COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEMPLE ASSOCIATION OF UNIVERSITY PROFESSIONALS, LOCAL 4531, AFT	:	
v.	:	Case No. PERA-C-05-506-E
TEMPLE UNIVERSITY	:	

FINAL ORDER

Temple University (Temple) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on July 10, 2006, challenging a Proposed Decision and Order (PDO) issued on June 19, 2006. In the PDO, the hearing examiner concluded that Temple had violated Section 1201(a)(1) and (2) of the Public Employe Relations Act (PERA) by sending a letter to dues paying members of the Temple Association of University Professionals, Local 4531, AFT (TAUP) advising those employes on procedures for resigning from TAUP membership and withdrawing their authorizations for dues deductions, including a printed form which TAUP members could use to accomplish the resignation and revocation. On July 31, 2006, TAUP filed its response to Temple's exceptions and a brief in support.

The facts as found by the hearing examiner are set forth at length in the PDO, but for the purpose of these exceptions are summarized briefly as follows. TAUP is the certified bargaining representative for a unit of Temple's faculty and academic professionals. In the most recent negotiations for a collective bargaining agreement, TAUP attempted to negotiate a "fair share" agreement in which non-members of TAUP would be charged a fee equal to the pro-rata share of expenses for activities reasonably employed by TAUP to effectuate TAUP's duty as the exclusive bargaining representative. TAUP and Temple ultimately agreed upon a fair share provision that provided that a fair share fee would be implemented in the event that TAUP obtained and maintained seventy (70) percent of the bargaining unit as dues paying members of TAUP as measured on November 1 of each calendar year. The collective bargaining agreement was ratified in early March of 2005 and TAUP subsequently sought to recruit new dues paying members from within the bargaining unit. On or about September 23, 2005, TAUP submitted to Temple's Office of Human Resources a chart listing fifty-six new TAUP members who had authorized dues deductions along with those employes' membership applications. This number exceeded the number of membership applications and dues authorizations that TAUP had submitted in previous Septembers. On or about September 26, 2005, Temple mailed a letter (September 26th letter) to TAUP members who had authorized Temple to withhold dues from their paychecks informing those employes of their right under the recently negotiated collective bargaining agreement to revoke their dues authorizations during the period of October 1st to October 15th of each calendar year and also giving employes specific directions, including the addresses to which the revocations were required to be mailed. The letter also contained a form on which the employes could merely provide their name, employe number, the date and other identifying information, execute the form and send it to the given addresses. The letter also directed the employes who had any questions to contact Sharon Boyle, Temple's Director of Labor and Employe Relations. The letter made clear that the decision to revoke dues authorizations was the individual employe's and that Temple wanted to be sure that the employes were aware of and understood their rights under the collective bargaining agreement. The letter further stated that whether the employe revoked his or her dues authorization or not, it would not make any difference in that employe's wages, benefits, position or treatment by Temple. During the October 1st through October 15th period immediately following Temple's letter, eleven TAUP members revoked their dues deduction authorizations and resigned their membership in TAUP. Several of the eleven who revoked their dues deductions authorizations during this period failed to provide copies to TAUP. Temple's Director of Labor and Employe Relations forwarded copies of the revocations to TAUP.

In its exceptions, Temple contends that the hearing examiner erred in 1) concluding that Temple's September 26th letter was intended to interfere with TAUP's finances; 2) concluding that the September 26 letter constituted an unlawful attempt to influence the TAUP's abilities to raise funds in violation of Section 1201 (a)(1) and (2) of PERA; 3) concluding that there is a meaningful difference between Board and National Labor Relations Board (NLRB) policy regarding an employer's right to inform employes in a non-coercive manner of their right to resign from union membership and revoke dues deductions; and 4) failing to make findings of fact regarding Temple's previously-stated opposition to fair share fees as contrary to academic freedom and freedom of association as communicated to the employes; TAUP's failure to remind employes of their right to withdraw during the October 1st to October 15th period; that an employe who used Temple's pre-printed form to resign and revoke subsequently renewed his TAUP membership; the net increase in the number of employes who joined TAUP during various periods of time; and that Temple made no effort to follow up on the September 26th letter.

Temple contends that the hearing examiner erred in his discussion wherein the hearing examiner states that the September 26th letter was an attempt by Temple to interfere with TAUP's finances and to influence TAUP's ability to raise funds. Temple contends that these assertions are mere speculation and are not supported by substantial evidence. The hearing examiner's discussion of these matters adresses the intent or motivation of Temple in distributing the September 26th letter and Temple's exceptions are an attempt by Temple to avoid a violation of PERA by arguing that the record fails to substantiate that Temple had an unlawful motive in distributing the September 26th letter. However, specific intent is not a necessary prerequisite to a conclusion that Temple interfered with the employes' exercise of rights guaranteed by Article IV of PERA. PLRB v. Montgomery County Community College, 15 PPER ¶ 15038 (Final Order, 1984), aff'd, 16 PPER ¶15156 (Court of Common Pleas of Montgomery County, 1985). Accordingly, even though an employer may not intend to coerce employes in the exercise of rights under PERA, the actions of the employer must be assessed to determine whether those actions may tend to coerce a reasonable employe in the exercise of PERA rights, based upon the totality of the circumstances. PLRB v. Woodland Hills School District, 13 PPER ¶ 13298 (Final Order, 1982); PLRB v. Brownsville Area School District, 14 PPER ¶ 14183 (Proposed Decision and Order, 1983); PLRB v. Commonwealth of Pennsylvania (Department of Public Welfare, Eastern State School and Hospital), 14 PPER ¶ 14153 (Proposed Decision and Order, 1983). Therefore, Temple's objection to the hearing examiner's discussion regarding its motivation in distributing the September 26th letter, even if valid, does not change the result where it can be concluded that Temple's action would tend to coerce or interfere with employe rights given the totality of the circumstances.

Temple next argues that its actions in informing employes of their right to resign their union membership does not amount to unlawful interference in violation of PERA. The Board has long held that an employer generally has a constitutionally protected right to communicate with its employes in a non-coercive manner that does not interfere with the exercise of rights granted in Article IV[1] of PERA. See City of Lancaster, 2 PPER 132 (Nisi Decision and Order, 1972); PLRB v. Portage Area School District, 7 PPER 325 (Nisi Decision and Order, 1976); PLRB v. City of Philadelphia (Sheriff's Department), 14 PPER ¶ 14118 (Proposed Decision and Order, 1983); Chester County Intermediate Unit No 24 Education Association, PSEA-NEA v. Chester County Intermediate Unit No 24, 35 PPER 110 (Final Order, 2004). Ordinary free speech rights apply so long as such speech does not interfere with the free exercise of employe rights without unlawful interference, restraint or coercion in violation of Section 1201(a)(1) and (2) of PERA. Thus, for example, the Board has held that an employer cannot offer material assistance or support

[1] Article 4 provides as follows:

"It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement."

43 P.S. §1101.401

for one union in a contested organizational campaign because to do so would interfere with the free exercise of employe rights. South Park School District v. PLRB, 10 PPER ¶ 10762 (Order Directing Rerun Election, 1979). The Board has further stated that allowing access to the employer's internal mail system for one of two competing unions unlawfully interfered with the free exercise of employe rights. Teamsters v. Central Bucks School District, 33 PPER ¶ 33004 (Final Order, 2002). In each instance, the employer transcended its free speech rights and offered material aid and assistance to certain unions competing for employe support. While the employer is free to express its views of union support or opposition in a non-coercive atmosphere, it exceeds its statutory authority when it takes action in a manner that interferes with the free exercise of employe rights. Thus, when approached by employes inquiring about their right to resign from the union, under the law, the employer has the free speech right to respond to employes in a non-solicitous, non-coercive, neutral manner. By the same token, the employer cannot lawfully transcend this right and solicit union resignations and provide material aid and assistance to employes to this end. Here the record shows that Temple initiated a solicitation to employes to exercise their right to resign from the union and provided a pre-printed form to assist employes to resign from the union and revoke their dues authorization.

Temple did not restrict its actions to merely informing employes in a non-coercive manner of their rights under the collective bargaining agreement to resign from TAUP and revoke their dues authorizations. Temple provided the employes with a pre-printed form to resign from TAUP and revoke their dues authorization, forwarded employe resignations to TAUP where the employes had failed to do so and offered to further answer any questions, even though no employe had posed any question regarding resignation and revocation.

We agree with the hearing examiner that the analysis of this case must follow our decision in County of York, 10 PPER ¶ 10157 (Nisi Decision and Order, 1979), in which the Board found a violation where the employer was approached by employes who wanted to withdraw from the union and the employer prepared withdrawals by its personnel on employer stationery and paid the postage to send the withdrawals to the union. Temple's actions here are at least as objectionable as those found unlawful in County of York. Temple crossed the line of permissible free speech in materially assisting the employes in resigning their membership and revoking their dues deductions by sending an unsolicited letter to TAUP members that included a pre-printed form for the employes to accomplish those tasks, soliciting and offering to answer any further questions regarding the process and thereafter correcting the employes effort to resign from TAUP by mailing the resignations to TAUP where the employes had failed to do so as was required by the collective bargaining agreement. Indeed the provision of the pre-printed form and forwarding resignations to TAUP where the employes had failed to do so is substantially similar to the employer's typing the resignations for the employes and mailing them to the union in County of York. We reaffirm our statement of policy in County of York and affirm the decision of the hearing examiner.

