

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PHILADELPHIA FEDERATION OF TEACHERS :
AFT LOCAL 3, AFL-CIO :
 :
v. : Case No. PERA-C-20-296-E
 :
PHILADELPHIA SCHOOL DISTRICT :

FINAL ORDER

The Philadelphia School District (District) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on November 8, 2022, challenging a Proposed Decision and Order (PDO) issued on October 19, 2022. In the PDO, the Board's Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by using labor relations officers, instead of supervisor principals, to conduct first-step investigatory interviews and increasing the discipline process from a two-step process to a three-step process contrary to the parties' agreement.¹ Pursuant to an extension of time granted by the Secretary of the Board, the District filed a brief in support of its exceptions on December 8, 2022. The Philadelphia Federation of Teachers, AFT Local 3, AFL-CIO (Union) filed a response to the exceptions on December 28, 2022, and, after an extension granted by the Secretary, a brief in opposition to the exceptions on February 10, 2023.

In its exceptions, the District argues that the Hearing Examiner erred in concluding that the District violated Section 1201(a)(1) and (5) of PERA by repudiating an agreement when it increased the number of steps in the disciplinary process and assigned labor relations officers to conduct first-step investigatory interviews. Specifically, the District asserts that the Union was aware of the alleged change to the first-step investigatory interviews in November 2020, that the Union's original Charge filed on December 15, 2020, was limited to an allegation that the District was refusing to provide investigatory information, and that the Union's attempt to amend its Charge on May 19, 2022 to allege a repudiation of the parties' agreement concerning the disciplinary process was beyond the four month statute of limitations so as to be untimely.

Section 1505 of PERA provides that no charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the charge. 43 P.S. § 1101.1505. A charge will be considered timely if it is filed within four months of when the charging party knew or should have known that an unfair practice was committed. Community College of Beaver County Society of Faculty, PSEA/NEA v. Beaver County Community College, 35 PPER ¶ 24 (Final Order, 2004). The

¹ The Hearing Examiner also concluded that the District did not violate Section 1201(a)(1) or (5) of PERA when it refused to provide investigatory information to the Union prior to the first investigatory interview. No exceptions were filed by the Union to the Hearing Examiner's decision regarding this issue. 34 Pa. Code § 95.98(a)(3) ("[a]n exception not specifically raised shall be waived"). Therefore, the Hearing Examiner's decision in that respect is final.

complainant has the burden to show that the charge was filed within the four months statute of limitations. PLRB v. Commonwealth of Pennsylvania (Bureau of Employment Security), 9 PPER ¶ 9171 (Nisi Decision and Order, 1978); PLRB v. Allegheny County Prison Employees Independent Union, 11 PPER ¶ 11282 (Proposed Decision and Order, 1980). A complaint may be amended at any time before the issuance of a final decision and order if no new cause of action is added after the statute of limitations has run. 34 Pa. Code § 95.32(a). The Board and the courts have held that amendments to charges of unfair practices are untimely where accomplished after expiration of the appropriate limitations period. Independent State Store Union v. Commonwealth of Pennsylvania, Liquor Control Board, 41 PPER 54 (Final Order, 2010), aff'd sub. nom, Independent State Store Union v. PLRB, 18 A.3d 367 (Pa. Cmwlth. 2011), appeal denied, 22 A.3d 1035 (Pa. 2011).

