

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE	:	
SCHUYLKILL-CARBON LODGE 13/	:	
POLICE DEPARTMENT OF KIDDER TOWNSHIP	:	
	:	Case No. PF-C-11-135-E
v.	:	
	:	
KIDDER TOWNSHIP	:	

PROPOSED DECISION AND ORDER

On October 14, 2011, the Fraternal Order of Police Schuylkill-Carbon Lodge 13/Police Department of Kidder Township (FOP or Complainant) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Kidder Township (Township or Respondent), alleging that the Township violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 when it unilaterally transferred the bargaining unit work of patrolling and responding to calls to the Chief of Police, who is outside the bargaining unit.

On November 10, 2011, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and December 13, 2011 in Wilkes-Barre was scheduled as the time and place of hearing if necessary, before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was necessary, but the parties jointly requested a continuance of the hearing to January 23, 2012. The parties requested another continuance to permit settlement discussions, and that request was also granted. The hearing was continued generally. On March 30, the FOP notified the Board that settlement discussions had not resolved the charge and that it was necessary for the Board to hold a hearing on the matter.

On April 11, 2012, the Examiner notified the parties that a hearing was scheduled for July 20, 2012 in Harrisburg. The Examiner changed the date of the hearing to July 23, 2012.

The hearing was held on the rescheduled date.

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. Kidder Township is an employer within the meaning of Section 3 (c) of the PLRA.
2. Fraternal Order of Police, Schuylkill-Carbon Lodge 13 is a labor organization within the meaning of Section 3(f) of the PLRA.
3. The Township and the FOP Lodge 13 are parties to a collective bargaining agreement for the period of January 1, 2010 to December 31, 2012. (N.T. 11-12, FOP Exhibit 1)
4. The collective bargaining agreement excludes the chief of police, the Deputy/Assistant Chief of Police and part-time officers from the agreement. They have not been included in previous agreements. (N.T. 10, FOP Exhibit 1)
5. Prior to September 2, 2011, the bargaining unit members' duties included, among other things, patrolling the Township and responding to calls for assistance

within the Township. The patrol and response functions were performed exclusively by members of the bargaining unit. (N.T. 24-25, FOP Exhibits 2,3 and 4)

6. The primary shifts for police work now are dayshift (7 am to 3 pm); afternoon (3 pm to 11 pm) and night shift (110 pm to 7 am) (N.T. 14)
7. The collective bargaining agreement calls for the department to provide police coverage of 24 hours a day, seven days a week. (N.T. 10, 55)
8. In December 2010 the Township laid off three officers due to budget problems. (N.T. 15)
9. Joseph Protasiewicz was the chief of police from 2003 until his retirement in September, 2011. The Township replaced him with Matt Kuzma. From that point on, the Township placed Chief Kuzma's name on the patrol schedule. (N.T. 12, 20, 24, FOP Exhibit 4)
10. The three chiefs who preceded Chief Kuzma were Protasiewicz, Frank Johnson (2002-2003) and Rodney Gallagher (1986 to 2002). (N.T. 10, 12-14)
11. Chief Kuzma testified that Chief Protasiewicz did not appear on the patrol schedule when he was chief. (N.T. 19-20, FOP Exhibit 3)

DISCUSSION

The FOP's charge of unfair labor practices alleges that the Township violated the PLRA and Act 111 by unilaterally transferring diverting the work of the police bargaining unit by assigning the chief of police to do patrol work.

An employer commits unfair labor practices in violation of sections 6(1)(a) and (e) if it unilaterally transfers bargaining unit work to non-members of the bargaining unit. **City of Allentown v. PLRB**, 851 A.2d 988 (Pa. Cmwlth. 2004). Bargaining unit work is work performed by members of the bargaining unit on an exclusive basis over time. **Id.**

The facts show that in 2010 the Township furloughed three full-time police officers due to financial difficulties. This reduced the department to seven full-time officers and a chief. Beginning in September, 2011, after the Township appointed Matt Kuzma as chief, the Township began placing Kuzma on the schedule for patrol duties. This was the first time the Township had committed the chief to the patrol schedule. This was done without approaching or bargaining with the FOP. This decision violated the Township's duty to bargain with the FOP over the transfer of bargaining unit work.

In a case with less systematic transfer of bargaining unit work than the present case, the Board found the employer violated its bargaining obligation. In **Fraternal Order of Police Lodge #28 v. City of Jeannette**, 36 PPER ¶ 68 (Final Order, 2005), the Board found that an employer unlawfully transferred bargaining unit work of patrolling when it assigned the non-unit chief of police to shifts of the bargaining unit when needed.

The Township's defense is that the FOP has failed to prove that patrol work has always been exclusively the work of the police unit. The Township offered evidence that prior chiefs have patrolled the township and responded to calls as necessary. However, the difference between that work and the work at issue is that those calls and responses were occasionally done as needed and not scheduled as is the case now with Chief Kuzma. An employer may not defend a charge of diversion of bargaining unit work by pointing to past occasional patrol and response work done by prior chiefs. **City of Jeannette, supra.**

After reviewing all of the evidence of record and considering the law governing this issue, the FOP has carried its burden of proving the Township committed an unfair labor practice.

The customary remedy for unfair labor practices involving a unilateral transfer of bargaining unit work to non-members of the bargaining unit includes an order to rescind the transfer of the bargaining unit work to the non-members of the bargaining unit. **Pennsylvania State Police v. PLRB**, 912 A.2d 909 (Pa. Cmwlth. 2006), **petition for allowance of appeal denied**, 593 Pa. 730, 928 A.2d 1292 (2006). The Township will be ordered to cease and desist from assigning the Chief of Police to the patrol schedule.

CONCLUSIONS

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

1. Kidder Township is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.
2. The Fraternal Order of Police, Schuylkill-Carbon Lodge 13/Kidder Township Police Department is a labor organization under section 3(f) of the PLRA as read in pari materia with Act 111.
3. The Board has jurisdiction over the parties.
4. Kidder Township has committed unfair labor practice under section 6(1)(a) and (e) of the PLRA as read in pari materia with Act 111.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA as read in pari materia with Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the Township shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed in the PLRA and Act 111.
2. Cease and desist from refusing to bargain in good faith with a labor organization which is the exclusive representative of the employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Cease and desist from scheduling the chief of police to the patrol and response work of full-time police officers until the Township has bargained the issue to impasse with the FOP.
4. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of the PLRA and Act 111:
 - (a) Offer to bargain with the FOP over the scheduling of the chief of police to do patrol and response work of full-time police officers;
 - (b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and
 - (c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance.

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 ninth day of October, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner