

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SAYRE AREA EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-05-60-E
 :
 SAYRE AREA SCHOOL DISTRICT :

FINAL ORDER

Sayre Area Education Association (Union) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on March 16, 2005. The Union's exceptions challenge a March 4, 2005 decision of the Secretary of the Board declining to issue a complaint and dismissing its Charge of Unfair Practices filed against Sayre Area School District (District) alleging that the District violated Section 1201(a)(1), (3), (5) and (9) of the Public Employee Relations Act (PERA).

The Union alleged the following facts in its charge. Susan Weber is a member of the Union and is employed by the District. On December 7, 2004, Principal Ann Marie Halstead summoned Ms. Weber to appear in her office. Ms. Weber asked a Union representative to accompany her to the meeting. Principal Halstead informed Ms. Weber and the Union representative that the meeting was not disciplinary in nature, but that if the Union representative remained, disciplinary action would result. Ms. Weber chose to continue the meeting without Union representation. The Union has not alleged that Principal Halstead disciplined Ms. Weber as a result of the meeting.

In its exceptions, the Union asserts that the Secretary erred in determining that "since the District informed the employe that the meeting would not result in discipline and the meeting did not result in discipline, the employe could not have 'reasonably' believed that the meeting may result in the imposition of discipline."

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).

The law is well established that a public employe has the right to union representation at an investigatory interview with his or her employer that the employe reasonably believes may result in the imposition of discipline. Commonwealth of Pennsylvania, Pennsylvania Emergency Management Agency v. PLRB, 768 A.2d 1201 (Pa. Cmwlth. 2001); NLRB v. Weingarten, Inc., 420 U.S. 251, 95 S.Ct. 959 (1975). An employer can effectively rebut an employe's claim of reasonable expectation of discipline by demonstrating that the employer assured the employe that no discipline would result from the meeting. Where, however, the assurances are less than convincing, the right to union representation still prevails. Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, 34 PPER ¶ 34134 (Final Order, 2003), citing Pennsylvania State Corrections Officers Association v. Commonwealth of Pennsylvania, 34 PPER ¶ 34021 (Final Order, 2003).

In its charge and its exceptions, the Union concedes that the District provided Ms. Weber with assurances that no discipline would result from the December 7 meeting. The Union alleges, though, that Ms. Weber distrusted the District's assurances, and that this distrust was reasonable, in part, because the District "was prepared to discipline the teacher merely for having a union representative present." It is within the District's managerial prerogative, however, to bar Union representatives from meetings not involving rights that arise out of Article IV of PERA. Furthermore, the District may exercise its managerial prerogative to discipline employes that refuse to abide by its direction of

personnel. Id. Therefore, the Union's argument that Ms. Weber's distrust of the principal was reasonable, because the District exercised its statutorily granted rights by barring the Union from the meeting, is without merit. As the Union failed to provide any other support for the reasonableness of Ms. Weber's distrust of the District's assurances, this charge fails to adequately state of claim of unfair practices by the District.

While the Union failed to adequately allege that a reasonable employee would distrust the principal's assurances that the meeting would not result in discipline, the District is not immune from future charges, should it elect to renege on its assurances and impose discipline as a product of the meeting. Clearly, any subsequent discipline resulting from information gathered at the meeting would provide conclusive support that the District's assurances were false.¹

In addition, in order for the Weingarten rights to attach to the December 7 meeting, it must have been an investigatory interview, i.e., the meeting must have been calculated to form the basis for taking disciplinary or other job affecting actions against Ms. Weber because of past misconduct. See American Federation of State, County and Municipal Employees, Council 13 by Keller v. PLRB, 514 A.2d 255 (Pa. Cmwlth. 1986). In its Specification of Charges, the Union failed to allege that the meeting was an interview, let alone that it was investigatory in nature. The Union only alleged that: "Susan Weber was summoned to appear in the office of her Principal." In its Exceptions and Supporting Brief, the Union again failed to allege that the meeting was an investigatory interview. In its brief, the Union states that, "the union member has a right to believe that the employer representative is lying and is, in fact, laying some kind of trap to conduct an investigatory meeting without union representation." However, the decisive issue is not whether the Union member's preliminary belief that the meeting would be an investigatory interview was reasonable, but rather, whether the meeting was in fact an investigatory interview.

Finally, the District failed to set forth facts sufficient to support its remaining allegations that the District violated its bargaining obligation under Section 1201(a)(5), its meet and discuss obligation under Section 1201(a)(9) or committed any act of discrimination under Section 1201(a)(3) of PERA.

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), (3), (5) and (9) 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 nineteenth day of April, 2005. 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.

¹ The Union is not prejudiced by PERA's limitations period from waiting until discipline is imposed (or until it obtains other adequate evidence that the District provided false assurances), because the four-month statute of limitations begins to run when the Union knew, or should have known, of the District's commission of an unfair practice. 43 P.S. 1101.1505; PLRB v. Ficon, Inc., 434 Pa. 383, 254 A.2d 3 (1969).