COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NESHAMINY FEDERATION OF TEACHERS, LOCAL UNION No. 1417,	:	
	:	CASE NO. PERA-C-12-5-E
v.	:	
NESHAMINY SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On January 12, 2012, Neshaminy Federation of Teachers, Local Union No. 1417 (Federation or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board). The Federation filed an amended charge on January 13, 2012, alleging that the Neshaminy School District (Employer or District) violated Section 1201(a)(1),(3), and (5) of the Public Employe Relations Act (PERA).

On February 6, 2012, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of August 20, 2012, in Harrisburg before Hearing Examiner Jack E. Marino, Esquire. A hearing was held in this matter on August 20, 2012. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Federation filed a post-hearing brief on February 6, 2013. The Employer filed a post-hearing brief on August 12, 2013. This matter was reassigned to the undersigned hearing examiner on August 28, 2015.

The hearing examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer within the meaning of PERA. (N.T. 5).

2. The Federation is an employee organization within the meaning of PERA. (N.T. 5).

3. Louise Boyd (Boyd)is a teacher employed by the District and is the president of the Federation. (N.T. 6).

4. The collective bargaining agreement between the Federation and the District expired in July, 2008. At the time of the hearing, the parties were bargaining for a successor agreement and were in *status quo*. (N.T. 7).

5. At the time of the hearing, the District and the Federation had engaged in approximately forty-seven negotiation sessions for the 2008-2015 collective bargaining agreement. (N.T. 8).

6. The Federation engaged in a strike which began on or about January 9, 2012, that lasted six days. (N.T. 9).

7. Boyd notified the District's Superintendent Dr. Louis Muenker(Muenker), of the Federation's January 9, 2012, strike. Muenker responded to Boyd in writing by attaching a memorandum dated January 6, 2012, to an email to Boyd. (N.T. 9, 12).

8. Muenker's January 6, 2012, memorandum to Boyd states in relevant part:

> Please be advised that for the duration of your strike starting January 9, 2012 all members of the Federation are not permitted on School District Property.
>
> Be further advised that NFT members are prohibited from parking on any portion of School District Property.

(Federation Exhibit 1).

9. During the strike the Federation engaged in picketing activities. The Federation picketed in front of the District's buildings on the sidewalk and, when there was no sidewalk, on the road. (N.T. 26).

10. The Federation did not picket on District property. (N.T. 27).

11. A rally was held on January 17, 2012, on District property. (N.T. 77, 79).

12. At another date, during a scheduled negotiation session, demonstrators held signs which were viewed by Federation members including Boyd. The demonstrators were on District Property. The signs had anti-Federation messages: "NFT=EVIL", "Fire the Teachers!: Dump State Incumbents," "We love our [Neshaminy] School Board," "Greedy teachers stop using our kids!". (N.T. 41, 42, 46, Federation Exhibit 2: parts 3 and 4 [pictures 1 and 2]).

13. In his Affidavit of August 8, 2013, Charles N. Sweet states in relevant part:

> I was the Chief Negotiator for the Neshaminy School District regarding negotiations for the 2008-2005 Collective Bargaining Agreement; and, that the parties reached a Tentative Agreement for a Collective Bargaining Agreement to succeed the 2002-2008 Collective Bargaining Agreement on May 30, 2013; and both parties, the Neshaminy Federation of Teachers and the Neshaminy School District, ratified the Tentative Agreement on June 3, 2013 and June 13, 2013 respectively.

(Affidavit of Charles B. Sweet).

DISCUSSION

The Federation alleges that the District violated Section 1201(a)(1),(3), and (5) of PERA by denying Federation members access to District property during a Federation strike while permitting others to access the District property during and after the strike.

As an initial matter, the District, in its brief, moved to supplement the record with an affidavit by Charles B. Sweet (the Affidavit). The Affidavit declares that since the conclusion of the hearing in this matter, the parties ratified a new collective bargaining agreement to succeed the collective bargaining agreement that expired in June, 2008. The ratification of this new agreement was effective June 13, 2013.

A request to reopen a record to permit introduction of additional evidence may only be granted where that evidence (1) is new, (2) could not have been obtained in time for hearing with exercise of due diligence, (3) is relevant and non-cumulative, (4) is not for purposes of impeachment, and (5) would likely compel a different result. **Plouffe v. State System of Higher Education, Kutztown University**, 43 PPER 120 (Final Order, 2012). The Affidavit submitted by the District is new and could not have been obtained in time for the hearing because the ratification of the agreement occurred after the hearing. Further, the Affidavit is relevant and non-cumulative. It is not intended for impeachment. Finally, its admission will compel a different result because the fact of an agreement between the parties is dispositive to the question of mootness which shall be discussed below. For these reasons, the District's motion to supplement the record is granted and the Affidavit is made part of the record and its contents are incorporated in Finding of Fact 13, *supra*.

Moving to the question of mootness, the District, in its brief, urges that the Federation's allegations of unfair practices should dismissed as moot due to the ratification of the 2013 agreement. The Board has a policy of dismissing unfair practice

charges as moot where the parties have resolved the issues forming the basis for the charge through bargaining and a subsequent agreement. **Temple University** 25 PPER ¶25121 (Final Order, 1994). In **Temple University**, the Board specifically vacated as moot a conclusion of law in the proposed decision and order dealing with a charge relating to picketing at one of Temple's campuses. **Id.** However, there is an exception to the mootness doctrine of the Board which states that "even if a charge is technically moot, it may be decided if it involves an important question that is capable of repetition but likely to evade review." Id., *citing* **City of Philadelphia**, 22 PPER ¶22072 (Final Order, 1991). The issue of the Board's mootness policy and its exception was recently reviewed by the Supreme Court in **Association of Pennsylvania State College and University Faculties (APSCUF) v. PLRB**, 607 Pa. 461, 8 A.3d 300 (2010). In **APSCUF**, the Supreme Court, in holding that the Commonwealth Court erred when it reversed an order of the Board which dismissed a charge of unfair labor practices as moot, supported the Board's stated mootness policy to move beyond past allegations of misconduct which have no present effects and focus instead on a cooperative future. **Id.** at 473.

Further the Supreme Court agreed with and supported the Board's exception to the mootness doctrine where "the issue presented is one of great public importance or is one that is capable of repetition yet evading review". **Id.** at 470. Importantly for this matter, and focusing on the "capable of repetition yet evading review" prong of the exception, the Supreme Court in **APSCUF** found that the Commonwealth Court erred, in part, when it concluded that the employer's conduct was capable of repetition and likely to evade review absent evidence in the record to support those conclusions. **Id.** at 472. Applying the law to this case, there is no evidence in the record that would support a conclusion that the actions of the District in this matter are capable of repetition and likely to evade review. There is no evidence in this record that the District has committed similar actions in the past. Nor is there evidence in the record to support a conclusion that this issue is one of great public importance.

Therefore, the exception to the Board's mootness policy does not apply to this matter and, in order to effectuate the Board's policy to move beyond past allegations of misconduct which have no present effects, and focus instead on a cooperative future, the Federation's charges are dismissed as moot because the parties have resolved the issues forming the basis for the charges through bargaining and a subsequent agreement.

CONCLUSIONS

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

1. That the District is a public employer within the meaning of Section 301(1) of PERA.

2. That the Federation is an employe organization within the meaning of Section 301(3) of PERA.

3. That the Board has jurisdiction over the parties hereto.

4. That the Federation's charges under Section 1201(a)(1),(3), and (5) of the Public Employe Relations Act are dismissed as moot.

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 charges are dismissed and the complaint rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirty-first day of August, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner