

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

BENSALEM TOWNSHIP POLICE :  
BENEVOLENT ASSOCIATION INC. :  
 :  
 :  
v. : Case No. PF-C-99-90-E

BENSALEM TOWNSHIP

**FINAL ORDER**

On July 23, 1999, a charge of unfair practices was filed by the Bensalem Township Police Benevolent Association, Inc. (Association) in which it was alleged that Bensalem Township (Township) violated Section 6(1)(a), (b), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA). In support of the charge, the Association alleged that the Township notified the Association that police officers would be prohibited from attending Association meetings in marked or unmarked police vehicles while on duty and further that police employees could not use Township vehicles or uniforms while attending Association meetings off duty. The Association further alleged the prohibition violated the parties' collective bargaining agreement.

After review of the charge of unfair practices the Secretary of the Pennsylvania Labor Relations Board (Board) by letter dated August 4, 1999, informed the Association that a complaint would not issue on the charge of unfair practices. The Secretary determined that the Commonwealth Court had recently held that it was within managerial prerogative under Act 111 of 1968 and the PLRA for a police employer to regulate the conduct of union business on the employer's time. Ellwood City Wage and Policy Unit v. PLRB, \_\_\_ A.2d \_\_\_ (Pa. Cmwlth at No. 2757 C.D. 1998, filed June 9, 1999). In Ellwood City the Board held that the on-duty conduct of union business is not a protected activity under Act 111 and Section 5 of PLRA and therefore any authorization to do so must derive from express permission from the employer. The Secretary further determined that use of police uniforms by officers while off-duty was also a matter of managerial prerogative and could be unilaterally restricted by the employer. Caln Township Police Officers Association v. Caln Township, 27 PPER ¶ 27180 (Final Order, 1996). Last, the Secretary determined that any allegation of violation of the parties' collective bargaining agreement should be addressed through the grievance procedure and not by the filing of charges of unfair practices.

On August 24, 1999, the Association filed exceptions and a supporting brief to the Secretary's dismissal of the charge of unfair practices. The Association raises two allegations of error in the decision declining to issue a complaint.

First, the Association alleges that the Secretary abused her discretion in failing to issue a complaint based on the averments set forth in the charge of unfair practices. The Association alleges that a complainant need not allege "each and every fact" (brief at 4) which would support a charge of unfair practices and that the role of the Secretary is not to "pass judgement on the merits" of the unfair practice charge (brief at 3). Section 8(b) of PLRA vests the Board with discretion to issue a

complaint on a charge of unfair practices. Delaware County Lodge 27 FOP v. PLRB, 461 A.2d 1337 (Pa. Cmwlth. 1983).

The standard for issuance of a complaint on a charge of unfair practices has been established by the Supreme Court. PSSU Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256(1978). In PSSU the Supreme Court stated:

For purposes of this appeal, we assume the factual assertions set forth in the "Specifications of Charges" to be true, as did the Labor Board. Therefore, we need only match the allegations with the unfair practices charged, namely Sections 1201(a)(3) and (5), to determine if the allegations would clearly establish a prima facie case, if true. If not, there was no abuse of discretion in dismissing the charges.

481 Pa. at 89, 392 A.2d at 260. On the Board supplied form for the filing of charges of unfair practices, the Board expressly solicits "specific facts, dates, names, addresses, place of occurrence, and other relevant facts". Contrary to the arguments set forth in the brief in support of the exceptions, it is necessary for a complainant to allege sufficient facts, assuming their accuracy, which would state a prima facie cause of action and not merely notice of the subsection and clauses of Section 6 of PLRA as contended by the Association. It would be contrary to the policies of PLRA and Act 111 for the Board to issue a complaint on a charge of unfair practices where, assuming all the allegations of fact in the charge to be accurate, the charge does not as a matter of law state a prima facie cause of action under the subsection and clauses alleged.

While the Board agrees with the Association that it is not necessary for a complainant to allege every factual detail surrounding the events alleged to be the unfair practice, it is necessary for a complainant to at least allege acts or events which if proved would state a prima facie claim. This issue brings us to the second exception of the Association, i.e. whether the acts complained of in the charge, as amended in the exceptions, states a prima facie cause of action.

