

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME COUNCIL 13 :
 :
 v. : Case No. PERA-C-06-581-E
 :
 COMMONWEALTH OF PENNSYLVANIA :
 DEPARTMENT OF AGRICULTURE :

FINAL ORDER

The American Federation of State, County and Municipal Employees, Council 13 (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 13, 2007. Pursuant to an extension granted by the Secretary of the Board, the Union filed a brief in support of its exceptions on March 6, 2007. The Union's exceptions challenge a January 25, 2007 decision of the Secretary of the Board declining to issue a complaint and dismissing its Charge of Unfair Practices filed against the Commonwealth of Pennsylvania, Department of Agriculture (Department).

In its Charge of Unfair Practices filed on December 7, 2006, the Union alleged that State Dog Warden Tracy Miller filed a grievance over the Department's denial of his request to engage in supplementary employment as a Constable. According to the documentation attached to the Charge, the Department's denial of Miller's request was based, in part, on the fact that the law enforcement duties of a Constable are incompatible with an individual being a full-time Dog Warden. (Attachment A-2). In the grievance, Miller alleged that, in the past, the Department had approved the requests of other Dog Wardens for supplementary employment in law enforcement positions. Following Miller's identification of other Dog Wardens engaged in supplementary law enforcement employment, the Department revoked its approval for supplementary employment of those other employees. The Union alleged that these revocations, which followed the filing of the grievance by Miller, were a violation of Section 1201(a)(1), (2), (3), (4) and (5) of the Public Employee Relations Act (PERA).

In the January 25, 2007 dismissal, the Secretary of the Board stated that the Union failed to state a claim under Section 1201(a)(1) and (3) because, rather than retaliating against Miller for filing a grievance, it appeared that the Department was merely enforcing its already established policy regarding supplementary employment. The Secretary also noted that the charge contained no allegations that would support a conclusion that the Department violated Section 1201(a)(2), (4) or (5).

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. PSSU, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). 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 to the Secretary's decision not to issue a complaint, the Union withdraws its allegations that the Department violated Sections 1201(a)(2), (3), (4) and (5) of PERA. As such, the Union only argues that the Secretary erred by dismissing its allegation that the Department committed a violation of Section 1201(a)(1). Specifically, the Union argues that the Department's actions rise to the level of an independent violation of Section 1201(a)(1). In essence, the Union contends that the Department's action of revoking the approvals for supplementary employment that it had previously granted after Miller filed the grievance tended to coerce employees.

Section 1201(a)(1) provides that it is an unfair practice for a public employer to interfere with, restrain or coerce employees in the exercise of employees' statutorily protected rights under PERA. "An independent Section 1201(a)(1) violation occurs where the totality of circumstances of the employer's actions would have a tendency to coerce

employees in the exercise of protected rights." AFSCME District Council 88 v. Berks County (Coroner), 36 PPER 36 (Final Order, 2005). See also Transport Workers' Union of Philadelphia, Local 234 v. SEPTA, 17 PPER ¶ 17038 (Final Order, 1986).

In support of its position that the Department committed an independent violation of Section 1201(a)(1), the Union argues that the Management Directive regarding supplementary employment does not give the Department the authority to conduct a second review of a request for supplementary employment after such request has been granted. (Union's brief, page 9). However, Management Directive 515.18 - Supplementary Employment, which is attached to the exceptions, provides, in relevant part, that:

4. RESPONSIBILITIES

...

d. The Secretary of Administration shall:

...

(4) Conduct post audits of supplementary employment requests to ensure compliance with the *Code of Conduct* and this directive.

Thus, contrary to the Union's assertion, the Management Directive does specifically authorize a review of previously granted requests for supplementary employment. This additional review is consistent with an employer's inherent managerial right under Section 702 of PERA to monitor supplementary employment of its employees to ensure that employment is not incompatible with the employees' obligations to the employer. The fact that the Department discovered through the processing of Miller's grievance that the supplementary employment of other employees had been erroneously approved does not strip the Department of its managerial right to restrict the conflicting supplementary employment of its employees. To accept the Union's position would undermine an employer's right to manage its own work force. The Union essentially seeks to restrict the Department from using information obtained through the grievance process in the exercise of its managerial right to restrict certain activity. There is no support in PERA for such a notion.

The Union further relies on PSSU Local 668 SEIU, AFL-CIO v. Erie County, 28 PPER ¶ 28112 (Proposed Decision and Order, 1997) and Northwestern Education Association v. Northwestern School District, 24 PPER ¶ 24141 (Final Order, 1993), to support its position that the Department committed an independent violation of Section 1201(a)(1). In Erie County, the Hearing Examiner found that an employer committed an independent violation of Section 1201(a)(1) when it discriminatorily discharged a leading union activist in violation of Section 1201(a)(3) of PERA. The Hearing Examiner concluded that given the totality of the circumstances, the employer's actions would tend to coerce other employees in the exercise of their rights under PERA. In this case, there is no discriminatory discharge proven, but merely an exercise by the Department of its managerial prerogative to manage and direct its workforce by monitoring its employees' supplementary employment.

In Northwestern School District, the employer decided not to renew two employees after they sought the union's assistance to be reclassified as temporary professional employees. The Board upheld the Hearing Examiner's conclusion that the employer committed an independent violation of Section 1201(a)(1) because a neutral observer could reasonably conclude that this non-renewal was due to the fact that the employees sought the assistance of the union. In this case, the Department did not take any unlawful action against Miller, the individual who engaged in the protected activity of filing a grievance. The Department implemented its policy regarding supplementary employment when it learned during the processing of that grievance that the supplementary employment of other employees was inconsistent with the Department's existing policies. We do not believe that it can reasonably be said that the Department's actions, when viewed by an objective observer given the totality of the circumstances, would have a tendency to coerce bargaining unit employees in the exercise of their protected right to file grievances. Berks County, *supra*. As such, the charge failed to state a claim of an independent violation of Section 1201(a)(1). Accordingly, the Secretary did not err by refusing to issue a complaint.

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 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 pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Anne E. Covey, Member, and James M. Darby, Member, this seventeenth day of April, 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.