COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WILLIAM EISENHART	:	
	:	
v.	:	Case No. PERA-C-08-439-E
	:	
EASTERN LANCASTER COUNTY SCHOOL DISTRICT	:	
ROBERT HOLLISTER	:	
CAROL KELSALL	:	
JOE TERCH	:	

FINAL ORDER

William Eisenhart (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on December 31, 2008.[1] The Complainant's exceptions challenge a December 11, 2008 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against Eastern Lancaster County School District (District), Robert Hollister, the District Superintendent, Carol Kelsall, a Principal of the District, and Joe Terch, an Assistant Principal of the District.

In the Charge filed on November 20, 2008, the Complainant alleged that the District, through its agents, has subjected him to harassment and discrimination. Specifically, the Complainant alleged that he received an unsatisfactory evaluation on June 4, 2008 and that he grieved that evaluation. The Complainant further alleged that a settlement of the grievance was reached and he was placed on an improvement plan for the fall 2008 semester. The Complainant asserted that the District's actions violated Section 1201 of the Public Employe Relations Act (PERA).

In dismissing the Charge, the Secretary stated that the Complainant's Charge was untimely under Section 1505 of PERA because the Complainant did not file the Charge within four months of June 4, 2008, the date he received an unsatisfactory evaluation. To timely charge an unfair practice regarding the unsatisfactory evaluation, Complainant had to file the Charge by October 4, 2008. The Secretary also noted that the Complainant had failed to specify the subsection and clauses of PERA that the District had allegedly violated. The Secretary further indicated that even if the Complainant had specified a subsection and clauses, the allegations in the Charge failed to state a cause of action under Section 1201 of PERA.

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 asserts in his exceptions that the Charge is based upon violations of Section 1201(a)(1) and (4) of PERA. The Complainant further asserts that the allegations regarding the events that occurred more than four months prior to the filing of the Charge are timely because they resulted in the District's implementation of an improvement plan for the Complainant on September 18, 2008.

[1] Although the Board received the Complainant's exceptions on January 2, 2009, a United States Postal Form 3817 Certificate of Mailing, dated December 31, 2008, accompanied the exceptions. Section 95.98(a)(1) of the Board's regulations provides, in relevant part, that "[e]xceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions." 34 Pa. Code § 95.98(a)(1).

Section 1505 of PERA provides that no charge shall be entertained that relates to acts which occurred or statements that 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 Complainant's allegation that the unsatisfactory rating led to the District's implementation of the improvement plan does not obviate the Complainant's failure to timely charge an unfair practice within four months of the issuance of the unsatisfactory rating, and deprives the Board of jurisdiction to consider whether issuance of the rating was an unfair practice. Therefore, the Secretary correctly dismissed the allegations in the Charge regarding events occurring more than four months before November 20, 2008.

In his exceptions, the Complainant additionally alleges, among other things, that Dr. Hollister's Level II grievance response upholding the unsatisfactory evaluation and the District's improvement plan dated September 18, 2008 violated Section 1201(a)(4) of PERA. The Complainant did not specifically reference the Level II grievance response in his original Charge, nor amend his Charge to allege an unfair practice concerning this matter. In addition, the Board has held that Section 1201(a)(4) of PERA is limited to situations where an employe is discriminated against by his or her employer for filing affidavits, petitions or complaints with the Board or providing information or testimony in a Board proceeding. Luzerne County Community College Association of Higher Education v. Luzerne County Community College, 37 PPER 123 (Final Order, 2006). The Complainant's Charge and exceptions do not allege that the Complainant filed an affidavit, petition or complaint with the Board or gave information or testimony before the Board, or that the District took adverse action against the Complainant because of such activity. Thus, the Complainant has failed to state a cause of action under Section 1201(a)(4) of PERA.

The Complainant next argues that the District violated Section 1201(a)(1) of PERA because he felt coerced into signing the grievance settlement agreement after the District allegedly threatened to fire the Complainant for violating state wiretapping laws by secretly videotaping his class during an observation by Principal Kelsall. The settlement agreement provided that the Complainant would instead receive a three day suspension in return for withdrawal of the grievance and placement of the Complainant on an improvement plan.

The Board will find that an independent violation of Section 1201(a)(1) of PERA has occurred where, in light of the totality of the circumstances, "the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). According to the Complainant's allegations, the District and his union settled, with his approval, the issue of the unsatisfactory rating and secret videotaping of the class by agreeing to lesser discipline (a suspension rather than discharge) and adoption of a plan to improve the Complainant's work performance. Moreover, the Complainant alleged in his Charge and exceptions that he signed the settlement agreement based upon his union's advice to do so. Viewed within the totality of the circumstances, the settlement of the grievance and videotape incident in a manner that preserved the Complainant's employment would not tend to coerce a reasonable employe in exercising his or her protected rights in filing or pursuing grievances.

The Complainant also alleges in his exceptions that an e-mail sent by Principal Kelsall on December 18, 2008 violated Section 1201(a)(1) of PERA. Principal Kelsall's e-mail was issued after the filing of the Complainant's Charge and was not the subject of a proper amendment to the Charge. Moreover, exceptions are not the appropriate vehicle for filing an amended charge raising new causes of action. Lower Dauphin School Service Personnel Association, PSSPA/PSEA v. Lower Dauphin School District, 19 PPER ¶ 19195 (Final Order, 1988). Therefore, the Board may not consider this post-charge event in deciding whether a complaint should be issued. Because the Complainant failed to state an independent or derivative violation of Section 1201(a)(1) of PERA in his Charge of Unfair Practices, 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 William Eisenhart are dismissed and the Secretary's December 11, 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 seventeenth day of February, 2009. 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.