

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

EASTON AREA EDUCATION ASSOCIATION :
:
v. : Case No. PERA-C-01-308-E
:
EASTON AREA SCHOOL DISTRICT :

FINAL ORDER

The Easton Area Education Association (Complainant) filed a Charge of Unfair Practices with the Pennsylvania Labor Relations Board (Board) on July 5, 2001 alleging that the Easton Area School District (Respondent) violated Section 1201(a)(5) of the Public Employee Relations Act (PERA) by refusing to bargain in good faith.

In the Specification of Charges, Complainant asserts that Respondent unilaterally developed a "Developmental Reading Assessment Program" that affects wages, hours and working conditions by imposing additional duties for professional employees in the bargaining unit. Complainant requested that Respondent bargain over the adoption of the program and its impact on the bargaining unit employees. Complainant further alleges that in response, on May 29, 2001, Respondent advised Complainant that the program will be adopted and that it would not bargain over the program or its impact.

By letter dated July 18, 2001, the Secretary of the Board advised Complainant that no complaint would be issued on the Charge since establishment of the program was a matter of managerial prerogative. Complainant filed timely Exceptions to the dismissal of the Charge, asserting that the Secretary erred in determining that an increased workload and its impact are not mandatory bargaining subjects. It also alleged that facts would be adduced at a hearing to support the Charge,¹ and argued in timely Supplemental Exceptions, that the Secretary has issued a complaint on similar facts.²

A public employer's decision that touches on the core of its public purpose, such as those of a school district in creating programs, functions and standards of services for education of students, is within management prerogative under Section 702 of PERA.

¹ It is not sufficient for a complainant to merely state that it has facts, which though not expressly stated in the Charge, could support a violation. The complainant must set forth the facts necessary to support the Charge. Homer Center Education Association v. Homer Center School District, 30 PPER ¶130024 (Final Order, 1998).

² The Board, however, is not bound by the decisions of its Secretary in other cases. Commonwealth of Pennsylvania, Pennsylvania Emergency Management Agency v. Pennsylvania Labor Relations Board, 768 A.2d 1201 (Pa. Cmwlth. 2001). Furthermore, the charge referenced in the Exceptions, Bethlehem Education Association v. Bethlehem School District, PERA-C-99-355-E, arguably alleged retaliation against the first grade teachers for their exercise of impact bargaining rights.

Mars Area Educational Support Personnel Association ESPA/PSEA/NEA v. Mars Area School District, 32 PPER ¶132089 (Final Order, 2001); Sayre Area Education Association/PSEA v. Sayre Area School District, 16 PPER ¶16200 (Final Order, 1985). Such decisions are subject to bargaining only where employees' interests in wages, hours and working conditions outweigh the employer's interests in its chosen manner of pursuing its policy. Pennsylvania Labor Relations Board v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975).

Complainant alleges that the proposed Developmental Reading Assessment Program "will" affect working conditions in that it requires teachers to engage in intensive study of students, testing and working with students, and compilation of a written report entered into a computer, to be performed during the work day and in addition to their normal duties. However, these "new" duties are merely the Respondent's direction of its workforce in furthering its educational goals and thus are matters of management prerogative under Section 702. 43 P.S. §1101.702; Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 29 PPER ¶29142 (Final Order, 1998); Sayre, supra. Accordingly, since Complainant has not alleged a mandatory bargaining subject, the Secretary did not err in declining to issue a complaint for a refusal to bargain.

In addition, Complainant has failed to allege facts sufficient to support a charge that the Respondent refused to bargain over the impact of its program. To support a violation of the obligation of impact bargaining, the Complainant must allege that 1) the employer lawfully exercised his managerial prerogative; 2) there is a demonstrable impact on wages, hours, or working conditions, severable from the managerial decision; 3) the union demanded to negotiate these matters following employer's implementation of its prerogative; and 4) the employer refused the union's demand to negotiate. Lackawanna County Detectives' Association v. Pennsylvania Labor Relations Board, 762 A.2d 792 (Pa. Cmwlth. 2000).

Complainant here failed to satisfy the requirements of an impact bargaining violation. Where a matter of managerial prerogative has been announced but has not yet been implemented, or is in the process of implementation, the alleged impact on wages, hours, and working conditions is speculative. Until the implementation of the management prerogative has in fact indirectly affected a change in a Section 701 matter, and there has been a demand and refusal to bargain over that matter, the second, third and fourth elements of a cause of action for a refusal to bargain are not satisfied.

As of May 29, 2001, Respondent has only stated that the program "will be adopted." There is no indication in the specification of Charges, Exceptions, or Supplemental Exceptions, that the program has been implemented and actually affected teachers' working conditions. Since there is no allegation that the Developmental Reading Assessment Program has been implemented, there is no basis for the issuance of a complaint contending that the Respondent refused to bargain over the subsequent impact of the program on wages, hours and working conditions. Accordingly, the Secretary's decision not to issue a complaint is affirmed.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Exceptions are dismissed and the Secretary's decision not to issue a complaint is made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this twenty-first day of August, 2001. 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.