

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

RADNOR TOWNSHIP :
 :
 v. : Case No. PERA-C-14-88-E
 :
 RADNOR ASSOCIATION OF TOWNSHIP :
 EMPLOYEES :

FINAL ORDER

Radnor Township (Township) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on April 22, 2014. The Township's exceptions challenge an April 2, 2014 decision of the Acting Secretary of the Board (Secretary) declining to issue a complaint and dismissing the Township's Charge of Unfair Practices filed against the Radnor Association of Township Employees (Association). Pursuant to an extension of time granted by the Secretary, the Township timely filed a brief in support of the exceptions on May 21, 2014.

The Township alleged in its Charge that the Association filed a grievance regarding the discharge of bargaining unit member Elizabeth TreDenick. The Township further alleged that the parties reached a settlement of the grievance, but the Association refused to sign the settlement agreement due to Ms. TreDenick's hiring of a private attorney to represent her. The Township asserted that the Association's refusal to sign and enforce the agreement was a violation of Section 1201(b) (3) and (5) of the Public Employee Relations Act (PERA), and a derivative violation of Section 1201(b) (1).

In declining to issue a complaint and dismissing the Charge, the Secretary stated that the Township failed to allege sufficient facts to support a finding that the Association violated its duty to bargain under Section 1201(b) (3) of PERA because, **inter alia**, Ms. TreDenick's failure to sign the agreement precluded a finding that a settlement was reached concerning her grievance. The Secretary also determined that the Township failed to state a cause of action under Section 1201(b) (5) of PERA because its allegations concerned the Association's refusal to sign a grievance settlement, and not a collective bargaining agreement as specified in 1201(b) (5).

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).

The Township excepts to the Secretary's dismissal of its Charge on the ground that the absence of a signed agreement does not preclude the finding of a binding settlement between the Township and the Association. The Township further argues that the Association's failure to sign the settlement agreement is both a violation of its duty to bargain under Section 1201(b) (3) of PERA and a violation of its duty to reduce a collective bargaining agreement to writing and sign it under Section 1201(b) (5). The Township cites **Athens Area School District v. PLRB**, 760 A.2d 917 (Pa. Cmwlth. 2000) for the proposition that a party commits an unfair practice under PERA when its act of bad faith derails an agreement in the finalization stage.

Section 1201(b) (3) of PERA prohibits an employe organization from refusing to bargain in good faith with a public employer. 43 P.S. § 1101.1201(b) (3). 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.**

The Township alleged in its Charge that the parties negotiated a settlement of the grievance and that Ms. TreDenick subsequently hired a private attorney and refused to sign the agreement. The Township further alleged that the Association was obligated to sign the settlement agreement even though Ms. TreDenick no longer wished to be represented by the Association at the time that the Township submitted the grievance settlement agreement to the Association for signatures.

However, review of the parties' grievance procedure, along with the settlement agreement, shows that Ms. TreDenick had the right to independently process her grievance and that her signature was required in order for the settlement agreement to be binding on the parties. The grievance procedure in the collective bargaining agreement attached to the Charge authorizes Ms. TreDenick to process the grievance through every step of the procedure, including arbitration, and states that the employe "shall be entitled to representation of counsel of his/her own choice ... in all hearings before the Township, the Board of Commissioners, and all arbitration proceedings." The allegations in the Charge indicate that Ms. TreDenick invoked her right in the grievance procedure to hire her own attorney, instead of the Association, to represent her before the grievance settlement was finalized.

Further, the grievance settlement agreement drafted by the Township expressly provides that the agreement "shall be considered null and void" if it is not executed by Ms. TreDenick within twenty-one days of receipt. Regardless of whether the Association signed the settlement agreement, it was not binding until Ms. TreDenick signed the agreement as well and became null and void when she failed to execute it within twenty-one days. Therefore, the allegations in the Township's Charge, even if proven, cannot support a finding that the Association bargained in bad faith or refused to sign a binding agreement between the parties. Rather, the Township's Charge and supporting documents indicate that the finalization of the grievance settlement was derailed by Ms. TreDenick's assertion of her right to hire her own attorney and independently process her grievance, and not because of an act of bad faith on the part of the Association. 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 Radnor Township are dismissed and the Secretary's April 2, 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, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this seventeenth day of June, 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.