

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 776 :
 :
 v. : Case No. PF-C-10-119-E
 :
 RYE TOWNSHIP :

FINAL ORDER

Teamsters Local 776 (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on September 7, 2010. The Union's exceptions challenge an August 18, 2010 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Labor Practices filed against Rye Township (Township).

The Union alleged in its Charge that the Township violated Section 6(1)(a), (c), (d) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968 by disbanding its police force after the Union filed a charge of unfair labor practices with the Board. The Secretary declined to issue a complaint and dismissed the Charge, stating that an employer may cease providing a service to the public, regardless of the underlying motivation, as long as the cessation is complete and permanent, citing County of Bucks v. PLRB, 465 A.2d 731 (Pa. Cmwlth. 1983), Jefferson-Penn Police Department v. Jefferson-Penn Police Commission, 20 PPER ¶ 20159 (Proposed Decision and Order, 1989), 21 PPER ¶ 21025 (Final Order, 1989) and Millcreek Township School District, 7 PPER 91 (Nisi Decision and Order, 1976), 7 PPER 215 (Final Order, 1976).

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).

The Union alleges in its exceptions that the Secretary erred in concluding that the Township's cessation of police services is permanent because the Township could provide these services in the future. The Union further alleges that the Township is not permitted to cease providing police services for discriminatory reasons, citing County of Bucks, supra. The Union's reliance on County of Bucks is misplaced because the Commonwealth Court stated specifically that it is within an employer's managerial prerogative to cease providing discretionary services, "regardless of the underlying motivation," as long as the cessation is complete and permanent. 465 A.2d at 734; see also Jefferson-Penn Police Commission, supra; Millcreek Township School District, supra. The Court did go on to state that an employer "may not under any guise avoid its Act 111 duty to bargain by subsequently directing its employees or others to resume any of the duties principally performed" by the bargaining unit. County of Bucks, 465 A.2d at 734 (emphasis in original). Rather, if the employer wishes to resume these duties, it must reinstate the bargaining unit employees and bargain with their representative. Id.

The Charge alleges that the Township disbanded its police force and furloughed Officer Shoop. However, the Charge does not allege that the Township is presently directing its employees or others to provide police services. The Board has held that it will not speculate as to whether an employer intends to resume provision of services in the future. Upper Mount Bethel Police Association v. Upper Mount Bethel Township, 31 PPER ¶ 31005 (Final Order, 1999). Therefore, the Board agrees with the Secretary that the

Charge does not state a cause of action under the cited provisions of the PLRA.¹ Accordingly, the Secretary did not err in determining that the Union failed to allege sufficient facts to support a claim under Section 6(1)(a), (c), (d) or (e) of the PLRA.

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 Teamsters Local 776 are dismissed and the Secretary's August 18, 2010 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 nineteenth day of October, 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.

¹ The Union asserts in its brief that the issues addressed in the Charge include a refusal to engage in effects bargaining. However, not only did the Union fail to allege in the Charge that the Township had refused to bargain over the impact or effects of its decision to disband the police department, but the obligation to engage in impact or effects bargaining arises only upon demand. Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000). Here, the Union does not allege in its brief that it requested impact or effects bargaining. Accordingly, the Union has failed to state a cause of action for a refusal to effects bargain.