COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

HAZLETON AREA EDUCATION SUPPORT PERSONNEL ASSOCIATION	:	
v.	:	Case No. PERA-C-03-462-E
HAZLETON AREA SCHOOL DISTRICT	:	

ORDER

Hazleton Area School District (District) filed exceptions with the Pennsylvania Labor Relations Board (Board) to an Amended Proposed Decision and Order issued by a Board hearing examiner in which the hearing examiner concluded that the District had committed unfair practices within the meaning of Section 1201 (a)(1) and (5) of the Public Employe Relations Act (PERA) when the District unilaterally declared that secretarial position to be a confidential position and outside of a bargaining unit represented by the Hazleton Area Education Support Personnel Association (Association) and directed the employer to cease and desist from engaging in such unlawful activity and to take the affirmative action of declaring a vacancy in the position of Secretary to the Assistant Superintendent, posting that position vacancy and agreeing to bargain with the Association over the wages, hours, and working conditions of that position. The Hearing Examiner's amended order was issued on March 14, 2006.

Section 95.98(a)(1) sets forth the requirements for the filing of exceptions to a hearing examiner's decision and provides in pertinent part as follows:

> (1) (1) A party may file with the Board within 20-calendar days of the date of issuance with the Board an original and four copies of a statement of exceptions and a supporting brief to a proposed decision issued under §95.91(k)(1) (relating to hearings) or a nisi order issued under §95.96(b) (relating to exceptions) certifying a representative or the results of an election. Exceptions will be deemed received upon actual receipt or on the date deposited in the United States mail, as shown on a United States Postal Form 3817 Certificate of Mailing enclosed with the statement of exceptions.

34 Pa. Code § 95.98(a)(1). The Board's Rules and Regulations that permit the use of the United States Postal Form 3817 Certificate of Mailing provides litigants with a guaranteed method to assure timely filing of exceptions by allowing deposit in the United States mail, as evidenced by a U.S. Postal Service Form 3817 Certificate of Mailing.

The Board received the District's exceptions to the Hearing Examiner's decision on April 7, 2006, accompanied by a United States Postal Form 3817 Certificate of Mailing, which indicated a mailing date of April 4, 2006. However, the Amended Proposed Decision and Order was issued on March 14, 2006. The twentieth day after March 14, 2006 was April 3, 2006. Accordingly, in order to be timely filed utilizing a United States Postal Form 3817 Certificate of Mailing, the exceptions in this case would have had to have been deposited in the United States mail on or before April 3,

2006, as evidenced by a United States Postal Form 3817 Certificate of Mailing. When the District became aware that the exceptions were not timely filed, the District filed a letter on April 10, 2006, acknowledging that the exceptions were untimely filed and that the error was due to simple miscalculation of the required filing date. The District's letter further requests that the Board liberally construe its Rules and Regulations and accept and address the exceptions. In response to that letter, the Association filed a letter opposing the District's request and urging the Board to dismiss the exceptions as untimely.

In AFSCME, Council 13 v. Commonwealth of Pennsylvania, Department of Transportation, 33 PPER ¶ 33027 (Final Order, 2001), aff'd in an unreported opinion, No. 138 C.D. 2002 (Pa. Cmwlth. 2002), the Board rejected as untimely exceptions received by mail beyond the due date without evidence of timely deposit in the mail. In that case, the exceptant, utilizing its private postal meter for postage, argued that it had placed the exceptions in the United States Mail five days prior to their due date. The exceptant argued that it was reasonable to assume timely receipt despite the use of a private postal meter. However, the exceptions were not accompanied by a United States Postal Form 3817 Certificate of Mailing that would have demonstrated the date the exceptions were deposited in the United States Mail and there existed no other independent evidence that the exceptant had complied with the Board's filing requirements. In this case, the District cannot even argue that it complied or substantially complied with the Board's Rules and Regulations as the United States Postal Form 3817 Certificate of Mailing clearly indicates that the exceptions were placed in the United States mail after the twenty-day period expired. The Amended Proposed Decision and Order was issued on March 14, 2006. The twentieth day after March 14, 2006 for purposes of filing exceptions was April 3, 2006. As such, the exceptions, deposited in the United States mail as evidenced by United States Postal Form 3817 Certificate of Mailing on April 4, 2006, were filed beyond the twenty-day time period allowed for filing of exceptions under the Board's Rules and Regulations. Accordingly, we will not address the merits of the exceptions to the Hearing Examiner's March 14, 2006 Amended Proposed Decision and Order.

After a thorough review of the exceptions and all matters of record, the Board hereby dismisses the exceptions as untimely filed.

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 above-captioned matter be and the same are hereby dismissed as untimely filed.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania 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 twentieth day of June, 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.