

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PSSU LOCAL 668, SEIU, AFL-CIO :  
 :  
 v. : Case No. PERA-C-99-377-E  
 :  
 COMMONWEALTH OF PENNSYLVANIA :  
 DEPARTMENT OF PUBLIC WELFARE :  
 BLAIR CAO :

**FINAL ORDER**

On December 16, 1999 the Pennsylvania Social Services Union, Local 668, SEIU, AFL-CIO (PSSU) filed with the Pennsylvania Labor Relations Board (Board) timely exceptions to a December 9, 1999 decision by the Secretary of the Board declining to issue a complaint on the above-referenced Charge of Unfair Practices against the Commonwealth of Pennsylvania, Department of Public Welfare, Blair CAO (Commonwealth). On January 4, 2000 the Secretary granted PSSU's request for an extension of time in which to file its brief in support of exceptions. Pursuant to that extension, PSSU filed its brief on January 27, 2000, wherein it requested that the Board delay its decision until the Commonwealth Court of Pennsylvania issued an Opinion and Order on PSSU's appeal of the Board's Final Order at Case No. PERA-C-98-353-E, wherein the Board concluded that the Commonwealth's promulgation of a written dress code for income maintenance caseworkers, income maintenance supervisors and energy assistance workers who work in County Assistance Offices (CAO) was a matter of managerial prerogative. The Commonwealth Court affirmed the Board's Final Order, holding that "the Board properly concluded that a dress code, which outlines specific minimum standards of appropriate attire, is appropriately within the employer's managerial prerogative and is not subject to collective bargaining." PSSU, Local 668 of SEIU, AFL-CIO v. PLRB, 763 A.2d 560 (Pa. Cmwlth. 2000).

In its Charge, PSSU alleged that the Commonwealth violated Section 1201(a)(1) and (5) of PERA when it "unilaterally implemented a new dress code for male employees only" by directing an employee "not to wear shorts at work." (Charge, at ¶¶ 9-10.) As support for its Charge that a dress code was indeed implemented, PSSU submitted with its Charge a letter from the Executive Director of the Blair CAO explaining that the Commonwealth "management has exercised its right to determine what is appropriate dress for conducting business." (Charge, letter attachment.) The Board dismisses PSSU's exceptions for the following reasons.

First, the direction "not to wear shorts" is materially similar to the direction given by the same employer to the employees in PSSU v. PLRB, supra. In that case, the employer explained that "[r]ecreational clothing,' such as halter tops, T-shirts or sweatshirts . . . shorts, sandals without socks or foot coverings, sweat suits, frayed or tattered jeans and sneakers, or similar apparel is not acceptable attire." Id., at 561 (citations omitted)(emphasis added). The Commonwealth Court held that such direction by the Commonwealth to income maintenance caseworkers, income maintenance

supervisors and energy assistance workers at the CAOs "is appropriately within [the] employer's managerial prerogative and is not subject to collective bargaining." Id., at 563. As explained by the letter submitted with PSSU's Charge, the Commonwealth was exercising its right to determine what is appropriate dress for conducting business and it therefore did not violate its obligation to bargain with PSSU over a mandatory subject.

Second, while the Board explained in its Final Order that "it will not make the sweeping conclusion that dress codes for all Commonwealth employees are matters of managerial prerogative," this issue has been definitively settled regarding these particular employees, employer and union. PSSU Local 668, SEIU, AFL-CIO, CLC v. Commonwealth of Pennsylvania, Dep't of Public Welfare, 31 PPER ¶ 31020, p. 49 (Final Order, 2000) aff'd, PSSU v. PLRB, supra. PSSU's request of the Board to remand its Charge to the Secretary for the issuance of a complaint and the application of the balancing test enunciated in PLRB v. State College Area Sch. Dist., 461 Pa. 494, 337 A.2d 262 (1975) is unwarranted because the Board has already "properly applied the State College balancing test and concluded that the employer had a substantial interest in the professional delivery of services which substantially outweighed the impact of the policy on the employees." PSSU v. PLRB, supra, at 563. This issue has now been decided by both the Board and the Commonwealth Court and the Board therefore dismisses PSSU's exceptions to the Secretary's decision.

Third, PSSU alleges in its Charge that a dress code was implemented for male employees only. The Board does not exercise jurisdiction over unfair practice charges alleging that an employer is applying its policies in a manner that discriminates against employees based on their gender. The Board's role in discrimination-based charges is limited to discrimination "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any employe organization." 43 P.S. § 1101.1201(a)(3). PSSU neither alleged nor charged discrimination based upon membership in an employe organization, as prohibited by Section 1201(a)(3) of PERA.

After a thorough review of the exceptions and all matters of record, the Board shall affirm the Secretary's decision not to issue a complaint.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions be and the same are dismissed, and the Secretary's decision not to issue a complaint be and the same is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John

Markle, Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this sixteenth day of October, 2001. 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.