Additionally, Section 95.31(b)(3) of the Board's Rules and Regulations requires that specifications of charges contain the specific conduct alleged to be a violation of PERA stating, in relevant part, that charges filed with the Board shall include "[a] clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular act alleged..." 34 Pa. Code § 95.31(b)(3). The Board has recognized that strict rules of pleading do not apply in administrative proceedings, but that fundamental due process requires that an employer be given notice of the factual allegations that support the charge. Bucks County Detectives Association v. Bucks County, 45 PPER 2 (Final Order, 2013). To satisfy this due process concern, the Board has consistently held that the charging party must put the responding party on notice of the precise nature of the conduct which is at issue in the charge, and is limited to the presentation of evidence as to the specific allegations contained in the charge. Iroquois Education Association PSEA/NEA v. Iroquois School District, 37 PPER 167 (Final Order, 2006); Independent State Store Union v. Commonwealth of Pennsylvania, Liquor Control Board, 22 PPER ¶ 22009 (Final Order, 1990); PLRB v. Lawrence County, 12 PPER ¶ 12312 (Final Order, 1981). Therefore, the Board has jurisdiction only over those unfair practices that are timely alleged in the charge. Id. Because resolution of the District's exceptions involves the jurisdiction of the Board to find an unfair practice, a review of the procedural posture, and allegations of the charge, is necessary.

On December 15, 2020, the Union filed a Charge of Unfair Practices with the Board alleging that the District violated Section 1201(a)(1) and (5) of PERA. In its Charge, the Union alleged, in relevant part, as follows:

2. On or about November 23, 2020, Tashell Jenkins, Investigative Officer for the District, contacted PFT member Alyse Weisbrod by email and advised her that the District had "received a complaint regarding conversations [Ms. Weisbrod] had during instruction on September 3, 2020." Ms. Jenkins advised Ms. Weisbrod that she wanted to schedule an interview, and that Ms. Weisbrod would have the right to PFT representation at that interview. (Email string attached hereto as Exhibit A, at 2).
3. On or about November 24, 2020, Suzanne Cataline, PFT Staff Representative, contacted Ms. Jenkins and requested additional information about the complaint so that she could meaningfully represent Ms. Weisbrod at the interview. Specifically,

Ms. Cataline requested more detail and a copy of any underlying complaint or allegation. (Exhibit A, at 1).

4. On or about November 25, 2020, Ms. Jenkins responded to Ms. Cataline stating only that the complaint concerns "an allegation of discrimination." Ms. Jenkins declined to produce any documentation in advance of the interview, stating "[t]his is not an investigatory conference; therefore, and pursuant to the District's discrimination policy, no documentation is presented at this stage as we are still gathering facts." (Exhibit A, at 1).

5. On or about November 28, 2020, Ms. Jenkins wrote to another PFT member, George Filip, asking to schedule an interview regarding allegations of inappropriate conduct, some of which was alleged to have occurred as far back as the 2015-16 school year. Ms. Jenkins advised Mr. Filip of his right to have PFT representation at the interview. (Exhibit B, at 3).

6. On or about November 30, 2020, LeShawna Coleman, PFT Staff Representative, wrote to Ms. Jenkins again requesting witness statements and objecting to the District conducting interviews without having provided necessary information to the PFT. Ms. Jenkins provided no additional information, except that the matter involved "a complaint of discrimination." Ms. Coleman again requested information "to ensure Mr. Filip's due process rights are maintained and in order to be able to provide him with proper representation." The District did not provide the requested information. (Exhibit B, at 1-2).

7. On November 30, 2020, the District conducted an interview with Ms. Weisbrod without having provided the requested information to the PFT. Upon information and belief, the District continues to schedule and conduct investigatory interviews without providing requested information necessary for representation to the PFT.

8. For decades prior to the [sic] Ms. Jenkins' November 25, 2020 refusal, the District and the PFT had always recognized that the furnishing of documents and information (including witness statements and underlying complaints) in advance of investigatory interviews was necessary to protect the due process rights of PFT members.

9. The District's failure to respond to the PFT's request for information necessary for the representation of its members constitutes an unfair labor practice under sections (a)(1) and (5) of the Pennsylvania Public Employe Relations Act.

(Charge of Unfair Practices filed December 15, 2020).

