

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMALGAMATED TRANSIT UNION, :
LOCAL 1279 :
 :
v. : Case No. PERA-C-15-286-W
 :
CAMBRIA COUNTY TRANSIT AUTHORITY :

FINAL ORDER

The Amalgamated Transit Union, Local 1279 (Union) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on November 24, 2015. The Union's exceptions challenge a November 4, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Union's Charge of Unfair Practices filed against Cambria County Transit Authority (Authority).

The Union alleged in its Charge, as amended, that the Authority removed the water cooler from the break room after the Union processed a grievance to arbitration that was very costly for the Authority. The Union further alleged that the Authority refused to provide comfortable seating in the break room for its employees. The Union asserted that the Authority's actions were a violation of Section 1201(a)(1), (2), (6) and (8) of the Public Employe Relations Act (PERA).¹

The Secretary declined to issue a complaint and dismissed the Charge, stating that the Union failed to state a cause of action under Section 1201(a)(8) of PERA because its Charge did not contain any allegations that an arbitration award existed. The Secretary further stated that no violation of Section 1201(a)(6) of PERA could be found because the Union did not allege that the Authority refused to reduce a collective bargaining agreement to writing or to execute that agreement. The Secretary additionally indicated that the Union failed to allege sufficient facts for finding violations of Section 1201(a)(1) or (2) 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 Union alleges in its exceptions that an arbitration award was issued sustaining its grievance concerning the suspension of Eileen Zibura and that Article III, Section 1 of the parties' collective bargaining agreement requires the party that does not prevail before the arbitrator to pay all the fees and expenses of arbitration. The Union contends

¹ Section 1201(a) of PERA provides as follows:

Public employers, their agents or representatives are prohibited from:

(1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this act.

(2) Dominating or interfering with the formation, existence or administration of any employee organization.

...

(6) Refusing to reduce a collective bargaining agreement to writing and sign such agreement.

...

(8) Refusing to comply with the provisions of an arbitration award deemed binding under Section 903 of Article IX.

that the Authority is failing to comply with that arbitration award in violation of Section 1201(a) (8) of PERA by removing the water cooler from the break room in order to recoup the money it paid to satisfy its obligation under the parties' agreement to pay all the arbitration expenses.

When a complainant alleges a refusal to comply with a grievance arbitration award, the Board's inquiry is limited to determining whether (1) an award exists; (2) no appeal of the award has been filed or stay of the award issued; and (3) the respondent has failed to comply with the provisions of the arbitration award. **Teamsters Local 401 v. Hazle Township**, 38 PPER 157 (Final Order, 2007). The complainant bears the burden of establishing that the respondent has failed to comply with the arbitration award. **Governor Mifflin Education Association, PSEA/NEA v. Governor Mifflin School District**, 39 PPER 46 (Final Order, 2008).

Here, the Arbitrator sustained the Union's grievance and ordered the Authority to reduce Ms. Zibura's five-day suspension to six months of probation and to make her whole for all wages, seniority and benefits. However, the Union does not allege that the Authority has failed to do what was directed in the arbitration award. Rather, the Union alleges that the Authority is recouping its expenses under the parties' collective bargaining agreement by removing and no longer paying for the water cooler in the employees' break room. These allegations, even if proven, would not demonstrate a failure to comply with the arbitration award. Therefore, the Union has failed to state a cause of action under Section 1201(a) (8) of PERA, or a derivative violation of Section 1201(a) (1) of PERA.

The Union further alleges that the Secretary erred in dismissing its allegations under Section 1201(a) (1) of PERA because the Authority's removal of the water cooler and failure to provide comfortable seating in the employees' break room created a hostile environment and caused physical, mental and emotional difficulties for its employees.² The Board will find that an independent violation of Section 1201(a) (1) of PERA has occurred where, in light of the totality of the circumstances, "the employer's actions have a tendency to coerce a reasonable employee in the exercise of protected rights." **Fink v. Clarion County**, 32 PPER ¶ 32165 at 404 (Final Order, 2001). The Union alleges that the lack of a water cooler and comfortable seating in the break room interferes, restrains and coerces employees in their right to engage in discussions concerning collective bargaining. However, the absence of a water cooler and comfortable seating in the break room in no way prevents the employees from engaging in discussions concerning collective bargaining issues. Therefore, the Authority's actions would not tend to coerce a reasonable employee in exercising his or her protected rights under PERA. 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 Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Amalgamated Transit Union, Local 1279 are dismissed and the Secretary's November 4, 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 nineteenth day of January, 2016. 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.

² The Union does not challenge the Secretary's decision under Section 1201(a) (2) and (6) of PERA.