

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PLAINS TOWNSHIP POLICE OFFICERS :
ASSOCIATION :
v. : Case No. PF-C-09-50-E
PLAINS TOWNSHIP :

FINAL ORDER

The Plains Township Police Officers Association (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on May 22, 2009. The Association's exceptions challenge a May 4, 2009 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Labor Practices filed against Plains Township (Township).

The Association alleged in its Charge that the Township violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968 by failing to bargain over the impact of the Township's implementation of a temporary light duty policy. The Secretary declined to issue a complaint on the Charge, stating that the Township's creation of a temporary light duty policy is a managerial prerogative that is not subject to bargaining, citing Ambridge Police Officers and Policy Unit v. Ambridge Borough, 30 PPER ¶ 30218 (Final Order, 1999) and Shillington Borough Police Officers Association v. Shillington Borough, 21 PPER ¶ 21195 (Proposed Decision and Order, 1990), 22 PPER ¶ 22074 (Final Order, 1991). The Secretary further indicated that the Association had not stated a cause of action for a failure to impact bargain because it had failed to set forth sufficient facts to show that the light duty policy had a severable impact on wages, hours or working conditions. Therefore, the Secretary dismissed the Association's Charge.

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. Hamburg Police Officers Association v. Borough of Hamburg, 37 PPER ¶ 121 (Final Order, 2006).

In its exceptions, the Association acknowledges that the Township's implementation of a temporary light duty policy is a managerial prerogative. However, the Association argues that Section IV(A)(6)¹ of the Township's temporary light duty policy affects the employees' wages, hours and working conditions because an employee could be discharged or forced to apply for disability retirement if the employee could not return to his or her original position after being assigned to a temporary light duty position for six months.

The law is well established that the creation of, and assignment to, a light duty position is within a public employer's managerial prerogative. Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000); Amity Township Police Association v. Amity Township, 39 PPER 131 (Final Order, 2008); Ambridge Borough, supra; Shillington Borough, supra. Where a public employer is charged with violating its duty to bargain over the impact of implementation of a managerial prerogative, the employee representative must demonstrate that (1) the employer lawfully exercised its managerial prerogative; (2) there is a demonstrable, severable impact on wages, hours or working conditions as a result of implementation of the managerial prerogative; (3) the employee representative made a demand to bargain over the demonstrable impact; and (4) the employer refused the employee representative's demand to bargain. Lackawanna County, supra; Amity Township, supra.

¹ Section IV(A)(6) of the Township's temporary light duty policy states that "[a]fter six months, personnel on temporary light duty who are not capable of returning to their original duty assignment shall pursue other options as provided by employment provisions of [the Township] or federal or state law." Exhibit A attached to the Charge.

Section IV(A)(6) of the Township's temporary light duty policy merely reiterates the temporary nature of the light duty assignments under the policy and places the employe in the same position the employe would have been in had the Township not instituted a light duty policy. This provision is not severable from the Township's managerial decision to create a policy that provides for temporary light duty assignments of no more than six months. Indeed, requiring the Township to bargain over the impact of its decision to limit the assignment of light duty positions to six months would essentially allow the Association to bargain over the Township's managerial decision to create the temporary light duty policy. Thus, the Association has failed to demonstrate that the Township's temporary light duty policy has a severable impact on the employes' wages, hours or working conditions.

The Association additionally asserts in its exceptions that the Township committed an independent violation of Section 6(1)(a) of the PLRA. The Board will find that an independent violation of Section 6(1)(a) of the PLRA has occurred where, in light of the totality of the circumstances, the employer's action has a tendency to coerce a reasonable employe in the exercise of protected rights. E.B. Jermyn Lodge No. 2 of the Fraternal Order of Police v. City of Scranton, 38 PPER 104 (Final Order, 2007).

The Association did not specifically allege an independent violation of Section 6(1)(a) of the PLRA in its Charge, and cannot add this new cause of action in its exceptions filed more than six weeks after implementation of the temporary light duty policy. See Section 9(e) of the PLRA, 43 P.S. § 211.9(e)(no charge shall be entertained where it is filed more than six weeks after complained of action). Moreover, even aside from the issue of timeliness, the Association's exceptions do not allege sufficient facts to establish an independent violation of Section 6(1)(a) of the PLRA. The Association's reliance upon Fairview Education Association, PSEA/NEA v. Fairview School District, 22 PPER ¶ 22135 (Final Order, 1990) is misplaced because that case stands for the proposition that vague and overbroad work rules may raise a bargaining obligation. That case in no way supports the Association's argument that, under the facts here, an independent violation of Section 6(1)(a) occurred. Indeed, the Association does not allege, or explain how, the Township's implementation of the temporary light duty policy would interfere, restrain or coerce employes in the exercise of protected activity.

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 Plains Township Police Officers Association are dismissed and the Secretary's May 4, 2009 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 October, 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.