

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF	:	
PAINTERS AND ALLIED TRADES	:	
LOCAL UNION 1968	:	
	:	
v.	:	Case No. PERA-C-07-14-W
	:	
ERIE CITY SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On January 8, 2007, Local 1968, International Union of Painters and Allied Trades (Local 1968), filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the School District of the City of Erie, PA (District), violated sections 1201(a)(1), 1201(a)(3), 1201(a)(4) and 1201(a)(9) of the Public Employee Relations Act (Act) by retaliating against Debra Culver because she filed a grievance. Local 1968 specifically alleged that the retaliation occurred in the Fall of 2006 when the District did not appoint her to a "recently posted Bus Driver position for which she was more qualified than those appointed and for which she passed all requisite tests." On February 1, 2007, the Secretary of the Board dismissed the charge for failure to state a cause of action under any of the cited provisions of the Act.

On February 16, 2007, Local 1968 filed exceptions to the Secretary's dismissal of the charge. On March 20, 2007, the Board issued an order directing remand to secretary for further proceedings in which it directed the Secretary "to issue a complaint for further exploration of the factual and legal issues." The Board stated that its order "shall not be construed by the parties as a determination that the February 1, 2007 decision of the Secretary was in error."

On April 10, 2007, the Secretary issued a complaint and notice of hearing directing that a hearing be held on June 12, 2007. The hearing examiner subsequently continued the hearing upon the request of Local 1968 and without objection by the District. On September 18, 2007, the hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On October 10, 2007, Local 1968 filed a brief by deposit in the U.S. Mail. On October 17, 2007, the District filed a brief by deposit in the U.S. Mail.¹

The hearing examiner, on the basis of the evidence presented at the hearing, makes the following:

FINDINGS OF FACT

1. Local 1968 and the District are parties to a collective bargaining agreement covering the District's custodians, teacher aides, cafeteria workers and building trades employees. (N.T. 52)

2. In October 2005, the District posted notice of an opening for a bus driver position. Among the applicants for the position were Gregory Bailey, Anthony Cubero, Ms. Culver, Diane May and Trent Meeks. (N.T. 18, 55, 59, 64)

3. The District administered a driving test as part of the process to fill the position. Two bus drivers (Mark Longstreet and John Ras, who was certified by the Commonwealth of Pennsylvania to instruct bus drivers) graded the applicants' performances by deducting points for various driving infractions. Mr. Ras noted driving infractions by Mr. Bailey totaling 16 points and by Mr. Meeks totaling 14 points. Mr. Longstreet noted no driving infractions by Mr. Cubero, driving infractions by Ms. Culver totaling 28

¹ By fax dated October 11, 2007, Local 1968 indicated that it had no objection to the filing of the District's brief on October 17, 2007, because the District had agreed not to read Local 1968's brief until after October 17, 2007.

points and no driving infractions by Ms. Mays. The District's director of personnel (Mary Holliday) used the scores on the tests to determine who was best able to drive a bus. (N.T. 19-20, 27-28, 38, 48, 51, 53-56, 59, 61-62, 73-75, 83, 87; Respondent Exhibits 2-6)

4. The District did not appoint Ms. Culver to the bus driver position. (N.T. 34-35, 56)

5. On October 19, 2006, the District posted notice of openings for three bus driver positions. Mr. Bailey, Mr. Cubero, Ms. Culver, Ms. May and Mr. Meeks submitted applications. (N.T. 23, 37, 56-57, 59; Union Exhibit 3)

6. Ms. Holliday scheduled Ms. Culver to retake the driving test because Ms. Culver grieved when the District did not appoint her to the bus driver position in 2005 and because Ms. Holliday wanted to afford her an opportunity to improve her score. Mr. Ras graded her performance. He noted driving infractions by her totaling 18 points. (N.T. 25-27, 58-59, 75-78; Respondent Exhibit 7)

7. On November 20, 2006, the District appointed Mr. Bailey, Mr. Cubero, Ms. May and Mr. Meeks as bus drivers. (N.T. 57, 59; Union Exhibit B)

DISCUSSION

Local 1968 has charged that the District committed unfair practices under sections 1201(a)(1), 1201(a)(3), 1201(a)(4) and 1201(a)(9) by retaliating against Ms. Culver because she filed a grievance. As set forth in the specification of charges, Local 1968 alleges that the retaliation occurred in the Fall of 2006 when the District did not appoint her to a "Bus Driver position for which she was more qualified than those appointed and for which she passed all requisite tests."

