

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DR. MARY ANN DAILEY,

Petitioner,

v.

**PENNSYLVANIA LABOR RELATIONS
BOARD,**

Respondent.

**Appeal from a Final
Determination of the
Pennsylvania Labor
Relations Board (Case No.
PERA-C-15-131-E)**

___ CD 2015

PETITION FOR REVIEW

Petitioner Dr. Mary Ann Dailey (“Dr. Dailey”), by and through undersigned counsel, files this petition, pursuant to Pennsylvania Rule of Appellate Procedure 1511, to vindicate her rights as a public employee and the public’s right to enforcement of the law.

JURISDICTION

1. Dr. Dailey appeals from a determination of Respondent Pennsylvania Labor Relations Board (“PLRB”). Specifically, Dr. Dailey seeks reversal of the PLRB’s Final Order in Case No. PERA-C-15-131-E, entered on February 16, 2016, and dismissing her charge of unfair labor practices against the Association of Pennsylvania State College and University Faculties (“APSCUF”). A true and

correct copy of the Final Order is attached hereto as Exhibit A and incorporated herein by reference.

2. Jurisdiction is proper in this Court pursuant to the Judicial Code, 42 Pa.C.S. § 763(a).

PARTIES

3. Petitioner Dr. Dailey is an Associate Professor of nursing at Slippery Rock University and a member of APSCUF since 2006. As a member of APSCUF, Dr. Dailey is obligated to pay union dues in order to keep her job.

4. Respondent PLRB is an administrative agency of the Commonwealth of Pennsylvania and charged with enforcement of, among other statutes, the Public Employee Relations Act (“PERA”), 43 P.S. §§ 1101.101-1101.2301.

GROUND FOR REVERSAL

5. The PLRB erred in concluding that APSCUF’s dues rebate campaign—which involves the artificial inflation of union dues amounts—and APSCUF’s related actions do not constitute unfair labor practices.

6. The PLRB also erred in finding that APSCUF’s dues rebate campaign and related actions were outside the scope of the PLRB’s jurisdiction.

WHEREFORE, Dr. Dailey respectfully requests that this Court reverse the PLRB’s Final Order, determine that APSCUF engaged in an unfair labor practice,

and remand to the PLRB to take action it deems appropriate to remedy the violation.

Respectfully submitted,

THE FAIRNESS CENTER

Date: March 17, 2016

A handwritten signature in black ink, appearing to read "David R. Osborne", is written over a solid horizontal line.

David R. Osborne

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EXHIBIT A



COMMONWEALTH OF PENNSYLVANIA

February 16, 2016

David R. Osborne, Esquire
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James L. Cowden, Esquire
Strokoff & Cowden
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ASSOCIATION OF PENNSYLVANIA STATE
COLLEGE & UNIVERSITY FACULTIES
Case No. PERA-C-15-131-E

Enclosed is a copy of the Order issued by the Board in the above-captioned matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry D. Cheskawich".

Larry D. Cheskawich
Board Secretary

cf

Enclosure

cc: Dr. Mary Ann Dailey
✓ Karin M. Sweigart
Association of Pennsylvania State
College of University Faculties

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MARY ANN DAILEY :
 :
 v. : Case No. PERA-C-15-131-E
 :
 ASSOCIATION OF PENNSYLVANIA STATE :
 COLLEGE AND UNIVERSITY FACULTIES :

FINAL ORDER

Mary Ann Dailey (Complainant) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 6, 2015. The Complainant's exceptions challenge a June 16, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Complainant's Charge of Unfair Practices filed against the Association of Pennsylvania State College and University Faculties (APSCUF).

The Complainant alleged in the Charge that APSCUF holds an annual dues rebate campaign in which union members may elect to donate \$25 of their already collected dues to APSCUF's political action committee, allow the \$25 to remain in APSCUF's dues fund or receive a rebate of \$25. The Complainant asserted that APSCUF's dues rebate campaign violates Section 1201(b)(1) of the Public Employe Relations Act (PERA) and that APSCUF's willingness to offer the dues rebate demonstrates that it is overcharging the union members \$25 a year in dues.

