

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL ASSOCIATION OF :
FIRE FIGHTERS LOCAL #22 :
 :
v. : Case No. PF-C-99-174-E
 :
CITY OF PHILADELPHIA :

FINAL ORDER

A Charge of Unfair Practices was filed with the Pennsylvania Labor Relations Board (Board) on December 29, 1999, by International Association of Fire Fighters Local #22 (Complainant), alleging that City of Philadelphia (Respondent) has engaged in unfair practices contrary to the provisions of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111. In the specification of charges, the Complainant alleges that following use of sick leave by two bargaining unit members pursuant to the collective bargaining agreement, the employees were transferred to other positions.

On February 9, 2000, the Secretary of the Board informed the Complainant that no complaint would be issued on the charge of unfair labor practices as the specification of charges failed to set forth a cause of action under the PLRA. The Secretary determined that the allegations in the charge of unfair practices essentially alleged violations of the parties' agreement and did not rise to the status of allegation of commission of an unfair practice. The Complainant was afforded an opportunity to file exceptions to the dismissal of the charge. On February 22, 2000, the Complainant filed timely exceptions and a supporting brief.

In its brief in support of exceptions the Complainant alleges that two members of the bargaining unit used sick leave "pursuant to the collective bargaining agreement between Local 22 and the City." (Brief at 1). To the extent that Complainant alleges that the collective bargaining agreement protects the right of the employees at issue to utilize sick leave under these circumstances, the appropriate forum for protection of that contractual right is the parties' grievance procedure and not through the filing of charges of unfair practices. Once the parties to the collective bargaining process have reached a collective bargaining agreement setting forth contractual terms and conditions of employment including such matters as sick leave, protection of contractual rights is through the parties' collective bargaining agreement's grievance procedure and not through the filing of charges of unfair practices. The Pennsylvania Supreme Court has declared that it is the role of the Board to address bargaining tactics regarding negotiation of contracts and not to review the substantive provisions of collective bargaining agreements. Parents Union for Public Schools in Philadelphia v. Board of Education of the School District of Philadelphia, 480 Pa. 194, 389 A.2d 577 (1978). The Complainant acknowledges in its charge of unfair practices and brief in support of exceptions that the terms of the collective bargaining agreement authorized the sick leave at issue and it reasonably follows that the specification of charges essentially alleges violation of the agreement and renders this matter a grievance and not a charge of unfair practices.

In its exceptions and supporting brief the Complainant alleges that this transfer is a "penalty" (Brief at 3) for use of the contractually provided sick leave. However in the charge of unfair practices the Complainant alleged violation of Section 6(1)(a) and (e) of PLRA regarding alleged imposition of new employment conditions without prior bargaining. The Association did not allege a violation of Section 6(1)(c) which would pertain to discrimination in regard to terms and conditions of employment in retaliation for engaging in protected activity. Accordingly, because the Association did not allege violation of the discrimination clause under Section 6, subsection (1), no discrimination claim is presently before the Board pursuant to the charge as amended in the exceptions.

Accordingly, after a thorough review of the charge of unfair practices as amended in the exceptions, the Board shall dismiss the exceptions and affirm the Secretary's decision declining to issue a complaint.

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 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 eighteenth day of April, 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.