COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

OFFICERS OF THE UPPER GWYNEDD TOWNSHIP POLICE DEPARTMENT	:	
v.	:	Case No. PF-C-99-167-E
UPPER GWYNEDD TOWNSHIP	:	

FINAL ORDER

On August 28, 2000, the Officers of the Upper Gwynedd Township Police Department (Union) filed timely exceptions and a brief in support of exceptions to a proposed decision and order (PDO) entered on August 14, 2000. In the PDO, the hearing examiner dismissed the Union's unfair labor practice charge alleging that Upper Gwynedd Township (Township) violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 by refusing to provide the Union with a copy of a letter of reprimand issued to Officer Charles Staub. In the charge, the Union alleged that it was reviewing the reprimand as potentially in violation of the collective bargaining agreement and that the Township's refusal to provide the Union with a copy of the reprimand interfered with its right to investigate and possibly file a grievance. The hearing examiner concluded that the Union failed to show the relevance of the requested information to its role as the exclusive bargaining representative of the employes. The examiner further concluded that the Union failed to identify any provision of the collective bargaining agreement that could arguably relate to the matter in dispute (i.e., no provision on discipline in general or regarding just cause). The Township filed no response to the Union's exceptions.

The pertinent facts of this case, which the Union does not challenge in its exceptions, are as follows. In October 1999, Police Chief Robert Freed called Officer Charles Staub into his office and presented him with a letter of reprimand, which Staub read and signed. Chief Freed denied Officer Staub's request for a copy of the letter. Chief Freed also suspended Officer Staub from the police department's tactical response team. By letter dated October 25, 1999, the Union requested a copy of the written reprimand and stated that it "views this matter as being possibly in conflict with the collective bargaining agreement and is investigating the matter relative to the processing of a grievance." (F.F. 5; Union Exhibit 1). By letter dated November 2, 1999, the Township denied the Union's request. The Township never provided the Union with a copy of the letter of reprimand. The parties' collective bargaining agreement covering the years 1997 through 1999 did not contain a grievance procedure.

In its exceptions, the Union raises essentially two arguments: (1) the hearing examiner erred in concluding that the Union failed to show how the information requested is relevant to its policing the collective bargaining agreement; and (2) the hearing examiner erred in even requiring the Union to explain such a connection (i.e., show relevance).

As to the Union's second argument, the law is well-established that in an information request case the information being sought by the bargaining representative must be relevant to its role in policing and administering the collective bargaining agreement. Department of Corrections v. PLRB, 541 A.2d 1168 (Pa. Cmwlth. 1988); Commonwealth v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987); Crestwood Educ. Ass'n v. Crestwood Sch. Dist., 26 PPER ¶ 26182 (Final Order, 1995). Indeed, the Board applies a liberal standard of relevancy, which requires a showing of only probable or potential relevance. PSSU v. Department of Public Welfare, 27 PPER ¶ 27205 (Final Order, 1996) (citing NLRB v. Acme Industrial Co., 385 U.S. 432 (1967)). Although there is no prerequisite that a grievance actually be pending at the time the information is requested, North Hills Educ. Ass'n v. North Hills Sch. Dist., 29 PPER ¶ 29063 (Final Order, 1998), the information sought must at least relate to a matter which arguably on its face would be governed by the contract. Commonwealth v. PLRB, supra. The hearing examiner recognized this threshold requirement and appropriately required the Union to establish the relevance of the requested information to policing the parties' agreement. Thus, the Union's second argument is dismissed.

The Union's first argument is also without merit because the Union failed to identify any provision in the parties' collective bargaining agreement that could, on its face, even arguably apply to the matter at issue (discipline). As the hearing examiner recognized, and as the Board's review of the entire record herein confirms, there is no provision in the parties' agreement to which the information sought could even potentially relate. The agreement contains no just cause provision or any provision regarding reprimands, suspensions or personnel files. The Union itself admits that no internal grievance procedure exists between the parties and that it is an issue over which the parties recently negotiated and submitted to interest arbitration. The Union failed to point to any provision in the contract that on its face could even arguably support a grievance under the circumstances of this case. The Union's argument in this regard was appropriately dismissed. [1]

The Union contends that although the parties have no grievance procedure in their collective bargaining agreement the Union nonetheless has the statutory right under Act 111 to pursue grievance arbitration. The Union claims that unlike the circumstances of Upper Makefield Township v. PLRB, 717 A.2d 598 (Pa. Cmwlth. 1998), [2] where the parties had an agreed-upon grievance procedure that did not include arbitration, the

[1] The Union states in its brief in support of exceptions that the chief of police had at least an "embryonic grievance process" wherein he always had an open door that officers used to address issues or "grievances." (Union brief at 4). Through this statement the Union appears to be suggesting that the Township may have violated a past practice to which the letter of reprimand may be relevant. This suggestion, however, is clearly without merit because the Chief followed the open-door policy in this case. (N.T. 57). Moreover, beyond a general open-door policy, the Union failed to show any past practice to which the written reprimand could even potentially be considered relevant.

