

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DONNELL PONTON :
 :
 v. : Case No. PERA-C-08-407-E
 :
 AMERICAN FEDERATION OF STATE, :
 COUNTY AND MUNICIPAL EMPLOYEES, :
 DISTRICT COUNCIL 33, LOCAL 427, :
 AFL-CIO :

FINAL ORDER

Donnell Ponton (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on November 6, 2008, as supplemented on November 10 and 12, 2008. The Complainant's exceptions challenge a November 4, 2008 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against the American Federation of State, County and Municipal Employees, District Council 33, Local 427, AFL-CIO (AFSCME).

In the Charge filed on October 17, 2008, the Complainant alleged that AFSCME refused to represent him and had discriminated against him. The Complainant asserted that AFSCME's actions, in conjunction with the actions of the City of Philadelphia (Employer),¹ forced him to resign from his position on April 9, 2008. The Complainant alleged that AFSCME's actions violated Section 1201(b)(1), (2), (3), (4), (7) and (9) of the Public Employe Relations Act (PERA).

The Secretary declined to issue a complaint on the Charge, stating that the Complainant's Charge was untimely under Section 1505 of PERA because the alleged unfair practice concerning the Complainant's resignation on April 9, 2008 did not occur within four months of the filing of the Charge. The Secretary further indicated that the courts, 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 dismissed the Charge.²

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. 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).

The Complainant initially argues in the exceptions that the Charge is timely because AFSCME refused to represent him before the Unemployment Compensation Board of Review on April 22, 2008 and continues to do so to the present. Section 1505 of PERA provides that no charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the charge. A

¹ The Complainant's Charge of Unfair Practices against the Employer was docketed at Case No. PERA-C-08-406-E. The Board Secretary also declined to issue a complaint on the Complainant's Charge against the Employer and the Complainant filed exceptions to that decision. In a Final Order issued on this date, the Board dismissed those exceptions and affirmed the Secretary's decision not to issue a complaint.

² The Secretary also noted that to the extent that the Complainant was alleging that AFSCME had engaged in racial discrimination, these allegations are appropriately remedied through a filing with the Pennsylvania Human Relations Commission or the Equal Employment Opportunity Commission.

charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair practice was committed. Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER ¶ 24 (Final Order, 2004).

The Complainant's reliance on AFSCME's ongoing refusal to represent him before the Unemployment Compensation Board of Review is misplaced because PERA does not obligate AFSCME to represent the Complainant before the Unemployment Compensation Board of Review. Therefore, AFSCME's refusal to provide such representation is not an unfair practice under Section 1201 of PERA. Thus, the Board must rely on April 9, 2008, which is the date that the Complainant resigned from his employment due to the alleged actions of AFSCME, to determine the timeliness of the Charge. Based on that date, the Complainant's Charge is untimely because it was filed outside of the four-month statute of limitations under Section 1505 of PERA.

Moreover, even if the Complainant's Charge was timely filed, the Board lacks jurisdiction over his claim against AFSCME for breaching its duty of fair representation. In the exceptions, the Complainant argues that he has stated causes of action under Section 1201(b) of PERA because AFSCME has refused to represent him. Under the duty of fair representation, a union must fairly represent "the interests of all employees in the bargaining unit, in good faith, and without arbitrariness or invidious discrimination." Cohen v. Temple University, 445 A.2d 179, 185 (Pa. Super. 1982)(quoting Branch 6000, National Association of Letter Carriers v. NLRB, 595 F.2d 808, 811 (D.C.Cir. 1979)). The Board lacks jurisdiction to entertain claims that a union has violated its duty of fair representation. Ziccardi, supra; Case, supra; Narcotics Agents, supra. In Case, the Commonwealth Court reaffirmed the well-settled case law concerning jurisdiction over duty of fair representation claims 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 [Board'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.

928 A.2d at 1161. Because the Complainant's Charge is based upon allegations that AFSCME violated its duty of fair representation, the Board lacks jurisdiction to hear his claims against AFSCME. Accordingly, the Secretary did not err in dismissing the Complainant's Charge.

After a thorough review of the exceptions and all matters of record, 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 Donnell Ponton are dismissed and the Secretary's November 4, 2008 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 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.