

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

COATESVILLE AREA TEACHERS :  
ASSOCIATION, PSEA/NEA :  
 :  
v. : Case No. PERA-C-12-321-E  
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COATESVILLE AREA SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On October 12, 2012, Coatesville Area Teachers' Association, PSEA/NEA, (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Coatesville Area School District (District or Respondent) alleging that the District violated Sections 1201(a)(1) and (5) of the Public Employee Relations Act (PERA).

On November 2, 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 April 19, 2013 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 conciliator did not resolve the dispute, making a hearing necessary.

On April 8, 2013, the examiner continued the case to June 11, 2013 for the purpose of permitting settlement discussions. On June 5, the examiner again continued the hearing to August 5, 2013 on the District's motion over the objection of the Association.

The hearing was held on the rescheduled day, at which time all parties in interest were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence. The examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

**FINDINGS OF FACT**

1. Coatesville Area School District is a public employer within the meaning of section 301(1) of PERA. (N.T. 9-10)
2. Coatesville Area Teachers' Association, PSEA/NEA is an employe organization within the meaning of section 301(3) of PERA. (N.T. 9-10)
3. The Association is the exclusive collective bargaining representative of the District's professional employees. (N.T. 77, Association Exhibit 1)
4. The District and the Association are parties to a collective bargaining agreement (CBA) that expired on June 30, 2012. They are currently conducting negotiations for a successor agreement. (N.T. 8-9. Association Exhibit 1)
5. Section (M)(4) of Article VII of the CBA reads, "Involuntary transfers due to reduction in force will be based on certification and seniority." (N.T. 76, District Exhibit 13)
6. Toward the end of the 2011-2012 academic year, the District announced its intention to furlough teachers in the coming weeks. (N.T. 13)

7. On June 18, 2012, Association UniServ Representative, Tricia Audrain, sent an e-mail to Erika Zeigler, the District's Human Resources Director, requesting "the most updated seniority list of CATA Bargaining Unit Members" that includes "the name, date of hire, current teaching position, and up-to-date certification(s) of each bargaining unit listed." (N.T. 13, 77, Association Exhibit 1)

8. Audrain's e-mail went on to say,

From my understanding, those being furloughed will receive notice by tomorrow, June 19, 2012, so such a list must already exist in order for this action to occur. Therefore, I request that the information requested in this letter be provided to Jeff Guy prior to the meetings with impacted members tomorrow; since he will be present as the CATA representative; so that we can best represent our members.

(N.T. 13, 77, Association Exhibit 1)

9. The same day, District administrators held a meeting with Association Vice President, Jeffrey Guy. Present for the District were School District Solicitor, James Ellison; and Human Resources Director Zeigler. At the meeting, District officials permitted Mr. Guy to review but not retain a seniority list of all bargaining unit employees that included certifications. (N.T. 14, 22-23)

10. When Mr. Guy requested a copy of this document. The District denied his request, asserting that the list was confidential. (N.T. 14)

11. The District did not comply with the Association's request. (N.T. 14)

12. The Pennsylvania Department of Education's website, which is available to the public, lists the certifications of the teachers. (N.T. 21-22, 44)

13. On June 19, 2012, the affected employees were informed of the furloughs. (N.T. 14)

14. The District furloughed six teachers out of a bargaining unit of approximately 500. (N.T. 44)

15. On August 1, 2012, the Association again requested the information from Ms. Zeigler. (N.T. 77, Association Exhibit 3)

16. The District did not provide the complete seniority list with certifications. (N.T. 14)

17. The District remains opposed to providing the seniority list with certifications of all bargaining unit members. (N.T. 28)

18. In June, 2011, the District also furloughed teachers. At that time, the District's Human Resources Director and Solicitor showed Association vice president Audra Ritter a seniority list with certifications. She was able to look at it for approximately ten to fifteen minutes (N.T. 26-29)

19. In the 2009-2010 school year, the District's Business Manager, Ken Lupold, provided Ritter with the seniority list with certifications. (N.T. 27)

#### **DISCUSSION**

The Association alleges that the District committed unfair practices under sections 1201(a)(1) and (5) of PERA by refusing to provide information the Association requested to assist it in representing its members.

As set forth in the findings of fact, the Association requested that the District produce the most recent seniority list of bargaining unit members, including the name, date of hire, current teaching position, and certifications of each member. The Association sought the information in order to make sure that the District was following the collective bargaining agreement when it furloughed professional employees. The District refused to produce the requested information.

A public employer violates Section 1201(a)(5) of PERA when it refuses to provide information to the collective bargaining representative relevant to policing the administration of the existing contract. **Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board**, 527 A.2d 1097 (Pa. Cmwlth. 1987), **North Hills Education Association v North Hills School District**, 29 PPER ¶ 29063 (Final Order, 1999).

