

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLENTOWN EDUCATION ASSOCIATION, :
PSEA/NEA :
 :
v. : Case No. PERA-C-14-203-E
 :
ALLENTOWN CITY SCHOOL DISTRICT :

FINAL ORDER

The Allentown Education Association, PSEA/NEA (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on July 30, 2014. The Association's exceptions challenge a July 10, 2014 decision of the Acting Secretary of the Board (Secretary) declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Allentown City School District (District). Pursuant to the Association's request for an extension of time to file its brief that was filed with the exceptions and subsequently granted by the Secretary, the Association timely filed a brief in support of the exceptions on August 28, 2014.

The Association alleged in its Charge that Scott Armstrong, a District School Board Member, read a statement at the February 27, 2014 School Board meeting in which he stated that Association President Deborah Tretter had made slanderous and baseless accusations in a newspaper opinion piece regarding his failure to support a city-backed housing proposal. The Association further alleged that Board Member Armstrong indicated that Ms. Tretter's accusations were "outside the bounds of common decency," "an attempt to intimidate a political opponent," and a "shameful ploy that should be beneath the standards of the teachers' union president." The Association asserted that Board Member Armstrong's statement violated Section 1201(a)(1), (2) and (3) of the Public Employee Relations Act (PERA).

The Secretary declined to issue a complaint and dismissed the Charge, stating that a public employer has a right to indicate its general views regarding bargaining or the union, as long as the expression includes no actual or veiled threat of reprisal or promise of benefits, and does not constitute an attempt to negotiate directly with the bargaining unit members, citing **PLRB v. Stairways, Inc.**, 425 A.2d 1172 (Pa. Cmwlth. 1981) and **Somerset Area Education Association v. Somerset Area School District**, 35 PPER 158 (Proposed Decision and Order, 2005). Because Board Member Armstrong's statement did not contain actual or veiled threats, or a promise of benefits or an attempt to negotiate directly with individual bargaining unit members, the Secretary stated that the Association failed to allege sufficient facts to find a violation of Section 1201(a)(1). The Secretary further indicated that the Charge contained no allegations that would support a determination that the District violated Section 1201(a)(2) or (3) 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).

In its exceptions, the Association broadly contends that "[t]he Secretary erred as a matter of law in failing to find that the Association alleged a prima facie violation of Sections 1201(a)(1) and 1201(a)(3) of [PERA]."¹ However, the Association's exceptions do not comply with Section 95.98(a)(1) of the Board's duly promulgated and published Rules and Regulations, which requires exceptions to be sufficiently specific so as to permit meaningful review. Section 95.98(a)(1) provides, in relevant part, as follows:

¹ The Association does not challenge the Secretary's decision under Section 1201(a)(2) of PERA.

The statement of exceptions shall:

- (i) State the specific issues of procedure, fact or law, or other portion of the proposed decision to which each exception is taken.
- (ii) Identify the page or part of the decision to which each exception is taken.
- (iii) Where possible, designate by page citation or exhibit number the portions of the record relied upon for each exception.
- (iv) State the grounds for each exception.

34 Pa. Code § 95.98(a)(1)(i)-(iv).

Pursuant to Section 95.98(a)(1), the Board will not consider exceptions that lack sufficient specificity to permit meaningful review of a particular assignment of error in fact or law. **FOP, Conference of Pennsylvania Liquor Control Board Lodges v. Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement**, 30 PPER ¶ 30164 (Final Order, 1999), **aff'd sub nom., FOP, Conference of Pennsylvania Liquor Control Board Lodges v. PLRB**, 751 A.2d 726 (Pa. Cmwlth. 2000); **Pennsylvania State Troopers Association v. Commonwealth of Pennsylvania, Pennsylvania State Police**, 41 PPER 84 (Final Order, 2010). However, where a brief simultaneously filed with the exceptions further elaborates on specific assignments of error in the decision excepted to, the Board will address those issues in the exceptions which it can separately identify. **Bureau of Liquor Control Enforcement, supra; Conrad Weiser Education Association v. Conrad Weiser School District**, 28 PPER ¶ 28050 (Final Order, 1997); **Edwardsville Firefighters Local #840 v. Edwardsville Borough**, 27 PPER ¶ 27109 (Final Order, 1996). Here, the Association's exceptions only state the conclusions of law excepted to, and do not state any specific grounds for the exceptions. Further, the Association's brief was not filed simultaneously with the exceptions. In **Pennsylvania State Troopers Association**, the Board dismissed the union's exceptions for failing to comply with the Board's Rules and Regulations under Section 95.98(a)(1) and stated that "the PSTA's brief cannot remedy the lack of specificity in the exceptions because it was not filed simultaneously with the exceptions." 41 PPER at p.287. Likewise, the Association's brief that was subsequently filed cannot remedy the lack of specificity in the exceptions. **Id.** Accordingly, the Association's exceptions must be dismissed for noncompliance with Section 95.98(a)(1) of the Board's Rules and Regulations.²

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 Allentown Education Association, PSEA/NEA are dismissed and the Secretary's July 10, 2014 decision not to issue a complaint be and the same is hereby made absolute and final.

² See also **Maier v. Unemployment Compensation Board of Review**, 983 A.2d 1264 (Pa. Cmwlth. 2009), **appeal denied**, 606 Pa. 674, 996 A.2d 493 (2010), where a petition for review that merely restated the Commonwealth Court's standard of review and did not address the petitioner's arguments on the merits of its appeal was dismissed for failure to comply with Pa. R.A.P. 1513(d) requiring "a general statement of the objections to the order or other determination." Even though the petitioner's subsequently filed brief raised specific objections, the Court held that the petition for review did not preserve any issue.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Albert Mezzaroba, Member, this twenty-first day of October, 2014. 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.