

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

RAY LETEZIA, DENNIS GRAMLING :  
LYNN JAMISON AND TONY SCARTON :  
 : Case No. PERA-C-06-58-E  
 v. :  
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 COMMONWEALTH OF PENNSYLVANIA, :  
 DEPARTMENT OF ENVIRONMENTAL :  
 PROTECTION, BUREAU OF DEEP :  
 MINE SAFETY :

**FINAL ORDER**

Ray Letezia, Dennis Gramling, Lynn Jamison and Tony Scarton (Complainants) filed Exceptions with the Pennsylvania Labor Relations Board (Board) on April 12, 2006 challenging a March 23, 2006 decision of the Secretary of the Board (Secretary) declining to issue a complaint and dismissing their Charge of Unfair Practices filed on February 8, 2006, against the Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Deep Mine Safety (Department).

In their charge, the Complainants alleged that the Department hired a person for the position of Bituminous Deep Mine Inspector Supervisor who is less qualified and less senior than any of the four Complainants. They further alleged that a DEP Program Manager stated to one of the Complainants that there would be "hell to pay" when an ongoing investigation of higher-level supervisors was completed and that each of the Complainants testified in that investigation. Complainants alleged that this amounted to an unfair labor practice under Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA). The Secretary dismissed the charge under Section 1201(a)(1) and (3) of the PERA because Complainants failed to allege that they were engaged in protected activity and further failed to allege any nexus between any protected activity and the motivation for any adverse action by the Department.<sup>1</sup>

In determining whether to issue a complaint, the Board assumes as accurate the factual representations in the charge. 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 their exceptions, the Complainants argue that the Secretary erred in refusing issue a complaint because they stated a cause of action for discrimination under the standard set forth in St Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977).

In order to sustain a charge of discrimination under Section 1201(a)(3) of PERA, the complainants must allege 1) that the employe engaged in protected activity; 2) the employer was aware of that protected activity; and 3) but for the protected activity, the adverse action would not have been taken against the employes. St. Joseph's.

Complainants argue that they satisfied the burden set forth in St. Joseph's because they alleged in their Charge that they are members, officers and activists in the Union and that they provided testimony in an ongoing investigation of higher level supervisors. However, as the Secretary noted in her letter declining to issue a complaint, the nature of this "ongoing investigation" is unspecified, and the Exceptions do not provide any

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<sup>1</sup>The Secretary also noted that, although Complainants alleged a violation of Section 1201(a)(7), the Specification of Charges contained no facts to support such a claim. In their Exceptions, Complainants state that they inadvertently alleged a violation of Section 1201(a)(7) and that they do not now allege that any such violation occurred.

further detail regarding this investigation. A promptly filed claim of discrimination based on giving testimony under PERA states a claim under Section 1201(a)(4). However, the Charge does not allege a violation of Section 1201(a)(4), nor does it allege that Complainants provided testimony under PERA. Simply providing testimony in any "investigation" is not an exercise of activity protected by PERA. The nature of the testimony and of the investigation would be the relevant factor in determining whether the Pennsylvania Labor Relations Board has jurisdiction over Complainant's claim. For example, if Complainants reported wrongdoing or waste in their testimony and were retaliated against for that testimony, an action under the Pennsylvania Whistleblower Law, 43 Pa. C.S. § 1423, would be the appropriate remedy. Because Complainants have failed to adequately specify the nature of their testimony or the investigation so as to bring their allegations within the Board's jurisdiction, we are unable to find that Complainants have stated a claim under the cited provisions of PERA. Further, simply being a member, officer and activist in a union is not necessarily protected activity. For a complaint to be issued, the protected activity must be specified and must relate to the exercise of rights granted under PERA. Complainants neither specify the exact nature of their testimony nor do they allege that they were exercising rights granted to them under PERA when they provided that testimony. Consequently, Complainants' Exceptions are dismissed.

After a thorough review of the exceptions and all matters of record, there are insufficient facts alleged to support the issuance of a complaint under Section 1201(a)(1) and (3) 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 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 sixteenth day of May, 2006. 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.