

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF :  
PAINTERS AND ALLIED TRADES, :  
LOCAL 1968 :  
 :  
v. : Case No. PERA-C-07-304-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 August 15, 2007. The Union's exceptions challenge a July 26, 2007 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Practices filed against Girard School District (Employer).

In its Charge of Unfair Practices filed on July 9, 2007, the Union alleged that the Employer violated Section 1201(a)(5) of the Public Employe Relations Act (PERA) by refusing to submit financial information and underlying documents to an outside auditor for a binding determination regarding any savings that would result from subcontracting transportation services. The Union also alleged that the Employer violated Section 1201(a)(2) of PERA by attempting to recruit James Fehls, a bus mechanic, out of the bargaining unit to work for the eventual subcontractor.

In dismissing the Union's Charge, the Secretary stated that the Union failed to state a claim under Section 1201(a)(5) of PERA because the obligation to bargain in good faith does not require a public employer to agree to a union's request to submit information to an outside auditor and to be bound by the outside auditor's determination regarding the cost savings to be realized from subcontracting transportation services. The Secretary also indicated that Section 1201(a)(2) of PERA prohibits "company unions" and is directed at employer domination of, or assistance to, employe organizations. Because the Union's Charge did not contain any factual allegations that would support a determination that the Employer violated Section 1201(a)(2), the Secretary declined to issue a complaint.

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).

With regard to its Charge under Section 1201(a)(5) of PERA, the Union notes in its exceptions that a public employer has a duty to furnish information which will enable an employe organization to make an informed decision about whether to pursue a grievance, citing Commonwealth of Pennsylvania v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987). The Union argues that because a public employer has a duty to provide information to an employe organization, it also has a duty to furnish its financial information to an outside auditor for the purpose of reviewing whether savings will result from subcontracting bargaining unit work. Concerning its Charge under Section 1201(a)(2) of PERA, the Union asserts that its Charge did not allege that the Employer was maintaining a company union. Rather, the Union contends that its Charge alleged that the Employer interfered with the existence or administration of an employe organization, and that the Superintendent's efforts to recruit a member of the bargaining unit for work in a non-union entity interfered with the Union's existence and administration in violation of Section 1201(a)(2) of PERA.

The Board has held that an employer's statutory bargaining duty includes the obligation to provide the employe bargaining representative with information that is relevant to "'representing employes in negotiations for a future contract and also for policing the administration of the existing contract.'" United Mine Workers of America District 2 v. Fayette County, 36 PPER ¶ 72 at 197 (Proposed Decision and Order, 2005)(quoting Pennsylvania Social Services Union, Local 668 v. Commonwealth of Pennsylvania, 17 PPER ¶ 17042 at 108 (Final Order, 1986)). If a public employer desires to subcontract bargaining unit work, it has an affirmative duty to, *inter alia*, provide the employe representative with relevant information necessary for the union to fulfill its bargaining obligation. AFSCME, District Council 89 v. Lancaster County, 24 PPER ¶ 24054 (Final Order, 1993)(citations omitted). That would include financial information regarding the proposed subcontract. That information would enable the employe representative to verify alleged savings and allow the employe representative to craft counter-proposals with cost savings to persuade the employer to maintain the work in-house. PLRB v. Minersville Area School District, 14 PPER ¶ 14063 (Proposed Decision and Order, 1983), 14 PPER ¶ 14137 (Final Order, 1983), *aff'd*, 475 A.2d 962 (Pa. Cmwlth. 1984); PLRB v. Homer-Center School District, 12 PPER ¶ 12067 (Proposed Decision and Order, 1981), 12 PPER ¶ 12169 (Final Order, 1981).

However, the Union does not allege that the Employer has failed to provide the Union with relevant financial information concerning the subcontracting of transportation services. Rather, the Union contends that the Employer violated its duty to bargain in good faith by declining to agree to the Union's offer to submit financial information to an outside auditor and to be bound by the outside auditor's determination regarding any cost savings to be realized by subcontracting transportation services. The Union's interpretation of the Employer's bargaining obligation, which the Board agrees includes the provision of relevant financial information, is flawed in this case because the obligation to provide such information is owed to the Union and not to an outside auditor. Furthermore, Section 701 of PERA provides that a public employer is not required to agree to a proposal or make a concession. 43 P.S. § 1101.701. Therefore, the Employer had the right under Section 701 to decline to agree to the Union's proposal to be bound by the outside auditor's determination regarding the amount of cost savings to be realized from subcontracting. Accordingly, the Secretary did not err in dismissing the Union's Charge under Section 1201(a)(5) of PERA.

Additionally, it is well-settled that Section 1201(a)(2) of PERA prohibits the formation of company unions and its purpose is to prevent employer domination of, or assistance to, employe organizations. Teamsters Local Union No. 384 v. Kennett Consolidated School District, 37 PPER ¶ 89 (Final Order, 2006). The Board has determined that Section 1201(a)(2) is intended to prevent an employe organization from becoming so controlled or assisted by the employer that the employe organization is indistinguishable from the employer. Pennsylvania Nurses Association v. Commonwealth of Pennsylvania, 31 PPER ¶ 31081 (Proposed Decision and Order, 2000)(citing PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978)).

In its exceptions, the Union agrees that the Superintendent's actions do not constitute domination of the Union or indicate that the Employer was maintaining a company union. Further, although the Union states that Mr. Fehls is in the bargaining unit, the Union does not allege that he is an officer or even a member of the Union. Moreover, the Union has not alleged in its Charge or exceptions that the Employer has exercised such control or domination over the Union that the Union is indistinguishable from the Employer. Thus, the Secretary did not err in dismissing the Union's Charge under Section 1201(a)(2) of PERA.

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 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 July 26, 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.