

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLIANCE OF CHARTER SCHOOL :
EMPLOYEES, LOCAL 6056, AFT-PA, :
AFT, AFL-CIO :
v. : Case No. PERA-C-12-210-E
MULTI-CULTURAL ACADEMY :
CHARTER SCHOOL :

PROPOSED DECISION AND ORDER

On July 20, 2012, the Alliance of Charter School Employees, Local 6056, AFT-PA, AFT, AFL-CIO (Union or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Multi-Cultural Academy Charter School (MACS or Respondent) alleging that the Respondent violated sections 1201(a)(1), (2) and (5) of the Public Employe Relations Act (PERA).

On August 21, 2012, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and September 20, 2012 in Harrisburg was assigned as the time and place of hearing if necessary, before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was necessary, as conciliation did not resolve the dispute. On September 7, 2012, the Examiner moved the date of the hearing to December 3, 2012. On November 15, 2012, the Complainant filed an amended charge of unfair practices.

On December 3, 2012, the day of the hearing, the parties entered an agreement that this charge be decided on briefs and the stipulations contained in the agreement.

On December 6, the Board issued an Amended Complaint of Unfair Practices.

On January 11, 2013, the parties filed briefs and on January 24, 2013, the parties filed reply briefs.

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

FINDINGS OF FACT

1. The Multi-Cultural Academy Charter School is a public employer within the meaning of Section 301(1) of the Public Employe Relations Act.
2. The Alliance of Charter School Employees, Local 6056, AFT-PA, AFT, AFL-CIO is an employe organization within the meaning of Section 301(3) of PERA.
3. On June 7, 2011, the Board, at Case No. PERA-R-11-86-E, certified the Union as the exclusive representative of a unit of all professional and non-professional employees of MACS. (Board Exhibit 1)
4. On July 14, 2012, the principal of MACS, received a petition signed by members of the bargaining unit asking MACS to withdraw recognition of the Union as the representative of the employees. (Stipulation, December 3, 2012 Settlement Agreement)
5. On or about July 25, 2012, MACS filed with the Board a Notice of Lack of Majority Support and Petition for Declaration That The Union Is No Longer The

Exclusive Representative Of The Employes ("Notice of Lack of Majority Support"). (Stipulation, December 3, 2012 Settlement Agreement)

6. The Notice of Lack of Majority Support reflects that the School's assertion of the Union's loss of majority support was based on the petition signed by bargaining unit members and received by the Principal of MACS on July 14, 2012. (Stipulation, December 3, 2012 Settlement Agreement)
7. On July 27, 2012, two employees of MACS, Robert DiCristino and Maxine Young, filed with the Board a Petition for Decertification, which was docketed to Case No. PERA-D-12-222-E. (Board Exhibit 2)
8. By letter dated August 2, 2012, the Board informed the parties that the four outstanding unfair labor practice charges previously filed by the Union (Case Nos. PERA-C-12-192-E; PERA-C-12-210-E; PERA-C-12-215-E and PERA-C-12-216-E) would block the processing of the Employee Decertification Petition. Specifically, the Board's letter stated as follows: "Pursuant to 34 Pa. Code Section 95.81, the secretary will defer at this time from issuing any order in the above matter due to the outstanding unfair practice charges filed at Case Nos. PERA-C-12-192-E; PERA-C-12-210-E; PERA-C-12-215-E and PERA-C-12-217-E." (Board Exhibit 3)
9. At the start of the hearing in the present matter, the parties commenced settlement discussions of the present charge, the Union's charge filed to Case No. PERA-C-12-192-E and MACS charge filed to Case No. PERA-C-12-201-E. The Union agreed to withdraw Case No. PERA-C-12-192-E and MACS agreed to withdraw Case No. PERA-C-12-201-E. (December 3, 2012 Settlement Agreement)
10. The Settlement Agreement provided that the instant case, Case No. PERA-C-12-210-E, which is the Union's sole outstanding unfair labor practice charge, would be submitted to the Board on briefs only and on a stipulated record that paragraphs 4 and 5 of the Amended Complaint are true. Those paragraphs state:
 4. On July 14, 2012, the Charging Party received a letter from the Respondent indicating it had received and possessed a decertification petition directly from the workers. The letter stated that "in light of the Union's loss of majority support of a majority of MACS employees in the certified bargaining unit, MACS hereby withdraws recognition of the Union as the exclusive representative of its employees effective immediately."
 5. The Union subsequently received a letter from counsel for Respondent on July 25, 2012, containing a "Notice of Lack of Majority Support and Petition for Declaration That The Union Is No Longer The Exclusive Representative Of The Employes" that counsel drafted and admittedly filed with the PLRB.

(Stipulation, December 3, 2012 Settlement Agreement)

DISCUSSION

The Union's charge of unfair practices alleges that MACS violated PERA by making substantial contributions to the decertification petition filed by MACS' employees in Case No. PERA-D-12-222-E.¹ The Union alleges that MACS provided a contribution to the employees' decertification petition that went beyond mere "ministerial aid," in violation of Section 1201(a)(1) of PERA. The Union requests that the Board dismiss the Petition filed to Case No. PERA-D-12-222-E to remedy the unfair practice.

¹ The decertification petition is currently being held in abeyance pending the determination of this case, pursuant to 34 Pa. Code §95.81.

MACS defends the charge by arguing that it provided no contributions to the employees' decertification petition and that the record contains no proof of such contributions.

An employer commits an unfair practice when it assists employees in withdrawing their union membership. In **County of York**, 10 PPER ¶ 10157 (Nisi Decision and Order, 1979), the Board ruled for the first time that a public employer violated Sections 1201(a)(1) and (2) of PERA when it allowed employees to use the county hospital's stationery and stamp meter to mail withdrawal requests to the union. (Board held that

In **Temple Association of University Professionals, Local 4531, AFT, v. Temple University**, 37 PPER ¶ 169 (Final Order, 2006), the employer informed employees, in a non-coercive manner, of their rights under the collective bargaining agreement to resign from the union and revoke their dues authorizations. However, the employer also provided the employees with a pre-printed form to resign from the union and revoke their dues authorization, forwarded employee resignations to the union where the employees had failed to do so and offered to further answer any questions, even though no employee had posed any question regarding resignation and revocation. The Board held that the employer crossed the line of permissible free speech in materially assisting the employees and found the employer committed an unfair practice. 37 PPER 169 at 528.

The Board noted that the employer had a right to free speech in such a setting, but the employer's free speech rights only went so far. In **Temple**, the Board qualified that right by stating that an "employer cannot lawfully transcend this right and solicit union resignations and provide material aid and assistance to employees" during a decertification drive. **Id.**

Unfair practice charges must be proven by substantial and legally credible evidence, and the burden of producing such evidence rests with the Complainant. **St. Joseph's Hospital v. Pennsylvania Labor Relations Board**, 473 Pa. 101, 373 A.2d 1069 (1977). "Substantial evidence is more than a mere scintilla and must do more than create a suspicion of the existence of the fact to be established." **Shive v. Bellefonte Area Board of School Directors**, 317 A.2d 311, 313 (Pa. Cmwlth. 1974), quoting **Pennsylvania Labor Relations Board v. Kaufmann Department Stores, Inc.**, 345 Pa. 398, 29 A. 2d 90, 92 (1942).

In deciding this case, I am bound by the facts of record. They come from the stipulations contained in the December 3, 2012 Settlement Agreement, the Board's official record in the present charge and Board's official record in the employee decertification petition filed to Case No. PERA-D-12-222-E.

To prove that MACS made a "substantial contribution" to the employees' decertification petition that would constitute unlawful assistance, the Union rests its case on three facts. The first two facts are from the December 3, 2012 agreement: 1) that on July 14, 2012, the Union received from MACS "a decertification petition directly from the workers." (Paragraph 4 of the Amended Complaint) and 2) that on July 25, 2012, the Union received a letter from MACS' counsel containing a 'Notice of Lack of Majority Support and Petition for Declaration That the Union Is No Longer The Exclusive Representative Of The Employees' that counsel drafted and admittedly filed with the PLRB." (Paragraph 5 of the Amended Complaint).² The third fact is a matter of Board's official record, that on July 27, 2012, the employees filed a decertification petition to Case No. PERA-D-12-222-E.

The Union contends that MACS' actions on July 14 and July 25, 2012 are evidence of "substantial assistance to the employees filing the petition" on July 27. However, other than the documents themselves, there is no proof of the specific details of what MACS provided in the way of assistance on or about these dates. There is no reliable evidence of record that MACS assisted the employees in their petition for decertification.

² The Amended Complaint also contained factual averments in paragraphs 6,7,8 and 9. However, there is nothing in the record to support the truthfulness of these averments.

Absent such proof, there can be no finding that MACS engaged in conduct that would violate PERA.

CONCLUSIONS

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

1. That the Multi-Cultural Academy Charter School is a public employer within the meaning of Section 301(1) of PERA.
2. That the Alliance of Charter School Employees, Local 6056, AFT-PA, AFT, AFL-CIO is an employe organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the Multi-Cultural Academy Charter School has not committed unfair practices in violation of Sections 1201(a)(1), (2) and (5) 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 charge of unfair practices is dismissed and the complaint rescinded.

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 twenty-eighth day of March, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner