COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ANTHONY STEVENSON	:	
	:	
v.	:	Case No. PERA-C-15-232-E
	:	
GREAT VALLEY SCHOOL DISTRICT	:	

FINAL ORDER

Anthony Stevenson (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on September 2, 2015. The Complainant's exceptions challenge an August 14, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against Great Valley School District (District).

In the Charge filed on August 12, 2015, the Complainant alleged that the District was using local union officials and members of the Great Valley Education Association (Association), such as Local Representative Shawn Whitelock, as informants and that the District rewarded Mr. Whitelock for acting as an informant by providing him transportation to a Board hearing. The Complainant further alleged that the District unlawfully interrogated Mr. Whitelock regarding the Complainant's protected union activity. The Complainant asserted that the District's actions were a violation of Section 1201(a)(1) and (2) of the Public Employe Relations Act (PERA).

The Secretary declined to issue a complaint and dismissed the Charge, stating that the Complainant lacked standing to allege a violation of Section 1201(a)(2) of PERA, citing Lyman v. Pittsburgh Board of Public Education, 34 PPER 38 (Final Order, 2003). The Secretary further stated that the Complainant failed to state a cause of action under Section 1201(a)(1) of PERA because the District's actions would not tend to coerce a reasonable employe in exercising his or her protected rights under 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 the exceptions, the Complainant asserts that he has standing to allege a violation of Section 1201(a)(2) of PERA because that provision should not be construed as limited to bargaining violations in which only an employe representative has standing to bring such a violation against a public employer. Section 1201(a)(2) of PERA prohibits a public employer from "[d]ominating or interfering with the formation, existence or administration of any employe organization." 43 P.S. § 1101.1201(a)(2). In Lyman, the Board concluded that individual employes lack standing to allege that an employer is interfering with internal union matters in violation of Section 1201(a)(2) of PERA. Here, the Complainant's allegations concern not employer domination of the certified bargaining representative, but his

dissatisfaction with the representation he receives from local Association officials. Indeed, the Complainant states in his affidavit attached to the exceptions that he has filed internal ethics charges with the Pennsylvania State Education Association against these local Association officials due to his belief that they are acting as informants for the District. Because the Complainant's allegations concern the District's alleged interference with internal union matters, he lacks standing to allege a violation of Section 1201(a)(2) of PERA. Lyman, supra; see also Ponton v. City of Philadelphia, 39 PPER 161 (Final Order, 2008).

Even if the Complainant did possess standing to allege a violation of Section 1201(a)(2) of PERA, he has failed to state a cause of action under that provision. It is well-settled that Section 1201(a)(2) of PERA prohibits the formation of company unions and its purpose is to prevent employer domination of, or assistance to, employe organizations. Teamsters Local Union No. 384 v. Kennett Consolidated School District, 37 PPER 89 (Final Order, 2006). The Board has determined that Section 1201(a)(2) is intended to prevent an employe organization from becoming so controlled or assisted by the employer that the employe organization is indistinguishable from the employer. Pennsylvania Nurses Association v. Commonwealth of Pennsylvania, 31 PPER ¶ 31081 (Proposed Decision and Order, 2000)(citing PLRB v. Child Development Council of Centre County, 9 PPER ¶ 9188 (Nisi Decision and Order, 1978)). However, the Complainant's Charge and exceptions fail to allege sufficient facts to support a finding that the District is assisting or controlling the Association to the point that it is indistinguishable from the District. Therefore, the Complainant's exception concerning Section 1201(a)(2) of PERA is dismissed.

The Complainant further asserts that even if he lacks standing to allege a violation of Section 1201(a)(2) of PERA, he has standing to allege a derivative violation of Section 1201(a)(1) of PERA. However, a derivative violation of Section 1201(a)(1) of PERA will only occur in conjunction with a finding of a violation of one of the other enumerated unfair practices under Section 1201(a)(2)-(a)(9). Wattsburg Education Association v. Wattsburg Area School District, 35 PPER 54 (Final Order, 2004). Because the Complainant lacks standing to allege a violation of Section 1201(a)(2) of PERA, no derivative violation of Section 1201(a)(1) of PERA has been stated.

The Complainant additionally alleges that the Secretary erred by failing to conclude that the District violated Section 1201(a)(1) of PERA by using local Association officials and members to act as informants and engage in surveillance of him. However, the Complainant's assertion regarding this issue is untimely. 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. 43 P.S. § 1101.1505. A charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair practice was committed. Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER 24 (Final Order, 2004). The complainant has the burden to show that the charge was filed within four months of the occurrence of the alleged unfair practice. PLRB v. Commonwealth of Pennsylvania (Bureau of Employment Security), 9 PPER ¶ 9171 (Nisi Decision and Order, 1978); PLRB v. Allegheny County Prison Employees Independent Union, 11 PPER ¶ 11282 (Proposed Decision and Order, 1980). The Complainant alleged in the Charge that the District was using local Association officials and members as informants "[f]rom October 2013 to the present". As such, the Complainant's allegation in this regard is

untimely because he has failed to state any dates occurring within four months of the filing of the Charge in which the District has allegedly engaged in surveillance through the use of Association officials or members.

Further, the District's alleged continued use of Association officials and members to engage in surveillance is not a continuing violation of PERA because it is inescapably grounded in the District's initial action. See PLRB v. Borough of Frackville, 14 PPER ¶ 14139 (Final Order, 1983)(no continuing violation where alleged violation is inescapably grounded upon a prior occurrence); Uhring v. Springdale Borough, 26 PPER ¶ 26215 (Final Order, 1995)(same); Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 39 PPER 100 (Final Order, 2008)(same); Hazleton Area Education Support Professionals v. Hazleton Area School District, 45 PPER 20 (Final Order, 2013)(same). The fact that the District allegedly continues to use Association officials and members to engage in surveillance of the Complainant does not constitute a separate and distinct unfair practice. If that were the case, the statute of limitations would never begin to run. Id.

The Complainant next alleges that the Secretary erred in stating that the District's interrogation of Mr. Whitelock did not violate Section 1201(a)(1) of PERA because there is no evidence that the District provided the assurances required under the decision of the National Labor Relations Board (NLRB) in Johnnie's Poultry Co., 146 NLRB 770 (NLRB, 1964), to Mr. Whitelock before questioning him about the Complainant's Charge. In Johnnie's Poultry Co., the NLRB set forth standards under which an employer may interview employes when preparing its case for an unfair labor practice hearing by requiring the employer to (1) state the purpose of the interview to the employe, (2) give assurances that no reprisal will take place and (3) obtain the employe's voluntary participation in the interview. The NLRB stated that these safeguards are designed to minimize the coercive impact the employer's questioning may have on an employe's protected rights under the National Labor Relations Act (NLRA). Here, the Complainant's Charge concerns the alleged coercive effect of the District's questioning on Mr. Whitelock's exercise of protected rights under Section 401 of PERA. Because the Complainant is not acting on behalf of the Association or Mr. Whitelock, he lacks standing to allege a violation of Section 1201(a)(1) of PERA concerning the District's questioning of Mr. Whitelock.[1] PLRB v. Commonwealth of Pennsylvania (Bucks County Board of Assistance), 8 PPER 116 (Nisi Order of Dismissal, 1977).

The Complainant also asserts that the Secretary erred in concluding that the District did not violate Section 1201(a)(1) of PERA when it allegedly rewarded Mr. Whitelock for acting as an informant by providing him

[1] It is well-settled that decisions of the NLRB concerning federal law under the NLRA may be considered for guidance, but are not binding on the Board in determining questions of state law under PERA. 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); PLRB v. Chartiers-Houston School District, 14 PPER ¶ 14056 (Final Order, 1983). Due to the disposition of this issue, the Board need not determine whether the test set forth in Johnnie's Poultry Co., supra, should be applied under PERA.

with transportation to a Board hearing concerning a separate charge of unfair practices filed by the Complainant. The Board will find that an independent violation of Section 1201(a)(1) of PERA has occurred where, in light of the totality of the circumstances, "the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). The Complainant alleges in his affidavit that Mr. Whitelock was appearing at the Board hearing to testify on behalf of the District. Section 95.95(a) of the Board's duly promulgated Rules and Regulations states that "[w]itness and mileage fees shall be paid by the party at whose instance the witnesses are called…." 34 Pa. Code § 95.95(a). Therefore, the District was required by Section 95.95(a) of the Board's Rules and Regulations to reimburse Mr. Whitelock for his transportation costs in attending the hearing. The District's provision of transportation to Mr. Whitelock for the Board hearing in lieu of paying him mileage fees would not tend to coerce a reasonable employe in exercising his or her protected rights under 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 Anthony Stevenson are dismissed and the Secretary's August 14, 2015 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 fifteenth day of December, 2015. 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.