

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

LEONARD E. BLOOM

:

:

v.

:

Case No. PERA-C-14-240-E

PHILIPSBURG BOROUGH

:

**FINAL ORDER**

Leonard E. Bloom (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on August 25, 2014. The Complainant's exceptions challenge an August 5, 2014 decision of the Acting Secretary of the Board (Secretary) declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against Philipsburg Borough (Borough).

The Complainant alleged in the Charge that a grievance arbitration award issued on March 22, 2002 granted retired Borough police officers an automatic yearly cost of living adjustment. The March 1, 2004 Memorandum of Understanding attached to the Charge evidences the Borough's agreement with the American Federation of State, County and Municipal Employees, District Council 83 (AFSCME) to provide the Complainant with, among other things, an automatic yearly cost of living adjustment as long as the increase did not result in any additional cost to the Borough. The Complainant asserted that the Borough violated Section 1201(b)(8) of the Public Employe Relations Act (PERA) by refusing to pay his cost of living adjustment for 2014.

In declining to issue a complaint and dismissing the Charge, the Secretary stated that the Board did not have jurisdiction over the Complainant's claim under PERA because collective bargaining between policemen and their public employes is covered by Act 111 of 1968, as read in pari materia with the Pennsylvania Labor Relations Act (PLRA). The Secretary also indicated that the Complainant lacked standing to enforce the provisions of the Memorandum of Understanding between the Borough and AFSCME.

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 the exceptions, the Complainant maintains that Section 1201(b)(8) of PERA applies to the allegations in the Charge.<sup>1</sup> However, the Board does not have jurisdiction to issue a complaint against the Borough under the provisions of PERA cited by the Complainant because this case concerns the Complainant's bargaining rights as a police officer under Act 111 as read in pari materia with the PLRA. Philadelphia Fire Officers Association v. PLRB, 470 Pa. 550, 369 A.2d 259 (1977); Borough of Nazareth v. PLRB, 534 Pa. 11, 626 A.2d 493 (1993); see also 43 P.S. § 1101.301(2)(police officers are excluded from the definition of public employe under PERA). Although the Secretary informed the Complainant that the Board lacked jurisdiction over his claim pursuant to PERA, the Complainant failed to amend the Charge to bring his cause of action under the appropriate provisions of the PLRA.

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<sup>1</sup> The Board notes that Section 1201(b) of PERA enumerates the prohibited unfair practices by an employe representative, and does not pertain to violations by employers. The Complainant's failure to specify the correct subsection that the Borough 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 the Complainant had alleged that the Borough violated the provisions of the PLRA, the Board would still lack jurisdiction to process the Charge because the Complainant does not fall within the definition of employee under Section 3(d) of the PLRA. The Board and the Courts have held that present retirees are not employees or members of the bargaining unit. Township of Wilkins v. Wage and Policy Committee of the Wilkins Township Police Department, 696 A.2d 917 (Pa. Cmwlth. 1997); FOP, Reading Lodge No. 9 v. City of Reading, 30 PPER ¶ 30062 (Final Order, 1999). The Complainant alleged that he has been retired from the Borough for ten years and, therefore, the Complainant is not an employee under Section 3(d) of the PLRA. Id.

The Complainant further alleges in the exceptions that he has standing to enforce the arbitration award and Memorandum of Understanding. However, the Borough's statutory duty to bargain, which includes its obligation to comply with the arbitration award and the provisions of the Memorandum of Understanding, is owed to AFSCME, the exclusive employee representative for purposes of collective bargaining, and not to individual employees such as the Complainant. Warwick v. PLRB, 671 A.2d 1199 (Pa. Cmwlth. 1996), petition for allowance of appeal denied, 545 Pa. 666, 681 A.2d 180 (1996). As such, the Complainant does not have standing to enforce the provisions of the March 22, 2002 arbitration award or the March 1, 2004 Memorandum of Understanding through filing of an unfair practice charge with the Board. Id. 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 Leonard E. Bloom are dismissed and the Secretary's August 5, 2014 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, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this sixteenth day of September, 2014. 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.