

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

READING EDUCATION ASSOCIATION :
PSEA/NEA :
 :
 : CASE NO. PERA-C-12-60-E
 v. :
 :
 :
 READING SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On February 29, 2012, the Reading Education Association (Union or REA), filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Reading School District (District) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). The Union specifically alleged that the District violated the conflict-of-interest provisions of Section 1801 of PERA, when it appointed school board members Robert Heebner and Karen McCree to be members of the District's bargaining team. The Union alleged that Mr. Heebner and Ms. McCree are also members of the Pennsylvania State Education Association (PSEA), with which the Union is affiliated, and that the District refused to remove them from the team at the Union's request.

On March 21, 2012, the Secretary of the Board issued a no-complaint letter concluding that the Board lacked jurisdiction to remedy a violation of Section 1801(a). On April 5, 2012, the Union filed with the Board exceptions to the Secretaries decision not to issue a complaint. On June 19, 2012, the Board issued an Order Directing Remand to Secretary for Further Proceedings. On June 27, 2012, the Secretary issued a complaint and notice of hearing directing that a hearing be held on February 1, 2013, in Harrisburg. At the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).
3. The parties stipulated and agreed that, on February 22, 2012, the District's board of directors appointed Robert Heebner and Karen McCree to the District's bargaining team. Mr. Heebner and Ms. McCree are both elected members of the District's board of directors. (N.T. 11-12, 22-23).
4. The parties stipulated and agreed that the Union and the District are engaged in negotiations (and were so engaged at the time of the filing of the charge) for a successor agreement to the collective bargaining agreement that expired on August 31, 2012. (N.T. 12).
5. The parties stipulated and agreed that Ms. McCree is an employe of the Delaware County Intermediate Unit and that she is a member of the PSEA and National Education Association (NEA). (N.T. 12).
6. The parties stipulated and agreed that Mr. Heebner is retired from the District. (N.T. 13).

7. The parties stipulated and agreed that the Union objected to the participation of Ms. McCree and Mr. Heebner, under Section 1801 of PERA, and demanded that the District remove them from the District's negotiating team. The District refused to remove Mr. Heebner and Ms. McCree from its negotiating team. (N.T. 13-14).

8. The parties stipulated and agreed that the District's board of directors passed the following resolution:

EP-097 BE IT RESOLVED, that the Board of Directors of the Reading School District is aware that Board member Karen McCree is affiliated with the Pennsylvania School Education Association (PSEA) and continues to support her role as a member of the Negotiations Team in bargaining between the Board of Directors and the Reading Education Association (REA), hereby formally waiving any conflict of interest that may exist under Act 195 of 1970.

(N.T. 15, 23-24; Joint Exhibit 1).¹

9. The parties stipulated and agreed that, on April 18, 2012, the District's board of directors approved the following resolution:

EP-135 BE IT RESOLVED, That the Board of Directors of the Reading School District is aware that Board member Robert Heebner is affiliated with the Pennsylvania School Education Association (PSEA) and continues to support his role as a member of the Negotiations Team in bargaining between the Board of Directors and the Reading Education Association (REA), hereby formally waiving any conflict of interest that may exist under Act 195 of 1970.

(N.T. 15, 23-24; Joint Exhibit 3).²

10. The parties stipulated and agreed that, in January, 2013, Ms. McCree was removed from her position as a member of the District negotiating team. (N.T. 16-18, 28).

11. The parties stipulated and agreed that Mr. Heebner was elected president of the school board and no longer sits on the negotiating team. A new negotiating team has been appointed. (N.T. 17-18, 28).

12. The parties stipulated and agreed that the District's board of directors adopted a policy on March 24, 2004, which was revised on November 23, 2005, entitled "005 ORGANIZATION." This policy provides that "[t]he Board President and Superintendent of Schools shall be ex-officio members of all committees." The same policy further provides that "[i]t should be remembered that any members should be allowed to attend any committee and permitted to participate in the discussions." (Joint Exhibit 2, pgs 8-9, ¶s f & d).

13. Mr. Heebner is not a member of PSEA or PSEAR (retired). (N.T. 39).

DISCUSSION

The Union argues that the District engaged in unfair practices in violation of its bargaining obligations under Section 1201(a)(1) and (5) of PERA when it refused to remove Mr. Heebner and Ms. McCree from its negotiating team upon the Union's request because their membership in PSEA and/or PSEAR violated the conflict-of-interest provisions of Section 1801 of PERA. The Union further argues

¹ The resolution mistakenly uses the term "School" instead of the term "State" in the name of the PSEA.

² The resolution mistakenly uses the term "School" instead of the term "State" in the name of the PSEA.

that, even though Mr. Heebner and Ms. McCree no longer sit on the negotiating team for the District, the school board policy permitting any board member to participate in any committee violates Section 1801 of PERA because those two PSEA affiliated school board members could participate in negotiations on behalf of the District at any time. The Union seeks an order prohibiting Mr. Heebner and Ms. McCree from serving as members of the District's negotiating team and invalidating the school board policy that authorizes them to serve on that team in the future.

The District argues that the conflict created by a member of the Union bargaining on behalf of the District is a conflict of the District's interests, not the Union's. Therefore, the District, and not the Union, possesses the sole power and discretion to remove the person from its bargaining team or waive the conflict of interest.

