COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA DOCTORS ALLIANCE	:	
	:	
v.	:	Case No. PERA-C-10-441-E
	:	
COMMONWEALTH OF PENNSYLVANIA AND	:	
STATE SYSTEM OF HIGHER EDUCATION	:	

PROPOSED DECISION AND ORDER

On December 17, 2010, the Pennsylvania Doctors Alliance (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania and the State System of Higher Education (Employers or Respondents) alleging that the respondents violated Sections 1201(a)(1),(5),(6) and (9) of the Public Employe Relations Act (PERA).

On January 4, 2011, the Secretary of the Board issued a Complaint and Notice of Hearing in which April 12, 2011, in Harrisburg was scheduled as the time and place of hearing.

The parties requested a continuance of the hearing to either resolve the matter in dispute or to submit a stipulation of facts. On July 15, 2011, the parties filed a stipulation of facts.

The examiner, on the basis of the stipulation of facts and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Pennsylvania Doctors Alliance, affiliated with Doctors Council, Service Employees International Union, is an employe organization within the meaning of the Act, and has served as the certified collective bargaining agent and representative for units of rank and file employees and first level supervisors employed by the Commonwealth and by the State System of Higher Education since 1971. (Stipulation of Fact).

2. Respondents Commonwealth of Pennsylvania and State System of Higher Education are employers within the meaning of the Act. (Stipulation of Fact).

3. The employees represented by the Union are the full time and permanent part-time physicians, psychiatrists, dentists and podiatrists employed by the Commonwealth and the SSHE. Bargaining unit and meet and discuss members are employed in a number of the Commonwealth's Departments, and in several universities of the SSHE. (Stipulation of Fact).

4. The parties to this proceeding have been parties to a series of Collective Bargaining Agreements and Memoranda of Understanding since 1971. (Stipulation of Fact).

5. The latest Agreement and Memorandum of Understanding between the parties were effective from July 1, 2005 through June 30, 2009. (Stipulation of Fact).

6. Prior to the expiration of the last Agreement and Memorandum of Understanding, the Union sent all notices required by the Act in preparation for negotiating a new contract and meeting and discussing a Memorandum of Understanding. (Stipulation of Fact).

7. The parties, through their representatives, engaged in a number of negotiating and meet and discuss sessions during 2009 and 2010. (Stipulation of Fact).

8. At the session held on July 29, 2010, the parties reached agreement over the terms of a new Agreement and Memorandum of Understanding. (Stipulation of Fact).

9. On August 20, 2010, the Union notified the Commonwealth and SSHE that the Agreement and Memorandum of Understanding had been ratified by the Union's members. (Stipulation of Fact).

10. In the history of bargaining between the parties, the Commonwealth has customarily prepared the actual documents embodying the terms agreed to. The written Agreement and Memorandum of Understanding are then approved and signed by the parties. (Stipulation of Fact).

11. In 2010 and 2011, the Union was told by the Commonwealth that it was working on preparing the contract documents. (Stipulation of Fact).

12. Neither the Commonwealth nor SSHE has ever told the Union that it believed there was no agreement reached. (Stipulation of Fact).

13. To date, the Respondents have not implemented any of the terms of the Agreement or Memorandum of Understanding. (Stipulation of Fact).

14. The parties' agreement provided for the payment by the Commonwealth of retroactive and wage and step increases effective between July 2, 2009 and July 1, 2010, and an additional step increase effective January 2011; and for the payment by SSHE of a one-time lump sum payment which would not be part of base salary for employees in active pay status on July 1, 2010. Also as part of the agreement, the parties agreed to a wage reopener effective July 1, 2011. (Stipulation of Fact).

15. Pursuant to that Agreement, the Union has sent notification to the Commonwealth and SSHR requesting reopener negotiations over wages. There was no response from the Commonwealth or SSHE to this request until April, 2011, when the parties agreed to continue negotiations at a later date. (Stipulation of Fact).

DISCUSSION

The Pennsylvania Doctors Alliance is the exclusive representative of physicians, psychiatrists, dentists and podiatrists employed by the Commonwealth of Pennsylvania and the State System of Higher Education. The rank and file employes are in a bargaining unit; the supervisors are in a meet and discuss unit. The Union has been party with the Commwonwealth and SSHE for a series of collective bargaining agreements for the rank and file employes and a series of memoranda of understanding for the supervisors.

The Union's charge of unfair practices alleges the employers violated four separate sections of Section 1201(a) as a result of refusing to reduce to writing a collective bargaining agreement and a memorandum of agreement that were reached over a year ago, on July 29, 2010.

The first allegation to be discussed is the charge that the employers violated Section 1201(a)(6) of PERA, which prohibits public employers from "[r]efusing to reduce a collective bargaining agreement to writing and sign such agreement. " 43 P.S. 1101.1201(a)(6).

A public employer violates Section 1201(a)(6) of PERA when it refuses to reduce a collective bargaining agreement to writing and sign such agreement. As stated by the Board in Abington School District, 11 PPER ¶ 11126 (Final Order, 1980):

> Section 1201(a)(6) can be violated only if the parties have, in fact, reached an agreement and the employer refuses to execute a written contract. If there are genuine differences of opinion as to the substance of the understanding, the employer will not commit a section 1201 (a)(6) violation by refusing to sign a contract. Tussey Mountain School District, 8 PPER ¶ 332 (1977).

A violation of Section 1201(a)(6) presupposes the existence of a collective bargaining agreement requiring only reduction to a written, executed contract. Abington School District, supra at 303.

