

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

FOP LOCAL 19 :  
 : Case Nos. PF-C-18-111-E  
 v. : PF-C-19-66-E  
 : PF-C-21-3-E  
 : PF-C-21-22-E  
 CITY OF CHESTER : PF-C-21-62-E

**ORDER DENYING MOTION FOR AUTOMATIC STAY**

On October 15, 2018, the Fraternal Order of Police Lodge 19 (FOP or Union) filed a charge of unfair labor practices, as amended on November 9, 2018, with the Pennsylvania Labor Relations Board (Board) against the City of Chester (City or Employer), alleging that the City violated Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA), as read with Act 111, by failing to comply with a September 14, 2018 grievance settlement agreement, which resolved a number of outstanding grievances. The charge was docketed at PF-C-18-111-E. On December 18, 2018, the Secretary of the Board issued a Complaint and Notice of Hearing in PF-C-18-111-E, assigning the charge to conciliation, and directing a hearing.

On November 25, 2019, the FOP filed a second charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1)(a) and (e) of the PLRA, as read with Act 111, by failing to comply with an October 18, 2019 grievance settlement agreement relative to compensation for court time appearances. The charge was docketed at PF-C-19-66-E. On December 16, 2019, the Secretary issued a Complaint and Notice of Hearing in PF-C-19-66-E, assigning the charge to conciliation, and directing a hearing.

On January 13, 2021, the FOP filed a third charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1)(a) and (e) of the PLRA, as read with Act 111, by failing to comply with an August 25, 2020 grievance settlement agreement, which required the City to make whole all affected individuals by December 31, 2020 with regard to contractual educational benefit payments. The charge was docketed at PF-C-21-3-E. On February 9, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing in PF-C-21-3-E, assigning the charge to conciliation, and directing a hearing.

On March 31, 2021, the FOP filed a fourth charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1)(a) and (e) of the PLRA, as read with Act 111, by failing to comply with a February 18, 2021 grievance settlement agreement, which granted the FOP viewing privileges only to the "PlanIt" scheduling system.<sup>1</sup> The charge was docketed at PF-C-21-22-E. On April 28, 2021, the Secretary issued a Complaint and Notice of Hearing in PF-C-21-22-E, assigning the charge to conciliation, and directing a hearing.

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<sup>1</sup> The FOP alleged a number of other violations of grievance settlement agreements by the City in its charge. However, the FOP indicated in its brief that these remaining allegations have since been complied with and resolved. See FOP brief at p. 6-7.

On July 1, 2021, the FOP filed a fifth charge of unfair labor practices with the Board against the City, alleging that the City violated Section 6(1)(a) and (e) of the PLRA, as read with Act 111, by failing to comply with a number of grievance settlement agreements dated May 26, 2021. The charge was docketed at PF-C-21-62-E. On July 30, 2021, the Secretary issued a Complaint and Notice of Hearing in PF-C-21-62-E, assigning the charge to conciliation, and directing a hearing.<sup>2</sup>

The hearings were continued multiple times until the charges were eventually consolidated and continued indefinitely on August 10, 2022, at the request of both parties.

On November 4, 2022, the consolidated charges were scheduled for hearing on February 6, 2023, at the FOP's request. On November 16, 2022, the City filed a "Suggestion of Bankruptcy" with the Board, indicating that the City had filed a voluntary petition for relief under Chapter 9 of title 11 of the United States Code (Bankruptcy Code) in the United States Bankruptcy Court for the Eastern District of Pennsylvania. The City averred that, pursuant to Section 362(a) of the Bankruptcy Code, the filing of the voluntary petition in the Chapter 9 case operates as a stay of the commencement or continuation of any and all judicial, administrative, or other actions or proceedings against the City that were or could have been commenced before the petition date to recover any claims against the City that arose before the petition date, as well as the enforcement of a judgment obtained against the City before the petition date. On November 17, 2022, the FOP filed a response opposing the City's motion for an automatic stay.

During a November 18, 2022 prehearing conference, the parties were directed to file briefs in support of their respective positions by December 12, 2022. On December 9, 2022, the briefing schedule was extended to January 6, 2023, at the request of the parties. The Board received the parties' briefs in support of their respective positions on January 6, 2023.

