

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

JAMES P. LUTZ :  
 :  
 : Case No. PERA-C-99-315-E  
 v. :  
 :  
 MORRISVILLE EDUCATION ASSOCIATION :

FINAL ORDER

On August 2, 1999, a charge of unfair practices was filed with the Pennsylvania Labor Relations Board (Board) by James P. Lutz (Complainant) alleging that the Morrisville Education Association (Union) violated Section 1201(b)(1) of the Public Employee Relations Act (PERA). In support of the charge of unfair practices, the Complainant alleges that the Union has ignored his request for the appointment of an impartial arbitrator to process his challenge to the imposition of a fair share fee in accordance with the collective bargaining agreement negotiated between the Union and the Morrisville Borough School District. After review of the charge of unfair practices, the Board Secretary by letter dated September 20, 1999, dismissed the charge. The Secretary determined that the charge failed to state a cause of action under Section 1201(b)(1) of PERA because relief to enforce the provisions of the fair share fee legislation applicable to school districts (Act 84 of 1988, 71 P.S. § Section 575)<sup>1</sup> is through the courts and not by way of a charge of unfair practices under PERA. On October 7, 1999, the Complainant filed exceptions to the Secretary's decision declining to issue a complaint. In the exceptions, the Complainant alleges that the Union has violated Section 1201(b)(1) of PERA by inappropriately refusing to secure the services of an independent arbitrator to process the Complainant's challenge to the fair share fee. The Complainant reasons that this failure violates his right guaranteed in Article IV of PERA to refrain from assisting a labor organization in any way.

After review of the charge of unfair practices and the exceptions filed by the Complainant, the Board shall sustain the dismissal of the charge. In the charge, the Complainant is clearly seeking to enforce the provisions of Act 84 of 1988, which provides for the appointment of an independent arbitrator to process challenges to the propriety of a fair

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<sup>1</sup>Throughout his filings, including his request to the Union for the appointment of an impartial arbitrator, the Complainant refers to his rights under Senate Bill No. 399 of 1993, which is similar fair share fee legislation applicable to municipal government employers and community colleges. Senate Bill No. 399, which was signed into law as Act 15 of 1993, does not apply to the Complainant. Rather, as an employe of a school district, the Complainant is subject to Act 84 of 1988, the fair share fee legislation applicable to the Commonwealth of Pennsylvania and school entities as employers.

share fee. Act 84 of 1988 also provides its own penalties, including fines and/or imprisonment, for individuals and employe organizations that violate its provisions. See 71 P.S. § 575(1) and (m). It should also be noted that redress may also be had in the courts if the challenge to the fair share fee implicates the constitutional rights of the Complainant. See, e.g., Hohe v. Casey, 956 F.2d 399 (3rd Cir. 1992). In his exceptions, the Complainant challenges individual expenditures charged by the Union to fair share fee payers as not appropriate charges. Nothing in Act 84 of 1988 or in PERA vests the Board with jurisdiction to enforce the various provisions of the fair share fee legislation. Accordingly, after a thorough review of the charge of unfair practices and the Complainant's exceptions, the Board shall dismiss the exceptions and affirm the decision of the Board Secretary.

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 hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this sixteenth day of November, 1999.

PENNSYLVANIA LABOR RELATIONS BOARD

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JOHN MARKLE, JR., CHAIRMAN

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EDWARD G. FEEHAN, MEMBER