

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ASSOCIATION OF PENNSYLVANIA STATE :
COLLEGE AND UNIVERSITY FACULTIES :
v. : Case No. PERA-C-07-276-E
STATE SYSTEM OF HIGHER EDUCATION :

FINAL ORDER

The Association of Pennsylvania State College and University Faculties (APSCUF) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 21, 2007. APSCUF's exceptions challenge a November 2, 2007 decision of the Secretary of the Board declining to issue a complaint and dismissing APSCUF's Charge of Unfair Practices filed against the State System of Higher Education (SSHE).

In its Charge of Unfair Practices, APSCUF alleged that SSHE forwarded a letter to APSCUF's bargaining unit members which outlined the actions that SSHE would take if a strike occurred. Specifically, SSHE stated that pay, health care and other benefits would cease immediately for any faculty member who engaged in a strike during the summer school term. The letter further stated that SSHE would recoup any prior payments that had been made to faculty members for teaching summer school if the faculty members failed to report for a summer course after June 30, 2007. APSCUF alleged that SSHE's letter violated Section 1201(a)(1), (3) and (5) of the Public Employe Relations Act (PERA).

In dismissing the Charge, the Secretary stated that APSCUF failed to state a cause of action under Section 1201(a)(3) of PERA because it did not allege that the faculty members had engaged in a strike and that SSHE had cancelled the members' health care and other benefits in response to the strike. The Secretary also indicated that APSCUF's allegations of violations of Section 1201(a)(1) and (5) were moot because the parties had ratified a successor collective bargaining agreement, citing Temple Association of University Professionals, Local 4531, AFT v. Temple University, 25 PPER ¶ 25121 (Final Order, 1994) and AFSCME District Council 33 v. City of Philadelphia, 36 PPER ¶ 95 (Proposed Decision and Order, 2005), 36 PPER ¶ 158 (Final Order, 2005). Therefore, the Secretary declined to issue a complaint.

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. See Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978).

In its exceptions, APSCUF concedes that it has entered into a new collective bargaining agreement with SSHE. However, APSCUF contends that its Charge should not be dismissed as moot because the factual situation presented here falls within an exception to the mootness doctrine. First, APSCUF argues that the factual allegations in its Charge raise an issue of great public importance in that SSHE's actions interfere with the faculty members' right to strike. APSCUF further argues that the underlying facts of this case are capable of repetition but likely to evade review. APSCUF maintains that a strike is more likely to happen during summer school and that SSHE will continue to threaten the faculty members in the same manner.¹

The Board will dismiss as moot any unfair practice charge involving alleged bad faith bargaining where the parties have resolved the issues forming the basis for the charge through bargaining and a subsequent contract. Temple University, supra; City of Philadelphia, supra. However, the Board, within its discretion, may hear a moot charge if

¹APSCUF is not challenging the Secretary's decision concerning APSCUF's failure to state a cause of action under Section 1201(a)(3) of PERA.

the charge presents an issue of great public importance that is capable of repetition but likely to evade review. Temple University, supra.

APSCUF does not allege that the bargaining unit members are subject to any present effects from SSHE's alleged threats because there are no allegations that the bargaining unit members engaged in a strike or that SSHE ceased providing pay, health care or other benefits to the unit members. Accordingly, this case is similar to United Transportation Union Local 1594 v. SEPTA, 37 PPER ¶ 119 (Final Order, 2006), where the Board declined to issue a complaint on the union's charge alleging violations of Section 1201(a)(1), (4) and (5) of PERA. In finding that the union's charge was moot in that case, the Board stated that the union failed to allege that the employer actually carried out any of its threats. Therefore, the Board determined that no facts were alleged to warrant issuing a complaint because the employees were not subject to any residual effects from the employer's alleged threats.

Additionally, the Board has previously stated that "[c]ontinued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future.'" Medical Rescue Team South Authority v. Association of Professional Emergency Medical Technicians, 30 PPER ¶ 30063 at 136 (Final Order, 1999)(quoting Ramapo-Indian Hills Regional High School District, 16 NJPER ¶ 21255 at 582 (Decision and Order, 1990)). Clearly, to continue this litigation over alleged past misconduct that no longer affects the parties cannot be said to be in the public interest. Thus, APSCUF has failed to demonstrate that its Charge raises an issue of great public importance.

Further, the Board will not speculate as to whether SSHE will make the same alleged threats to the bargaining unit members in the future. As such, APSCUF has failed to demonstrate that the underlying factual situation presented here is one that is capable of repetition but likely to evade review. Therefore, APSCUF's allegations of violations of Section 1201(a)(1) and (5) of PERA are moot. Temple University, supra. Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board concurs with the Secretary's decision to dismiss APSCUF's Charge of Unfair Practices. Accordingly, the Board shall 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 Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Association of Pennsylvania State College and University Faculties are dismissed and the Secretary's November 2, 2007 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, Anne E. Covey, Member and James M. Darby, Member, this eighteenth day of December, 2007. 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.