

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SERVICE EMPLOYEES INTERNATIONAL :
UNION, LOCAL 668 :
 :
v. : Case No. PERA-C-06-151-E
 :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF PUBLIC WELFARE, :
BUCKS COUNTY ASSISTANCE OFFICE :

FINAL ORDER

Service Employees International Union, Local 668 (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on May 8, 2006. The Union's exceptions challenge an April 19, 2006 decision of the Secretary of the Board declining to issue a complaint and dismissing its Charge of Unfair Practices filed against the Commonwealth of Pennsylvania, Department of Public Welfare, Bucks County Assistance Office (Department).

In its Specification of Charges, the Union alleges that, in February of 2006, the Department announced that it was instituting a policy restricting cell phone use. On March 2, 2006, the Union made a demand to bargain over the policy. However, the Department refused to bargain and made it clear that it would only meet and discuss over the new policy. On April 10, 2006, the Union filed a Charge of Unfair Practices alleging that the Department's refusal to bargain over the cell phone policy was a violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). On April 19, 2006, the Secretary declined to issue a complaint and dismissed the Charge because the cell phone policy restricted cell phone usage to breaks, meal periods and the like and therefore constituted a legitimate exercise of its managerial prerogative. In support of the decision to dismiss the Charge, the Secretary cited the case of Monessen Education Association v. Monessen City School District, 35 PPER 33 (Proposed Decision and Order, 2004).

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 exceptions to the Secretary's refusal to issue a complaint, the Union asserts that, like Monessen Education Association, the cell phone policy is not narrowly tailored and does apply to non-assignment time. The Union also argues that, applying the balancing test set forth in PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975), the impact of the cell phone policy on the

interests of the employees' wages, hours and working conditions far outweighs the Department's interests.

Pursuant to Section 702 of PERA, public employers are not required to bargain over matters of inherent managerial policy. 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 PPER ¶ 19067 (Final Order, 1988), affirmed, 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 narrowly tailored to substance, to meet with particularity only the employer's legitimate and necessary objectives, without being overly broad, vague or ambiguous and appropriately limited in its applicability to affected employees to accomplish necessarily limited objectives. See International Union of Operating Engineers, Local 542 v. Upper Southampton Township, 36 PPER ¶ 36112 (Final Order, 2005).

In Monessen Education Association, the hearing examiner found that the cell phone policy was overbroad and not narrowly tailored to meet the employer's objectives because it prohibited the employees from receiving any cell phone calls without prior written approval and did not distinguish between calls made during assignment and non-assignment time. In International Union of Operating Engineers, the Board held that the Township's cell phone policy was a legitimate exercise of a managerial prerogative and did not impact the employees' wages, hours or working conditions because the policy only affected the employees' work time. Also, the policy was not overbroad because it accounted for the employees' personal emergencies.

The cell phone policy, a copy of which was attached to the Charge, provides, in relevant part, that:

The use of personal cell phones by employees ... during work hours has become an increasing problem. The ringing of personal cell phones and the resultant interruption of the conduct of state business has a detrimental effect on operational efficiency.

Consequently, it is necessary to implement the following policy requirements governing the use of personal cell phones during work hours.

... all personal cell phones, or any other cellular device must be turned off during work hours. The use of personal cell phones or any other cellular device will be limited to scheduled breaks and meal periods away from your work station.

Reasonable use of Commonwealth telephones for local calls on personal business by employees is permitted where such use does not interfere with the efficiency of operations. Long distance calls are only permitted provided they are collect, or charged to credit cards, or the employee's home telephone number.

Considerations, on a case-by-case basis, will be made for employees who can demonstrative a bona fide need (medical, etc.) to have the cell phones on during work hours. This would have to be cleared through management and would have to be accompanied by documentation and would be for a specified period of time.

As a reminder, if you are concerned that your family member or childcare provider might be unable to reach you during your workday you can give them the Executive Director and the Income Maintenance Administrator's telephone numbers ... You will be advised of the call immediately.

(Bucks County Assistance Office Cell Phone Policy; emphasis in original).

The Union argues that the policy is overbroad because: "In this case whether the rules allow cell phone or other cellular device usage before or after an employees working hours is unclear. If the rule actually applies to time before or after an employees work time then it is not a legitimate and necessary objective and is not narrowly tailored ..." In support of its argument that the policy applies to non-assignment time, the Union argues that the policy provides that employees may only use cell phones during non-assignment time when they are away from their work stations. Presumably, the Union believes that an employe would not be able to use a cell phone at their work station even if they are on break. The Union also alleges that the policy is not narrowly tailored because emergencies cannot be predicted in advance.

As in Upper Southampton Township, the Department's cell phone policy in this case would not impact the employees' interest in wages, hours and working conditions because the policy does not prohibit cellular telephone use during non-assignment time. To the extent the policy is interpreted to prohibit cell phone calls during non-assignment times when an employe is at his work station, the employe need only leave the work station to use the cell phone, which the employe is capable of doing because he is not currently working. Therefore, the policy is narrowly tailored to affect the bargaining unit members only during the time the Department has a managerial prerogative under Section 702 of PERA to direct its personnel. Further, the policy is not overbroad because the policy clearly cannot apply, as the Union suggests, to before or after an employees' work hours. Additionally, as in Upper Southampton Township, the policy accounts for bargaining unit members' personal emergencies because it provides for a system whereby the bargaining unit members can be contacted by using the Department's telephones in the case of an emergency and also provides a system whereby cell phones can be used if the bargaining unit member has a legitimate reason. Further, the policy allows for reasonable use of Commonwealth landline telephones for any calls that bargaining members need to make. Accordingly, the Board must conclude that the policy is not overbroad.

The Board concludes that 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 Department's interest in not allowing the ringing and usage of cell

phones to interrupt Commonwealth business. Accordingly, based on the allegations set forth in the Charge, the Board finds that the Department'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 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.