COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GAIL S. KNAUER	:	
	:	
v.	:	Case No. PF-C-15-6-E
	:	
CITY OF READING	:	

FINAL ORDER

Gail S. Knauer (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 24, 2015. The Complainant's exceptions challenge a February 10, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Labor Practices filed against the City of Reading (City).

In her Charge filed on January 21, 2015,[1] the Complainant alleged that she filed a grievance over the Borough's failure to grant her request to transfer from her current position as the Lieutenant Fire Training Officer to the position of Lieutenant Fire Prevention Officer. The Complainant further alleged that the Borough denied her grievance at the first step based upon a settlement agreement entered into with the International Association of Fire Fighters, Local 1803 (Union) that settled the Union's Unfair Labor Practice Charge relating to the Complainant's transfer request.[2] The Complainant additionally asserted that the City refused to process her grievance to the next step without the participation of the Union. The Complainant alleged that the Borough's refusal to process her grievance to the next step was a violation of Section 6(1)(a), (c) and (e) and Section 7(a)[3] of the Pennsylvania Labor Relations Act (PLRA).

The Secretary declined to issue a complaint and dismissed the Charge, stating that the Complainant lacked standing to allege a violation of Section 6(1)(e) of the PLRA, citing **Kramer v. Towamencin Township**, 29 PPER ¶ 29059 (Final Order, 1998). The Secretary further noted that Section 7(a) of the PLRA does not provide an individual employe with the right to appeal the employer's denial of the employe's contractual grievance where

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[1] The Complainant alleges that her Charge was filed on January 20, 2015, and that the Board time-stamped the wrong date on her Charge. However, the Capitol Complex, including the Board's Harrisburg office where the Charge was filed, was closed on January 20, 2015 for the inauguration of Governor Wolf. Therefore, the Complainant's Charge was filed on January 21, 2015.

[2] On June 16, 2014, the Union filed a Charge of Unfair Labor Practices docketed at Case No. PF-C-14-66-E alleging that the City violated its duty to bargain under Section 6(1)(a) and (e) of the PLRA by unilaterally changing its policy regarding lateral transfers and by directly dealing with a bargaining unit member. On December 9, 2014, the Board received a written request from the Union to withdraw its Charge, which request was granted by issuance of a Nisi Order of Withdrawal on December 18, 2014. On January 21, 2015, the Complainant filed with the Board a Motion to Reopen and for Leave to Intervene in Case No. PF-C-14-66-E in order to challenge the validity of the parties' settlement agreement. On February 4, 2015, the Secretary denied the Complainant's request because the Complainant lacked standing to intervene to pursue a failure to bargain charge under Section 6(1)(e) of the PLRA and the Nisi Order of Withdrawal became final on January 7, 2015 when no exceptions were filed within twenty days of issuance of the Nisi Order of Withdrawal. The Secretary also stated that "[t]his decision will become and be absolute and final unless within twenty (20) days of the date of this letter exceptions are filed with the Board pursuant to the procedure set forth in 34 Pa. Code § 95.98," and the Complainant failed to file exceptions within 20 days from the issuance of the Secretary's letter. Therefore, the Secretary's denial of the Complainant's Motion became final and binding on February 24, 2015, and the Complainant's allegation regarding the validity of the parties' settlement agreement is waived. **AFSCME Council 13 v. Commonwealth of Pennsylvania, Department of Transportation**, 33 PPER ¶ 33027 (Final Order, 2001), **aff'd**, No. 138 C.D. 2002 (Pa. Cmwlth. 2002)(opinion not reported).

[3] Section 7(a) of the PLRA provides as follows:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employes in a unit appropriate for such purposes, shall be the exclusive representatives of all the employes in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer.

43 P.S. § 211.7(a).

the grievance provisions in the parties' collective bargaining agreement do not expressly provide such a right, citing **Maggs v. PLRB**, 413 A.2d 453 (Pa. Cmwlth. 1980). The Secretary also indicated that the Complainant failed to state a cause of action under Section 6(1)(c) of the PLRA because she did not allege that the City refused to process her grievance in retaliation for activity protected under the PLRA. The Secretary additionally stated that the Complainant had failed to allege sufficient facts for finding a violation of Section 6(1)(a) of the PLRA.

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 labor 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 labor practice as defined by the PLRA. **Hamburg Police Officers Association v. Borough of Hamburg**, 37 PPER 121 (Final Order, 2006).

The Complainant alleges in her exceptions that the Secretary erred in dismissing her claim under Section 6(1)(e) of the PLRA because the City's duty to bargain with the Union is subordinate to an employe's right under Section 7(a) to present grievances to the employer. The Complainant's position is contrary to longstanding, well-settled case law in the public sector in Pennsylvania.

Section 6(1)(e) of the PLRA prohibits employers from refusing to bargain collectively in good faith with an employe representative that has been designated by a majority of the employes as their exclusive representative for purposes of collective bargaining. 43 P.S. § 211.6(1)(e). Individual employes lack standing to allege a refusal to collectively bargain under Section 6(1)(e) of the PLRA because the employer's duty to collectively bargain is owed exclusively to the employe representative, and not to individual employes such as the Complainant. **Warwick v. PLRB**, 671 A.2d 1199 (Pa. Cmwlth. 1996), **appeal denied**, 545 Pa. 666, 681 A.2d 180 (1996); **Towamencin Township**, **supra**. As the Commonwealth Court stated nearly two decades ago in **Warwick**, which also involved a charge of unfair labor practices under the PLRA:

> Among the specific obligations contained within the general mandate to collectively bargain is the duty to process grievances with–but only with–the employee representative. Danishefsky v. Commonwealth of Pennsylvania, 540 Pa. 220, 656 A.2d 1326 (1995); Pottstown Police Officers' Association v. Pennsylvania Labor Relations Board, 160 Pa.Cmwlth. 87, 634 A.2d 711 (Pa. Cmwlth. 1993). This exclusive duty follows the general rule that where there is a majority representative, the employer is guilty of an unfair labor practice when it engages in direct dealing with its employees rather than through the majority representative. Charley v. Pennsylvania Labor Relations Board, 136 Pa.Cmwlth. 411, 583 A.2d 65 (Pa. Cmwlth. 1990).