On February 5, 2021, the Secretary of the Board issued a letter declining to issue a complaint on the Union's Charge of Unfair Practices. In dismissing the Charge, the Secretary stated as follows:

Pursuant to Section 1201(a)(5) of PERA, a public employer is obligated to provide the employee representative with information

that is relevant to the processing of a grievance. However, prior to an alleged grievable disciplinary action by the employer, the union is generally not entitled to the employer's investigatory materials during the pendency of the investigation. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, Department of Corrections, Greene SCI, 34 PPER 52 (Final Order, 2003). Your Charge fails to indicate that the District's investigation has concluded or that the bargaining unit members have been disciplined. Further, the Pennsylvania Labor Relations Board has held that an employer does not have a duty to supply written witness statements obtained during the course of the employer's investigation of an incident. See AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Corrections, 17 PPER ¶ 17072 (Proposed Decision and Order, 1986); aff'd, 18 PPER ¶ 18057 (Final Order, 1987); aff'd sub nom., Commonwealth of Pennsylvania, Department of Corrections, State Correctional Institution at Muncy v. PLRB, 541 A.2d 1168 (Pa. Cmwlth. 1988); see also AFSCME, Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Department of Corrections, Graterford, 19 PPER ¶ 19039 (Final Order, 1988). Therefore, you have failed to state a cause of action under Section 1201(a) (5) of PERA.

(Secretary's Letter of February 5, 2021).

On February 23, 2021, the Union filed exceptions to the Secretary's dismissal of its Charge, stating, in relevant part, as follows:

1. Exception is taken to the Secretary's refusal to issue a complaint based on Sections 1201(a) (1) and (5) of the Pennsylvania Employee Relations Act ("PERA") because in refusing to provide requested information to PFT representatives, the District has unilaterally altered the decades-old established practice between the parties regarding information to be produced during investigatory interviews.

2. The PFT and the District are parties to a Collective Bargaining Agreement ("CBA"). The CBA requires the District have "just cause" to discipline bargaining members, and further provides members are entitled to certain due process procedures in connection with their employment. Affidavit of Denise Rogers ("Rogers Affidavit") at ¶¶ 4-5.

3. The CBA also contains an Article titled "Dispute Resolution," which provides, in part, that during the grievance procedure the PFT member, representative, and District all have "the opportunity and duty to present all documentary evidence and witnesses on which it relies." Id. at ¶ 6.

4. For at least the past several decades, the parties have mutually understood the CBA as requiring the District to provide information (including the underlying complaint or allegation) to PFT staff representatives prior to the District conducting investigatory interviews of PFT members. Id. at ¶ 7.

5. On November 23, 2020, Tashell Jenkins, Investigative Officer for the District, contacted PFT member Alyse Weisbrod

regarding the scheduling of an investigative interview. Suzanne Cataline, PFT Staff Representative, requested a copy of the underlying complaint against Ms. Weisbrod in order to provide proper representation at the investigative interview. The District did not produce the requested information. Id. at ¶ 8.

6. On November 28, 2020, Investigative Officer Jenkins contacted PFT member George Filip regarding the scheduling of an investigative interview. LeShawna Coleman, PFT Staff Representative, requested additional information to ensure Mr. Filip would have proper representation at the investigatory interview. The District did not produce the requested information. Id.

7. The District acknowledged in correspondence to the PFT members that each would have the right to PFT representation at the interviews. In refusing to provide information once it was requested by PFT representatives, Ms. Jenkins asserted the interview was "not an investigatory conference." Id. at ¶ 9.

8. In refusing to produce the information requested by PFT staff representatives, the District broke the established practice of providing information concerning the underlying complaint/allegation to PFT staff representatives in advance of investigatory interviews of PFT members. Id at ¶ 11.

(Union's Exceptions filed on February 23, 2021). The Union attached the Affidavit of Denise Rogers, special assistant to the Union president, which reiterated the allegations in its exceptions. Nowhere in the exceptions did the Union raise allegations concerning the District's use of labor relations officers to conduct the first-step investigatory interviews and alleged change to the disciplinary process. On April 20, 2021, the Board issued an Order Directing Remand to the Secretary for Further Proceedings, stating that the Union "provided additional factual allegations and clarification of the charge, ... which raised factual issues regarding the adequacy of the [District's] notice of the investigatory interview."

