

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEAMSTERS LOCAL UNION NO. 384, IBT, :
AFL-CIO :
 :
v. : Case No. PERA-C-01-278-E
 :
CENTRAL BUCKS SCHOOL DISTRICT :
 :
CENTRAL BUCKS EDUCATIONAL SUPPORT :
PERSONNEL ASSOCIATION ESPA/PSEA/NEA, :
Intervenor¹ :

FINAL ORDER

Central Bucks School District (Employer) filed exceptions with the Pennsylvania Labor Relations Board (Board) from a Proposed Decision and Order issued January 8, 2002. The Board's hearing examiner had found that the Employer violated Section 1201(a)(1) of the Public Employee Relations Act (PERA) by denying the Teamsters Local Union No. 384, IBT, AFL-CIO (Teamsters) equal access to the school and internal mail system during an election campaign. The Employer's exceptions and supporting brief were timely filed on January 28, 2002, and the Teamsters filed a brief in opposition to the exceptions on February 15, 2002. After a thorough review of the exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDINGS OF FACT

16. The Employer and the Central Bucks Educational Support Personnel Association ESPA/PSEA/NEA (Association) were parties to a collective bargaining agreement covering the period of July 1, 1996 through June 30, 2001. Article V Section 4 of the collective bargaining agreement provides that "[t]he [Employer] shall not permit any organization which is challenging the Association as the exclusive bargaining agent pursuant to Act 195 to use any of the District's mail distribution facilities." (Exhibit District #1).

17. When Ms. Fritz requested permission for the meeting on April 22, 2001, she did not advise the Employer of the purpose of the meeting only that the meeting was for the Association. (N.T. 104).

18. On April 10, 2001, the Teamsters advised the Employer in writing of its efforts to become the bargaining representative for the bargaining unit employees. (N.T. 60).

¹ At the hearing on September 4, 2001, the hearing examiner granted the request of the Central Bucks Educational Support Personnel Association ESPA/PSEA/NEA to intervene.

DISCUSSION

The Employer and the Association were parties to a collective bargaining agreement covering the period of July 1, 1996 through June 30, 2001. The Employer permitted the Association access to certain school facilities during the term of the collective bargaining agreement due to its status as the collective bargaining representative. (Finding of Fact 9).

On April 10, 2001, the Teamsters notified the Employer that it was attempting to become the bargaining representative for the employees. (Finding of Fact 18). Around that time, the Association obtained permission from the Employer to hold a meeting at the school, but did not advise the Employer of the purpose of the meeting. (Finding of Fact 17). The Association distributed the announcements for the meeting through the Employer's interschool mail, which was available to the Association under the collective bargaining agreement. (Finding of Fact 2). On April 22, 2001, the Association held the meeting in the school cafeteria at which time the Association urged employees to support the Association against a rival union's organizing effort. (Finding of Fact 2 and 3).

The day following the Association's meeting, the Teamsters filed a representation petition with the Board. (Finding of Fact 4). Thereafter, on May 14, 2001, the Teamsters wrote the Employer advising the Employer that the Association had held meetings at the school and used its internal mail system. The Teamsters requested that it be allowed to do the same. (Finding of Fact 8). The Employer responded noting that the collective bargaining agreement allowed the Association to use the facilities and the internal mail system. (Finding of Fact 9). On May 23, 2001, the Teamsters again wrote the Employer regarding use the Employer's facilities, (Finding of Fact 10), and the Employer response was a reference to its obligation to the Association under the collective bargaining agreement. (Finding of Fact 11). At no time did the Employer indicate that the Teamsters could use its internal mail system or hold a meeting at the school. In addition, there is no indication in the record that the Association sought specific access to the school after the Teamsters' representation petition was filed or that it held any further meetings at the school.

On May 24, 2001, the Board issued an order and notice of election. An election was held on June 8, 2001, and the Association received a majority of the votes cast. (Finding of Fact 12 and 15). Thereafter, on June 18, 2001, the Teamsters filed a Charge of Unfair Practices with the Board alleging that the Employer violated Section 1201(a)(1), (2), (3) and (7) of PERA.² The charge in relevant part alleged that the Employer violated PERA by allowing the Association to hold an organizational meeting at the school and announce that meeting by interschool mail, and did not provide the Teamsters with the same accommodation.

After hearing testimony and taking evidence, the hearing examiner found that the Employer did not allow the Teamsters' use of its

² The hearing examiner found no violation of Section 1201(a)(2), (3) or (7) of PERA.

internal mail system or grant the Teamsters permission to hold a meeting at the school, and thereby violated Section 1201(a)(1) of PERA. In so holding, the hearing examiner determined that "the critical inquiry under [Pennsylvania Labor Relations Board v. South Park School District, 10 PPER ¶10262, 380 (Final Order, 1979)] is whether or not the employer has afforded rival employe organizations the same access to its facilities, not whether or not the employer is aware of why such access has been requested..." (PDO pg. 12). The Employer filed timely exceptions to the PDO with the Board.

In its first exception, the Employer contends that the hearing examiner failed to make necessary findings that the Employer was unaware that the Association's April 22, 2001 meeting was for organizational purposes, and that once the Teamsters filed a representation petition, neither union was permitted use of the Employer's facilities. Generally, the hearing examiner must set forth the findings that are necessary to support the conclusion reached, and need not render all possible findings on all the facts presented. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). As discussed below, we believe that findings regarding the Employer's knowledge of an incumbent union's organizational purpose for using the Employer's facilities are material, and accordingly have made additional findings of fact consistent with the testimony presented.³

The Employer argues that the hearing examiner erred in concluding that it violated Section 1201(a)(1) of PERA by denying the Teamsters the same right of access to the school and use of the interschool mail. Specifically, the Employer contends that under its collective bargaining agreement with the Association, the Association has access to the school facilities for contract administration. The Association was not required to advise the Employer of the purposes of its meetings, or seek permission for use of the internal mail system. Because the record does not show that the Employer knew that the April 22, 2001 meeting of the Association was for campaign purposes when it granted the Association permission to meet in the school cafeteria, the Employer asserts that it acted uniformly and neutrally in not granting the Teamsters permission for an organizational meeting. In addition, the Employer argues that because neither union was granted access to

³ The Employer also argues that Finding of Fact 2, to the extent the hearing examiner determined that the Employer distributed the notice of the April 22, 2001 meeting, is contrary to the weight of the evidence. To support a finding there must be such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942) (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1938)). There is substantial evidence supporting the hearing examiner's conclusion that the Employer distributed the April 22, 2001 meeting notice. A bargaining unit member testified that he received the meeting notice through the interschool mail. Irrespective of whether the Employer knew the Association placed the notice into the interschool mail, there is substantial evidence that distribution of that notice was through the Employer's internal mail system. However, although the Employer allowed distribution of the notice through its interschool mail, the record does not show that the Employer was aware of the content of the notice.

the school after the representation petition was filed, it had treated both unions equally during the election campaign, and therefore, did not violate Section 1201(a)(1) of PERA.

Section 1201(a)(1) of PERA provides that it is an unfair practice for an employer to interfere, restrain or coerce employees in the exercise of their rights to select a bargaining representative. In this regard, an employer which knowingly provides a union with use of its facilities or internal mail for an organizational campaign, must also make those accommodations uniformly available to a competing union. Montgomery County Intermediate Unit Education Association v. Montgomery County Intermediate Unit, 17 PPER ¶17124 (Final Order, 1986). "As long as an employer fulfills the requirement of providing equal opportunity and does not otherwise violate the mandate for neutrality[,] no violation of Section 1201(a)(1) of PERA will be found. Pennsylvania Labor Relations Board v. Woodland Hills School District, 13 PPER ¶13298, 574 (Final Order, 1982).

The Employer argues that in order to violate Section 1201(a)(1) by denying equal access to the Teamsters, it must have known that it was permitting the Association to hold a campaign meeting. The Employer relies, in part, on the opinion of the General Counsel of the Florida Public Employee Relations Commission in Benevolent Association of Coachmen, Inc. v. Broward County, 16 FPER ¶21208 (General Counsel's Summary Dismissal 1990), for the proposition that knowledge of a permitted organizational activity is required for an unfair practice arising from the employer's denial of equal access to its facilities. In Broward County, the General Counsel noted that because the incumbent union's use of the employer's internal mail for campaign purposes was not blatant or continuous, the employer did not know of the organizational use, and thus there were insufficient allegations to support a charge of discriminatory access. The Employer contends here that it similarly allowed the Association access for contract administration purposes pursuant to the collective bargaining agreement and did not know that the Association held an organizational meeting.

