

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PHILADELPHIA COMMUNITY COLLEGE :
 :
v. : Case No. PERA-C-17-31-E
 :
FACULTY FEDERATION OF COMMUNITY :
COLLEGE OF PHILADELPHIA, :
LOCAL 2026, AFT, AFL-CIO :

FINAL ORDER

The Philadelphia Community College (College) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) on February 13, 2017, alleging that the Faculty Federation of Community College of Philadelphia, Local 2026, AFT, AFL-CIO (Federation) violated Sections 1201(b)(3) and 1006 of the Public Employee Relations Act (PERA). In the Specification of Charges, the College alleged that the collective bargaining agreement between the College and Federation expired on August 31, 2016, and beginning in November 2016, the Federation instructed its members to refuse to perform mandated assessment work. The College alleged that the Federation's conduct is creating a clear and present danger to the accreditation of the College and its programs and requested that the Board order the Federation and its members to cease and desist from their conduct, and resume performance of the assessment work.

By letter dated February 22, 2017, the Secretary of the Board declined to issue a complaint. The Secretary noted that under Article X of PERA, a request to enjoin a strike by public employees must be filed with the court having appropriate jurisdiction. On March 15, 2017, the College filed timely exceptions to the Secretary's letter. In its exceptions, the College asserts that it is not seeking to enjoin the strike, but is requesting that the Board declare that the Federation is committing unfair practices, and grant appropriate relief for such violation.¹

In reviewing the Secretary's decision whether to issue a complaint, the Board assumes that the alleged facts in the Charge of Unfair Practices are true. Where the allegations do not demonstrate an unfair practice, the Board Secretary properly declines to issue a complaint. **Pennsylvania State Park Officers Association v. PLRB**, 854 A.2d 674 (Pa. Cmwlth., 2004), *petition for allowance of appeal denied*, 871 A.2d 194 (Pa. 2005). In this regard, we note that the College has not alleged any unlawful conduct by the Federation under PERA.

A strike by public employees is expressly defined in Section 301(9) of PERA. A strike is "**concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment.**" 43 P.S. §1101.301(9) (emphasis added). While the allegations in the College's Specification of Charges are not entirely clear on the question of whether Federation members have actually declined to perform assessment work, such conduct, if it has occurred, would arguably fall within the express definition of a strike under PERA.

A strike, as defined in Section 301(9), by public employees is expressly permitted by PERA. However, Section 1002 of PERA provides as follows:

Strikes by public employees during the pendency of collective bargaining procedures set forth in sections 801 and 802 of Article VIII are prohibited. In the event of a strike during this period the public employer shall forthwith initiate an action for the same relief and utilizing the same procedures required for prohibited strikes under section 1001.

¹ On March 27, 2017, the Federation filed a Memorandum of Law in Opposition to the Exceptions, and on March 30, 2017, it filed a letter in further response to the exceptions.

43 P.S. §1101.1002. The procedure to be utilized for prohibited strike under Section 1001 of PERA is as follows:

If a strike occurs the public employer shall forthwith initiate in the court of common pleas of the jurisdiction where the strike occurs, an action for appropriate equitable relief including but not limited to injunctions. If the strike involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief, either in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court.

43 P.S. §1101.1001. Section 1003 of PERA, further provides as follows:

If a strike by public employes occurs after the collective bargaining processes set forth in sections 801 and 802 of Article VIII of this act have been completely utilized and exhausted, it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public. In such cases the public employer shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public. If the strike involves Commonwealth employes, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court. Prior to the filing of any complaint in equity under the provisions of this section the moving party shall serve upon the defendant a copy of said complaint as provided for in the Pennsylvania Rules of Civil Procedure applicable to such actions. Hearings shall be required before relief is granted under this section and notices of the same shall be served in the manner required for the original process with a duty imposed upon the court to hold such hearings forthwith.

43 P.S. §1101.1003.

As the above-quoted provisions of Article X of PERA indicate, the legality of a strike is to be determined by the courts rather than the Board. **City of Scranton v. PLRB**, 505 A.2d 1360 (Pa. Cmwlth. 1986); **Wilkes-Barre Education Association v. Wilkes-Barre Area School District**, 523 A.2d 1183 (Pa. Cmwlth. 1987), *petition for allowance of appeal denied*, 533 A.2d 715 (Pa. 1987); **Fairview School District v. Fairview Education Association**, 27 PPER ¶27229 (Proposed Decision and Order, 1996), *affirmed*, 28 PPER ¶28181 (Final Order, 1997). Where, as here, a court has not enjoined the alleged strike as prohibited by the mediation or fact-finding process or as creating a clear and present danger or threat to the health, safety or welfare of the public, the alleged strike by public employes under Article X of PERA is not a failure to bargain in good faith. **Id.**²

After a thorough review of the exceptions and all matters of record, the Board finds that the Secretary did not err in declining to issue a complaint.³ Accordingly, the

² Indeed, as a matter of labor policy, to hold that a strike by public employes under PERA that has not been enjoined by the court is nevertheless unlawful under Section 1201(b)(3) merely because it may be effective in the parties' negotiations invites surface bargaining by an employer who knows that the employe representative would be powerless to bring economic pressure to bear on the dispute, and would defeat the salient purposes of PERA. **West Shore School District v. West Shore Education Association**, 20 PPER ¶20113 (Final Order, 1989).

³ Section 1006 provides that "[n]o public employe shall be entitled to pay or compensation from the public employer for the period engaged in any strike." 43 P.S. §1101.1006. However, payment of employe wages involves the obligations of the employer and receipt thereof cannot be attributed to the employe as an unfair practice under Section 1201(b) of PERA. See **McAdoo Borough v. PLRB**, 485 A.2d 761 (Pa. 1984) (holding that a public employer's failure to remove its negotiator with a conflict of interest under Section 1801 of PERA should not work to the detriment of the collective bargaining process).

facts alleged do not support a violation of Section 1201(b)(3) of PERA. Thus, the exceptions filed by the College shall be dismissed, and the Secretary's February 22, 2017 decision declining to issue a complaint shall be made absolute and final.

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 the Philadelphia Community College are hereby dismissed, and the February 22, 2017 decision of the Secretary of the Board declining to issue a complaint and dismissing the Charge of Unfair Practices, be and hereby is 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 eighteenth day of April, 2017. 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.