

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ALLENTOWN EDUCATION ASSOCIATION, :  
PSEA/NEA :  
 :  
v. : Case No. PERA-C-15-65-E  
 :  
ALLENTOWN CITY SCHOOL DISTRICT :

**FINAL ORDER**

Allentown Education Association, PSEA/NEA (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on April 23, 2015. The Association's exceptions challenge an April 3, 2015 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Allentown City School District (District).

The Association alleged in its Charge that the District increased the workload of the special education teachers, nurses and guidance counselors by requiring them to complete additional paperwork for 504 Plans.<sup>1</sup> The Association further alleged that the parties met to bargain over the impact of the additional workload and that the District failed to respond to the Association's proposals. The Association asserted that the District's actions were a violation of Section 1201(a)(1), (5) and (9) of the Public Employe Relations Act (PERA).

The Secretary declined to issue a complaint and dismissed the Charge, stating that the District's determination of the workload and assignment of duties is a managerial prerogative that is not subject to bargaining, citing **Joint Bargaining Committee of the Pennsylvania Social Services Union v. PLRB**, 503 Pa. 236, 469 A.2d 150 (1983), **Lincoln University Chapter of the American Association of University Professors v. Lincoln University**, 38 PPER 137 (Final Order, 2007) and **Bangor Area Education Association v. Bangor Area School District**, 33 PPER ¶ 33088 (Final Order, 2002). The Secretary further indicated that the Association had not stated a cause of action for a failure to impact bargain under Section 1201(a)(5) of PERA because it did not allege a severable impact on the employes' wages, hours or working conditions. The Secretary additionally indicated that the Association failed to state a cause of action under Section 1201(a)(9) of PERA because the Association did not allege that it requested a meet and discuss session with the District. The Secretary also stated that the Association failed to allege sufficient facts for finding an independent violation of Section 1201(a)(1) of PERA.

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).

In its exceptions, the Association alleges that its Charge establishes a severable change in wages, hours and working conditions because the District is requiring the special education teachers, nurses and guidance counselors to perform additional duties without providing them with adequate training, equipment (e.g., laptops), facilities (e.g., private room to hold 504 Plan meetings) or coverage to ensure student supervision while they perform their regular duties.<sup>2</sup> The law is well established that the determination of the workload and the assignment of duties to public employes fall within the public employer's managerial prerogative under Section 702 of PERA. **Joint Bargaining Committee, supra; Lincoln University; supra; Bangor Area School District, supra**. Where a

<sup>1</sup> A 504 Plan is a written agreement executed by a student's parents and a school official setting forth the specific related aids, services or accommodations to be provided to a protected handicapped student.

<sup>2</sup> The Association does not challenge the Secretary's decision under Section 1201(a)(9) of PERA.

public employer is charged with violating its duty to bargain over the impact of implementation of a managerial prerogative, the employe representative must demonstrate that (1) the employer lawfully exercised its managerial prerogative; (2) there is a demonstrable wage, hour or working condition impact regarding matters mandatorily negotiable under Section 701 of PERA that is severable from the underlying managerial decision; (3) the employe representative made a demand to bargain over the demonstrable impact; and (4) the employer refused the employe representative's demand to bargain. **Lackawanna County Detectives' Association v. PLRB**, 762 A.2d 792 (Pa. Cmwlth. 2000).

The Association alleged in its Charge that it requested impact bargaining over the additional workload regarding 504 Plans and that the District met with the Association on four occasions in response to that request. However, the issues over which the Association wishes to impact bargain with the District are matters of managerial prerogative not subject to bargaining. **International Association of Fire Fighters, Local 1803, AFL-CIO v. City of Reading**, 31 PPER ¶ 31057 (Final Order, 2000) (decision whether employes receive training is a managerial prerogative); **International Union of Operating Engineers Local 542 v. Quakertown Borough**, 41 PPER 146 (Final Order, 2008) (policy concerning use of employer's equipment and facilities is a managerial prerogative); **Joint Bargaining Committee, supra** (assignment of duties is a managerial prerogative); **Lincoln University; supra** (same); **Bangor Area School District, supra** (same). Because the Association has failed to demonstrate that the District's managerial decision to increase the workload of the special education teachers, nurses and guidance counselors has a severable impact on their wages, hours or working conditions, it has failed to state a cause of action under Section 1201(a) (5) of PERA.

Additionally, the Association has not made any further factual allegations in its exceptions concerning its Charge under Section 1201(a) (1) of PERA. Absent new factual allegations, the Association has failed to state an independent or derivative violation of Section 1201(a) (1). 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 Employe Relations Act, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed by Allentown Education Association, PSEA/NEA are dismissed and the Secretary's April 3, 2015 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, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this nineteenth day of May, 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.