

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FRATERNAL ORDER OF TRANSIT POLICE :  
 :  
 v. : Case No. PERA-C-19-219-E  
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 SOUTHEASTERN PENNSYLVANIA TRANSIT :  
 AUTHORITY :

**FINAL ORDER**

The Fraternal Order of Transit Police (FOTP) filed timely exceptions and supporting brief with the Pennsylvania Labor Relations Board (Board) on November 18, 2019. FOTP's exceptions challenge the November 7, 2019 decision of the Secretary of the Board declining to issue a complaint on the FOTP's Charge of Unfair Practices filed against the Southeastern Pennsylvania Transit Authority (SEPTA) under Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On October 10, 2019, the FOTP filed a Charge of Unfair Practices alleging that on or about August 15, 2019, SEPTA violated Section 1201(a)(1) and (5) of PERA by unilaterally changing an existing directive to provide that "[e]very member is expected to check and respond to his/her email at the beginning and end of their working day regardless of assignment." The FOTP alleged that it demanded to bargain over the email requirement and its effects, but SEPTA, while agreeing to meet, stated that it "won't debate with you on the substance of the policies, but we are willing to sit down and meet with you to discuss any questions or concerns you may have around these updates." The FOTP and SEPTA met on September 5, 2019, at which time SEPTA stated its belief that it "maintains the right to implement [the] policy and does not view this as an issue that requires bargaining." The FOTP alleged in its Charge that by refusing to negotiate over the directive, including its effects, and unilaterally implementing the directive, SEPTA violated Section 1201(a)(1) and (5) of PERA.

On November 7, 2019, the Secretary issued a letter declining to issue a complaint on the FOTP's Charge of Unfair Practices. In his letter, the Secretary stated that the assignment of duties to a public employe is within the public employer's managerial prerogative under Section 702 of PERA. The Secretary further noted that the facts alleged in the specification of charges failed to identify a severable impact on wages, hours or working conditions, necessary to state a cause of action for a failure to bargain over a separately negotiable matter. Thus, the Secretary stated that the FOTP had failed to allege facts supporting an unlawful refusal to bargain under Section 1201(a)(5) of PERA.

The Secretary further noted that there were no allegations of threats, coercion or interference to support an independent violation of Section 1201(a)(1) of PERA. Because there was insufficient allegations to support a claim under Section 1201(a)(5), the Secretary also dismissed the alleged derivative violation of Section 1201(a)(1) of PERA. Accordingly, the Secretary determined that the facts alleged did not warrant the Board's issuance of a complaint under Section

1201(a)(1) and (5) of PERA and dismissed the FOTP's Charge of Unfair Practices.

In the exceptions, the FOTP argues that the Secretary erred in not issuing a complaint. Specifically, the FOTP asserts that a factual evidentiary hearing is necessary to weigh the respective interests of the FOTP in wages, hours and working conditions that are negotiable under Section 701 of PERA, against SEPTA's managerial rights under Section 702 of PERA, as required by PLRB v. State College Area School District, 337 A.2d 262 (Pa. 1975). In support of the employees' interests in wages, hours and working conditions, regarding the directive and its effects on employees, the FOTP asserts in its exceptions that "[t]he new requirement of responding to every email during working hours may well require a significant commitment of time beyond the normal workday in order to comply with the directive or have some other impact upon the officers' duties and time." (Brief of FOTP In Support of Exceptions at 4).

The determination of whether to issue a complaint on a charge of unfair practices is within the sound discretion of the Board. Association of Pennsylvania State College and University Faculties v. PLRB, 8 A.3d 300 (Pa. 2010). The Board may properly dismiss a charge where the allegations set forth in the specification of charges, taken as true, would not support a claim of an unfair practice under Section 1201 of PERA. See Pennsylvania State Troopers Association v. PLRB, 809 A.2d 422 (Pa. Cmwlth. 2002). The Board does not abuse its discretion by relying on its own prior analogous caselaw to dismiss a charge of unfair practices without issuing a complaint. Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cwlth. 2004), *petition for allowance of appeal denied*, 871 A.2d 194 (Pa. 2005).

