

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LATITIA SMITH :
 :
 v. : Case No. PERA-C-10-438-E
 :
 SOUTHEASTERN PENNSYLVANIA :
 TRANSPORTATION AUTHORITY :

FINAL ORDER

Latitia Smith (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on January 25, 2011. The Complainant's exceptions challenge a January 5, 2011 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against the Southeastern Pennsylvania Transportation Authority (SEPTA).

In the Charge filed on December 13, 2010, the Complainant alleged that her request for union representation was denied at an August 3, 2010 meeting with William Hughes, an electrical foreman for SEPTA, concerning an alleged time clock violation. The Complainant further alleged that her request for union representation was denied during an August 13, 2010 meeting with Foreman Hughes regarding safety issues with the Complainant's jewelry. The Complainant asserted that SEPTA's actions violated Section 1201(a)(1) and (4) of the Public Employe Relations Act (PERA).

In declining to issue a complaint, the Secretary initially stated that the Complainant's Charge concerning the August 3, 2010 meeting with Foreman Hughes was untimely under Section 1505 of PERA because the Complainant did not file the Charge within four months of the August 3, 2010 meeting. Concerning the August 13, 2010 meeting with Foreman Hughes, the Secretary further stated that the Complainant failed to allege sufficient facts to support a finding that SEPTA violated the Complainant's Weingarten¹ rights under Section 1201(a)(1) of PERA because the August 13, 2010 meeting was not an investigatory interview, citing Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 38 PPER 183 (Final Order, 2007) (no Weingarten violation found where meeting was not an investigatory interview and employe did not have a reasonable belief that discipline might be imposed). The Secretary also indicated that the Complainant failed to state a cause of action under Section 1201(a)(4) because the Complainant did not allege that she was subject to discrimination for filing a petition or charge with the Board, or giving testimony before the Board. 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 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 Complainant alleges in the exceptions that the August 13, 2010 meeting with Foreman Hughes was an investigatory interview because the Complainant had a reasonable belief that her answers would result in adverse action.² An employe is entitled to assistance from a union representative in an investigatory interview upon request when the employe has a reasonable expectation that disciplinary action may result. Sayre Area

¹ The Board has adopted the rule set forth in NLRB v. Weingarten, Inc., 420 U.S. 251, 95 S. Ct. 959 (1975), that employes have the right to union representation at investigatory interviews that they reasonably believe may result in discipline. Commonwealth of Pennsylvania, Office of Administration v. PLRB, 591 Pa. 176, 916 A.2d 541 (2007).

² The Complainant does not challenge the Secretary's decision under Section 1201(a)(4) of PERA.

Education Association v. Sayre Area School District, 36 PPER 54 (Final Order, 2005). In order for a meeting to be an investigatory interview, the meeting must have been calculated to form the basis for taking disciplinary or other job-affecting actions against an employe for misconduct. Id.

The Complainant alleged that on August 13, 2010, Foreman Hughes inquired if the Complainant understood SEPTA's safety rules and that the Complainant then requested union representation. The Complainant further alleged that Foreman Hughes indicated that although he had to leave, he would be returning and, at that time, he would request that the Complainant remove the nose ring and earring that she was wearing. The Complainant asserted that Foreman Hughes returned and again inquired regarding whether the Complainant understood SEPTA's safety rules and that the Complainant again requested union representation. The Complainant also asserted that Foreman Hughes directed the Complainant to remove the nose ring and earring that she was wearing as they posed a safety hazard and that the Complainant refused. The Complainant alleged that Foreman Hughes thereafter directed the Complainant to clock out.

Based on these alleged facts, the Complainant's meeting with Foreman Hughes was not an investigatory interview because Foreman Hughes did not question the Complainant about misconduct with the intent to discipline her for that conduct. Sayre Area School District, supra. Rather, Foreman Hughes apprised the Complainant of his opinion that her wearing jewelry violated SEPTA's safety rules and when she failed to follow his directive to remove the jewelry, Foreman Hughes disciplined the Complainant by directing her to clock out. Because the Complainant, according to her own factual allegations, was not subjected to an investigatory interview, she had no right to demand union representation and the Secretary correctly concluded that the Complainant failed to state a cause of action under Section 1201(a)(1). City of Philadelphia, supra. 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 Latitia Smith are dismissed and the Secretary's January 5, 2011 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 and James M. Darby, Member, this fifteenth day of March, 2011. 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.