

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SERVICE EMPLOYEES INTERNATIONAL	:	
UNION, LOCAL 668	:	
	:	
v.	:	Case No. PERA-C-09-239-E
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF MILITARY AND	:	
VETERANS AFFAIRS,	:	
SOUTHWESTERN VETERANS CENTER	:	

FINAL ORDER

On June 24, 2009, a Charge of Unfair Practices was filed by the Service Employees International Union, Local 668 (Union) alleging that the Commonwealth of Pennsylvania, Department of Military and Veterans Affairs (Commonwealth) violated Section 1201(a)(1) and (5) of PERA by unilaterally implementing a new requirement that Therapeutic Recreational Services Workers have a Class C driver's license. On July 10, 2009, the Secretary of the Board informed the Union that a complaint would not issue on the charge of unfair practices. The Secretary determined that the specification of charges did not state a cause of action under the cited provisions of the Act and, therefore, did not support the issuance of a complaint. Specifically, the Secretary noted that an employer is not required to bargain over matters of inherent managerial policy, such as the qualifications for a position. In support of her decision, the Secretary cited FOP Rose of Sharon Lodge No. 3 v. City of Sharon, 29 PPER 29147 (Final Order, 1998), aff'd sub nom., FOP Rose of Sharon Lodge No. 3 v. PLRB, 729 A.2d 1278 (Pa. Cmwlth. 1999) and AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania (Department of Transportation), 18 PPER ¶ 18136 (Final Order, 1987).

On July 30, 2009, within the time provided for the filing of exceptions to the Secretary's letter declining to issue a complaint, the Union filed an Amended Charge of Unfair Practices. The Amended Charge will be treated, for purposes of this order, as exceptions to the Secretary's decision. Accordingly, for purposes of deciding whether to direct a hearing, the Board will consider both the Charge of Unfair Practices as originally filed on June 24, 2009 as well as the amendment filed on July 30, 2009.

In its Amended Charge, the Union additionally alleges that the Commonwealth violated its duty to bargain over the impact of the implementation of the driver's license requirement. The Union reiterates its allegation that the Commonwealth violated its duty to bargain over the new driver's license requirement itself.

With regard to the Union's allegation that the Commonwealth should have bargained over the driver's license requirement, the cases cited in the Secretary's letter hold that implementation of new qualifications for a position are a matter of managerial prerogative. Rose of Sharon Lodge No. 3 v. PLRB; AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania (Department of Transportation). The Union does not allege any facts that would distinguish this case from the cited cases. Therefore, that portion of the Secretary's decision will not be disturbed.

Turning to the Union's impact bargaining allegation, an unfair practice charge alleging a violation of the duty to impact bargain over implementation of a matter of managerial prerogative requires the following four elements to warrant issuance of a complaint: (1) imposition of a matter of managerial prerogative; (2) a demonstrable, severable change in wages, hours and working conditions as a result of imposition of the managerial prerogative; (3) a demand to bargain over the change; and (4) an employer refusal. Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000). Neither the original Charge, nor the Amended Charge, alleges that the Union made a demand to bargain over implementation of the driver's license requirement or that the

Commonwealth refused any such demand. Therefore, the Union has failed to state a claim for an alleged violation of the Commonwealth's duty to impact bargain. Accordingly, the Union's impact bargaining charge under Section 1201(a)(5) of PERA must be dismissed.

Finally, with regard to the Union's allegation of a violation of Section 1201(a)(1) of PERA, the Board will find that an independent violation of Section 1201(a)(1) has occurred where, in light of the totality of the circumstances, "the employer's actions have a tendency to coerce a reasonable employee in the exercise of protected rights." Fink v. Clarion County, 32 PPER 32165 (Final Order, 2001). The Union has alleged no facts that would establish an independent violation of Section 1201(a)(1). Therefore, this portion of the Charge must also be dismissed.

After review of the Charge of Unfair Practices filed on June 24, 2009, and the amended Charge filed on July 30, 2009, treated as exceptions, the Board shall dismiss the amended charge in the nature of exceptions and affirm the decision of the Secretary 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 Union's 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, and Anne E. Covey, Member, and James M. Darby, Member, this fifteenth day of September, 2009. 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.