

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF TRANSIT POLICE :
:
v. : Case No. PERA-C-05-201-E
:
SOUTHEASTERN PENNSYLVANIA :
TRANSPORTATION AUTHORITY :

FINAL ORDER

On May 3, 2005, the Fraternal Order of Transit Police (Union) filed a charge of unfair practices alleging that the Southeastern Pennsylvania Transportation Authority (SEPTA) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by unilaterally issuing an intra-office memorandum, effective March 6, 2005, requiring that "all lunches MUST be taken on the officer's assigned beat or within walking distance of their beat assignment." On June 8, 2005, the Board Secretary issued a letter requesting that the Union submit the intra-office memorandum to the Board to assist the Board's review of the charge.¹ On June 22, 2005, after review of the memorandum, the Secretary issued a letter informing the parties that no complaint would be issued on the Union's charge stating that "public employers are not required to bargain over matters of inherent managerial policy, including the direction and supervision of personnel." On July 7, 2005, the Union filed exceptions to the Secretary's decision, and a supporting brief.

In its exceptions, the Union contends that the Secretary erred in failing to issue a complaint. Specifically, the Union argues that the Secretary erred in concluding, without a hearing, that SEPTA's alleged unilateral change in the lunchtime distance limitations did not constitute a mandatory subject of bargaining under the balancing test set forth in PLRB v. State College Area Sch. Dist., 461 Pa. 494, 337 A.2d 262 (1975). SEPTA's police officers negotiate under PERA because SEPTA, neither a "political subdivision" nor the "Commonwealth", is not an employer under Act 111 of 1968.

In determining whether to issue a complaint, the Board assumes that the facts alleged are true. A complaint will not be issued, however, when the facts, as alleged, fail to support a cause of action. PSSU, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978); Homer Center Education Association v. Homer Center Sch. Dist., 30 PPER ¶ 30024 (Final Order, 1998).

Section 702 provides that "[p]ublic employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services . . . and direction of personnel." 43 P.S. § 1101.702. In City of Philadelphia (First Responder) v. PLRB, 588 A.2d 67, 72 (Pa. Cmwlth. 1991), petition for allowance of appeal denied, 528 Pa. 632, 598 A.2d 285 (1991), the Commonwealth Court stated that the "level of fire and medical emergency protection the city wishes to provide to its citizens, its total staffing levels, its budget, and selection and direction of personnel" under Section 702 constitute managerial prerogatives about which a public employer does not owe a duty to bargain. Id. In Reading Fraternal Order of Police, Lodge No. 9 v. City of Reading, 30 PPER ¶ 30121 (Final Order, 1999), the Board held under Act 111 that a public employer has a managerial prerogative to direct its personnel in a manner that achieves a level and quality of police services that it deems

¹ The intra-office memorandum issued by SEPTA provides, in part, as follows:

Patrol officers going "Out of Service" for lunch, personal or any other reason will also provide the location. Units will return to service by notifying radio at the expiration of the thirty (30) minute lunch period. Units on personals will advise radio when they are available for service. Commencing Sunday, March 6, 2005 all lunches MUST be taken on the officer's assigned beat or within walking distance of their beat assignment.

appropriate. A public employer's decision that involves the core of its public purpose or the efficiency and effectiveness of its operation is within management's prerogative under Section 702 of PERA. Easton Area Educ. Ass'n v. Easton Area Sch. Dist., 32 PPER ¶ 32163 (Final Order, 2001). In City of Reading, the Board opined as follows:

[A]n employer has the responsibility . . . to exercise its discretion to select and direct its personnel. The exercise of such discretion is essential to the employer's achievement of its policy goals and objectives and to its ability to establish and maintain the quality and level of police service it deems appropriate.

City of Reading, 30 PPER at 262.

In its brief, the Union further alleged that, under the prior policy requiring officers to remain in "close proximity" to their assigned beats, officers frequently rode SEPTA trains and buses to and from regional zone headquarters for meal periods. The Union claims that, under the "walking distance" restriction, officers will be unable to eat at headquarters and will be exposed to all weather, unless they are willing to pay for restaurant lunches. (Union's brief at 4). Also, in the affidavit attached to the Union's brief, the Union president averred that SEPTA police officers have thirty minutes for lunch and "for many years have been required to respond to police calls even during their lunch breaks." (Union brief, Exhibit B, ¶s 7 & 12).

One of SEPTA's important public purposes is to ensure a safe system of public transportation. SEPTA possesses an express managerial prerogative under Section 702 of PERA to determine the standards of its police protective services and to facilitate the effective and efficient performance of those services. In this regard, SEPTA is authorized by Section 702 to direct its police personnel in a manner that ensures that those officers (i.e., the expected available complement) are able to either respond to emergency police calls during lunch time or are able to return to their assigned patrol within one-half hour. Fraternal Order of Transit Police v. SEPTA, 35 PPER 73 (Final Order, 2004), aff'd, sub nom., Docket No. October Term 04-2172 (Philadelphia County Court of Common Pleas, May, 2005)(holding that SEPTA possesses a managerial prerogative to direct personnel in a manner that fulfills and effectuates SEPTA's staffing requirements of its special operations response team). The possibility that SEPTA's policy may negatively affect lunchtime conveniences for the patrol officers does not diminish SEPTA's ability to direct its work force to ensure officers' ability to timely respond to police emergencies. City of Reading, supra (stating that "[d]isruption of one's personal life is an inevitable consequence of employer direction of the work force").

Our review of the memorandum of March 2, 2005, accepting as true all of the Union's allegations regarding the impact of the directive on employe break times, discloses that SEPTA's managerial interests in ensuring a safe public transit system in Philadelphia and its environs outweighs the alleged impact on employe working conditions. Without changing the time allotted for the lunch period, SEPTA has required that officers report going in or out of service for breaks and that officers stay within "walking distance" of their beat assignments during lunch. In the charge as originally filed (Paragraph 6), the Union alleged that officers have been accustomed to taking a train, bus or other transportation to lunch locations which is now disallowed. However, SEPTA's need to have officers readily available on short notice unencumbered by reliance on vehicular transportation, which is subject to delay and, on occasion, gridlock during police emergencies involving the public transportation system of a major city, is apparent.

A hearing is not required, accepting as accurate the Union's claim of impact on employe hours and working conditions under Section 701, for purposes of reviewing the Secretary's decision declining to issue a complaint, and "[i]t is not the public employer's burden to show the wisdom of its exercise of managerial policy to the satisfaction of the [U]nion or for that matter, the Board." Id. at 263. Accordingly, SEPTA is expressly authorized under Section 702 of PERA to direct its patrol personnel to remain on, or within walking distance of, their assigned beats during lunch breaks to ensure that the required complement is able to return to their work assignments within the one-half hour lunch break (or respond to police calls during that time) and thereby provide the standards of service required by SEPTA. Therefore, the law does not impose a

bargaining obligation on SEPTA under the facts alleged and the Secretary properly determined that no complaint should issue.

After a review of the exceptions and all matters of record, the facts alleged do not support the Union's charge under Section 1201(a)(1) and (5) of PERA. 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 Employee 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 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.