

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

NORTHWEST AREA EDUCATION ASSOCIATION :  
:  
v. : Case No. PERA-C-06-188-E  
:  
NORTHWEST AREA SCHOOL DISTRICT :

**FINAL ORDER**

The Northwest Area Education Association (Association) filed exceptions with the Pennsylvania Labor Relations Board (Board) on March 15, 2007, challenging the Proposed Decision and Order (PDO) issued by a Board Hearing Examiner on February 26, 2007. In the PDO, the Hearing Examiner dismissed the Association's Charge of Unfair Practices that Northwest Area School District (District) violated Section 1201(a)(1), (3) and (5) of the Public Employe Relations Act (PERA). By letter dated March 19, 2007, the Secretary of the Board granted the Association's request to extend the time for filing of its Brief in Support of Exceptions to April 16, 2007. However, the Association did not file its Brief until April 18, 2007.<sup>1</sup> The Secretary also granted the District's request for an extension of time for filing of its Responsive Brief, which was timely filed on May 29, 2007.

The Hearing Examiner's Findings of Fact are not in dispute and are summarized as follows. In January 2005, the Association and the District agreed that their negotiations for a successor collective bargaining agreement would be "kept in the room" as they did not want negotiations "played out in the media." (Finding of Fact 4). After the composition of the District's bargaining committee changed in December 2005,<sup>2</sup> the Association pointed out to the District's bargaining committee members that there was an agreement to keep the negotiations confidential. The District's bargaining team did not indicate that the confidentiality agreement had in any way changed. (Finding of Fact 5). In March 2006, Robert Hagenbach, one of the new members of the District's negotiating team, released bargaining proposals to the public, which were then published by the local media. (Finding of Fact 6). The District promptly removed Mr. Hagenbach from its negotiating team. (Finding of Fact 6). On April 19, 2006, the District adopted a resolution that "mandate[s] a 10-day public examination period, to include a work session open to the public for comments and recommendation, before the school board votes on any tentative agreement negotiated with the ... Association." (Finding of Fact 7).

The Hearing Examiner found that the District's April 19, 2006 resolution permitting a 10-day public examination period and work session for public comments and recommendations was enacted to quell public concern arising out of Mr. Hagenbach's inappropriate release of bargaining information. The Hearing Examiner concluded that the parties' ground rule to keep negotiations confidential did not give rise to an unfair practice under Section 1201(a)(5) of PERA because the District's April 19, 2006 resolution was not intended to frustrate bargaining. Wilkes Barre Police Benevolent Association v. City of Wilkes-Barre, 29 PPER ¶29,233 (Final Order, 1998). Given the District's non-discriminatory reason for the April 19, 2006 resolution, the Hearing Examiner also dismissed the Association's charge under Section 1201(a)(3) of PERA.

<sup>1</sup> The Association's Brief was received by the Board on April 18, 2007 in an envelope bearing a private postage meter mark. No official United States Postal Service postmark, postmark cancellation, or Form 3817 Certificate of Mailing indicated the mailing date. 34 Pa. Code §95.98(a)(1). The Board will not accept a private postage meter mark as evidence of timely filing. Teamsters Local No. 764 v. Lycoming County, 37 PPER 12 (Final Order, 2006); Pennsylvania Social Services Union Local 668 v. Commonwealth, Department of Public Welfare (Montgomery County Assistance Office), 33 PPER ¶33174 (Order, 2002). As the Brief was due on April 16, 2007, but was not filed until April 18, 2007, it is untimely and has not been considered in addressing the Association's exceptions.

<sup>2</sup> The testimony cited by the Hearing Examiner in support of Finding of Fact 5 indicates that the composition of the District's bargaining team changed in December 2005, but the Hearing Examiner's finding states that the change occurred in December 2006. Therefore, Finding of Fact 5 is hereby amended to state that the change in the District's bargaining team occurred in December 2005.

Further, determining that the District would be permitted in any event to receive public comment on a tentative agreement "whether that period is ten seconds, ten minutes, ten hours or ten days[.]" (PDO at 4), the Hearing Examiner concluded that there was no unlawful interference or coercion with employe rights under Section 1201(a)(1) of PERA, and no failure to bargain under Section 1201(a)(5).

