COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CATASAUQUA POLICE OFFICERS ASSOCIATION	:	
	:	
	:	
v.	:	Case No. PF-C-15-24-E
	:	
CATASAUQUA BOROUGH	:	

PROPOSED DECISION AND ORDER

On April 6, 2015, the Catasauqua Police Officers Association (Association or Union) filed a charge of unfair labor practices with the Pennsylvania Labor Relations Board (Board) against Catasauqua Borough (Borough or Employer), alleging that the Borough violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by unilaterally placing Officer Donald Stratton on administrative duty and requiring him to undergo a psychological screening after he was involved with a shooting on duty.[1]

On April 14, 2015, the Secretary of the Board issued a Complaint and Notice of Hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating November 9, 2015, in Harrisburg, as the time and place of hearing, if necessary. On May 8, 2015, the Borough filed an Answer and New Matter, essentially denying all material allegations contained in the specification of charges.

The hearing was necessary and was held before the undersigned Hearing Examiner of the Board on November 9, 2015, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief in support of its position on December 31, 2015. The Borough filed a post-hearing brief in support of its position on January 4, 2016.

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. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA. (N.T. 3)

2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA. (N.T. 3-4)

3. The Association is the exclusive bargaining agent for a unit of police officers employed with the Borough. (Association Exhibit 3)

4. The Association and Borough are parties to a collective bargaining agreement (CBA), which is effective from January 1, 2014 through December 31, 2016. (N.T. 68; Association Exhibit 3)

5. Donald Stratton has been a patrolman with the Borough for a little over five years. He has been working a regularly scheduled shift from 12:00 am to 8:00 am Monday through Friday for approximately two and a half years. (N.T. 7-8)

6. On February 23, 2015, Stratton was involved in an incident at approximately 3:30 am, in which he and his partner, Scott Rothrock, assisted the Whitehall police department in apprehending a suspect, who had allegedly stabbed his girlfriend. The suspect stabbed Rothrock, and Stratton, along with a state

[1] The charge also alleged that the Borough violated the PLRA and Act 111 by unilaterally implementing a total smoking ban in all Borough vehicles on February 24, 2015 without bargaining with the Association. However, the parties stipulated at the hearing that they had reached an agreement regarding that portion of the charge. As a result, that portion of the charge was withdrawn. (N.T. 6-7)

trooper who was also involved in the incident, both fired at the suspect, who was killed. (N.T. 8-9, 28)

7. After the shooting, Stratton went to the Pennsylvania State Police Bethlehem Barracks for an interview with a trooper and county detective. He voluntarily gave up his service weapon to a trooper and contacted the Association president, Detective Christopher Wittik. Then Stratton was driven to the Borough headquarters where the firearms instructor, Officer Buchman, gave him another service weapon and ammunition. At that point, Stratton declined an opportunity to speak with an officer from an emotional support group and eventually spoke to his attorney. (N.T. 9-12)

8. About an hour later, Stratton ended up speaking with a Lieutenant Tyler, who was another trooper involved with the emotional support group for officers involved in critical incidents. Following that, Borough Police Chief Douglas Kish ordered Stratton to report to work the next morning for day shift at 8:00 am. Stratton was not to be in full uniform and instead wore tactical pants with a polo top, and carried his new service weapon. (N.T. 12-14)

9. On February 24, 2015, Stratton worked a shift from 8:00 am to 4:00 pm, but did not perform his regular patrol duties. Instead, he performed filing duties, moving boxes, and taking phone calls. (N.T. 14-15)

10. Stratton worked on an administrative duty basis, which consisted of day shift Monday through Friday, for approximately two weeks following the incident. During that period, Kish told him to undergo a psychological examination with a doctor, who released him to return to his regular duties. (N.T. 15-16)

11. During that period, Stratton was also interviewed by the State Police and County, during which he was given his Miranda rights. Ultimately, the District Attorney's office determined that Stratton's actions on February 23, 2015 were lawful, and he was not charged with a crime. (N.T. 16-18)

