

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE,
FORT PITT LODGE NO. 1

v. Case No. PF-C-14-41-W
CITY OF PITTSBURGH

FINAL ORDER

The Fraternal Order of Police, Fort Pitt Lodge No. 1 (FOP) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on May 27, 2014. The FOP's exceptions challenge the May 14, 2014 decision of the Acting Secretary of the Board (Secretary) declining to issue a complaint against the City of Pittsburgh (City) under Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read in *pari materia* with Act 111 of 1968.

On May 1, 2014, the FOP filed a Charge of Unfair Labor Practices alleging that the City violated Section 6(1)(a) and (e) of the PLRA by transferring bargaining unit work of the City police department's Explosive Ordinance Disposal (EOD) Unit to the Allegheny County Police Department (County Police). Attached to the Charge was Memorandum S-21-14 issued on March 31, 2014, by the Superintendent of the County Police describing an agreement between the County Police and City that starting April 1, 2014, the City and County would alternate responding to EOD requests outside of Allegheny County.

By letter dated May 14, 2014, the Secretary declined to issue a complaint on the Charge of Unfair Labor Practices. In the May 14, 2014 letter the Secretary explained as follows:

You further allege that the City of Pittsburgh (City) and the County agreed, pursuant to the County's March 31, 2014 memorandum, that the County EOD Unit would respond to requests for services within the City in the event that the City's EOD Unit was unable to respond thereby transferring the work of the City's EOD Unit to non-bargaining unit members. You allege that this was a violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA).

You allege that the County's March 31, 2014 memorandum contains an agreement between the County and the City which transfers the work of the City's EOD Unit to the County's EOD Unit. However, the County's memorandum specifically states that "[a]ny 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." Because the County's memorandum does not contain an agreement between the County and the City to transfer the work of the City's EOD Unit, you have failed to state a cause of action under Section 6(1)(e) of the PLRA.

In its exceptions the FOP asserts that a copy of the signed Memorandum of Understanding (MOU) between the County Police and the City was not made available to the FOP until May 22, 2014, after the expiration of the six weeks statute of limitations under Section 9(e) of the PLRA. The FOP argues that Memorandum S-21-14, filed with the Charge, became effective April 1, 2014 and contained the City's and County's mutual understanding of the MOU, which included the statement that "the officers will continue to assist each other agency and respond when necessary." The FOP asserts that in dismissing the Charge the Secretary erred in failing to address its allegation that "[i]n a situation where the City EOD Unit is required to perform services for outside agencies, and thus cannot respond to City calls for service, the agreement between the City and County requires that the County EOD Unit handle EOD services for the City of Pittsburgh, duties that are exclusively provided by the City EOD Unit."

However, the Secretary did not fail to address this allegation. Indeed, the Secretary noted that the FOP alleged that there would be an unlawful transfer of the work if, pursuant to the County's March 31, 2014 memorandum, the County EOD Unit would respond to requests for services within the City in the event that the City's EOD Unit was unable to respond. The Secretary addressed this allegation by noting that the Charge failed to allege an agreement requiring the City to assign EOD duties within the City limits to the County Police. The Secretary's determination in the May 14, 2014 letter was not simply that there was no signed agreement attached to the charge, but that at the time of the filing of the Charge of Unfair Practices, no effective or actual removal of bargaining unit work had yet occurred.

In **Mt. Lebanon Education Association v. Mt. Lebanon School District**, 35 PPER 95 at 299 (Final Order, 2004), the Board held as follows:

Implementation occurs on "the date when the [employer] directive becomes operational and serves to guide the conduct of employees..." **Upper Gwynedd Township Police Department v. Upper Gwynedd Township**, 32 PPER ¶ 32101 (Final Order, 2001). The preliminary steps taken by the employer to formulate a program that is to be utilized in the future is not an implementation **Pennsylvania State Troopers Association v. Pennsylvania Labor Relations Board**, 804 A.2d 1291 (Pa. Cmwlth. 2002).

The statement in the County Police's Memorandum S-21-14 that "the officers will continue to assist each other agency and respond when necessary," does not equate to a binding agreement by the City to affirmatively call in the services of the County EOD Unit when the City EOD is responding to a call outside Allegheny County, and thus is not equivalent to an effective implementation of a removal of bargaining unit work. Further, the MOU included with the exceptions contains no express requirement that the City utilize the County EOD Unit within the City limits. Indeed, there are no allegations by the FOP that the City has, as of yet, ask the County EOD to respond within the City limits, or issued an affirmative directive to utilize the County EOD Unit within the City limits in lieu of the bargaining unit employees.

As noted by the Secretary, until such time as the City effectuates an actual transfer of bargaining unit work from the City's EOD Unit to the County Police, the FOP's Charge of Unfair Labor Practices under Section 6(1)(a) and (e) of the PLRA is premature. Accordingly, after a thorough review of the exceptions and all matters of record, the FOP's exceptions shall be dismissed and the Secretary's May 14, 2014 letter declining to issue a complaint shall be made final.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Fraternal Order of Police, Fort Pitt Lodge No. 1 are hereby dismissed, and the May 14, 2014 decision of the Secretary declining to issue a complaint, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this seventeenth day of June, 2014. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.