

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BEDFORD COUNTY COURT-RELATED :
EMPLOYEES ASSOCIATION :
 :
 v. : CASE NO. PERA-C-23-167-W
 :
BEDFORD COUNTY :

PROPOSED DECISION AND ORDER

On July 21, 2023, the Bedford County Court-Related Employees Association (Union or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Bedford County (County or Employer) violated Section 1201(a)(1), (3) and (5) of the Public Employee Relations Act (PERA or Act) when the County unilaterally transferred security work from bargaining-unit Deputy Sheriffs to non-bargaining-unit security guards.

On August 30, 2023, 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 10, 2023, in Pittsburgh, as the time and place of hearing.

The hearing was continued by agreement of the parties and held on February 26, 2024, in Bedford, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Union submitted a post-hearing brief on April 12, 2024. The County submitted a post-hearing brief on May 10, 2024.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The County is a public employer within the meaning of the Act. (N.T. 7).
2. The Union is an employee organization within the meaning of the Act. (N.T. 7).
3. The parties were subject to a collective bargaining agreement with the effective dates of January 1, 2020, through December 31, 2022. The parties had no successor agreement. At the time of the hearing, the parties were subject to an Act 195 interest arbitration award issued in October 2023 and which expires on July 31, 2025. (N.T. 55-56; Union Exhibit 1, 2).
4. The Union's certified bargaining unit includes Deputy Sheriffs. (Association Exhibit 1; PERA-R-04-117-w).
5. Most of the County's administrative offices are located in the Bedford County Courthouse (Courthouse). Some County offices, such

as the Magisterial District Court offices and the County Jail are not located in the Courthouse. (N.T. 13-14).

6. Prior to July 2023, Deputy Sheriffs performed all security duties in the Courthouse. Security duties performed by Deputy Sheriffs included reviewing closed-circuit cameras, patrolling the Courthouse, responding to alarms, responding to security incidents, and staffing the entrances to the Courthouse. (N.T. 17-29, 81).

7. Prior to July 2023, the Courthouse had a single point of entry for the public. The single point of entry had been firmly established during the height of the response to Covid in 2020. Wayne Emerick is the Bedford County Sheriff. He has been Sheriff since January, 2020. Prior to July 2023, the Sheriff assigned Deputy Sheriffs to staff the entrance to the Courthouse during the height of the Covid pandemic. He would also assign Deputy Sheriffs to the entrance of the Courthouse from time-to-time as a "show of force" so that people coming into the Courthouse would see a uniformed Deputy. Prior to July 2023, Deputy Sheriffs would from time-to-time use metal detectors or wands to scan members of the public in the Courthouse. (N.T. 11-15, 35-38, 47-48, 71, 102).

8. Since the beginning of the Covid pandemic in 2020, many of the entrances to the Courthouse were closed and the public was limited to entering only on the second-floor entrance near the parking garage. This area was expanded in July 2023 and is referred to as the security vestibule. (N.T. 15-17, 31).

9. Prior to July 2023, the employees of the Sheriff's department were responsible for security in the Courthouse parking garage which included duties such as monitoring the cameras in the parking garage and responding to incidents in the parking garage. (N.T. 19-20, 86-87, 109-110).

10. The Courthouse camera system observes all parts of the Courthouse, including row offices, hallways, stairwells, and courtrooms. (N.T. 18).

11. There are also panic buttons located throughout the Courthouse including the courtrooms and row offices. (N.T. 18).

12. Deb Baughman has been a County Commissioner since 2020. She was a member of the Security Committee and participated in the decision to hire non-union security guards to staff the security vestibule. She testified that early in 2020 the County Commissioners became concerned about the security of the Courthouse campus. She testified that President Judge Livengood came to her and told her he was concerned the County did not have a single-entry point for public access to the Courthouse. (N.T. 97-102).

13. Baughman testified that the Security Committee focused on a security vestibule as a needed upgrade to the Courthouse. The Security Committee wanted the vestibule to have a magnetometer, scanner, and a check-in window for weapons. The check-in window would be a new addition to the Courthouse. (N.T. 103-104).

14. Baughman testified that the Security Committee first considered that the Deputy Sheriffs would handle staffing the security vestibule because: "They were there. They were already doing some duties." (N.T. 104).

15. On or about October 21, 2022, members of the County Security Committee sent Sheriff Emerick a memo with the subject "Plan of Operations for the Security vestibule". Emerick is also a member of the Security Committee. This memo states in relevant part:

As a member of the County Security Committee, you are aware that the Committee has planned with the understanding that the Bedford County Sheriff's Department would be responsible for staffing and operating the security vestibule which is currently under construction. As you are also aware, the security vestibule is currently scheduled to be completed by the end of the year. Based upon your comments at the October 20, 2022 Security Committee meeting, all of the undersigned members of the Security Committee have serious concerns over the current state of plan to prepare, staff and operate the security vestibule. . . .