The District contends that the charge should be dismissed for lack of proof that it did not appoint Ms. Culver as a bus driver because she filed a grievance. According to the District, it did not appoint Ms. Culver as a bus driver because her score on a driving test it administered as part of the process to fill bus driver positions was not as high as the scores of those who were appointed as bus drivers.

The charge under section 1201(a)(3)

An employer commits an unfair practice under section 1201(a)(3) if it discriminates against an employee for having engaged in an activity protected by the Act. St. Joseph's Hospital v. PLRB, 473 Pa. 101, 373 A.2d 1069 (1977). The filing of a grievance is a protected activity. Commonwealth of Pennsylvania, Department of Public Welfare, Somerset State Hospital, 27 PPER ¶ 27086 (Final Order 1996).

"The motive creates the offense" under section 1201(a)(3). PLRB v. Stairways, Inc., 425 A.2d 1172, 1175 (Pa. Cmwlth. 1981), quoting PLRB v. Ficon, 434 Pa. 383, 388, 254 A.2d 3, 5 (1969). Close timing between an employee's protected activity and an employer's action coupled with the employer's disparate treatment of similarly situated employees will support a finding that the employer was discriminatorily motivated. City of Reading v. PLRB, 568 A.2d 715 (Pa. Cmwlth. 1989). Close timing between an employee's protected activity and an employer's action coupled with a pretextual explanation for the employer's action will support the same finding. Lehigh Area School District v. PLRB, 682 A.2d 439 (Pa. Cmwlth. 1996). The timing of events alone, however, will not. Pennsylvania State Park Officers Association v. PLRB, 854 A.2d 674 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 582 Pa. 704, 871 A.2d 194 (2005). An employer does not violate section 1201(a)(3) if it takes an employment action for a legitimate business reason. Indiana Area School District, 34 PPER 133 (Final Order 2003).

In order to prevail on a charge under section 1201(a)(3), the charging party must show by substantial evidence during its case-in-chief that an employee engaged in a protected activity, that the employer knew that the employee had done so and that the employer discriminated against the employee for having done so. Perry County, 634 A.2d 808 (Pa. Cmwlth. 1994). If the charging party presents a prima facie case during its case-in-chief, the charge is to be sustained unless the employer shows that it would have taken

the same action even if the employee had not engaged in the protected activity. Id. If the charging party does not present a prima facie case during its case-in-chief, the charge is to be dismissed, id., and any defense the employer might have presented need not be addressed. Montour County, 35 PPER 147 (Final Order 2004). Evidence presented after the charging party rests its case-in-chief is not to be considered in deciding whether or not the charging party presented a prima facie case during its case-in-chief. Temple University, 23 PPER ¶ 23033 at n. 5 (Final Order 1992). Speculation is not substantial evidence. Shive v. Bellefonte Area Board of School Directors, 317 A.2d 311 (Pa. Cmwlth. 1974).

Local 1968 did not present a prima facie case during its case-in-chief. Although Local 1968 established that Ms. Culver engaged in protected activity by filing a grievance when the District did not appoint her as a bus driver in 2005 (N.T. 21-23; Union Exhibit 1) and that the District knew that she filed the grievance (N.T. 22-23), Local 1968 did not establish that the District did not appoint her as a bus driver in the Fall of 2006 because she filed the grievance. Accordingly, the charge under section 1201(a)(3) must be dismissed for that reason alone. See Perry County, supra (if the charging party does not present a prima facie case during its case-in-chief, the charge is to be dismissed); Montour County, supra (same).

