

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYEES OF :
 : Case No. PERA-U-02-414-W
WINDBER AREA SCHOOL DISTRICT : (PERA-R-88-161-W)

FINAL ORDER

On February 3, 2003, the Windber Area School District (District) filed exceptions with the Pennsylvania Labor Relations Board (Board) from a Nisi Order of Amended Certification issued January 15, 2003, reflecting that the Windber Personnel Organization changed its name to the Windber Educational Support Personnel, ESP/PSEA/NEA (Union) based on its affiliation with the Pennsylvania State Education Association (PSEA) and National Education Association (NEA).¹ The Union filed a timely response to the exceptions on February 24, 2003.

By way of background, in 1971 the Board certified the Windber Area Non-Professional Association as the exclusive representative for the full-time cafeteria personnel, maintenance, custodians, janitresses and secretaries. In 1976, that union affiliated with the Pennsylvania School Service Personnel Association, becoming the Windber Area School Service Personnel Association, PSSPA/PSEA. In 1988, the Windber Personnel Organization, an independent employe organization, successfully challenged the PSSPA affiliate, and became the certified representative for the bargaining unit employes. (Case No. PERA-R-88-161-W). Presently, on September 3, 2002, the Windber Personnel Organization filed a Petition for Amendment of Certification requesting a name change to the Windber Educational Support Personnel, ESP/PSEA/NEA, to reflect its affiliation with the Pennsylvania State Education Association.

Ordinarily, the Board regards the decision of a local union to affiliate with statewide, national or international organizations as an internal union matter. School District of Pittsburgh, 5 PPER 68 (Nisi Order of Amended Certification, 1974). Affiliation, by its nature, is not a change in the bargaining representative governed by Section 6 of PERA, but rather is a decision by the union to retain its status as the bargaining representative despite affiliation or disaffiliation with another organization. In order to ensure that the union's status as the bargaining representative remains unaffected by the affiliation, the Board requires that the petitioning union demonstrate

- (1) that the newly affiliated local is a continuation of the old with the same officers and functional leaders, and;

¹ In addition to its exceptions and brief filed February 3, 2003, the District has requested oral argument before the Board. As this case raises no novel issue of law or fact, the District's request for oral argument is denied.

- (2) that steps have been taken to insure that a majority of the membership approves and that there is no loss of identity of the certified local, and;
- (3) that there is no change in the day-to-day relationship with the employer, and;
- (4) that it is has been made clear that all contract commitments with the employer will be honored.

Lincoln Intermediate Unit No. 12, 7 PPER 137, 138 (Final Order, 1976). The petition filed by the Union satisfied these criteria and the Board Representative issued the Nisi Order of Amended Certification on January 15, 2003 to reflect the name change as requested.

The District contends in exceptions 1, 2, 6 and 7, that it should have received notice of the petition prior to issuance of the Nisi Order of Amended Certification. The District asserts that it must have an opportunity to answer the Union's petition, and have an opportunity at a hearing to challenge the fairness and voting processes utilized by the Union before the Board's Nisi Order is issued because it claims a substantial interest in the Union's decision to affiliate. The District argues that it has an interest in challenging the union's voting process to prevent the employees from being coerced in a vote to affiliate.

The District attempts to distinguish the Board's reliance on School District of Pittsburgh, by noting that that case merely involved the rights of nonmembers to vote on the affiliation, and does not support the proposition that the employer has no interest in the union's decision to affiliate. Indeed, the District points out that the Board's decision in School District of Pittsburgh was issued only "after hearing". (Exceptions at 2). However, on close inspection of School District of Pittsburgh, the matter was not merely an amendment of certification, but involved a companion charge of unfair practice, wherein it was alleged that the union did not permit non-union members of the collective bargaining unit to vote on affiliation.² Because the unfair practice charge contained a specific allegation of fact that the union violated the statutory rights of non-members, the Board conducted a hearing, and after hearing, addressed the rights of the non-union members as follows:

The question of whether or not that organization chooses to affiliate with a national or international union is of no consequence to the non-member since they play no role and pay no dues accepting only the benefits which the union wins for them at the negotiating table. These persons have clearly not been restrained or coerced in the exercise of their rights under Article IV of the Act since this Article gives them the right to "...refrain from any such activities..." i.e. membership in an employe organization. The [Pittsburgh Educational Office Personnel] by its vote to affiliate with AFSCME has not taken away the right not

² The complainants in School District of Pittsburgh were members of the bargaining unit asserting rights under Section 1201(b)(1) of PERA, not the public employer.

to join nor has it required the non-members to join. Therefore non-members cannot be heard to complain about a union's denial to permit non-members to participate in a vote on the question of affiliation.

School District of Pittsburgh, 5 PPER 69.³

No unfair practice charge has been filed here alleging any cognizable cause of action by any party having standing to assert such rights. Moreover, clearly if non-union members in the bargaining unit lack an interest in internal union decisions, then an employer, an adversary in the bargaining context, has even less of an interest, if any, to delve into a matter of internal union governance or affiliation. In fact, such a suggestion may run afoul of unfair practices as defined in Section 1201(a) of PERA. But yet, it appears from the exceptions, that this is precisely what the District is suggesting by asserting that it should have an opportunity to challenge the union's vote to affiliate through a response to the petition for amendment of certification. The District argues that through preemptory challenges to the petition for amendment of certification, an employer should be allowed to question the Union's internal governance. However, as recognized by the Board and the Commonwealth Court, a union's internal decision making should not be subject to outside interference from the Board, courts, or the employer. See Eastern Lancaster County Education Association, 427 A.2d at 308. Our close review of these exceptions and the specific matters raised therein, disclose no meritorious claims that, even had they been raised by persons with standing, warrant further review -- the District's claims in this regard amount to nothing more than a fishing expedition. The Board has often stated that a union's decision to affiliate is an internal union matter, and has held that that neither the employer nor the Board is entitled to prior notice of the union's decision to affiliate. Lincoln Intermediate Unit No. 12, 7 PPER 137 (Final Order, 1976).