The Association excepts to the Hearing Examiner's conclusions on the issues of whether the District committed unfair practices under PERA by allegedly violating the parties' ground rules for negotiations and posting the tentative agreement for public input.<sup>3</sup> However, as the Hearing Examiner noted, the breach of a ground rule for negotiations is not a violation of the duty to bargain in good faith under Section 1201(a)(5) of PERA unless it is established that the breach was intended to frustrate bargaining. City of Wilkes-Barre, supra. The Hearing Examiner credited the District's testimony that it passed the April 19, 2006 resolution concerning public examination of the tentative agreement "to quell the public's aroused perception that it had no prior notice of how its money was spent ... rather than with the express purpose of thwarting the negotiating process." (PDO at 3). Absent compelling circumstances, the Board does not disturb the credibility determinations of its hearing examiners, who are able to observe the manner and demeanor of the witnesses during their testimony. Teamsters Local 384 v. Kennett Consolidated School District, 37 PPER 89 (Final Order, 2006). There are no compelling reasons to disturb the Hearing Examiner's credibility determinations on the issue of whether the District passed the April 19, 2006 resolution to thwart the negotiating process. Because the District did not have such an intent, the alleged violation of the parties' ground rules did not rise to the level of an unfair practice.

The Association further alleged that the District's decision to permit a ten-day public examination and comment period on the tentative agreement constitutes bad faith bargaining and an independent violation of Section 1201(a)(1) of PERA. An independent violation of Section 1201(a)(1) arises where the employer's action, regardless of intent, interferes with employes' statutory rights or, under the totality of circumstances, would tend to coerce a reasonable employe from engaging in protected activities. Northwestern Education Association v. Northwestern School District, 24 PPER ¶24,141 (Final Order, 1993).

At its most basic level, what the Association is seeking to restrict is when, where and how a governmental body may consult the public with regard to matters of collective bargaining before ratifying a tentative agreement. However, the public employer's process of considering a tentative agreement, and deciding whether to obtain public input, is within the public employer's exclusive purview. The same holds true for a union. It is well recognized that polling of employes and the union's contract ratification procedures are internal union matters that neither an employer nor non-members of the union have standing to challenge before the Board. See Pennsylvania Labor Relations Board v. Eastern Lancaster County Education Association, 427 A.2d 305 (Pa. Cmwlth. 1981). As was aptly recognized by the Hearing Examiner, the District was entitled to obtain the public's opinion before it voted on ratification of a tentative agreement, and it does not matter whether it chose to do so for a period of "ten seconds, ten minutes, ten hours or ten days." Moreover, where a negotiating team for a public employer (comprised of less than a majority of the members of the governing body) reaches a tentative agreement with the union subject to ratification, the public governing body as a whole may independently consider the tentative agreement and is not necessarily bound to accept the terms of that tentative agreement. Athens Area School District v. Pennsylvania Labor Relations Board, 760 A.2d 917 (Pa. Cmwlth. 2000) (*quoting* St. Clair Education Association v. St. Clair Area School District, 18 PPER ¶18116 (Final Order, 1988), *affirmed*, 525 Pa. 236, 579 A.2d 879 (1990)); *see* City of McKeesport Wage and Policy Committee v. City of McKeesport, 31 PPER ¶31,130 (Final Order, 2000) (*citing* Teamsters Local 107 v. Upper Moreland-Hatboro Joint Sewer Authority, 30 PPER 30220 (Final Order, 1999)). So long as the members of the public employer's bargaining team remain loyal to any tentative agreement during formal vote on ratification, no unfair practice will be found. Athens Area School District, supra; St. Clair School District, supra.

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<sup>3</sup> The Association does not specifically except to the Hearing Examiner's conclusion that the District did not engage in discrimination under Section 1201(a)(3) of PERA. Moreover, for the reasons stated by the Hearing Examiner, the Association did not prove such a violation.

Accordingly, because the District was entitled to receive public comment on the tentative agreement, the bargaining process was not interfered with or frustrated by the District's resolution mandating a ten-day posting period for public comment before a formal vote on ratification. Likewise, a reasonable bargaining committee member would not be coerced from presenting proposals to its bargaining counterpart merely because it is now on notice that those proposals will, if tentatively agreed to by the employer's negotiating team, be subject to scrutiny by the public before a final vote by the full school board at an open meeting.

After a thorough review of the exceptions and all matters of record, the Board finds that the District has not committed unfair practices within the meaning of Section 1201(a)(1), (3) and (5) of PERA. Accordingly, the Association's exceptions shall be dismissed and the PDO made final.

#### 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 the Northwest Area Education Association to the Proposed Decision and Order are hereby dismissed, and the February 26, 2007 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 seventeenth day of July, 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.