[2] The Pennsylvania Supreme Court affirmed the Commonwealth Court in Upper Makefield Township on other grounds and did not address the issue of whether Act 111 mandates grievance arbitration where the grievance procedure provided in the parties' agreement does not require arbitration. __ Pa. __, 753 A.2d 803 (2000).

parties in this case have absolutely no grievance procedure. Where there is a void left by the absence of legislation or agreement of the parties, the Union argues that it clearly has the statutory right to pursue grievance arbitration. Upper Makefield Township, 717 A.2d at 602 (citing West Lampeter Township v. Police Officers of West Lampeter Township, 598 A.2d 1049 (Pa. Cmwlth. 1991), appeal denied, 531 Pa. 658, 613 A.2d 562 (1992), wherein the Court recognized that, unlike Chirico v. Board of Supervisors of Newton Township, 504 Pa. 71, 470 A.2d 470 (1983), Township of Moon v. Police Officers of Township of Moon, 508 Pa. 495, 498 A.2d 1305 (1985) and Upper Providence Township v. Buggy, 514 A.2d 991 (Pa. Cmwlth. 1986) where arbitration was deemed appropriate in order to fill a void left by the absence of legislation or agreement of the parties, the parties had freely bargained over and agreed to exclude arbitration from the grievance process). The Union asserts that a copy of the written reprimand is necessary for it to determine whether to pursue a grievance consistent with Act 111's mandate for grievance arbitration. Even if the Union's statement of the law in light of Upper Makefield Township is correct, the Union's charge in this case must fail. The issue is not whether the Union ultimately has the statutory right to pursue grievance arbitration where there is absolutely no grievance procedure available under the particular contract. Rather, the issue is whether the requested information is in any way even arguably relevant to the Union's duty to police the agreement. Commonwealth v. PLRB, supra. Had the Union met this threshold requirement, then its argument that it has the statutory right to pursue grievance arbitration would be appropriate. The Union is attempting through its exceptions in this case to put the proverbial cart before the horse.

In Pennsylvania Nurses Association v. Department of Public Welfare, 17 PPER ¶ 17125 (Final Order, 1986), aff'd sub nom., Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987), the Board set forth the following pertinent analysis for information request cases:

> Of course, a union's bare assertion that it needs information to process a grievance does not automatically oblige the employer to supply all information requested. Detroit Edison Co. v. NLRB, 440 U.S. 301, 99 S. t. 1123 (1979). On the other hand, it is not incumbent upon the PLRB to determine the merits of a grievance. PNA [the union] has asserted that Articles 28 and 36 of the collective bargaining agreement have been violated by the Commonwealth, thus giving rise to the filing of the grievances. The Seventh Circuit has stated:
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> > Like a court asked to declare a dispute to be nonarbitrable, the [National Labor Relations] Board when asked to declare a controversy to be nongrievable, can avoid becoming 'entangled in the construction of substantive divisions of a labor agreement' only by ordering disclosure 'unless it may be said with positive assurance that the [grievance] clause is not susceptible to an interpretation that covers the asserted dispute.' It is enough to determine that the union 'is making a claim which on its face is governed by the contract,' without a 'weighing the merits of the grievance, considering whether

> there is equity in a particular claim, or determining whether there is a particular language in the written instrument which will support the claim.'
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> P.R. Mallory and Co. v. NLRB, 411 F.2d 948, 955-56 (7th Cir. 1969). While declining to rule on the merits of the grievance, we cannot say with positive assurance that the clauses at issue in the four grievances are not susceptible to an interpretation that covers the asserted dispute. Accordingly, we determine that PNA is advancing a grievance which, on its face, is governed by the contract [and is entitled to the information].

17 PPER at 327 (citations omitted). Unlike the union in that case, the Union herein failed to identify any provision in the collective bargaining agreement that might on its face support a claim under the contract.[3] The hearing examiner did not, as the Union now claims, determine that the Union had no ultimate statutory right to pursue grievance arbitration. Because the Union did not show the relevance of the information requested to its duty to police the agreement, its unfair labor practice charge was appropriately dismissed. Accordingly, the Union's exceptions are dismissed.

After a thorough review of the exceptions, the brief in support of exceptions and all matters of record, the Board shall dismiss the exceptions and make the proposed decision and order final.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the proposed decision and order in the above-captioned matter be and the same are hereby dismissed and the proposed decision and order be and the same is hereby 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 seventeenth day of October, 2000. 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.

[3] Had the Union requested information regarding a change in scheduling, for example, an issue that has previously arisen between the parties in this case (Union Exhibit 5; N.T. 37-38), the Township in all likelihood would have been required to disclose such information as the contract has a provision addressing scheduling. (Township Exhibit 3 at 6).