

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

**PROPOSED DECISION AND ORDER**

On September 30, 2011, the Pennsylvania State Rangers Association (Union), filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) alleging that the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources (Commonwealth or DCNR) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111. The Union specifically alleged that the Commonwealth invited the Federal Emergency Management Agency (FEMA) to establish a property claims operation in Loyalsock State Forest and invited FEMA to hire a private firm to provide security services, where such services were exclusively provided by bargaining unit rangers, without bargaining with the Union. The Union also alleged that the Commonwealth refused to bargain the severable impact of private security on bargaining unit members.<sup>1</sup>

On October 18, 2011, the Secretary of the Board issued a complaint and notice of hearing for April 20, 2012, in Harrisburg. After two continuances, the hearing was held on August 30, 2012. During the hearing on that date, both parties were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties filed post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. The Commonwealth is an Act 111 public employer. (N.T. 4).
2. The Union is a labor organization under the PLRA, as read with Act 111. (N.T. 4).
3. Paul Ashford is a Ranger Operations Specialist and currently serves as the Union President. DCNR Rangers' duties include: public contact, visitor services, first responder services, searches, law enforcement and other police work. (N.T. 5-7, 43).
4. Forestry District No. 20 is the Loyalsock State Forest and is in the Eastern part of the Commonwealth. It includes Bradford, Sullivan and Eastern Lycoming Counties. (N.T. 7, 32-33, 41).
5. There are two salaried rangers (Robert Barbour and Brian Valencik) and one seasonal ranger, Amy Sterner, stationed in Forestry District No. 20. (N.T. 8, 41-42).
6. Within Forestry District No. 20, Rangers Barbour and Valencik report to the Hillsgrove Ranger Station. Seasonal Ranger Sterner reports to the new facility called the Forest Resource Management Center (RMC). Hillsgrove is centrally

<sup>1</sup> The Union withdrew its severable impact claim at the hearing. (N.T. 57-58).

located within District 20. The RMC is located in Sullivan County. (N.T. 8, 25, 27, 43; Complainant Exhibit 1).

7. District Forester Richard Glinski is the manager in charge of District 20. (N.T. 10, 32-33).
8. On September 13, 2011, District Forester Glinski issued an e-mail advising that the RMC would be used by FEMA as a flood recovery center for a few weeks. (N.T. 8-10; Complainant Exhibit 1).<sup>2</sup>
9. The e-mail also 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." (Complainant Exhibit 1).
10. Danette Bixler-George is the Division Chief for Employee Relations Services at DCNR. (N.T. 16).
11. On September 14, 2011, Ranger Ashford e-mailed Danette Bixler-George and stated that "the [Union] considers security duties on DCNR property to be bargaining unit work." (Complainant Exhibit 1).
12. 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.

(Complainant Exhibit 1).

13. The Union did not agree to permit security at the RMC to be provided by non-unit employees. (N.T. 13).
14. FEMA is not normally present on state forest land. FEMA was at Loyalsock Forest to establish an operations center to process claims for people who live outside the forest and suffered flood damage from tropical storm Lee. FEMA remained at the RMC for approximately four-to-five weeks. The people placing claims for damaged property were not visiting the forest or seeking information about the forest. (N.T. 18-19, 36).
15. Most of the time, Rangers and Pennsylvania State Police provide uniformed, armed security for people within the forest district, except on leased properties where gas drilling companies provide their own security. There are no municipal police departments in Sullivan County. (N.T. 19, 22-23, 29, 33-34).
16. FEMA contracted with its own private security company called Knight Security. Knight Security personnel secured FEMA's equipment within the RMC conference room, not state property. They were armed and in uniform. FEMA and Knight Security came as a package to protect FEMA equipment. (N.T. 20-21, 32, 34-35).

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<sup>2</sup> The e-mail chain refers to "PEMA" but the testimony in the record indicates that both PEMA and FEMA were involved in the flood recovery efforts underway at the RMC and that some references to PEMA should have been references to FEMA. (N.T. 14-15). I will refer herein only to FEMA to provide consistency and eliminate confusion.

17. There was no lease agreement with FEMA. (N.T. 24).
18. The RMC has locks on its doors. The rangers have keys to those locks. The FEMA operations director was issued a key to the conference room only. (N.T. 25-26).
19. The downstairs of the RMC is a complete ranger station. It has cubicles for Rangers, evidence rooms, locker rooms and other amenities. (N.T. 28).
20. FEMA did not ask DCNR to provide security for its operations at the RMC; there was no agreement between FEMA and DCNR regarding security at the RMC. (N.T. 30-31, 39).
21. 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. 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. (N.T. 31, 40).

### DISCUSSION

The Union argues that the essential function of the work at issue in this case is the armed, uniformed presence at a DCNR facility to deter visitors from being disruptive. (Union's Post-hearing Brief at 6). "Knight Security was charged with that duty as well for the FEMA operation in the DCNR building." (Union Post-hearing Brief at 6).

During the hearing, the Commonwealth moved to dismiss the Union's charge of unfair labor practices, for lack of proof, at the close of the Union's case-in-chief. (N.T. 54-58). The Union defended the motion by arguing that motions to dismiss were not appropriate in bargaining cases because the Board may infer a violation from all the facts of record. I deferred my ruling at that time, and the Commonwealth has preserved the motion in its post-hearing brief. Also, the Commonwealth did not present any witnesses at the hearing. (N.T. 58; Commonwealth's Post-hearing Brief at 3).

