

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

CENTRAL BUCKS EDUCATIONAL SUPPORT :  
PERSONNEL ASSOCIATION :  
v. : Case No. PERA-C-06-22-E  
CENTRAL BUCKS SCHOOL DISTRICT :

**FINAL ORDER**

The Central Bucks Educational Support Personnel Association (Complainant) filed Exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on March 3, 2006. The Complainant's exceptions challenge a February 15, 2006 decision of the Secretary of the Board (Secretary) declining to issue a complaint and dismissing its Charge of Unfair Practices filed on January 18, 2006, against Central Bucks School District (Employer).

In its charge, the Complainant alleged that in May of 1999, Don L. Wilson filed a grievance challenging the District's denial of a transfer/promotion for Wilson. Complainant further alleged that Mr. Wilson unsuccessfully sought remedy through the grievance procedure, the Pennsylvania Human Relations Commission, the Equal Employment Opportunity Commission, and prior unfair practice filings with the Pennsylvania Labor Relations Board between 1999 and November 2004. At the Human Relations Commission and Equal Employment Opportunity Commission, Mr. Wilson alleged that he was being discriminated against based upon his age. In its Charge, Complainant also alleged that on October 14, 2005, approximately one year following this activity, Mr. Wilson was again denied a head custodian position. Complainant alleged that this conduct amounted to a violation of 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, after a review of the Specification of Charges as a whole, the Employer's consistent denial of a promotion to Mr. Wilson coupled with his unsuccessful attempts to challenge various denials of promotions indicated that the District's denial of the promotion related to Mr. Wilson's qualifications for the position rather than retaliation for the exercise of protected activity.

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 its exceptions, the Complainant argues that: 1) the Secretary erred as a matter of law by not accepting the facts as pled in the Charge as true and in the most favorable light to Complainant and 2) the Secretary erred as a matter of law by engaging in factfinding by accepting Employer's motivation for denying Complainant a promotion.

In order to sustain a charge of discrimination under Section 1201(a)(3) of PERA, the complainant 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 employe. St Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). The timing of an alleged discriminatory act is a key factor in determining whether the employer's actions were motivated by anti-union animus. PLRB v. Fabrication Specialists, Inc., 477 Pa. 23, 383 A.2d 802 (1978).

The Charge alleges that Mr. Wilson filed a grievance against Employer in May of 1999 and that numerous times after that Mr. Wilson has been denied head custodian

positions. The filing of grievances is an activity protected by the PERA. Commonwealth of Pennsylvania, Department of Public Welfare, Somerset State Hospital, 27 PPER ¶ 27086 at 191 (Final Order 1996). Although the Charge established that Mr. Wilson engaged in protected activity by filing a grievance and that Employer knew he engaged in this activity, it failed to adequately support the alleged nexus between Employer's decision not to promote Mr. Wilson and the exercise of the protected activity of filing a grievance. Significantly, Mr. Wilson filed the grievance in 1999 and Employer most recently decided not to promote him to the position of head custodian on October 14, 2005. The filing of the grievance is too remote in time to Employer's refusal to promote Mr. Wilson for there to be a nexus. Further, it is important to note that Mr. Wilson previously contended that the reason he was denied a promotion was due to age discrimination. Thus, no claim under Section 1201(a)(3) was stated. The Secretary did not improperly engage in factfinding as alleged in the Exceptions. Rather, the Secretary properly dismissed the Charge because the Charge did not allege facts setting forth each of the elements of a claim under St. Joseph's Hospital. Consequently, this exception is dismissed.

After a thorough review of the exceptions and all matters of record, there are insufficient facts alleged to support the Complainant's charge under Section 1201(a)(1) and (3) of the 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 Employee 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 21<sup>st</sup> day of March, 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.