Although not entitled to prior notification, the District is not without recourse, and may challenge a Nisi Order of Amended Certification by way of exceptions raising legitimate employer interests, such as the union's not honoring the bargaining agreement and bargaining obligations as required under Lincoln Intermediate Unit, supra.⁴ See Washington County Commissioners v. Pennsylvania Labor

³ Furthermore, the Commonwealth Court has noted that "equally well established is the right of unions and other voluntary associations to govern their internal affairs without judicial interference and the rule that the procedure applicable to the ratification of collective agreements is an internal union matter." Pennsylvania Labor Relations Bd. v. Eastern Lancaster County Education Association, 427 A.2d 305, 308 (Pa. Cmwlth. 1981), cert. denied, 459 U.S. 838 (1982) (involving the question of non-members' rights to participate in the ratification of a collective bargaining agreement).

⁴ We note that by allowing exceptions after a Nisi Order of Amended Certification has been issued, as opposed to a preemptory challenge to the petition, the employer is afforded an opportunity to observe the newly affiliated union to assess its compliance with the Lincoln Intermediate Unit criteria, and if found to be in violation, may timely challenge the affiliation on one of those bases.

Relations Board, 490 Pa. 526, 417 A.2d 164 (1980); see also Seaboard Industries, Inc. v. Joachim, 45 D. & C. 2d 780 (Philadelphia County, 1968). As noted above, the employer's interests only arise in connection with the effects of the union's decision to affiliate, i.e. its subsequent bargaining relationship with the newly affiliated union, not to the union's internal decision-making process. Lincoln Intermediate Unit, 7 PPER at 138. Our review of the exceptions and supporting brief discloses no claims regarding such matters.

The District relies on several Board Nisi Orders of Amended Certification wherein the Board noted that the union engaged in a secret ballot vote to decide whether to affiliate, e.g. North Allegheny School District, 18 PPER ¶18171 (Nisi Order of Amended Certification, 1987), to suggest that such a secret ballot election is a mandatory prerequisite. However, the Board's requirements for a secret ballot election pertain exclusively to the selection of a bargaining representative. As noted in Lincoln Intermediate Unit, 7 PPER at 138,

Section 605 [calling for secret ballot elections] pertains to "Representation elections". This bargaining unit is already represented and, therefore, another formal representation vote would not be necessary where there is no significant change in the representation.

Here there is no suggestion that a formal change in representative is taking place requiring a Board supervised representation election under Section 605 of PERA.⁵ In addition, neither PERA nor the Board's Rules require that a vote by the union membership concerning an internal union matter must be performed in any particular manner. Accordingly, a secret ballot vote for union affiliation is not mandatory for purposes of an amendment to the certification.

In fact, the second criteria in Lincoln Intermediate Unit requires only that the petitioner demonstrate to the Board that steps have been taken to insure that a majority of the membership approves of the affiliation. In this regard, the District questions whether a majority of members, in fact, voted in favor of affiliation. The District notes that the Nisi Order does not indicate the size of the Union and only states that fourteen members voted in favor and zero voted against the affiliation. The District points out that fourteen votes is equivalent to the number of maintenance personnel within the union, and questions whether all members received notice of the vote.

As noted above, the Board requires only that a majority of the membership approved of the affiliation. As such, the Board does not concern itself with the composition or make-up of the faction voting in favor of the affiliation, or even the views of the non-union members of the bargaining unit. It is sufficient for our purposes that fourteen (14) of the twenty-four (24) union members voted in favor of affiliation. (Petition, Attachment A, Paragraph 1). Thus, the Union has satisfied the second criteria under Lincoln Intermediate Unit.

⁵ In its exceptions, the District does not argue that a question of representation is raised by the Union's affiliation with PSEA/NEA.

The Union has satisfied the remaining criteria for the amendment of the certification by alleging that (a) the affiliation would not affect the day-to-day relationship with the District; and (b) the Union would continue to honor all contracts with the District. Indeed, the Union's petition was filed September 3, 2002, containing these averments, and the exceptions, filed more than five months later on February 3, 2003, contain no allegation that any matters of interest to the employer are contested.⁶ Accordingly, after a thorough review of the exceptions and all matters of record, the Board dismisses the Employer's exceptions and sustains the certification to reflect the Union's name change to the Windber Educational Support Personnel, ESP/PSEA/NEA.

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 by the District are hereby dismissed and the Nisi Order of Amended Certification issued by the Board Representative on January 15, 2003 be and the same is hereby 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 Anne E. Covey, Member, this fifteenth day of April, 2003. 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.

⁶ Contrary to the District's claim of a right to interject itself at an incipient stage of an internal union matter, the Board process providing for subsequent exceptions to a Nisi Order of Amended Certification allows for additional monitoring by the employer to ensure compliance with the contract and bargaining process -- matters of legitimate concern to the employer.