

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMERICAN FEDERATION OF STATE, COUNTY :
AND MUNICIPAL EMPLOYEES, :
DISTRICT COUNCIL 33, LOCAL 394 :
 :
v. : Case No. PERA-C-14-161-E
 :
CITY OF PHILADELPHIA, :
WATER DEPARTMENT :

FINAL ORDER

The American Federation of State, County and Municipal Employees, District Council 33, Local 394 (AFSCME) filed an Amended Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) on June 13, 2014, alleging that the City of Philadelphia, Water Department (City) violated Section 1201(a)(1), (5) and (9) of the Public Employee Relations Act (PERA).¹ The Amended Charge alleged a unilateral change to job classification regarding essential employees, and further alleged that a grievance has been filed under the parties' collective bargaining agreement on that issue. By letter dated November 6, 2014, the Board Hearing Examiner deferred the matter to the parties' grievance procedure and held the Charge of Unfair Practices in abeyance in accordance with the Board policy announced in PLRB v. Pine Grove Area School District, 10 PPER ¶10167 (Order Deferring Unfair Practice Charge Until Further Order of the Board, 1979).

On May 11, 2023, the Secretary of the Board issued a show cause letter to the parties, informing the complainant as follows:

The [Board's] records indicate that the above-referenced case has remained dormant for at least six (6) months. This letter is to inform you that this case will be dismissed unless within twenty (20) calendar days of the date of this letter the Board receives a written request for permission to withdraw the charge or a letter showing cause why further proceedings are warranted. Failure to set forth in your letter facts establishing that further Board proceedings are necessary will result in the dismissal of your charge.

No response to the Secretary's May 11, 2023 letter was received within the twenty calendar days. Accordingly, on June 9, 2023, the Secretary issued a letter pursuant to 34 Pa. Code §95.81(d) dismissing the Charge of Unfair Practices, as amended.² On June 16, 2023, AFSCME filed exceptions to the

¹ By letter dated June 5, 2014, the Secretary of the Board requested an amendment to the Charge for clarification and preserved the original filing date of May 20, 2014.

² The Board's rules provide in relevant part as follows:

At any time subsequent to the issuance of a complaint and prior to the issuance of a proposed decision under § 95.91(k)(1) (relating to hearings), the Secretary of the Board or the Executive Director of the Board will have the authority to hold

Secretary's June 9, 2023 dismissal letter. In the exceptions, AFSCME alleged that the grievance was submitted to arbitration and hearings held in 2017, but the final day of hearing was postponed for settlement discussions. AFSCME therefore requests on exceptions that the Charge of Unfair Practice continue to be held in abeyance while the parties' complete the arbitration proceedings.

However, here AFSCME was expressly informed in writing on May 11, 2023 that pursuant to Section 95.81(d) of the Board's rules that the Charge of Unfair Practices "will be dismissed" in the absence of a written response to the show cause letter. AFSCME did not respond to the show cause letter in any fashion nor did it provide any reason why it had failed to respond to the show cause letter in its exceptions.

Accordingly, the Secretary did not err or abuse his discretion in administratively dismissing the Charge of Unfair Practices for failure to respond to the May 11, 2023 show cause letter. Pennsylvania Association of State Mental Hospital Physicians v. Commonwealth of Pennsylvania, Department of Corrections, 27 PPER ¶ 27256 (Final Order, 1996). After a review of the exceptions, and all matters of record, the Board shall affirm the Secretary's June 9, 2023 dismissal of the Charge of Unfair Practices.³

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 AFSCME are hereby dismissed, and the Secretary's May 11, 2023 administrative dismissal of the Charge of Unfair Practices be and hereby is made absolute and final.

SEALED, DATED, and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, and Albert Mezzaroba, Member, this eighteenth day of July, 2023. 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.

MEMBER GARY MASINO DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THIS CASE.

in abeyance or rescind complaints and to dismiss unfair practice charges upon failure of the charging party to show cause, upon request by the Secretary of the Board or the Executive Director of the Board, why further proceedings are required to effectuate the policies of the act.

34 Pa. Code § 95.81(d).

³ On exceptions, AFSCME argues that the City could refuse to finish the arbitration process. However, the City's failure to do so would be cause for filing a new unfair practice charge, and is not itself cause to continue to hold the pending 2014 Amended Charge in abeyance.