

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY
POLICE ASSOCIATION

v.

ALLEGHENY COUNTY

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Case No. PF-C-14-42-W

PROPOSED DECISION AND ORDER

On May 1, 2014, the Allegheny County Police Association (Association or Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair labor practices, under the Pennsylvania Labor Relations Act (PLRA), as read in **pari materia** with Act 111, and therein alleged that Allegheny County (County) violated Section 6(1)(a) and (e) of the PLRA by unilaterally transferring exclusively performed bargaining unit work to non-unit employees when the Superintendent of the County Police entered into an agreement with the City of Pittsburgh to provide bomb squad services to municipalities outside of Allegheny County, every other month.

On May 22, 2014, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 22, 2014, in Pittsburgh, Pennsylvania. I continued the hearing to October 29, 2014. During the hearing on that date, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and to cross-examine witnesses. On January 27, 2015, the Union filed its post-hearing brief. The Board has not received a post-hearing brief from the County.

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

FINDINGS OF FACT

1. The County is a public employer and political subdivision pursuant to Act 111 and the PLRA. (N.T. 7)
2. The Association is a labor organization pursuant to Act 111 and the PLRA. (N.T. 7)
3. The County Police Department maintains a Bomb Squad known as the Explosive Ordnance Disposal Unit (EOD), which was established in 1973. There are currently eight team members in the Unit. (N.T. 11-13, 17)
4. The EOD unit responds to calls regarding threats from explosive devices, ordnance and other materials. The County EOD Unit also supports other government agencies investigating explosives and explosive materials. (N.T. 13)
5. County police officer participation in the EOD Unit is voluntary; it is collateral to patrol duty, and it is not full time. EOD Unit personnel receive five weeks of specialized FBI-operated training in Huntsville, Alabama at the Hazardous Devices School. EOD Unit personnel also receive recertification training every three years at the same facility in Huntsville. (N.T. 14-15)
6. The City of Pittsburgh Police Department maintains its own Bomb Squad, also known as an EOD Unit. (N.T. 17; Association Exhibit 14)
7. Calls regarding perceived threats from explosives within the geographical limits of the City of Pittsburgh are now and always were handled by the City of Pittsburgh Police Department EOD Unit. Calls from outside the City of Pittsburgh but within the geographical limits of Allegheny County are now and always were handled by the County EOD Unit. That division of work has remained unchanged. The

County 9-1-1 Communication Center historically dispatched the emergency calls from municipalities outside the City of Pittsburgh to the County EOD Unit. (N.T. 17-18, 22, 63)

8. Prior to March 31, 2014, the County EOD Unit was dispatched and responded to calls outside of the County within Region Thirteen. Region Thirteen is a FEMA designation for the thirteen counties in Southwestern Pennsylvania. The emergency management of Region Thirteen is governed by a Board of Directors known as The Southwestern Pennsylvania Emergency Response Group (SPERG). The SPERG is funded with federal money distributed through the Commonwealth. The SPERG funding provides the County and the City of Pittsburgh EOD Units with equipment and training. (N.T. 18-20, 22, 48, 53-57, 63, 65, 68)

9. Between 2003 and 2013, the City's EOD Unit did not respond to any out-of-County calls. The County EOD Unit responded to all out-of-County, County-non-airport and non-City calls. (N.T. 25-27; Association Exhibit 1)

10. When County EOD Unit police officers respond to out-of-County calls, they wear County police patches and County identification. They are governed by the County's standards, protocols and procedures. (N.T. 64-65)

11. On or about March 1, 2014, the Superintendent of the County Police Department, Charles Moffat, entered an agreement with the City of Pittsburgh changing the manner in which emergency calls for explosive materials and devices would be dispatched. For emergency calls outside of the County, effective April 1, 2014, both the City's and the County's EOD Units would respond on an alternating month basis, rather than only the County EOD Unit, as previously. As of the date of the hearing, the out-of-County calls were in fact being diverted to the City's EOD Unit during alternating months, including October 2014. (N.T. 18, 28-29, 30-31, 66; Association Exhibits 14 & 15)

12. The March, 2014 Memorandum of Understanding provides, in relevant part, as follows:

NOW, THEREFORE, the parties do hereby agree as follows:

1. The parties will alternate on a monthly basis in responding to E.O.D. calls received from other counties outside the territorial limits of Allegheny County who are part of the PA Region 13 Task Force. Starting in March 2014, the County Police will respond to all E.O.D. calls received from other counties outside the territorial limits of Allegheny County who are part of the PA Region 13 Task Force for the entire month. In April 2014, the City Police will respond to all E.O.D. calls received from other counties outside the territorial limits of Allegheny County who are part of the PA Region Task Force for the entire month. The process of alternating responses between the County and City Police E.O.D. teams on a monthly basis will continue thereafter until such time that the parties agree to change this arrangement.