Generally, a violation of 1201(a)(1) of PERA may occur despite the Employer's lack of intent to discriminate against competing employe organizations. Pennsylvania Labor Relations Board v. South Park School District, 10 PPER ¶10262, 380 (Final Order, 1979). However, even though there is no specific intent to discriminate or interfere with the exercise of employe rights, the employer must knowingly deprive a competing employe organization equal access.

In South Park School District, the employer was well aware of the intended campaign purpose when, following the issuance of an Order and Notice of Election, it permitted the rival union access to the school during work time while denying the same right of access to the incumbent. South Park School District, supra. Here, unlike in South Park School District, there is no indication that the Employer was aware that the Association would be engaging in campaign activities when it granted permission for it to hold a meeting at the school.

The Board has previously addressed a charge which, in all material respects, we find similar to the facts here. In Pennsylvania Labor Relations Board v. Interboro School District, 3 PPER 125 (Nisi Order of Dismissal 1973), the incumbent union had access to the

district's internal mail system under the collective bargaining agreement. There the incumbent union had used the mail system to distribute anti-rival union literature without notifying the school district. The Board found that because there was no evidence that the district was aware of the incumbent's distribution of campaign literature, it could not be held responsible for the actions of the union. Accordingly, the Board found no unfair labor practice, and dismissed the charge filed against the employer.

We recognize that the Board has a substantial concern in overseeing the election process to ensure that the employees' choice of representative has not been unlawfully affected by the surrounding circumstances. However, under PERA for purposes of challenging election results, the circumstances that may affect an election must be premised on a finding that a party violated the law, or upon the Board's oversight of the election. 43 P.S. §1201.605; 34 Pa. Code §§ 95.57-95.58; Pennsylvania Labor Relations Board v. Upper Merion Area School District, 3 PPER 386 (Nisi Decision and Order, 1973) (holding that the Board will normally not overturn an election absent a "flagrant violation" of the rights of one of the parties). In Woodland Hills School District, supra, in dismissing an unfair practice charge alleging a denial of equal access during a campaign, the Board noted that "[c]oncern for the public interest requires that the Board balance 'clarity' and 'relative predictability' of holding every act to be an unfair practice against the finality of representation elections, promptness of certifications, the rights of the employees who have already cast their ballots and the viability of the Board's procedures." Woodland Hills School District, 13 PPER at 575.

While unwittingly allowing one union to use the facilities, and later denying a rival union similar access, may raise a concern that there is the appearance to the employees that the employer favors the union that obtained access, our concern over the appearance of impropriety may not negate the employer's actual lawful position of neutrality. Such a conclusion would be inconsistent, and require holding that an otherwise lawful decision or policy of the employer would nonetheless constitute an unfair practice and be unilaterally voidable by the overt acts of an incumbent union.⁴ Under the guise of promoting fair elections, the Board must not succumb to the temptation of using whatever means available, such as shading otherwise lawful conduct of a party with the cloak of an unfair practice, in order to direct a new election.⁵

⁴ It has been recognized that an employer does not commit an unfair practice by taking corrective measures to cease unpermitted campaign activities on its premises, so long as all competing unions are treated similarly. See, Hotel and Restaurant Employees International Union, Local No. 634 v. Philadelphia School District, 28 PPER ¶ 28038 (Proposed Decision and Order, 1996).

⁵ In a case where the employer did not have any knowledge of the rival union's attempt to organize the employees when it had granted access to another union, the First Circuit Court of Appeals reversed a decision of the National Labor Relations Board which had found that the employer committed an unfair labor practice by denying access to the rival, noting that Board's conclusion "would suspend a Damoclesian sword over every instance where an employer innocently extended, and a union

We note that at the hearing, the Complainant withdrew the charge of unfair practices, at Case No. PERA-C-01-279-E, filed against the Association for its use of the Employer's facilities in its campaign against the Teamsters. In this regard, it is interesting to note that the Association, as intervenor, while relying on Board caselaw which promotes equal treatment and access to competing employe organizations, also is a party to contract language that denies rival unions similar access. (Finding of Fact 16). The contract provision, negotiated by the Association, denying access to rival employe organizations, coupled with the Association's obligation to comply with Board caselaw regarding equal access, provides strong support that the Association violated at least the spirit, if not the letter of the law. However, as noted, the Teamsters withdrew the charge against the Association and elected to proceed only against the Employer. It would be fundamentally unfair to label the Employer's conduct with the Association's actions when the Employer was unaware that the Association had used its facilities for organizational purposes.

Moreover, although the Teamsters charged the Employer with specifically allowing the Association to hold an organizational meeting on April 22, 2001,⁶ the testimony, exhibits, and Findings of Fact do not specifically show that alleged fact. The Teamsters' letters do not adequately advise the Employer that the Association, in fact, held a campaign meeting at the school on April 22, 2001, or that it used the internal mail system in its campaign. The Teamsters' letters of May 14, 2001 and May 23, 2001, while referencing the campaign, merely request information regarding the Employer's policy for organizing activity on school property. The Employer's responses simply state its contractual obligations and policy, and reference the limitation on access for meetings and to the interschool mail to contract administration. In addition, the testimony in the record does not indicate that the Employer was made aware, by the Association, the Teamsters, or independently, of the purpose of the Association's April 22, 2001 meeting before it had responded to the Teamsters' requests.

Logically, the employer must know what access it had granted to the incumbent before holding it liable for unlawfully depriving a rival union similar access, see Interboro School District, supra, even though a specific intent to discriminate or interfere with employe rights is not required. South Park School District, supra. Thus, we hold that in order for the Employer to have violated Section 1201(a)(1) for granting unequal access to the Teamsters, it must have known of the Association's intended campaign purpose at the time it granted the Association permission to use its facilities.

innocently accepted, legitimate accommodation to an organizational campaign." Local 1325, Retail Clerks International Association, AFL-CIO, v. NLRB, 325 F.2d 293, 295 (1st Cir. 1963).

⁶ Indeed, the entire unfair practice charge relevant to this issue is that "[t]he District allowed the PSEA to use CB [Central Bucks] West HS [High School] on April 22, 2001, and the use of District mail to announce the meeting, for the express purpose of campaigning against the Teamsters Union. I asked for the same right and was refused." (Charge of Unfair Practices, pg. 2).

Because the Employer did not knowingly grant the Association use of its facilities for organizational purposes it did not treat the Teamsters unequally when it applied a neutral position in not granting the Teamsters permission to hold an organizational meeting. Further, there is an insufficient basis in the record to find that when the Employer denied the Teamsters access for a campaign meeting, it had actual knowledge that there had been an organizational meeting held at the school by the Association. Where the record does not establish that the Employer knew that the incumbent union used its facilities for organizational purposes, the Employer does not commit an unfair labor practice by applying a lawful policy or practice to deny a rival union access to its facilities.

After a thorough review of the exceptions and all matters of record, the Board concludes that the Employer has not violated Section 1201(a)(1) of PERA by not providing the Teamsters with the use of a meeting room or the internal mail system for its campaign. Accordingly, the exceptions will be sustained, in part, and the PDO reversed.

CONCLUSIONS OF LAW

That CONCLUSIONS number 1 through 4, and 6 as set forth in the Proposed Decision and Order, are hereby affirmed and incorporated herein by reference and Conclusion number 5 is hereby vacated.

7. The District has not committed an unfair practice within the meaning of section 1201(a)(1) of the Act.

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 to the Proposed Decision and Order of January 8, 2002 are hereby sustained, in part, and the Order on pages 14-15 of the Proposed Decision and Order be and the same is hereby vacated and set aside, including the hearing examiner's direction for a new election at Case No. PERA-R-01-182-E.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that the Charge of Unfair Practices is dismissed and the Complaint issued thereon is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

That the Employer shall post a copy of this Final Order within five (5) days of the date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days, and furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of the posting of this Final Order by completion and filing of the attached affidavit of compliance.

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 tenth day of April, 2002. 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.

COMMONWEALTH OF PENNSYLVANIA
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Intervenor :

AFFIDAVIT OF COMPLIANCE

The Central Bucks School District hereby certifies that it has posted a copy of the final order as directed.

Signature/Date

Title

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

Signature of Notary Public