As the Commonwealth argued in its brief, a complainant has the burden to establish a **prima facie** case that an employer unilaterally transferred bargaining unit work. **FOP, Lodge No. 85 v. Commonwealth of Pennsylvania**, 21 PPER ¶ 21115 (Proposed Decision and Order, 1990), **aff'd**, 22 PPER 22013 (Final Order, 1990). **See also, PSSU, Local 668 v. Commonwealth of Pennsylvania, Department of Public Welfare**, 33 PPER ¶ 33055 (Final Order, 2002)(opining that a complainant has the burden of proving a **prima facie** case in a refusal to bargain claim); **FOP, Lodge No. 85 v. Commonwealth of Pennsylvania (State Museum)**, 45 PPER 58 (Proposed Decision and Order, 2011)(granting the Commonwealth's motion to dismiss the charge of unfair labor practices for lack of proof that the non-unit security personnel performed at the direction of the Commonwealth). Therefore, the Union had the burden to establish a **prima facie** case of a unilateral transfer of bargaining unit work during its case-in-chief and entertaining the motion to dismiss is appropriate.

Turning to the merits of the motion to dismiss, the Commonwealth argues that the motion should be granted because the Union did not prove that there was any relationship between Knight Security and the Commonwealth, as required by law. The Union, contends the Commonwealth, did not establish either that a **quid pro quo** existed between FEMA security and the Commonwealth or that the Commonwealth directed FEMA security in any manner. (Commonwealth's Brief at 3-5). I agree.

In its post-hearing brief, the Commonwealth discussed several analogous, dispositive cases that require discussion here. In **Pennsylvania State Park Officers' Association v. Commonwealth of Pennsylvania (Pennsylvania Historical and Museum Commission)**, 28 PPER ¶ 28227 (Final Order, 1997), the union representing park rangers at Washington Crossing Historic Park alleged, **inter alia**, that the Commonwealth removed bargaining unit work of responding to 911 emergency calls, originating within the Park,

to municipal police officers. In reversing the hearing examiner, the Board concluded that the union did not prove that the response to 911 calls was exclusively performed by the bargaining unit. The **Historical and Museum Commission** Board further concluded as follows:

[e]ven if the Association had proven on the record that response to 911 emergency calls was bargaining unit work, we would be compelled to find no unfair practice due to the Commonwealth's additional argument that there is no evidence that it has entered a **quid pro quo** with an alternate provider and/or directs non-unit employees in the performance of the work at issue.

**Historical and Museum Commission**, 28 PPER at 495.

In **Fraternal Order of Police, Capitol Police Lodge No. 85 v. Commonwealth of Pennsylvania (A T & T)**, 29 PPER ¶ 29011 (Proposed Decision and Order, 1997), the union representing Capitol Police Officers alleged, *inter alia*, that the Commonwealth transferred the bargaining unit work of providing security on the grounds of the Harrisburg State Hospital during a disaster recovery exercise conducted by A T & T, where bargaining unit police officers historically provided that service. In the **A T & T** case, Hearing Examiner Wallace quoted the rule from **Historical and Museum Commission** that the Board will not find an unlawful transfer of bargaining unit work where there is no evidence that the employer entered into an agreement with an alternate provider or that the employer directed or controlled the non-unit employees in the performance of their duties. **A T & T**, 29 PPER at 25.

In **A T & T**, Examiner Wallace concluded as follows:

The record shows that security guards worked during the disaster recovery exercise conducted by A T & T on Commonwealth property, but it does not show that the Commonwealth entered into an agreement for them to do so or directed them in any fashion. To the contrary, the record shows that when A T & T asked the Commonwealth for capitol police officers to provide security, the Commonwealth denied A T & T's request and had no further discussions with A T & T regarding security. Thus, there is no basis for finding that the Commonwealth was under an obligation to bargain with the FOP over the performance of the work done by the security guards, **even if the FOP is correct in its assertion that members of the bargaining unit had performed that work on an exclusive basis in the past.**

**Commonwealth, (AT& T)**, 29 PPER at 25 9 (emphasis added). **A T & T** is on all fours with the matter **sub judice**.

In the **State Museum case, supra**, the union representing Capitol Police Officers alleged that the Commonwealth unlawfully removed the bargaining unit work of providing museum security where the Mechanicsburg School District rented the State Museum for a prom and the Mechanicsburg School Police and the Museum Security provided security at the prom. Hearing Examiner Wallace again relied on the **Historical and Museum Commission** case and concluded that the record established only that Museum Security Guards were in attendance; it did not establish the duties performed by the Museum Security Guards during the prom. Moreover, Examiner Wallace concluded that the union's case-in-chief did not establish that the Commonwealth directed the work performed by the Mechanicsburg School Police.

The record in this case demonstrates that, contrary to the allegations in the charge, the Commonwealth did not "invite" Knight Security to provide security at the RMC. Indeed, the record is clear that FEMA independently contracted with Knight Security and that FEMA and Knight Security came as a "package." (F.F. 16). Consequently, there is no agreement or **quid pro quo** between the Commonwealth and either FEMA or Knight Security to provide security at the RMC. The record is also clear that the Commonwealth did not control or direct either FEMA or Knight Security personnel, with the exception of

directing FEMA to contact Rangers or State Police for emergencies, which is not the type of security work alleged to have been transferred in this case. Accordingly, pursuant to **Historical and Museum Commission, supra; AT & T, supra;** and **State Museum, supra,** the Commonwealth's motion is granted and the charge dismissed.

#### CONCLUSIONS

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

1. The Commonwealth is an Act 111 public employer.
2. The Union is a labor organization within the meaning of the PLRA, as read in **pari materia** with Act 111.
3. The Board has jurisdiction over the parties hereto.
4. The Commonwealth has **not** committed unfair labor practices within the meaning of Section 6(1) (a) or (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 and Act 111, the hearing examiner

#### HEREBY ORDERS AND DIRECTS

That the charge is dismissed and the complaint is rescinded and that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twentieth day of February, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO  
Hearing Examiner