

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF :
PAINTERS AND ALLIED TRADES :
LOCAL 1968 :
v. : Case No. PERA-C-10-220-W
GIRARD SCHOOL DISTRICT :

FINAL ORDER

The International Brotherhood of Painters and Allied Trades, Local 1968 (Union) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 19, 2010. The Union's exceptions challenge a July 9, 2010 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Practices filed against Girard School District (District). The District filed a response to the Union's exceptions on July 22, 2010.

In its Charge filed on June 23, 2010, the Union alleged that Sherie Lossie, a bargaining unit member, was issued a reprimand on December 3, 2009 for the improper use of the District's e-mail system. The Union further alleged that Ms. Lossie filed a grievance over the reprimand. The Union asserted that District Superintendent James Tracy subsequently used the e-mail system in the same manner as Ms. Lossie. The Union finally alleged that the District refused the Union's request that Superintendent Tracy be disciplined for his actions or that the reprimand issued to Ms. Lossie be rescinded. The Union contended that the District's actions violated Section 1201(a)(3) and (4) of PERA.

The Secretary declined to issue a complaint on the Charge, stating that the Union's Charge was untimely under Section 1505 of PERA because the Union did not file the Charge within four months of December 3, 2009, the date the reprimand was issued. The Secretary further stated that the Union failed to allege a nexus between Ms. Lossie's filing of a grievance and the District's refusal to discipline Superintendent Tracy to support a finding of discrimination under Section 1201(a)(3) of PERA. The Secretary also indicated that the Union failed to state a cause of action under Section 1201(a)(4) because the Union did not allege that Ms. Lossie was subject to discrimination for filing a petition or charge with the Board, or giving testimony before the Board. Therefore, the Secretary dismissed the 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).

In its exceptions, the Union alleges that its Charge was timely because the alleged unfair practice occurred on May 20, 2010 when the District refused to discipline Superintendent Tracy and suggested that its refusal was due to the Union's filing of a grievance on behalf of Ms. Lossie. 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. As more fully set forth below, a review of the facts alleged in the Charge and exceptions reveal that the only adverse action taken against Ms. Lossie was the District's issuance of the reprimand on December 3, 2009. The Union's Charge was filed on June 23, 2010, which is more than four months after the reprimand was issued. Therefore, the Secretary properly dismissed the Charge as untimely under Section 1505.

Even if the Charge had been timely filed, it fails to state a cause of action under Section 1201(a) of PERA. Regarding its allegation of discrimination under Section 1201(a)(3) of PERA, the Union alleges that the District's refusal to discipline Superintendent Tracy was due to the Union's filing of a grievance on behalf of Ms.

Lossie. Pursuant to Section 1201(a)(3) of PERA, the charging party must prove that (1) the employe engaged in protected activity; (2) the employer was aware of the employe's protected activity; and (3) the employer took adverse action against the employe because of a discriminatory motive or anti-union animus. Cameron County Educational Support Personnel Association PSEA/NEA v. Cameron County School District, 37 PPER ¶ 45 (Final Order, 2006) (citing St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977)). The filing of grievances is activity protected by PERA. Montrose Area Education Association v. Montrose Area School District, 38 PPER 127 (Final Order, 2007).

Although the Union alleges sufficient facts to show that Ms. Lossie engaged in protected activity by filing a grievance and that the District knew that she had engaged in such protected activity, the only allegation in the Charge concerning any adverse action taken against Ms. Lossie, i.e. the District's December 3, 2009 reprimand, occurred before the filing of the grievance. Further, the Union fails to allege facts to adequately support the finding of a nexus between the District's refusal to discipline Superintendent Tracy and Ms. Lossie's filing of a grievance. Indeed, the District's refusal to discipline Superintendent Tracy has no adverse effect on Ms. Lossie. Therefore, the adverse action taken against Ms. Lossie could not have been in retaliation for her engaging in protected activity. Thus, the Secretary did not err in concluding that the Union failed to state a cause of action under Section 1201(a)(3).¹

Concerning its allegations under Section 1201(a)(4) of PERA, the Union argues that being involved in Board proceedings is not the only activity for which employes are protected from discrimination. However, by its plain language, Section 1201(a)(4) only concerns discrimination against employes for involvement in Board proceedings. In declining to issue a complaint on the Union's Charge, the Secretary merely noted that the Board has held, consistent with the plain language of Section 1201(a)(4), that it only applies to situations where an employe is discriminated against for filing affidavits, petitions or complaints with the Board or giving information or testimony before the Board, citing Luzerne County Community College Association of Higher Education v. Luzerne County Community College, 37 PPER 123 (Final Order, 2006). The Union's Charge does not allege that the District took adverse action against Ms. Lossie for filing an affidavit, petition or complaint with the Board or giving information or testimony before the Board. Nor has the Union included such allegations in its exceptions. As such, the Secretary did not err in dismissing the Union's Charge under Section 1201(a)(4) of PERA for failure to state facts in support of such a violation. Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions, brief 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 International Brotherhood of Painters and Allied Trades, Local 1968 are dismissed and the Secretary's July 9, 2010 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 August, 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.

¹ The alleged disparate treatment between Ms. Lossie and Superintendent Tracy may support a Union argument in a grievance arbitration that the District lacked just cause to discipline Ms. Lossie. But, it cannot support a charge alleging retaliation for engaging in protected activity under Section 1201(a)(3) where the discipline occurs before the protected activity.