

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ROGER L. BOLEN AND :
MATTHEW J. WINCER :
 :
v. : Case No. PERA-C-01-541-W
 :
UNITED STEELWORKERS OF AMERICA, :
DISTRICT 10 :
RAYMOND T. JASTRZAB :

FINAL ORDER

On December 14, 2001, Roger Bolen and Matthew Wincer (Complainants) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) alleging that the United Steelworkers of America, District 10 (Union) and Raymond Jastrzab (collectively Respondents) violated Section 1201(b)(1), (3), (5), (7) and (9) of the Public Employe Relations Act (PERA). Complainants contend that on June 26, 2001, the City of Johnstown (Employer) eliminated Mr. Bolen's mechanics position and re-assigned Mr. Wincer to the sewage treatment plant. They allege that the Union refused to file grievances on their behalf. Further, they allege that although they were able to obtain grievance forms and file grievances themselves on July 11, 2001, the Employer refused to process and "voided" their grievances.

On January 14, 2002, the Secretary of the Board issued a letter advising Complainants that no complaint would be issued. The Secretary noted that the charge alleged a breach of the Union's duty of fair representation, which is not actionable before the Board under the Pennsylvania Supreme Court's holding in Ziccardi v. Commonwealth of Pennsylvania, Department of General Services, et al., 500 Pa. 326, 456 A.2d 979 (1982). In addition, the Secretary noted that the charge was not filed within four months of the acts alleged to constitute the unfair practice as required by Section 1505 of PERA. On February 4, 2002, Complainants filed timely exceptions to the Secretary's decision not to issue a complaint.¹

Based on the allegations in the charge, as amended in the exceptions, there was a Memorandum of Understanding entered into between Respondents and the Employer. That Memorandum of Understanding affected the Complainants' positions and assignments, and negated any grievance filed over those changes. In the charge, the Complainants allege that the Respondents violated Section 1201(b) of PERA by not notifying or discussing with the membership the interim contract negotiations that would affect their jobs. They also contend that Respondents negotiated without the authority of the membership, and did not sign the agreement until after the changes had already affected the Complainants. The Complainants also claim that the Respondents refused

¹ Identical exceptions were filed with the Board, one on behalf of Mr. Wincer and the other on behalf of Mr. Bolen. Because the charge was filed on behalf of both individuals and docketed at the same number, the exceptions are consolidated for disposition.

to represent them in their grievance over the loss of their positions and their reassignment.

In their exceptions, the Complainants assert that the charge was filed timely. The Complainants contend that the alleged unlawful Memorandum of Understanding was entered into by the Respondents on August 30, 2001, and signed by the Employer on September 6, 2001, and therefore the unfair labor practice occurred on September 6, 2001, when the agreement was finalized.

Initially, we note that the charge filed December 14, 2001, makes no reference to a Memorandum of Understanding, and refers to acts occurring prior to its execution. The charge, however, does refer to the elimination of Complainants' positions, an elimination of overtime, and a refusal to process grievances, all subjects of the September 6, 2001 Memorandum of Understanding. Thus, the allegations in the exceptions regarding the Memorandum of Understanding relate to and clarify the acts alleged in the charge. Accordingly, the charge appears to have been filed within four months of the execution of the Memorandum of Understanding. Nevertheless, the charge fails to allege a cause of action that is cognizable before the Board.

In reviewing the dismissal of a charge, we assume that all facts alleged are true, and will generally sustain a decision not to issue a complaint if the charge could not support an unfair labor practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶130024 (Final Order, 1998).

The Complainants argue that the Secretary erred in relying on Ziccardi, since the facts of this case are claimed to be distinguishable from Ziccardi wherein the union refused to take a grievance to arbitration. Complainants contend that here, the Respondents prevented them from filing their grievance.

In Ziccardi, the Supreme Court held that the union's decision not to process a member's grievance through arbitration was not an enumerated unfair labor practice under Section 1201(b) of PERA. Ziccardi, 456 A.2d at 980. However, Ziccardi also extends to the union's decision over processing grievances and its decision whether to initiate the grievance process. See Narcotics Agents Regional Committee, Fraternal Order of Police Lodge No. 74 v. American Federation of State, County and Municipal Employees AFL-CIO, Council 13, et al., 780 A.2d 863 (Pa. Cmwlth. 2001); see also Vitko v. Teamsters Local Union #773, 22 PPER ¶122024 (Final Order, 1991). Thus, under the Supreme Court's holding in Ziccardi the Board is without jurisdiction to hear Complainants' claims that the Union breached its duty of fair representation by failing to properly represent them in the grievance process.

In addition, the Complainants contend that Respondents entered into an agreement contrary to the provisions of the collective bargaining agreement, and assert that the Union's refusal to process their grievance violated the Union's collective bargaining agreement with the Employer. These claims against the Union, however, are within the jurisdiction of a court of law for an alleged breach of the duty of fair representation, and are not actionable before the Board. See

Certain AFSCME Local 2666 Professional Bargaining Unit Employees v. AFSCME, District Council 85, 21 PPER ¶ 21101 (Final Order, 1990).

Similarly, the Complainants argue that the Respondents violated the contract between the Union and its membership, which did not authorize Mr. Jastrzab to negotiate for the Union, and required Respondents to notify the membership of the negotiations. The Complainants contend that the Union's refusal to process their grievances also violated the membership agreement. As noted in AFSCME, District Council 85, 21 PPER at 251, "claims by union members against the union for violations of the contract that exists between the union and its individual members are actionable in a court of appropriate jurisdiction." (quoting Taylor v. AFSCME, 19 PPER ¶ 19115 at 284 (Final Order, 1988)).²

In addition, we note that the Complainants lack standing to pursue their claims under Section 1201(b)(3), (5) and (9) of PERA. In Wynn v. Pennsylvania School Service Personnel Association, PSEA/NEA, 20 PPER ¶ 20129 (Final Order, 1989), the Board noted that "Section 1201(b)(3) on its face establishes an obligation in the employe organization to negotiate in good faith 'with the public employer' and not with individual members of the bargaining unit." Similarly, a union's duty to reduce an agreement to writing under Section 1201(b)(5) involves the fulfillment of bargaining obligations, and therefore is a duty owed to the public employer, not individual members of the bargaining unit. See Prinkey v. AFSCME, District Council 84, 30 PPER ¶30186 (Final Order, 1999). Finally, the Board has held that the union's statutory meet and discuss duty is also owed to the employer rather than the individual. Vitko, supra. Accordingly, the Complainants

² Complainants also allege that the conduct of Mr. Jastrzab in negotiating the Memorandum of Understanding was a conflict of interest in violation of Section 1801 of PERA, which provides that

- (a) No person who is a member of the same local, State, national or international organization as the employe organization with which the public employer is bargaining or who has an interest in the outcome of such bargaining which interest is in conflict with the interest of the public employer, shall participate on behalf of the public employer in the collective bargaining processes with the proviso that such person may, where entitled, vote on the ratification of an agreement.
- (b) Any person who violates subsection (a) of this section shall be immediately removed by the public employer from his role, if any, in the collective bargaining negotiations or in any matter in connection with such negotiations.

43 P.S. §1101.1801. However, there are no allegations supporting that Mr. Jastrzab was participating in the negotiations of the Memorandum of Understanding on behalf of, and as an agent for the Employer. Mr. Jastrzab was at all relevant times acting as a representative of the Union, and signed the Memorandum of Understanding as such. Accordingly, there are no allegations supporting a violation of Section 1801 of PERA.

lack standing to file charges under Section 1201(b)(3), (5) or (9) of PERA.

As a final argument, the Complainants raise a constitutional challenge contending that the Secretary's decision declining to issue a complaint denies them due process by failing to provide a forum in which they can seek redress for the Respondents' conduct. This argument disregards the Supreme Court's holding that violations of the duty of fair representation under Pennsylvania law are actionable in a court of appropriate jurisdiction, if not before the Board. Further, while the Complainants' claims may not be actionable in an administrative setting, the Supreme Court stated in Martino v. Transport Workers' Union of Philadelphia, Local 234, 505 Pa. 391, 407-408, 480 A.2d 242, 250-251 (1984), that:

Ziccardi does preclude an employee from directly seeking reinstatement in a court action for wrongful discharge; it does not prevent an equity court from fashioning a remedy which will effectuate the parties' collective bargaining agreement so long as its decree insures compliance with PERA's requirement of mandatory grievance arbitration. In requiring mandatory arbitration of public employees' grievances, the legislature certainly did not intend to shield the employer from the natural consequences of its breach of the collective bargaining agreement, nor did the legislature intend to deprive employees of the right, under proper circumstances, to seek equitable relief compelling pursuit of the statutorily prescribed grievance arbitration procedures under a collective bargaining agreement precluding the employee from seeking his statutory remedy. Thus, the Chancellor may, under proper circumstances, order the union and employer to arbitrate the aggrieved employee's grievance; and, where the arbitrator deems it appropriate, he may order reinstatement.

After a thorough review of the exceptions and all matters of record, the Board concludes that the charge filed by Complainants fails to state a cause of action before the Board, and accordingly, the Secretary did not err in declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

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

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and L. Dennis Martire, Member, this nineteenth day of March, 2002. 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.