

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 5 :
 :
 v. :
 : Case No. PF-C-11-87-E
 :
 CITY OF PHILADELPHIA :

PROPOSED DECISION AND ORDER

On June 6, 2011, the Fraternal Order of Police Lodge No. 5 (FOP) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the City of Philadelphia (City) violated sections 6(1)(a) and (e) of the Pennsylvania Labor Relations Act, as read in pari materia with the Policemen and Firemen Collective Bargaining Act (Act 111) by unilaterally transferring bargaining unit work of the deputy sheriffs to persons outside the bargaining unit.

On July 5, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 25, 2011 in Philadelphia. The hearing was continued to January 20, 2012, at the request of the FOP without objection from the City. The hearing was again continued to May 22, 2012, at the request of the City and without objection from the FOP. The location of the hearing was changed to Harrisburg.

The hearing was held on the rescheduled date, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing, makes the following:

FINDINGS OF FACT

1. The City of Philadelphia is an employer within the meaning of section 3(c) of the PLRA as read in pari materia with Act 111.
2. The FOP Lodge 5 is a labor employe organization within the meaning of Section 3(f) of the PLRA as read in pari materia with Act 111.
3. The FOP is the exclusive bargaining representative for deputy sheriffs of the City of Philadelphia employed by the Sheriff's Department. (N.T. 31-33)
4. For many years the deputy sheriffs had the exclusive responsibility for transporting prisoners from holding cells around the city to the Philadelphia Traffic Court, at 8th and Spring Garden Streets, Philadelphia. The holding cells are located at the prison on State Road, the several police districts around the city and the City Police Department Roundhouse, at 7th and Race Streets. (N.T. 9-10, 12, 33, 36-37)
5. In these years, the deputy sheriffs would transfer an average of 25 prisoners a day to the Traffic Court. (N.T. 10)
6. At some point in early 2011, Deputy Sheriff William O'Leary discovered that civilian employes of the First Judicial District, from the Warrants Unit, were transporting prisoners to the holding cell at the Philadelphia traffic court. Mr. Leary informed FOP Vice President John McGrody of his observations and the present charge was filed. (N.T. 11, 30-31, FOP Exhibit 1)

DISCUSSION

The FOP's charge of unfair labor practices alleges that the City of Philadelphia violated the PLRA as read in pari material with Act 111 by unilaterally transferring the deputy sheriffs' bargaining unit work of transporting prisoners from holding cells in different city locations to the Philadelphia Traffic Court. In early 2011, the City began using civilian court employes to do the transportation work that had been done by the deputy sheriffs.

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 clearly show that the work of transporting prisoners from prisons or police facilities throughout the city to the cell room at traffic court has historically been the exclusive work of the deputy sheriffs. Deputy Sheriff William O'Leary and FOP Lodge 5 Vice President John McGrody testified clearly to this fact. The witnesses also testified that in 2011, the FOP discovered that civilian employes from the First Judicial District were doing the work of transporting prisoners to Traffic Court. There was no evidence that the City approached the FOP to bargain this decision to transfer this work outside the bargaining unit.

After reviewing all of the evidence of record and considering the law governing this issue, it must be concluded that the FOP has carried its burden of proving the City committed unfair labor practices in violation of sections 6(1)(a) and (e) of the PLRA as read in pari material with Act 111 when it decided to have civilian court employes transport prisoners to Traffic Court.

The customary remedy for a unilateral transfer of bargaining unit work violation 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 City will be ordered to cease and desist from assigning civilians to do the work of transporting prisoners from throughout the city to the Philadelphia Traffic Court.

CONCLUSIONS

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

1. The City of Philadelphia is an employer under section 3(c) of the PLRA as read in pari materia with Act 111.
2. The Fraternal Order of Police Lodge 5 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. The City of Philadelphia has committed unfair labor practices 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 City shall:

1. Cease and desist from interfering with, restraining or coercing employes 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 employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Cease and desist from using non-bargaining persons to transport prisoners from holding cells throughout the City of Philadelphia to the cell room at the Philadelphia Traffic Court.
4. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of the PLRA and Act 111:
 - (a) 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 employes and have the same remain so posted for a period of ten (10) consecutive days; and
 - (b) 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 twenty-third day of October, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner