

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DENNIS BEVINGTON :
 :
 v. : Case No. PERA-C-03-126-W
 :
 BRIDGEWATER BOROUGH :

FINAL ORDER

Dennis Bevington (Complainant) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 4, 2003. The Complainant's exceptions challenge a July 14, 2003 decision of the Secretary of the Board declining to issue a complaint and dismissing his Charge of Unfair Practices filed against Bridgewater Borough (Borough) under the Public Employee Relations Act (PERA).

On April 2, 2003, the Complainant filed a charge, amended June 13, 2003,¹ in which he alleges that since the beginning of January 2003, the Borough has violated Section 1201(a)(5), (6) and (9) of PERA. The Complainant claims that the Borough unlawfully and unilaterally began deducting health insurance premiums from his pay, and was refusing to bargain with him in good faith to reach a successor employment contract. The Complainant also asserts that since January 2003, the Borough has unilaterally scheduled him as a part-time employee, and hired a second employe part-time to cover the vacant shift.

Relying on Thomas Flagg v. Delaware County, 28 PPER ¶128142 (Final Order, 1997), the Secretary issued a letter advising the Complainant that no complaint would be issued on the charge since an individual employe lacks standing to assert a refusal to bargain or meet and discuss under Section 1201(a)(5), (6) or (9) of PERA. The Secretary also noted that the Board records indicated that Service Employees International Union, Local 585, AFL-CIO (SEIU) was certified by the Board as the exclusive representative for the Borough street department employe(s).²

The Complainant filed timely exceptions arguing that he should be entitled to pursue the charge since he has previously been able to negotiate his own employment contracts with the Borough. He also notes that since its certification in 1981, SEIU has never collected dues from him, has not negotiated on his behalf, and has not entered into any contracts with the Borough for the street department employe(s).

In assessing the merits of a charge to determine whether a complaint should be issued, the Board accepts as true the facts alleged

¹ By letter dated May 12, 2003, the Secretary directed the Complainant to amend the charge because he had failed to set forth the subsection allegedly violated, and because the Specifications of the Charge did not establish that he engaged in protected activity.

² Case No. PERA-R-81-629-W.

in the charge. A complaint will not be issued if the facts alleged would not support an unfair practice as defined by PERA. Pennsylvania Social Services Union Local 668 v. Pennsylvania Labor Relations Board, 481 Pa. 81, 392 A.2d 256 (1978); Homer Center Education Association v. Homer Center School District, 30 PPER ¶130024 (Final Order, 1998).

An employer's bargaining obligations under Section 1201(a)(5) and (6), and "meet and discuss" requirements under Section 1201(a)(9) of PERA, extend only to the certified representative of the employees. Chase v. Carlynton School District, 16 PPER ¶16002 (Final Order, 1984). The bargaining, or meet and discuss, representative to which the employer's duty is owed, is that entity or union recognized by the Board through the proper certification process. United Steel Workers of America v. Ford City Borough, 30 PPER ¶130031 (Final Order, 1999). The Board will not certify under PERA a single person bargaining unit. In the Matter of the Employees of Ford City Borough, 19 PPER ¶19117 (Final Order 1988). Ergo, an employer has no statutory obligation to bargain, or meet and discuss, with an individual employe. Thomas Flagg, 28 PPER at 312. Even though SEIU has never negotiated on behalf of the Complainant or the street department employe(s), SEIU is the Board certified bargaining representative to which the employer owes any statutory duty to bargain. Ford City Borough, 30 PPER at 65.

After a thorough review of the exceptions and all matters of record, there are no facts alleged to support the Complainant's charge under Section 1201(a)(5), (6) and (9) of PERA. Accordingly, the Board will dismiss the exceptions and sustain the Secretary's decision declining 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 are dismissed and the Secretary's decision not to issue a complaint be and the same is hereby 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 Anne E. Covey, Member, this sixteenth day of September, 2003. 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.