

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION, :
LOCAL 668, SERVICE EMPLOYEES :
INTERNATIONAL UNION :
 :
v. : Case No. PERA-C-15-25-W
 :
ERIE COUNTY :
DEPARTMENT OF CORRECTIONS :

ORDER DIRECTING REMAND TO SECRETARY FOR FURTHER PROCEEDINGS

Pennsylvania Social Services Union, Local 668, Service Employees International Union (PSSU) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 20, 2015. PSSU's exceptions challenge a February 5, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing PSSU's Charge of Unfair Practices filed against Erie County, Department of Corrections (County).

PSSU alleged in its Charge that the County unilaterally eliminated the positions of Sergeant and Corporal and reclassified the employees holding those positions to Correctional Officer II. PSSU further alleged that the County refused to bargain over the impact of its decision or to meet and discuss over the reclassification of the employees. PSSU asserted that the County's actions violated Section 1201(a)(1), (5) and (9) of the Public Employee Relations Act (PERA).

In declining to issue a complaint and dismissing the Charge, the Secretary stated that the County's reclassification of the employees holding Sergeant and Corporal positions was within its managerial prerogative under Section 702 of PERA to select and direct its personnel, citing **AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Public Utility Commission**, 21 PPER ¶ 21057 (Final Order, 1990) and **PLRB v. Commonwealth of Pennsylvania**, 9 PPER ¶ 9165 (Final Order, 1978). The Secretary further indicated that PSSU had not stated a cause of action for failure to impact bargain under Section 1201(a)(5) of PERA because it did not allege that PSSU had requested impact bargaining and that the County refused PSSU's request. The Secretary additionally indicated that PSSU failed to state a cause of action under Section 1201(a)(9) of PERA because PSSU did not allege that it requested a meet and discuss session with the County. The Secretary also stated that PSSU had failed to allege sufficient facts for finding an independent violation of Section 1201(a)(1) of PERA.

In its exceptions, PSSU does not challenge the Secretary's dismissal of the Charge alleging an independent violation under Section 1201(a)(1) of PERA, but contends that the Secretary erred in dismissing the Charge of a refusal to impact bargain under Section 1201(a)(1) and (5) and of a refusal to meet and discuss under Section 1201(a)(9). PSSU alleges that it made a request to the County to bargain over the impact of its decision to reclassify the Sergeant and Corporal positions and that the County refused PSSU's request, as evidenced by e-mails attached to PSSU's exceptions. However, the referenced e-mails do not establish a request to impact bargain and employer refusal after implementation of the reclassification of the Sergeant and Corporal positions on January 1, 2015. As such, even if the e-mails could be construed as requesting impact bargaining, PSSU's request was premature and its exception in this regard must be dismissed. **Lackawanna County Detectives' Association v. PLRB**, 762 A.2d 792 (Pa. Cmwlth. 2000) (request to impact bargain made prior to implementation of managerial prerogative was premature); **Association of Pennsylvania State College and University Faculties v. State System of Higher Education, Kutztown University**, 43 PPER 52 (Final Order, 2011) (same).

PSSU further alleges in its exceptions that it requested a meet and discuss session with the County and that the County refused PSSU's request. Thus, PSSU asserts that it has stated a cause of action under Section 1201(a)(9) of PERA. Based upon the

allegations set forth in the Charge and the further clarification in the exceptions, we are hereby remanding this matter to the Secretary with direction to issue a complaint concerning PSSU's allegation that the County violated its meet and discuss obligation under Section 1201(a)(9) of PERA. This order directing remand shall not be construed by the parties as a determination that the February 5, 2015 decision of the Secretary was in error.

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 to the Secretary's February 5, 2015 decision be and the same are hereby sustained in part, and dismissed in part, and this matter is remanded to the Secretary of the Pennsylvania Labor Relations Board with direction to issue a complaint consistent with this Order.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Albert Mezzaroba, Member, this seventeenth day of March, 2015. 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.