

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

BLACKHAWK EDUCATION ASSOCIATION, :  
PSEA/NEA :  
 :  
v. : Case No. PERA-C-14-58-W  
 :  
BLACKHAWK SCHOOL DISTRICT :

**FINAL ORDER**

Blackhawk School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (PLRB or Board) on October 30, 2014, to a Proposed Decision and Order (PDO) issued on October 10, 2014, in which the Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). The Blackhawk Education Association, PSEA/NEA (Association) filed a brief in response to the exceptions on November 20, 2014. The Findings of Fact (FF) set forth by the Hearing Examiner in the PDO are summarized as follows.

The Association and the District were parties to a collective bargaining agreement dated September 1, 2009 through August 31, 2013, which was extended by mutual agreement of the parties until August 31, 2014. (FF 4). In early June 2013, the Association's Representative Council voted to approve the initiation of early bird negotiations with the District. (FF 5). The Association's President, Jarrod McCowin, explained that this was the first time he was involved in negotiations for a collective bargaining agreement. (FF 5). Mr. McCowin testified that the Association "saw the potential to get to work early on contracts. The previous two contracts that had been negotiated went through full-blown negotiations and nothing was settled by the time the old contracts had expired. So in both cases a new school year had started under ... the ... status quo ... without a new contract. [W]ith that little bit of history, we were hoping to get started early and keep things simple. Get things done in a timely manner. And personally as a teacher, I have a lot more time to get to work on that in June and July than during the school year. So it was advantageous for all of us in terms of being able to meet." (FF 6). Mr. McCowin understood that while "normal negotiations begin in January of the last year of the contract, ... if the two parties agree to the idea, they can meet any time before that to try to come to an early bird agreement." (FF 5).

Accordingly, Mr. McCowin sent correspondence to the District's Superintendent, Dr. Michelle Miller, requesting to commence early bird negotiations for a successor agreement. (FF 5). In July 2013, Mr. McCowin and Negotiations Chairperson Anita Mensch on behalf of the Association, and School Board members Donald Inman, Chad Calabria, and Paul May on behalf of the District, began the negotiations for a successor collective bargaining agreement. (FF 7). After at least seven meetings, those representatives reached a tentative agreement with respect to a successor agreement, with a term from September 1, 2014 through August 31, 2018. (FF 7).

On September 19, 2013, the Association's membership ratified the tentative agreement. On the same date, the District's School Board voted to approve the tentative agreement by a vote of seven in favor, to two opposed. Specifically, those voting in favor were: Chad Calabria, Bob Clendennen, Jamie Fitzgerald, Paul Heckathorn, Donald Inman, Paul May, and Richard Oswald; those who voted no were: Dean Fleischman and Lance Rose. (FF 8).

Thereafter, in the November 2013 general election one school board member was reelected (Fleischman), and three new school board members were elected to the remaining seats (Helsing, Pander, and Yonkee). An additional school board member (Clendennen), who was not up for reelection, resigned after the general election took place in November 2013 and was replaced by appointment. (FF 9).

The new School Board held its organizational meeting in December 2013. On January 16, 2014, the District held a regular School Board meeting during which no action was

taken concerning the 2014-2018 collective bargaining agreement. (FF 10). On February 14, 2014, the District's School Board voted to pass a Resolution on Revocation in which it rescinded the prior approval of the 2014-2018 collective bargaining agreement. (FF 11). Specifically, in reference to the approval of the 2014-2018 CBA, the Resolution states, in relevant part:

- (5) On the basis of legal advice provided by the present District Solicitor, this (School) Board believes that the purported contract approval made as noted above was contrary to applicable Pennsylvania law, and is therefore invalid.
- (6) Such purported approval is hereby revoked, and the previous (School) Board action thereon is hereby vacated.
- (7) The District Solicitor is hereby authorized and directed to take such actions as he deems necessary or proper to implement this resolution.

(FF 12). The Association subsequently filed a Charge of Unfair Practices against the District that was the subject of a PLRB hearing on April 24, 2014, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

On June 9, 2014, after the close of the hearing, the District moved to reopen the record to introduce alleged after-discovered evidence of bad faith intentions of the "early bird" negotiations. The Hearing Examiner declined to reopen the record because the District's evidence was not new and would not compel a different result. The District argues on exceptions that the Hearing Examiner erred in failing to reopen the record.