In Lebanon School District, 8 PPER 121 (Nisi Decision and Order, 1977), the Board found that an employer violated Section 1201(a)(6) when it was dilatory in reducing a

collective bargaining agreement to writing that it tentatively agreed to in August, 1976 but did not hand to the union until the unfair practice hearing in December, 1976.

In the present case, the stipulation reveals no genuine differences of opinion as to the substance of the understanding. Despite this, the employers still have not reduced to writing the collective bargaining agreement and the memorandum of understanding. Accordingly, the employers must be found to have violated Section 1201(a)(6) for refusing the reduce to writing the terms of the agreement and the memorandum of understanding that were agreed to on June 29, 2010,

The Union also has charged the employers with two distinct violations of Section 1201(a)(5): refusing to implement the terms of the agreement and refusing to bargain over the wage reopener that was part of the agreement.

Section 1201(a)(5) of PERA prohibits public employers from "[r]efusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative." 43 P.S. 1101.1201(a)(5).

The first part of the refusal to bargain charge, that the employer refused to implement the terms of the agreement, is actually an allegation that that the employers repudiated the agreement. An employer violates sections 1201(a)(5) if it repudiates a provision in a collective bargaining agreement. Millcreek Township School District v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1993). The parties stipulation of fact, at paragraphs 13 and 14, show that the employers have not implemented the terms of the agreement. This failure to implement includes the Commonwealth not making the payment of retroactive and wage and step increases effective between July 2, 2009 and July 1, 2010, and an additional step increase effective January 2011; and SSHE not making a one-time lump sum payment which would not be part of base salary for employees in active pay status on July 1, 2010. These are instances of repudiating the agreement. Based on the stipulation of fact, the employers will be found to have violated Section 1201(a)(5) for refusing to implement the terms of the agreement.

The second part of the Section 1201(a)(5) charge is the allegation that the employers have refused to bargain with the union over the July 1, 2011 wage reopener. The stipulation shows that initially there was no response from the Commonwealth or SSHE to the request to bargain, but that in April, 2011, "the parties agreed to continue negotiations at a later date."

In City of Philadelphia, 29 PPER ¶ 29149 (Final Order 1998), the Board dismissed as moot a charge alleging that an employer committed unfair practices by refusing to commence collective bargaining in a timely fashion. Noting that the parties had proceeded to interest arbitration, the Board explained that "[i]t is generally well accepted that charges of unfair practices contesting refusals to collectively bargain are rendered moot by the subsequent performance of the collective bargaining obligation." 29 PPER at 347 (citations omitted).

In the present case, the stipulation of fact shows that the parties have agreed to continue their negotiations for the wage reopener at a later date. The employers have changed their position from not responding to the Union's request to agreeing to continue negotiations to a later date. This change of position from the date the charge was filed leads to the conclusion that the employers are performing their bargaining obligations with regard to the wage reopener. Therefore, this part of the Section 1201(a)(5) refusal to bargain charge is moot.

Next, the Union has also charged the two employers with violating Section 1201(a)(9) of PERA which prohibits public employers from "[r]efusing to comply with the requirements of 'meet and discuss.'" 43 P.S. 1101.1201(a)(9). Section 301(17) of PERA states " 'Meet and discuss' means the obligation of a public employer upon request to meet at reasonable times and discuss recommendations submitted by representatives of public employes: Provided, That any decisions or determinations on matters so discussed shall remain with the public employer and be deemed final on any issue or issues raised." 43 P.S. 1101.301(17).

The parties' stipulation of fact states that the parties have agreed to continue negotiations in the future. From this, I am inferring that the negotiations will also encompass the meet and discuss required by PERA for the supervisory unit. Because the parties will be meeting and discussing at a future date, the Section 1201(a)(9) charge is also moot for the same reason set forth in the discussion above concerning the second part of the Section 1201(a)(5) charge. The Section 1201(a)(9) charge will be dismissed.

Finally, the Union has charged that the two employers' conduct violates Section 1201(a)(1) of PERA, which prohibits public employers from "[i]nterfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this Act." 43 P.S. 1101.1201(a)(1).

In Millcreek Township School District, supra., the Hearing Examiner, who was affirmed by the Board, found that the District's repudiation of the agreement also constituted a derivative violation of Section 1201(a)(1) of PERA. In the present case, where the employers have been found to have violated Section 1201(a)(5) of PERA, the same legal conclusion will apply. Accordingly, the employers' conduct constitutes a derivative violation of Section 1201(a)(1) of PERA.

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That the Commonwealth of Pennsylvania is a public employer within the meaning of Section 301(1) of PERA.

2. That the State System of Higher Education is a public employer within the meaning of Section 301(1) of PERA.

3. That the Doctors Alliance is an employe organization within the meaning of Section 301(3) of PERA.

4. That the Board has jurisdiction over the parties hereto.

5. That the Commonwealth of Pennsylvania and the State System of Higher Education have committed unfair practices in violation of Sections 1201(a)(1),(5) and (6) of PERA.

6. That the Commonwealth of Pennsylvania and the State System of Higher Education have not committed unfair practices in violation of Section 1201(a)(9) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

that the Commonwealth of Pennsylvania and the State System of Higher Education shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Cease and desist from refusing to reduce a collective bargaining agreement to writing and sign such agreement.

4. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Immediately deliver to the Doctors Alliance an executed collective bargaining agreement and memorandum of understanding that were agreed to in 2010;

(b) Immediately implement the terms of the collective bargaining agreement and the memorandum of understanding;

(c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place, readily accessible to employes in the units at issue in this case, and have the same remain so posted for a period of ten (10) consecutive days.

(d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing one of the attached Affidavits of Compliance; and

(e) Serve a copy of the completed affidavit of compliance upon the Union.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this eighth day of August, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner