

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

HARRISBURG EDUCATION ASSOCIATION :
PSEA/NEA :
v. : Case No. PERA-C-11-53-E
HARRISBURG CITY SCHOOL DISTRICT :

FINAL ORDER

Harrisburg Education Association, PSEA/NEA (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on March 23, 2011. The Association's exceptions challenge a March 3, 2011 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Harrisburg City School District (District).

In its Charge filed on February 24, 2011, the Association alleged that the District will transfer bargaining unit work in the Early Childhood Education Program to the local Headstart agency effective with the 2011-2012 school year. The Association asserted that the District's actions violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). The Secretary declined to issue a complaint, stating that the Association's allegations under Section 1201(a)(1) and (5) of PERA are premature because the District has not implemented its alleged decision to transfer bargaining unit work in the Early Childhood Education Program to non-bargaining unit personnel, citing APSCUF v. PLRB, 661 A.2d 898 (Pa. Cmwlth. 1995), appeal denied, 542 Pa. 649, 666 A.2d 1058 (1995). Therefore, the Secretary dismissed the Association'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 Association argues in its exceptions that its Charge under Section 1201(a)(1) and (5) of PERA is not premature because the District's decision to transfer bargaining unit work in the Early Childhood Education Program to the local Headstart agency is a concrete and irrevocable action. The Association relies on the factual allegation that the District failed to apply for grant money to run the Early Childhood Education Program and its alleged agreement to provide the local Headstart with facilities and supplies for the 2011-2012 school year. Thus, the Association essentially argues that the transfer of bargaining unit work does not need to occur in order for it to be determined that the District has implemented its decision to transfer the operation of the Early Childhood Education Program to the local Headstart agency. The Association further asserts that APSCUF, supra, is inapplicable because the employer in that case indicated that it was willing to negotiate over any filling of positions that would conflict with bargaining unit work.

A public employer commits an unfair practice if it unilaterally transfers bargaining unit work to non-bargaining unit employees. APSCUF, supra. Where it is alleged that a public employer has decided to unilaterally transfer bargaining unit work to non-bargaining unit employees, but the bargaining unit work has not yet been transferred, the Board will dismiss the charge as premature. Id.; see also FOP, Queen City Lodge No. 10 v. City of Allentown, 19 PPER ¶ 19190 (Final Order, 1988) (charge dismissed as premature where employer had not implemented its policy to transfer bargaining unit work to non-bargaining unit employees). The Board has consistently held that an employer's mere statement of future intent to engage in a certain activity, without its actual implementation, does not constitute an unfair practice. See id.; see also APSCUF v. SSHE,

California University, 40 PPER 2 (Final Order, 2009), aff'd, APSCUF v. PLRB, 263 C.D. 2009 (Cmwlth. Ct. 2009) (unreported opinion) (California University); Temple University Hospital Nurses Association/PASNAP v. Temple University Health System, 39 PPER 45 (Final Order, 2008); Officer of the Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001).

The arguments made by the Association are similar to those made in California University, in which the Board concluded that the union's charge was premature because the university had not implemented its alleged decision to move free parking off-campus and to impose parking fees. The union argued that its charge was not premature because the university's board of trustees had approved a resolution to obtain a bond to pay for the proposed parking changes. Therefore, the union asserted that the university did not need to impose parking fees and remove free parking in order for the Board to determine that the university had implemented its decision. However, the Board concluded, and the Commonwealth Court agreed, that the university's mere statement of its future intent to move free parking and impose parking fees was not equivalent to actual implementation of the policy. The Board further noted that the university's policy may be subject to modification until it is actually implemented.

The same rationale applies in the present case because it is clear from the allegations in the Charge and exceptions that the District has not yet implemented its alleged decision to transfer bargaining unit work in the Early Childhood Education Program to the local Headstart agency. Indeed, the Charge alleges that the District's decision will not become effective until the start of the 2011-2012 school year. As such, the facts in the present case are the same as in APSCUF, City of Allentown and the other relevant cases cited above. Because to date the District has not transferred work out of the bargaining unit, the Association's charge under Section 1201(a)(1) and (5) of PERA is premature. Id. 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 Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Harrisburg Education Association, PSEA/NEA are dismissed and the Secretary's March 3, 2011 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 and James M. Darby, Member, this twenty-first day of June, 2011. 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.