

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GAIL S. KNAUER :
 :
v. : Case No. PF-C-15-7-E
 :
INTERNATIONAL ASSOCIATION OF FIRE :
FIGHTERS, LOCAL 1803 :

FINAL ORDER

Gail S. Knauer (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 24, 2015. The Complainant's exceptions challenge a February 10, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Labor Practices filed against the International Association of Fire Fighters, Local 1803 (Union).

In her Charge filed on January 21, 2015,¹ the Complainant alleged that the Union opposed her request to transfer from her current position as the Lieutenant Fire Training Officer to the position of Lieutenant Fire Prevention Officer. The Complainant further alleged that she filed a grievance with the City of Reading (City) concerning its failure to grant her transfer request and that in a letter dated September 30, 2014, the City denied her grievance at the first step, relying upon a settlement agreement entered into with the Union that settled the Union's Unfair Labor Practice Charge relating to the Complainant's transfer request.² The Complainant additionally asserted that the City refused to process her grievance to the next step without the participation of the Union. The Complainant alleged that the Union's opposition to her transfer request and insistence that the settlement agreement barred her grievance were a violation of Section 6(2)(a) and Section 7(a)³ of the Pennsylvania Labor Relations Act (PLRA).

The Secretary declined to issue a complaint, stating that the Complainant's Charge was untimely under Section 9(e) of the PLRA because the Complainant failed to allege any actions of the Union that occurred within six weeks of the filing of the Charge. The

¹ The Complainant alleges that her Charge was filed on January 20, 2015, and that the Board time-stamped the wrong date on her Charge. However, the Capitol Complex, including the Board's Harrisburg office where the Charge was filed, was closed on January 20, 2015 for the inauguration of Governor Wolf. Therefore, the Complainant's Charge was filed on January 21, 2015.

² On June 16, 2014, the Union filed a Charge of Unfair Labor Practices docketed at Case No. PF-C-14-66-E alleging that the City violated its duty to bargain under Section 6(1)(a) and (e) of the PLRA by unilaterally changing its policy regarding lateral transfers and by directly dealing with a bargaining unit member. On December 9, 2014, the Board received a written request from the Union to withdraw its Charge, which request was granted by issuance of a Nisi Order of Withdrawal on December 18, 2014. On January 21, 2015, the Complainant filed with the Board a Motion to Reopen and for Leave to Intervene in Case No. PF-C-14-66-E in order to challenge the validity of the parties' settlement agreement. On February 4, 2015, the Secretary denied the Complainant's request because the Complainant lacked standing to intervene to pursue a failure to bargain charge under Section 6(1)(e) of the PLRA and the Nisi Order of Withdrawal became final on January 7, 2015 when no exceptions were filed within twenty days of issuance of the Nisi Order of Withdrawal. The Secretary also stated that "[t]his decision will become and be absolute and final unless within twenty (20) days of the date of this letter exceptions are filed with the Board pursuant to the procedure set forth in 34 Pa. Code § 95.98," and the Complainant failed to file exceptions within 20 days from the issuance of the Secretary's letter. Therefore, the Secretary's denial of the Complainant's Motion became final and binding on February 24, 2015, and the Complainant's allegation regarding the validity of the parties' settlement agreement is waived. **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).

³ Section 7(a) of the PLRA provides as follows:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer.

Secretary further stated that the Union's alleged insistence that the parties' settlement agreement bars the City from processing the Complainant's grievance could not be considered a continuing violation because any subsequent assertions of the Union regarding the parties' settlement agreement are inescapably grounded in the Union's initial actions entering into the settlement agreement, citing **Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia**, 39 PPER 100 (Final Order, 2008), **Philadelphia Fraternal Order of Correctional Officers v. City of Philadelphia**, 30 PPER ¶ 30178 (Final Order, 1999) and **PLRB v. Borough of Frackville**, 14 PPER ¶ 14139 (Final Order, 1983). The Secretary additionally indicated that the courts, and not the Board, possess exclusive jurisdiction to entertain claims that employ representatives have breached their duty of fair representation, citing **Ziccardi v. Commonwealth of Pennsylvania, Department of General Services**, 500 Pa. 326, 456 A.2d 979 (1982) and **Case v. Hazelton Area Educational Support Personnel Association (PSEA/NEA)**, 928 A.2d 1154 (Pa. Cmwlth. 2007) (en banc). The Secretary also noted that Section 7(a) of the PLRA does not provide an individual employee with the right to appeal the employer's denial of the employee's contractual grievance where the grievance provisions in the parties' collective bargaining agreement do not expressly provide such a right, citing **Maggs v. PLRB**, 413 A.2d 453 (Pa. Cmwlth. 1980). 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 labor 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 labor practice as defined by the PLRA. **Hamburg Police Officers Association v. Borough of Hamburg**, 37 PPER 121 (Final Order, 2006).

