

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARION SUNDERMAN :
 :
 v. : Case No. PERA-C-09-363-E
 :
 TEAMSTERS LOCAL 401 :

FINAL ORDER

Marion Sunderman (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on September 30, 2009. The Complainant's exceptions challenge a September 21, 2009 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against Teamsters Local 401 (Teamsters).

In the Charge filed on September 9, 2009, the Complainant alleged that she expressed interest in joining the Teamsters, but that the Teamsters took no action on her membership application. The Complainant further alleged that when she inquired about the status of her membership, she was told that her employer, Freeland Borough (Borough), would have to agree to allow her to join the Teamsters before her application could be processed. The Complainant also alleged that she was terminated from her employment on June 13, 2009 and that she later learned that the matter of whether she would be permitted to join the union was one of the "bargaining chips" in negotiating the contract between the Teamsters and the Borough, which was signed after her termination. The Complainant asserted that the Teamsters' actions violated Section 1201(b)(1) of the Public Employe Relations Act (PERA).¹

The Teamsters is certified as the exclusive bargaining representative of a unit of blue-collar, nonprofessional employes of the Borough.² The Complainant acknowledges that she is a clerical employe, and thus does not fall within the scope of the certified bargaining unit. Because the Complainant's Charge indicated that she failed to apprehend the distinction between being a member of a union and being a member of a bargaining unit represented by a union, the Secretary noted this distinction in dismissing the Complainant's Charge. The Secretary further stated that the failure of a union to file a petition for unit clarification seeking to add a position to a bargaining unit is not an unfair practice under Section 1201(b)(1) 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 her exceptions that the fact that neither the Teamsters nor the Borough filed a petition for unit clarification on her behalf confirms that her membership in the Teamsters was used as a "bargaining chip" in contract negotiations. The Complainant also excepts to the Secretary's statement that there are legitimate statutory reasons to exclude employes from a bargaining unit and appears to contend that once the Teamsters initially explored including her position in the bargaining unit, it was obligated to follow through by filing a petition for unit clarification.

If the Complainant had been a member of the blue-collar bargaining unit represented by the Teamsters prior to her discharge, the Teamsters would have had an obligation to

¹ The Complainant also filed a charge against the Borough alleging that the Borough discriminated against her in retaliation for her attempt to exercise rights under PERA. That Charge was separately docketed at Case No. PERA-C-09-362-E and a Complaint and Notice of Hearing was issued on October 6, 2009.

² See Case No. PERA-R-90-704-E.

fairly represent her in collective bargaining with the Borough. However, the Complainant was a clerical employe whose position was not included in the blue-collar unit. Therefore, the Teamsters had no duty to represent the Complainant. Furthermore, the courts, and not the Board, possess exclusive jurisdiction to entertain claims of a breach of the duty of fair representation. Ziccardi v. Commonwealth of Pennsylvania, Department of General Services, 500 Pa. 326, 456 A.2d 979 (1982). See also Case v. Hazelton Area Educational Support Personnel Association (PSEA/NEA), 928 A.2d 1154 (Pa. Cmwlth. 2007); Narcotics Agents Regional Committee, FOP Lodge 74 v. AFSCME, AFL-CIO, 780 A.2d 863 (Pa. Cmwlth. 2001). Thus, the claim that a union has breached its duty of fair representation must be pursued in the courts, and not by way of an unfair practice charge filed with the Board.

In order for the Complainant to have been included in the blue-collar bargaining unit, either the Teamsters or the Borough would have had to file a petition for unit clarification seeking to add the Complainant's position to the unit.³ Alternatively, if adding the Complainant's position to the bargaining unit would have increased the size of the unit by more than fifteen percent, the Teamsters would have had to file a petition for representation pursuant to the Board's Westmoreland Intermediate Unit procedures.⁴ However, notwithstanding the Complainant's filing of an application for membership in the Teamsters, neither the Teamsters nor the Borough had an obligation under PERA to seek to add the Complainant's white-collar position to the blue-collar unit. Nor does PERA require the Teamsters to give the Complainant an explanation for its failure to take such action. As such, the Teamsters' failure to file a petition on the Complainant's behalf was not a violation of Section 1201(b)(1) of PERA. Accordingly, the Secretary did not err by dismissing the Complainant's Charge of Unfair Practices.

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 the Complainant are dismissed and the Secretary's September 21, 2009 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 November, 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.

³ The Complainant could not have filed a petition for unit clarification herself, as individual employes do not have standing to participate in representation proceedings. See Official Court Reporters of Court of Common Pleas v. Pennsylvania Labor Relations Board, 502 Pa. 518, 467 A.2d 311 (1983); Commonwealth of Pennsylvania, 26 PPER ¶ 26134 (Final Order, 1995).

⁴ When a party seeks to accrete a number of employes that amounts to fifteen percent or more of the existing bargaining unit, an election must be held among the employes sought to be included. Westmoreland Intermediate Unit, 12 PPER 12347 (Order and Notice of Election, 1981).