In this regard, Section 702 of PERA provides that "[p]ublic employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the ... direction of personnel." 43 P.S. §1101.702. The Board has consistently, and repeatedly, held that the assignment of specific work duties to employees falls within the employer's managerial prerogative of the direction of personnel. *E.g.* Fraternal Order of Police, Lodge 32 v. City of Butler, 41 PPER 116 (Final Order, 2010); Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 29 PPER ¶29142 (Final Order, 1998).<sup>1</sup> The employer's assignment of a specific work duty does not lose its status as a managerial prerogative under Section 702 of PERA based on allegations that the performance of the duty would require extra work or work time. *E.g.* Lackawanna Trail Educational Support Personnel Association v. Lackawanna Trail School District, 41 PPER 48 (Final Order, 2010) (upholding the Secretary's decision declining to issue a complaint on allegations a refusal to bargain the employer's assignment of a new duty of calling substitute teachers, noting that the change to the employee's schedule was a direct and necessary consequence of the decision to assign those additional duties); PSSU Local 668 v. Commonwealth, Department of Corrections, 29 PPER ¶29022 (Final Order, 1997) (sustaining the Secretary's dismissal of union's claim that the

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<sup>1</sup> A matter that has been determined to be a managerial prerogative under Act 111 is *a fortiori* also a managerial prerogative under PERA. Teamsters Local 77 & 250 v. PLRB, 786 A.2d 299 (Pa. Cmwlth. 2001).

employer's directive requiring employees to use a time clock at the beginning and end of their shift was not a managerial prerogative because it allegedly effectively lengthened the workday).

Indeed, in Fraternal Order of Transit Police v. Southeastern Pennsylvania Transportation Authority, 36 PPER 115 (Final Order, 2005), the Board dismissed the FOTP's exceptions to the Secretary's decision declining to issue a complaint on the FOTP's charge alleging that SEPTA unlawfully refused to bargain a directive that employee lunch breaks must be taken within walking distance of the officer's assigned beat. The Board noted that the possibility that SEPTA's policy may negatively affect the officer's lunchtime convenience did not diminish SEPTA's managerial ability to direct its workforce.

In the instant case, the FOTP alleges in its Charge of Unfair Practices that SEPTA unlawfully unilaterally implemented a directive that bargaining unit employees are "expected to check and respond to his/her email at the beginning and end of their working day regardless of assignment" and refused to bargain with the FOTP over the directive or its impact or effects on wages, hours and working conditions. Consistent with the above caselaw and Section 702 of PERA, it is clear that SEPTA has a managerial prerogative to direct its workforce to perform specific work duties regarding the checking of employee emails.

Furthermore, no specific separately negotiable impact or effect on wages, hours or working conditions was alleged in the FOTP's Charge of Unfair Practices. The FOTP only vaguely mentioned on exceptions that "[t]he new requirement of responding to every email during working hours may well require a significant commitment of time beyond the normal workday in order to comply with the directive or have some other impact upon the officers' duties and time." However, as reflected in the Board's caselaw, the mere fact that the assignment of a specific duty may cause more work or time, does not in and of itself present a separately negotiable matter over which SEPTA would have an obligation to bargain. 43 P.S. §1101.702 (nonseverable consequences of a managerial prerogative are subject to the requirement of meet and discuss).

After a thorough review of the exceptions and all matters of record, the Secretary properly determined that the FOTP's allegations in its Charge of Unfair Practices, taken as true, that SEPTA directed employees "to check and respond to his/her email at the beginning and end of their working day regardless of assignment," and refused to bargain with the FOTP over the directive or its impact or effects, could not support the finding of an unfair practice under Section 1201(a)(1) and (5) of PERA. Accordingly, the exceptions filed by the FOTP shall be dismissed, and the Secretary's November 7, 2019 decision declining to issue a complaint is made absolute and final.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Fraternal Order of Transit Police are hereby dismissed, and the November 7, 2019 decision of the Secretary of the Board be and hereby is 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 seventeenth day of December, 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.