

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE :  
LODGE NO. 44 :  
 :  
v. : Case No. PF-C-17-32-E  
 :  
CITY OF POTTSVILLE :

**FINAL ORDER**

The Fraternal Order of Police, Lodge No. 44 (FOP) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on May 16, 2017. The FOP's exceptions challenge an April 28, 2017 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 Pottsville (City).

In its Charge filed on April 17, 2017, the FOP alleged that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111 of 1968, when Chief Richard Wojciechowsky issued a directive requiring police officers to notify the patrol division captain before making a request to reschedule or cancel a court appearance. The Secretary declined to issue a complaint and dismissed the Charge, stating that the City's direction of personnel concerning the rescheduling of court appearances is a managerial prerogative not subject to bargaining.

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 FOP alleges that the Secretary erred in concluding that the City was not required to bargain over the change to its court appearance policy because the rescheduling or cancellation of court appearances has no effect on the City's managerial concerns while having a significant impact on the officers' ability to "take time off" from court.<sup>1</sup> The law is well-established that the direction of personnel, including the assignment of duties, is within a public employer's managerial prerogative. See Local 22, International Association of Firefighters, AFL-CIO v. PLRB, 588 A.2d 67 (Pa. Cmwlth. 1991); see also FOP Lodge No. 5 v. City of Philadelphia, 29 PPER ¶ 29142 (Final Order, 1998). The City's alleged new court appearance policy states as follows:

---

<sup>1</sup> The FOP further alleges that the effective date of implementation of the City's court appearance policy is March 29, 2017, and not March 29, 2016 as stated in its specification of charges.

Effective immediately, any officer who has received notice of his/her scheduled appearance in any type of court proceeding shall notify the Patrol Division Captain in the event the officer would like to request the appearance be either rescheduled or nullified prior to any such request being made to the court, the District Attorney's office, or any other entity overseeing the jurisdiction of the proceeding. The Patrol Division Captain shall then advise the officer how the matter will be handled by our department.

In Northampton County Deputy Sheriffs Association v. Northampton County, 45 PPER 106 (Proposed Decision and Order, 2014), the employer unilaterally changed its call-off procedure to require its employees to speak directly with a supervisor fifteen minutes prior to their starting time to report off sick. The change to the call-off procedure was found to be within the employer's managerial prerogative to direct its employees because it concerned the employer's need to have advance knowledge of who would not be available to work on a particular shift. As in Northampton County, the City's requirement that an officer contact the patrol division captain to request the rescheduling or cancellation of a court appearance pertains to the direction of personnel because it provides advance notice to the City of an officer's scheduled duties for a particular day so that it may plan accordingly. See also South Park Township Police Association v. South Park Township, 32 PPER ¶ 32078 (Final Order, 2001), aff'd sub. nom, South Park Township Police Association v. PLRB, 789 A.2d 874 (Pa. Cmwlth. 2002), appeal denied, 569 Pa. 727, 806 A.2d 864 (2002)(employer's requirement that on-duty officers return to station to finish their shift after court appearance was within employer's managerial prerogative).

Similarly, in FOP Lodge No. 5 v. City of Philadelphia, 27 PPER ¶ 27133 (Proposed Decision and Order, 1996), the city unilaterally changed its court appearance policy to require its officers to, among other things, notify their supervisors if they had questions concerning the necessity of their appearance in court and directing both officers and supervisors to be responsible for notifying the city solicitor if an officer was unable to attend a required court appearance. The Board's hearing examiner concluded that the city was not required to bargain over these changes because they concerned the direction of personnel. Likewise, the City's change to its court appearance policy is nothing more than the direction of personnel to provide notification of an officer's need to reschedule or cancel a court appearance. As alleged, the City's March 29, 2017 court appearance policy is not a mandatory subject of bargaining and the Secretary did not err in declining to issue a complaint and dismissing the Charge alleging a violation of Section 6(1)(a) and (e) of the PLRA.

Accordingly, after a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm 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 No. 44 are dismissed and the Secretary's April 28, 2017 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, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this eighteenth day of July, 2017. The Board hereby authorizes the Acting Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.