

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF POLICE, LODGE 34 :  
 :  
 v. : Case No. PF-C-15-94-W  
 :  
 CITY OF FARRELL :

**FINAL ORDER**

The Fraternal Order of Police, Lodge 34 (FOP) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on January 13, 2016. The FOP's exceptions challenge a December 24, 2015 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 Farrell (City).

In its Charge filed on December 8, 2015, the FOP alleged that the City notified the Southwest Mercer Regional Police Commission (Commission) that it intended to withdraw as a member of the Commission and create its own police department effective January 1, 2016. The FOP further alleged that the City refused its demand for recognition as the exclusive bargaining representative of the City's police officers and adoption by the City of the collective bargaining agreement (CBA) between the Commission and the FOP. The FOP asserted that the City's actions violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read *in pari materia* with Act 111 of 1968. The Secretary declined to issue a complaint and dismissed the Charge, stating that the FOP's allegations were premature because the City had not yet implemented its alleged decision to withdraw from the Commission and to create its own police department.<sup>1</sup>

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 FOP argues in its exceptions that the Charge under Section 6(1)(a) and (e) of the PLRA is not premature because the City's decision to withdraw from the Commission was unequivocal. Alternatively, the FOP asserts that the alleged unfair labor practice is the City's refusal to recognize the FOP and adopt the terms of the CBA, not its decision to withdraw from the Commission.

The Board will dismiss an unfair labor practice charge as premature where an employer's alleged announced actions have not yet become operational and affected the employees' wages, hours or working conditions. **APSCUF v. PLRB**, 661 A.2d 898 (Pa. Cmwlth. 1995), **appeal denied**, 542 Pa. 649, 666 A.2d 1058 (1995); **see also FOP, Queen City Lodge No. 10 v. City of Allentown**, 19 PPER ¶ 19190 (Final Order, 1988). The Board has consistently held that a charge alleging a refusal to bargain is not ripe until the employer's announced policy is implemented, becomes operational, and has an actual impact on the employees. **Temple University Hospital Nurses Association/PASNAP v. Temple University Health System**, 39 PPER 45 (Final Order, 2008); **Allegheny County Deputy Sheriffs' Association v. Allegheny County**, 35 PPER 75 (Final Order, 2004); **Officer of Upper Gwynedd Township Police Department v. Upper Gwynedd Township**, 32 PPER ¶ 32101 (Final Order, 2001). Indeed, the Board has recognized that until an employer's announced

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<sup>1</sup> The Secretary also noted that even if the Charge was not premature, the City had failed to state a cause of action under Section 6(1)(a) and (e) of the PLRA because the City's decision to withdraw from the Commission is a managerial prerogative, citing **City of Philadelphia v. PLRB**, 588 A.2d 67 (Pa. Cmwlth. 1991). The Secretary further stated that the City was not a successor employer, such that it would not be required to recognize the FOP as the exclusive bargaining representative of the City's police officers or to adopt the terms of the CBA between the Commission and the FOP, citing **Lewistown Police Association v. Lewistown Borough**, 43 PPER 56 (Proposed Decision and Order, 2011).

policy is actually implemented and has a demonstrable effect on the employees' wages, hours or working conditions, it may be subject to modification or rescission. **APSCUF v. SSHE, California University**, 40 PPER 2 (Final Order, 2009), **aff'd, APSCUF v. PLRB**, 263 C.D. 2009 (Pa. Cmwlth. 2009) (unreported).

The same rationale applies in the present case because it is clear from the allegations in the Charge and exceptions that the FOP's demand for recognition and adoption of the CBA by the City was premature. As of the filing of the FOP's Charge on December 8, 2015, the City had not implemented its alleged decision to withdraw from the Commission, making it the sole employer, and there had not been a change in the terms and conditions of employment. **See Temple University Health System, supra; Allegheny County, supra; Upper Gwynedd Township, supra.** Indeed, the Charge alleges that the City's decision to withdraw from the Commission would not become effective until January 1, 2016.<sup>2</sup> Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge as premature.<sup>3</sup>

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 34 are dismissed and the Secretary's December 24, 2015 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 fifteenth day of March, 2016. 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> The FOP alleges that the City's subsequent withdrawal from the Commission on December 31, 2015 and continued refusal to recognize the FOP as the exclusive bargaining representative remedies the premature nature of the Charge. However, the City's post-charge conduct does not resolve the issue of whether the FOP's Charge was prematurely filed. **See Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police**, 37 PPER 4 (Final Order, 2006) (Board is not permitted to find an unfair labor practice for conduct that has not yet occurred at time charge is filed).

<sup>3</sup> Based upon the disposition of this issue, the Board need not address the FOP's remaining exceptions.