

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

RESERVE TOWNSHIP :
 :
 v. : Case No. PF-C-00-175-W
 :
 TEAMSTERS, LOCAL 249 :
 :

FINAL ORDER

On November 22, 2000, Reserve Township (Township) filed a charge of unfair labor practices against the Teamsters Local 249 (Union) alleging violations of both Section 6(2)(e) and (f) of the Pennsylvania Labor Relations Act (PLRA) and Section 1201(b)(3) and (9) of the Public Employe Relations Act (PERA). The Township specifically alleged the following facts.¹ As a result of investigations and deliberations associated with the Township's bargaining preparation, the Township discovered that its part-time police officers were not hired in accordance with Section 20 of the First Class Township Code (Code)² or the applicable civil service regulations. On July 18, 2000, Township and Union negotiators held a meeting during which the Township informed the Union of its intent to employ only full-time police officers in the future. After the parties exchanged correspondence framing certain issues for bargaining, the parties held a bargaining session on August 24, 2000. At the August 24th negotiation session, the Township reiterated its position that it desired to eliminate the part-time police officers from the department and "the Union refused to discuss or negotiate any part of the Contract, but demanded that no Contract would be entered into by the Union without the participation and employment of Part Time Police." (Township Exhibit A ¶ 6). The Union allegedly informed the Township that it would not negotiate a contract that excluded the part-time officers and would contest any attempt by the Township to remove the officers from the unit.

By letter dated January 2, 2001, the Board Secretary dismissed the charge for two reasons. First, to the extent that the Township's charge was based on PERA, the Secretary concluded that PERA is not applicable to police officers. Second, although the PLRA and Act 111, which are read in pari materia, apply to police officers, a union's alleged refusal to bargain is not an unfair labor practice under PLRA.

On January 22, 2001, the Township filed timely exceptions to the Secretary's dismissal letter. In its exceptions, the Township argues the following. The Township is a first class township and the manner in which it hires its police officers is governed by the Code. The

¹ For purposes of issuing a complaint, the factual allegations in the charge of unfair practices are accepted as accurate. PSSU Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978).

² Act of June 24, 1931, P.L. 1206, as amended, 53 P.S. §§ 55638 & 55648.

Code requires that every police officer must be hired according to express statutory and civil service procedures. 53 P.S. §§55638 & 55648. There is no provision in the Code that specifically authorizes the hiring of part-time police officers. Accordingly, the Township argues that the part-time police officers do not meet the statutory definition of "police" under the Code because they were not appointed pursuant to statutory civil service requirements. Therefore, argues the Township, "[i]f the 'non-civil service police' cannot exist under the First Class Township Code, then these part-time employes cannot be considered [p]olice in [f]irst [c]lass [t]ownships; accordingly, these [e]mployees are not covered by Act 111 and PLRA, because they do not meet the statutory definition of [p]olice." (Township's Exceptions at ¶ 11). From this premise, the Township contends that, because the part-time police officers cannot constitute police officers and are consequently not covered by Act 111 and the PLRA, "the only possible way that Union may negotiate for them is under [PERA]" under which "the Union's refusal to negotiate with the Township constitutes an unfair labor practice," pursuant to 1201(b)(3) of PERA.

By arguing that part-time police officers are not Act 111 police officers, the Township has accepted the dismissal of its charge for having no basis under the PLRA and Act 111. The Township has thereby waived any right to challenge the dismissal on that basis by failing to raise exceptions to that part of the Secretary's decision.

Alternatively, in City of Philadelphia v. Fraternal Order of Police, Lodge No. 5, 22 PPER ¶ 22072 (Final Order, 1991), the Board held that it has no jurisdiction to entertain an unfair labor practice charge against a union alleging a refusal to bargain under the PLRA because no such charge exists either expressly or under any plausible theory of statutory construction. Accordingly, the Board stated that it "may not transcend the specifically enumerated unfair practices which it may believe the legislature omitted." City of Philadelphia, 22 PPER at 164. Therefore, the statute and the case law clearly establish that the legislature deliberately withheld jurisdiction from the Board over unfair labor practice charges against unions for refusing to bargain under the PLRA.

Also, the Township's charge pursuant to the PLRA and Act 111 is untimely. Although timeliness was not one of the Secretary's reasons for dismissing the Township's charge, whether a claim is filed beyond the limitations period is a question of subject matter jurisdiction, which can be raised sua sponte by the Board at any time. Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 31 PPER ¶ 31036 (Final Order, 2000) (FOP). Section 9(e) of the PLRA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the petition or charge." 43 P.S. § 211.9(e). In FOP, the Board concluded that the mandatory language of this section requires the absence of Board jurisdiction to entertain unfair labor practice charges filed under the PLRA where the complainant possessed actual or constructive knowledge of the statements or events allegedly giving rise to the charge more than six weeks prior to the filing. FOP, supra.

