

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WESTMORELAND COUNTY COURT-RELATED :
EMPLOYEES ASSOCIATION :
:
v. : Case No. PERA-C-08-270-W
:
WESTMORELAND COUNTY :

FINAL ORDER

On August 21, 2008, the Westmoreland County Court-Related Employees Association (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board).¹ The Association's exceptions challenge an August 1, 2008 decision of the Board Secretary declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Westmoreland County (County). The County filed a response to the exceptions and a supporting brief on September 10, 2008.

In its Charge of Unfair Practices filed on July 21, 2008, the Association alleged that the County violated Section 1201(a)(1), (2), (3) and (5) of the Public Employee Relations Act (PERA) by failing to maintain the status quo during negotiations for a new collective bargaining agreement. The Association alleged that the County altered the status quo by refusing to make dues deductions on behalf of the Association pursuant to the expired collective bargaining agreement between the County and the former bargaining representative, the Service Employees International Union, Local 668 (SEIU).²

In the August 1, 2008 dismissal letter, the Board Secretary concluded that the Association did not state a cause of action under Section 1201(a)(5) of PERA because a public employer is not required to deduct and remit union dues to a newly-certified bargaining representative where the dues deductions were previously made pursuant to a collective bargaining agreement with the prior bargaining representative. In support of the decision, the Board Secretary cited PLRB v. Philadelphia Housing Authority, 12 PPER ¶ 12058 (Final Order, 1981) and FOP, Pennsylvania Conservation Police Officers Lodge 114 v. Commonwealth of Pennsylvania, Pennsylvania Game Commission, 39 PPER ¶ 87 (Proposed Decision and Order, 2008) as controlling precedent directly on point. The Secretary further declined to issue a complaint on the other portions of the Association's charge because the Association failed to allege facts that would support a finding that the County committed an independent violation of Section 1201(a)(1) of PERA or a violation of Section 1201(a)(2) or (3) of PERA.

The Association initially excepts to the Secretary's decision not to issue a complaint under Section 1201(a)(1) and (5) of PERA, arguing that in order to maintain the status quo during contract negotiations, the employer must continue dues deductions.³ However, the Association fails to address the Board's controlling decisions in Philadelphia Housing Authority and Pennsylvania Game Commission, even though they were cited by the Secretary. The Association further argues that it is evident that the County committed a violation of Section 1201(a)(3) of PERA because the County continued the status quo for all contractual matters, except for dues deductions, and only discontinued dues deductions after the employees engaged in protected activity by choosing a new bargaining representative.

¹ This charge deals with the court-related bargaining unit. The Association filed an identical charge for the court-appointed unit at Case No. PERA-C-08-269-W. By Final Order issued today, the Board dismissed the charge pertaining to the court-appointed bargaining unit.

² The agreement between the County and SEIU expired on December 31, 2005. The Association filed a rival petition for representation on October 25, 2007 and, following a hearing and an election, was certified as the exclusive representative of the employees on March 14, 2008.

³ The Association does not except to the Secretary's dismissal of its charge under Section 1201(a)(2) of PERA and has withdrawn that portion of its charge.

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). 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).

After review of the Association's exceptions, we must dismiss the exceptions and affirm the decision of the Secretary not to issue a complaint. In Philadelphia Housing Authority, supra, the newly-certified bargaining representative filed a charge of unfair practices when the employer refused to deduct union dues on its behalf pursuant to the expired contract between the employer and the prior bargaining representative. In rejecting the new bargaining representative's charge, the Board stated:

The Complainant relies heavily on the Board's recent decision in Lehigh County, 11 PPER ¶ 11115 (1980) wherein the Board found that the employer had committed an unfair practice by ceasing dues deductions during a period of no contract with the certified representative of its employees. We find this case to be materially distinguishable from Lehigh County in that dues deductions here were sought not by the representative contemplated by the contract but rather by a newly certified representative. We do not believe that the "status quo" encompasses the extension of a dues check-off from a supplanted bargaining representative in favor of a newly-certified bargaining representative. See, Appeal of Cumberland Valley School District, 483 Pa. 134, 384 A.2d 946, 9 PPER 9291 (1978); also PLRB v. Williamsport Area School District, 486 Pa. 275, 406 A.2d 329, 10 PPER 10265 (1979).

Philadelphia Housing Authority, 12 PPER at 82. Accord Pennsylvania Game Commission, supra.

Pursuant to the above-cited Board decisions, an employer does not have a duty under PERA to maintain dues deductions and remit them to a successor bargaining representative under an expired collective bargaining agreement with a prior representative. Rather, such a duty only arises through bargaining between the employer and the successor representative for the employees. The cases relied upon by the Association, Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004); Millcreek Township School District v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1993); Norwin School District v. Belan, 510 Pa. 255, 507 A.2d 373 (1986), do not involve the issue of whether dues deductions must be maintained after a contract expires and there is a change in the employee representative, and thus those cases are not applicable to the facts presented here. Nor does the Association even attempt to distinguish this case from the Board's decisions directly on point in Philadelphia Housing Authority and Pennsylvania Game Commission. Accordingly, the Secretary did not err by refusing to issue a complaint on the Association's charge of a violation of Section 1201(a)(1) and (5) of PERA.

Furthermore, because the County had no obligation to continue dues deductions following the change in the employee bargaining representative, the charge also fails to state a violation of Section 1201(a)(3) of PERA. Even if the County maintained the status quo regarding other contractual terms as the Association alleges, such action is not indicative of a discriminatory intent because other contractual terms not involving payment of union dues are not affected by the change in bargaining representative and must be maintained under well-settled case law. Moreover, the mere timing of the County's action is insufficient to establish a discriminatory motive. Teamsters Local No. 764 v. Montour County, 35 PPER 12 (Final Order, 2004) (timing alone is insufficient to demonstrate a violation of Section 1201(a)(3) of PERA); AFSCME, AFL-CIO, Council 13 v. Commonwealth, Department of Labor and Industry, 16 PPER ¶ 16020 (Final Order, 1984) (same). Indeed, it is not surprising that the County ceased dues deductions after the employees selected a new bargaining representative because the County's duty to make the deductions on behalf of the prior representative ceased at that point in time. Accordingly, the Secretary correctly determined that the charge fails to state a cause of action under Section 1201(a)(3) 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 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 at Harrisburg, Pennsylvania 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 sixteenth day of December, 2008. 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.