. . . In sum, you must provide a detailed plan on how the security vestibule will be properly staffed and properly operated at the time construction is completed.

Please be aware that if the County Security Committee finds your plan unsatisfactory, it will be necessary for the Security Committee to find an alternative to plan for the successful operation of the security vestibule.

(N.T. 21; PLRB Exhibit 1).

16. The October 21, 2022, memo to Emerick was signed by Travis Tanglewood (President Judge of the Bedford County Court of Common Pleas), Barry Dallara (County Commissioner), Mary Wilt (District Court Administrator), Deb Baughman (County Commissioner), Joy Lepako (Human Resources), Alan Frederick (County commissioner), Joyce Hillegas (Tax Assessment), Alex Delia (Emergency Management), and Tanner Cottle (Maintenance). (PLRB Exhibit 1).

17. On October 27, 2022, Emerick submitted to the County a plan for Deputy Sheriffs to staff the security vestibule. Emerick's plan would have used three Deputy Sheriffs and one non-union supervisor Deputy Sheriff to staff the security vestibule. (N.T. 22-27, 40-44, 50-51; PLRB Exhibit 2).

18. On November 28, 2022, counsel for the County, Christopher Gabriel, Esq., responded to Emerick's plan by letter. The County's letter states in relevant part:

RE: Courthouse Security

Dear Sheriff Emerick:

This correspondence follows up on the recent correspondence from the Courthouse Security Committee, in which it noted that it would look for other avenues to ensure the physical safety of the Courthouse in conjunction with the new single point of entry currently under construction. On behalf of the Committee and the Commissioners, thank you for your suggestions and participation in the process and we look forward to coordinating security measures in the future. The County has determined to provide security through a different means and will hire employees directly for this purpose.

(N.T. 27; PLRB Exhibit 3).

19. Alex Delia is the Director of Emergency Services for the County. He has been in that position since April 2022. He joined the Security Committee in approximately June 2022. Delia testified that when he started, he became aware that the County had a plan to build a security vestibule at the front entrance of the second floor facing the parking garage. He understood that the plan included a magnetometer, an x-ray machine, and a check-in window for weapons. (N.T. 129-131, 142-143).

20. Delia testified that the Security Committee was not confident in the Sheriff's plan and that the Sheriff could adequately staff the security vestibule. (N.T. 134-136).

21. On October 20, 2022, Delia submitted a plan for Courthouse Security to the Security Committee. The proposal included hiring one new security supervisor and three new security guards. Braugman testified that the Security Committee relied on this submitted plan when deciding to go forward with hiring non-Union employees for the security vestibule. (N.T. 125-126, 136, 148; County Exhibit 2).

22. At the December 13, 2022, Board of Commissioners meeting, the Board of Commissioners voted to approve the creation of three new positions in the Department of Emergency Services: Deputy Director of Emergency Services and Security Guard. (Association Exhibit 7 page 8).

23. Delia was informed by the Board of Commissioners that they were going to use his plan in staffing the security vestibule in late November 2022. When he was notified, he immediately began the process of hiring new employees to staff the security vestibule. Delia filled the position of deputy director in April 2023. This person would be the supervisor of the security guards. Delia filled the position of

security guards in the spring of 2023. He was looking for people who had worked as security at courthouses with a private company or worked as a constable. Delia testified that he was looking for people with "security-esque backgrounds." (N.T. 137-140).

24. The security vestibule was originally planned to open on January 1, 2023. However, there were construction delays which pushed back the opening to July 3, 2023. (N.T. 137).

25. On July 3, 2023, new County employees, the security guards, who were not members of the Union or the Sheriff's department staffed the County's security vestibule. (N.T. 59).

26. The new security guards also patrol through the Courthouse and check on office, staff the security vestibule, handle issues in the parking garage, and respond to alarms. (N.T. 66-67, 141; Association Exhibit 6).

27. Delia testified: "So the approach we take is security is a collective, the entirety of the courthouse, so we don't interfere or prohibit anybody from participating in security." (N.T. 143).

28. At the time of the hearing, Deputy Sheriffs still provided the following services in the Courthouse: monitor closed circuit cameras; respond to panic and door alarms; respond to incidents throughout the Courthouse; provide Courtroom security; and provide a show of force when necessary. (N.T. 17-29, 32-35, 47, 75, 80-81).