In the present case, the Township specifically alleged that the Union refused to bargain over the Townships elimination of part-time

police officers, who were hired contrary to law. The Township alleged that, after the parties exchanged correspondence framing certain issues for bargaining, the parties held a bargaining session on August 24, 2000. The Township further alleged that, at the August 24th negotiation session, the Township reiterated its position that it desired to eliminate the part-time police officers from the department and "the Union refused to discuss or negotiate any part of the Contract, but demanded that no Contract would be entered into by the Union without the participation and employment of Part Time Police." (Township Exhibit A ¶ 6). The Union allegedly informed the Township that it would not negotiate a contract which excluded the part-time officers and would contest any attempt by the Township to remove the officers from the unit. Therefore, the Township had actual knowledge of the Union's allegedly unyielding refusal to bargain on August 24, 2000. However, the Township filed its charge on November 22, 2000, well beyond the six-week limitation period prescribed by Section 9(e).³

Also, the Township is attempting to charge the Union with a refusal to bargain not only the elimination of the part-time police officers, but also the wages, hours and terms and conditions of employment of the full-time officers who the Township admits are Act 111 and PLRA employees. For the reasons set forth above, the Board cannot consider any refusal to bargain charges against the Union under PLRA and Act 111. Therefore, the Board will address only the Township's allegations and supporting arguments that the Union refused to bargain the elimination of part-time police officers, because the Township bases these claims on PERA, and will not address any bargaining refusal issues regarding other officers.

The substantive issue raised by the Township's exceptions is whether the Township's part-time police officers, who allegedly were not hired in accordance with the Code or the civil service procedures, are police officers within the meaning of Act 111 and the PLRA or public employees whose bargaining rights are governed by PERA.

The Board has the authority and jurisdiction to determine whether employees are policemen under Act 111. Commonwealth v. PLRB (Capitol Police), 441 A.2d 470 (Pa. Cmwlth. 1982), aff'd in part, rev'd in part on other grounds, 502 Pa. 7, 463 A.2d 409 (1983). By order dated September 10, 1999, the Board certified the Union as the exclusive bargaining representative, under Act 111 and the PLRA, of the Township's police officers and defined the unit in the following manner:

All full-time and regular part-time police officers including but not limited to the chief of police, captains, lieutenants, sergeants and patrolmen; and excluding any managerial employees.

(In The Matter of the Employees of Reserve Township, Case No. PF-R-99-55-W (Nisi Order of Certification, 1999)). Neither the Township nor the Union appealed this order or challenged the Board's unit

³ Although the Township references subsequent occurrences in the charge, those alleged events do not evidence a refusal to bargain by the Union within the six-week limitation period.

determination. Indeed the Township voluntarily entered into an agreement expressly including the "regular part time police officers" in the certified unit a little more than a year prior to its proposal to exclude those employees from the contract. Under the plain language of the Board's order, all regular part-time police officers are members of the Township's Act 111 police bargaining unit notwithstanding the manner in which they were hired by the Township. Once the Board rendered the certification, under Act 111 and PLRA, that included the part-time police employees in the unit, those part-time police officers were "not in any respect covered by PERA." Capitol Police, 441 A.2d at 476 (quoting Philadelphia Fire Officers Association v. PLRB, 470 Pa. 550, 558 369 A.2d 259, 262 (1977)). "Once the employees were determined to be 'Policemen' under Act 111, those employees' Act 195 rights were dissolved by statutory definition." Id.

Moreover, the Board already dismissed the Township's argument in In the Matter of the Employees of the Borough of Whitaker (Whitaker), 14 PPER ¶ 14273 (Final Order, 1983). In Whitaker, the borough argued that the failure of any patrolmen to pass a civil service commission test prior to their employment with the borough denied them the right to collectively bargain under Act 111 and the PLRA. The borough also argued that Act 111 did not apply to part-time police officers because the legislative intent of Act 111 was to deal with strikes by full-time policemen. In rejecting both arguments, the Board concluded that "the status of part-time policemen under either the Civil Service Act or the Police Tenure Act is not dispositive of their coverage under Act 111." Whitaker, 14 PPER at 633. The Board, in Whitaker, concluded that regular part-time police officers are covered by Act 111 and the PLRA regardless of civil service status. Id.

Similarly, the Commonwealth Court, in School Dist. of the Township of Millcreek v. Millcreek Educ. Ass'n, 440 A.2d 673 (Pa. Cmwlth. 1982), held that the provision in the Public School Code of 1949⁴ defining the term "teacher" is not dispositive of an employee's unit status under PERA. In In the Matter of the Employees of the City of Lebanon, 6 PPER 167 (Nisi Decision and Order 1975), the Board concluded that job duties and responsibilities, not civil service status, are determinative of unit placement.

As the above statutory and case authority discloses, this Board's role under the Commonwealth's public sector labor laws is to certify units for bargaining based on the job duties of public employees employed by public employers, including political subdivisions such as Reserve Township. The Township essentially alleges in this charge that it has hired and continues to employ part-time police employees in a manner inconsistent with the provisions of its enabling legislation. It is not the function of the Board to adjudicate the Township's compliance with the Township Code and/or relevant civil service requirements. To the extent that the Township alleges its prior actions are not in compliance with statutory standards not within the jurisdiction or purview of the Board, the Township's remedies lie elsewhere.

⁴ Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §§1-101-27-2702.

After a thorough review of the exceptions to the decision of the Secretary declining to issue a complaint, the Board shall dismiss the exceptions and affirm the Secretary's determination.

ORDER

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act, Act 111 and the Public Employee 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 pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this twenty-seventh day of March, 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.