In its brief in support of its claim, the City contends that the filing of the Bankruptcy Petition operates as an automatic stay of the Board's proceedings under Section 362(a)(1) of the Bankruptcy Code. The City asserts that the stay is automatic, mandatory, and triggered once the debtor files the petition. The City also maintains that parties seeking relief from the automatic stay must petition the Bankruptcy Court for such relief and that only the Bankruptcy Court with jurisdiction over the debtor's case has the authority to grant relief or determine if an exemption applies after notice and a hearing. Thus, the City concludes that the Board has no jurisdiction to determine whether the unfair labor practice hearing is exempt from the stay.

Of course, the FOP opposes these arguments on the grounds that the Board's proceedings are excepted from the automatic stay pursuant to Section 362(b)(4) of the Bankruptcy Code since they are proceedings by a governmental unit to enforce its police and regulatory power. The City counters the FOP's argument in this regard by claiming that the exception under Section 362(b)(4) applies only to cases brought by government agencies. The City

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<sup>2</sup> The charge docketed at PF-C-21-62-E was originally assigned to Hearing Examiner Jack Marino, but was subsequently reassigned to the undersigned hearing examiner following a request for consolidation by the parties. The FOP has now withdrawn all allegations contained in the charge docketed at PF-C-21-62-E in its brief for the instant matter. See FOP brief at p. 6-7.

reasons that, since the Board did not initiate these matters and is not a party to the proceedings, then the Board's adjudication does not protect the public health and safety. Therefore, the City concludes that the matter is primarily designed to adjudicate the private rights of the FOP and its members, which renders the exception in Section 362(b)(4) inapplicable. The City's position is unavailing.

Section 362(a) of the Bankruptcy Code, which is entitled "Automatic Stay," provides, in relevant part, as follows:

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303<sup>3</sup> of this title...operates as a stay, applicable to all entities, of:

- (1) the commencement or continuation...of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title...

11 U.S.C. § 362(a).

However, Section 362(b) of the Bankruptcy Code provides, in relevant part, as follows:

The filing of a petition under section 301, 302, or 303 of this title...does not operate as a stay...

- (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit...to enforce such governmental unit's...police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's...police or regulatory power...

11 U.S.C. § 362(b).

Thus, while the City is correct that the filing of a voluntary petition for bankruptcy does provide for an automatic stay in certain situations, there is clearly an exception for the continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police and regulatory power. It cannot be seriously disputed that the hearing scheduled for February 6, 2023, is a proceeding by a governmental unit, as the Board is clearly an agency of the Commonwealth. What is more, the Board's proceeding also fits within the statutory exception, as it is a hearing to enforce the Board's police and regulatory power.

Indeed, Section 2(c) of the PLRA provides that "...it is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of

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<sup>3</sup> Section 301 applies to voluntary petitions. 11 U.S.C. § 301.

representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers." 43 P.S. § 211.2(c). Likewise, Section 2(e) of the PLRA provides that "[t]his act shall be deemed an exercise of the police power of the Commonwealth of Pennsylvania for the protection of the public welfare, prosperity, health, and peace of the Commonwealth." 43 P.S. § 211.2(e).

The PLRA goes on to create the existence of the Board in Section 4 and enumerates a list of unfair labor practices in Section 6. 43 P.S. §§ 211.4, 211.6. Further, Section 8(a) of the PLRA provides that "[t]he [B]oard is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice listed in section six of this act. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that have been or may be established by agreement, law, or otherwise." 43 P.S. § 211.8(a). Of course, the PLRA then goes on to describe the Board's authority to issue a complaint and notice of hearing after a charge is filed, to conduct hearings, and to order those found to be engaging in or those who have engaged in unfair labor practices to cease and desist and to take such reasonable affirmative action, including reinstatement of employees, with or without back pay, as will effectuate the policies of the act. 43 P.S. § 211.8(b), (c).

There can be little doubt, then, given the Board's exclusive authority to prevent unfair labor practices, along with the General Assembly's express policy declarations in the PLRA, that the Board's hearing scheduled for February 6, 2023, is a proceeding to enforce the Board's police and regulatory power. To that end, the FOP has filed several charges, which remain outstanding and which allege violations of Section 6(1)(a) and (e) of the PLRA. The Board alone is empowered to prevent and remedy such alleged unfair labor practices to encourage collective bargaining and to protect the statutory rights of workers, as well as the public welfare, prosperity, health, and peace of the Commonwealth. Therefore, the City's argument that the instant charges are simply an attempt by the FOP to adjudicate private rights for its members must be rejected.

