

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PEARL MACKERCHAR :
 :
v. : Case No. PERA-C-15-150-E
 :
PHILADELPHIA SCHOOL DISTRICT and :
PUBLIC SCHOOL EMPLOYEES' :
RETIREMENT SYSTEM :

FINAL ORDER

Pearl MacKerchar (Complainant) filed Charges of Unfair Practices with the Pennsylvania Labor Relations Board (Board) on May 15, 2015, alleging that the Philadelphia School District (District) and the Public School Employees' Retirement System (PSERS) (collectively "Respondents") violated Section 1201(a)(3) and (9) and 1201(b)(1) and (9) of the Public Employee Relations Act (PERA). By letter dated June 9, 2015, the Secretary of the Board requested amendment of the charges, noting that the May 15, 2015 filings were not notarized and contained no specification of charges as required by Section 95.31(a) and (b)(3) of the Board's Rules and Regulations.¹ The Secretary's June 9, 2015 letter preserved the Complainant's May 15, 2015 filing date, and expressly advised that the "[f]ailure to amend the Charge as requested...within twenty (20) days of the date of this letter may result in a dismissal of the Charge." Because no amended charge was received by the Board within the twenty (20) day period, by letter dated July 9, 2015 the Secretary advised Complainant that the Charges of Unfair Practices were dismissed. The Secretary further advised that the dismissal would become final twenty (20) days from the date of the letter unless timely exceptions were filed with the Board pursuant to 34 Pa. Code §95.98.

By letter postmarked July 17, 2015, Complainant alleged that she had not received the Board Secretary's June 9, 2015 letter. Complainant included in her July 17, 2015 letter a factual statement as specification of the charges and enclosed a notarized statement swearing to the attached documents. We shall construe the Complainant's July 17, 2015 correspondence as timely exceptions to the Secretary's July 9, 2015 dismissal letter.

Even were we to accept Complainant's July 17, 2015 correspondence as a timely amendment, the Charges of Unfair Practices must be dismissed.² As can be gleaned from the Complainant's July 17, 2015 letter, her May 5, 2015 Charges and all documents of record, the Complainant suffered a work-related injury on September 8, 2000. A claim under the Workers' Compensation Act was filed and litigation ensued thereunder regarding Complainant's ability to return to work. On February 17, 2006, the District offered employment as a seventh grade teacher, which was disputed by Complainant as not within her medical restrictions. On June 22, 2006, the Workers Compensation claim was settled, and on August 16, 2006, Complainant attended a retirement exit counseling session with PSERS. Sometime between her retirement exit counseling session and December 19, 2007, Complainant became aware that the District had reported her retirement date to PSERS as the day of her injury and not June 22, 2006, the date of her Workers' Compensation settlement, allegedly resulting in several years of lost retirement service credits.

The Board is without jurisdiction to adjudicate the matter. First, none of the Complainant's statements or documents refer to acts occurring within four months of filing her Charges of Unfair Practices. Section 1505 of PERA expressly provides that

¹ 34 Pa. Code §95.31(a) and (b)(3).

² We note that both the June 9, 2015 letter and the July 9, 2015 letter were sent certified mail to the address supplied by Complainant in her Charges. The twenty (20) day period for a response starts on the date of service, i.e. the date issued by the Board, not on the date of receipt by the Complainant. 34 Pa. Code §95.98(a)(1). Thus, a failure to pick up properly addressed certified mail service from the Board does not toll the twenty (20) day time period for filing a response or exceptions. **Brown v. Elegant Arrivals Limousine Service**, 46 PPER 32 (Final Order, 2014). Complainant admits receiving the Board's July 9, 2015 correspondence, and timely filed her July 17, 2015 letter within twenty (20) days of the Secretary's July 9, 2015 dismissal letter.

"[n]o ... 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. Further, upon thorough review of Complainant's July 17, 2015 letter, her May 5, 2015 Charges, and all documents of record, the alleged conduct of the Respondents, stemming from Complainant's workers compensation litigation and her resulting retirement from the District in settlement thereof, does not fall within the parameters of any of the clauses of Section 1201 of PERA. **Borough of Ambridge v. Local Union 1051, AFSCME**, 17 PPER ¶17075 (Final Order, 1986) (Board has authority to remedy only those acts that constitute a violation of Article XII of PERA). Accordingly, after a thorough review of the July 17, 2015 exceptions and all matters of record, we must dismiss the exceptions, and make the Secretary's July 9, 2015 dismissal of the Charges of Unfair Practices final.

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 Complainant are hereby dismissed, and the July 9, 2015 decision of the Secretary of the Board, be and hereby is 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 eighteenth day of August, 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.