

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, :
DELAWARE COUNTY LODGE 27 :
 :
v. : Case No. PF-C-18-100-E
 :
YEADON BOROUGH :

FINAL ORDER

The Fraternal Order of Police, Delaware County Lodge 27 (FOP) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on October 31, 2018. The FOP's exceptions challenge an October 12, 2018 decision of the Secretary of the Board declining to issue a complaint and dismissing the FOP's Charge of Unfair Labor Practices filed against Yeadon Borough (Borough).

The FOP alleged in its Charge that the Borough violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read in pari materia with Act 111 of 1968, by unilaterally implementing a body camera policy. In declining to issue a complaint and dismissing the Charge, the Secretary stated that the FOP failed to state a cause of action under Section 6(1)(e) of the PLRA because the utilization of new technology falls within the Borough's managerial prerogative, citing FOP Lodge #5 v. City of Philadelphia, 31 PPER ¶ 31022 (Final Order, 1999). The Secretary further stated that the FOP had 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. 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 does not contest the Secretary's decision insofar as it states that an employer's decision to utilize body camera technology is a managerial prerogative. See City of Philadelphia, supra; see also Pennsylvania Liquor Enforcement Association v. Commonwealth of Pennsylvania, Pennsylvania State Police Bureau of Liquor Control Enforcement, 45 PPER 99 (Final Order, 2014) (installation of GPS tracking system technology is within employer's managerial prerogative). Rather, the FOP alleges that Section III(C)(11) of the Borough's body camera policy limits or restricts a bargaining unit police officer's right to view a video where the officer is suspected of wrongdoing or is involved in an officer-involved shooting. The FOP further alleges for the first time on exceptions that this provision should be negotiable because it impacts upon the bargaining unit officer's due process rights and diminishes the FOP's ability to prepare a grievance contesting any disciplinary action.

Pursuant to Section 95.32(a) of the Board's Rules and Regulations, a charge may be amended "if no new cause of action is added after the statute of limitations has run." 34 Pa. Code § 95.32(a). Section 9(e) of the PLRA provides that no charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the

filing of the charge. 43 P.S. § 211.9(e). In its Charge, the FOP did not allege that it had identified and requested to bargain over a severable impact that the body camera policy had on the officers' wages, hours or working conditions. 34 Pa. Code § 95.31(b)(3). Further, the FOP alleged that the Borough's unfair labor practice for implementing its body camera policy occurred on September 6, 2018. Therefore, the FOP's amended allegation in its exceptions that the Borough failed to bargain over the impact of the body camera policy upon the officers' terms and conditions of employment is not timely.

Moreover, even if the FOP's impact bargaining allegation was timely, it has failed to state a cause of action under Section 6(1)(a) and (e) of the PLRA. Where a public employer is charged with violating its duty to bargain over the impact of implementation of a managerial prerogative, the employe representative must demonstrate that (1) the employer lawfully exercised its managerial prerogative; (2) there is a demonstrable, severable impact on wages, hours or working conditions as a result of implementation of the managerial prerogative; (3) the employe representative made a demand to bargain over the demonstrable impact; and (4) the employer refused the employe representative's demand to bargain. Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Pa. Cmwlth. 2000). The FOP does not allege that the Borough has in fact limited or restricted any bargaining unit police officer from viewing a video made through the body cameras for purposes of the FOP deciding whether to file a grievance over discipline imposed or in preparation for a disciplinary grievance. Therefore, in its Charge, the FOP has failed to allege that any cognizable or demonstrable impact has occurred.¹

As such, 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, Delaware County Lodge 27 are dismissed and the Secretary's October 12, 2018 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, James M. Darby, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this eighth day of January, 2019. 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 It is noted that the FOP would not be time-barred from filing an unfair labor practice charge in the future should there be a demonstrable impact arising from the Borough's implementation or enforcement of the complained of policy.