2. The City Police will continue to answer all E.O.D. calls within the City limits and that the County Police will continue to answer E.O.D. calls outside the City of Pittsburgh and within the other municipalities in the County.

3. All E.O.D. calls will be dispatched to the appropriate police department thru 911. The parties agree to provide 911 with a schedule identifying the police department who will [be] responding to E.O.D. calls received from other counties outside the territorial limits of Allegheny County who are part of the PA Region 13 Task Force during a particular month.

. . . .

(Association Exhibit 15)

13. No one from the SPERG Board of Directors signed the Memorandum of Understanding. (N.T. 68-70)

14. Also on March 31, 2014, Superintendent Moffat issued a memo to Alvin Henderson, the emergency management coordinator for Region Thirteen. (N.T. 71-72)

15. Superintendent Moffat's March 31, 2014 memo to Mr. Henderson provided, in relevant part, as follows:

As of April, 2014 the City of Pittsburgh Police E.O.D. personnel will, in addition to Allegheny County Police Department E.O.D. personnel respond to requests outside of Allegheny County.

The City of Pittsburgh Police Department will respond to calls outside of Allegheny during the month of April 2014 and Allegheny County Police Department will respond in May 2014. And the teams will continue to respond on alternating months. (See attached schedule)

Any calls within Pittsburgh City limits will continue to be handled by the City of Pittsburgh's Police Department and Allegheny County Police Department will continue to respond to all other calls within Allegheny County, outside the City of Pittsburgh. The officers will continue to assist each other agency [sic] and respond when necessary.

. . . .

(Association Exhibit 14)

16. The County did not bargain with the Union or reach an agreement with the Union at any time before agreeing with the City of Pittsburgh that the City's EOD Unit would respond to out-of-County calls every other month. The change has affected County EOD Unit call volume and overtime for the EOD Unit members. (N.T. 32-33, 45-46, 71)

DISCUSSION

The Union contends that the County violated its bargaining obligation when it unilaterally transferred EOD services to municipalities outside the County within Region Thirteen, which was historically and exclusively performed by the County Police Department, to the City of Pittsburgh EOD unit on an alternating month basis.

As the Board stated in **Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman Sch. Dist.**, 37 PPER 56 (Final Order, 2006):

The Commonwealth Court has held that "a public employer commits an unfair practice when it transfers **any** bargaining unit work to non-members without first bargaining with the unit." **City of Harrisburg v. PLRB**, 605 A.2d 440 (Pa. Cmwlth. 1992) (emphasis original). In establishing an unfair practice for the removal of bargaining unit work, a union has the burden of proving that the employer unilaterally transferred or assigned work exclusively performed by the bargaining unit to a non-unit employee(s). **City of Allentown v. PLRB**, 851 A.2d 988 (Pa. Cmwlth. 2004). Even where bargaining unit and non-unit employees have both performed similar duties, a union can satisfy the exclusivity requirement by proving that the bargaining unit members exclusively performed an identifiable proportion or quantum of the shared duties such that the bargaining unit members have developed an expectation and interest in retaining that amount of work. **AFSCME, Council 13 v. PLRB**, 616 A.2d 135 (Pa. Cmwlth. 1992); **City of Jeanette v. PLRB**, 890 A.2d 1154, 1159 (Pa. Cmwlth. 2006). Therefore, a public employer commits an unfair practice by altering the manner in which work has been traditionally assigned or by varying "the extent to which members and non-members of the bargaining unit have performed the same work." **Wyoming Valley West Educ. Support Personnel Ass'n v. Wyoming Valley West Sch. Dist.**, 32 PPER ¶ 32008, 28-29 (Final Order, 2000) (citing **AFSCME**, *supra*).

The Union has met its burden of establishing on this record that the County EOD Unit had exclusively and historically performed all of the EOD services outside of the County within Region Thirteen prior to March 31, 2014. When the County agreed with the City to divert that work to the City EOD Unit every other month, without bargaining to an agreement with the Association, the County unlawfully transferred bargaining unit work in violation of the PLRA as read with Act 111.

