COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DOWNINGTOWN AREA EDUCATION ASSOCIATION, PSEA/NEA	:	
v.	:	Case No. PERA-C-15-363-E
DOWNINGTOWN AREA SCHOOL DISTRICT	:	

FINAL ORDER

The Downingtown Area Education Association, PSEA/NEA (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on February 24, 2016. The Association's exceptions challenge a February 5, 2016 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against the Downingtown Area School District (District). Pursuant to an extension of time granted by the Secretary of the Board, the Association timely filed a brief in support of the exceptions on March 16, 2016.[1]

In its Charge filed on December 28, 2015, the Association alleged that the District unilaterally implemented a new program called "Schoology" and required the bargaining unit members in all of the secondary schools to use the Schoology program to create and maintain certain classwork online including homework assignments, due dates and related materials. The Association asserted that the District's failure to bargain over the impact of the Schoology program on the bargaining unit members' wages, hours and working conditions was a violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

The Secretary declined to issue a complaint and dismissed the Charge, stating that the District's utilization of new technology falls within its managerial prerogative under Section 702 of PERA, citing **Pennsylvania Liquor Enforcement Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement**, 45 PPER 99 (Final Order, 2014). The Secretary further stated that the District's determination of the employes' workload and assignment of duties is a managerial prerogative that is not subject to bargaining, citing **Joint Bargaining Committee of 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 additionally 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 or that the Association made an impact bargaining request that was refused by the District. The Secretary also indicated that the Association failed to allege sufficient facts for finding an independent or derivative 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).

[1] The District filed a response to the exceptions and a supporting brief on March 30, 2016. However, the Board's Rules and Regulations do not provide for the filing of a response to exceptions in situations where the Secretary has declined to issue a complaint. Because the Board must accept all allegations in the Charge as true when determining, in its sole discretion, whether to issue a complaint, the District's response and supporting brief will not be considered in this matter.

Where a 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 law is well established that the utilization of technology falls within the public employer's managerial prerogative under Section 702 of PERA. **Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement, supra**. In its exceptions, the Association alleges that its Charge establishes a severable change in wages, hours and working conditions because the Schoology program requires the bargaining unit members to spend more time outside of their contractual work day performing their assigned duties. The Association further alleges that it requested impact bargaining on October 12, 2015 and that the District refused its request.

The Association alleges that the Schoology program increased the workload of the bargaining unit members thereby extending the amount of time they spend performing their assigned duties past the contractual work day. However, the Board has consistently held that the determination of the workload and the assignment of duties to public employes is not a mandatory subject of bargaining under PERA. **Joint Bargaining Committee, supra; Lincoln University; supra; Bangor Area School District, supra**. Furthermore, to require the District to negotiate over the bargaining unit members' workload and performance of the newly assigned duties would essentially allow the Association to bargain over the District's exercise of its managerial prerogative to implement the Schoology program. Because the Association has failed to demonstrate that the District's managerial decision to implement the Schoology program has a severable impact on a mandatory subject of bargaining, 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. Indeed, the Association has not alleged facts that could establish that the District's exercise of its managerial prerogative in implementing the Schoology program would interfere with, or tend to coerce, a reasonable employe in exercising protected statutory rights. Absent such 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 Downingtown Area Education Association, PSEA/NEA are dismissed and the Secretary's February 5, 2016 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 April, 2016. 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.