As the FOP persuasively points out, the federal courts have reached the same result with regard to National Labor Relations Board proceedings in NLRB v. Cooper Painting, 804 F.2d 934 (6<sup>th</sup> Cir. 1986). In Cooper, the Sixth Circuit Court of Appeals indicated that, generally, one of two tests has been applied to determine whether a particular governmental action was excepted from the automatic stay: the pecuniary purpose test or the public policy test. *Id.* at 942. Under the pecuniary purpose test, the court asks whether the governmental proceeding relates primarily to the protection of the government's pecuniary interest in the debtor's property and not to matters of public safety and health. *Id.* The former purpose subjects the proceeding to the stay provision of Section 362(a), while the latter does not. *Id.* In contrast, the public policy test distinguishes between proceedings that effectuate public policy and those that adjudicate private rights: only the former are excepted from the automatic stay. *Id.*

The Court concluded in Cooper that the NLRB proceedings, which adjudicated whether a corporation violated federal labor law embodied in the National Labor Relations Act, were not proceedings for the primary purpose of protecting the government's claim of entitlement to a pecuniary interest in the debtor's estate. Nor did the Court find that the NLRB was proceeding on behalf of private persons. Instead, the Court found that the NLRB determines

which complaints it will act upon in its own name in furthering the policies of the federal labor laws. *Id.* at 942.

In the same vein, the Board's proceedings here certainly qualify as a governmental action excepted from the automatic stay, regardless of which test is utilized. The Board's hearing scheduled for February 6, 2023, does not relate in any way whatsoever to the protection of the government's interest in the City's property. Rather, as set forth at length above, the Board's proceedings are solely and specifically related to matters of public safety, as the Board is empowered to prevent and remedy unfair labor practices. Moreover, as also set forth above, the Board does not simply function as a private forum where parties may present labor disputes. *Id.* at 942. To the contrary, the Board was created as an express exercise of the Commonwealth's police powers to prevent unfair labor practices and for the protection of the public welfare, prosperity, health, and peace of the Commonwealth. As such, it must be concluded that the City's voluntary petition for bankruptcy does not result in an automatic stay of the Board's proceedings.

Next, the City argues that only the Bankruptcy Court has jurisdiction to determine the applicability of the exceptions to the automatic stay pursuant to Section 362(a), which was the same argument raised by the employer in Cooper and which was rejected by the Court. The Sixth Circuit recognized that, while the Bankruptcy Court is the proper court to petition as a general matter for the automatic stay provisions in Section 362(a)(1) to be lifted, that is only the rule for cases that are not even arguably excepted from the stay pursuant to Section 362(b)(4). *Id.* at 939. The Court went on to hold that Section 362(b)(4) of the statute provides that governmental actions to enforce police or regulatory powers are automatically excepted from the operation of the automatic stay found in Section 362(a)(1). *Id.* at 940. In fact, the Court opined that "there is no occasion therefore to seek relief from a stay which has no application to the proceeding in question." *Id.*<sup>4</sup> The Court ultimately concluded that Section 362(b)(4) explicitly provides that proceedings undertaken by a governmental unit in the exercise of its police power are unaffected by the automatic stay. *Id.* at 940. Therefore, it must be concluded that the Board has jurisdiction to determine the applicability of the exceptions to the automatic stay.