Following the close of the testimony, a hearing examiner may reopen the record for taking of additional evidence where the evidence sought to be admitted: (1) is new; (2) could not have been obtained at the time of hearing through the exercise of due diligence; (3) is relevant and non-cumulative; (4) is not for the purpose of impeachment; and (5) is likely to compel a different result. **Teamsters Local 205 v. Peters Creek Sanitary Authority**, 34 PPER ¶ 27 (Final Order, 2003) (citing **Minersville Area School District v. Minersville School Service Personnel Association**, 518 A.2d 874 (Pa. Cmwlth. 1986)). After the hearings had closed, the District sought to reopen the record to admit a litany of emails purporting to evidence bad faith on the part of the Association and prior school board members in negotiating the "early bird" contract. On exceptions, the District claims that the emails were not obtained during the hearings because they needed to be recovered from computer files and placed into a readable format for printing. However, as reflected in the Findings of Fact, the District was aware of the negotiations and email exchanges between Mr. McCowin and members of the School Board prior to the close of record. (FF 5 and 7). Further, as noted by the Hearing Examiner, despite knowledge of the email communications, the District never sought a continuance of the hearing or requested that the record remain open until the emails could be recovered, examined, and if necessary, introduced into the record in a timely fashion. Accordingly, the Hearing Examiner did not err in declining to reopen the record, as the evidence sought to be admitted by the District is not new and could have been discovered and introduced prior to the close of the record through exercise of due diligence. As such, the District's exceptions to the Hearing Examiner's refusal to reopen the record are dismissed.

The District argues on exceptions that school board members who lose in the primary election in May should immediately be deemed "lame ducks" and have their votes excluded on any matter coming before the school board in the last seven months of their term in office. However, as discussed by the Hearing Examiner, we have found no cases holding that members of a school board who have been defeated in a primary election are in "lame duck" status as of the date of the primary. To the contrary, it has been consistently held that "the notion of 'lame duck' boards normally applies in instances of last-minute contracts or contracts executed near the end of the board members' terms." **Chichester School District v. Chichester Education Association**, 750 A.2d 400, 404 (Pa. Cmwlth.

2000), *appeal denied*, 568 Pa. 668, 795 A.2d 980 (2000); **AFSCME, District Council 83 v. Summit Township**, 41 PPER 29 (Final Order, 2010); **International Association of Machinists and Aerospace Workers Local 243 v. Stewartstown Borough**, 44 PPER 9 (Final Order, 2012); **Teamsters Local Union No. 205 v. Borough of Plum**, 33 PPER ¶33077 (Proposed Decision and Order, 2002).

It is entirely within reason, and sound policy for the stability of labor relations, to hold that for purposes of determining "lame duck" status, "last-minute" does not entail the period of time between the primary election in May and the general election in November. Indeed, this policy is consistent with the Commonwealth Court's holding in **Burns v. Uniontown Area School District**, 748 A.2d 1263 (Pa. Cmwlth. 2000), wherein the court stated as follows:

Although District characterizes the then-sitting July 1997 Board as a "lame-duck" board, this term has no basis in the School Code. Such a political distinction has no basis in law in determining the rights, duties and obligations of a duly elected board fulfilling duties for their full term. On the contrary, even though some members of the July 1997 Board may not have been nominated for reelection in their respective party, at the time of the July 1997 Board action upon the expiring term of the superintendent, the sitting Board, although not mandated to do so, was fully empowered under the School Code to make that decision as part of their duties to fulfill their existing term.

Id. at 1269 - 1270.

The District argues that the holding of **Burns** is limited to the facts of that case and a school board vote to retain a superintendent, and that **Lobolito, Inc. v. North Pocono School District**, 755 A.2d 1287 (Pa. 2000) controls the facts of this case. In **Burns**, the Commonwealth Court recognized that the School Code's procedures for the retention of a superintendent reflected a legislative policy to allow an outgoing school board to renew a superintendent's contract for a period of three to five years to commence after the school board members left office. The Court in **Burns** upheld the statutory authority of a school board to enter into a multi-year contract over the common-law approach against binding successor governing bodies set forth in **Lobolito**. Recognizing the inherent conflict of giving effect to both a legislative policy favoring agreements and the common-law approach in **Lobolito**, the Pennsylvania Supreme Court in **Program Administration Services, Inc. v. Dauphin County General Authority**, 593 Pa. 184, 928 A.2d 1013 (2007), sided with **Burns**, and restricted the ability of a successor governing board to rescind contracts that had been entered into by non-lame duck board members in accordance with a statutory policy. The Supreme Court expressly held that "[t]o the extent ... legislative policy is in tension with the competing common-law concern relating to the freedom of a new board to respond to popular pressures, the latter must yield to the former". **Program Administration Services, Inc.**, 928 A.2d at 1019.