12. Stratton eventually returned to his regular patrol duties on his 12:00 am to 8:00 am shift Monday through Friday in full uniform after being on administrative duty for two weeks. (N.T. 18-19)

13. On March 2, 2015, the Association served the Borough Mayor and Council President with a request to bargain over the inclusion of an administrative leave/duty policy following a critical incident, to which the Borough never responded. (N.T. 19-20, 49-50; Association Exhibit 1)

DISCUSSION

The Association has charged the Borough with violating Section 6(1)(a) and (e) of the PLRA[2] and Act 111 by unilaterally placing Officer Donald Stratton on administrative duty and requiring him to undergo a psychological screening after he was involved with a shooting on duty. The Borough contends that it was acting within its managerial prerogative and had a contractual privilege in doing the same.

Section 1 of Act 111 provides in pertinent part:

> Policemen or fireman employed by a political subdivision of the Commonwealth or by the Commonwealth shall, through labor organizations or other representatives designated by fifty percent or more of such policemen or firemen, have the right to bargain collectively with their public employers concerning the terms and conditions of their employment, including compensation, hours, ***working conditions***, retirement, pensions, and other

[2] Section 6(1) of the PLRA provides that "[i]t shall be an unfair labor practice for an employer: (a) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act...(e) To refuse to bargain collectively with the representatives of his employes, subject to the provisions of section seven (a) of this act. 43 P.S. § 211.6.

> benefits, and shall have the right to an adjustment or settlement of their grievances or disputes in accordance with the terms of this act.

43 P.S. § 217.1 (emphasis added).

As Hearing Examiner Thomas Leonard observed, the Pennsylvania Supreme Court has applied a balancing test when deciding whether a managerial decision is a mandatory subject of bargaining for municipalities in collective bargaining relationships with their police and fire employes under Act 111. **Middletown Borough Police Officers Ass'n v. Middletown Borough**, 46 PPER 78 (Proposed Decision and Order, 2015). Once it is determined that the decision is rationally related to the terms and conditions of employment, or germane to the work environment, the inquiry is whether collective bargaining over the topic would unduly infringe upon the public employer's essential managerial responsibilities. If so, it will be considered a managerial prerogative and non-bargainable. If not, the topic is subject to mandatory collective bargaining. *Id.* (citing **Borough of Ellwood City v. PLRB**, 998 A.2d 589, 600 (Pa. 2010); **City of Philadelphia v. International Ass'n of Firefighters, Local 22**, 999 A.2d 555, 570-571 (Pa. 2010).

In this case, the record shows that the decision is rationally related to the terms and conditions of employment, as well as germane to the work environment. Indeed, the Borough placed Stratton on administrative duty during the daylight shift and had him undergo a psychological examination after the shooting incident on February 23, 2015. It cannot be seriously contended that changing an employe's shift following an incident during which he discharged his service weapon during the course of his duties and having him perform administrative duties instead of his regular patrol duties is not rationally related to his terms and conditions of employment or germane to the work environment. To be sure, the Borough changed both Stratton's regular shift and work duties. As a result, the question here is whether collective bargaining over the topic would unduly infringe upon the Borough's essential managerial responsibilities. I find that it would.

The Borough has presented a compelling justification for why it placed Stratton on administrative duty for two weeks following the February 23, 2015 shooting incident. The Borough asserts that it was necessary to change Stratton's shift temporarily for a two-week period in order to allow the State Police and the County to conduct an investigation of the shooting. (*See* Borough brief at p. 7). The record shows that the Borough changed Stratton's shift to make him more readily available to cooperate with the investigation and to allow him to take advantage of a psychological examination should he choose to do so. (N.T. 80-81). These reasons substantially outweigh any impact on Stratton resulting from the brief temporary change in shift. The Borough has a duty to ensure that its police officers are acting lawfully in the course of their duties, especially where the use of lethal force is at issue. Indeed, the record shows that Stratton did not suffer any wage loss, loss in benefits, and that he was still able to perform police work during his brief temporary change in shift. (N.T. 30-31, 80-81). Stratton was just not able to perform his regular patrol duties for approximately two weeks. As a result, it would unduly infringe upon the Borough's essential managerial responsibilities to require mandatory bargaining over such a change in shift.

