

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :
ASSOCIATION :
 :
 v. : Case No. PF-C-08-51-E
 :
 COMMONWEALTH OF PENNSYLVANIA :
 PENNSYLVANIA STATE POLICE :

FINAL ORDER

The Pennsylvania State Troopers Association (Association) filed timely¹ exceptions with the Pennsylvania Labor Relations Board (Board) on May 19, 2008. The Association's exceptions challenge an April 28, 2008 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Labor Practices filed against the Commonwealth of Pennsylvania, Pennsylvania State Police (Commonwealth).

The Association alleged in its Charge that it filed a grievance regarding the Commonwealth's assignment of Trooper Jamie Lopez to permanent medically limited duty due to his use of insulin. The Association further alleged that the Arbitrator sustained the grievance and struck down the Commonwealth's practice of placing troopers on permanent medically limited duty based upon the trooper's use of insulin. The Association asserted that the Commonwealth failed to comply with the arbitration award when it subsequently placed Corporal Charles G. Sands on medically limited duty after being informed that he was taking insulin. The Association alleged that the Commonwealth's actions violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968.

In dismissing the Charge, the Secretary stated that prior arbitration awards involving the same or similar contract provisions do not necessarily control the disposition of subsequent grievances, citing Westmont Hilltop Education Association, PSEA/NEA v. Westmont Hilltop School District, 22 PPER ¶ 22225 (Final Order, 1991); Federation of State, Cultural and Educational Professionals v. Commonwealth of Pennsylvania Office of Administration, 15 PPER ¶ 15209 (Final Order, 1984) and PLRB v. Commonwealth of Pennsylvania, 9 PPER ¶ 9054 (Nisi Decision and Order, 1978). The Secretary further indicated that the Arbitrator's award did not apply to Corporal Sands because the award was limited to the specific situation involving the grievance filed on behalf of Trooper Lopez. As such, the Secretary noted that the Association's Charge concerning Corporal Sands would more properly be brought as a new grievance. Therefore, the Secretary declined to issue a complaint.

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 labor practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair labor practice as defined by the PLRA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

In its exceptions, the Association argues that the arbitration award was not limited to the specific facts involving Trooper Lopez. Rather, the Association contends that the award should apply to all bargaining unit members because it struck down the Commonwealth's practice of placing troopers on medically limited duty based upon the trooper's use of insulin. When the complainant alleges a refusal to comply with a grievance arbitration award, the Board's inquiry is limited to determining whether (1) an award exists; (2) no appeal of the award has been filed or stay of the award issued; and

¹ The Association's exceptions are timely because May 18, 2008, the twentieth day following issuance of the Secretary's decision, was a Sunday and is therefore excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b).

(3) the respondent has failed to comply with the provisions of the arbitration award. East Hempfield Township Police Association v. East Hempfield Township, 38 PPER ¶ 138 (Final Order, 2007). The complainant bears the burden of establishing that the respondent has failed to comply with the arbitration award. Id.

The Association has failed to allege facts that if proven would demonstrate a failure to comply with the award. On October 10, 2007, the Arbitrator sustained the Association's grievance, concluding that the Commonwealth had improperly removed Trooper Lopez from his full duty position. In reaching this decision, the Arbitrator determined that it was not appropriate for the Commonwealth "in this specific situation" to decide that Trooper Lopez was unable to perform his duties because it had not fully assessed his condition before placing him on permanent medically limited duty status. (October 10, 2007 Arbitration Award at 44). A review of the four corners of the award demonstrates that the Arbitrator limited his decision to the specific facts involving Trooper Lopez's grievance. In granting the grievance, the Arbitrator's specific award is as follows:

AWARD

The Commonwealth improperly removed the grievant from his full duty position of Trooper. Based upon his physician's evaluation and recommendation, he is to be returned to his position. The Commonwealth is permitted to continue to medically evaluate the grievant, and the grievant is required to cooperate in such medical evaluations to determine his continued fitness for duty as a Patrol Trooper.

(Id. at 45). The Arbitrator did not direct the Commonwealth to cease its practice of placing troopers on medically limited duty due to the trooper's use of insulin. As such, the Association cannot attempt to apply the previous arbitration award to the situation involving Corporal Sands because that award specifically addressed the grievance filed on behalf of Trooper Lopez. Westmont Hilltop School District, supra; Office of Administration, supra; Commonwealth of Pennsylvania, supra. Thus, as stated by the Secretary, the Association's claim must be brought as a new grievance. Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board shall 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 filed by the Pennsylvania State Troopers Association are dismissed and the Secretary's April 28, 2008 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 September, 2008. 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.