

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION, :
LOCAL 668, SERVICE EMPLOYEES :
INTERNATIONAL UNION :
 :
v. : Case No. PERA-C-13-348-E
 :
LANCASTER COUNTY :

ORDER

The Pennsylvania Social Services Union, Local 668, Service Employees International Union (PSSU) filed exceptions with the Pennsylvania Labor Relations Board (Board) on February 4, 2014. PSSU's exceptions challenge a January 10, 2014 decision of the Secretary of the Board declining to issue a complaint and dismissing PSSU's Charge of Unfair Practices filed against Lancaster County (County).

PSSU alleged in its Charge that the County violated its duty to bargain under Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by refusing to meet at a mutually agreeable location to hold negotiations for a successor collective bargaining agreement. The Secretary declined to issue a complaint, stating that PSSU failed to state a cause of action under Section 1201(a)(5) of PERA because disagreement between a public employer and a union over the location of bargaining sessions does not rise to the level of an unfair practice, citing **Pennsylvania Social Services Union, Local 668, Service Employees International Union v. Lancaster County**, Case No. PERA-C-13-202-E (Final Order, 2013) (**Lancaster County**) and **PLRB v. Greater Nanticoke Area School District**, 15 PPER ¶ 15021 (Proposed Decision and Order, 1984). The Secretary further stated that PSSU failed to allege sufficient facts to establish a violation of Section 1201(a)(1).¹ Therefore, the Secretary dismissed the Charge.

Although PSSU excepts to the Secretary's decision, PSSU's exceptions are untimely. Section 95.98(a)(1) of the Board's duly promulgated and published Rules and Regulations provides in pertinent part as follows:

A party may file with the Board within 20-calendar days of the date of issuance with the Board an original and four copies of a statement of exceptions and a supporting brief to a proposed decision issued under § 95.91(k)(1) (relating to hearings) or a nisi order issued under § 95.96(b) (relating to exceptions) certifying a representative or the results of an election. Exceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions.

34 Pa. Code § 95.98(a)(1). When determining the timeliness of exceptions, the Board accepts substantial compliance with Section 95.98(a)(1) if there is independent, third-party evidence of timely deposit provided by either the United States Postal Service or a private courier appearing on the face of the mailing. **AFSCME, Council 13 v. Commonwealth of Pennsylvania, Department of Transportation**, 33 PPER ¶ 33027 (Final Order, 2001), **aff'd**, No. 138 C.D. 2002 (Pa. Cmwlth. 2002) (opinion not reported). Therefore, the Board will accept as substantial compliance with Section 95.98(a)(1) a United States Postal Service postmark or postmark cancellation, **In the Matter of the Employes of Bethlehem**

¹ The Secretary additionally noted that PSSU's reliance on the National Labor Relations Board's decision in **Queen Anne Record Sales**, 273 NLRB 96 (Decision and Order, 1984) was not binding on the Board in determining questions of state law under PERA, citing **PLRB v. State College Area School District**, 461 Pa. 494, 337 A.2d 262 (1975), **American Federation of State, County and Municipal Employees, Council 13, AFL-CIO v. PLRB**, 529 A.2d 1188 (Pa. Cmwlth. 1987), **American Federation of State, County and Municipal Employees, District Council 83, AFL-CIO v. PLRB**, 553 A.2d 1030 (Pa. Cmwlth. 1989) and **PLRB v. Chartiers-Houston School District**, 14 PPER ¶ 14056 (Final Order, 1983).

Area School District, 39 PPER 124 (Order, 2008), or a private courier's shipping documentation indicating that the exceptions were mailed within twenty days of issuance of the underlying decision. **Department of Transportation, supra.**

The Board did not receive PSSU's exceptions until February 4, 2014, which is twenty-five days after the issuance of the Secretary's decision on January 10, 2014. Further, PSSU did not include a United States Postal Form 3817 Certificate of Mailing with its exceptions and the envelope contained a private postage meter stamp rather than a United States Postal Service postmark or postmark cancellation. The Board has adopted the Pennsylvania Supreme Court's holding in **Lin v. Unemployment Compensation Board of Review**, 558 Pa. 94, 735 A.2d 697 (1999), and held that a private postage meter stamp is unreliable to establish the date exceptions were actually deposited in the United States mail. **Department of Transportation, supra.** Accordingly, the Secretary's decision became final and binding on January 30, 2014, and PSSU has waived all issues on appeal. **Id.**

Even if PSSU's exceptions had been timely, PSSU's Charge and exceptions fail to allege sufficient facts warranting the issuance of a complaint under Section 1201(a) (1) and (5) of PERA. In its exceptions, PSSU alleges that the County is refusing to meet in order to delay bargaining over PSSU's proposals.

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).

Section 1201(a) (5) of PERA provides that public employers are prohibited from refusing to bargain in good faith with an employe organization. 43 P.S. § 1101.1201(a) (5). The courts have held that bargaining in good faith means that the parties must make "a serious effort to resolve differences and reach a common ground." **Upper Moreland Township District v. PLRB**, 695 A.2d 904, 908 (Pa. Cmwlth. 1997) (quoting **Appeal of Cumberland Valley School District**, 483 Pa. 134, 142, 394 A.2d 946, 950 (1978)). The Board will look to the totality of the circumstances to determine whether a party has bargained in good faith. **Commonwealth Bar Association v. Commonwealth of Pennsylvania Public Utility Commission**, 35 PPER 113 (Final Order, 2004). A party will be found to have bargained in bad faith where it can reasonably be concluded that the party never intended to achieve an agreement, demonstrated unreasonableness, or displayed a single-minded purpose to thwart the public policy. **Id.**

PSSU alleged in the Charge that the parties met at the Ramada Inn for three bargaining sessions and that the County has refused to continue to meet at that location because the County, among other things, does not have a room in which to caucus. The Charge and the attached e-mails also indicate that the County proposed that the parties meet at the Community Service Foundation building, a property not owned by the County, at no charge or that the parties meet at one of the two other locations previously proposed by PSSU. However, PSSU will only meet at the Ramada Inn. The facts in **Lancaster County**, which involved the same parties, are similar to the facts alleged here. In **Lancaster County**, the Board held that the parties' disagreement over where to hold negotiations for a successor collective bargaining agreement was not an unfair practice under Section 1201(a) (1) and (5) of PERA. As in **Lancaster County**, PSSU's allegations merely demonstrate a disagreement between the parties over the location of negotiations. **See also Greater Nanticoke Area School District, supra.** The County's willingness to meet for negotiations at alternative locations undermines any allegation that the County never intended to achieve an agreement, demonstrated unreasonableness, or displayed a single-minded purpose to thwart the public policy. Therefore, PSSU has failed to state a cause of action under Section 1201(a) (1) and (5) of PERA. 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 Pennsylvania Social Services Union, Local 668, Service Employees International Union are dismissed and the Secretary's January 10, 2014 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 March, 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.