The Complainant alleges in the exceptions that her Charge was timely filed because she did not become aware that an unfair labor practice occurred until December 10, 2014, when she received the City's letter indicating that her grievance would not be processed to the next step without the participation of the Union. Section 9(e) of the PLRA provides that no charge shall be entertained which relates to acts which occurred or statements which were made more than six weeks prior to the filing of the charge. 43 P.S. § 211.9(e). A charge will be considered timely if it is filed within six weeks of when the charging party knew or should have known that an unfair labor practice was committed. **Fraternal Order of Police, Lodge No. 5, supra; Mount Joy Township Police Association v. Mount Joy Township**, 29 PPER ¶ 29184 (Proposed Decision and Order, 1998). The City's December 10, 2014 letter stating its position regarding the Complainant's grievance does not constitute action by the Union. Further, the Complainant has failed to state any dates in her Charge or exceptions demonstrating that the Union committed an unfair labor practice within six weeks of the filing of the Charge. The Complainant was aware of the settlement agreement as a result of the City's September 30, 2014 denial of her grievance in which the City relied upon the settlement agreement. Any subsequent assertions of the Union regarding the parties' settlement agreement is not a continuing violation of the PLRA because it is inescapably grounded in the Union's initial actions. **Fraternal Order of Police, Lodge No. 5, supra** (no continuing violation where alleged violation is inescapably grounded upon a prior occurrence); **Philadelphia Fraternal Order of Correctional Officers, supra (same); Borough of Frackville, supra** (same). Therefore, the Complainant's Charge is untimely because it was not filed within six weeks of when the alleged unfair labor practice occurred.

Even if the Complainant's Charge had been timely filed, the Board lacks jurisdiction over her claim against the Union because it effectively alleges a breach of the Union's duty of fair representation. In her exceptions, the Complainant argues that she is alleging a violation of Section 6(2)(a) of the PLRA, and not a duty of fair representation claim against the Union.

Section 6(2)(a) of the PLRA makes it an unfair labor practice for a labor organization to "intimidate, restrain, or coerce any employe for the purpose and with the intent of compelling such employe to join or to refrain from joining any labor organization, or for the purpose or with the intent of influencing or affecting his selection of representative for the purposes of collective bargaining." Nothing in the

Complainant's Charge supports the notion of intimidation or coercion for the stated purpose that would give rise to a violation of Section 6(2)(a). Rather, the Charge simply accuses the Union of failing to fairly represent the Complainant in entering into the settlement agreement. Under the duty of fair representation, a union must fairly represent "the interests of all employees in the bargaining unit, in good faith, and without arbitrariness or invidious discrimination." **Cohen v. Temple University**, 445 A.2d 179, 185 (Pa. Super. 1982) (quoting **Branch 6000, National Association of Letter Carriers v. NLRB**, 595 F.2d 808, 811 (D.C.Cir. 1979)). The Board lacks jurisdiction to entertain claims that a union has violated its duty of fair representation. **Ziccardi, supra; Case, supra**.

In **Case**, the complainants alleged in a charge of unfair practices filed with the Board that the employe representative breached its duty of fair representation to certain members of the bargaining unit when it negotiated and agreed to contractual provisions that were more favorable to other members of the unit. The Commonwealth Court discussed the extensive case law, including the Pennsylvania Supreme Court's decision in **Ziccardi** and the Commonwealth Court's own decisions in **Casner v. AFSCME**, 658 A.2d 865 (Pa. Cmwlth. 1995) and **Narcotics Agents Regional Committee, FOP Lodge No. 74 v. AFSCME, AFL-CIO**, 780 A.2d 863 (Pa. Cmwlth. 2001), which hold that the Board lacks jurisdiction to hear breach of duty of fair representation claims. The Court noted that its decision in **Segilia v. Riverside School Service Personnel Association**, 526 A.2d 832 (Pa. Cmwlth. 1987) split jurisdiction over these claims between the Board and the courts of common pleas based on the subject matter of the claim, "i.e. failure to negotiate fairly on behalf of union members (jurisdiction with PLRB) versus a refusal to process members' grievances (jurisdiction with the courts)." 928 A.2d at 1161. The Commonwealth Court stated that it was not sound policy to create such a split and held as follows:

Individual claims by employees against the union that allege a breach of the duty of fair representation do not qualify as unfair labor practices in violation of PERA. The [Board's] expertise lies in resolving disputes involving alleged violations of the provisions of PERA, not in remedying an individual injustice to an employee by an employee's representative union.

928 A.2d at 1161. The Complainant's Charge is based upon allegations that the Union is hindering her transfer request and the grievance she filed regarding the request. As in **Case**, these allegations fall within a claim for a breach of the Union's duty of fair representation, and not an unfair labor practice. As such, the Board lacks jurisdiction to hear the Complainant's claims against the Union.

Further, the Complainant's assertion that the Union violated her right to present grievances to the City pursuant to Section 7(a) of the PLRA is untenable. The Complainant alleged in her Charge that the Union filed its Charge of Unfair Labor Practices against the City in order to thwart her grievance. However, the Union filed its Charge of Unfair Labor Practices with the Board on June 16, 2014, before the Complainant filed her grievance on September 8, 2014. Additionally, the Complainant presented her grievance to the City and there are no allegations that the Union restrained her from doing so. Indeed, the allegations in the Charge indicate that the City, and not the Union, denied the grievance and informed the Complainant to contact the Union if she wished to process her grievance to the next step. The Employer's response is consistent with the Commonwealth Court's decision in **Maggs, supra**, that limits an individual employe's right to unilaterally advance a grievance through the grievance procedure unless the collective bargaining agreement expressly grants an employe that right. **See also, McCluskey v. Commonwealth of Pennsylvania, Department of Transportation**, 391 A.2d 45 (Pa. Cmwlth. 1978). The Complainant does not allege in her Charge or exceptions that the collective bargaining agreement grants her such a right. 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 Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Gail S. Knauer are dismissed and the Secretary's February 10, 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 sixteenth day of June, 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.