

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

HAMBURG POLICE OFFICERS :
ASSOCIATION :
 : Case No. PF-C-06-54-E
 v. :
 :
BOROUGH OF HAMBURG :
 :
 :

FINAL ORDER

The Hamburg Police Officers Association (Complainant) filed Exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 14, 2006 challenging a June 27, 2006 decision of the Secretary of the Board (Secretary) declining to issue a complaint and dismissing its Charge of Unfair Practices filed on April 24, 2006, against the Borough of Hamburg (Employer). In its charge, the Complainant alleged that the Employer violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA), by promoting two patrol officers, Robert Mengle and Richard Leymeister, to the rank of corporal without subjecting them to the civil service provisions of the Borough Code and then changing the rules and regulations of the Hamburg Civil Service Commission to make it easier to promote these same two officers after the Complainant filed a civil complaint in the Court of Common Pleas challenging the promotions. Specifically, the Employer changed the qualification for promotions from "no more than five days of suspension in the last three years" prior to the deadline for submitting applications for promotion to "no more than three days of suspension in the last two years."

On May 16, 2006, the Secretary issued an Amendment Letter stating that the Board was unable to process the Charge in its present form and requesting that Complainant amend the Charge to explain how the allegations contained in the Charge were distinguishable from IAFF, Local 10 v. City of McKeesport, 34 PPER ¶ 28 (Final Order, 2003) and FOP Rose of Sharon Lodge No. 3 v. Pennsylvania Labor Relations Board., 729 A.2d 1278 (Pa. Cmwlth. 1999), finding that, although the procedural aspects of a promotion are subject to mandatory bargaining, the establishment of standards for position remains a managerial prerogative within the employer's right to select and direct personnel. On June 5, 2006, the Complainant filed "Exceptions" to the Amendment Letter, which the Board treated as an amendment to the April 24, 2006 Charge. In the June 5, 2006 amendment, the Complainant did not explain how the allegations in the Charge were distinguishable from McKeesport and Rose of Sharon. On June 27, 2006, the Secretary dismissed the charge on the basis that the establishment of criteria for evaluating the qualifications of employees to perform a job is a managerial prerogative and therefore not subject to collective bargaining.

In its exceptions, the Complainant argues that all disciplinary matters, including reckoning periods, are a mandatory subject of bargaining. In its brief in support of the exceptions, the Complainant also argues that it was engaging in protected activity when it challenged the promotion of the two officers and that the Employer retaliated against it for engaging in this activity. Thus, the Complainant argues that the Secretary erred by refusing to issue a complaint on its Charge.

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 PLRA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

First, we address the Complainant's contention that the changes to the rules and regulations with regard to promotions are a mandatory subject of bargaining. As the Secretary explained in her letter requesting amendment and dismissal letter, the establishment of criteria for evaluating the qualifications of employees to perform a job is a managerial prerogative and therefore not subject to collective bargaining. McKeesport; Rose of Sharon. Therefore, the Secretary did not err in failing to issue a complaint on the Complainant's allegation of a violation of Section 6(1)(e).

Next, we address the Complainant's argument that the Employer retaliated against it for engaging in protected activity. A claim of discrimination under Section 6(1)(c) of the PLRA requires establishing that employees were engaged in protected activity, that the employer was aware of the activity, and that an adverse employment action was taken because of the employer's anti-union animus. PLRB v. Stairways, Inc., 425 A.2d 1172 (Pa. Cmwlth. 1981). For a claim of discrimination, "the motive creates the offense." Stairways, Inc., 425 A.2d at 1175 (quoting PLRB v. Ficon, 424 Pa. 383, 388, 254 A.2d 3, 5 (1969)). Even where there is no direct evidence of anti-union animus, the Board may draw an inference of unlawful motive from the facts presented. Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993).

The Complainant's Court challenge to rules and regulations that could affect the promotions of members of the bargaining unit could be considered protected activity, even though establishing the qualifications for a job is a managerial prerogative. Next, there is no question that the Employer was aware of the Complainant's activity. Thus, the only remaining question is whether the Employer retaliated against the Complainant for engaging in this activity. In its brief, the Complainant argues that "the changes were made to permit the Borough to select the same officers it had improperly promoted in the event the Court of Common Pleas rescinds those improper promotions. The Association avers such action is adverse to the Association because it secures an unfair advantage to certain members at the expense of the body."

As the Secretary noted, rather than indicating retaliation, the Employer's actions suggest that, in response to the Complainant's challenge to the promotions, the Employer attempted to make the civil service rules consistent with the qualifications that it chose to adopt. The fact that these changes would again benefit Officers Mengle and Leymeister does not indicate that the Borough is discriminating against Association members and the Complainant does not allege that the changes were retaliation against specific individuals for protected activity. Rather, this only indicates that these are two officers who have had fewer suspensions in the last two years and, in the eyes of the Employer, are more qualified for promotion. Further, the Complainant's contention, that changing civil service rules to benefit two members of the Association is detrimental to the Association as a whole, is not supportable. The very nature of having different ranks of officers means that some officers will be more qualified than others for different positions. This is a fact inherent to a ranking system and not indicative of discrimination against any individual for engaging in protected activity, a necessary element in a claim of discrimination. Therefore, the Secretary did not err in failing to issue a complaint on the Complainant's allegation of a violation of Section 6(1)(a) and (c).

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), (c) 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, 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.

SIGNED, SEALED, DATED and MAILED this nineteenth of September, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

L. DENNIS MARTIRE, CHAIRMAN

ANNE E. COVEY, MEMBER

JAMES M. DARBY, MEMBER