

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CHESTER COUNTY INTERMEDIATE UNIT NO :
24 EDUCATION ASSOCIATION, PSEA-NEA :
:
v. : Case No. PERA-C-04-321-E
:
CHESTER COUNTY INTERMEDIATE UNIT :
NO 24 :

FINAL ORDER

The Chester County Intermediate Unit No. 24 Education Association, PSEA-NEA (Union) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 18, 2004. The Union's exceptions challenge a July 29, 2004 decision of the Secretary of the Board declining to issue a complaint and dismissing its Charge of Unfair Practices filed against Chester County Intermediate Unit No. 24 (Intermediate Unit) alleging that the Intermediate Unit violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

The Union alleged the following facts in its charge. The Union and the Intermediate Unit have been engaged in negotiations for a successor collective bargaining agreement since December 2003. On or about May 19, 2004, the Intermediate Unit placed a "Negotiations Timeline" on its website, periodically updating it. The "Negotiations Timeline" purports to provide a chronological summary of the negotiations that have occurred between bargaining representatives for the Union and the Intermediate Unit. In several postings, the Intermediate Unit negatively portrays the Union's chief negotiator as unwilling to engage in good faith bargaining.

In its exceptions, the Union asserts that the Secretary erred as a matter of law in refusing to issue a complaint. The Union further alleges that if the Secretary applied the proper legal standard, its charge contains sufficient allegations to warrant the issuance of a complaint.

The Board assumes as accurate the allegations of fact set forth in the specification of charges and applies the allegations to the specific subsection and clauses of Section 1201 of PERA. To the extent that the factual allegations state a cause of action, the Secretary would issue a complaint. However, to the extent that the allegations in the charge of unfair practices, assumed as accurate, would not demonstrate the existence of an unfair practice, no complaint is issued. PSSU Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978).

Ordinarily, rights of free speech remain operational during periods of negotiation between the parties. For example, the Board has held since the inception of PERA that parties negotiating a collective bargaining agreement normally remain free to communicate with the media. Southeast Delco Education Association v. Southeast Delco School District, 27 PPER ¶ 27258 (Final Order, 1996); PLRB v. Bethlehem Area School District, 3 PPER 108 (Nisi Decision and Order, 1973). The law is

equally well established that an employer is not precluded from communicating, in noncoercive terms, with employes during negotiations, so long as such communications are not an attempt to negotiate directly with bargaining unit members. The fact that an employer posts at its website information regarding the status of negotiations for consumption by any person who visits the site does not, standing alone, violate this standard. Id.; PLRB v. Portage Area School District, 7 PPER 325 (Nisi Decision and Order, 1976).

However, an employer's expression may not include actual or veiled threats of reprisal or promise of benefit directed to the employes for their participation in protected activities and may not constitute an attempt to circumvent the bargaining representative and negotiate directly with employes. PLRB v. Williamsport School District, 6 PPER 57 (Nisi Decision and Order, 1975). The Union fails to allege that the Intermediate Unit's expression included any actual or veiled threats or promises of benefits or constituted an attempt to negotiate directly with individual bargaining unit members. Therefore, the Union never presents sufficient allegations to state a claim under this standard.

Additionally, a party to collective bargaining negotiations is precluded from deliberately misrepresenting the position of its bargaining counterpart to gain an advantage in the bargaining process. See Southeast Delco Education Association, PSEA/NEA v. Southeast Delco School District, *supra*; Forest Hills School District, 2 PPER 203 (Nisi Decision and Order, 1972). To constitute a failure to negotiate in good faith, the alleged factual mischaracterization must be analyzed in light of the totality of the circumstances surrounding the negotiations. See Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978). The Union's allegations includes no demonstrable misrepresentation of fact on the part of the Intermediate Unit that would constitute bad faith bargaining within the totality of the circumstances. While the "Negotiations Timeline" attached to the Union's charge and exceptions include the Intermediate Unit's impressions and opinions of the negotiating process, the Union points to no specific factual misrepresentation or mischaracterization. Therefore, no complaint can be issued based on this standard.

In support of its position that the Secretary applied the wrong standard in refusing to issue a complaint, the Union cites to Radnor Township Education Association, PSE/NEA v. Radnor Township School District, 27 PPER ¶ 27244 (Proposed Decision and Order, 1996), PLRB v. West Chester Board of School Directors, 3 PPER 75 (1973) and PLRB v. Forest Hills School District, *supra*. However, the Union's reliance on these decisions is misplaced, as they are all distinguishable. In the abovementioned cases, employers communicated directly and exclusively with their employes and, in at least one instance, attempted to bargain directly with the employes; while in this case, the employer's statements are posted on an internet site for public consumption. In Radnor Township School District, *supra*, the hearing examiner found that the employer violated its duty to bargain in good faith by issuing to all members of the bargaining unit memoranda intended to undercut the union's ability to represent the employes at negotiations. In West Chester Board of School Directors, *supra*, the employer mailed a newsletter directly to its employes with the purpose of inducing them to accept the terms of a proposed contract. In PLRB v. Forest Hills,

supra, the employer disseminated a memorandum to its employees during bargaining impasse, factually misstating and mischaracterizing the union's initial bargaining position and the employer's final bargaining position.

In this case, the employer did not directly communicate with its employees, but rather, placed the "Negotiations Timeline" on a page on its website accessible by the general public. Therefore, this case is more analogous to Board decisions addressing statements to the media, rather than Board decisions regarding communications directed at employees in an attempt to bargain or unlawfully chill negotiations. As stated above, the parties are free to communicate with the public or the media. Southeast Delco Education Association v. Southeast Delco School District, supra, PLRB v. Bethlehem Area School District, supra. Additionally, to the extent that the Union regards the information in the "Negotiations Timeline" to be inaccurate or requiring responses from the Union, the Union remains free to communicate its position as it deems appropriate. See Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

After a thorough review of the exceptions and all matters of record, there are no facts alleged to support the Union's charge under Section 1201(a)(1) and (5) of PERA. Accordingly, the Board will dismiss the exceptions and sustain the Secretary's decision declining to issue a complaint.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions are dismissed and the Secretary's decision not to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Anne E. Covey, Member, this twenty-first day of September, 2004. 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.