

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

VINCENT A. RUSSO :
 :
 v. : Case No. PERA-C-23-230-W
 :
 PLUM BOROUGH EDUCATION :
 ASSOCIATION PSEA/NEA :

FINAL ORDER

Vincent A. Russo (Complainant) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on November 20, 2023. Complainant's exceptions challenge an October 31, 2023 decision of the Secretary of the Board declining to issue a complaint and dismissing Complainant's Charge of Unfair Practices filed against the Plum Borough Education Association PSEA/NEA (Association).

Complainant alleged in the Charge that the Association agreed to pay freezes in the new contract that harmed teachers with less seniority. Complainant asserted that the Association's actions in ratifying the new contract were a violation of Section 1201(b)(3) of the Public Employee Relations Act (PERA). In declining to issue a complaint and dismissing the Charge, the Secretary stated that Complainant does not have standing to allege a violation of Section 1201(b)(3) of PERA against the Association, as only a public employer has standing to allege such violation, citing PLRB v. AFSCME, AFL-CIO, 9 PPER ¶ 9088 (Nisi Decision and Order, 1978); Prinkley v. AFSCME District Council 84, 30 PPER ¶ 30186 (Final Order, 1999).

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, 392 A.2d 256 (Pa. 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, Complainant acknowledges that he lacks standing to allege a violation under Section 1201(b)(3) of PERA against the Association but asserts that "the [Board] and PERA may need to change their rules and regulations to adapt to changing times." The public policy of PERA is "to promote orderly and constructive relationships between ... public employers and their employees" by providing public employees the right to choose their bargaining representative and requiring the public employer to negotiate and enter into agreements with that representative. 43 P.S. § 1101.101. In that regard, Section 1201(b)(3) of PERA prohibits an employee organization from refusing to bargain in good faith with a public employer. 43 P.S. § 1101.1201(b)(3). However, a union's duty to bargain in good faith under Section 1201(b)(3) of PERA is owed to the public employer and not to individual members of the bargaining unit. AFSCME, AFL-CIO, supra.; Prinkley, supra; Varner v. PSSU, Local 668, SEIU, AFL-CIO, 26 PPER ¶ 26198 (Final Order, 1995).

Further, Complainant's claim that the Association is not representing certain employees by agreeing to pay freezes is not cognizable as an unfair practice under Section 1201(b)(3) of PERA. Case v. Hazelton Educational Support Personnel Association, PSEA/NEA, 928 A.2d 1154 (Pa. Cmwlth. 2007). Rather, those allegations concern a breach of the duty of fair representation, a claim over which courts, and not the Board, have exclusive jurisdiction to decide. Id. Therefore, 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 Vincent A. Russo are dismissed and the Secretary's October 31, 2023 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, James M. Darby, Chairman, Albert Mezzaroba, Member, and Gary Masino, Member, this sixteenth day of January, 2024. 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.