

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GOVERNOR MIFFLIN EDUCATION :
ASSOCIATION, PSEA/NEA :
 :
v. : Case No. PERA-C-08-45-E
 :
GOVERNOR MIFFLIN SCHOOL DISTRICT :

FINAL ORDER

The Governor Mifflin Education Association, PSEA/NEA (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 28, 2008. The Association's exceptions challenge a February 20, 2008 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Governor Mifflin School District (District).

In its Charge of Unfair Practices filed on February 8, 2008, the Association alleged that the parties entered into a Memorandum of Understanding regarding early dismissals, school delays, class assignments and remuneration for department chairs and liaisons, effective September 1, 2005 to June 30, 2010. The Association further alleged that, on May 21, 2007, the District unilaterally approved and implemented changes to the department chairs' and liaisons' terms and conditions of employment, including the remuneration rates, that were contrary to the terms in the Memorandum of Understanding. The Association stated that it received a memorandum from District Superintendent Mary T. Weiss on October 7, 2007, indicating that the District was not willing to bargain with the Association over these changes. The Association asserted that, despite the Superintendent's October 7, 2007 memorandum, the parties began negotiating over the changes in late October 2007. The Association further asserted that the District rejected its proposal and ceased bargaining on November 5, 2007. The Association alleged that the District's actions violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

In dismissing the Charge, the Secretary noted that the unilateral changes occurred on May 21, 2007, which was well past the four-month statute of limitations provided under Section 1505 of PERA. The Secretary indicated that the Association's Charge would still be untimely even if the October 7, 2007 receipt of the Superintendent's memorandum refusing to bargain over the changes was the triggering event for purposes of the statute of limitations. The Secretary reasoned that, at the very least, on that date the Association became aware of the District's refusal to bargain over the changes in the department chairs' and liaisons' terms and conditions of employment. Therefore, the Secretary declined to issue a complaint and dismissed the Association's Charge as untimely.

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).

In its exceptions, the Association argues that its Charge was timely because it did not become aware of the District's refusal to bargain until November 5, 2007. 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). The date of a refusal to revoke a previously implemented unilateral change is not considered by the Board in determining timeliness. North Pocono Educational Support Personnel Association, PSEA/NEA v. North Pocono School District, 32 PPER ¶ 32117 (Final Order, 2001). Rather, the Board looks to the date that

the unilateral change was implemented in order to determine the timeliness of the charge. Id.; Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001). Further, the parties' subsequent discussions toward an amicable resolution will not toll the statute of limitations. North Pocono School District, supra; Archbald Police Department Employees Association v. Archbald Borough, 26 PPER ¶ 26141 (Final Order, 1995).

The Association's Charge alleges that the District unilaterally changed the department chairs' and liaisons' terms and conditions of employment, including remuneration rates, on May 21, 2007. The Association further alleges in its exceptions that it demanded bargaining over these changes and that the District, between May 2007 and November 2007, indicated its willingness to reach a mutually acceptable compromise. Applying the principles of North Pocono School District, the Association's Charge is untimely because it was not filed within four months of when the Association became aware of the District's unilateral action. Further, the Board will not consider the discussions that occurred between the Association and the District from May 2007 to November 2007 in determining the timeliness of the Association's Charge because those discussions did not toll the statute of limitations. 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 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 Governor Mifflin Education Association, PSEA/NEA are dismissed and the Secretary's February 20, 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 eighteenth day of March, 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.