

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

IROQUOIS EDUCATION ASSOCIATION PSEA/NEA :
:
v. : Case No. PERA-C-05-608-W
:
IROQUOIS SCHOOL DISTRICT :

FINAL ORDER

The Iroquois Education Association, PSEA/NEA (Association) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on September 25, 2006, challenging a Proposed Decision and Order (PDO) issued September 6, 2006, finding that the Iroquois School District (District) did not violate Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) as alleged in the Charge of Unfair Practices. The District filed a timely brief in response to the exceptions on October 4, 2006.

The Association's Charge of Unfair Practices alleges that

The . . . Association represents bargaining unit members who exclusively provide classroom instruction to students at the . . . High School. Prior to the 2005-06 school year, bargaining unit members provided classroom instruction in the In-School Suspension classroom. On or about September 6, 2005, the . . . District assigned an aide to perform classroom instruction in the In-School Suspension classroom located in the . . . High School. This classroom instruction was previously done by bargaining unit members. Thus the District has engaged in a diversion of bargaining unit work.

Following the issuance of a Complaint on the charge, the District filed an Answer asserting as a defense to the charge that the student services aide assigned to the In-School Suspension (ISS) classroom "is not permitted to teach or to provide any academic instruction..." (Answer to Charge of Unfair Practices ¶7).

Based on the testimony and evidence presented, the Hearing Examiner found that "[t]he duties of the student services aide in the ISS room include monitoring the students, keeping them on task, making sure they are not sleeping, and keeping them in their seats[,]" (Finding of Fact 10), and that the student services aide "does not assist the students in completing their assignments." (Findings of Fact 11 and 12). Indeed, whenever a student in the ISS classroom had a question concerning an assignment, the student services aide contacted teachers to assist the student. (Finding of Fact 11). Thus, because instruction to students in the ISS classroom remained with members of the bargaining unit, the Examiner found no violation of Section 1201(a)(1) and (5) for removal of "classroom instruction" as alleged, and dismissed the Association's charge.

The Association argues that the Examiner erred in holding it to an overly burdensome standard of fact pleading, and claims that its charge adequately alleged removal of all the ISS classroom duties from the bargaining unit. The Association asserts that its charge should have been construed to include all duties previously preformed by bargaining unit members while in the ISS classroom, including monitoring students, ensuring they have their assignments, keeping the students on task, which are now being performed by the student services aide.

The Board's Rules and Regulations at 95.31(b)(3) provides that charges filed with the Board shall include:

[a] clear and concise statement of the facts constituting the alleged unfair practice, including the names of the individuals involved in the alleged unfair practice, the time, place of occurrence and nature of each particular

act alleged, and reference to the specific provisions of the act alleged to have been violated.

In Independent State Store Union v. Commonwealth, Liquor Control Board, 22 PPER ¶122009 (Final Order, 1990), the Board reiterated the holding in PLRB v. Lawrence County, 12 PPER 12312 (Final Order, 1981), *aff'd*, 469 A.2d 1145 (Pa. Cmwlth. 1983),

We are fully cognizant of due process considerations which arise out of the processing of unfair practice charges. Charges must be sufficiently detailed so as to put a respondent on notice of the specific conduct alleged to have been in violation of the Act, thereby allowing adequate opportunity to prepare and present the defense. Accordingly, a charging party is limited to the presentation of evidence as to the specific allegations contained in the charge as timely amended.

Lawrence County, 12 PPER at 469 (citations omitted).

The Association's charge only specifies that "classroom instruction to students" in the ISS room was being removed from the bargaining unit. The District's answer to the charge reveals that the District was on notice that the Association was complaining of the removal of student instruction in the ISS classroom from the bargaining unit. As found by the Examiner, the evidence of record supports that classroom instruction of the students in the ISS classroom is still being performed by teachers in the bargaining unit, and therefore there was no violation of Section 1201(a)(1) and (5) for the removal of classroom instruction, as was alleged in the charge.

Moreover, the first time the Association asserted that "classroom instruction" included the other duties involved in the ISS classroom, was in its post hearing brief filed with the Board on June 14, 2006, which was more than four months after the student services aide commenced duties with the start of the 2005-2006 school year. Section 1505 of PERA precludes the Board from entertaining charges concerning acts that occurred more than four months before the claims are made to the Board. Fraternal Order of Transit Police v. Southeastern Pennsylvania Transportation Authority, 36 PPER 14 (Final Order, 2005). Because the Association's allegations concerning the removal of the ISS coordinator duties, the monitoring of students, keeping students on task, and insuring that the students had their assignments, *et cetera*, was raised more than four months after they were being performed by the student services aide, the Examiner did not err in refusing to entertain the charges or amend the complaint.

After a thorough review of the exceptions and all matters of record the examiner did not err in dismissing the charge of unfair practices as alleged. Accordingly, the exceptions filed by the Association are 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 exceptions filed by the Iroquois Education Association are hereby dismissed, and the September 6, 2006 Proposed Decision and Order, be and hereby is 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.