

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :
ASSOCIATION :
:
v. : Case No. PF-C-09-112-E
:
COMMONWEALTH OF PENNSYLVANIA :
PENNSYLVANIA STATE POLICE :

FINAL ORDER

The Pennsylvania State Troopers Association (PSTA) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on May 4, 2010, challenging a Proposed Decision and Order (PDO) issued on April 14, 2010. In the PDO, the Board's Hearing Examiner concluded that the Commonwealth of Pennsylvania, Pennsylvania State Police (PSP) did not violate Section 6(1)(a), (b) or (e) of the Pennsylvania Labor Relations Act (PLRA) as read in pari materia with Act 111 of 1968 when Lieutenant Colonel John R. Brown, the Deputy Commissioner of Administration and Professional Responsibility for the PSP, wrote in a letter to Sergeant Bruce A. Edwards, the President of the PSTA, that "the PSTA should not endeavor to conduct independent investigations of alleged violations of regulations, nor should the complaint be discussed with the alleged subject(s)" and that "the PSTA is not authorized to conduct investigations during on-duty hours." The PSP filed a motion to dismiss the exceptions on May 12, 2010. Pursuant to an extension of time granted by the Board Secretary, the PSTA timely filed a brief in support of the exceptions on May 14, 2010. The PSTA filed a response to the PSP's motion to dismiss on May 21, 2010. The PSP filed a brief in response to the exceptions on June 4, 2010.

The facts of this case are summarized as follows. During the summer of 2009, President Edwards was informed by two members of the PSTA's Board of Directors that troopers were complaining about a quota system. To verify the complaints, President Edwards spoke with troopers who told him that Lieutenant Brahl, the eastern section commander of the Pennsylvania Turnpike, was requiring a minimum of 60 citations and warnings per month, with over half of them being traffic citations. President Edwards had previously spoken with Lieutenant Brahl, who assured him that no quotas were required.

On or about July 22, 2009, President Edwards informed Lt. Colonel Brown that he was going to be sending Lt. Colonel Brown a letter about a quota system and that he had talked with the subject of the allegation. President Edwards sent a letter to Colonel Frank E. Pawlowski, the Commissioner of the PSP, on July 29, 2009, concerning the alleged quota system. Lt. Colonel Brown responded to President Edwards' letter on August 6, 2009 as follows:

Your letter of July 30, 2009 to Colonel Pawlowski has been forwarded to me for response. Please be advised that if you wish to file a complaint regarding an alleged quota system, you must, pursuant to AR 4-25, file that complaint with the Bureau of Integrity and Professional Standards. When you file that complaint, you should include any facts you have to support your allegations.

Moreover, the PSTA should not endeavor to conduct independent investigations of alleged violations of regulations, nor should the complaint be discussed with the alleged subject(s), since this is obviously within the purview of the Internal Affairs Division. Per AR 4-25 and the Field Regulations, such matters are deemed confidential and such actions could interfere with the fair and objective investigation of the complaint. As you know, members are expected to report violations of regulations through appropriate channels.

Finally, the PSTA is not authorized to conduct investigations during on-duty hours. The Collective Bargaining Agreement (Article 28, Section 5) provides for follow-up investigations by the union only after complaints are filed with the Department, subsequent to the issuance of the Department Disciplinary Officer's letter of adjudication and only after the Department

chooses not to investigate. These follow-up investigations shall occur during off-duty hours, a member's badge of office shall not be used, and any expenses incurred are borne exclusively by the PSTA.

Accordingly, kindly file the complaint utilizing the proper procedures.

(PSTA Exhibit 3).

Administrative Regulation 4-25 (AR 4-25) provides that the Bureau of Integrity and Professional Standards is "to process all complaints or allegations of misconduct by personnel." (PSP Exhibit 2, p. 1). Implementing a quota system for troopers constitutes misconduct for which a supervisor may be disciplined. Giving the subject of an investigation notice that some kind of inquiry is going on may impede the investigation by allowing the subject to dispose of incriminating evidence. Article 28, Section 5 of the parties' collective bargaining agreement (CBA) provides, in relevant part, as follows:

Subsequent to the issuance of the Disciplinary Officer's letter of adjudication the PSTA shall have the right to investigate all issues not incorporated within an investigation against a member, provided the issue has been brought to the attention of the Department and the Department chooses not to investigate the issue. Such follow-up investigation shall occur during off-duty hours, a member's badge of office shall not be used, and any expenses incurred therewith shall be borne exclusively by the PSTA.

