

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CAROL L. BITTNER :
 :
 v. : PERA-C-98-383-E
 :
 MEGAN SCHAPER, and the :
 STATE COLLEGE AREA SCHOOL DISTRICT :

FINAL ORDER

On August 24, 1998, Ms. Carol L. Bittner (Bittner) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices against Megan Schaper (Schaper) and the State College Area School District (Employer). On March 9, 1999, the Secretary to the Board returned the charge to Bittner because it lacked the required notarization and did not reference a subsection or clause of the Public Employe Relations Act (PERA) alleged to have been violated. In the notarized amended charge filed March 25, 1999, Bittner alleges that Schaper and the Employer violated PERA Section 1201(a)(1), which prohibits public employers, their agents or representatives from interfering, restraining or coercing employes in the exercise of their employe rights guaranteed in Article IV of PERA. ¹

On May 6, 1999, the Secretary declined to issue a complaint because the allegations set forth in the charge as amended did not support Bittner's claim that she was harassed following her increased activity on behalf of her employe representative, the American Federation of State, County and Municipal Employees, Local 0259 (AFSCME). The Secretary determined that Bittner's grievance claims were being appropriately raised and addressed through the contractual grievance procedure between AFSCME and the Employer. Pursuant to the Board's Rules and Regulations, the Secretary informed Bittner that she had twenty (20) calendar days to file exceptions to her decision not to issue a complaint. 34 Pa. Code § 95.98(a)(1), (2) and (3).

Bittner did not file exceptions. However, on May 18, 1999, AFSCME representative Herb Williams wrote a letter to the Secretary "in support of Mrs. Bittner's appeal." The Board cannot consider this letter to constitute exceptions, because AFSCME is not a party to the proceeding. Section 95.98(a) provides that a party may file exceptions and supporting brief with the Board. (Emphasis added). "Party" is defined as

¹ Article IV provides as follows:

It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

a person, employe, group of employes, organization or public employer filing a charge, petition, request or application under this chapter; a person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under the act; or a person, organization or public employer whose intervention in a proceeding has been permitted or directed by the Board, secretary or a hearing officer.

34 Pa. Code § 95.1. The only parties to this proceeding are Bittner, the Complainant, and Schaper and the Employer, who were named as Respondents in the charge. AFSCME did not join Bittner in filing the charge of unfair practices, nor was AFSCME named as a party in the charge. The only remaining procedure by which AFSCME could become a party to this proceeding was intervention. AFSCME did not intervene pursuant to 34 Pa. Code § 95.44, which requires a written, signed and verified motion to intervene specifying the grounds for intervention to be filed with the Board. Thus, the Board will not accept exceptions from AFSCME, because it is not a party to this proceeding.

Thereafter, on May 24, 1999, Bittner requested that the Board hold her charge in abeyance, pending the arbitration of her latest grievance with the Employer.² This request came within the twenty-day exceptions period provided by Section 95.98(a). Ms. Bittner also attached a copy of AFSCME's May 18, 1999, letter to her request. On June 9, 1999, the Secretary granted this request, and agreed to take no action until Bittner expressed a desire to proceed with the review of the exceptions filed by AFSCME. Because Bittner's correspondence came within the twenty-day exceptions period and attached AFSCME's May 18, 1999, letter, the Board will regard AFSCME's exceptions as having been adopted by Bittner.

On July 2, 1999, Bittner informed the Secretary that the arbitrator's decision³ was unsatisfactory to her, and that she wished to have her charge reviewed by the Board. Within this correspondence, Bittner presented nine separately delineated provisions of the arbitrator's decision with which she disagreed. As discussed above, the Board's rules and regulations allow it to consider only timely filed exceptions. Section 95.98(a) provided Ms. Bittner with twenty days within which she could file exceptions to the Secretary's May 6, 1999, decision to not issue a complaint. The exceptions period expired May 26, 1999, and the only correspondence that the Board received within this period was the May 18, 1999, letter from AFSCME and Bittner's May 24, 1999, request for her charge to be held in abeyance. As such, the Board will only consider these two letters. The Board is without authority to consider Bittner's July 2, 1999, "points of difference" letter because it was outside of the exceptions period. Dauphin County, 29 PPER ¶

² The grievance that was submitted to arbitration was filed after Bittner received a five day suspension for allowing perishable food at a school cafeteria to remain unrefrigerated until it was unsafe for consumption and was discarded. Bittner is a satellite manager in the Employer's Corl Street food service department, and is responsible for preparing, maintaining and presenting meals to the students. (Arb. Op. at 2).

