

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

JAN SKLAROFF :
 :
 v. : Case No. PERA-C-08-127-E
 :
 PHILADELPHIA SCHOOL DISTRICT :

FINAL ORDER

Jan Sklaroff (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on April 28, 2008. The Complainant's exceptions challenge an April 22, 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 Philadelphia School District (District).

In the Complainant's Charge filed on April 7, 2008, he alleged that the District assigned him to work in a basement from April 9 to April 30, 2007 in retaliation for calling the Safe Schools Hotline.¹ The Complainant further alleged that the District did not pay him until December 10, 2007 for the time that he worked from April 9 to April 30, 2007. The Complainant asserted that the District's actions violated Section 1201 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 practices concerning the April 2007 work assignment and the District's failure to pay the Complainant for time worked during that period had not occurred within four months of the filing of the Charge. The Secretary further indicated that the Complainant's allegation concerning the District's failure to pay him for time worked was moot because the District paid the Complainant on December 10, 2007. The Secretary also noted that the Complainant had failed to specify the subsection and clauses of PERA that the District had allegedly violated. The Complainant's failure to remedy this omission in his exceptions is an independent basis upon which to dismiss the Charge. West Whiteland Township Police Association v. West Whiteland Township, 32 PPER ¶ 32127 (Final Order, 2001).

In determining whether to issue a complaint, the Board assumes that all facts alleged in the charge 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 cannot 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 his exceptions, the Complainant argues that his Charge is timely because he did not know until November 2007 that the District would not pay him for the time that he worked in April 2007.² 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 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).

¹ The Safe Schools Hotline is a teacher safety hotline in which teachers may report student violence, harassment, and threats directly to the Office of the Safe Schools Advocate.

² The Complainant does not challenge the Secretary's determination that his Charge was untimely to the extent it concerned his work assignment in April 2007.

The Complainant alleges in his exceptions that the District informed him in mid-November 2007 that it would not pay him for the time that he worked in April 2007. The Complainant's Charge was filed on April 7, 2008, which was more than four months after he was informed that he would not be paid. Therefore, the Complainant's Charge is untimely. Further, the Complainant's allegation concerning the District's failure to pay him for time worked is moot because the District paid him the amount due on December 10, 2007. Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm 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 filed by Jan Sklaroff are dismissed and the Secretary's April 22, 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 twentieth day of May, 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.