

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION :  
LOCAL 668 SERVICE EMPLOYEES :  
INTERNATIONAL UNION :  
:  
v. : Case No. PERA-C-12-164-E  
:  
COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF LABOR & INDUSTRY<sup>1</sup> :

**FINAL ORDER**

The Pennsylvania Social Services Union, Local 668, Service Employees International Union (SEIU) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on August 2, 2012. SEIU's exceptions challenge a July 19, 2012 decision of the Secretary of the Board declining to issue a complaint and dismissing SEIU's Charge of Unfair Practices filed against the Commonwealth of Pennsylvania, Department of Labor & Industry (Commonwealth).

SEIU alleged in its Charge that the Commonwealth failed to bargain in good faith in violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by failing to provide requested information relating to SEIU's grievance concerning the discharge of Jason McFadden, an unemployment compensation referee. In declining to issue a complaint, the Secretary stated that the Commonwealth does not have a duty under Section 1201(a)(5) to provide SEIU with the requested information because it is only required to meet and discuss, rather than bargain, with a first level supervisory unit such as the unit comprised of unemployment compensation referees at issue in the Charge, citing **PLRB v. Commonwealth of Pennsylvania**, 19 PPER ¶ 19138 (Final Order, 1988) and **Joint Bargaining Committee of PSSU, Local 668, SEIU v. Commonwealth of Pennsylvania**, 21 PPER ¶ 21163 (Proposed Decision and Order, 1990). The Secretary further stated that SEIU failed to allege sufficient facts to establish a violation of Section 1201(a)(1). 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).

SEIU acknowledges in its exceptions that the Commonwealth does not have a duty to bargain with the first level supervisory unit of unemployment compensation referees, but it contends that the Commonwealth should be required to provide information necessary for the representative of a meet and discuss unit to properly represent its members. SEIU further alleges that **Commonwealth of Pennsylvania** and **Joint Bargaining Committee** are inapplicable because those cases do not concern requests for information to process a grievance under a Memorandum of Understanding.

A public employer's duty regarding a first level supervisory unit is set forth in Section 704 of PERA, which states as follows:

Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with first level supervisors or their representatives, on matters deemed to be bargainable for other public employes covered by [PERA].

<sup>1</sup> The caption appears as amended by the Board.

43 P.S. § 1101.704. The term "meet and discuss" is defined in Section 301(17) of PERA as "the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes" with any decisions made on such matters remaining with the employer. 43 P.S. § 1101.301(17). In **Independent State Store Union v. PLRB**, 547 A.2d 465 (Pa. Cmwlth. 1988), the Commonwealth Court held that the employer did not violate Section 1201(a)(5) of PERA when it refused to process a grievance to arbitration because first level supervisors do not have bargaining rights under PERA. The Court further concluded that the Memorandum of Understanding did not create a legally binding obligation upon the employer that would be enforceable before the Board to submit employe grievances to arbitration. Likewise, the Commonwealth has no duty enforceable under Section 1201(a)(5) to provide information to SEIU regarding its grievance. Because the Commonwealth has no duty to bargain with the meet and discuss unit represented by SEIU, there can be no violation of Section 1201(a)(5).

To the extent that SEIU is arguing that the Commonwealth has a duty to provide SEIU with information relevant to performing its duties as a meet and discuss unit representative, SEIU has failed to effectively charge the Commonwealth with a violation of its duty to meet and discuss under Section 1201(a)(9) of PERA. In its Charge, SEIU only alleged that the Commonwealth violated Section 1201(a)(1) and (5) of PERA and did not check off a violation of Section 1201(a)(9) on the charge form or reference that provision in its specification of charges. Although SEIU's exceptions note that the Commonwealth has a duty to meet and discuss, they fail to specifically allege a violation of Section 1201(a)(9) of PERA. SEIU's mere reference in its exceptions to the Commonwealth's duty to meet and discuss is insufficient to adequately charge a violation of Section 1201(a)(9) of PERA. **Greater York Professional Fire Fighters and EMTs v. Spring Garden Township**, 41 PPER 5 (Final Order, 2010); **Fraternal Order of Police, Schuylkill-Carbon Lodge 13 v. Tamaqua Borough**, \_\_ PPER \_\_, Case No. PF-C-12-71-E (Final Order, August 28, 2012).

Additionally, SEIU has not made any further factual allegations in its exceptions concerning its Charge under Section 1201(a)(1) of PERA. Absent new factual allegations, SEIU has failed to state an independent or derivative violation of Section 1201(a)(1). 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 Employee Relations Act, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Pennsylvania Social Services Union, Local 668, Service Employees International Union are dismissed and the Secretary's July 19, 2012 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, James M. Darby, Member, and Robert H. Shoop, Jr., Member, this eighteenth day of September, 2012. 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.