

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA STATE TROOPERS :  
ASSOCIATION :  
 :  
 v. : Case No. PF-C-10-121-E  
 :  
 COMMONWEALTH OF PENNSYLVANIA :  
 PENNSYLVANIA STATE POLICE :

**FINAL ORDER**

The Pennsylvania State Troopers Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on September 7, 2010. The Association's exceptions challenge an August 18, 2010 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).

In its Charge, the Association alleged that the Commonwealth violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968 by unilaterally implementing an internal protocol in which troopers diagnosed with Attention Deficit Disorder (ADD) or taking medication for ADD would be placed on medically-limited duty. The Secretary declined to issue a complaint and dismissed the Charge, stating that the implementation of fitness for duty standards falls within an employer's managerial prerogative and is not a violation of the employer's duty to bargain under Section 6(1)(e) of the PLRA, citing City of Sharon v. Rose of Sharon Lodge No. 3, 315 A.2d 355 (Pa. Cmwlth. 1973); FOP, Conference of Pennsylvania Liquor Control Board Lodges v. Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement, 30 PPER ¶ 30216 (Final Order, 1999); Officers of North Wales Borough Police Department v. North Wales Borough, 30 PPER ¶ 30181 (Final Order, 1999). The Secretary further stated that the Association failed to state a cause of action under Section 6(1)(c) because it did not allege that the bargaining unit members had engaged in protected activity and that the Commonwealth implemented the internal protocol because of the bargaining unit members' protected activity. The Secretary also indicated that the Association failed to allege sufficient facts to support a finding of a violation of Section 6(1)(a) of the PLRA.

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,<sup>1</sup> the Association alleges that the Commonwealth is required to bargain over the implementation of its ADD policy because the policy affects a trooper's ability to be promoted, transferred and receive overtime. The implementation of fitness for duty standards falls within an employer's managerial prerogative and is not a matter that must be bargained with the employe representative. City of Sharon, supra; Bureau of Liquor Control Enforcement, supra; North Wales Borough, supra. Here, the troopers that are diagnosed with ADD or are taking medication for ADD are placed on medically-limited duty and the Commonwealth evaluates whether those troopers are able to adequately perform their duties while on the ADD medication. The Commonwealth's policy clearly falls within its managerial prerogative to set forth standards to determine a trooper's fitness to

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<sup>1</sup> The Association does not challenge the Secretary's decision under Section 6(1)(c) of the PLRA.

discharge his or her duties. Indeed, the Commonwealth Court, in holding that the imposition of a physical fitness requirement was a managerial prerogative, stated that "[t]here is nothing more fundamental to the interests and safety of the public than the good health and physical fitness of those charged with the responsibility of enforcing the laws." City of Sharon, 315 A.2d at 357. Therefore, the Commonwealth was not required to bargain over the implementation of this policy. City of Sharon, *supra*; Bureau of Liquor Control Enforcement, *supra*; North Wales Borough, *supra*.<sup>2</sup> Accordingly, the Secretary did not err in determining that the Association failed to allege sufficient facts to support a claim under Section 6(1)(a) 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 the Pennsylvania State Troopers Association 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.

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<sup>2</sup> Even if the Association's exceptions were construed as alleging a failure to bargain over the impact or effects of the Commonwealth's policy on troopers' promotions, transfers and receipt of overtime, issuance of a complaint would not be warranted because the Association has failed to allege that it requested impact bargaining. See Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000) (obligation to engage in impact bargaining arises only upon demand).