671 A.2d at 1201 n.4. The Court further stated in **Warwick**:

> Warwick also does not have standing to bring an unfair labor practice in the name of the bargaining agent. Under traditional principles of labor relations law, an employee is a third party beneficiary of the collective bargaining agreement and does not have the standing to enforce that agreement if the bargaining representative does not do so. Ziccardi v. Department of General Services, 500 Pa. 326, 456 A.2d 979 (1982). Individual members of the bargaining unit lack the standing to file an unfair labor practice charge against an employer to enforce a collective bargaining agreement. See Roderick v. Pennsylvania Labor Relations Board, 86 Pa.Cmwlth. 278, 484 A.2d 841 (Pa. Cmwlth. 1984). Only the bargaining representative can seek to enforce the collective bargaining agreement. Ziccardi, supra; Roderick, supra. The rule is applicable to private sector and public sector

> employees. McCluskey v. Commonwealth, Department of Transportation, 37 Pa.Cmwlth. 598, 391 A.2d 45 (Pa. Cmwlth. 1978).

671 A.2d at 1201-1202.

The Court's ruling in **Warwick** that an individual employe may not challenge the employer's denial of a grievance through filing of an unfair labor practice charge is dispositive of the Complainant's Charge in this case and compels dismissal of the Charge. As in **Warwick**, the City's refusal to participate in successive steps of the grievance procedure with the Complainant is not a violation of its duty to collectively bargain with the Union. Furthermore, the Complainant does not have standing to allege a violation of the City's duty to bargain under Section 6(1)(e). **Warwick, supra; Towamencin Township, supra.** Therefore, the Complainant has failed to state a cause of action under Section 6(1)(e) of the PLRA.

The Complainant further asserts that her right to present grievances to the City under Section 7(a) of the PLRA is not limited by the grievance procedure in the parties' collective bargaining agreement (CBA). However, Pennsylvania case law over the last half century has consistently held that where, as here, the CBA does not expressly grant employes the right to process grievances independent of the employe bargaining representative, they have no such right. **See Maggs, supra, and McCluskey v. Commonwealth of Pennsylvania, Department of Transportation**, 391 A.2d 45 (Pa. Cmwlth. 1978) and cases cited therein.

Further, the Board's unfair labor practice jurisdiction, which the Complainant seeks to invoke here, is limited to the unfair labor practices listed in Section 6 of the PLRA, 43 P.S. § 211.8(a), and an employer's refusal to process grievances presented by individual employes pursuant to Section 7(a) is not an unfair labor practice under Section 6. Additionally, the Board has consistently held that Section 7(a) of the PLRA, like Section 606 of the Public Employe Relations Act, merely grants individual employes the opportunity to present grievances to their employer outside the collective bargaining process, but does not provide individual employes with the right to bargain with the employer, including further processing of their grievances. **See, e.g., Cheltenham Township Police Association v. Cheltenham Township**, 36 PPER 4 (Final Order, 2005). In the present case, the Complainant presented her grievance to the City, the City denied the grievance, and the Complainant has no recourse through the unfair labor practice provisions of the PLRA to require further consideration of the grievance by the City.

The Complainant additionally alleges that Section 6(1)(c) of the PLRA does not require an allegation that the City retaliated against her for engaging in protected activity. Even if retaliation is required, the Complainant asserts that the City's actions are due to her filing of a grievance concerning her transfer request. The Board and the Courts have held that, in order to sustain a charge of discrimination under Section 6(1)(c) of the PLRA, the charging party must prove (1) that the employe engaged in protected activity, (2) that the employer was aware of the employe's protected activity, and (3) that the employer took adverse action against the employe because of a discriminatory motive or anti-union animus. **Duryea Borough Police Department v. PLRB**, 862 A.2d 122 (Pa. Cmwlth. 2004)(citing **St. Joseph's Hospital v. PLRB**, 473 Pa. 101, 373 A.2d 1069 (1977)). The charging party must demonstrate that all three elements are present in order to establish a **prima facie** case under Section 6(1)(c) of the PLRA. **West Conshohocken Police Officers v. West Conshohocken Borough**, 45 PPER 21 (Final Order, 2013). In her Charge and exceptions, the Complainant alleges that the City's denial of her grievance and refusal to process the grievance to the next step are based upon the settlement agreement between the City and the Union, and not due to any protected activity engaged in by the Complainant. Therefore, the Complainant has failed to state a cause of action under Section 6(1)(c) of the PLRA.

Further, the Complainant has not made any further factual allegations in her exceptions concerning the Charge under Section 6(1)(a) of the PLRA. Absent new factual allegations, the Complainant has failed to state an independent or derivative violation

of Section 6(1)(a). 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 Gail S. Knauer are dismissed and the Secretary's February 10, 2015 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 June, 2015. 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.