

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MICHAEL NEWMAN :
 :
 v. : Case No. PLRA-C-11-8-E
 :
 WALMART :

FINAL ORDER

On May 11, 2011, Michael Newman (Complainant) filed a Charge of Unfair Labor Practices with the Pennsylvania Labor Relations Board (Board) alleging that Walmart (Employer) violated Section 6 of the Pennsylvania Labor Relations Act (PLRA) by harassing him and wrongfully discharging him. On May 18, 2011, the Secretary of the Board declined to issue a complaint and dismissed the Charge, stating that the National Labor Relations Board (NLRB), rather than the Board, would have jurisdiction over the Complainant's claims. On June 24, 2011, the Complainant filed exceptions with the Board to the Secretary's decision declining to issue a complaint.

Initially, we note that the Complainant's exceptions are untimely. The Secretary's letter stated that "[a]ny exceptions to this decision not to issue a complaint may be filed with the Board within twenty (20) calendar days of the date of this letter in accordance with the procedure set forth in the Board's Rules and Regulations at 34 Pa. Code Section 95.98(a)(1), (2) and (3)." The Secretary's letter was issued on May 18, 2011. Based on that date, the last day to file exceptions was June 7, 2011. The Complainant's exceptions were filed on June 24, 2011 and, therefore, are untimely.

Even if the Complainant's exceptions were timely, the Board does not have jurisdiction over the Complainant's claims. Pursuant to the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169, the NLRB has exclusive jurisdiction to decide whether a private employer, such as the Employer, who engages in activities affecting interstate commerce has committed an unfair labor practice under the NLRA. 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 Michael Newman are dismissed and the Secretary's May 18, 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 nineteenth day of July, 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.