

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

DANIEL EDWARD MEYERS :  
 :  
v. : Case No. PERA-C-11-277-E  
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COMMONWEALTH OF PENNSYLVANIA :  
DEPARTMENT OF PUBLIC WELFARE :  
SOUTH MOUNTAIN RESTORATION CENTER :

**FINAL ORDER**

Daniel Edward Meyers filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on October 12, 2011. Mr. Meyers' exceptions challenge a September 26, 2011 decision of the Secretary of the Board declining to issue a complaint and dismissing his Charge of Unfair Practices filed against the Commonwealth of Pennsylvania, Department of Public Welfare, South Mountain Restoration Center (Commonwealth).

Mr. Meyers alleged in his Charge that the Commonwealth issued an unsatisfactory performance evaluation to him thereby preventing him from becoming a member of the union. Mr. Meyers asserted that the Commonwealth's actions violated Section 1201(b)(1), (3), (4) and (9) of the Public Employee Relations Act (PERA).<sup>1</sup>

In declining to issue a complaint, the Secretary initially noted that Section 1201(b) of PERA enumerates the prohibited unfair practices by employe representatives. Assuming that Mr. Meyers actually intended to allege violations of Section 1201(a) of PERA, which sets forth the prohibited unfair practices by public employers, the Secretary stated that Mr. Meyers lacked standing to allege a violation of Section 1201(a)(9), citing Case v. Hazleton Area School District, 915 A.2d 1262 (Pa. Cmwlth. 2007)(employes lack standing to allege violation of Section 1201(a)(9) of PERA, which concerns right of employe bargaining representative to meet and discuss with public employer). The Secretary further stated that Mr. Meyers failed to state a cause of action under Section 1201(a)(4) because he did not allege that he was subject to discrimination for filing a petition or charge with the Board, or giving testimony before the Board. The Secretary additionally indicated that Mr. Meyers failed to allege facts that would support a finding that the Commonwealth violated Section 1201(a)(3) because Mr. Meyers' failure to receive the full protection afforded to union members under the collective bargaining agreement was due to his failure to satisfactorily complete his probationary period and not any actions of the Commonwealth. The Secretary also indicated that Mr. Meyers failed to allege sufficient facts to support a finding of an independent violation of Section 1201(a)(1) of PERA. Therefore, the Secretary dismissed the Charge.

In his exceptions, Mr. Meyers challenges the Secretary's decision declining to issue a complaint. 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).

Initially, Mr. Meyers' exceptions fail to remedy his erroneous allegation that the Commonwealth violated Section 1201(b) of PERA, which enumerates the prohibited unfair

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<sup>1</sup> On August 22, 2011, Mr. Meyers filed a separate Charge of Unfair Practices alleging that the Commonwealth violated Section 1201(b)(1), (3), (4) and (9) of PERA when it discharged him after receiving notice of Mr. Meyers' filing of a complaint with the Equal Employment Opportunity Commission. That Charge was docketed at Case No. PERA-C-11-276-E. On September 26, 2011, the Secretary declined to issue a complaint and dismissed the Charge. Mr. Meyers filed exceptions to the Secretary's decision on October 12, 2011. In a Final Order issued on this date, the Board has dismissed Mr. Meyers' exceptions and affirmed the Secretary's decision not to issue a complaint on that Charge.

practices by an employe representative, and does not pertain to violations by public employers such as the Commonwealth. Mr. Meyers' failure to specify the correct subsection of PERA that the Commonwealth allegedly violated, in and of itself, warrants dismissal of the Charge. See Roman v. Shuman Juvenile Detention Center, 39 PPER 122 (Final Order, 2008)(no cause of action stated where complainant failed to allege subsection and clauses violated by public employer); see also West Whiteland Township Police Association v. West Whiteland Township, 32 PPER ¶ 32127 (Final Order, 2001)(same).

Even if Mr. Meyers had properly alleged violations of Section 1201(a) of PERA, he has failed to state a cause of action. Mr. Meyers only excepts to the Secretary's decision that he lacks standing to allege a violation of the Commonwealth's meet and discuss obligation under Section 1201(a)(9) of PERA.<sup>2</sup> Pursuant to Section 702 of PERA, a public employer is required to "meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives." 43 P.S. § 1101.702. A public employer's obligation to meet and discuss arises only when a request to do so is made by the employe representative. Correctional Institution Vocational Education Association PSEA/NEA v. Commonwealth of Pennsylvania Department of Corrections, 37 PPER 118 (Final Order, 2006); APSCUF v. SSHE, 24 PPER ¶ 24070 (Final Order, 1993). Consistent with the plain language of Section 1201(a)(9), an employer's duty to meet and discuss is owed only to the employe representative, and not to individual employes. Case, supra; Flagg v. SSHE, Cheyney University, 36 PPER 86 (Final Order, 2005); Lyman v. Pittsburgh Board of Public Education, 34 PPER 38 (Final Order, 2003). Thus, as correctly stated by the Secretary, Mr. Meyers lacks standing to allege a violation of the Commonwealth's meet and discuss obligation under Section 1201(a)(9) of PERA.

Additionally, Mr. Meyers has not made any further allegations or arguments in his exceptions concerning the other provisions of PERA cited in his Charge. Therefore, he has also failed to state a violation of those sections. 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 Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Daniel Edward Meyers are dismissed and the Secretary's September 26, 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 seventeenth day of January, 2012. 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.

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<sup>2</sup> Mr. Meyers also alleges in his exceptions that fair share dues were illegally deducted from his pay and that the Public Employee Fair Share Fee Law, Act of June 2, 1993, P.L. 45, No. 15, 43 P.S. §§ 1102.1-1102.9, is unconstitutional. However, the Board does not have jurisdiction to hear cases regarding the constitutionality of the Public Employee Fair Share Fee Law. See 43 P.S. § 1102.5 (objection to fair share fees will be resolved by an impartial arbitrator and constitutional challenges may be filed with the courts).