The County does not dispute that the out-of-County EOD work in question was exclusively performed by the County Police EOD Unit, yet the County maintains that it was not bargaining unit work. (N.T. 48). The County maintains that the SPERG determines which entities receive equipment, money and training from federal funds, and it decides which entity responds to calls, not the County. (N.T. 48-49). The County further posits that the SPERG, and not the County, has jurisdiction beyond the geographical limits of the County. The County maintains that it lacks jurisdictional control over municipalities beyond the County and therefore lacks control over who can respond to those calls. (N.T. 48-49). The County argues that the Emergency Services Management Act (ESMA) establishes a system of intergovernmental cooperation and coordination that transcends political boundaries for the protection of lives and property. (N.T. 49-50). The County asserts that the ESMA promotes the mutual assistance of political subdivisions in responding to emergencies. (N.T. 50). Accordingly, claims the County, the emergency work of containing and disarming explosive devices and materials is, by law, the cooperative work of employees employed by multiple public employers for the greater good and not the work of one bargaining unit. (N.T. 50).

However, the record does not support the County's position. The SPERG has no authority over the direction and control of the employees of any political subdivision within Region Thirteen. Only a political subdivision, as a public employer, can direct its employees to respond to emergencies. The record shows that the County historically and exclusively utilized its EOD unit to respond to calls from municipalities outside the County. Although those requests originated outside the County in other jurisdictions, the County police officers responded under the direction and auspices of the County. The County's argument, that the ESMA establishes that Region Thirteen has direction and control over the EOD work rather than any particular municipality, is indeed contradicted by the record. Public entities in Region Thirteen seek the cooperation of other public entities employing personnel with emergency expertise to provide specific emergency services across political boundaries. Political boundaries and jurisdictions have no effect on the determination of bargaining unit work where, pursuant to the ESMA, the work in question was historically and exclusively performed by the same employees in the same bargaining unit of one employer in foreign jurisdictions and not a mixture of employees from two or more public employers. In other words, it was the bargaining unit work of the County EOD Unit only to provide specialized explosive containment services for the other public employers within Region Thirteen outside of the County, and it was the employer of those bargaining unit employees that removed the work.

Bargaining unit work is work performed by the bargaining unit employees. **City of Allentown, supra**. The County EOD Unit's out-of-County responses to EOD requests constituted bargaining unit work that was performed at the direction of the County, which is a political subdivision cooperating with other political subdivisions under the ESMA. The County police officers in the EOD Unit wear County patches and identification when they respond to an out-of-County EOD call. Moreover, the County entered into an agreement with the City to change the division of EOD work which demonstrates that the work was diverted at the direction and with the approval of the County, not at the direction of another political subdivision or the SPERG. Although the SPERG Board may have requested or wanted the County to share the out-of-County EOD Unit work with the City of Pittsburgh Police Department, it lacked the authority to directly remove any of that work from the County EOD Unit or to direct the County Police to relinquish the work. The SPERG also lacked the authority to direct the City of Pittsburgh to assume any of those responsibilities.

Accordingly, the County has engaged in unfair labor practices in violation of Section 6(1)(a) and (e), as charged, by unilaterally assigning the bargaining unit work of responding to out-of-County EOD calls to the City of Pittsburgh EOD Unit every other month, in March, 2014, where previously the County Police EOD Unit responded to those calls all the time, which affected the EOD Unit members' work and overtime.

CONCLUSIONS

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

1. The County is a public employer and a political subdivision within the meaning of Act 111 as read in pari materia with the PLRA.
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 County has committed unfair labor practices within the meaning of 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 and Act 111, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the County shall

1. Cease and desist from interfering, 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 collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Take the following affirmative action, which the hearing examiner finds necessary to effectuate the policies of Act 111 as read in pari materia with the PLRA:
 - (a) Immediately return to the bargaining unit of County police officers the duties of responding to out-of-County calls to contain and dispose of explosive devices and materials at all times throughout the year;
 - (b) Immediately rescind the Memorandum of Understanding between the County of Allegheny and the City of Pittsburgh assigning the out-of-County EOD work every other month to City of Pittsburgh police officers;
 - (c) Immediately make the bargaining unit officers whole for any lost wages and overtime pay as a result of not responding to out-of-County EOD calls every other month;
 - (d) 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
 - (e) 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 thirty-first day of August, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLEGHENY COUNTY
POLICE ASSOCIATION

v.

ALLEGHENY COUNTY

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Case No. PF-C-14-42-E

AFFIDAVIT OF COMPLAINE

The County of Allegheny hereby certifies that it has ceased and desisted from its violations of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act as read in pari materia with Act 111; that it has returned to the bargaining unit of County police officers the duties of responding to out-of-County calls to contain and dispose of explosive devices and materials at all times throughout the year; that it has rescinded the Memorandum of Understanding between the County of Allegheny and the City of Pittsburgh assigning the out-of-County EOD work every other month to City of Pittsburgh police officers; that it has made the bargaining unit officers whole for any lost wages and overtime pay as a result of not responding to out-of-County EOD calls every other month; that it has posted a copy of the proposed decision and order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public