The Association alleges that the Secretary erred in relying on Ellwood City, supra, in determining that the Township could prohibit the conduct of union business on scheduled work time. In its brief in support of exceptions the Association distinguishes a companion case to the Ellwood City decision the Secretary relied on here in her decision not to issue a complaint. In June, 1999, the Commonwealth Court decided two appeals involving Ellwood City. In Ellwood City Police Wage and Policy Unit v. PLRB, \_\_\_ A.2d \_\_\_ (No. 2758 C.D. 1998, filed June 15, 1999) the Commonwealth Court dismissed an appeal from a PLRB final order involving a question of scheduling police officers for testifying at district justice hearings where the scheduling was done by the district justice and not the public employer. In Ellwood City Police Wage and Policy Unit v. PLRB, \_\_\_ A.2d \_\_\_, (No. 2757 C.D. 1998, filed June 9, 1999) the Commonwealth Court upheld a PLRB final order in which the Board determined that police employees did not have a PLRA, Section 5, right to engage in union business on scheduled work time. The Secretary properly identified and relied on the Commonwealth Court's Opinion at No. 2757 C.D. 1998 which we also find dispositive of the Association's arguments regarding attendance at union meetings on scheduled work time. In Ellwood City the Board and the Commonwealth

Court on appeal held that Section 5 of PLRA and Act 111 do not statutorily protect any alleged right of police employees to engage in internal union business on scheduled work time. Although, this may be a lawful bargaining subject and collective bargaining agreements routinely address certain matters which grow out of the bargaining process (e.g. grievance investigation and disposition, negotiations) on scheduled work time, any right to such activity must exist by virtue of the parties' agreement and is not a right granted by statute, the protection of which is by charges of unfair practices. Accordingly we find that the Secretary properly determined that the charge of unfair practices regarding attendance of union meetings on scheduled work time did not state a prima facie cause of action.

The Association next excepts to the Secretary's determination that the Township may prohibit the use of Township vehicles and police uniforms at Association meetings during nonscheduled time. The Association specifically excepts to the Secretary's reliance on Caln Township, supra, in support of the dismissal of the charge. However our review of the charge of unfair practices as amended in the exceptions and brief in support leads us to conclude that the Secretary appropriately dismissed that portion of the charge in reliance on Caln Township. In Caln Township the Board determined that a public employer under Act 111 may as a matter of managerial right regulate the wearing of police uniforms by officers while off duty. The Association argues that the Caln Township officers sought to use the uniforms while performing supplemental employment while the officers here seek use of the uniforms while attending union meetings. However this distinction ignores the basis for the Board's decision which was that the regulation of police uniforms of the Township is a matter of managerial prerogative and need not be negotiated by the public employer. The Board in Caln Township further stated that allegation of past practice is not determinative of a present bargaining obligation if the subject matter is a matter of managerial prerogative where no bargaining obligation is owed regardless of the prior unwritten authorization of the employer.

In its brief in support of exceptions the Association alleges that the Township has committed unfair practices regarding the use of police cruisers by officers while off duty. It argues that the use of vehicles while off duty is consistent with the Township's policy of increased visibility of police presence and also constitutes a "benefit" to police officers because they do not need to use their personal vehicles (brief at 8). The issue of use of police vehicles while officers are off duty has also been addressed by the Board and the Commonwealth Court. In Cheltenham Township, 312 A.2d 835 (Pa. Cmwlth. 1973) the Commonwealth Court rejected the same "benefit" argument made by the Association here and held that the use of police vehicles by officers while off duty for personal use was a matter of managerial prerogative and not subject to mandatory collective bargaining. On the other hand the Board and the Commonwealth Court have held that where the public employer requires police employees to respond (including pursuit) to police calls and incidents occurring in the officer's presence while off duty, the public employer cannot unilaterally remove the use of police cruisers from officers. Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998). Our review of the specification of charges does not reveal allegations of the standard operating procedures or other directions to the officers of Bensalem Township while off duty akin to those in Plumstead.

As regards the Association's argument that officers' use of cruisers for attendance at Association meetings would further support the Township's policy of visible police presence in the community, it remains the Township's managerial right to make that determination without prior negotiation with the Association. It is not the appropriate role for the Association through the collective bargaining process to make the determination for the Township regarding the level of visible police presence desirable.

After a thorough review of the charge of unfair practices as amended in the exceptions and supporting brief 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 PLRA 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 nineteenth day of October, 1999. 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.