29. The County did not bargain with the Union over the issue of manning the security vestibule. (N.T. 60, 122).

30. Braughman testified that the County did not bargain the issue of the Security vestibule work with the Union because "Well, we weren't changing anything that the deputies were already doing. So that didn't enter into our side of the bargaining, because this would have been new duties, a new security vestibule." (N.T. 121).

DISCUSSION

The Union alleges that the County violated Section 1201(a)(1), (3) and (5) when it unilaterally removed exclusive bargaining-unit work by assigning non-Union employees to work the Courthouse security vestibule in July, 2023.¹

It is well settled that the removal of bargaining unit work is a mandatory subject of bargaining and an employer commits an unfair practice when it fails to bargain with the exclusive representative before transferring bargaining-unit work to an employee outside the unit. Hazleton Area Education Support Personnel Ass'n v. Hazleton Area School District, 37 PPER 30 (Proposed Decision and Order, 2006) citing Midland Borough School District v. PLRB, 560 A.2d 303 (Pa. Cmwlth.

¹At the hearing, the Union stated that it would not pursue its charge under Section 1201(a)(3). (N.T. 11). The Section 1201(a)(3) charge is therefore dismissed.

1989); PLRB v. Mars Area School District, 389 A.2d 1073 (Pa. 1978). The removal of any bargaining unit work is a *per se* unfair labor practice. City of Harrisburg v. PLRB, 605 A.2d 440, 442 (Pa. Cmwlth. 1992). There is no threshold amount of bargaining unit work that needs to be diverted; even a *de minimis* amount is actionable under PERA. Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman School District, 37 PPER 56 (Final Order, 2006). Nor does it matter whether the removal of bargaining unit work resulted in the termination or layoff of bargaining unit employees, or whether the unit members lost pay; instead, the analysis is whether the unit lost work. Tredyffrin-Easttown School District, 43 PPER 11 (Final Order, 2011).

The Board has held that where non-unit personnel perform work through the use of new technology that is substantially equivalent to work previously performed by the bargaining unit on an exclusive basis, the Board will find a duty to bargain over assignment of such work out of the unit. Commonwealth of Pa. State Police, 36 PPER ¶ 144 (Final Order 2005), *aff'd sub nom. Pa. State Police v. PLRB*, 912 A.2d 909 (Pa. Cmwlth. 2006); City of Philadelphia, 27 PPER ¶ 27161 (Final Order, 1996); City of Pittsburgh, 21 PPER ¶ 21111 (Final Order, 1990); AFSCME District Council 83 v. Centre Area Transportation Authority, 53 PPER ¶ 31 (Proposed Decision and Order, 2021).

In City of Philadelphia, 31 PPER ¶ 31022 (Final Order, 1999), the Board explicitly found:

The Board has held that introduction of technology is generally a matter of managerial prerogative, but is not license to unilaterally transfer bargaining unit work to non-unit personnel. Where non-unit personnel perform work through use of new technology that is **substantially equivalent** to work previously performed by the bargaining unit on an exclusive basis, the Board will find a duty to bargain over assignment of such work out of the unit.

(emphasis added) (internal citations omitted).

Moving to this matter, the facts are generally not disputed. Prior to July 2023, bargaining-unit member Deputy Sheriffs exclusively performed security work in the Courthouse. The record shows that security work exclusively performed by the Deputy Sheriffs had the following discrete duties or functions: patrol the Courthouse and parking garage, staff the entrance to the Courthouse during the height of the Covid pandemic; staff the entrance to the Courthouse from time-to-time as a "show of force"; use metal detectors or wands to scan members of the public in the Courthouse; review closed-circuit cameras which observe all parts of the Courthouse, including row offices, hallways, stairwells, the parking garage and courtrooms; respond to panic and door alarms; and respond to security incidents in the Courthouse and adjacent parking garage.

Further, the record shows that prior to July 2023, the Courthouse had a single point of entry for the public. That single point of entry is now what is called the security vestibule. The single point of

entry had been firmly established during the height of the response to Covid in 2020.

The record shows unequivocally that, prior to July 2023, it was the Deputy Sheriffs, and only the Deputy Sheriffs, who performed the above security work.²

The record also shows that the security vestibule added a magnetometer, a scanner, and a security check-in window. The Courthouse did not have these security features before July 2023.

The record shows that the County's leadership was plainly uncomfortable with the Sheriff being responsible for managing expanded security operations at the Courthouse. The parties agree that the County chose to staff the security vestibule with non-Union security guards. The parties also agree that this was done unilaterally, with no attempt to bargain the issue with the Union.

