

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 :

PROPOSED DECISION AND ORDER

On October 31, 2005, the Temple Association of University Professionals Local 4531 AFT (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Temple University (University) violated Section 1201(a)(1) and (2) of the Public Employe Relations Act (Act). On December 21, 2005, the Secretary of the Board issued a complaint and notice of hearing directing a hearing on March 17, 2006. On that date all parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. In lieu of presenting viva voce testimony the parties submitted a series of factual stipulations and joint exhibits. Both parties filed post-hearing briefs.

The examiner, on the basis of the factual stipulations and exhibits presented and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The University is a public employer. (Joint Stipulations 2)¹
2. The Union is an employe organization. (J.S. 1)
3. TAUP is the certified bargaining agent for a unit of certain faculty and academic professionals employed by Temple. (J.S. 3)
4. Since 1973, TAUP and Temple have been parties to successive collective bargaining agreements, each of which has contained a dues deduction provision, pursuant to which TAUP members may authorize Temple to deduct their membership dues from their paychecks, and remit those dues to TAUP. (J.S. 4)
5. The current collective bargaining agreement, effective from October 15, 2004, through October 15, 2008, was ratified in early March, 2005. (J.S. 5)
6. During the negotiations for the current collective bargaining agreement, one of TAUP's bargaining demands was the inclusion of a provision in the contract stating that "Nonmembers will be charged a fair share fee that is equal to the pro-rata share of expenses for activities or undertakings that are reasonably employed to implement or effectuate the duties of the TAUP as the exclusive bargaining agent." TAUP had proposed the addition of similar language during every round of contract negotiations since the passage of Act 84 of 1988, 71 P.S. § 575 ("Act 84"). (J.S. 6, 7)
7. Temple opposed the Union's fair share fee proposal. (J.S. 8)
8. The Union's fair share fee demand was the last issue to be resolved during the negotiations. The parties ultimately agreed to a new contract provision which states as follows:

TAUP shall be authorized to collect a fair share fee from all members of the bargaining unit, calculated in accordance with applicable law, if it obtains and maintains seventy percent (70%) of the bargaining unit as dues-paying

¹ Hereinafter referred to as J.S.

members of TAUP as measured on November 1 of each calendar year. If TAUP fails to maintain seventy percent (70%) of the bargaining unit as dues-paying members of TAUP as measured on November 1 of each calendar year, its authorization to collect a fair share fee shall cease.

(J.S. 11)

9. Following ratification of the current collective bargaining agreement, TAUP sought to recruit new dues paying members from within the bargaining unit. (J.S. 13)

10. Bargaining unit members who join and become members of TAUP are obligated to pay dues to TAUP, and payment of dues is the only obligation of membership. The TAUP membership application authorizes payment of TAUP dues through payroll deduction. TAUP members may also remit their dues payments to TAUP directly. (J.S. 14)

11. In response to TAUP's request, Temple began in August, 2005, to provide TAUP with a list of newly hired bargaining unit members in advance of the periodic employee orientation meetings. (J.S. 15)

12. Every month, Temple provides TAUP with a list of employees for whom dues have been deducted. TAUP reviews Temple's lists for accuracy and has the opportunity to provide Temple's Office of Human Resources with a list of corrections, which would include the addition of any new members who have signed the membership application/dues deduction authorization. (J.S. 16)

13. At the same time, TAUP provides the original membership application/dues deduction authorization forms signed by such employees to the Office of Human Resources. (J.S. 17)

14. In August, 2005, TAUP mailed a copy of the Collective Bargaining Agreement to each bargaining unit member. (J.S. 19)

15. On or about September 23, 2005, TAUP turned in to Temple's Office of Human Resources a chart listing 56 new TAUP members who had authorized dues deductions, along with their membership applications. In September, 2004, TAUP had provided the Office of Human Resources with one new member application. In September, 2003, the Union turned in 13 new membership applications to the Office of Human Resources. (J.S. 20)

16. On or about September 26, 2005 the University mailed to Union members who had authorized the University to withhold Union dues from their paychecks the following correspondence:

Dear TAUP Bargaining Unit Member:

The recently negotiated collective bargaining agreement between the Temple Association of University Professionals, American Federation of Teachers, AFL-CIO Local 4531 (TAUP) and Temple University, effective March 4, 2005, changed the rights of bargaining unit members to revoke their authorizations to deduct TAUP dues payments from their salary. Article 7.B of the agreement now provides that during the period from October 1 to October 15 of each calendar year, any TAUP bargaining unit employee may revoke his or her dues deduction authorization by sending notice to the University and TAUP.

