

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE LODGE 32	:	
	:	
v.	:	Case No. PF-C-10-94-W
	:	
CITY OF BUTLER	:	

FINAL ORDER

The Fraternal Order of Police, Lodge 32 (FOP) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 13, 2010. The FOP's exceptions challenge a June 23, 2010 decision of the Secretary of the Board declining to issue a complaint and dismissing the FOP's Charge of Unfair Labor Practices filed against the City of Butler (City).

The FOP alleged in its Charge that the City violated Section 6(1)(a), (c) and (e) of the Pennsylvania Labor Relations Act (PLRA) and Act 111 of 1968 by unilaterally implementing a policy restricting the use of cell phones while on-duty. The Secretary declined to issue a complaint and dismissed the Charge, stating that the implementation of a policy restricting the use of cell phones during work hours 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 Service Employees International Union, Local 668 v. Commonwealth of Pennsylvania, Department of Public Welfare, Bucks County Assistance Office, 37 PPER 74 (Final Order, 2006) and International Union of Operating Engineers, Local 542 v. Upper Southampton Township, 36 PPER 112 (Final Order, 2005). The Secretary further stated that the FOP failed to state a cause of action under Section 6(1)(c) because it did not allege facts that would support a finding that the City's action was in retaliation for protected activity by the bargaining unit members. The Secretary also indicated that the FOP failed to allege sufficient facts to support a finding of a violation of Section 6(1)(a).

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,¹ the FOP alleges that the exemption of the Captain and Detective Sergeant from the City's cell phone policy constitutes direct dealing in violation of the City's duty to bargain in good faith under Section 6(1)(e). An employer will be found to have engaged in direct dealing if the employer bypasses the exclusive employee representative and negotiates directly with an employee over terms and conditions of employment. Delaware County Lodge No. 27, FOP v. Folcroft Borough, 28 PPER ¶ 28094 (Final Order, 1997). The Charge fails to allege that the City negotiated directly with the Captain and Detective Sergeant concerning the cell phone policy. Further, the implementation of a policy restricting the use of cell phones during work hours falls within an employer's managerial prerogative and is not a matter that must be bargained with the employee representative. See Bucks County Assistance Office, supra; Upper Southampton Township, supra. Therefore, the Secretary properly concluded that the FOP failed to state a cause of action under Section 6(1)(e) of the PLRA.

The FOP further argues that the unequal application of the cell phone policy to some, but not all of the bargaining unit members violates Section 6(1)(a) of the PLRA. The Board will find that an independent violation of Section 6(1)(a) has occurred where,

¹ The FOP does not challenge the Secretary's decision under Section 6(1)(c) of the PLRA.

in light of the totality of the circumstances, the employer's action has a tendency to coerce a reasonable employee 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). Here, the FOP does not allege that the cell phone policy was implemented in response to employee protected activity, or was only applied to employees engaging in such activity. Indeed, the FOP indicates that at the time the cell phone policy was implemented, it was not processing a grievance or pursuing any other action on the employees' behalf. Accordingly, the Secretary did not err in determining that the FOP failed to allege sufficient facts to support a claim that the City's actions would tend to coerce a reasonable employee in the exercise of protected rights in violation of Section 6(1)(a) 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 Fraternal Order of Police, Lodge 32 are dismissed and the Secretary's June 23, 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 twenty-first day of September, 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.