

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :
CONFERENCE OF PENNSYLVANIA :
LIQUOR CONTROL BOARD LODGES :
 :
v. : Case No. PERA-C-99-98-E
 :
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :
BUREAU OF LIQUOR CONTROL ENFORCEMENT :

FINAL ORDER

On March 2, 1999, a charge of unfair practices was filed by the Fraternal Order of Police, Conference of Pennsylvania Liquor Control Board Lodges (Complainant) against the Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement (Respondent) in which it was alleged that Respondent violated Section 1201(a)(1), (3), (5) and (9) of the Public Employee Relations Act (Act). In support of the charge the Complainant alleged that the Respondent restricted the use of state assigned vehicles to certain liquor law enforcement officers who were on limited duty. The restrictions imposed by the Respondent provided that state assigned vehicles were to be used only for Commonwealth business, that officers on limited duty (i.e., performing work in the office during normal work shifts) were not permitted to use state vehicles to travel from home to work. It was further alleged that the Respondent was motivated in part by retaliation for Complainant's union activities and that the unfair practice occurred when the restrictions were imposed in writing without prior negotiations with Complainant.

By letter dated April 15, 1999, the Secretary of the Pennsylvania Labor Relations Board (Board) informed Complainant that a complaint would not issue on the charge of unfair practices. The Secretary observed that the Board and the Commonwealth Court have distinguished between the use of employer provided vehicles for company business where employees were regarded as on call while off duty as presenting certain negotiable issues and instances where an employer placed restrictions on the use of employer provided vehicles where no showing was made regarding the need for performance of duties during off hours. Cheltenham Township v. Cheltenham Township Police Department, 312 A.2d 835 (Pa. Cmwlth. 1973); Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998). The Secretary determined, after review of the charge of unfair practices and supporting documentation, including the relevant directives and policy statement, that the restrictions essentially involved officers whose duties were limited to in office functions while on duty and no showing of being on call while off duty, and accordingly presented no bargaining duty prior to the Respondent's promulgation of its directive. The Secretary further determined that no allegations were set forth which would support the Complainant's allegation of an anti-union motive for promulgation of the directive.

Thereafter, on May 3, 1999, Complainant filed exceptions and a supporting brief to the Secretary's dismissal of the charge. The exceptions essentially are a recitation of the background events and state only that the decision of the Secretary was "error." The exceptions themselves contain no specific assignment of error. As a general matter the Board will not entertain alleged exceptions under its rules (34 Pa. Code § 95.98(a)) which are not sufficiently specific so as to permit meaningful review of a particular assignment of error in fact or law. See, e.g., PLRB v. Lawrence County, 12 PPER ¶ 12312 (Final Order,

1981). The Commonwealth Court on appeal from a PLRB final order has similarly stated that an issue so broadly stated that it does not define any specific issue does not constitute adequate preservation of issues for review. Geistown Borough v. PLRB, 679 A.2d 1330 (Pa. Cmwlth. 1996). The sole claim in the document styled as exceptions that the decision of the Secretary was in "error" does not sufficiently preserve any specific issue for further administrative review.

However, the Board has also stated that where a simultaneously filed brief further elaborates on specific assignments of error in the decision of the Secretary, the Board will address those issues which it can separately identify. Conrad Weiser Education Association v. Conrad Weiser School District, 28 PPER ¶ 28050 (Final Order, 1997).

