

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NANCY L. AVAU and GAIL M. HERRON :
 :
 v. : Case No. PERA-C-07-355-W
 :
 RIVERSIDE BEAVER COUNTY EDUCATION :
 ASSOCIATION :

FINAL ORDER

Nancy L. Avau and Gail M. Herron (Complainants) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on September 18, 2007. The Complainants' exceptions challenge an August 29, 2007 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainants' Charge of Unfair Practices filed against the Riverside Beaver County Education Association (Union).

In their Charge of Unfair Practices filed on August 9, 2007, the Complainants alleged that the Union breached its duty of fair representation by signing the collective bargaining agreement that contained a longevity bonus provision. That provision awards longevity bonuses based upon the employee's years of service in the Riverside Beaver County School District bargaining unit. The Complainants alleged that because they spent part of their careers teaching in other school districts, they will not receive the longevity bonus. The Complainants finally alleged that the Union's agreement to this provision violated Section 1201 of the Public Employee Relations Act (PERA).

In dismissing the Charge, the Secretary stated that the courts, and not the Board, possess exclusive jurisdiction to entertain claims that employe representatives have breached their duty of fair representation, citing Ziccardi v. Commonwealth of Pennsylvania, Department of General Services, 500 Pa. 326, 456 A.2d 979 (1982), Case v. Hazelton Area Educational Support Personnel Association (PSEA/NEA), 928 A.2d 1154 (Pa. Cmwlth. 2007)(en banc) and Narcotics Agents Regional Committee, FOP Lodge No. 74 v. AFSCME, AFL-CIO, 780 A.2d 863 (Pa. Cmwlth. 2001). Therefore, the Secretary declined to issue a complaint.¹

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. See Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge cannot 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 contend that the Board has jurisdiction to hear their Charge pursuant to the Commonwealth Court's en banc decision in Segilia v. Riverside School Service Personnel Association, 526 A.2d 832 (Pa. Cmwlth. 1987), as the facts of the instant case are allegedly identical to the facts in Segilia. However, the Complainants' reliance on Segilia is misplaced because Segilia has recently been overruled by the Commonwealth Court in its en banc decision in Case.

In Case, the complainants alleged in a charge of unfair practices filed with the Board that the employe representative breached its duty of fair representation to certain members of the bargaining unit when it negotiated and agreed to contractual provisions that were more favorable to other members of the unit. The Commonwealth Court discussed

¹The Secretary also noted that the Complainants had failed to specify the subsection and clauses of PERA that the Union had allegedly violated. The Complainants assert in their exceptions that their Charge is based upon a violation of Section 1201(b)(3) of PERA, and they have amended their Charge accordingly. However, the Union's duty to bargain in good faith under Section 1201(b)(3) is owed exclusively to the public employer and not to individual employes such as the Complainants. Therefore, the Complainants lack standing to allege a violation of 1201(b)(3). Case supra.

the extensive case law, including the Pennsylvania Supreme Court's decision in Ziccardi and the Commonwealth Court's own decisions in Casner v. AFSCME, 658 A.2d 865 (Pa. Cmwlth. 1995) and Narcotics Agents, which hold that the Board lacks jurisdiction to hear breach of duty of fair representation claims. The Court noted that its decision in Segilia split jurisdiction over these claims between the Board and the courts of common pleas based on the subject matter of the claim, "i.e. failure to negotiate fairly on behalf of union members (jurisdiction with PLRB) versus a refusal to process members' grievances (jurisdiction with the courts)." 928 A.2d at 1161. The Commonwealth Court stated that it was not sound policy to create such a split and held as follows:

Individual claims by employees against the union that allege a breach of the duty of fair representation do not qualify as unfair labor practices in violation of PERA. The PLRB's expertise lies in resolving disputes involving alleged violations of the provisions of PERA, not in remedying an individual injustice to an employee by an employee's representative union.

Id. Accordingly, the Court overruled Segilia as inconsistent with the rule of law set forth in Ziccardi, Casner and Narcotics Agents, and affirmed the Board's refusal to issue a complaint on the breach of duty of fair representation claim for lack of jurisdiction.

Pursuant to the well settled case law, including the Commonwealth Court's decision in Case, the Board lacks jurisdiction to hear the Complainants' Charge of Unfair Practices alleging a breach of the Union's duty of fair representation. Therefore, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board concurs with the Secretary's decision that the Board lacks jurisdiction to hear the Charge of Unfair Practices. Accordingly, the Board shall 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 filed by Nancy L. Avau and Gail M. Herron are dismissed and the Secretary's August 29, 2007 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, Anne E. Covey, Member and James M. Darby, Member, this sixteenth day of October, 2007. 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.