COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CARMELITA CASE, JAIME POPSO, LINDA SCHIAVO, GERALDINE GORDON, LEE ANN PERRY, SHARON TURSE, LYNN CALVELLO, NOREEN GUNSHORE, LOUISE LYATE and JOAN CHINCOLA	:	Case No. PERA-C-05-265-E
v.	:	
HAZLETON AREA SCHOOL DISTRICT	:	

FINAL ORDER

Carmelita Case, Jaime Popso, Linda Schiavo, Geraldine Gordon, Lee Ann Perry, Sharon Turse, Lynn Calvello, Noreen Gunshore, Louise Lyate and Joan Chincola (Complainants) filed Exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 4, 2005. The Complainants' exceptions challenge the Secretary of the Board's decision to bifurcate their charges against the Hazleton Area School District (District) and Hazleton Area Educational Support Personnel Association, PSEA/NEA (Union) and a July 14, 2005 decision declining to issue a complaint and dismissing their Charge of Unfair Practices filed against the District. The Complainants alleged that the District violated Section 1201(a)(1), (3), (5), (6), (7) and (9) of the Public Employe Relations Act (PERA).

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. 43 P.S. §1101.1302. Generally, a complaint will be issued unless the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

In the Specification of Charges, the Complainants allege the following. The Complainants are members of the Union and employed by the District. During the course of negotiations between the Union and the District over a successor collective bargaining agreement, the Union rejected a proposal from the District the Complainants deemed "fair and reasonable." On March 10, 2005, the Union called a meeting of the bargaining unit for purposes of reviewing and voting on the Union's counter-offer. Complainants allege that the meeting to discuss the counter-offer was only forty-five minutes prior to the vote to present the counter-offer, which consisted of fifty-three pages. The counter-offer proposed two tiers of pay increases based on the employes' length of service with the District. The percentage increase in pay proposed by the Union was higher for less senior employes. Finally, Complainants allege that any acceptance of the counter-proposal by the District would be unlawful under the cited provisions of PERA.

In their exceptions to the Secretary's refusal to issue a complaint, Complainants allege that the Secretary's decision is contrary to an April 27, 2005 decision and order of the Court of Common Pleas of Luzerne County.[1] The Complainants further argue that the parties must remain joined pursuant to the Pennsylvania Rules of Civil Procedure § 2229(b), since the remedy demanded requires actions taken by both the Union and the District. Finally, Complainants allege that, contrary to the Secretary's determination in the dismissal letter, the charges contained sufficient facts to support a cause of action under PERA.

The Common Pleas decision and order cited by the Complainants holds that the Board possesses subject matter jurisdiction over their charges pursuant to Segilia v. Riverside School Service Personnel Association, 526 A.2d 832 (Pa. Cmwlth. 1987). Segilia involved actions by members of bargaining units against their Union. This case involves a charge of unfair practices filed by individual members of their bargaining unit against their employer. Therefore, Sigilia is immaterial to the issues raised by the Complainants' charge against the District.

Further, as determined by the Board in the companion charge of unfair practices filed against the Union[2], more recent case law does not support the notion that the Board has jurisdiction over claims essentially alleging violations of

[1] Carmelita Case v. Hazleton Area Education Support Personnel Association, PSEA and Hazleton Area School District, Civil Action No. 3371-E of 2005 (Judge Olszewski, Jr., April 27, 2005).

[2] The same or similar factual allegations have been alleged to support an unfair practice claim against the Union (Case No. PERA-C-05-266-E), which we also dismiss today.

the duty of fair representation. The foundation of Sigilia, that the Board has jurisdiction over duty of fair representation claims, has since been rejected by the Commonwealth Court in Narcotics Agents Regional Committee, Fraternal Order of Police v. AFSCME, AFL-CIO Council 13, 780 A.2d 863 (Pa. Cmwlth.), a case not cited in the Common Pleas decision and order. In Narcotics Agents, Commonwealth Court reaffirmed the principle of Ziccardi v. Commonwealth, 456 A.2d 979 (Pa. Cmwlth. 1982), that duty of fair representation claims are actionable not before the Board, but before a court of competent jurisdiction. Even after Ziccardi, the Board continued to assert jurisdiction over duty of fair representation claims where the motive for the union's action was allegedly to retaliate against employes for exercising PERA Article IV rights, which the Board is primarily statutorily charged with protecting.

