

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL UNION OF OPERATING :
ENGINEERS, LOCAL 542 :
 :
v. : Case No. PERA-C-05-179-E
 :
UPPER SOUTHAMPTON TOWNSHIP :

FINAL ORDER

International Union of Operating Engineers, Local 542 (Union) filed exceptions with the Pennsylvania Labor Relations Board (Board) on August 1, 2005. The Union's exceptions challenge a July 12, 2005 decision of the Secretary of the Board declining to issue a complaint and dismissing its Charge of Unfair Practices filed against Upper Southampton Township (Township) alleging that the Township violated Section 1201(a)(1), (5) and (9) of the Public Employe Relations Act (PERA). Specifically, the Union alleges that the Township unilaterally implemented a "Cellular Telephone and Computer Use Policy."

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. 43 P.S. §1101.1302. 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).

In its Specification of Charges, the Union alleges that in February 2005, the Township unilaterally issued a new "Cellular Telephone and Computer Use Policy." The Union further alleges that the policy altered terms and conditions of employment that previously permitted employes to use personal cell phones during work hours. Immediately upon learning of the policy's existence and in response to a Union demand, the Union and the Township met and discussed the new policy.

In its exceptions to the Secretary's refusal to issue a complaint, the Union asserts that Monessen Education Association v. Monessen City School District, 35 PPER 33 (Proposed Decision and Order, 2004), the case cited by the Secretary as support for the dismissal of the charges, supports the issuance of a complaint. The Union argues that the balancing test used to determine whether an issue that implicates managerial policies also involves a matter of fundamental concern to the employes' interests in wages, hours and other terms and conditions of employment, established in PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975) and applied in Monessen Education Association, should be applied here. Further, the Union argues that to balance the competing interests of the bargaining unit and the Township, a hearing is required to develop a more complete record.

The Board agrees with the Union's assertion that a State College balancing test is required in this case. However, in order to warrant the issuance of a complaint, the Union must allege an impact caused by the exercise of managerial prerogative on a matter of fundamental concern to the employees' wages, hours or working conditions. If the Union fails to properly allege such an impact, then the issuance of a complaint is not warranted.

Monessen Education Association, supra, involved an employer's unilateral implementation of a cell phone policy, determined by the hearing examiner to constitute an unfair practice. The Board is not bound by proposed decisions. See Fraternal Order of Police, Star Lodge No. 20 v. PLRB, 522 A.2d 697 (Pa. Cmwlth. 1987, *aff'd*, 522 Pa. 149, 560 A.2d 145 (1989)). Consequently, the Board has not generally addressed the issue of whether cellular telephone policies of public employers implicate a bargaining obligation prior to implementation. We note that all unfair practice claims are framed by the allegations and that the analysis of the merits of this particular cellular phone policy does not involve other questions not addressed by this policy. We have carefully reviewed the policy in its entirety and the Union's Section 701 interests alleged in the charge as amended in determining whether a complaint should be issue or whether the policy itself implicates only managerial interests and does not, on its face, state a claim that the policy infringes an matters negotiable under Section 701 of PERA.

Accordingly, the Board will apply the State College balancing analysis to determine whether the policy allegedly implemented by the Township impacts the employees' fundamental interests in wages, hours or working conditions, and therefore, states a cause of action.

Initially, the law is well established that for work rules to fall entirely within management prerogative, the rules must not be vague or overbroad. In Abington Transportation Association v. Abington School District, 18 PPER ¶ 18888 (Proposed Decision and Order 1987), 19 P. PPER 19067 (Final Order, 1988), *aff'd*, 570 A.2d 108 (Pa. Cmwlth. 1990), the Board and Courts determined that an employer's work rule constitutes a legitimate exercise of managerial policy if the employer can show that the rule is on its face: (1) narrowly tailored to substance, to meet with particularity only the employer's legitimate and necessary objectives, without being overly broad, vague or ambiguous; and (2) appropriately limited in its applicability to affected employees to accomplish necessarily limited objectives.

Here, the Township's policy would not impact the employees' interest in wages, hours and working conditions if the policy only affected the employees' work time. See e.g. Ellwood City Police Wage and Policy Unit v. PLRB, 736 A.2d 707 (Pa. Cmwlth. 1999)(Activity protected by the PLRA does not include conducting union business during work time). Contrary to the facts of Monessen Education Association, the Township's new policy does not prohibit cellular telephone use during non-assignment time. Therefore, the policy is narrowly tailored to affect the bargaining unit only during the time the Township has a managerial prerogative under Section 702 of PERA to direct its personnel.

Second, contrary to the Union's argument, the policy accounts for bargaining unit members' personal emergencies. In its exceptions, the

Union alleges that several members of the bargaining unit have family members with serious medical conditions requiring "instantaneous telephone communication" in the event of an emergency. Additionally, a member of the bargaining unit allegedly has a medical condition that requires emergency access to outside health care providers. The policy, a copy of which was attached to the Union's Specification of Charges, provides in relevant part:

Provided, however, such cellular and landline telephones may be used in the case of an emergency. Such use for an emergency shall be promptly reported to the Employee's department head.

Therefore, as set forth in the charge as amended, the only impact the new policy has on the bargaining unit members who use their cellular or landline telephones during an emergency is the requirement that they inform their department head of this use. This impact is at most nominal and does not outweigh the Township's legitimate managerial prerogative of directing their personnel during assignment hours.

The Union failed to allege any substantial impact on a matter of fundamental concern to the employees' interest in wages, hours or working conditions to counter-balance the Township's managerial prerogative. Accordingly, based on the allegations set forth in the charge as amended, the Board finds that the Township's cellular telephone policy satisfies the State College balancing test and is a legitimate exercise of managerial prerogative.

After a thorough review of the exceptions and all matters of record, there are no facts alleged warranting issuance of a complaint. 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 Public Employe Relations Act, 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 sixteenth day of August, 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.