In declining to issue a complaint, the Secretary stated that the Complainant's allegations did not rise to the level of an unfair practice under Section 1201(b)(1) of PERA. The Secretary further stated that the Board lacks jurisdiction over the Complainant's allegations because they involve internal union matters and APSCUF's duty of fair representation to its members. Therefore, the Secretary dismissed the Complainant's Charge.

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 Complainant alleges in the exceptions that the Secretary erred in dismissing the Charge because the dues rebate campaign coerces her into financially assisting APSCUF beyond what is required under the maintenance of membership provision in the parties' collective bargaining agreement. In this regard, the Complainant asserts that the \$25 remains in APSCUF's dues fund if the members do not respond within the deadline for the dues rebate. The Complainant further asserts that she did not receive the dues rebate election form in 2015 until after the deadline, and thus her dues remained in APSCUF's dues fund.

Pursuant to Section 401 of PERA, public sector employes have the right to choose to become union members or to refrain from doing so. 43 P.S.

§ 1101.401. Section 1201(b)(1) of PERA provides that an employe organization is prohibited from "[r]estraining or coercing employes in the exercise of the rights guaranteed in Article IV of [PERA]." 43 P.S. § 1101.1201(b)(1). Nothing in the Complainant's Charge supports the notion of restraint or coercion for the stated purpose that would give rise to a violation of Section 1201(b)(1) of PERA.

The Complainant alleges that the dues rebate campaign coerces her into financially assisting APSCUF. However, the payment of membership dues is a corollary to an employe's decision to become a union member and the Complainant alleged that she has been a member of APSCUF since 2006 thereby consenting to the payment of membership dues. Further, the Complainant alleged that APSCUF's dues rebate campaign provides the employes with the option of either donating the \$25 to APSCUF's political action committee, allowing the \$25 to remain in APSCUF's dues fund, receiving a rebate or choosing not to fill out the dues rebate form altogether. Since at least 2012, the employes' rebate election made by April 1 of any given year was effective "during the current fiscal year and on any subsequent occasion." (Exhibit F). Because APSCUF's dues rebate campaign does not affect membership rights and provides the employes with options regarding disposition of the rebate, the Complainant has failed to state a cause of action under Section 1201(b)(1) of PERA.

With regard to the Complainant's allegation that APSCUF is overcharging its members \$25 in dues in order to offer the rebate, the amount of dues charged union members is an internal union matter over which the Board does not have jurisdiction. See Rudnick v. AFSCME District Council 47, 29 PPER ¶ 29144 (Final Order, 1998) (employe's claim involving union's denial of access to names and addresses of members who overpaid dues was an internal union matter not within the Board's jurisdiction). Further, the Complainant's allegations make clear that only voluntary contributions are forwarded to APSCUF's political action committee, and the Complainant's general allegation that APSCUF is utilizing membership dues for an unauthorized purpose does not fall within the scope of unfair practices set forth in Article XII of PERA. See Borough of Ambridge v. Local Union 1051, AFSCME, 17 PPER ¶ 17075 (Final Order, 1986) (Board has authority to remedy only those acts that constitute a violation of Article XII); see also PLRB v. Mangino, 3 PPER 330 (Nisi Order of Dismissal, 1973) (same). 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 Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Mary Ann Dailey are dismissed and the Secretary's June 16, 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 sixteenth day of February, 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Petition for Review and referenced exhibit, filed on behalf of Petitioner Dr. Dailey, has on this date been served as follows:

Larry D. Cheskawich, Board Secretary (*certified mail*)
Pennsylvania Labor Relations Board
651 Boas Street, Room 418
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James L. Cowden (*first class mail*)
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Date: March 17, 2016



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