

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :
 :
BETHLEHEM AREA VOCATIONAL : Case No. PERA-R-05-128-E
TECHNICAL SCHOOL :

FINAL ORDER

On June 23, 2005, the Bethlehem Area Vocational Technical School (Employer) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to a Nisi Order of Certification issued on June 6, 2005, certifying the Bethlehem Vo Tech School Allied Education Support Professionals Association, PSEA/NEA (Association) as the exclusive bargaining representative of a bargaining unit of all full-time and regular part-time white-collar, nonprofessional employees of the Employer. The Nisi Order of Certification was issued pursuant to a May 24, 2005 representation election in which the final tally of ballots revealed that 14 ballots were cast in favor of representation by the Association, 12 ballots were cast against such representation and one ballot was challenged.

In its exceptions, the Employer contends that the Nisi Order of Certification issued on June 6, 2005, should be set aside because "... [i]n a note dated June 8th, 2005, and signed by 10 members of the proposed Unit, the employees stated that they were given false and misleading information by Union Officials concerning their right to vote and the impact of their failure to vote on the results of the election." The allegations in the Employer's exceptions form the basis of a charge of unfair practices filed on June 14, 2005, by the Employer against the Association and docketed by the Board at Case No. PERA-C-05-241-E.

The Employer's exceptions must be dismissed. Section 605(6) of the Public Employee Relations Act (PERA) states that "[t]he board shall certify the results of said election within five working days after the final tally of votes if no charge is filed by any person alleging that an 'unfair practice' existed in connection with said election." 43 P.S. § 1101.605(6) Implementing this section of the statute, the Board's Rules and Regulations provide that "[o]bjections to the conduct of a party to the election seeking a new election shall be filed as a charge of unfair practices within five working days of the final tally of votes." 34 Pa. Code §95.58(a). The election in this case was held on May 24, 2005; accordingly any charges of unfair practices requesting a new election as a remedy were required to be filed by June 1, 2005. Having failed to file its charge of unfair practices within the time period required by the statute, the Employer is precluded from obtaining a new election by (1) the filing of exceptions to the Board's order certifying the results of the election and (2) any filing after the five-day period as required by Section 605(6) of PERA.

In City of Pittsburgh, 9 PPER ¶ 9015 (Final Order, 1977), aff'd sub nom. SEIU, Local 585, AFL-CIO v. PLRB, 10 PPER ¶ 10224 (CCP of Allegheny County, 1979), aff'd, 426 A.2d 181 (Pa. Cmwlt. 1981), both the Court of Common Pleas and the Commonwealth Court agreed with the Board that objections to another party's conduct in connection with a representation election must be filed by way of an unfair labor practice within five working days of the final tally of votes and cannot be raised in exceptions to the order certifying the election results. The Board explained basis underlying the requirement in PERA and the Board's rules that objections must be raised as unfair practices in the five-day period as follows:

As a matter of fundamental fairness to all parties concerned, we deem it essential to raise contentions regarding irregularities in the conduct of an election prior to the issuance of a nisi certification. Otherwise, one party to the election may well hold such contentions in reserve pending issuance of our certification and then raise them by way of exceptions in order to obtain another

election should it disagree with the results of the first one. Our rules are intended for the efficient operation of the Board and the orderly administration of the Act, 34 Pa. Code Ch. 91.5. We do not believe that the piecemeal presentation of contentions regarding irregularities in the election to the Board complies with this intent.

9 PPER at 33. Similarly, the Commonwealth Court in Bucks County Schools I.U. No. 22 v. PLRB, 466 A.2d 262 (Pa. Cmwlth. 1983) held that election objections could not be raised by way of exceptions to the Nisi Order of Certification where the party had failed to raise those objections within five working days of the final tally of the ballots. See also, Berks Heim County Home, 16 PPER ¶ 16170 (Final Order, 1985). Accordingly, having failed to properly pursue objections to the Association's conduct in connection with the election within the five-day period mandated by PERA and the Board's Rules and Regulations, the Employer's exceptions raising those objections and seeking a new election must be dismissed.

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 Nisi Order of Certification in the above-captioned matter be and the same are hereby dismissed; and that the Nisi Order of Certification is hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this nineteenth day of July, 2005.

PENNSYLVANIA LABOR RELATIONS BOARD

L. DENNIS MARTIRE, CHAIRMAN

ANNE E. COVEY, MEMBER