

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE COUNTY :  
AND MUNICIPAL EMPLOYEES :  
DISTRICT COUNCIL 47 LOCAL 2186 :  
:  
v. : Case No. PERA-C-09-422-E  
:  
PHILADELPHIA HOUSING AUTHORITY :

**FINAL ORDER**

The American Federation of State, County and Municipal Employees, District Council 47, Local 2186 (AFSCME) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on November 24, 2009. AFSCME's exceptions challenge a November 4, 2009 decision of the Secretary of the Board declining to issue a complaint and dismissing AFSCME's Charge of Unfair Practices filed against the Philadelphia Housing Authority (Authority).

In its Charge filed on October 22, 2009, AFSCME alleged that it represents a meet and discuss unit of first level supervisors employed by the Authority. AFSCME further alleged that the parties' Memorandum of Record provides for a grievance procedure, which permits the parties to proceed to arbitration in cases where the employe has been discharged for a Class IV Major Infraction. AFSCME asserted that the Authority refused to proceed to arbitration regarding a grievance filed on behalf of a bargaining unit member because he was not discharged for a Class IV Major Infraction. AFSCME alleged that the Authority's refusal to proceed to arbitration was a violation of Section 1201(a)(1), (3), (5) and (9) of the Public Employe Relations Act (PERA).

In declining to issue a complaint, the Secretary initially stated that the Authority did not violate Section 1201(a)(5) of PERA because it is not required to bargain with the representative of a meet and discuss unit. The Secretary further stated that AFSCME failed to state a cause of action under Section 1201(a)(9) because its Charge did not allege that AFSCME had requested a meet and discuss session with the Authority over its refusal to proceed to arbitration. Citing Independent State Store Union v. PLRB, 547 A.2d 465 (Pa. Cmwlth. 1988), the Secretary noted that a grievance procedure in a memorandum of understanding between a public employer and an exclusive representative of a meet and discuss unit of first level supervisors does not create a legally binding obligation for the public employer to proceed to arbitration that is enforceable before the Board. The Secretary also indicated that AFSCME had failed to allege any facts to support causes of action under Section 1201(a)(1) or (3) of PERA. Therefore, the Secretary dismissed AFSCME's Charge.

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).

AFSCME alleges in its exceptions that the Authority agreed to submit the grievance to arbitration and then reneged on that agreement at the arbitration hearing. Relying on Independent State Store Union, supra, AFSCME argues that once the Authority agreed to submit the matter to arbitration, it was required to allow the grievance to proceed through the arbitration process. AFSCME further alleges that the issue of whether the grievance is arbitrable must be submitted in the first instance to an arbitrator, citing Scranton Federation of Teachers, Local 1147, AFT v. Scranton School District, 498 Pa. 58,

444 A.2d 1144 (1982) and PLRB v. Greater Johnstown Area Vocational-Technical School, 410 A.2d 1290 (Pa. Cmwlth. 1980).

However, Scranton and Greater Johnstown involved grievances arising from interpretation of collective bargaining agreements, rather than a memorandum of understanding. In such cases, Section 903 of PERA mandates arbitration, and submission of any dispute over arbitrability to an arbitrator in the first instance. Independent State Store Union, supra.

In contrast, meet and discuss units of first level supervisors do not have collective bargaining rights or the right to demand arbitration of disputes arising under non-binding memoranda of understanding. Id. As the Commonwealth Court stated in rejecting the very same argument made by AFSCME:

[T]he only rights granted to ... first-level supervisors under Section 704 of PERA are "meet and discuss rights," with the ultimate decision making power remaining with the public employer. See Section 301(17) of PERA. Nothing in the Memorandum binds [the employer] to implement, in whole or in part, any of the procedures contained therein ... Since [the union's] assertions that the [employer] violated Section 1201(a)(1), 1201(a)(5) and 1201(a)(9) of PERA are premised on the [employer's] alleged duty to arbitrate, these contentions are meritless.

Independent State Store Union, 547 A.2d at 470.

Here, AFSCME's Charge of Unfair Practices is likewise premised on an alleged duty to arbitrate that simply does not exist under PERA for an employer of a meet and discuss unit of first level supervisors. Id. AFSCME attempts to distinguish this case by claiming that here, the Authority specifically agreed to the submission of the grievance to arbitration by agreeing to bypass the third step of the grievance procedure and proceed directly to arbitration. This is a distinction without a difference. Under Independent State Store Union, the Board cannot require the Authority to proceed to arbitration whether its agreement to arbitrate is specific to a particular case or contained in a memorandum of understanding. 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 the American Federation of State, County and Municipal Employees, District Council 47, Local 2186 are dismissed and the Secretary's November 4, 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 sixteenth day of March, 2010. 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.