

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

JOHN GATTO :
:
v. : Case No. PERA-C-15-270-W
:
SOMERSET AREA SCHOOL DISTRICT :

FINAL ORDER

John Gatto (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on October 13, 2015. The Complainant's exceptions challenge a September 30, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against Somerset Area School District (District).

In the Charge, the Complainant alleged that he filed a grievance over the District's decision to issue a written warning concerning his failure to return to work after attending an educational conference. The Complainant further alleged that the District thereafter threatened to discharge him in the written warning in retaliation for filing the grievance. The Complainant asserted that the District's actions were a violation of Section 1201(a)(1), (2), (3), (4) and (5) of the Public Employe Relations Act (PERA).

The Secretary declined to issue a complaint and dismissed the Charge, stating that the Complainant lacked standing to allege violations of Section 1201(a)(2) and (5) of PERA, citing Lyman v. Pittsburgh Board of Public Education, 34 PPER 38 (Final Order, 2003) (individual employes lack standing to allege violation of Section 1201(a)(2)), Case v. Hazleton Area School District, 915 A.2d 1262 (Pa. Cmwlth. 2007) (individual employes lack standing to allege violation of employer's duty to bargain under Section 1201(a)(5)) and PLRB v. Methacton School District, 14 PPER ¶ 14078 (Final Order, 1983) (same). The Secretary further stated that the Complainant failed to state a cause of action under Section 1201(a)(4) of PERA because the Complainant 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 the boilerplate language contained in the written warning stating that the Complainant would be subject to discipline, including termination, for future unprofessional behavior was not discriminatory under Section 1201(a)(3) of PERA. The Secretary also indicated that the Complainant failed to allege sufficient facts for finding a violation of Section 1201(a)(1) of PERA.

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).

The Complainant alleges in the exceptions that he stated a cause of action under Section 1201(a)(3) of PERA because the language in the District's written warning was meant to intimidate and cause him to refrain

from engaging in protected activity.¹ Pursuant to Section 1201(a)(3) of PERA, the charging party must prove that (1) the employee engaged in protected activity; (2) the employer was aware of the employee's protected activity; and (3) the employer took adverse action against the employee because of a discriminatory motive or anti-union animus. 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 1201(a)(3). Perry County v. PLRB, 634 A.2d 808 (Pa. Cmwlth. 1993).

The Charge alleges that the Complainant was issued a written warning dated June 8, 2015, concerning his failure to return to work after attending an educational conference. The Charge further alleges that the District, upon the request of the Complainant, revised the written warning on June 16, 2015, by deleting language that was challenged by the Complainant and replacing it with the statement that "future behavior that is deemed unprofessional may result in disciplinary measures which includes termination of employment." The Complainant asserts that the District added this language in retaliation for his filing a grievance on or about June 2, 2015 contesting the District's decision to issue a written warning and was meant to intimidate him from continuing to engage in protected activity. However, the Complainant's grievance attached to the Charge states that the Complainant was informed at the May 21, 2015 disciplinary meeting with his supervisors that (1) he would be charged a half-day of leave for the date of the educational conference, (2) he would receive a letter of reprimand and (3) similar occurrences in the future would be grounds for dismissal. Therefore, the District notified the Complainant that future unprofessional behavior may result in discipline, including termination, before he filed his grievance. This fact completely undermines the Complainant's allegation that this language was placed in the June 16, 2015 written warning in retaliation for filing the grievance. 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 John Gatto are dismissed and the Secretary's September 30, 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 fifteenth day of December, 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.

¹ The Complainant does not challenge the Secretary's decision under Section 1201(a)(1), (2), (4) and (5) of PERA.