(PSP Exhibit 1, p. 29).

The PSTA filed its Charge of Unfair Labor Practices on September 17, 2009, alleging that the PSP violated Section 6(1)(a), (b) and (e) of the PLRA and Act 111 by implementing a new term and condition of employment, which limited the PSTA's performance of internal investigations to disciplinary matters only and prohibited the PSTA from conducting any investigations based upon complaints received by its bargaining unit members. A hearing was held before the Board's Hearing Examiner on February 18, 2010, in which both parties were afforded an opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

The Hearing Examiner concluded in the PDO that the PSP did not violate Section 6(1)(a) of the PLRA because Lt. Colonel Brown's statements in his August 6, 2009 letter to President Edwards regarding investigations of alleged violations of PSP regulations were in conformity with Article 28, Section 5 of the parties' CBA. The Hearing Examiner further concluded that the PSTA had failed to establish a violation of Section 6(1)(b) of the PLRA because the PSTA did not prove that the PSP effectively created a company union when Lt. Colonel Brown issued his August 6, 2009 letter to President Edwards. Finally, the Hearing Examiner determined that the PSTA had failed to establish a violation of Section 6(1)(e), stating that investigating alleged violations of PSP regulations is a protected activity, not a term and condition of employment. The Hearing Examiner further stated that even if these investigations were a term and condition of employment, the parties bargained the circumstances under which the PSTA may investigate allegations of misconduct pursuant to Article 28, Section 5 of the CBA. Citing Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000), the Hearing Examiner stated that no refusal to bargain may be found where, as here, the employer acts pursuant to a contractual privilege. Thus, the Hearing Examiner dismissed the PSTA's Charge of Unfair Labor Practices.

In its exceptions, the PSTA does not challenge the Hearing Examiner's decision under Section 6(1)(b) of the PLRA, but contends that the Hearing Examiner erred in concluding that the PSP did not violate Section 6(1)(a) or (e). In its motion to dismiss, the PSP argues that the PSTA's exceptions should be dismissed because they do not comply with Section 95.98(a) of the Board's Rules and Regulations, which requires exceptions to be sufficiently specific so as to permit meaningful review.

Section 95.98(a)(1) of the Board's Rules and Regulations provides, in relevant part, as follows:

The statement of exceptions shall:

(i) State the specific issues of procedure, fact or law, or other portion of the proposed decision to which each exception is taken.

(ii) Identify the page or part of the decision to which each exception is taken.

(iii) Where possible, designate by page citation or exhibit number the portions of the record relied upon for each exception.

(iv) State the grounds for each exception.

34 Pa. Code § 95.98(a)(1)(i)-(iv). Pursuant to Section 95.98(a)(1) of the Board's Rules and Regulations, the Board will not consider exceptions that are not sufficiently specific so as to permit meaningful review of a particular assignment of error in fact or law. FOP, Conference of Pennsylvania Liquor Control Board Lodges v. Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement, 30 PPER ¶ 30164 (Final Order, 1999), aff'd sub nom., FOP, Conference of Pennsylvania Liquor Control Board Lodges v. PLRB, 751 A.2d 726 (Pa. Cmwlth. 2000). However, the Board will address any issues in the exceptions that have been further elaborated on in a brief simultaneously filed with the exceptions. Bureau of Liquor Control Enforcement, supra; Conrad Weiser Education Association v. Conrad Weiser School District, 28 PPER ¶ 28050 (Final Order, 1997); Edwardsville Firefighters Local #840 v. Edwardsville Borough, 27 PPER ¶ 27109 (Final Order, 1996). The PSTA's exceptions only state the conclusions of law excepted to, but do not state any grounds for each exception. Further, the PSTA's brief cannot remedy the lack of specificity in the exceptions because it was not filed simultaneously with the exceptions. See id. Thus, the PSP's motion to dismiss the PSTA's exceptions is granted.¹

Even if the Board were to consider the arguments in the PSTA's brief in support of exceptions, they are meritless. The PSTA does not challenge any of the Hearing Examiner's findings of fact. Therefore, the Hearing Examiner's findings of fact are conclusive on appeal. FOP Lodge #5 v. City of Philadelphia, 34 PPER 22 n.3 (Final Order, 2003). Further, upon review of the record, the Board agrees with the Hearing Examiner's conclusion that the PSP did not violate Section 6(1)(a) or (e) of the PLRA.

