

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

POLICE EMPLOYEES OF SILVER :
SPRING TOWNSHIP :
 :
v. : Case No. PF-C-04-33-E
 :
SILVER SPRING TOWNSHIP :

FINAL ORDER

Police Employees of Silver Spring Township (Union) filed timely exceptions and a supporting brief on October 25, 2004, with the Pennsylvania Labor Relations Board (Board) from a Proposed Decision and Order (PDO) issued October 5, 2004. On November 10, 2004, Silver Spring Township (Township) filed a response to exceptions and supporting brief. In the PDO, the Hearing Examiner concluded that the Township had not committed unfair labor practices within the meaning of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), because it was contractually privileged to require its police officers to submit doctor's notes on specifically identified occasions.

The Union has excepted to the PDO, asserting that the Hearing Examiner erred 1) by concluding that the Township did not violate the PLRA in the issuance of the sick leave abuse policy, and 2) by determining that the Township was contractually privileged to implement the policy unilaterally modifying a mandatory subject of bargaining.

The Hearing Examiner's findings of fact are as follows. On February 5, 2004, Chief of Police Walter Hughes issued a directive ordering its police officers to submit doctor's notes if they called off sick the day preceding or following a scheduled day off and required a second doctor's note attesting that the officer is physically fit to return to work. Section 3.02 of the parties' collective bargaining agreement provides that "[t]he employer reserves the right to request a certificate signed by an attending physician on questionable illnesses or injuries."

An employer commits unfair labor practices within the meaning of sections 6(1)(a) and (e) of the PLRA if it unilaterally changes an employe term and condition of employment. Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998). A change to a sick leave policy is a change to an employe term and condition of employment that usually requires bargaining prior to implementation. Cleona Borough Police Officers' Association v. Cleona Borough, 28 PPER ¶ 28065 (Final Order, 1997). However, the Board will dismiss a refusal to bargain charge if the employer establishes a sound arguable basis for the claim that its action was contractually privileged (i.e. that the parties satisfied their statutory bargaining duty and the matter is presently addressed in the collective bargaining agreement). Ellwood City Police Wage and Policy Unit v. Ellwood City Borough, 28 PPER ¶ 28200 (Final Order, 1997). Specifically, if the employer has a sound basis for arguing that its change to a term and condition of employment was privileged by a contract provision and the employer acted in conformity with its

construction of the agreement, then the employer satisfied its statutory obligation to bargain when it negotiated the collective bargaining agreement. Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000).

Section 3.02 of the parties' collective bargaining agreement provides that, "[t]he employer reserves the right to request a certificate signed by an attending physician on questionable illnesses or injuries." The Union contends that this provision requires the Township to determine on a case-by-case basis whether or not to compel a doctor's note when an officer takes a sick day. The Township argues that the results of its internal investigation into sick leave by its officers permits it to categorize any sick leave taken in conjunction with a scheduled day off as a questionable illness or injury, thus allowing it to require doctor's notes. Section 3.02 of the agreement does not provide an unambiguous resolution to this dispute, and it therefore hinges on the proper interpretation of the parties' contract. The law is well established that where the collective bargaining agreement covers the item of dispute and the employer and union disagree regarding proper interpretation of their agreement, the Board will not enter the dispute to determine which interpretation is correct. Rather, questions regarding proper interpretation of the parties' agreement should be submitted to an arbitrator. Amalgamated Transit Union Local No. 801 v. Altoona Metro Transit, 26 PPER ¶ 26085 (Final Order, 1995).

In this case, the contract provision covers the dispute at issue, and the parties disagree as to its proper interpretation. Therefore, adjudication of this dispute is properly left to an arbitrator, and the Board declines to comment upon the meaning of the provision in dispute. Accordingly, the Hearing Examiner correctly determined that the Township was contractually privileged to implement its policy concerning officers taking sick leave in conjunction with a scheduled day off, and the Union's exceptions are dismissed.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions filed by the Union and make the Proposed Decision and Order final.

ORDER

In view of the foregoing, and in order to effectuate the policies of Act 111 of 1968 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the above case number be and the same, are hereby dismissed, and the Proposed Decision and Order is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Anne E. Covey, Member, this fourteenth day of December, 2004. 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.