The Pennsylvania Commonwealth Court reached a similar result in ANR Freight System v. WCAB (Bursick), 728 A.2d 1015, 1020 fn. 7 (Pa. Cmwlth. 1999), wherein the Court recognized that the administration of workers' compensation claims by the State is a valid exercise of a governmental unit's regulatory power, and is exempt from the automatic stay. Similarly then, the prevention of unfair labor practices, which is the sole province of the Board under the PLRA, is also a valid exercise of a governmental unit's regulatory power, making it exempt from the automatic stay. Furthermore, the Commonwealth Court in ANR Freight System dismissed the same argument raised by the City here that, even if the Board's proceedings are excepted from the automatic stay, and the Board finds an unfair labor practice, the Board would have virtually no authority to order a make-whole remedy, as it would

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<sup>4</sup> The Court did, however, recognize that, while an action or proceeding by a governmental unit seeking to enforce its regulatory power is not automatically stayed pursuant to Section 362(b)(4), it might nonetheless be enjoined by the bankruptcy court in appropriate circumstances. Cooper, 804 F.2d at 939. To date, there is no indication or evidence of any such injunction here.

constitute an enforcement of a money judgment against the City, which is specifically precluded by Section 362(a)(2). Addressing this point, the Commonwealth Court quoted the Third Circuit Court of Appeals in Penn Terra Ltd. v. Dept. of Environmental Resources, 733 F.2d 267, 275 (3<sup>rd</sup> Cir. 1984) and opined that “[a]s the legislative history explicitly notes, the mere entry of a money judgment by a governmental unit is not affected by the automatic stay, provided of course that such proceedings are related to that government’s police or regulatory powers.” In contrast, the Commonwealth Court did recognize, however, citing Penn Terra, that actions to enforce money judgments are affected by the automatic stay, even if they are in furtherance of the State’s police powers. ANR Freight System, at 1020 fn. 7 citing Penn Terra, *supra*. As such, the Board is not precluded from entering any money judgments in the form of a traditional make-whole or other remedy if, in fact, the FOP sustains its burden of proving the charges alleged. The Board simply could be stayed at some point in the future from petitioning the Common Pleas Court to enforce any proposed decision and order or final order issued by the Board. ANR Freight System, at 1020 fn. 7.<sup>5</sup> As a result, the City’s argument in this regard must also fail.

Nor does it matter that the FOP will be the party that prosecutes its charges at the hearing. Indeed, the government does not initiate or prosecute workers’ compensation claims on behalf of injured workers in furtherance of the Workers’ Compensation Act. Yet, the Commonwealth Court still found the workers’ compensation proceeding to be excepted from the automatic stay. On this point, Section 362(b)(4) of the Bankruptcy Code provides that “[t]he filing of a petition under section 301...does not operate as a stay... of the commencement or continuation of an action **or proceeding by a governmental unit**...to enforce such governmental unit’s...police and regulatory power...” (Emphasis added). Accordingly, the plain language of the Bankruptcy Code clearly indicates that the petition does not operate as a stay of the Board’s February 6, 2023 hearing, as the hearing is unquestionably a proceeding by a governmental unit. There is simply no support for the City’s claim that the Board must have initiated or brought the action or prosecuted the matter before the agency. Nevertheless, even if there were such a requirement, the PLRA specifically authorizes the Board to initiate proceedings by issuing a complaint and notice of hearing upon the receipt of a charge of unfair labor practices.<sup>6</sup> In addition, the PLRA further provides the Attorney General with the authority to prosecute cases, in which a complaint is issued by the Board, if and when the Attorney General sees fit. 43 P.S. § 211.8(f). As such, the fact that the Board does not typically prosecute charges filed by the parties is not reason to find the exception in Section 362(b)(4) inapplicable to this matter. Therefore, the City’s Motion for an Automatic Stay must be denied, and the hearing will remain scheduled for February 6, 2023.

#### ORDER

In view of the foregoing and in order to effectuate the policies of the PLRA and Act 111, the hearing examiner

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<sup>5</sup> Obviously, this would not be the case for any non-monetary remedies, which may arise.

<sup>6</sup> Of course, the issuance of a complaint is not a matter of right, but is within the sound discretion of the Board. PSSU Local 668 v. PLRB, 392 A.2d 256 (Pa. 1978).

**HEREBY ORDERS AND DIRECTS**

that the City's Motion for an Automatic Stay of the Charges of Unfair Labor Practices at the above case numbers is denied and dismissed.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

that no exceptions may be filed to this procedural order, pursuant to 34 Pa. Code § 95.96(a). If a proposed decision and order is issued pursuant to 34 Pa. Code § 95.91(k)(1) in the future, exceptions to this order may be filed pursuant to 34 Pa. Code § 95.98(a) at that time.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this 30<sup>th</sup> day of January, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak  
John Pozniak, Hearing Examiner