

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME DISTRICT COUNCIL 33 :
 :
 v. : Case No. PERA-C-95-447-E
 :
 CITY OF PHILADELPHIA :

FINAL ORDER

The American Federation of State, County and Municipal Employees (AFSCME), District Council 33 (Complainant) filed Exceptions with the Pennsylvania Labor Relations Board (Board) from the decision of the Secretary of the Board dismissing its Charge of Unfair Labor Practices pursuant to Section 95.81(d) of the Board's Rules and Regulations.

On September 5, 1995, Complainant filed a Charge alleging that the City of Philadelphia (Respondent) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). On September 13, 1995, the Secretary issued a Complaint, and a hearing was scheduled for February 27, 1996. The hearing was continued indefinitely pending settlement negotiations, and was to be rescheduled upon request of either party. On June 12, 1997, because there had been no docket activity, the Secretary advised the parties that the Charge would be dismissed unless either party showed cause why a hearing needed to be held. On June 30, 1997, counsel for the Complainant advised the Board that it had not received the June 12, 1997 notice, but wished to have a hearing scheduled in the matter. Thereafter, a hearing was scheduled for December 5, 1997, which was again continued indefinitely pending settlement negotiations. Since there had been no activity since 1997, on January 31, 2001, the Secretary issued another letter notifying the parties that the Charge would be dismissed unless cause for a hearing was shown. On February 20, 2001, Complainant advised the Secretary that negotiations were ongoing, and requested 120 days for the parties to bring this matter to a conclusion. Because neither party contacted the Board following expiration of the requested 120 days, on June 29, 2001, the Secretary advised the Complainant that the Charge would be dismissed unless it responded in writing within twenty days and showed cause why a hearing should be held in the matter. When there was no response to that letter, on August 8, 2001, the Secretary dismissed the Charge, notifying the Complainant that

Pursuant to the authority granted to me by Section 95.81(d) of the Board's Rules and Regulations, this is to inform you that the Charge of Unfair Practices filed to the above case number has been dismissed since you did not timely respond to my letter of June 29, 2001.

Complainant filed timely Exception to the Secretary's dismissal of the Charge by letter dated August 22, 2001. Complainant asserted in the Exceptions that the case remained viable, and that the employees were still affected by the unfair labor practices charged. The Complainant also alleged that negotiations to resolve this matter

continue, and that it has an ongoing interest in pursuing the Charge. The Complainant requested that the Secretary schedule a hearing.

Section 95.81(d) of the Board's Rules and Regulations provides that:

At any time subsequent to the issuance of a complaint and prior to the issuance of a proposed decision ... the Secretary of the Board ... will have the authority to hold in abeyance or rescind complaints and to dismiss unfair practice charges upon failure of the charging party to show cause, upon request by the Secretary of the Board ... why further proceedings are required to effectuate the policies of the act.

34 Pa. Code §95.81(d). Failure to respond to a request to show cause is grounds for the dismissal of the charge under Section 95.81(d). Pennsylvania Association of State Mental Hospital Physicians v. Department of Corrections, 27 PPER ¶27256 (Final Order, 1996).

After the hearing had been continued over a course of nearly five years, the Secretary specifically advised Complainant on June 29, 2001 that the "Charge of Unfair Practices will be dismissed unless within twenty (20) days of the date of this letter you, in writing, request permission to withdraw the charge or show cause why a hearing should be held in this matter." Complainant did not timely respond to this request, and in its Exceptions following the dismissal of the Charge did not adequately explain why it had filed to timely respond to the show cause letter. Accordingly, Complainant's Exceptions are dismissed, and the Secretary's dismissal of the Charge is affirmed.

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 are dismissed and the Secretary's decision dismissing the Charge of Unfair Labor Practices is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and L. Dennis Martire, Member, this nineteenth day of November, 2001. 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.