Legislative policy favoring continuity of labor relations spanning changes in the composition of a school board is clearly reflected in PERA. See **Chichester School District v. Chichester Education Association**, 750 A.2d 400 (Pa. Cmwlth. 2000). While PERA and Act 88 provide the procedures for resolution of impasses, those procedures are in place to ensure bargaining, not to preclude negotiations. See **Central Dauphin School District v. Central Dauphin Bus Drivers' Association**, 996 A.2d 47 (Pa. Cmwlth. 2010). Indeed, PERA and Act 88 allow an employer and employe organization to commence negotiations for successor agreements at any time, including "early bird" negotiations, and once negotiations have commenced, the parties are legally bound to negotiate with the intent and desire to reach a final agreement. **Morrisville School District v. PLRB**, 687 A.2d 5, 8 (Pa. Cmwlth. 1996), *petition for allowance of appeal denied*, 549 Pa. 708, 700 A.2d 445 (1997) ("[g]ood faith bargaining requires the parties to make a serious effort to resolve differences and to reach common ground").

Further evidence of the legislative policy favoring stability in employe relations despite changes in an employer's governing board, is reflected in Section 901, which

within a constitutional framework, provides that provisions of a collective bargaining agreement that require a legislative enactment may be deemed advisory. In requiring the necessity of a "legislative enactment", the General Assembly clearly intended that more than the common-law whim of a successor governing body is required to repudiate a collective bargaining agreement with its employes. See **International Brotherhood of Firemen and Oilers, Local 1201 v. Board of Education of the School District of Philadelphia**, 500 Pa. 474, 457 A.2d 1269 (1983) (holding that district bears the burden of establishing the impossibility of performance); see also **Teamsters Local Union No. 205 v. City of McKeesport**, 17 PPER ¶17041 (Final Order, 1986) (equating Section 901 to the legislative enactment requirements necessary under Section 805 of PERA); **AFSCME, District Council 33, Local 1637 v. City of Philadelphia**, 22 PPER ¶22140 (Proposed Decision and Order, 1991) (same). Thus, the General Assembly in PERA and Act 88 recognized, as a matter of sound labor policy, that a school district could and may lawfully enter into a binding collective bargaining agreement with the employes' representative for a term beyond that of the members of the school board. See **Program Administration Services, Inc., supra**.

After a thorough review of the exceptions and all matters of record, we find that the District was bound by the September 19, 2013 collective bargaining agreement lawfully negotiated and entered into in accordance with the provisions and policies of PERA. See **Program Administration Services, Inc., supra**. In this regard, we find that School Board members Chad Calabria, Jamie Fitzgerald, and Donald Inman, although defeated in the primary election, were not "lame ducks" on September 19, 2013, and thus the duly recorded seven affirmative votes of the School Board were sufficient under Section 5-508 of the School Code to ratify the collective bargaining agreement on September 19, 2013.<sup>1</sup>

Accordingly, the Hearing Examiner did not err in concluding that the District's January 16, 2014 rescission of the collective bargaining agreement entered into by the District on September 19, 2013, was an unlawful repudiation in violation of Section 1201(a)(1) and (5) of PERA. See **Chichester School District, supra**. The District's exceptions to the October 10, 2014 PDO are therefore dismissed, and the Findings of Fact, Conclusions of Law and Proposed Order of the Hearing Examiner, shall be made final.

#### 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 Blackhawk School District are hereby dismissed, and the October 10, 2014 Proposed Decision and Order, 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, L. Dennis Martire, Chairman, Robert H. Shoop, Jr, Member, and Albert Mezzaroba, Member this seventeenth day of February, 2015. 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.

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<sup>1</sup> Because we have found that the school board was not a "lame duck" board on September 19, 2013, we need not address the District's exceptions to the Hearing Examiner's alternative discussion of the voting requirements under Section 5-508 of the School Code, as the collective bargaining agreement was properly ratified by seven affirmative votes constituting a majority of all the school board members.

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Case No. PERA-C-14-58-E

**AFFIDAVIT OF COMPLIANCE**

The Blackhawk School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has made the Association whole for any lost wages and/or benefits, plus six percent per annum interest on the amount as a result of the District's unlawful rescission of the 2014-2018 CBA; and that it has served an executed copy of this affidavit on the Blackhawk education Association at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

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Signature of Notary Public