Temple further argues that the hearing examiner erred in failing to make various findings of fact including Temple's previously-stated opposition to fair share fees as contrary to academic freedom and freedom of association as communicated to the bargaining unit employes during the TAUP negotiations, TAUP's allegedly limited communications to bargaining unit employes regarding the right to revoke dues authorizations during the annual October 1st to October 15th period, the net increase in the number of employes who joined TAUP during various periods of time and that Temple made no effort to follow up on the September 26th letter. Generally, the hearing examiner must set forth those findings that are necessary to support the conclusion reached by the hearing examiner and need not render all possible findings on all factual issues presented. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). A number of Temple's proffered findings of fact go to Temple's alleged lack of intent to interfere with the employes' exercise of rights under the Act. Because, as noted above, unlawful intent is not a component of violations of Section 1201(a)(1) and (2) of PERA, Temple's communications to unit members regarding its position on fair share fees during collective bargaining negotiations, Temple's lack of any activity to follow up on the September 26th letter and TAUP's alleged failure to adequately inform its members of their resignation rights under the new collective bargaining agreement would have no material effect on our examination of whether the circumstances surrounding the September 26th letter constitute a violation of

those subsections of PERA. Further, the proffered findings regarding the net increase in the number of employes who joined TAUP during various periods of time, and that one employe who utilized the pre-printed form subsequently renewed his membership, go to the issue of whether Temple's actions actually coerced any employes in the exercise of their rights under PERA. It is axiomatic that a violation of Section 1201(a)(1) of PERA can occur even where it is not shown that any individual employe was actually coerced, but that an examination of the totality of the circumstance must be performed to determine whether the employer's action had a tendency to coerce employes. Tri-Valley Education Association v. Tri-Valley School District, 29 PPER ¶ 29202 (Proposed Decision and Order, 1998). Accordingly, the proffered findings that run counter to a conclusion that Temple's actions did in fact coerce specific employes does not change the determination that Temple violated PERA. Upon review of the record and Temple's exceptions, the hearing examiner's findings accurately reflect the factual underpinning necessary for the disposition of this case and Temple's proffered findings of fact would not alter the conclusion that it had committed an unfair practice.

Temple separately argues that the hearing examiner erred by not adopting a decision of the NLRB in Perkins Machine Company v. International Union of Electrical Radio and Machine Workers, 141 NLRB 697 (1963). The Board has stated that it will consider the positions of other jurisdictions (e.g., NLRB, federal courts and other state jurisdictions) in assisting resolution of matters arising before the Board. In such circumstances, those decisions may be considered for their persuasive value but in no sense can it be claimed, as Temple does here, that the hearing examiner erred in "failing to follow directly applicable federal precedent". (Brief at 8) It is simply not error for the Board to accept or reject as persuasive the authority of any other jurisdiction. Rather, it is for the Board to exercise its discretion to accept or reject proffered federal authority on any given area of law. AFSCME v. PLRB, 529 A.2d 1188 (Pa. Cmwlth., 1987). Pennsylvania Emergency Management Agency v. PLRB, 768 A.2d 1201 (Pa. Cmwlth., 2001). Indeed, the exceptant here, Temple, has previously sought to assign specific error for the Board's failure to follow federal authority, an argument rejected by the Board and Commonwealth Court. Temple v. PLRB, 734 A.2d 448 (Pa. Cmwlth., 1999), petition for allowance of appeal denied, 561 Pa. 682, 749 A.2d 474 (1999). Here the Board has, as above noted, adopted its own law in the past 36 years since passage of PERA regarding employer material assistance to employes in sufficiently similar circumstances and resort to federal authority is unavailing.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Proposed Order and Decision of the hearing examiner.

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 Temple to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed and the Proposed Decision and Order is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-first day of November, 2006. 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.

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TEMPLE UNIVERSITY	:	

AFFIDAVIT OF COMPLIANCE

The University hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (2) of PERA; that it has posted the Final Order and the Proposed Decision and Order as directed; and that it has served a copy of this affidavit on the Union at its principal place of business.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

_____
Signature of Notary Public