

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 776 :
 :
 v. : Case No. PERA-C-23-238-E
 :
 ADAMS COUNTY :

FINAL ORDER

Teamsters Local Union No. 776 (Complainant) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) on October 30, 2023, alleging that Adams County (County) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by cancelling a negotiation session and requesting a stay of interest arbitration. The background of this Charge stems from a Petition for Decertification filed on August 21, 2023, at Case No. PERA-D-23-186-E. On September 18, 2023, the Complainant filed a Charge of Unfair Practices alleging that the County had unlawfully assisted in the filing of the Decertification Petition in violation of Section 1201(a)(1) of PERA. That Charge was docketed at Case No. PERA-C-23-207-E and blocked further processing of the Decertification Petition pursuant to Section 95.58(b) of the Board's Rules and Regulations. In response to that Unfair Practices Charge, the County filed a Motion to Dismiss with the Hearing Examiner. By Order dated October 16, 2023, the Hearing Examiner denied the County's Motion to Dismiss. In the Order denying the County's Motion, based on the matters of record before him, the Hearing Examiner exercised his discretion under the Board's adaption of the Midwest Piping and Supply Co., 63 NLRB 1060 (1945), to suspend further negotiations between the Complainant and County for the bargaining unit employees subject to the Decertification Petition. On November 13, 2023, Complainant requested that the Hearing Examiner reconsider his Order denying the Motion to Dismiss insofar as he suspended negotiations. By Order dated November 16, 2023, the Hearing Examiner denied the Complainant's Motion for Reconsideration.

However, in between the Hearing Examiner's October 16, 2023 Order denying the County's Motion to Dismiss and Complainant's Motion for Reconsideration, the Complainant filed the instant Charge on October 30, 2023, docketed at Case No. PERA-C-23-238-E. The Complainant's October 30, 2023 Charge of Unfair Practices alleges that on October 24, 2023, the County violated Section 1201(a)(1) and (5) of PERA by cancelling a negotiation session and requesting that the neutral arbitrator suspend further interest arbitration proceedings based on the Hearing Examiner's October 16, 2023 Interlocutory Order in Case No. PERA-C-23-207-E.

By letter dated November 8, 2023, the Secretary of the Board declined to issue a complaint and dismissed the October 30, 2023 Charge of Unfair Practices. In declining to issue a complaint, the Secretary stated as follows:

It is noted that the Union filed a charge on September 18, 2023, against the County at Case No. PERA-C-23-207-E, which blocked a Petition for Decertification filed August 21, 2023, at Case No. PERA-D-23-186-E. However, following a Motion to Dismiss filed by the County on October 6, 2023, the assigned hearing examiner issued an order on October 16, 2023, holding that under Midwest Piping and Supply Co., 63 NLRB 1060 (1945), the employer was precluded from engaging in interest arbitration during the pendency of the Petition for Decertification. The County is not refusing to bargain in good faith by following the Hearing Examiner's interlocutory order. Accordingly, no complaint will be issued, and your Charge is dismissed.

On November 27, 2023, Complainant filed timely exceptions with the Board challenging the Secretary's November 8, 2023 decision not to issue a complaint. Following an extension of time granted by the Secretary, Complainant filed a brief in support of the exceptions on January 8, 2024.

It is well-established that the decision of whether or not to issue a complaint regarding alleged violations of PERA is not a matter of right, but within the sound discretion of the Board. Association of Pennsylvania State College and University Faculties v. PLRB, 8 A.3d 300 (Pa. 2010). The Complainant's October 30, 2023 Charge of Unfair Practices is an impermissible collateral attack on the Hearing Examiner's October 16, 2023 Interlocutory Order in Case No. PERA-C-23-207-E. See Erie County, 29 PPER ¶ 29239 (Final Order, 1998). The Board's Rules and Regulations provide a clear and concise avenue for Board review of a hearing examiner's interlocutory order following issuance of a proposed decision and order. 34 Pa. Code §95.98(a)(1); Crestwood Educational Support Personnel Association v. Crestwood School District, PERA-C-23-159-E (Order, January 16, 2024) (dismissing exceptions to an interlocutory order of the hearing examiner, without prejudice, to be reasserted on exceptions once a proposed decision and order has been issued). Accordingly, the Complainant's allegations in the October 30, 2023 Charge of Unfair Practices that the Hearing Examiner erred in applying Midwest Piping to suspend negotiations and interest arbitration during the Decertification Petition may only be raised on exceptions to the Proposed Decision and Order issued in Case No. PERA-C-23-207-E.¹

Upon a thorough review of the exceptions and all matters of record pending before the Board, the Charge of Unfair Practices filed on October 30, 2023 is an impermissible means to challenge an interlocutory order of the hearing examiner under the Board's Rules and Regulations. Accordingly, the Secretary did not err or abuse his discretion in declining to issue a complaint and dismissing the Charge. Thus, the Complainant's exceptions shall be dismissed and the Secretary's November 8, 2023 decision will be sustained.

¹ We note that a Proposed Decision and Order in Case No. PERA-C-23-207-E was issued on January 10, 2024, and Complainant has filed timely exceptions thereto on January 29, 2024.

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 the Teamsters Local Union No. 776 are hereby dismissed, and the Secretary's November 8, 2023 decision declining to issue a complaint and dismissing the Charge of Unfair Practices filed on October 30, 2023, 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, Albert Mezzaroba, Member, and Gary Masino, Member, this twentieth day of February, 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.