

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

JOHN LYMAN :
ROSALIE PICCOLA :
ANN T. SQUEGLIA :
 :
v. : Case No. PERA-C-02-595-W
 :
PITTSBURGH BOARD OF PUBLIC EDUCATION: :
BONNIE GAVLAK :

FINAL ORDER

On November 26, 2002, John Lyman, Rosalie Piccola, and Ann Squeglia (Complainants) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) asserting that the Pittsburgh Board of Public Education and Bonnie Gavlak (Respondents) had violated the Public Employe Relations Act (PERA). Subsequent to the filing of the charge, Ms. Piccola filed a letter on January 6, 2003, raising additional facts not set forth in the charge. Thereafter, in a letter to the Board dated January 28, 2003, the Respondents opposed the issuance of a complaint on the charge as filed.

Upon review of the charge and Ms. Piccola's letter, on February 12, 2003, the Secretary of the Board advised the Complainants that no complaint would be issued and that the charge would be dismissed. Specifically, the Secretary noted that the charge failed to specify the subsection and clauses under which the Claimants were proceeding with their claims. Furthermore, the Secretary noted that the allegation in the charge failed to support any claim for an unlawful practice under PERA, and that the whistleblower activities alleged in the charge were not within the jurisdiction of the Board.

On that same date, February 12, 2003, Complainants sent verified statements to the Board (received on February 14, 2003) responding to the Respondents' letter opposing the charge. In addition, the Complainants filed an amended charge on March 4, 2003, in response to the Secretary's letter declining to issue a complaint. Generally, where the Board receives supplemental materials within the time for exceptions, the Board construes the supplemental materials as exceptions filed under Section 95.98 of the Board's Rules and Regulations. Accordingly, the Complainants' letters of February 12, 2003 and the March 4, 2003 amended charge will be addressed as timely exceptions to the Secretary's decision of February 12, 2003 declining to issue a complaint.

In assessing the merits of a charge to determine whether a complaint should be issued, the Board accepts as true the facts alleged in the charge. However, a complaint will not be issued if the charge does not set forth sufficient facts which could 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).

In their exceptions, the Complainants assert that the Respondents' adverse employment actions had violated Section 1201(a)(1), (2), (4), (5) and (9) of PERA. However, upon review of the exceptions, the Board agrees with the Secretary that the allegations fail to support an unfair practice under Section 1201 of PERA.

Specifically, Section 1201(a)(4) of PERA prevents an employer's retaliatory action because of participation with a case filed or pending before the Board. As such, there is no basis under Section 1201(a)(4) for the Board to consider retaliation claims for reports made under the Pennsylvania Whistleblower Act, 43 P.S. §1421. In addition, the Complainants' allegations do not support a showing of coercion or interference with protected activity under Article IV of PERA for a Section 1201(a)(1) violation. Micki Fink v. Clarion County, 32 PPER ¶32165 (Final Order, 2001).

Moreover, the Complainants, as individual members of the unit, lack standing to pursue bargaining violations under Section 1201(a)(5), or meet and discuss obligations under Section 1201(a)(9) of PERA. See Thomas Flagg v. Delaware County, 28 PPER ¶ 28142 (Final Order, 1997). Neither do the Complainants have standing for claims that the employer is interfering with internal union matters under Section 1201(a)(2). Furthermore, we note that the Complainants' allegations do not even support that an adverse employment action was taken because they had engaged in protected activity necessary for a claim of discrimination under Section 1201(a)(3) of PERA. See St. Joseph's Hospital v. Pennsylvania Labor Relations Board, 473 Pa. 101, 373 A.2d 1069 (1977).

After a thorough review of the record, the Complainants' exceptions are dismissed, and the Secretary's decision declining to issue a complaint is made 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 Complainants' exceptions are hereby dismissed, and the Secretary's decision of February 12, 2003 declining to issue a complaint, be and hereby is 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 eighteenth day of March, 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.