

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME, DISTRICT COUNCIL 84, :
AFL-CIO :
 :
 : Case No. PERA-C-01-51-W
 v. :
 :
 CITY OF BUTLER :
 :

FINAL ORDER

On February 2, 2001, AFSCME, District Council 84 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the City of Butler (City) alleging that the City violated Section 1201(a)(4) of the Public Employe Relations Act (PERA). The charge specifically alleged that, on October 5, 2000, the City terminated Donald Zirnsak for filing a grievance, dated July 14, 2000, that addressed the City's termination of Mr. Zirnsak's benefits because he was on non-compensable status. The Union further alleged that Mr. Zirnsak had been on non-compensable status since November 19, 1999 and that the City did not choose to terminate Mr. Zirnsak until he and the Union filed a grievance and subsequently engaged the City in discussions concerning the subject of the grievance. The Union did not set forth any other charges or allegations.

By letter dated February 20, 2001, the Board Secretary informed the Union that no complaint would be issued on the charge because the Union did not allege discrimination as a result of filing any affidavit, petition or charge with the Board as required for a violation of Section 1201(a)(4) of PERA. Accordingly, the Secretary's letter stated that retaliation or discrimination for filing a grievance with one's employer does not constitute a violation of Section 1201(a)(4). On March 7, 2001, the Union filed an amended charge of unfair practices. In the amended charge, the Union alleged that the City violated Section 1201(a)(1) of PERA, which was not previously charged; it also withdrew its previous charge that the City violated Section 1201(a)(4). The amended charge did not contain any additional factual allegations. By letter dated March 13, 2001, the Secretary informed the Union that the amended charge would be treated as exceptions to her decision not to issue a complaint because the amended charge contained no new factual allegations and it was filed within the 20-day period for filing of exceptions to the decision declining to issue a complaint.¹

In reviewing the Union's exceptions, the Board must determine whether the charge of unfair practices under Section 1201(a)(1) of PERA was time-barred. The four-month statute of limitations in Section 1505 of PERA states that "[n]o petition or 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 petition or charge." In PSSU v. Commonwealth Dep't of Pub. Welfare, 31 PPER ¶ 31060 (Final Order, 2000), the Board

¹ For purposes of issuing a complaint, the factual allegations in the charge of unfair practices are accepted as accurate. PSSU Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978).

stated that "the mandatory language of Section 1505 raises the question of whether a charge was properly filed within the four-month limitation period to one of jurisdiction." Id. at 16. Section 95.32(a) of the Board's regulations states that "[a]t the discretion of the Board, upon due notice to parties, a complaint may be amended, in such manner as the Board may deem proper, before the issuance of a final decision and order, if no new cause of action is added after the statute of limitations has run. In AFSCME, Council 13 v. Commonwealth Department of Transportation, 16 PPER ¶ 16019 (Final Order, 1984), aff'd, 514 A.2d 255 (Pa. Cmwlth. 1986), the Board expressly held that a complainant is barred, as a matter of law, from adding or raising a cause of action for the first time in exceptions after the statute of limitations has expired. In PSSU, Local 668 v. Commonwealth, Dep't. of Labor and Indus., 30 PPER ¶ 30090 (Final Order, 1999), the Board stated that "it has been the Board's consistent position that the allegation of additional clauses to a pending charge of unfair practices adds allegation of a new cause of action and must therefore occur within four months of the act which allegedly constitutes the unfair practice." Id. at 192 (citations omitted).

Here, the four-month limitation period expired on February 5, 2001, just three days after the filing of the initial charge. The Union filed its amended charge on March 7, 2001 alleging, for the first time, that the City violated Section 1201(a)(1). Accordingly, the March 7, 2001 amendment constituted a new cause of action, and the Union's charge, that the City violated Section 1201(a)(1), is time barred and must be dismissed.

After a thorough review of the exceptions to the decision of the Secretary declining to issue a complaint, the Board shall dismiss the exceptions and affirm the Secretary's determination.

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 be and the same are dismissed and the Secretary's decision not to issue a complaint be and the same is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this seventeenth day of April, 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.