Noticeably absent from Local 1968's case-in-chief was any evidence to support the allegation in its specification of charges that Ms. Culver was more qualified than those appointed as bus drivers in the Fall of 2006. Although Local 1968 established that she had the requisite CDL with an S endorsement when she applied to be a bus driver (N.T. 14-15, 24-25), it did not establish that those appointed as bus drivers did not. At best, it established that those appointed as bus drivers did not have the requisite CDL with an S endorsement when they first began working for the District three years earlier (N.T. 29-30), leaving it to speculation that they did not have the requisite CDL with S endorsement when they were appointed as bus drivers in the Fall of 2006. Speculation, of course, is not substantial evidence. Shive, supra.

Local 1968 also established that Ms. Culver had been driving a bus for the District for a longer period of time than those appointed as bus drivers had (N.T. 16, 29), but Local 1968 did not establish that the bus driving experience of those appointed as bus drivers was limited to their time with the District, leaving it to speculation that they did not have as much bus driving experience as she had. Again, speculation is not substantial evidence. Id. Moreover, experience is not synonymous with qualification in any event.

Local 1968 further established that Ms. Culver was a member of Local 1968 (N.T. 15) while those appointed as bus drivers were not members of Local 1968 or of another employee organization (Local 95) (N.T. 28-29), but Local 1968 did not establish that membership in Local 1968 or in Local 95 was a qualification to be a bus driver.

In its brief, Local 1968 does not contend otherwise. Rather, Local 1968 contends that the charge should be sustained (1) because the District's treatment of Ms. Culver and those appointed as bus drivers was disparate and (2) because the District's explanation for not appointing Ms. Culver as a bus driver was pretextual. Neither contention has merit.

In support of its first contention, Local 1968 points out that the District scheduled Ms. Culver but not those appointed as bus drivers to retake the driving test to be a bus driver (N.T. 58-59) and directed that her testing but not the testing of those appointed as bus drivers be the subject of a separately prepared narrative account (N.T. 85-86; Respondent Exhibits 2-5, 7-8). Local 1968 also points out that the form the District used to grade her test was not the same as the form the District used to grade the tests of those appointed as bus drivers in that her form did not include a pass/fail line as theirs did (Respondent Exhibits 2-5, 7).

The evidence cited by Local 1968 was only presented after it rested its case-in-chief, however. As noted above, evidence presented after the charging party rests its case-in-chief is not to be considered in deciding whether or not the charging party presented a prima facie case during its case-in-chief. Temple University, supra. Thus, the cited evidence provides no support for a finding that Local 1968 presented a prima facie case during its case-in-chief.

In any event, Local 1968's contention finds no support in the record. If anything, the fact that the District scheduled her but not those appointed as bus drivers to retake the driving test militates against a finding that the District retaliated against her because she filed the grievance. As set forth in finding of fact 3, her score when she took the test in 2005 was lower than theirs, so by retaking the test she had the opportunity to score higher than they did. Thus, retaking the test was to her benefit, not her detriment. No disparate treatment supporting an inference that the District retaliated against her because she filed the grievance is apparent under the circumstances.

Local 1968 would have the Board find that retaking the test was not to Ms. Culver's benefit because the District did not tell her that she did not have to retake the test (N.T. 39, 58) and because the District's policy was not to allow retesting (N.T. 59), but the fact remains that retaking the test was to her benefit because her score when she took the test in 2005 was lower than the scores of those appointed as bus drivers.

Local 1968 also would have the Board find that retaking the test was not to Ms. Culver's benefit because her score when she took the test in 2005 could not have been as low as the District said it was. According to Local 1968, if her score had been as low as the District said it was, the District would not have allowed her to drive a bus thereafter as it did (N.T. 14-17, 67) and would not have admitted that she was "a quite capable" bus driver as its director of personnel (Ms. Holliday) did (N.T. 67). Having a low score on a driving test is not necessarily an indicator of incompetence, however, so neither the fact that the District allowed Ms. Culver to drive a bus after she took the test in 2005 nor the fact that the District admitted that she was a "quite capable" bus driver compels a finding that her score when she took the test in 2005 was not as low as the District said it was.

The fact that the District directed that Ms. Culver's testing but not the testing of those appointed as bus drivers be the subject of a separately prepared narrative account provides no better support for local 1968's contention. As Local 1968 points out, the direction that her testing be the subject of a separately prepared narrative account came from the District's then director of transportation (Tony Casey) (N.T. 86, 91). As Local 1968 also points out, Ms. Culver had a "difficult" working relationship with Mr. Casey (N.T. 97). As Local 1968 further points out, Mr. Casey lobbied a member of the District's board of directors (Ned Smith) not to support Ms. Culver's grievance (N.T. 97-100). As the bus driver who prepared the narrative account of Ms. Culver's testing (Mr. Ras) testified, however, Mr. Casey gave the direction that her testing be the subject of a separately prepared narrative account at the conclusion of the testing late on a Friday night (N.T. 86, 91). Given the time of day, it is hardly remarkable that Mr. Casey did so. Moreover, there was no showing that Mr. Casey told Mr. Ras what to write or that Mr. Casey was biased against Ms. Culver because she filed the grievance. Furthermore, there was no showing that the testing for those who were appointed as bus drivers was conducted late on a Friday night as hers was, so there is no basis for finding that Ms. Culver and those appointed as bus drivers were similarly situated. No disparate treatment supporting an inference that the District retaliated against her because she filed the grievance is apparent under the circumstances. See Montour County, supra (no disparate treatment may be found unless the employees involved are similarly situated).

The fact that the form the District used to grade Ms. Culver's testing was not the same as the form the District used to grade the testing of those appointed as bus drivers in that hers did not include a pass/fail line as theirs did (Respondent Exhibits 2-5, 7) also does not support Local 1968's contention. Notably, there is no dispute that she passed the test as they did. Moreover, in all other respects the forms were the same. No disparate treatment supporting an inference that the District retaliated against Ms. Culver because she filed the grievance is apparent under the circumstances.

In support of its second contention, Local 1968 submits that the District's driving test incredibly had no minimum score to pass. Local 1968 also submits that testimony by its witnesses that the District administered the driving test on a pass/fail basis and that Ms. Culver passed the test was not rebutted by the District. Local 1968 further submits that the District did not reveal until shortly before the hearing that it scored the tests, did not tell Ms. Culver what her score was until the hearing and appeared to be tallying her score during the hearing. Local 1968 finally submits that the evidence presented by the District in defense of the charge was suspect.

During its case-in-chief, however, Local 1968 presented no evidence that the District even had a driving test, much less that it had one that incredibly had no minimum score to pass. Evidence in that regard (N.T. 87) was only presented after Local 1968 rested its case-in-chief, so whether or not the District's driving test incredibly had no minimum score to pass provides no support for a finding that Local 1968 presented a prima facie case during its case-in-chief. See Temple University, supra (evidence presented after the charging party rests its case-in-chief is not to be considered in deciding whether or not the charging party presented a prima facie case during its case-in-chief). Although Local 1968 presented testimony that the District's then director of transportation (Mr. Casey) said that the test was being administered on a pass/fail basis (N.T. 20, 48), that its business agent (Dean Bagnoni) had "never seen a test with a grade on it besides pass or fail" (N.T. 44) and that Ms. Culver passed the test (N.T. 44-45), Local 1968 did not present any evidence that whoever passed the test would be appointed as a bus driver. Absent a showing of that sort, there is no basis for finding that the District's explanation for not appointing Ms. Culver as a bus driver was pretextual. Local 1968 presented no evidence that the District did not reveal until shortly before the hearing that it scored the tests, did not tell Ms. Culver what her score was until the hearing and appeared to be tallying her score during the hearing. Evidence in that regard (N.T. 64-65, 96, 114-115) was only presented after Local 1968 rested its case-in-chief and thus provides no additional support for a finding that Local 1968 presented a prima facie case during its case-in-chief. See id. An employer's defense to a charge need not even be considered unless the charging party presents a prima facie case during its case-in-chief, Montour County, supra, so whether or not the evidence presented by the District in defense of the charge was suspect likewise provides no support for a finding that Local 1968 presented a prima facie case during its case-in-chief.

In any event, a close review of the record shows that the District's explanation for not appointing Ms. Culver as a bus driver was not pretextual. As set forth in findings of fact 3, 6 and 7, the record shows that Ms. Culver did not score as high on the driving test as those appointed as bus drivers did. Thus, it is apparent that the District would not have appointed Ms. Culver as a bus driver even if she had not engaged in the protected activity of filing a grievance. Accordingly, the charge under section 1201(a)(3) must be dismissed for that reason as well. See Indiana Area School District, supra (an employer does not violate section 1201(a)(3) if it takes an employment action for a legitimate business reason).

No merit is found in Local 1968's contention that the District's explanation for not appointing Ms. Culver as a bus driver was pretextual because the District's driving test incredibly had no minimum score to pass. According to Local 1968, "[i]t defies common sense to conduct a scored test which does not have a fail cut score" (brief at 17, emphasis in original). Although, as Local 1968 points out, the bus driver who administered the driving test to Ms. Culver (Mr. Ras) testified that he was unaware of any minimum score required to pass the test (N.T. 87), he also testified that having an accident, hitting the curb or not checking for a sleeping child would result in a failing grade. Id. Moreover, as the District's director of personnel (Ms. Holliday) testified, the District scored the driving test "to make some determination of who is able to do the job best" (N.T. 55). Common sense dictates that the District would have to do so if multiple applicants passed the test, as here. The fact that the District had no minimum score to pass the test does not defy common sense under the circumstances.

Nor is any merit found in Local 1968's contention that the District's explanation for not appointing Ms. Culver as a bus driver was pretextual because testimony by Local 1968's witnesses that the District administered the driving test on a pass/fail basis and that Ms. Culver passed the driving test was un rebutted by the District. Although two of Local 1968's witnesses (Ms. Culver and Robert Tirak) testified without rebuttal that the District's then director of transportation (Mr. Casey) said that the test was being administered on a pass/fail basis (N.T. 20, 48), while a third (Mr. Bagnoni) testified without rebuttal that he had "never seen a test with a grade on it besides pass or fail" (N.T. 44), the District presented testimony by Ms. Holliday that it nevertheless scored the tests "to make some determination of who is able to do the job best" (N.T. 55). Again, common sense dictates that the District would have to have some means to differentiate among applicants if they all passed the test. The testimony by Ms. Holiday

was, therefore, plausible. As such, it has been credited accordingly. Thus, there is no basis for finding that the District's explanation for not appointing Ms. Culver as a bus driver was pretextual as Local 1968 contends.

Moreover, the District's defense to the charge was not predicated on the fact that Ms. Culver did not pass the test; rather, it was predicated on the fact that she did not score as high on the test as those appointed as bus drivers did. Thus, although Mr. Bagnoni also testified without rebuttal that the District told him that Ms. Culver passed the test (N.T. 44-45), his testimony does not provide a basis for finding that the District's explanation for not appointing Ms. Culver as a bus driver was pretextual either.

Nor is any merit found in Local 1968's contention that the District's explanation for not appointing Ms. Culver as a bus driver was pretextual because the District did not reveal until shortly before the hearing that it scored the tests, did not tell her what her score was until the hearing and appeared to be tallying her score during the hearing. The record shows that the District did not share Ms. Culver's grading sheet with Local 1968 before the hearing (N.T. 64-65) and did not tell Ms. Culver what her score was until the hearing (N.T. 96). The record also shows that one of the District's witnesses (Mr. Ras) tallied her score during the hearing (N.T. 114-115). Mr. Ras further testified, however, that he scored Ms. Culver's performance as set forth on the grading sheet for her that the District presented at the hearing (N.T. 75-77; Respondent Exhibit 7). Inasmuch as Mr. Ras appeared as a witness with no vested interest in the outcome of the charge and inasmuch as his demeanor was impressive, his testimony has been credited accordingly. Thus, while good labor relations may have been better served had the District provided scoring information in a more timely fashion, there is no basis for finding that the District's explanation for not appointing Ms. Culver as a bus driver was pretextual.