Initially, the record shows that the Union first became aware of the District's alleged change to the disciplinary process, including the assignment of labor relations officers to conduct first-step investigatory interviews, on November 23, 2020. (FF 24, 25). Therefore, the Union was required to file its Charge of Unfair Practices concerning this occurrence on or before March 23, 2021. Hazleton Area Education Support Professionals v. Hazleton Area School District, 45 PPER 20 (Final Order, 2013) (no continuing violation where alleged violation is inescapably grounded upon a prior occurrence). In that respect, a review of the Union's Charge of Unfair Practices filed on December 15, 2020 was limited to an allegation that the District committed an unfair practice by refusing to provide investigatory information prior to the first-step investigatory interview. Indeed, nowhere in the specification of charges is there any allegation that the District violated its duty to bargain for repudiating the parties' agreement concerning the disciplinary process nor is there any timely allegation of the use of labor relations officers to conduct the first-step investigatory interviews.

In the PDO, the Hearing Examiner noted that the specification of charges only alleged a failure to provide investigatory information, but then

went on to find that a statement made in an email attached as an exhibit to the December 15, 2020 Charge was sufficient to establish an allegation concerning the change to the disciplinary process. However, Section 95.31(b)(3) of the Board's Rules and Regulations requires that the specification of charges contain allegations concerning each specific action alleged to be a violation of PERA. Therefore, attachments to charges of unfair practices can only be considered as support for those causes of actions specifically alleged in the specification of charges, and not to support a cause of action that is not specifically raised in the charge.² Further, here, it is clear that the attachments to the December 15, 2020 Charge were included to support the Union's allegations of the District's refusal to supply requested investigatory documents.

Additionally, the Union's exceptions to the Secretary's dismissal of its December 15, 2020 Charge do not contain any allegations concerning the District's change to the disciplinary process, and only set forth further factual allegations to support its allegations that the District's refusal to supply investigatory information is a violation of its duty to bargain under PERA. Indeed, the Union raised this issue, for the first time, in the Amended Charge of Unfair Practices filed on May 19, 2022, which is well beyond the four month statute of limitations under Section 1505.³ Because this issue was not alleged in the Union's December 15, 2020 Charge, nor was a timely amendment made, the Hearing Examiner was without jurisdiction to entertain or conclude that the District committed an unfair practice by failing to comply with the parties' agreement concerning the disciplinary process.⁴

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board finds that the Union failed to timely raise its allegations concerning the District's change to the disciplinary process. Accordingly, the Board shall sustain the District's exceptions, set aside the Proposed Decision and Order consistent with the above discussion, and issue the following.

CONCLUSIONS

CONCLUSIONS 1 through 5 of the Proposed Decision and Order are affirmed and incorporated herein by reference.

CONCLUSIONS 6 through 8 are vacated and set aside and the following additional conclusion is made:

² In the cases relied on for the proposition that attachments to Charges of Unfair Practices can be considered part of the Specification of Charges, the attachments were utilized in those cases to clarify, not expand, the causes of action that were expressly raised in the Specification of Charges. See e.g. Williams v. Allegheny County, 29 PPER ¶ 29045 (Final Order, 1998).

³ The Board notes that the Union filed Amended Charges of Unfair Practices on June 15, 2021 and December 8, 2021. However, these Charges do not contain any allegations concerning the District's change to the disciplinary process.

⁴ Based upon the disposition of this matter, the Board need not address the District's remaining exceptions.

9. The District has not committed unfair practices within the meaning of Section 1201(a) (1) or (5) of PERA.

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 Philadelphia School District are hereby sustained, and the Order on pages 16-17 of the PDO is vacated. It is further Ordered that the Charge of Unfair Practices be and hereby is dismissed, and the Complaint issued thereon is rescinded.

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 April, 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.