In **Pennsylvania Labor Relations Board v. Moon Area School Board**, 4 PPER ¶ 10 (Nisi Decision and Order, 1974), the Board stated the following:

The language of the Act is explicit, no member of an employe organization can participate in the process of collective bargaining on behalf of the public employer when the other party to the negotiations is an employe organization affiliated with the organization of which he is a member. When a person is in violation of this provision it is the duty of the public employer to remove him from negotiations.

Moon, 4 PPER at 12. The **Moon** Board held that the school district violated its obligation to bargain in good faith by knowingly retaining a person on its negotiating team after receiving a letter from PSEA advising the district of the person's membership in PSEA and seeking his resignation from the district's negotiating team. In this context, the **Moon** Board opined as follows:

The existence or non-existence of good faith in collective bargaining must be based on the totality of the circumstances. Here the [s]chool [b]oard not only abdicated its responsibility under the Act to remove Mr. Crawford from negotiations, it caused the violation and forced its continuance. The policy of the Act is to promote an orderly and constructive employment relationship. To violate a provision of the Act and continue this violation to the point where the collective bargaining process is terminated is clearly a violation of the good faith requirement of Section 1201, subsection (a), clause (5).

Moon, 4 PPER at 12.

In **Pennsylvania Labor Relations Board v. South Allegheny School District**, 6 PPER 299 (Nisi Decision and Order, 1975), the Board rejected the argument made by the District here that only the District has the right to remove conflicted members of its bargaining team or waive the conflict. In **South Allegheny**, the district appointed its superintendent to be on its bargaining team. It admitted that it refused to remove him from the negotiating committee arguing that he was the only person with full knowledge of the operations of the school district, that he was an essential party to the negotiation process and that the union could simply expel him from the union under its bylaws. In rejecting the South Allegheny School District's argument, the Board opined as follows:

The Legislature recognized the fundamental right of an employe to be a member of an employe organization and did not require that said employe resign his membership when a conflict of interest arose, as in this case, but did require that the employer immediately remove said employe from his role as a member of the employer's negotiating committee. Thus, the Respondent has no right to request that [the superintendent] resign his membership

in the PSEA and the NEA, but Respondent does have a legal duty, required by the Act, to remove [the superintendent] from Respondent's negotiating committee forthwith.

South Allegheny, 6 PPER at 301. The **South Allegheny** Board concluded that the district in that case failed to bargain in good faith when it intentionally retained its superintendent on its negotiating team.

The record demonstrates that Mr. Heebner is not a member of the REA, the PSEA or the PSEAR. Therefore, Mr. Heebner's membership or future membership on the District's bargaining team does not create a conflict of interest. The necessary factual predicate for a conflict, and the District's obligation to remove him under Section 1801, does not exist. Accordingly, the charge is dismissed with respect to Mr. Heebner.

Although Ms. McCree is no longer serving as an active member of the District's negotiating team, the Union maintains that, by way of school board policy, she may participate in negotiations at any time and, because she is affiliated with the PSEA, must be prohibited from doing so. In **South Allegheny**, the Board significantly noted as follows:

The fact that a collective bargaining agreement has been consummated between the Respondent and the employe organization does not render our decision moot nor obviate the necessity for a remedial order in view of the circumstances, i.e., Respondent will shortly be negotiating with the PSEA, the certified bargaining agent, for other collective bargaining units of Respondent's employes. Under these facts, [the superintendent] must be removed from the permanent negotiating committee which Respondent created by resolution of its [s]chool [b]oard.

South Allegheny, 6 PPER at 301. The **South Allegheny** Board's order was explicitly prospective thereby prohibiting future membership on the public employer's negotiation team to avoid future conflicts of interests created by those individuals known to have affiliations with the union with which that employer will be negotiating. Accordingly, **South Allegheny** is precedent for granting the Union's request to issue an order that prospectively prohibits the conflict that the District knowingly refused to remove in violation of Section 1201(1) and (5) of PERA.

Accordingly, the District engaged in unfair practices in violation of Section 1201(a)(1) and (5) of PERA when it refused to remove Ms. McCree from its bargaining team knowing that she was affiliated with the PSEA. The District must prospectively ensure that Ms. McCree does not participate in any negotiations with the Union unless and until she is no longer affiliated with the Union. The District did not violate PERA by maintaining Mr. Heebner on its negotiating team because he did not have any affiliation with the REA, the PSEA or the NEA at any time relevant to this charge.

CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.

4. The District **has** committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the District shall:

1. Cease and desist from interfering, restraining and coercing employes in the exercise of the rights guaranteed in Article IV of PERA;

2. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in an appropriate unit, including but not limited to discussing of grievances with the exclusive representative;

3. Cease and desist from appointing, assigning or including Karen McCree on any current or future negotiation committees or teams that negotiate with the Union or its affiliates unless and until she is no longer affiliated with the Union or its affiliates;

4. Take the following affirmative action:

(a) Amend, modify and revise Policy "005 ORGANIZATION" to prohibit any school board member or the superintendent from any attendance, service or participation in any committees or teams engaged in negotiations with any employe organizations with which those board members or superintendent may be affiliated.

(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 the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

(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.

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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirteenth day of May, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

READING EDUCATION ASSOCIATION :
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AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has ceased and desisted from appointing, assigning or including Karen McCree on any current or future negotiation committees or teams that negotiate with the Union or its affiliates unless and until she is no longer affiliated with the Union or its affiliates; that it has amended, modified and revised Policy "005 ORGANIZATION" to prohibit any school board member or the superintendent from any attendance, service or participation in any committees or teams engaged in negotiations with any employe organizations with which those board members or superintendent may be affiliated; that it has posted a copy of this Decision and Order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principle place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public