

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SUZANNE BAIR, ET AL. :
 :
 v. :
 : Case No. PERA-C-00-363-E
 :
 PHOENIXVILLE AREA EDUCATION :
 ASSOCIATION :

FINAL ORDER

On September 7, 2000, 18 former teachers (collectively "Complainants") of the Phoenixville Area School District (District), filed an unfair practice charge with the Pennsylvania Labor Relations Board (Board) against the District and the Phoenixville Area Education Association (Union). In the charge, the Complainants incorporated by reference, and attached as Exhibit A, a civil complaint they filed in the Chester County Court of Common Pleas against the District and the Union. The Board bifurcated the charge and assigned case number PERA-C-00-362-E to the charge against the District and assigned case number PERA-C-00-363-E to the charge against the Union.¹

By letter dated November 3, 2000, the Secretary informed the Complainants that no complaint would be issued on the charge filed against the Union. On November 21, 2000, the Complainants timely filed an "amended" charge. At no time did the Complainants file separate exceptions to the Secretary's letter declining to issue a complaint on the charge against the Union. By letter dated December 22, 2000, the Secretary informed the Complainants that, because the amendment was filed within the period provided for the filing of exceptions, the Board would entertain the amendment as exceptions to the dismissal of the charge.

The factual allegations of the unfair practice charge are derived from the civil complaint, which was incorporated by reference.² All 18 Complainants were employed by the District as teachers when their collective bargaining agreement expired on June 30, 1998. The Complainants thereafter worked for the District without a collective bargaining agreement during the entire 1998-1999 school year. During this time, the Complainants were members of the Union, which was certified by the Board as their exclusive bargaining representative. In September 1999, the Complainants either retired from the District or sought employment at other schools. In December of 1999, the District and the Union negotiated a new collective bargaining agreement (CBA),

¹ After the charge filed against the District was amended, the Secretary, by letter dated January 4, 2001, dismissed the charge. No exceptions were filed to that dismissal and that matter is now concluded. Thus any unfair practice charge against the District arising directly from the obligations of the new collective bargaining agreement have been dismissed.

² 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).

which was made retroactive to the expiration of the first collective bargaining agreement. The new CBA provided that teachers in the district would receive increases in salaries and benefits, which Complainants allege impacted pension calculations. However, the Complainants did not receive the increased salary and resulting pension benefits.

Complainants allege that the Union breached its duty of fair representation to each of the Complainants to represent them in contract negotiations for the time period that they were teaching at the District without a collective bargaining agreement by failing to ensure that the Complainants received retroactive salary and other benefits in the new CBA. A union, as the exclusive representative of a bargaining unit of employes, owes those employes a fiduciary duty of fair representation. Ziccardi v. Commonwealth of Pennsylvania, Department of General Services, 500 Pa. 326, 456 A.2d 979 (1982). However, as explained in the dismissal letter, the Pennsylvania Supreme Court has held that allegations that a union has breached its duty of fair representation are not within the unfair practice jurisdiction of the Board. Ziccardi, supra. In Capaldi v. AFSCME District Council 84, 16 PPER ¶ 16021 (Final Order, 1984), the Board carved out a limited and narrow exception to Ziccardi and therein held that the Board possesses limited "jurisdiction over duty of fair representation cases in which the charging party alleges that Article IV rights were violated." Id. at 54. In other words, the Board will assert jurisdiction only over those fair representation claims where the alleged violation was motivated by a desire to discriminate against employes for engaging in or declining to engage in protected activity set forth in Article IV. Nowhere in the charge as amended are there any allegations indicating that the Union interfered with the Complainants' Article IV rights to engage in or refrain from concerted or union activity.

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 twenty-seventh day of March, 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.