

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARK YORKGITIS :
 :
 v. : Case No. PERA-C-00-23-W
 :
 AFSCME, LOCAL 2107 :

FINAL ORDER

On January 18, 2000, Mark Yorkgitis (Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the American Federation of State, County and Municipal Employees, Local 2107 (AFSCME) alleging a violation of Section 1201(b)(1) of the Public Employe Relations Act (PERA). The Complainant alleged that AFSCME failed to adequately represent him when it did not file a grievance on his behalf. It is the Board's usual policy for purposes of issuing a complaint to assume as accurate the allegations of fact set forth in a charge of unfair practices. PSSU, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). The allegations, as the Complainant presents them, are as follows. The Complainant was an employe of the Department of Transportation (Department). On December 26, 1998, the Complainant was cited for driving under the influence and subsequently lost his driver's license. This citation was not issued while the Complainant was working or on Department property. AFSCME president Arman Scarano attended a pre-disciplinary conference on the Complainant's behalf. After a hearing, AFSCME declined to file a grievance on the Complainant's behalf. The Complainant filed his own grievance on September 16, 1999, and has not received a response.

On February 3, 2000, the Secretary of the Board declined to issue a complaint because the Board does not have jurisdiction over claims concerning a union's breach of its duty of fair representation. The Secretary explained that the Board is authorized to assert jurisdiction over only those claims in which there are allegations constituting an interference with Article IV rights to engage in or refrain from union or concerted activity.

On February 22, 2000, the Complainant filed timely exceptions to the Secretary's refusal to issue a complaint. In these exceptions, the Complainant again argues that AFSCME breached its duty of fair representation because it refused to file a grievance, withdrew assistance and did not pursue alternative forms of discipline. He added that he was neither given a written response to his grievance nor informed of his rights regarding alcoholism under the Americans with Disability Act. These exceptions are without merit.

The Secretary properly informed the Complainant that the Board does not have jurisdiction over claims regarding a union's breach of its duty of fair representation. Ziccardi v. Commonwealth of Pennsylvania, Department of General Services, et al., 500 Pa. 326, 456 A.2d 979 (1982). The Board may only assert jurisdiction under Section 1201(b)(1) where the allegation is made that a labor organization discriminated against bargaining unit members solely because they were not members of the union. Id. In order to establish a Section 1201(b)(1) claim under PERA, the Complainant would have had to have alleged that AFSCME discriminated against him because he

was not a member of the union. No such allegation was made in this case. As such, the Board has no jurisdiction to remedy the alleged breach of the duty of fair representation.¹ Pennsylvania School Service Personnel Association, 20 PPER ¶ 20129 (Final Order, 1989). Absent a showing of discrimination based upon nonmembership in the employe organization, the Board cannot find a violation of Section 1201(b)(1) of PERA. APSCUF, 25 PPER ¶ 25160 (Final Order, 1994).

In his final exception, the Complainant asserts that he was not informed of his rights under the Americans with Disabilities Act. The Board has no jurisdiction to enforce this statute, and therefore dismisses this exception as well.

After a thorough review of the charge of unfair practices, the Secretary's dismissal and the exceptions filed in this case, the Board shall dismiss the exceptions and make the Secretary's decision absolute and final.

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

SEALED, DATED and MAILED at Harrisburg, Pennsylvania, pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Members L. Dennis Martire and Edward G. Feehan, this twenty-eighth day of March, 2000. 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.

¹ The Board notes that by failing to process a grievance in good faith, a bargaining representative may under appropriate circumstances breach its duty of fair representation. Falsetti v. Local Union No. 2026, 400 Pa. 145, 161 A.2d 882 (1960). However, authority to remedy this breach of the duty of fair representation does not lie with the Board. If AFSCME has indeed breached its fiduciary duty, the Complainant may have a cause of action against it in a court of appropriate jurisdiction. Martino v. Transport Workers Union of Philadelphia, Local 234, 505 Pa. 391, 480 A.2d 242 (1984).