In any event, the Board has already held that, where a schedule change affects only part of the bargaining unit and where the employer puts forth a managerial concern justifying the change, the employer has a managerial prerogative to make the scheduling change. **Fraternal Order of Police Wyoming Valley Lodge 36 v. Municipality of Kingston**, 34 PPER ¶ 48 (Proposed Decision and Order, 2003) citing **Reading Fraternal Order of Police Lodge 9 v. City of Reading**, 30 PPER ¶ 30121 (Final Order, 1999).

It is well settled that the Board properly relies on precedent to determine whether a matter constitutes a mandatory subject of bargaining rather than reinventing the wheel by applying the Act 111 balancing test to arrive at the same result as the established precedent. **Pennsylvania State Corrections Officers Ass'n v. Commonwealth of Pennsylvania, Dept. of Corrections, Fayette SCI**, 35 PPER 58 (Proposed Decision and Order, 2004) citing **Teamsters Local 77 & 250 v. PLRB**, 786 A.2d 299 (Pa. Cmwlth. 2001). Although the decision regarding the negotiability of a particular subject is in part fact driven (i.e. balancing the relationship of the issue to Section 1 matters on one hand and core

managerial interests on the other), once the Board has conducted this analysis the result is precedential for future cases on the same or similar facts. **Fayette SCI**, *supra.* Of course, where a party introduces new or different facts that may alter the weight the matter at issue bears on the interests of the parties, additional analysis may be warranted. The burden is on the party requesting departure from established precedent to demonstrate on the record facts warranting such a departure. *Id.* (citing **Wilkes-Barre Police Benevolent Ass'n v. City of Wilkes-Barre**, 33 PPER ¶ 33087 (Final Order, 2002).

In the instant matter, the record shows that the schedule change affected only part of the bargaining unit. In fact, the change only affected one member of the unit, Stratton. Likewise, as previously set forth above, the Borough advanced a managerial concern justifying the change. Further, the Association has not introduced any new or different facts to justify any departure from the Board's established precedent. Accordingly, the charge must be dismissed.

Finally, the Association has also alleged that the Borough violated the PLRA and Act 111 by refusing to bargain the impact of the unilateral change here. The Commonwealth Court has adopted a four-part test for a prima facie cause of action when a public employe alleges a refusal to bargain over the impact of a matter of managerial prerogative. **Lackawanna County Detectives' Ass'n v. PLRB**, 762 A.2d 792 (Pa. Cmwlth. 2000). First, the employer must lawfully exercise its managerial prerogative. Second, there must be a demonstrable impact on wages, hours, or working conditions, matters that are severable from the managerial decision. Third, the union must demand to negotiate these matters following management's implementation of its prerogative. And fourth, the public employer must refuse the union's demand. *Id.* at 794-795.

In this case, the record is devoid of any evidence that the Association demanded to negotiate the impact following the Borough's implementation. Nor does the record show that the Borough refused any such demand from the Association. As such, the record does not support a prima facie case for an impact bargaining claim.

CONCLUSIONS

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

1. The Borough is a public employer and political subdivision under Act 111 as read *in pari materia* with the PLRA.

2. The Association is a labor organization under Act 111 as read *in pari materia* with the PLRA.

3. The Board has jurisdiction over the parties hereto.

4. The Borough has not committed unfair labor practices in violation of Section 6(1)(a) or (e) of the PLRA.

ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the Examiner

HEREBY ORDERS AND DIRECTS

that the charge of unfair labor practices is dismissed and the complaint is rescinded.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this first day of February, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

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John Pozniak, Hearing Examiner