The decision is each individual's to make. The University simply wants to be sure that you are aware of, and understand, your rights and privileges under the new agreement. Whether you revoke your TAUP dues authorization, or whether you choose to continue the authorization, will not make any difference in your wages, benefits, position or treatment by the University. As far as the University is concerned, that is a matter for each individual to decide for himself or herself without pressure from the University or TAUP.

If you voluntarily choose to revoke your dues deduction authorization, the agreement requires that you send written notice of revocation between

October 1 and October 15 to the Department of Human Resources, Temple University, 408 University Services Building, 1601 North Broad Street, Philadelphia, PA 19122, and also requires that you send a copy to the TAUP office at Barton Hall, Room A231, 1900 North 13th Street, Philadelphia, PA 19122-6082. The written notice of revocation should contain your full name, employee number, school/college and department, and be signed and dated by you. A sample is attached for your convenience.

If you have any questions regarding the above, please feel free to contact Sharon Boyle, Director of Labor and Employee Relations, at (215) 204-XXXX.

Sincerely,

Deborah Hartnett

(J.S. 21; joint Exhibit 8)

17. Attached to the above-recited letter was the following form:

To: Department of Human Resources
Temple University
408 University Services Building
1601 North Broad Street
Philadelphia, PA 19122
Attention: Sharon Boyle

I, the undersigned, a member of the TAUP bargaining unit, hereby revoke my prior authorization to Temple to deduct all dues payments authorized by the TAUP Constitution and By-Laws from my salary.

Name: _____ Employee # _____

School/College: _____ Department: _____

Signature: _____ Date: _____

cc: TAUP Office
Barton Hall, Room A231
1900 N. 13th Street
Philadelphia, PA 19122-6082

Neither Ms. Hartnett nor Sharon Boyle, who was referenced in the letter, spoke with any bargaining unit members about revoking their dues deduction authorization. (J.S. 21, 22; Joint Exhibit 8)

18. Temple informs TAUP bargaining unit employees of other deadlines for exercising their rights under the collective bargaining agreement and other employment-related deadlines. For example, on May 3, 2005, Temple President David Adamany sent an e-mail message to bargaining unit employees (via their Temple email addresses) informing them that the nomination period for merit awards would close on May 16, 2005. On June 7, 2005, Jennifer Speer of the Temple Human Resources Department sent a memorandum to eligible full-time TAUP non-tenure track faculty members, at their home addresses, informing them of their new rights under the collective bargaining agreement (i) to enroll in a defined contribution pension plan by completing an enclosed salary reduction agreement form by July 31, 2005 and (ii) to elect additional life insurance coverage by completing an enclosed enrollment form prior to July 31, 2005. On November 1, 2005, Ms. Speer sent a memorandum to employees, at their office addresses, informing them of the applicable enrollment windows for electing Medicare Part D Prescription Drug Coverage. On November 15, 2005, Heather Woods of the Temple Human Resources Department sent a memorandum to

eligible employees, at their office addresses, informing them of the November 28, 2005 - December 28, 2005, window for enrolling in a Flexible Spending Account. On March 9, 2006, Ms. Wood mailed a letter, along with an Enrollment/change/Waiver Form to the homes of eligible employees informing them of their right, and applicable deadlines, to participate in the Retiree Health Benefits Pre-Funding Plan. These were sent to those employees to whom the communication was relevant, as opposed to all employees in the bargaining unit. (J.S. 24, 25)

18. Temple has not previously sent letters to TAUP members advising them of their right to revoke their dues deductions authorization. (J.S. 26)

19. TAUP regularly solicits bargaining unit members to become dues paying members of TAUP. Pursuant to the collective Bargaining Agreement, Temple allows TAUP to use its facilities, bulletin boards and mail boxes in connection with these solicitations. Temple has not previously sent any letter to bargaining unit employees who are not members of TAUP regarding their right to become union members and/or to authorize dues deduction. (J.S. 27)

20. Eleven (11) TAUP members revoked their dues deduction authorizations, thereby resigning their membership in TAUP, during the October 1 through 15, 2005, revocation period. (J.S. 28)

