

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF :
PAINTERS AND ALLIED TRADES, :
LOCAL 1968 :
:
v. : Case No. PERA-C-07-251-W
:
GIRARD SCHOOL DISTRICT :

FINAL ORDER

The International Brotherhood of Painters and Allied Trades, Local 1968 (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 9, 2007. The Union's exceptions challenge a June 25, 2007 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Practices filed against the Girard School District (Employer).

In its Charge of Unfair Practices filed on June 13, 2007, the Union alleged that the Employer violated Section 1201(a)(1) and (4) of the Public Employe Relations Act (PERA) by: engaging in bargaining that split the Union over outsourcing of transportation services; insisting, as a condition of contract acceptance, that the Union agree to subcontract bargaining unit work; and insisting that the Union take the Employer's final offer to a membership vote. The Secretary indicated that Section 1201(a)(4) is limited to situations where an employe is discriminated against for having had involvement in proceedings before the Board, citing PLRB v. Beaver County, 7 PPER 307 (Nisi Order, 1976). The Secretary stated that the Union did not allege facts that would support a finding that the Employer violated Section 1201(a)(4) or committed an independent violation of Section 1201(a)(1). Therefore, the Secretary declined to issue a complaint and dismissed the Charge.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 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 to the Secretary's refusal to issue a complaint, the Union argues that being involved in Board proceedings is not the only activity for which employes are protected from discrimination. The Union contends that its refusal to take the Employer's final contract offer to a vote of the Union members is another form of PERA protected activity, citing Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993), Bailey v. Ferndale Area School District, 454 A.2d 207 (Pa. Cmwlth. 1982), Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978) and National Labor Relations Board v. Great Dane Trailers, Inc., 388 U.S. 26 (1967).² The Union further argues that its Charge is validated by the fact that the Board refused to issue a complaint on the Employer's Charge that the Union was committing an unfair labor practice by refusing to

¹The Secretary also noted that the Union did not specify when the alleged unfair practices occurred and, therefore, the Board was unable to make a determination as to whether the charge was timely filed. The Union states in its exceptions that the Charge arises from incidents that occurred during bargaining with the Employer in late May through June 2007. Assuming this allegation is true, the Union's Charge would be timely as it was filed within the four-month statute of limitations set forth in Section 1505 of PERA, 43 P.S. § 1101.1505.

²The cases cited are inapplicable because they do not involve a factual scenario similar to the facts alleged here.

submit the Employer's contract offer to a vote of the Union's membership.³ The Union asserts that the Employer continues to engage in bad faith bargaining by insisting that the Union submit the final contract offer to a vote of the Union members, even though the Board has indicated that the Union is not required to do so.

In declining to issue a complaint on the Union's Charge, the Secretary did not state that employe protected activity under PERA is limited to situations where an employe has had involvement in Board proceedings. Rather, the Secretary simply noted that the Union filed its Charge under Section 1201(a)(4) of PERA, which provides that public employers are prohibited from "[d]ischarging or otherwise discriminating against an employe because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act." Thus, the Union's Charge was filed under the provision of PERA that prohibits discrimination against employes for filing affidavits, petitions or complaints with the Board or providing information or testimony in a Board proceeding. See PLRB v. Beaver County, supra. However, as the Secretary noted, the Union's Charge does not allege that an employe or employes filed an affidavit, petition or complaint with the Board or gave information or testimony before the Board, or that the Employer took adverse action against an employe or employes because of such activity. Nor has the Union included such allegations in its exceptions to the Secretary's decision not to issue a complaint. Therefore, the Secretary did not err in dismissing the Union's Charge under Section 1201(a)(4) of PERA for failure to state facts in support of such a violation.

Further, the Union has not set forth any facts in its Charge or exceptions that would support a determination that the Employer committed an independent violation of Section 1201(a)(1) of PERA. Therefore, any violation of this section would have to be a derivative violation of Section 1201(a)(4). Because the Union has not alleged facts that would support a finding that the Employer violated Section 1201(a)(4), no derivative violation of Section 1201(a)(1) of PERA could be found. Thus, the Secretary did not err in dismissing the Union's Charge in its entirety.

After a thorough review of the exceptions and all matters of record, we agree with the Board Secretary that the Union has failed to allege facts warranting issuance of a complaint for a violation of Section 1201(a)(1) or (4) of PERA. 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 the International Brotherhood of Painters and Allied Trades, Local 1968 are dismissed and the Secretary's June 25, 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, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this eighteenth day of September, 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.

³On June 13, 2007, the Employer filed a Charge of Unfair Practices alleging that the Union violated Section 1201(b)(1) and (3) of PERA when it refused to submit the Employer's contract proposal to the Union's membership for a vote. On June 25, 2007, the Secretary declined to issue a complaint and dismissed the Charge on the ground that the obligation to bargain in good faith does not require that the Union submit employer contract proposals to a vote of the Union members. The Employer filed exceptions to the Secretary's decision on July 13, 2007. In a Final Order issued on this date, the Board dismissed the Employer's exceptions and affirmed the Secretary's decision not to issue a complaint on the Employer's Charge.