COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

READING EDUCATION ASSOCIATION	:	
	:	
v.	:	Case No. PERA-C-05-100-E
	:	
READING SCHOOL DISTRICT	:	

FINAL ORDER

Reading Education Association (Union) filed exceptions with the Pennsylvania Labor Relations Board (Board) on April 7, 2005. The Union's exceptions challenge a March 21, 2005 decision of the Secretary of the Board declining to issue a complaint and dismissing its Charge of Unfair Practices filed against Reading School District (District) alleging that the District violated Section 1201(a)(5) of the Public Employe Relations Act (PERA).

The Union alleged the following facts in its charge. On November 23, 2004, the District approved, without negotiations with the Union, a restructuring plan for the District's English Language Acquisition Program (Program). On November 22, 2004, one day prior, the Union demanded bargaining on the impact of the proposed changes. The District refused to bargain regarding the Program's implementation, which allegedly requires all professional personnel to conform to a new lesson plan model consisting of eight components, involves a "substantial change" in vocational and teacher practices, requires professional development and training of teachers with reference to the new program and includes the reassignment of personnel and change of duties. The Union further demands the District suspend implementation of the Program until bargaining occurred.

In its exceptions, the Union asserts that the Union demanded bargaining simultaneous with the implementation of management's decision. The Union further asserts that the negative impact is well pleaded and occurred simultaneous with the bargaining demand.

For purposes of 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).

There are four elements necessary to establish an employer's refusal to engage in impact bargaining: 1) the employer must lawfully exercise its managerial prerogative; 2) there must be a demonstrable impact on wages, hours or working conditions, severable from the managerial decision; 3) the union must demand to negotiate these matters following management's implementation of its prerogative; and 4) the public employer must refuse the union's demand. Lackawanna County Detectives' Association v. PLRB, 762 A.2d 792 (Cmwlth. Ct. 2000). Ordinarily, a demonstrable, actual and severable impact on Section 701 matters following implementation of the matter of managerial prerogative will arise post-implementation. Mt. Lebanon Education Association v. Mt. Lebanon School District, 35 PPER 95 (Final Order, 2004).

In its Specification of Charges and Exceptions, the Union alleges that the District's implementation of the Program negatively impacted the Union members' wages, hours or working conditions. Specifically, the Union alleges that the Program requires all professional personnel to conform to a new lesson plan model consisting of eight components, a substantial change in vocational and teacher practices, the requirement of professional development and training of teachers with reference to the new program and the reassignment of personnel and change of duties. However, the Union failed to allege with specificity that the matters impacted were severable from the managerial decision or that the employer's actions have in fact changed a specific Section 701 matter.

Therefore, the Union failed to allege sufficient facts that satisfy the second element necessary to establish the District's refusal to engage in impact bargaining.

The Union further asserts in its Exceptions that it demanded bargaining over the impact of the Program's implementation "simultaneous with the implementation of management's decision." However, this assertion contradicts the Union's previous allegations in its Specification of Charges and supporting documents. In the Specification of Charges, the Union alleged that the Union "being aware that the Board of School Directors was going to adopt the aforementioned program, without negotiations, demanded bargaining on the impact of the proposed changes..." Assuming, *arguendo*, that the demand for bargaining occurred simultaneously with the District's implementation of the Program, this demand fails to satisfy the third element of an impact bargaining claim.

Union demands made prior to implementation are in furtherance of the employer's meet and discuss requirement to afford the employes' the opportunity to voice their concerns regarding a proposed directive, without hindering the right of the employer to implement. The fulfillment of the meet and discuss obligations prior to implementation may effect changes to the employer policy or program that in turn affect the potential impact on the employes' working conditions.[1] It is pure speculation that any impact that exists during the meet and discuss period, prior to implementation, will have the same effects or impact on the employes upon final implementation. Only after implementation will the impact that the managerial decision has on the negotiable subjects of wages, hours and working conditions be demonstrable. Mt. Lebanon Education Association v. Mt. Lebanon School District, *supra*. Accordingly, because any legally demonstrable impact is identifiable only after implementation of the managerial prerogative, the Union's demand to bargain that impact prior to or, here, simultaneous with implementation is ineffectual.

Therefore, the Union's impact bargaining charge was premature. If after the Program's implementation, the Union has identified a demonstrable impact on wages, hours or working conditions, matters that are severable from the managerial decision, and the other requisite elements are present, it may file a new charge with the Board.

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)(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 Employe 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] There is no contention here that the District failed in its meet and discuss obligations prior to implementation.