21. Several of the eleven (11) who revoked their dues deduction authorizations during the contractual window period turned their revocations in to Temple's Human Resources office, but did not provide copies to TAUP themselves. Sharon Boyle, Temple's Director of Labor and Employee Relations, forwarded copies of the revocations to TAUP. (J.S. 30)

DISCUSSION

The Union complains that the University violated Section 1202(a)(1) and (2) of the Act when it sent a letter exclusively to dues paying Union members advising them how and when to withdraw authorization for dues deductions. The University included, for "convenience", a printed form Union members could use to accomplish this task, and listed both addresses where Union members needed to send the withdrawal for it to be effective. Recipients of the letter were told, if they had any questions, "please feel free to contact Sharon Boyle, [the University's] Director of Labor and Employee Relations...." The University defends its actions by citing federal authority, which at first blush, seems to be persuasive. Yet a close examination of the differences between those cited cases and this case leads to the conclusion that those federal cases simply are not applicable. The University violated Section 1201(a)(1) and (2) of the Act by sending this letter.

The Union calls attention to County of York, 10 PPER ¶ 10157 (Nisi Decision and Order, 1979), a case in which the Board opined that an employer which assists employees in withdrawing their union membership commits an unfair practice under Section 1201(a)(1) and (2) of the Act. In County of York, the employer was approached by employees who intended to withdraw from the union. The employer volunteered to have some withdrawal letters typed on its stationary for those employees. The employer also covered the cost of postage to send those withdrawals to the union. The Board found those actions violated Section 1201(a)(1) and (2) of the Act. There are both similarities and differences between this case and that one. The University provided some assistance by providing a convenient, preprinted form that enabled Union members to do little more than sign their names to effectuate the dues authorization withdrawal.² The employees here did not seek out assistance from the University; rather the University took the impetus in contacting Union members. While the employer in County of York provided more direct assistance to union members than has the University, the University's actions are still violative of the Act.

² The University refers to the form as a "sample notice", but it stretches the imagination to think that Union members would not simply sign and return the form provided. (Joint Exhibit 8)

In Brownsville Area School District, 14 PPER ¶ 14183 (Proposed Decision and Order, 1983) the employer was found to have violated Section 1201(a)(1) when, out of concern that allowing an employee, Ms. Walker, to personally circulate a decertification petition in the high school might cause a confrontation, the principal walked the petition around the building himself. As he did so he informed each prospective signer "Would you like to sign a petition that Ms. Walker is presenting to decertify the union?" Id. at 403. Albeit, a revocation of dues deduction form is not a decertification petition. Nevertheless, the employer's implied imprimatur was present in that case, and is also present in this case as well.

The University argues that the letter, as sent, does not constitute an unfair practice under federal precedent and recites that the Board has, in the past, seen fit to follow National Labor Relations Board (NLRB) precedent when the policies of the National Labor Relations Act (NLRA) and the Public Employees Relations Act (Act) coincide.³ Commonwealth v. PLRB, 826 A.2d 932 (Pa. Cmwlth. 2003). The University then cites, Perkins Machine Company v. International Union of Electrical Radio & Machine Workers, 141 NLRB 697 (1963), a case with facts strikingly similar to this one.

In Perkins, the NLRB found no violation of the NLRA where the parties' agreement provided for an annual, fifteen-day dues deduction revocation period and the employer wrote a letter virtually identical to the one sent in this case. The NLRB found the letter free from "threat of reprisal or promise of benefit" and ruled that it only contained "a clear statement of Respondent's [employer's] neutral position." The NLRB therefore concluded there was no violation of the NLRA by that employer. 141 NLRB at 700. The University's brief then goes on to reference other NLRB cases that follow the Perkins rationale.

Included in those other cases is Ace Hardware Corporation, 271 NLRB 1174, 117 LRRM 1096 (1984). In Ace Hardware, the employer's manager stated, in response to an employee's question about withdrawal from the union, that if they would come to him or other members of management he could assist them in getting out and would help them in any way possible. The manager held up a check-off authorization card and stated that while management hadn't approached any employees about canceling their dues deductions, if employees wanted to go their supervisor or to him, he would see what he could do. The Administrative Law Judge (ALJ) found a violation of Section 8(a)(1) of the NLRA under those facts. The NLRB reversed citing Perkins, *supra*. Given the Board's decision in County of York, *supra*, and the hearing examiner's decision in Brownsville Area School District, *supra*, Board policy is more in line with the ALJ's opinion in Ace Hardware than with the NLRB's final decision. Moreover, there is an additional wrinkle in the facts of this case that differentiate it from the federal precedent cited by the University.

