

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LOWER MORELAND TOWNSHIP POLICE :
BENEVOLENT ASSOCIATION :
 :
v. : Case No. PF-C-23-20-E
 :
LOWER MORELAND TOWNSHIP :

FINAL ORDER

The Lower Moreland Township Police Benevolent Association (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on April 6, 2023. Complainant's exceptions challenge a March 21, 2023 decision of the Secretary of the Board declining to issue a complaint and dismissing Complainant's Charge of Unfair Labor Practices filed against Lower Moreland Township (Township).

In its Charge filed on March 2, 2023, Complainant alleged that on January 23, 2023, the Township 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 physical agility test for the promotion of police officers. The Secretary declined to issue a complaint, stating that Complainant failed to state a cause of action under Section 6(1)(e) because the establishment of qualifications for promotion to a position and physical fitness testing is a matter of managerial prerogative, citing FOP, Rose of Sharon Lodge No. 3 v. PLRB, 729 A.2d 1278 (Pa. Cmwlth. 1999); City of Sharon v. Rose of Sharon Lodge No. 3, 315 A.2d 355 (Pa. Cmwlth. 1973); FOP, Conference of Pennsylvania Liquor Control Board Lodges v. Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement, 30 PPER ¶ 30216 (Final Order, 1999). The Secretary further stated that Complainant failed to allege sufficient facts to support a finding of a violation of Section 6(1)(a) of the PLRA. Therefore, the Secretary dismissed Complainant's Charge.

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, 392 A.2d 256 (Pa. 1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for the unfair labor practice alleged under the PLRA. Hamburg Police Officers Association v. Borough of Hamburg, 37 PPER 121 (Final Order, 2006).

In the exceptions, Complainant disputes the Secretary's determination that the Township's addition of a physical agility test for promotions is a managerial prerogative, asserting that the test is a new promotional procedure. The law is well established that minimum qualifications for promotion to a position, FOP, Rose of Sharon Lodge No. 3, *supra*, and physical fitness testing is within a public employer's managerial prerogative. City of Sharon, *supra*; FOP, *supra*. Here, the Township is requiring officers to meet the physical fitness standards as set forth by the Municipal Police

Officers' Education and Training Commission (MPOETC)¹ in order to qualify for promotion. Rather than creating a new procedure for promotion, the Township's physical agility test is setting forth minimum qualifications and physical fitness standards for promotion. Indeed, as stated by the Court in City of Sharon, "[t]here is nothing more fundamental to the interests and safety of the public than the good health and physical fitness of those charged with the responsibility of enforcing the laws." 315 A.2d at 357. Therefore, the Township's implementation of the physical agility test falls within its managerial prerogative to set forth standards to determine an officer's fitness to discharge his or her duties.

Complainant further asserts that the Secretary failed to address the allegations in its Charge that the Township did not bargain over the impact the physical agility test would have on the police officers' terms and conditions of employment. Where a public employer is charged with violating its duty to bargain under Section 6(1)(e) of the PLRA 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). Complainant alleged in its Charge that the physical agility test "directly impacts the working conditions" of the officers and that the "impact that the unilateral change in the testing procedures will have on police officers substantially outweighs any interests of the [Township]." (Charge of Unfair Labor Practices filed on March 2, 2023). These allegations demonstrate that Complainant's Charge was limited to its assertion that the physical agility test is a mandatory subject of bargaining. Nevertheless, Complainant failed to allege in the Charge, or in its exceptions, that it requested impact bargaining. Because the obligation to engage in impact bargaining arises only upon demand, Complainant failed to state a cause of action for a refusal to engage in impact bargaining. Lackawanna County Detectives' Association, supra.

Additionally, Complainant has not made any new factual allegations concerning the Charge under Section 6(1)(a) in its exceptions. Absent new factual allegations, Complainant has failed to state an independent or derivative violation of Section 6(1)(a) of the PLRA. Therefore, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

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

¹ MPOETC establishes certification and training standards for municipal police officers.

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Lower Moreland Township Police Benevolent Association are dismissed and the Secretary's March 21, 2023 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, Member, Albert Mezzaroba, Member, and Gary Masino, Member, this sixteenth day of May, 2023. 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.