In its brief the Complainant initially argues that the Secretary erroneously relied on Cheltenham Township, *supra*, in which the Commonwealth Court held that the employer's provision of vehicles to transport police officers to and from work was not a term or condition of employment subject to mandatory bargaining under Act 111 of 1968. This Board has contrasted and distinguished that result from a situation where the employer provides vehicles to employes and its standard operating procedures provide that the employes at issue are regarded as on call during non-working time and are required to respond in emergency settings. In Plumstead Township, *supra*, the Board determined that where the employer required employes to respond while off duty in emergency and other circumstances requiring specialized vehicles, the employer was required to bargain with the union prior to removing the vehicles from use by its police employes off duty. Our review of the specification of the charge of unfair practices and the amendments discloses that the Secretary properly relied on Cheltenham and the Respondent's action is similar to that of the employer in Cheltenham rather than Plumstead. The written directives relied on by the Complainant disclose that the officers placed on limited duty were restricted to office duties at their office headquarters and were not expected to be called to work or otherwise conduct Commonwealth business outside of the officers' assigned work shifts (charge, Appendix B). Accordingly, the Respondent's directive prohibiting officers on limited duty from using Commonwealth vehicles to travel between home and work closely resembles the use which the Commonwealth Court found to be a matter of managerial prerogative in Cheltenham. Accordingly, we must reject Complainant's claim that the Secretary's reliance on Cheltenham was erroneous.

The Association alleges that the Secretary erred by failing to account for that portion of the written directive which provided that employes on limited duty may be "further restricted as deemed appropriate by the Bureau Director when certain conditions exist" (brief of Association at 3). The Association contends that these "certain conditions" are disciplinary in nature and constitute new disciplinary policies. However, these contentions are not clear from the promulgation of the directives and represent speculative claims regarding the written directives and their impact. Because these contentions are not known at this time, the unfair practice charge is premature due to the speculative nature of the Association's claim.

The Association further contends that the written directives implement a new job standard requirement regarding the directive that officers now "exercise proper care and maintenance of assigned automobiles" (brief of Association at 3). However, our review of the written directive discloses only the normal direction of personnel by an employer when employer supplied vehicles are provided to employes. There is no specific allegation set forth in the charge or in the written directive itself which would support the Association's claim that new duties and obligations which would be subject to a bargaining obligation have been imposed. To the extent that the Respondent's routine direction that employes exercise proper care and maintenance of assigned automobiles results in discipline of or adverse action taken toward a member of

the bargaining unit, the Association may remedy individual applications through the parties' collective bargaining agreement's grievance procedure. However, the Association's claim that every routine direction of personnel of this nature imposes a separate bargaining obligation would cripple the Respondent's ability to manage its program and direct its work force.

The Association further contends that the removal of radio equipped automobiles from limited duty personnel inhibits the performance of the officers' duties. In support of this claim the Association alleges that removal of radio equipped automobiles limits the officers from calling in incidents and violations while traveling in the automobile. However, the directive itself submitted by the Association provides that employes on limited duty are not expected to conduct Commonwealth business outside of their assigned work shift at the work location assigned. Further, it is simple common sense that employes who are not assigned a radio equipped car would not be expected to place calls on a car radio which is not available. Further, the Association has submitted no information in its charge and attached documentation which would support the notion that these employes, having been deprived of radio equipped cars, are expected by the Respondent to call in incidents on a car radio.

The Association last excepts on the basis that the impact on employes is a "fact intensive" matter which requires the conduct of a hearing (brief of Association at 4). In this regard the Board, in deciding whether to issue a complaint on a charge of unfair practices, assumes the factual allegations set forth in the charge of unfair practices as accurate. PSSU Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). Accordingly, the Board has assumed as accurate the factual allegations set forth in the charge of unfair practices and the supporting documentation. However, the Board carefully scrutinizes charges to determine whether the factual allegations support a complainant's allegation that the facts alleged, if proved at hearing, would establish an unfair practice. As above noted in this order, after review of the directive and supporting documentation, the Board finds as a matter of law that a fair reading of the directive and its natural and normal consequences does not constitute a cause of action under the cited provisions of PERA. The Board and the courts have clearly held that it is a managerial prerogative for a public employer to remove company supplied vehicles which are used for commuting purposes. Where employes are not required to utilize company vehicles off duty, an employer may unilaterally decide to remove such vehicles from its employes. Review of the directive and supporting documentation in this case discloses only that and the arguments set forth in the brief in support of exceptions set forth only speculative, exaggerated and otherwise unsupported claims regarding the directive and its impact.

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

ORDER

In view of the foregoing and in order to effectuate the policies of 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 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 twenty-seventh day of July, 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.