In this case more is at stake than the mere loss of an individual employee's dues. The Union may only collect fair share fees from non-member bargaining unit employees if it keeps a minimum seventy-percent membership rate in effect. If the University is successful in keeping or reducing Union membership below seventy-percent, the University could lighten the Union's coffers by almost thirty-percent. The parties here have a mixed history of multi-year contracts in which there is an annual dues withdrawal period, and multi-year contracts in which there is but one dues withdrawal period. Tellingly, in prior multi-year contracts where there was only one fifteen-day window period for Union withdrawal the University did not send Union members a letter reminding them of their withdrawal rights. Were the University so concerned that employees realize they could rescind dues authorizations, would it not be logical to send this letter previously, when employees had but one fifteen-day period in a multi-year contract to do so? Yet, regardless of whether there was one, or there were three revocation periods per contract, the University never before sent a letter like the one in question. Only when a third of the Union's income was at stake did the University become so concerned about Union members understanding their ability to withdraw dues deduction authorizations.

The parties' stipulations recite a litany of prior occasions when the University has sent letters reminding bargaining unit members of upcoming contractually mandated deadlines. And the University attempts to characterize the letter in question as just

³ Section 8(a)(1) of the NLRA is substantially similar to Section 1201(a)(1) of the Act.

another of those reminders. All those reminders, however, spoke to employe benefits.⁴ Those reminders, therefore, involved only the relationship between the University and its employes, as opposed to the letter in question, which involved the relationship between Union members and the Union.

Looking past the University's legal rhetoric, the record reveals that the University sent a solicitation only to dues paying Union members, singularly emphasizing when and how they could rescind their dues authorizations, and included a preprinted form which required a minimum of effort to accomplish that end.⁵ Despite identical situations in whilom contracts the University only sent this letter when it might have the affect of materially reducing the Union's income. Such an attempt to influence the Union's ability to raise funds violates Section 1201(a)(1) and (2) of the Act. *See generally, Chester County Deputy Sheriffs Association v. Chester County*, 28 PPER ¶ 28045 (Final Order, 1997) (a public employer violates Section 1201(a)(1) of the Act when it seeks to control the union's purse strings).

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The University is a public employer within the meaning of Section 301(1) of the Act.
2. The Union is an employe organization within the meaning of Section 301(3) of the Act.
3. The Board has jurisdiction over the parties hereto.
4. The University has committed unfair practices in violation of 1201(a)(1) and (2) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the examiner

HEREBY ORDERS AND DIRECTS

that the University shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.

2. Cease and desist from interfering with the administration of the employe organization within the meaning of Section 1201(a)(2) of the Act.

2. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the Act:

- (a) Post a copy of this decision and order within five (5) days from the date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days; and

⁴ Those reminder letters covered such topics as, nomination periods for merit awards; enrollment periods for defined contribution plans, election periods for additional life insurance purchase, Medicare drug election coverage windows, and deadlines for both flexible spending account creation and the retiree health pre-funding plan. (Joint Stipulations, No. 24)

⁵ The record also indicates that "several" of the Union members who withdrew their dues deduction authorizations using the University's "sample form" sent the form only to the University. That is not surprising since at the top of the page the form shows but one addressee, the University, while the Union's address appears as a "cc" toward the foot of the page, and the University provided only one form. (Joint Stipulations No. 30; Joint Exhibit 8)

(b) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this nineteenth day of June, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEMPLE ASSOCIATION OF UNIVERSITY
PROFESSIONALS LOCAL 4531 AFT

v.

TEMPLE UNIVERSITY

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Case No. PERA-C-05-506-E

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 proposed decision and order as directed therein; 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

June 19, 2006

Mark J. Foley, Esquire
KLETT LIEBER ROONEY & SCHORLING PC
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TEMPLE UNIVERSITY
Case No. PERA-C-05-506-E

Enclosed please find a copy of the proposed decision and order issued in the above-captioned case.

Sincerely,

Timothy Tietze
Hearing Examiner

Enclosure

cc: Deborah Hartnett
Temple Association of University Professionals Local 4531 AFT