not make any financial or other quid-pro-quo arrangements with Bristol Township to maintain police services inside the three Complex buildings.

Accordingly, the County has not engaged in unfair labor practices in violation of Section 6(1)(a) and (e), as charged, by directing the cessation of County provided police services inside the Library, the GSB and the Shelter.

CONCLUSIONS

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

1. The County is a public employer and a political subdivision pursuant to Act 111 and the PLRA.
2. The Union is a labor organization pursuant to Act 111 and the PLRA.
3. The Board has jurisdiction over the parties hereto.
4. The County has **NOT** committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the PLRA and 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 charge is dismissed and 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 seventeenth day of August, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO
Hearing Examiner