

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FOP, PA CONSERVATION POLICE :  
OFFICERS LODGE NO. 114 :  
 : Case No. PERA-C-17-144-E  
v. :  
 :  
COMMONWEALTH OF PENNSYLVANIA :  
FISH AND BOAT COMMISSION :

**PROPOSED DECISION AND ORDER**

On May 26, 2017, the Fraternal Order of Police Pennsylvania Conservation Police Officers Lodge No. 114 (FOP or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Pennsylvania Fish and Boat Commission (Commonwealth or PFBC), alleging that the Commonwealth violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA or Act) by notifying the FOP on May 4, 2017 that Commonwealth-issued vehicles would no longer be authorized for use by FOP members to attend labor meetings with the Commonwealth. By letter dated June 9, 2017, the Secretary of the Board declined to issue a Complaint and dismissed the charge of unfair practices, stating that conducting union business on employer time is not activity protected under PERA.

The FOP filed timely exceptions to the Secretary's dismissal on June 27, 2017, alleging that the Secretary erred in that regard and raising additional factual averments. On August 15, 2017, the Board issued an Order Directing Remand to Secretary for Further Proceedings, concluding that resolution of the matter requires a thorough examination of the factual and legal issues raised, and directing the Secretary to issue a Complaint.

On August 22, 2017, the Secretary issued a Complaint and Notice of Hearing, directing a hearing on November 9, 2017, in Harrisburg, if necessary. The hearing was continued to January 31, 2018 at the request of the Commonwealth and without objection by the FOP. The hearing ensued on January 31, 2018, 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 Commonwealth is a public employer within the meaning of Section 301(1) of PERA. (N.T. 5)
2. The FOP is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 5)
3. The FOP is the exclusive bargaining representative for a unit including the classification of Waterways Conservation Officers (WCOs) at the PFBC. (Joint Exhibit 1)

4. The FOP and the Commonwealth were parties to a collective bargaining agreement (CBA), which was effective from July 1, 2012 to June 30, 2016 with an automatic yearly renewal thereafter. (Joint Exhibit 1)

5. Article 2, Section 1 of the CBA, which is entitled "Management Rights," provides in relevant part as follows:

It is understood and agreed that the [Commonwealth], at its sound discretion, possesses the right, in accordance with applicable laws, to manage all operations, including the direction of the working force and the right to plan, direct, and control the operation of all equipment and other property of the [Commonwealth], except as modified by this or unit agreements.

(Joint Exhibit 1)

6. The Commonwealth's Management Directive 590.1 Amended provides that employees who have state automobiles permanently assigned to them may drive those vehicles to certain labor relations functions, such as Board elections, representation and unit clarification hearings, attendance at negotiating/meet and discuss sessions, attendance at grievance and labor-management meetings, and attendance at arbitration hearings "when such use is consistent with efficiency and economy in the conduct of an employee's normal work assignments." (Joint Exhibit 2)

7. The purpose of the PFBC is to protect, conserve and enhance the aquatic resources throughout the Commonwealth and to promote fishing and boating opportunities to the public. WCOs within the bargaining unit are responsible for enforcing Title 30, which is the Fish and Boat Code, and Title 18, which is the Crimes Code, along with performing educational and liaison programs with schools and sporting organizations. (N.T. 48-50)

8. The WCOs work out of home offices within their assigned region and district throughout the state. The Commonwealth issues each WCO a permanently assigned law enforcement vehicle with markings and accoutrements, as well as a patrol boat, for work use. (N.T. 20-22, 51-54)

9. Prior to May 2017, elected members of the FOP were permitted to use their Commonwealth issued vehicles to attend labor functions in Harrisburg between the FOP and the Commonwealth, including contract negotiations, arbitration hearings, grievance meetings, and labor-management meetings. (N.T. 9-13, 15-16, 26-32, 68-69, 87-91)

10. On May 4, 2017, the Commonwealth sent an email to the FOP advising that Commonwealth assigned vehicles could no longer be used to attend labor relations activities unless the use is consistent with efficiency and economy in the conduct of an employee's normal work assignments. (N.T. 71-75; FOP Exhibit 4)

11. The Commonwealth compensates FOP officers for the time spent attending labor functions on behalf of the FOP by coding it as regular time or administrative leave. (N.T. 22-23, 66-68)

12. PFBC Director of the Bureau of Law Enforcement, Colonel Corey Britcher, testified that WCOs are required to obtain supervisory approval to take enforcement action when they are outside of their scheduled shift. Britcher further stated that WCOs are not expected or required to take

enforcement action if they are in their personal vehicles and not on duty.  
(N.T. 117-118)

#### DISCUSSION

The FOP's charge alleges that the Commonwealth violated Section 1201(a)(1) and (5) of PERA<sup>1</sup> by notifying the FOP on May 4, 2017 that Commonwealth-issued vehicles would no longer be authorized for use by FOP members to attend labor meetings with the Commonwealth. The Commonwealth contends that the charge should be dismissed because the use of Commonwealth vehicles to attend labor functions on behalf of the FOP is not a mandatory subject of bargaining.

