

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

AFSCME, COUNCIL 13 :  
 :  
 v. :  
 : Case No. PERA-C-98-345-E  
 STATE SYSTEM OF HIGHER EDUCATION :  
 INDIANA UNIVERSITY :

**FINAL ORDER**

On March 29, 1999, the State System of Higher Education (SSHE) filed timely exceptions and a brief in support of exceptions to a proposed decision and order (PDO) entered on March 9, 1999. In the PDO, the hearing examiner concluded that SSHE violated Section 1201(a)(1) and (9) of the Public Employee Relations Act (PERA) by failing to meet and discuss with the American Federation of State, County and Municipal Employees, Council 13 (AFSCME) its decision to install a video camera at Indiana University. Based on the finding of an unfair practice, the hearing examiner directed SSHE to cease and desist from refusing to comply with its meet and discuss obligations under PERA. The hearing examiner dismissed AFSCME's claim that SSHE violated Section 1201(a)(5) in failing to impact bargain because AFSCME failed to show that the camera's installation subjected employees to any different measure of discipline. On April 19, 1999, AFSCME filed a response to SSHE's exceptions and a brief in support.

The essential facts of this case as found by the hearing examiner are as follows. AFSCME is the exclusive representative of a bargaining unit that includes custodial employees of SSHE at Indiana University. In the fall of 1997, SSHE discovered that a restroom in Gordon Hall at Indiana University, which was marked for employees only, was being vandalized. As a result, SSHE launched a criminal investigation to find the vandal and decided to install a hidden video camera as part of the investigation. On or about March 12, 1998, SSHE installed a camera with a focus on the exterior and the common interior areas of the restroom. Thereafter, the camera videotaped a custodian, William Midock, engaged in acts of vandalism in the restroom. On April 1, 1998, the interim director of human resources at Indiana University, Thomas Mittelhouser, informed a staff representative for AFSCME, Dominic Sgro, that Mr. Midock had been caught on videotape vandalizing the restroom. Prior to that time, Mr. Sgro had been unaware of the hidden video camera. On or about April 6, 1998, SSHE removed the hidden camera.

On April 10, 1998, SSHE held a pre-disciplinary conference for Mr. Midock wherein SSHE played the videotape for Mr. Midock's review. SSHE also discussed alleged false reports that Mr. Midock had filed with the University. At the conclusion of the pre-disciplinary conference, SSHE suspended Mr. Midock pending further investigation. By letter dated April 14, 1998, SSHE terminated Mr. Midock's employment on the ground that "[y]ou have failed to properly care for university property, a primary function of your assigned duties, and have submitted falsified reports about co-workers" (FF 12). In the April 14<sup>th</sup> letter, SSHE noted that the university had video evidence showing that Mr. Midock vandalized the basement bathroom at Gordon Hall and had additional evidence showing that he filed false incident reports against two fellow employees. Thereafter, AFSCME filed a grievance of Mr. Midock's termination.

On May 16, 1998, SSHE and AFSCME met on Mr. Midock's grievance at the second step of the grievance procedure. The interim labor relations manager at Indiana University, Emmy Fairman, indicated that the grievance would be denied. Mr. Sgro objected to the use of the videotape at the next step of the grievance procedure, but Ms. Fairman said that SSHE would nevertheless be using the videotape. In addition, SSHE suspended another employe represented by AFSCME, Doris Pfeiffer for failing to report Mr. Midock's vandalism. The videotape showed Ms. Pfeiffer laughing at Mr. Midock's vandalism of the restroom. AFSCME also grieved Ms. Pfeiffer's suspension. However, a joint panel of the parties sitting at the third step of the grievance procedure decided to rescind her suspension. SSHE did not bargain or meet and discuss with AFSCME prior to the installation of the video camera. Accordingly, AFSCME filed this unfair practice charge.

