

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE :
RANGERS ASSOCIATION :
 :
v. : Case No. PF-C-11-130-E
 :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF CONSERVATION AND :
NATURAL RESOURCES :

FINAL ORDER

The Pennsylvania State Rangers Association (Union) filed timely exceptions on March 11, 2013, to a Proposed Decision and Order (PDO) issued on February 20, 2013, dismissing its Charge of Unfair Labor Practice against the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources (Commonwealth or DCNR) alleging violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read in *pari materia* with Act 111. After requesting a thirty-day extension of time for filing of its brief in support of the exceptions, the Union filed its brief on April 10, 2013. The Commonwealth filed a brief in response to the exceptions on April 25, 2013.

The Hearing Examiner had held a hearing on August 30, 2012, at which time both parties were afforded the opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.¹ Based on the evidence presented the Hearing Examiner made Findings of Fact (FF), which, for purposes of the exceptions, are summarized as follows.

Forestry District No. 20 is the Loyalsock State Forest and is in Bradford, Sullivan and Lycoming counties. (FF 4). DCNR Rangers' duties at Forestry District No. 20 include: public contact, visitor services, first responder services, searches, law enforcement and other police work. (FF 3). Within Forestry District No. 20, in Sullivan County, is a relatively new DCNR facility called the Forest Resource Management Center (RMC).² (FF 6).

On September 13, 2011, District Forester Richard Glinski, the manager in charge of District 20, issued an e-mail advising that the RMC would be used by the Federal Emergency Management Agency (FEMA) as a flood recovery center for a few weeks. (FF 7 and 8). The e-mail provided that "[o]perations will be set up in the conference room and in a mobile unit parked in the parking lot. Operations will run for a 12 hr day. [F]EMA will have a security company on duty." (FF 9). In response, on September 14, 2011, Union President, Ranger Operations Specialist Paul Ashford, e-mailed Danette Bixler-George, the Division Chief for Employee Relations Services at DCNR, and stated that "the [Union] considers security duties on DCNR property to be bargaining unit work." (FF 3, 10, 11). Ms. Bixler-George responded on September 15, 2011, as follows:

Please be advised that FEMA will continue to utilize its own security resources for its operations being conducted at Forest District 20's headquarters. In the Department's opinion the work being performed by FEMA's security resources is not PSRA bargaining unit work nor has it been traditionally performed by rangers. It is work similar to that which is utilized by lessees on state forestland. FEMA has been advised that they must limit the security work to their operations only. DCNR Rangers will continue to perform their regularly assigned duties within the district.

(FF 12).

¹ At the close of the Union's case-in-chief, the Commonwealth moved to dismiss the charge and declined to present any witnesses.

² The downstairs of the RMC is a complete ranger station. It has cubicles for Rangers, evidence rooms, locker rooms and other amenities. (FF 19).

FEMA established an operations center in the RMC at Loyalsock Forest for approximately four-to-five weeks to process claims for people who live outside the forest and suffered flood damage from tropical storm Lee.³ (FF 14). The FEMA operations director was issued a key that only opened the conference room of the RMC. (FF 18). FEMA did not ask DCNR to provide security for its operations at the RMC, and there was no agreement between FEMA and DCNR regarding security at the RMC. (FF 20). FEMA contracted with its own private security company, Knight Security, to secure FEMA's equipment within the RMC conference room. (FF 16). Knight Security came as a package, with FEMA, to protect FEMA's equipment, not state property. (FF 16). DCNR rangers continued to have law enforcement responsibilities at the RMC and in the entire forestry district during the entire time that FEMA was at the RMC. Accordingly, DCNR instructed FEMA to contact the rangers or the state police in an emergency, but DCNR did not direct the activities of Knight Security personnel while at the RMC. (FF 21).

The Union challenges Hearing Examiner Findings of Fact 16 and 20, as not supported by substantial evidence of record. Findings will be sustained by the Board where there is substantial evidence in the record to support the finding. Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." **PLRB v. Kaufman Department Stores**, 345 Pa. 398, 29 A.2d 90 (1942). At the August 30, 2012, hearing, Ms. Bixler-George testified that FEMA did not ask DCNR to provide security (N.T. 30-31), and that FEMA brought their own security to protect FEMA equipment. (N.T. 32). Accordingly, Hearing Examiner Findings of Fact 16 and 20 are clearly supported by the testimony of Ms. Bixler-George and will not be disturbed.

The Union also argues that Finding of Fact 21 is internally inconsistent. The Hearing Examiner found, as fact, that "DCNR did not direct the activities of Knight Security personnel while at the RMC. DCNR instructed FEMA to contact the rangers or the state police in an emergency." We find no inconsistency in this finding. Ms. Bixler-George unequivocally testified that FEMA brought in Knight Security to protect its equipment, and that DCNR Rangers continued to provide the police presence and to exercise security responsibilities at the RMC and in Forestry District No. 20. (N.T. 31). Knight Security personnel are not police officers, but rather are security guards. Moreover, there is no evidence that the Commonwealth directed the security activities of Knight Security. However, because Knight Security personnel are only private security guards, the Commonwealth simply informed FEMA that if there was a need for a police presence, FEMA should contact the Rangers or state police who have full police powers within Forestry District No. 20.

The Union also argues that the Hearing Examiner erred in failing to find a violation of Section 6(1)(a) and (e) of the PLRA because the DCNR had allowed FEMA to use its own security while at the RMC. According to the Union, the Commonwealth should have refused FEMA access to the RMC and Forestry District No. 20 upon finding that FEMA was using its own security. The Union argues that DCNR's failure to do so imputed FEMA's actions to DCNR and resulted in DCNR's tacit transfer of bargaining unit work to Knight Security. We disagree. On this record, there is no evidence to support a finding that the Commonwealth took an active role to unlawfully transfer the bargaining unit work of the DCNR Rangers. **Fraternal Order of Police, Capitol Police Lodge No. 85 v. Commonwealth of Pennsylvania (A T & T)**, 29 PPER ¶ 29011 (Proposed Decision and Order, 1997) (finding no unfair labor practice where security was not provided at the direction of the Commonwealth, but by AT & T during a disaster recovery exercise by AT & T on the grounds of the Harrisburg State Hospital); **FOP, Lodge No. 85 v. Commonwealth of Pennsylvania (State Museum)**, 45 PPER 58 (Proposed Decision and Order, 2011) (dismissing an unfair labor practice charge where security for a prom at the State Museum was provided at the direction of and by the Mechanicsburg School District, not the Commonwealth).

After a thorough review of the exceptions and all matters of record, the Hearing Examiner did not err in concluding that the Union failed to establish that the

³ The people filing claims for damaged property were not visiting the forest or seeking information about the forest.

Commonwealth violated Section 6(1)(a) and (e) of the PLRA. Accordingly, the Union's exceptions shall be dismissed and the PDO made absolute and final.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Pennsylvania State Rangers Association are hereby dismissed, and the February 20, 2013 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and James M. Darby, Member, this twenty-first day of May, 2013. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.