

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

HARRISBURG CITY SCHOOL DISTRICT :
 :
v. : Case No. PERA-C-11-362-E
 :
AMERICAN FEDERATION OF STATE COUNTY :
AND MUNICIPAL EMPLOYEES :
DISTRICT COUNCIL 90 :

FINAL ORDER

On October 20, 2011, the Harrisburg City School District (District) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) alleging that the American Federation of State, County and Municipal Employees, District Council 90 (AFSCME) violated Section 1201(b)(3) and (9) of the Public Employe Relations Act (PERA) by failing to negotiate or to meet and discuss with the District concerning the implementation of a grievance arbitration award.¹ On December 1, 2011, the Secretary of the Board declined to issue a complaint and dismissed the Charge, stating that the District failed to allege sufficient facts to support a finding of a violation of AFSCME's duty under Section 1201(b)(3) of PERA to bargain in good faith. The Secretary further stated that the District's allegations did not support a finding of a violation of AFSCME's duty under Section 1201(b)(9) to meet and discuss. The Secretary additionally noted that the Board was unable to determine whether the Charge had been timely filed because the District failed to allege the date that it believed an unfair practice occurred. The District filed a new Charge of Unfair Practices with the Board on December 7, 2011. The Board shall treat this filing in the nature of exceptions because it was filed within the period for filing of exceptions.

The District alleges in its exceptions that AFSCME refuses to meet and discuss or negotiate a payment schedule with the District. 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).

Section 1505 of PERA provides that no charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the charge. The District's exceptions do not contain any date that the alleged unfair practice occurred. Therefore, the Board is unable to conclude that the District's Charge is timely.

Even if the District's Charge had alleged dates within PERA's four-month statute of limitations, the District fails to state a cause of action under Section 1201(b)(9) regarding AFSCME's obligation to meet and discuss over a payment plan. Pursuant to Section 702 of PERA, public employers are not required to bargain "over matters of inherent managerial policy," but they must "meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives." 43 P.S. §1101.702. Meet and discuss sessions "exist as a device to permit input or recommendations from the employes on policy matters

¹ AFSCME's grievance concerned the District's withholding of thirteen days of pay from the employes when it converted the method of payment from a pay forward system to a pay behind system. The arbitrator sustained the grievance and ordered the District to "make the Grievants whole for the amount of monies deducted from their pay in Fiscal Year 2009-2010 as a result of the method utilized by the District in converting its payroll system." AFSCME has filed, and the Board is currently processing, a charge of unfair practices against the District for its alleged failure to make the grievants whole as directed by the arbitrator. That case is docketed at Case No. PERA-C-11-304-E.

affecting wages, hours and terms and conditions of employment so as to assist the public employer in ultimately making its discretionary resolution or disposition of the issues in question." PLRB v. APSCUF, 355 A.2d 853, 856 (Pa. Cmwlth. 1976). Because the issue in this case is compliance with a binding arbitration award, and not the District's exercise of any managerial prerogative, AFSCME's duty to meet and discuss is not implicated. Accordingly, the District has failed to state a cause of action under Section 1201(b)(9) of PERA.

Concerning the District's allegation of a violation of Section 1201(b)(3), an employe representative is prohibited from refusing to bargain in good faith with a public employer over mandatory subjects of bargaining. 43 P.S. § 1101.1201(b)(3). In this regard, the District alleges that AFSCME is refusing to negotiate a payment schedule in order for it to implement the remedy awarded by the arbitrator. However, the District is required to comply with the arbitration award as written, Teamsters Local 401 v. Hazle Township, 38 PPER 157 (Final Order, 2007), and AFSCME is not required to negotiate over the means of implementing the binding arbitration award. Accordingly, 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 Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Harrisburg City School District are dismissed and the Secretary's December 1, 2011 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, L. Dennis Martire, Chairman and James M. Darby, Member, this twentieth day of December, 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.