SSHE has filed a number of exceptions to the PDO arguing mainly that the campus police, who are statutorily authorized law enforcement officers, rather than SSHE instituted the criminal investigation here with the advice of the local district attorney. Thus, SSHE contends that it had no control over and/or knowledge of the installation of the camera and therefore SSHE could not have complied with any meet and discuss requirement, which in any event would have allegedly jeopardized the investigation. However, the Board need not address SSHE's exceptions because the managerial matter found by the examiner to be subject to a meet and discuss obligation under PERA (i.e., the installation of a video camera)<sup>1</sup> is now moot.

An actual case or controversy must exist at all stages of the judicial or administrative process for the matter at issue to not be considered moot. Bradway v. Cohen, 642 A.2d 615 (Pa. Cmwlth. 1994); Minersville Area School District v. PLRB, 569 A.2d 979 (Pa. Cmwlth. 1989). However, a case that is technically moot may be decided on its merits if it involves a question of great public importance, exceptional circumstances exist or the question to be decided is capable of repetition but likely to evade review. Bradway; City of Philadelphia, 22 PPER ¶ 22072 (Final Order, 1991). The video camera at issue here, which was installed outside a restroom in Gordon Hall at Indiana University in order to detect continuing acts of vandalism, was removed on or about April 6, 1998 as stipulated by the parties before the hearing examiner (N.T. 55-56). The managerial policy that SSHE had an obligation to meet and discuss with AFSCME is no longer in place and is therefore moot. Moreover, this case does not involve a question of great public importance or exceptional circumstances. Finally, this case does not involve an issue that is likely to recur in light of the fact that the vandal was caught and the camera has been removed. If SSHE does in fact install a video camera in the future, the Board can see no reason, nor has AFSCME offered any reason, why such a decision will likely evade review.

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<sup>1</sup> Although AFSCME conceded that the installation of the video camera was a matter of managerial prerogative (PDO at 3; N.T. 8), as the Board noted in its prior remand order herein the Board does not express any opinion whether the installation of a video camera under circumstances similar to those present here is managerial prerogative or a mandatory subject of bargaining under PERA, which normally involves a case by case analysis. See, e.g., East Pennsboro Township, 28 PPER ¶ 28015 (Proposed Decision and Order, 1996) (installation of video camera in public area of police station matter of managerial prerogative as employer has paramount interest in deciding how its property is used and union has other rooms available in which to conduct its business beyond view of camera).

Although AFSCME's charge in this case alleged a refusal to bargain over the installation of the video camera, AFSCME did not pursue that issue but instead alleged a refusal to meet and discuss that decision and a refusal to bargain the alleged impact of that decision. The hearing examiner concluded that SSHE had no obligation to impact bargain because there was no evidence to show that Mr. Midock suffered any different measure of discipline on account of the installation of the camera. AFSCME filed no exceptions to the PDO. Thus, all that remains is the meet and discuss obligation regarding SSHE's installation of this single camera, which SSHE removed shortly after the incident. Because SSHE has removed the camera, AFSCME's unfair practice charge is moot.

After a thorough review of the exceptions and all matters of record, the Board concludes that the unfair practice charge is moot and therefore the Proposed Decision and Order is hereby set aside consistent with the above discussion.

#### CONCLUSIONS

That CONCLUSIONS numbers 1 through 3 inclusive, as set forth in the Proposed Decision and Order are hereby affirmed and incorporated herein by reference and made a part hereof.

That CONCLUSIONS numbers 4 and 5 of the Proposed Decision and Order are hereby vacated and set aside and the following additional conclusion is made:

6. That the unfair practice charge filed at Case No. PERA-C-98-345-E is moot.

#### 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 order on page 6 of the Proposed Decision and Order be and the same is hereby vacated and set aside, and

#### IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the charge of unfair practices is dismissed and the complaint issued thereon is rescinded.

SIGNED, SEALED, DATED and MAILED this twenty-second day of September, 1999.

PENNSYLVANIA LABOR RELATIONS BOARD

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JOHN MARKLE JR., CHAIRMAN

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L. DENNIS MARTIRE, MEMBER

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EDWARD G. FEEHAN, MEMBER