The District has presented various reasons for not producing the requested information.

First, when the Association initially requested the information the day before the furloughs in June, 2012, the District cited employee confidentiality as a reason for not producing it. The District claimed that if it produced this information that it would violate the rights of employees to protect such information from disclosure to third parties. The confidentiality argument is not persuasive. First, on June 18, 2012, the District's administrators permitted Association Vice President, Jeffrey Guy, to have ten minutes to view the seniority list of all of the teachers with their date of hire and certifications. Also, the Pennsylvania Department of Education's website, which is available to the public, lists the teachers' certifications.

Second, after the charge was filed, the District argued that the information on seniority and certifications for the 500 bargaining unit members is not relevant to the Association's right to police the collective bargaining agreement. However, The Association demonstrated the information is relevant within the meaning of the legal precedent guiding this area, which sets a liberal standard for relevancy. The Association has proven that the information is relevant to its duty to represent its members in times of furlough. The CBA, at Article VII, Section M(4) states that "[i]nvoluntary transfers due to reduction in force will be based on certification and seniority."

If the Association has this information, in the manner it was requested, it will then be able to fulfill its contractual obligation to represent its bargaining unit members who were facing furloughs. It must have both the seniority and the certifications of the bargaining unit members in order to determine if the CBA is being followed. The Association needs both the seniority and the certification of each teacher because both factors come into play in determining contractual bumping rights during a furlough.

Third, the District contended that the request was burdensome. It argued that if it has to produce a seniority list with certifications of the 500 bargaining unit members then it would be unfairly loaded with a task on District personnel. This argument is not persuasive. In the past, the District maintained such a list. In 2011, the District's Human Resources Director and solicitor showed a seniority list with certifications to Association vice president Audra Ritter. It is reasonable to assume that the District had a similar list in 2012 in order to be able to properly furlough teachers in a manner that was consistent with the CBA.

Fourth, the District raised the defense that the Association's unfair practice charge is moot because it later offered to produce some of the information requested. On June 11, 2013, the District's Director of Human Resources Director, Erika Zeigler, offered to produce a list of all the furloughed teachers, with their certifications and a list of bargaining unit members beginning with the most senior furloughed employee in descending order of seniority.

The District argues that since the District "expressed a willingness to disclose the certifications of all of those teachers furloughed and those teachers with less

seniority than those furloughed" so as "to verify whether the furloughs were done properly" that it serves no purpose to proceed with an unfair practice charge.

The Board will find a refusal to bargain charge is rendered moot "by the subsequent performance of the collective bargaining obligation." **Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia**, 9 PPER ¶ 29049 (Final Order, 1998), citing **Local 634, H.E.R.E. Int'l Union v. PLRB and Phila. Sch. Dist.** 28 PPER ¶ 28039 (Philadelphia County Court of Common Pleas, 1997)

In the present case, the District's 2013 offer came well after the time of the furlough when the Association needed the information. The offer only provided the Association with part of what it was seeking. The District's offer was not the performance of the requested action as the law requires. For that reason, the charge is not moot.

Furthermore, the Board will not apply the mootness doctrine if the matter at issue is "capable of repetition, but likely to evade review." **AFSCME Dist. Council 33 v. City of Philadelphia**, 36 PPER 95 (2005); **Temple Ass'n of Univ. Professionals, Local AFT v. Temple Univ.**, 25 PPER ¶ 25121 (1994). In these difficult times for school district budgets, the prospect of additional furloughs is something that the Association could very likely face again, as it did in 2011 and 2012. The scenario that the Association had to face in 2012 of being denied a seniority list with certification meets the test of "capable of repetition, but likely to evade review." *Id.* Accordingly, the mootness defense will not be applicable in this case.

Having found the District's arguments are not persuasive, the District's failure to produce the requested seniority list is a violation of Section 1201(a) (5) of PERA and a derivative Section 1201(a) (1) violation.

#### CONCLUSIONS

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

1. The Coatesville Area School District is a public employer under section 301(1) of PERA.
2. The Coatesville Area Teachers' Association, PSEA/NEA is an employe organization under section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has committed unfair practices in violation of Sections 1201(a) (1) and (5) of PERA.

#### ORDER

In view of the foregoing and in order to effectuate the policies of PERA the Examiner

#### HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of PERA.
2. Cease and desist from refusing to bargain collectively with the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:
  - (a) Immediately provide the Association with the June 18, 2012 seniority list of the employes in the unit represented by the Association, including the name, date of hire, current teaching position, and certification(s) of all bargaining unit members.
  - (b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days;
  - (c) 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 of the attached Affidavit of Compliance and
  - (d) Serve a copy of the attached affidavit of compliance upon the Union.

**IT IS HEREBY FURTHER ORDERED AND DIRECTED**

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-sixth day of February, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner