COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION, LOCAL 668, SEIU	:	
v.	:	Case No. PERA-C-99-139-E
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY SHAMOKIN JOB CENTER	:	

FINAL ORDER

On March 30, 1999, the Pennsylvania Social Services Union, Local 668, SEIU (PSSU) filed a charge of unfair practices against Commonwealth of Pennsylvania, Department of Labor and Industry, Shamokin Job Center (Commonwealth) in which it was alleged that the Commonwealth violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (Act). In support of the charge PSSU alleged that the Commonwealth entered into a lease to relocate job center employes to a building owned by Northumberland County. Northumberland County maintained a policy of a "smoke free workplace" since March 1996 and due to restrictions in the lease imposed by Northumberland County, PSSU represented employes were forbidden from smoking after their work site was relocated. PSSU alleged that the unfair practice arose when PSSU demanded bargaining over the smoking ban in the new work location which was refused by the Commonwealth citing the pre-existing Northumberland County policy and the Commonwealth's status as a tenant in the county owned building.

After review of the charge the Secretary dismissed the charge by letter dated April 12, 1999. Although noting that smoking is generally regarded as a mandatory subject of bargaining (Commonwealth v. PLRB (Venango County Board of Assistance), 459 A.2d 452 (Pa. Cmwlth. 1983)), the Secretary determined that it is a managerial prerogative for the Commonwealth to enter into a lease for premises for Commonwealth employes to perform work. The Secretary reasoned that the charge of unfair practices demonstrated that the building owned by Northumberland County and leased by the Commonwealth had been previously declared a smoke free environment by Northumberland County and that the smoking ban was part and parcel of the lease arrangement over which the Commonwealth lacked independent control as a tenant in the county building.

Thereafter, on April 23, 1999, PSSU filed exceptions to the decision of the Secretary declining to issue a complaint and requested additional time in which to file a brief in support. After grant of the request for an extension of time to file its brief, on May 28, 1999, PSSU filed a timely brief in support of its exceptions. In its exceptions PSSU renews its claim that smoking is a mandatory subject of bargaining pursuant to Commonwealth v. PLRB (Venango County Board of Assistance), supra, and the Commonwealth had a duty to negotiate with PSSU over the smoking ban. After review of the charge of unfair practices, supporting documentation, the exceptions and brief in support, the Board finds that the decision of the Secretary was

correct. Although we agree that under prior Board case law smoking is generally regarded as a mandatory subject of bargaining, the circumstances of this matter distinguish this case from prior authority which solely raised the question of the negotiability of employe smoking. The Secretary properly determined that the decision of the Commonwealth to enter into a lease for a work site for Commonwealth employes is a matter of managerial prerogative. To the extent that the lease for working premises is affected by a pre-existing prohibition on smoking in the building by the owner, the lease may appropriately be subject to those terms. Moreover, PSSU cannot, by virtue of its right to negotiate employe smoking in Commonwealth owned and operated buildings, veto the Commonwealth's managerial right to enter into leases for office space.

PSSU further argues that the Commonwealth on other occasions has entered into leasing arrangements in buildings where employe smoking was permitted and preserved pursuant to a lease agreement. However, that circumstance is not presented by the charge of unfair practices and the supporting documentation here. Rather, the charge and supporting documentation disclose that no discretion was afforded regarding smoking in the county owned building and that since 1996 smoking by any person was totally and absolutely forbidden. The Northumberland County Smoke Free Workplace Policy was a pre-existing condition that was not negotiable as a consequence of the lease agreement.

PSSU seeks to control by virtue of the charge of unfair practices the relationship between the employer of employes it represents and a third party. The collective bargaining duty set forth in the charge of unfair practices under Section 1201(a)(1) and (5) is imposed between the union and the employer and not between the employer and a third party such as Northumberland County. Because the smoking ban at issue was imposed by Northumberland County, PSSU lacks the standing under Section 1201(a)(5) to impose in turn a duty on the Commonwealth to negotiate with Northumberland County over lifting the 1996 smoking ban. Our review of the statute and relevant case law discloses no support for that proposition and we decline to establish one here. The only obligation that PSSU is empowered under PERA to enforce is the bargaining obligation between the Commonwealth and PSSU, which we have above found to be one where collective bargaining between these parties would be ineffectual since it was a pre-existing condition prior to the Commonwealth's exercise of its managerial prerogative to enter into the lease in question.

After a thorough review of the charge of unfair practices, supporting documentation, exceptions and brief in support, the Board shall affirm the decision of the Secretary declining to issue a complaint and dismiss the exceptions filed by PSSU.

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 August, 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.