³ The arbitrator upheld the suspension because of the potential danger that was presented to schoolchildren (Arb. Op. at 2). He credited the testimony of a truck driver who delivered the meat to the school, a health technician, a health officer, and two employes in reaching his decision.

29217 (Final Order, 1998); Fraternal Order of Police, Fort Pitt Lodge No. 1 v. PLRB, 553 A.2d 469 (Pa. Cmwlth. 1998); Delaware County Lodge No. 27 v. PLRB, 461 A.2d 1337 (Pa. Cmwlth. 1983).

The Board will only review the record and AFSCME's exceptions as adopted by Bittner. Bittner's charge was accompanied by a letter that alleged harassment by the Employer because of her union activities. However, she did not charge the Employer with violating Section 1201(a)(3) of PERA (discriminating in regard to . . . any term or condition of employment to . . . discourage membership in any employe organization). The Board is thus not compelled to engage in an analysis of whether the evidence submitted by Bittner supports a charge of discrimination based on union activity. The only violation alleged was that of Section 1201(a)(1) of PERA, and "an independent violation of this section will be found if the actions of the employer, in light of the circumstances in which the particular act occurred, tend to be coercive" SEPTA, 27 PPER ¶ 27091 (Proposed Decision and Order, 1996)(citing Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985). Bittner submitted no evidence that the Employer's act of suspending her for leaving perishable food unrefrigerated tended to be coercive. In fact, the evidence submitted by Bittner established that she received several negative evaluations and recommendations from her Employer both before and after she became the union steward in November of 1997.

The evaluations and recommendations that Bittner submitted with her charge indicate that her Employer found fault with her work. Her evaluations deteriorated progressively, and she was disciplined accordingly. She received both oral and written warnings concerning the inaccuracy of her work, her inability to complete her work timely, her rude disposition toward other employes, her need to prioritize, plan and organize better, her inability to accept criticism, her abrupt and abrasive treatment of coworkers and her lack of good judgment. (employe evaluations 1996-1998; employe counseling reports 1997-1998). Bittner has grieved several of the disciplinary actions taken against her, and the grievances were handled according to the contract between AFSCME and the Employer. Bittner has presented no evidence that any of these negative evaluations were intended to be coercive in any way. There is no evidence that employe evaluations or counseling reports should be construed by the Board as interference, restraint or coercion of Bittner's exercise of her Article IV rights.

The exceptions to the Secretary's decision not to issue a complaint deal primarily with the perishable food incident, rather than Bittner's charge that the Employer committed unfair practices under Section 1201(a)(1) of PERA. The first exception contains a denial that Bittner left the perishable food unrefrigerated. This does not relate to Bittner's unfair practices charge. The second exception contains an allegation that "the School District was out to get Mrs. Bittner for filing an early grievance." This statement is not followed by evidence of coercion or discrimination in support of her unfair practices charge. Rather, it is followed by assertions that the school district did not investigate the perishable food incident thoroughly and a statement by a coworker concerning the refrigeration of the food. These matters were addressed and resolved unfavorably to Bittner by the arbitrator. The third exception concerned AFSCME's dissatisfaction with the Employer's settlement offer regarding the perishable food grievance, rather than evidence of an unfair

practice under PERA. Again, AFSCME's rejection of a settlement offer does not substantiate an unfair practices charge of coercion or discrimination.

After a thorough review of the exceptions and all matters of record, the Board affirms the Secretary's decision not to issue a complaint in this matter for various reasons. Although Bittner alleges that the Employer harassed her because of her union activity, she neither charged discrimination under PERA § 1201(a)(3), nor presented evidence to support a claim of discrimination based on union activity. Likewise, her Section 1201(a)(1) of PERA charge of interference, restraint, or coercion of her Article IV rights is not supported by the documentation she submitted. Lastly, Bittner's grievance over her suspension was submitted to the arbitration procedure, and the arbitrator's award is consistent with the policies of PERA. "It is not the role of the Board to review the arbitrator's decision to provide a second bite at the apple by the party which was not victorious before the arbitrator." City of Reading, 14 PPER ¶ 14002 (Final Order, 1982).

After a thorough review of all matters of record, the Board shall affirm the Secretary's decision not 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 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 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-first day of December, 1999. 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.