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008047-1

Howard Deck, Council Representative
AFSCME, District Council 47
1606 Walnut Street
Philadelphia, PA 19103

Re: Request to Evaluate Possible ULP Charge
(WWD-810-09-02)

Dear Howard:

You have asked for an opinion concerning the request of a bargaining unit member of Local 810 on the question of whether the Union can file an unfair labor practice charge with the Pennsylvania Labor Relations Board over various aspects of the sick leave policy currently followed in the First Judicial District, and in particular, over the so-called "home check" provisions of the policy.

Based upon my evaluation of Pennsylvania law, in all likelihood an unfair labor practice charge filed by District Council 47, Local 810 raising issues over the circumstances under which bargaining unit members may take leave filed against the First Judicial District would be rejected by the Secretary of the Board and a complaint would not issue on such a matter.

As I know you are aware, collective bargaining rights of public employees in Pennsylvania are governed by statute. Act 111 (43 P.S. § 217.1 *et seq.*) governs the collective bargaining process for police officers and firefighters as defined under that statute. All other public employees have collective bargaining rights as defined and limited under Act 195 (43 P.S. § 1101.101 *et seq.*).

In addition to the limitations existing in Act 195, several Pennsylvania Appellate Court decisions have delineated additional limitations upon the right of court employees to bargain over issues affecting leave time, or the circumstances under which such leave time may be utilized. *See e.g., Pennsylvania Labor Relations Board*

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v. AFSCME District Council 84, 515 Pa. 23; 526 A.2d 769 (Pa. 1987) (sick leave and funeral leave provisions of a proposed agreement contain language which would appear to impact upon the court's supervisory authority, and Pennsylvania Labor Relations Board acted properly in not issuing a complaint on those issues). *See also Commonwealth ex rel. Bradley v. Pennsylvania Labor Relations Board*, 479 Pa. 440, 388 A.2d 736 (1978); *Ellenbogen v. County of Allegheny*, 479 Pa. 429, 388 A.2d 730 (Pa. 1978); *County of Lehigh v. Commonwealth of Pennsylvania Labor Relations Board*, 507 Pa. 270, 589 A.2d 1325 (1985).

The common thread running through each of these cases is that the public employer (here, the City of Philadelphia) and the certified representative (here, District Council 47, Local 810) can bargain over financial/economic terms and conditions of employment, and under appropriate circumstances may even proceed to interest arbitration under Act 195. However, issues relating to leave utilization, including sick leave utilization, such as requirement for compliance with home visitation regulations, are not mandatory subjects of bargaining. Therefore, the First Judicial District is not required to bargain and/or agree over such issues and the Pennsylvania Labor Relations Board will, in all likelihood, refuse to issue a complaint against either the City or the First Judicial District where that is the issue in dispute.

Please note that this opinion is limited solely to the issue of the likelihood of success in a proceeding before the Pennsylvania Labor Relations Board under Act 195. We issue no opinion on the availability of other venues and/or non-collective bargaining approaches to this issue.

Should you have any questions concerning this matter, please feel free to contact me directly.

Very truly yours,



RALPH J. TETI

RJT/eb

cc: Louise Carpino, President, Local 810
Cathy Scott, President, AFSCME DC 47