

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FOP, PA CONSERVATION POLICE :
OFFICERS LODGE NO. 114 :
 : Case No. PF-C-17-42-E
v. :
 :
COMMONWEALTH OF PENNSYLVANIA :
GAME 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 labor practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Pennsylvania Game Commission (Commonwealth or PGC), alleging that the Commonwealth violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by notifying the FOP on April 14, 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 labor practices, stating that conducting union business on employer time is not activity protected under the PLRA.

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 1, 2017, in Harrisburg, if necessary. After multiple continuances at the request of both parties and without objection, the hearing eventually ensued on April 23, 2018, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The FOP filed a post-hearing brief on September 4, 2018. The Commonwealth filed a post-hearing brief on October 1, 2018.

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 and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 6)
2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 6)
3. The FOP is the exclusive bargaining representative for a unit of police employees at the PGC. (Joint Exhibit 1)

4. The FOP and the Commonwealth were parties to a collective bargaining agreement (CBA), which was effective from July 1, 2016 to June 30, 2017 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 Agreement.

(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 PGC is to regulate the wildlife resources and the habitats of the wildlife resources in the Commonwealth. Game Wardens within the bargaining unit enforce the game and conservation laws, lead educational efforts concerning hunting and trapping, manage the state game lands, and relocate nuisance wildlife. (N.T. 9-11, 18)¹

8. Game Wardens work out of home offices in their assigned districts throughout the state. The Commonwealth issues each Game Warden a permanently assigned law enforcement vehicle for work use, which includes emergency lighting, sirens, computer and communication accessories and a GPS system known as AVAIL. (N.T. 21-25)²

9. Prior to April 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. 48-52, 68, 93, 105, 121-122)

10. On April 14, 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. 68-69, 134-138; Commonwealth Exhibit 1)

11. The Commonwealth compensates FOP officers for the time spent attending labor functions on behalf of the FOP. (N.T. 48, 87-88)

¹ The Game Warden title was a recent change from the prior position title of Wildlife Conservation Officer. (N.T. 9, 12).

² The record does not contain a description or explanation for the AVAIL acronym.

12. PGC Deputy Executive Director for Field Operations Richard Palmer testified that, with the exception of first step grievance meetings, which occur in a Game Warden's assigned district and for which a Game Warden would be permitted to use a Commonwealth vehicle to attend, Game Wardens attending labor functions on behalf of the FOP are not required to perform Commonwealth job duties while attending such functions. (N.T. 136-137)

DISCUSSION

The FOP has alleged that the Commonwealth violated Section 6(1)(a) and (e) of the PLRA³ and Act 111 by notifying the FOP on April 14, 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, the Commonwealth had a contractual privilege for its actions, and the FOP failed to demonstrate a change in an established past practice.

Section 1 of Act 111 provides, in pertinent part, as follows:

Policemen or fireman employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions, and other benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

43 P.S. § 217.1.

The Pennsylvania Supreme Court has applied a balancing test when deciding whether a managerial decision is a mandatory subject of bargaining for municipalities in collective bargaining relationships with their police and fire employees under Act 111. Middletown Borough Police Officers Ass'n v. Middletown Borough, 46 PPER 78 (Proposed Decision and Order, 2015). Once it is determined that the decision is rationally related to the terms and conditions of employment, or germane to the work environment, the inquiry is whether collective bargaining over the topic would unduly infringe upon the public employer's essential managerial responsibilities. If so, it will be considered a managerial prerogative and non-bargainable. If not, the topic is subject to mandatory collective bargaining. *Id.* citing Borough of Ellwood City v. PLRB, 998 A.2d 589, 600 (Pa. 2010); City of Philadelphia v. International Ass'n of Firefighters, Local 22, 999 A.2d 555, 570-571 (Pa. 2010).

In Pennsylvania State Rangers Ass'n v. Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, 41 PPER 62 (Proposed

³ Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in this act... (e) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section seven (a) of this act. 43 P.S. § 211.6.

Decision and Order, 2010), the Hearing Examiner explained the law regarding use of employer vehicles as follows:

Two cases, each involving the employer's unilateral revocation of police vehicle use by off-duty bargaining unit members, have reached opposite results. The take-home privilege is a mandatory subject of bargaining only when it is rationally related to the officers' duties, but not when it is merely a benefit.

In Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998) the Court upheld the Board's conclusion that the employer violated the PLRA when it unilaterally ended officers' take-home privileges of police cars. The Court agreed with the Board that "[t]he Township's standard operating procedures (SOPs) mandate that the police officers respond to both emergency and non-emergency situations requiring police action when off duty, thereby requiring off duty officers to be subject to call at all times." 713 A.2d at 734.

And, that is the reason the employer violated the PLRA by its unilateral rescission of the privilege - because the officers, "whether they are on or off duty, are required to take police action whenever they see a situation in which life is threatened; therefore, retaining the police vehicles assists the police officers in carrying out their duties." *Id.* at 733. That requirement creates the rational relationship of the benefit to the officers' duties, and therefore makes it bargainable. *Id.* at 734-735. See also FOP Lodge No. 5 v. City of Philadelphia, 23 PPER ¶ 23004 (Final Order, 1991) (take-home car policy mandatory subject of bargaining when police commanders required to respond to off-duty emergencies).

Exactly the opposite result was reached in Cheltenham Township v. Cheltenham Township Police Department, 312 A.2d 835 (Pa. Cmwlth. 1973) (footnote omitted). In Cheltenham, the Court found that the employers' (sic) practice of allowing the use of police vehicles merely to pick up officers going on and off duty, while a benefit, was not rationally related to their employment, and it was therefore stricken from the interest arbitration award.

The instant facts are much closer to Cheltenham than to Plumstead. The rangers are certainly not required to take any off-duty actions as were the officers in Plumstead. Absent that singular requirement, the use of an official car to get to and from work is not rationally related to their employment as rangers.

41 PPER at 213.

In this case, the record is also more closely akin to Cheltenham than Plumstead. Although the FOP contends that the Game Wardens are on duty when they attend labor functions in Harrisburg, I agree with the Commonwealth that it is more accurate to state that the Commonwealth simply compensates FOP officers for the time spent attending labor functions on behalf of the FOP. Indeed, the record shows that Game Wardens attending labor functions in Harrisburg on behalf of the FOP are not required to perform Commonwealth job duties while attending such functions. While the FOP presented testimony

from Game Wardens that they are expected to take appropriate law enforcement action when they are operating their Commonwealth-assigned vehicle, Palmer testified credibly and persuasively that this is not the case. In fact, the record shows that the Game Wardens cannot take certain law enforcement actions unless they are in uniform and that the Game Wardens are not always in uniform while traveling to labor functions on behalf of the FOP. (N.T. 76). As such, it must be concluded that there are times when the Game Wardens cannot take law enforcement action when traveling to attend labor functions on behalf of the FOP, which further supports the credible testimony of Palmer. Accordingly, the charge must be dismissed, as the record shows that the use of a Commonwealth vehicle is not rationally related to the Game Wardens' terms and conditions of employment or germane to their work environment.

CONCLUSIONS

The 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 and political subdivision under Act 111 as read *in pari materia* with the PLRA.
2. The FOP is a labor organization under Act 111 as read *in pari materia* with the PLRA.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has not committed unfair labor practices in violation of Section 6(1)(a) or (e) of the PLRA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, 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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 21st day of November, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

