

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL 401 :
 :
v. : Case No. PERA-C-13-84-E
 :
LUZERNE COUNTY :

FINAL ORDER

Teamsters Local 401 (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on May 15, 2013. The Union's exceptions challenge an April 26, 2013 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Practices filed against Luzerne County (County).

In its Charge, the Union alleged that it represents a meet and discuss unit of first level supervisors employed by the County. The Union further alleged that the parties' Memorandum of Understanding (MOU) provides that the first level supervisors will receive any general pay increase that is received by the County's non-represented employees. The Union asserted that the County violated the parties' MOU by failing to pay the first level supervisors a \$1,000 lump sum payment given to the County's non-represented employees in 2013. The Union alleged that the County's failure to pay the first level supervisors a \$1,000 lump sum payment was a violation of Section 1201(a)(1), (3) and (5) of the Public Employee Relations Act (PERA).

The Secretary declined to issue a complaint, explaining that the Union failed to state a violation of Section 1201(a)(5) of PERA because the County is not required to engage in collective bargaining with the representative of a meet and discuss unit, citing **Pennsylvania Association of State Mental Hospital Physicians v. PLRB**, 557 A.2d 825 (Pa. Cmwlth. 1989), **appeal denied**, 524 Pa. 635, 574 A.2d 75 (1989) and **Pennsylvania Social Services Union, Local 668, Service Employees International Union v. Commonwealth of Pennsylvania, Department of Labor & Industry**, 44 PPER 39 (Final Order, 2012). Relying on **Independent State Store Union v. PLRB**, 547 A.2d 465 (Pa. Cmwlth. 1988), the Secretary noted that memoranda of understanding concerning terms and conditions of employment for first level supervisors are in the nature of recommendations to the public employer and are not enforceable contractual commitments. The Secretary further explained that the Union failed to state a cause of action under Section 1201(a)(3) because it did not allege facts that would support a finding that the County's action was in retaliation for protected activity by the first level supervisors. The Secretary additionally indicated that the Union failed to allege sufficient facts to establish a derivative or independent violation of Section 1201(a)(1). 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).

In its exceptions, the Union acknowledges that the County does not have a duty to bargain with the first level supervisors represented by the Union, but it contends that the County bargained in bad faith when it agreed to provide the first level supervisors with any general pay increase that the County's non-represented employees receive and refused to comply with that agreement. The Union further alleges that **Independent State Store Union** is inapplicable because the memorandum of understanding in that case demonstrated that the employer did not intend to be legally bound by the recommended provisions, whereas here the County agreed to the terms of the MOU.

Pursuant to Section 704 of PERA, a public employer's duty regarding a first level supervisory unit is as follows:

Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with first level supervisors or their representatives, on matters deemed to be bargainable for other public employes covered by [PERA].

43 P.S. § 1101.704. The term "meet and discuss" is defined in Section 301(17) of PERA as "the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes" with any final decisions made on such matters remaining exclusively with the employer. 43 P.S. § 1101.301(17). Contrary to the Union's assertion, the Commonwealth Court's holding in **Independent State Store Union** is controlling. In that case, the Court held that the employer did not violate Section 1201(a)(5) of PERA when it refused to process a grievance to arbitration because first level supervisors do not have bargaining rights under PERA. The Court further concluded that there was nothing in the memorandum of understanding binding the employer to implement any of the procedures contained therein. As stated in **Independent State Store Union**, the County is not required to bargain in good faith with the Union over terms and conditions of employment of the County's first level supervisors. Further, the Union's attempt to distinguish **Independent State Store Union** from the present case is meritless because the County retained its rights under Section 704 of PERA by specifically reserving the right "to amend, modify or cancel" any of the benefits in the MOU after first meeting and discussing them with the Union. Because the County has no duty to bargain with the meet and discuss unit represented by the Union, there can be no violation of Section 1201(a)(5).¹ **Pennsylvania Association of State Mental Hospital Physicians; supra; Independent State Store Union, supra; Commonwealth of Pennsylvania, Department of Labor & Industry, supra.**

Finally, the Union has not made any further factual allegations in its exceptions concerning its Charge under Section 1201(a)(1) and (3) of PERA. Absent new factual allegations, the Union has failed to state violations of Section 1201(a)(1) or (3) of PERA. 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 the Teamsters, Local 401 are dismissed and the Secretary's April 26, 2013 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, James M. Darby, Member, and Robert H. Shoop, Jr., Member, this sixteenth day of July, 2013. 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.

¹ Although the Union notes that the County has a duty to meet and discuss over terms and conditions of employment, the Union failed to effectively charge the County with a violation of its duty to meet and discuss under Section 1201(a)(9) of PERA. **See Commonwealth of Pennsylvania, Department of Labor & Industry, supra** (where union failed to allege a violation of Section 1201(a)(9) in charge of unfair practices, mere reference to duty to meet and discuss in exceptions was insufficient to charge a violation of Section 1201(a)(9) of PERA).