In PLRB v. State College Area School District, 337 A.2d 262 (Pa. 1975), the Pennsylvania Supreme Court explained the balancing test for whether matters are negotiable under PERA as follows:

[W]hen an item of dispute is a matter of fundamental concern to the employees' interest in wages, hours, and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under Section 701 simply because it may touch upon basic policy. It is the duty of the Board in the first instance and the Courts thereafter to determine whether the impact of the issue on the interest of the employee in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole. If it is determined that the matter is one of inherent managerial policy but does affect wages, hours, and terms and conditions of employment, the public employer shall be required to meet and discuss such subject upon request by the public employees' representative pursuant to Section 702.

*Id.* at 268. 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). The Board will find an employer in violation of its bargaining obligation enforceable under Sections 1201(a)(1) and (5) of the Act if the employer unilaterally changes a mandatory subject of bargaining. PLRB v. Mars Area School District, 389 A.2d 1073 (Pa. 1978). If, however, the employer changes a matter of inherent managerial policy under Section 702 of the Act, then no refusal to bargain may be found. State College, *supra*. The Commonwealth Court has held that a policy governing the use of state vehicles for non-work related purposes while off duty is not a mandatory subject of bargaining, but rather a managerial prerogative under Section 702 of PERA. FOP, Conference of Pennsylvania Liquor Control Bd. Lodges v. PLRB, 751 A.2d 726 (Pa. Cmwlth. 2000).

In this case, the FOP attempts to distinguish this matter from Conference of Liquor Control Bd. Lodges by arguing that the WCOs are on duty and expected to take appropriate law enforcement action where warranted

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

because they are on duty. However, it is more accurate to say that the Commonwealth simply compensates FOP officers for the time spent attending labor functions on behalf of the FOP by coding it as regular time or administrative leave. The Commonwealth persuasively notes in its brief that the FOP members are not on a Commonwealth work assignment when traveling to Harrisburg for labor functions, regardless of their pay status. Indeed, the Commonwealth persuasively maintains that it plays no role in the election of FOP officers, nor does it select which WCOs attend contract negotiations. (N.T. 40, 105). Likewise, the FOP officers do not take direction from the Commonwealth with regard to grievances or contract proposals. (N.T. 104). Furthermore, the Commonwealth does not assign FOP work to the WCOs/FOP officers. (N.T. 41). And, the job descriptions for the WCOs contain no mention whatsoever of work they perform on behalf of the FOP. (N.T. 40, 104; Exhibits C-1 & C-2). In light of these facts, it must be concluded that the use of Commonwealth vehicles for FOP labor relations activities has no relationship to the work the WCOs perform on behalf of the Commonwealth.

It is well settled that a matter deemed to be a managerial prerogative under Act 111 is *a fortiori* a managerial prerogative under PERA. Teamsters Local 77 & 250 v. PLRB, 786 A.2d 299 (Pa. Cmwlth. 2001). It is equally well settled that use of employer-owned vehicles is a managerial prerogative under Act 111 unless the employees to whom the vehicles are assigned are required to take off-duty action. Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998); Cheltenham Township v. Cheltenham Township Police Department, 312 A.2d 835 (Pa. Cmwlth. 1973); Pennsylvania State Rangers Ass'n v. Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, 41 PPER 62 (Proposed Decision and Order, 2010). The FOP has not demonstrated that the WCOs are required to take off-duty action on this record. Instead, Britcher credibly testified that WCOs are required to obtain supervisory approval to take enforcement action when they are outside of their scheduled shift and that WCOs are not expected or required to take enforcement action if they are in their personal vehicles and not on duty. Therefore, the Commonwealth has not committed unfair practices under the Act, and the charge 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 Commonwealth is a public employer under Section 301(1) of PERA.
2. The FOP is an employee organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has not committed unfair practices under Section 1201(a)(1) or (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 21<sup>st</sup> day of November, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner