

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

WASHINGTON LODGE NO. 17, :  
FRATERNAL ORDER OF POLICE :  
 :  
v. : Case No. PF-C-06-47-E  
 :  
CITY OF EASTON :

**FINAL ORDER**

Washington Lodge No. 17, Fraternal Order of Police (Union) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on May 3, 2006. The Union's exceptions challenge an April 13, 2006 decision of the Secretary of the Board (Secretary) declining to issue a complaint and dismissing its Charge of Unfair Practices filed on March 22, 2006 against the City of Easton (City).

In its Charge, the Union alleged that, on February 8, 2006, the City directed a request for Special Weapons and Tactics (SWAT) to the Pennsylvania State Police rather than assignment to the City's SWAT division. The Union alleged that this was a violation of Section 6(1)(a), (b) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 because the City transferred bargaining unit work that had previously been performed by the City's SWAT division to the Pennsylvania State Police. The Secretary dismissed the Union's charge under Section 6(1)(a), (b) and (e) of the PLRA. The Secretary noted that, in a prior unfair practice charge filed by the Union, Washington Lodge No. 17, Fraternal Order of Police v. City of Easton, 36 PPER ¶ 141 (Final Order, 2005), the Board stated that that the City's disbanding of the SWAT team was a permissible exercise of a managerial prerogative. Because the new Charge contained no allegation that the SWAT service had been resumed, the Secretary dismissed the Charge because a public employer has the 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 PLRA. 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 did not completely and permanently cease providing the services performed by the SWAT team. Specifically, the Union states that, on February 8, 2006, the City directed the Pennsylvania State Police to serve a warrant and that, prior to this time, the service of warrants was performed exclusively by members of the bargaining unit on the SWAT team. Therefore, the Union argues that the City is still in the business of providing services performed by the SWAT team, which

negates the City's argument that it has completely and permanently discontinued the services of the SWAT division.

As noted in our previous Final Order, the Board and the Courts have concluded that a public employer's permanent and complete cessation of a discretionary public service 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), petition for allowance of appeal denied, 522 Pa. 599, 562 A.2d 323 (1989). County of Bucks v. PLRB, 465 A.2d 731 (Pa. Cmwlth. 1983). In this case, the Union claims that the City is still providing services that were performed by the SWAT team, such as the service of warrants, to support its argument that the City unilaterally transferred bargaining unit work and that it still provides SWAT services, thereby violating the PLRA. However, the relevant inquiry in this case is whether the City has resumed providing services that require a SWAT team, or whether the City has ceased providing SWAT services and refers such requests to the Pennsylvania State Police, which by operation of law provides necessary police services not provided by municipal police forces. The Union does not allege that the City itself has resumed providing SWAT services but rather that it continues to refer such requests to the Pennsylvania State Police following the City's disbanding of the SWAT division in July 2005.

In PLRB v. Perkiomen Township, 14 PPER ¶ 14259 (Final Order, 1983), the union argued that the township did not cease providing police services but merely replaced those services with the Pennsylvania State Police. The Board rejected the union's argument and held that the township did not commit an unfair labor practice by terminating its police services. The Board reasoned that the decision of a township to provide police services is discretionary and that the State Police's assumption of jurisdiction after a township stops providing police services is based on its statutory authority to assume jurisdiction set forth in the Administrative Code. See Section 710 and 712 of The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §§ 250 and 252. See also Youngwood v. PLRB, 539 A.2d at 29 (the State Police are obligated by the provisions of Section 710 of The Administrative Code to cooperate whenever possible with counties and municipalities to preserve law and order throughout the Commonwealth). The allegation in the Charge of Unfair Practices sets forth no claim that the City has departed from its prior decision to completely and permanently stop providing the public service of a SWAT team and refer such needs to the Pennsylvania State Police. Thus, like in Perkiomen, because the Pennsylvania State Police's assumption of SWAT services is not under the control and/or financial support of the City, the City did not transfer bargaining unit work to the Pennsylvania State Police. Because the City is entitled to completely and permanently cease providing a discretionary public service, which is thereafter performed by the State Police by operation of law, the City has not violated Section 6(1)(a) or (e) of the PLRA. Consequently, this exception is dismissed.

The result in these cases is a function of an employer's duty to negotiate with its paid employees to give them an opportunity to negotiate with their employer to compete with an outside provider of services before their jobs are contracted out. The claim here does not

fall within that standard. The Union makes no claim here that the City presently employs SWAT employees which would trigger a bargaining obligation. Rather, our review of the charge as amended discloses an allegation that the City merely continues to refer SWAT requests to the Pennsylvania State Police after disbanding the City's SWAT division in 2005.

Finally, in its exceptions, the Union alleges that the City violated Section 6(1)(b) of the PLRA. However, Section 6(1)(b) 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.

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 twentieth day of June, 2006. 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.