The record shows that, in addition to staffing the security vestibule, the new non-Union security guards patrol through the courthouse and parking garage and respond to door alarms and other alarms.

On this record, it is manifest that the County violated Section 1201(a)(1) and (5) of the Act by unilaterally transferring the exclusive bargaining unit work of the Union to the non-Union security officers. The exclusive bargaining-unit work transferred on this record is: staffing the single point of entrance to the Courthouse, scanning members of the public, patrolling the Courthouse and parking garage, and responding to alarms. As discussed below, staffing the weapon check-in window is not exclusive bargaining-unit work. The County will be ordered to immediately return this exclusive bargaining-unit work to the bargaining-unit.

The County argues in its Brief that the Union cannot show that it exclusively performed the duties performed by the security officers because some of the duties are new. The County argues:

The sheriff deputies have never performed the work that the security guards carry out in operating the vestibule. The duties performed by the security guards are entirely new and separate from any of the sheriff deputies' duties. For example, the security guards operate the metal detector and scanning machine that are now located at the County's single-access entrance. (T. 14). Sheriff Emerick testified that the security guards are "the primary source of scanning people coming into the complex." The security guards' purpose is to filter who enters

² Though it was mentioned in the record that Deputy Sheriffs have non-Union supervisors who are employees of the County, the extent to which the supervisors performed any security work in and around the Courthouse was not developed on the record.

the County Complex and to ensure that visitors do not bring weapons with them.

Deputies, in contrast, have never been responsible for screening visitors for weapons upon their entrance to the County Complex. Instead, they have had limited responsibilities for screening for COVID-19 symptoms or to present a show of force. Deputies have never operated a metal detector to check visitors for weapons. The security guards staff the check-in window for firearms and other weapons. At no point have sheriff deputies ever staffed a check-in window for weapons. The security guards therefore perform entirely new work that the deputies have never been responsible for, meaning that there is no removal of bargaining unit work.

County's Brief at 13 (citations omitted).

I agree with the County that the work of staffing the check-in window is new work and not substantially equivalent to the exclusive bargaining-unit work performed by the Deputy Sheriffs. The record does not show that Deputy Sheriffs ever performed the clerical work of staffing a window where members of the public would check-in weapons before entering the Courthouse. This work is also, I find, primarily clerical in nature and not dispositively similar to the security work performed by the Deputy Sheriffs in and around the Courthouse. This specific duty, therefore, is not exclusive bargaining-unit work done by the Deputy Sheriffs and, on this record, it was not an unfair practice for the County to assign this work to employes other than the Deputy Sheriffs. The Union did not raise the issue of the County unilaterally removing the exclusive-bargaining unit work of any clerical employes, so I do not address that here.

I find that the rest of the work performed by the security guards in the security vestibule and throughout the Courthouse and parking garage is at most upgraded or updated work that was previously performed exclusively by the Deputy Sheriffs. I find this updated work is substantially equivalent to work previously performed by the bargaining unit on an exclusive basis, and, therefore, the County had a duty to bargain over assignment of such work out of the unit.

Addressing the specific facts highlighted by the County above: the Deputy Sheriffs exclusively staffed the area that is now the security vestibule when it was the single point of access to the Courthouse. The single point of access for the Courthouse, therefore, is not new. Though the County upgraded and expanded the single point of access to the new security vestibule, the work of staffing the security vestibule is substantially equivalent to the work the Deputy Sheriffs did before, which was to staff the single point of access to the Courthouse.

Moving to the magnetometer and scanner, while the Deputy Sheriffs did not use a magnetometer or scanner, they did use wands. I find the work of using wands on members of the public in the Courthouse to be

substantially equivalent to using a magnetometer and scanner on members of the public in the Courthouse. Staffing the magnetometer and scanner is primarily security work and the magnetometer and scanner are upgrades or extensions to the wands and thus not an entirely new line of work. Therefore, the duty of staffing the magnetometer and scanner is substantially equivalent to the prior and exclusive work performed by the Deputy Sheriffs.

CONCLUSIONS

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

1. The County is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The charge against the County pursuant to Section 1201(a) (3) of PERA is dismissed as it was waived by the Union.
5. The County has committed unfair practices in violation of Section 1201(a) (1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the County of Bedford shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes 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 PERA:
 - (a) Immediately return the exclusive bargaining-unit work to the bargaining unit.
 - (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 the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(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; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirtieth day of May, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ Stephen A. Helmerich
STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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AFFIDAVIT OF COMPLIANCE

The County of Bedford hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as directed therein; that it immediately returned the exclusive bargaining-unit work to the bargaining unit; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

Signature

Title

Date

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

Signature of Notary Public