In the intervening two decades after Ziccardi, the Board reasoned that while ordinary claims of violations of the membership contract between the union and the employe were contractual in nature and beyond the Board's expertise[3], claims that a union would not represent an employe because he or she exercised Article IV rights not to support the incumbent union remained within the Board's jurisdiction under Section 1201(b)(1) of PERA[4]. However, in Narcotics Agents, Commonwealth Court went further than Ziccardi and held that the Board does not have jurisdiction over duty of fair representation claims, even where the alleged violation is motivated by discrimination against an employe because he or she supported another union during a representation campaign. In light of Narcotics Agents, which presented a far more compelling case for the exercise of Board jurisdiction, the relatively benign claim that the exclusive representative represented the interests of all bargaining unit members (not just Complainants) pales by comparison. Accordingly, this exception is dismissed.

The Complainants challenge the Secretary's determination that the charge failed to allege facts that state a cause of action. First, Section 1201(a)(5) and (6) of PERA expressly provides that the employer's obligation to bargain is only with the exclusive representative of the employes and not individual employes in the unit. Similarly, Section 1201(a)(9) of PERA provides that it is the certified representative of the employes, and not an individual member of a unit, that can allege a meet and discuss violation. See Maggs v. PLRB, 413 A.2d 453 (Pa. Cmwlth. 1980); Roderick v. PLRB, 484 A.2d 841 (Pa. Cmwlth. 1984). Therefore, the Complainants lack standing to raise allegations under Section 1201(a)(5), (6) and (9) of PERA, and any exceptions to the Secretary's dismissal of these charges is dismissed.

Second, Section 1201(a)(3) of PERA prohibits public employers from discriminating against its employes for purposes of encouraging or discouraging membership in any employe organization. See St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). In its specification of charges, the Complainants failed to allege any discrimination by the District. Furthermore, the discrimination it alleged against the Union is based on the employes' level of seniority with the District, and not on their participation in protected activities. Therefore, any exception to the Secretary's determination that the Complainants failed to allege any facts to support this claim is dismissed.

Third, Section 1201(a)(7) of PERA provides that public employers are prohibited from "violating any of the rules and regulations established by the board regulating the conduct of representation elections." Since the Complainants failed to allege that representation elections were at issue in this case, then, *a fortiori*, the Complainants failed to allege that the District violated the Board's rules and regulations regarding such elections. Accordingly, any exception to the Secretary's determination that the Complainants failed to allege any facts to support this claim is dismissed.

Fourth, the Secretary's decision to bifurcate the Complainants' charges was not in error. The Complainants argue that the parties must remain joined under the Pennsylvania Rules of Civil Procedure § 2229(b), since the remedy demanded requires action taken by both the Union and the District. Initially, practice and procedure before the Board is governed by the Board's Rules and Regulations and the general Rules of Administrative Practice and Procedure, and not the Rules of Civil Procedure applicable in Courts of Common Pleas. In this case, the Secretary bifurcated the charges only for purposes of responding to separate unfair practice allegations filed against the District (under Section 1201(a)) and the Union (under Section 1201(b)) of PERA. Had complaints issued, the hearing examiner would have discretion to consolidate the matter for hearing and decision for the reasons stated by Complainants in the exceptions. However, because the charges lack merit and no hearing is necessary, this exception is essentially mooted.

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[3] Philadelphia v. Board of Education of the School District of Philadelphia, 480 Pa. 194, 389 A.2d 577 (1978)(The Board exists to remedy violations of statute, i.e., unfair labor practices, and not violations of contract; accordingly, the Board does not interpret contracts.).

[4] Section 1201 of PERA provides in relevant part as follows:

(b) Employe organizations, their agents, or representatives, or public employes are prohibited from:

(1) Restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act.

After a thorough review of the exceptions and all matters of record, there are no facts alleged warranting issuance of a complaint. 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 at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this twentieth day of September, 2005. 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.