

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WASHINGTON LODGE NO. 17, :
FRATERNAL ORDER OF POLICE :
 :
v. : Case No. PF-C-05-119-W
 :
CITY OF EASTON :

FINAL ORDER

Washington Lodge No. 17, Fraternal Order of Police (Union) filed exceptions and a brief in support with the Pennsylvania Labor Relations Board (Board) on October 3, 2005. The Union's exceptions challenge a September 12, 2005 decision of the Secretary of the Board (Secretary) declining to issue a complaint and dismissing its Charge of Unfair Practices filed on August 30, 2005, against the City of Easton (City). In its charge, the Union alleged that the City violated Section 6(1)(a), (b) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111, by unilaterally disbanding its Special Weapons and Tactics (SWAT) division. The Secretary dismissed the charge of violations under Section 6(1)(b) of the PLRA for failing to allege sufficient facts to support its claim. Further, the Secretary dismissed the Union's charge under Section 6(1)(a) and (e) of the PLRA, citing a public employer's right to completely and permanently cease providing a discretionary service to the public.

In determining whether to issue a complaint, we assume that all facts alleged are true. Generally, a complaint will be issued unless the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998). The Union alleges in its Specification of Charges that the City "unilaterally disbanded the S.W.A.T. division on July 21, 2005."

In its exceptions, the Union argues that the City's unilateral disbandment of the SWAT division was not a proper exercise of managerial prerogative. Additionally, the Union argues that the "evidence suggests that the decision to eliminate the division is far from permanent."

Section 6(1)(b) of the PLRA provides that it is an unfair practice for an employer "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other material support to it..." The Union failed to allege any facts that would support a claim under this provision; therefore, any exceptions to the Secretary's refusal to issue a complaint under Section 6(1)(b) are dismissed.

The Union argues that the City's decision to eliminate the SWAT division is a mandatory subject of bargaining, because the elimination of the division impacted bargaining unit members' hours and working conditions. The Union supports its argument by analogizing the City's cessation of SWAT division services to changes in work schedules. Further, the Union argues that the City failed to offer any policy concerns that outweigh the impact its decision had on the affected employees. The Board and the Courts have previously addressed and dismissed the Union's arguments and concluded that a public employer's permanent and complete cessation of services is a proper exercise of managerial prerogative that does not implicate the employer's bargaining obligation. Youngwood Borough Police Department v. PLRB, 539 A.2d 26 (Pa. Cmwlth. 1988) *appeal denied*, 522 Pa. 599, 562 A.2d 323 (1989). County of Bucks v. PLRB, 465 A.2d 731 (Pa. Cmwlth. 1983).

The argument that the City's actions impact the bargaining unit members' hours and working conditions is unavailing. Often, a public employer's exercise of managerial prerogatives indirectly impacts bargaining unit members' wages, hours and/or working conditions. While the employer owes the union a duty to bargain over the impact of these

actions on demand, the subsequent impact on bargainable subjects itself does not render the exercise of managerial prerogative a violation of a public employer's bargaining obligation. See Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000); Philadelphia Federation of Teachers, Local No 3, AFL-CIO v. Philadelphia School District, 28 PPER ¶ 28127 (Proposed Decision and Order, 1997). Accordingly, although the City may owe the Union a duty to bargain the impact of its decision to eliminate the SWAT division upon demand, it does not owe the Union a duty to bargain over the underlying decision to eliminate the division. While the Union cites several alleged impacts the decision to eliminate the SWAT division had on the bargaining unit members' hours and working conditions, the Union fails to allege a violation of the City's impact bargaining obligation. Accordingly, this exception is dismissed.

The Union next argues that the City provided no evidence that the elimination of the SWAT division is permanent. The Board and the Courts have previously held that an employer may go out of the business of providing a discretionary public service for any reason, so long as the service is completely and permanently discontinued. See Youngwood Borough Police Department v. PLRB, *supra*; County of Bucks v. PLRB, *supra*. As the Commonwealth Court stated in County of Bucks, a public employer

may not *under any guise* avoid its Act 111 duty to bargain by subsequently directing its employees or others to resume any of the duties principally performed by the [bargaining unit members] prior to their termination; if it wishes to resume these duties, the [employer] must reinstate the [employees] and bargain with their Association.

County of Bucks v. PLRB, 465 A.2d at 734. The Union, however, fails to allege any facts to support the argument that the City does not intend to permanently cease providing SWAT division services. Instead, in its brief, the Union states:

the FOP submits that the City did not fully contemplate how it will respond to a situation that requires the expertise of the disbanded division. Therefore, it remains to be seen whether the City can effectively serve the needs of its constituents without the S.W.A.T. division.

Accordingly, the Union is asking the Board to speculate about the City's future intent regarding the status of its SWAT division. Previous Board and Court cases have held that the Board declines to speculate regarding a public employer's future intent in cessation of services cases. See Upper Mount Bethel Police Association v. Upper Mount Bethel Township, 31 PPER ¶ 31005 (Final Order, 1999); Jefferson-Penn Police Department v. Jefferson-Penn Police Commission, 21 PPER ¶ 21025 (Final Order, 1989); Millcreek Township School District, 7 PPER 91 (Nisi Decision and Order, 1976). Regarding claims of this nature, matters of a "permanent and complete cessation" involve prospective deduction that cannot be ascertained now. The Board's policy is to accept the employer's stated intent at face value, unless accompanied by conduct that contradicts such claims or resumes the operation at a time where to do so would violate the employer's bargaining duty. Our review of the charges as amended in the Exceptions does not support a claim of unfair practice at this time.

The Board confines its review to whether the record before it evidences actual performance of the work at issue by the employer or an alternative provider (e.g. employees of a subcontractor) after the alleged date of permanent discontinuance of the service. *Id.* For instance, in Millcreek Township School District, the Board viewed the permanency in terms of whether the employer restarted its operations on its own or by way of a subcontractor after the cessation. Millcreek Township School District, 7 PPER at 93. Since the Union has failed to allege any factual allegations that the City actually provided SWAT division services following the date of the division's purported elimination, the Union has failed to state a cause of action warranting the issuance of a complaint. Consequently, this exception is dismissed.

After a thorough review of the exceptions and all matters of record, there are no facts alleged to support the Union's charge under Section 6(1)(a), (b) or (e) of the PLRA

or Act 111. Accordingly, the Board will dismiss the exceptions and sustain 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 are dismissed and the Secretary's decision not to issue a complaint be and the same 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, Anne E. Covey, Member and James M. Darby, Member, this eighteenth day of October, 2005. 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.