

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS LOCAL 743 :
 :
v. : Case No. PERA-C-11-71-E
 :
UPPER LEACOCK TOWNSHIP :

FINAL ORDER

The International Brotherhood of Electrical Workers, Local 743 (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on April 18, 2011. The Union's exceptions challenge a March 29, 2011 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Practices filed against Upper Leacock Township (Township). Pursuant to an extension of time granted by the Secretary, the Union timely filed a brief in support of its exceptions on May 18, 2011.

The Union alleged in its Charge that the parties are negotiating for an initial collective bargaining agreement after the Board certified the Union as the exclusive bargaining representative of the Township's blue-collar employees on January 20, 2011 at Case No. PERA-R-10-429-E. The Union further alleged that, on or about March 1 of each year, the Township grants wage increases to all of its employees and that it granted wage increases to non-bargaining unit members on March 3, 2011. However, the Township did not grant wage increases to members of the bargaining unit represented by the Union. The Union asserted that the Township's actions violated Section 1201(a)(1), (3) and (5) of the Public Employee Relations Act (PERA).

The Secretary declined to issue a complaint, stating that maintenance of the status quo during contract negotiations does not include the continuation of periodic wage adjustments, citing Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004), appeal denied, 871 A.2d 194 (2005) and SEIU Local 668 v. Beaver County, 37 PPER 62 (Proposed Decision and Order, 2006). The Secretary further stated that the Union failed to allege sufficient facts to demonstrate that the Township was retaliating against the employees for engaging in protected activity, rather than simply complying with the law requiring maintenance of the status quo. Because the Secretary decided that the Union failed to state causes of action under Section 1201(a)(1), (3) and (5) of PERA, the Secretary dismissed the 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 practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

The Union excepts to the Secretary's conclusion that its Charge failed to state a cause of action under Section 1201(a)(5) of PERA.¹ The Union alleges in its exceptions and supporting brief that State Park Officers Association and Beaver County are distinguishable because they concerned negotiations for a successor agreement, whereas the parties in the present case are negotiating for an initial collective bargaining agreement. However, Beaver County involved similar circumstances as are presented here because the parties were negotiating an initial contract for newly-organized employees who were accreted to an existing bargaining unit. Furthermore, the Board has held that an employer must maintain the status quo as to mandatory subjects of bargaining during

¹ The Union is not challenging the Secretary's decision regarding the Union's allegations under Section 1201(a)(1) and (3) of PERA.

negotiations for an initial contract with a newly-certified union. Moshannon Valley Education Support Professionals v. Moshannon Valley School District, 41 PPER 81 (Final Order, 2010); Bucks County Security Guards Association v. Bucks County, 38 PPER 99 (Final Order, 2007), 39 PPER 105 (Court of Common Pleas of Bucks County, 2008); Teamsters Local 429 v. Lebanon County, 30 PPER ¶ 30002 (Final Order, 1998). Thus, the distinction that the Union attempts to draw between bargaining for an initial contract and bargaining for a successor agreement is not supported by the Board's case law.

In State Park Officers Association, *supra*, the Commonwealth Court affirmed the Board's decision that the maintenance of the status quo during negotiations for a successor agreement does not include the continuation of step and longevity wage increases. In affirming the Board, the Commonwealth Court stated as follows:

To interpret *status quo* as suggested by Complainants would allow employees to gain an unfair advantage over their public employers by obtaining the very wage increases under negotiation. This would discourage good faith negotiations....

State Park Officers Association, 854 A.2d at 682. This rationale applies in this case where the Union and the Township are negotiating over the wages, hours and working conditions for the bargaining unit employees, and the Union through its unfair practice charge effectively seeks to obtain the very wage increases under negotiation. Such a result would be inconsistent with State Park Officers Association and the other Board decisions cited above.

The Union further alleges that an employer is prohibited from unilaterally changing a promised wage increase, relying on Eastern Maine Medical Center v. NLRB, 658 F.2d 1 (1st Cir. 1981), NLRB v. United Aircraft Corporation, 490 F.2d 1105 (2d Cir. 1973), and American Telecommunications Corporation, 249 NLRB 1135 (1980).² However, the Union's Charge and exceptions fail to allege that the Township announced its intention to issue wage increases to the bargaining unit members prior to the certification of the Union. In any event, federal labor law differs from our law in that the National Labor Relations Board follows the dynamic status quo that mandates implementation of announced wage increases even after the certification of an exclusive bargaining representative. This Board and our courts have consistently adhered to the static status quo, which freezes wages pending negotiation of a collective bargaining agreement. Thus, under Pennsylvania law, the alleged wage increase in this case cannot be considered as part of the status quo. State Park Officers Association, *supra*. Finally, the Board is not required to follow decisions of the National Labor Relations Board under the federal labor law when deciding questions of state labor law under PERA. AFSCME, Council 13, AFL-CIO v. PLRB, 529 A.2d 1188 (Pa. Cmwlth. 1987). Accordingly, the Secretary's decision is consistent with relevant Board and appellate authority applicable to the public sector in Pennsylvania, and 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 Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the International Brotherhood of Electrical Workers, Local 743 are dismissed and the Secretary's March 29, 2011 decision not to issue a complaint be

² The Union also relies on PLRB v. York County, 4 PPER 12 (Nisi Decision and Order, 1974) as allegedly supporting its position in this case. However, York County is distinguishable in that it involved an employer's past practice of granting merit wage increases to employees upon promotion from one job classification to another, and not discretionary across the board wage increases granted to employees generally as in the instant case, and State Park Officers Association.

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, L. Dennis Martire, Chairman and James M. Darby, Member, this fifteenth day of November, 2011. 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.