Concerning the PSTA's allegation that the PSP violated Section 6(1)(a) of the PLRA, the Board will find that an independent violation of Section 6(1)(a) 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 FOP v. City of Scranton, 38 PPER 104 (Final Order, 2007). In determining that Lt. Colonel Brown's August 6, 2009 letter to President Edwards would not tend to coerce a reasonable employe in engaging in protected activity, the Hearing Examiner stated as follows:

As noted above ... article 28, section 5, of the parties' collective bargaining agreement addresses the circumstances under which the PSTA may conduct an investigation: "[s]ubsequent to the issuance of the Disciplinary Officer's letter of adjudication" and provided "the issue has been brought to the attention of the Department and the Department chooses not to investigate the issue." Given that President Edwards had investigated allegations about a quota system before bringing them to the attention of the PSP, it is apparent that Lt. Colonel Brown in writing that "the PSTA should not endeavor to conduct independent investigations of alleged violations of regulations, nor should the complaint be discussed with the alleged subject(s), since this is

¹ See also Maher v. Unemployment Compensation Board of Review, 983 A.2d 1264 (Pa. Cmwlth. 2009), appeal denied, ___ Pa. ___, ___ A.2d ___ (2010), where a petition for review that merely restated the Commonwealth Court's standard of review and did not address the petitioner's arguments was dismissed for failure to comply with Pa. R.A.P. 1513(d) requiring "a general statement of the objections to the order or other determination." Even though the petitioner's brief specifically addressed the issues, the Court held that the petition for review did not preserve any issues for review as it failed to articulate any statement that addressed the issues and did not challenge any specific findings of fact.

obviously within the purview of the Internal Affairs Division," was acting in conformity with article 28, section 5.

(PDO, p. 5). Because Lt. Colonel Brown was acting in conformity with Article 28, Section 5 of the parties' CBA, the Hearing Examiner concluded that the PSP did not violate Section 6(1)(a) of the PLRA. We concur with the Hearing Examiner's assessment that merely requiring conformance with the contractual procedure regarding PSTA investigations of alleged violations of regulations would not tend to coerce a reasonable employe in the exercise of rights under the PLRA. Accordingly, the Hearing Examiner did not err in dismissing the PSTA's charge under Section 6(1)(a).

Regarding the PSTA's allegation under Section 6(1)(e) of the PLRA, an employer's unilateral change in a term and condition of employment constitutes a violation of the employer's duty to bargain in good faith under Section 6(1)(e). Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998); Derry Borough Police Association v. Derry Borough, 29 PPER ¶ 29018 (Proposed Decision and Order, 1997), 29 PPER ¶ 29237 (Final Order, 1998). However, a refusal to bargain charge will be dismissed if the employer establishes that it had a sound arguable basis in claiming a contractual privilege for its action. North Cornwall Township Police Association v. North Cornwall Township, 33 PPER ¶ 33007 (Proposed Decision and Order, 2001), 33 PPER ¶ 33054 (Final Order, 2002).

In the PDO, the Hearing Examiner concluded that the PSTA had failed to establish a violation of Section 6(1)(e) of the PLRA because investigating alleged violations of regulations is a protected activity, not a term and condition of employment. The Hearing Examiner further stated that even if these investigations were a term and condition of employment, the PSP had a sound arguable basis for its action in that the parties bargained the circumstances under which the PSTA may investigate allegations of misconduct pursuant to Article 28, Section 5 of the parties' CBA. Based upon the record and case law cited by the Hearing Examiner, the Hearing Examiner properly concluded that the PSP did not violate Section 6(1)(e) of the PLRA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.²

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 April 14, 2010 Proposed Decision and Order 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 July, 2010. 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.

² Our decision should not be interpreted as a determination of the breadth of coverage of Article 28, Section 5 of the parties' CBA. Given the myriad situations in which the PSTA may seek to conduct an investigation on behalf of their members, a determination of the coverage of that provision of the contract is one reserved for a grievance arbitrator.