Nor is any merit found in Local 1968's contention that the District's explanation for not appointing Ms. Culver as a bus driver was pretextual because the evidence presented by the District to show that her score was not as high as the scores of those appointed as bus drivers was suspect. As Local 1968 points out, Mr. Ras' narrative account of Ms. Culver's testing (Respondent Exhibit 8) does not indicate that she missed an address as set forth in his grading sheet of her testing (Respondent Exhibit 7), while his grading sheet of her testing (Respondent Exhibit 7) does not show that she pulled out in front of a car as his narrative account of her testing does (Respondent Exhibit 8). As Local 1968 also points out, Ms. Culver testified that she did not commit two of the driving infractions noted by Mr. Ras (N.T. 95-96). Again, however, Mr. Ras credibly testified that he scored Ms. Culver's performance on the test as set forth on the grading sheet for her that the District presented at the hearing (N.T. 75-77; Respondent Exhibit 7)). Moreover, as set forth in finding of facts 3 and 6, the record shows that her score was as high as the scores of those appointed as bus drivers. Thus, the record shows that the District's explanation for not appointing Ms. Culver as a bus driver was not pretextual.

The charge under section 1201(a)(4)

An employer commits an unfair practice under section 1201(a)(4) if it discriminates against an employee for filing a charge or a petition with the Board. Lebanon County, 32 PPER ¶ 32006 (Final Order 2000).

If a charge does not state a cause of action under section 1201(a)(4), it is to be dismissed. SSHE, 36 PPER 86 (Final Order 2005).

As set forth in the specification of charges, Local 1968 has alleged that the District retaliated against Ms. Culver because she filed a grievance. Local 1968 has not charged that the District retaliated against her because she filed a petition or charge with the Board. As such, the charge does not state a cause of action under section 1201(a)(4) and therefore must be dismissed for that reason alone. See SSHE, supra (charge under section 1201(a)(4) dismissed for failure to state a cause of action where the charging party did not allege that he had been discriminated against because he filed a petition or charge with the Board).

In any event, Local 1968 did not show that Ms. Culver filed a charge or a petition with the Board before the District did not appoint her as a bus driver. Accordingly, the

charge under section 1201(a)(4) must be dismissed for lack of proof as well. See Luzerne County Community College, 37 PPER 123 (Final Order 2006)(where employment action was taken before a charge was filed, no violation of section 1201(a)(4) could have occurred).

The charge under section 1201(a)(9)

An employer commits an unfair practice under section 1201(a)(9) if it violates its obligation to meet and discuss. Chester-Upland School District, 29 PPER ¶ 29179 (Final Order 1998).

If a charge does not state a cause of action under section 1201(a)(9), it is to be dismissed. Sayre Area School District, 36 PPER 54 (Final Order 2005).

As set forth in the specification of charges, Local 1968 has alleged that the District retaliated against Ms. Culver because she filed a grievance. Local 1968 has not charged that the District violated its obligation to meet and discuss. As such, the charge does not state a cause of action under section 1201(a)(9) and therefore must be dismissed for that reason alone. See Sayre Area School District, *supra* (charge under section 1201(a)(9) dismissed for failure to state a cause of action where the charging party did not allege that the employer violated its obligation to meet and discuss).

In any event, Local 1968 did not show that the District violated its obligation to meet and discuss. According to Local 1968, the District violated its meet and discuss obligation by not timely responding to requests by Local 1968's business agent and by Local 1968's attorney for an explanation as to why it did not appoint Ms. Culver as a bus driver (N.T. 45; Union Exhibit C). As the court observed in Commonwealth of Pennsylvania, PLRB v. APSCUF/PAHE, 355 A.2d 853 (Pa. Cmwlth. 1976), however,

"meet and discuss sessions exist as a device to permit input or recommendations from the employees on policy matters affecting wages, hours, and terms and conditions of employment so as to assist the public employer in ultimately making its discretionary resolution for disposition of the issue in question."

355 A.2d at 856. The District's decision not to appoint Ms. Culver as a bus driver can hardly be described as a policy matter, so there is not basis for finding that the District was under an obligation to meet and discuss the matter. Moreover, even if there were a basis for finding that the District was under an obligation to meet and discuss the matter and even assuming without deciding that Local 1968's requests were to meet and discuss, Local 1968 only made them after the District did not appoint Ms. Culver as a bus driver. As such, Local 1968's requests were too late to trigger whatever meet and discuss obligation the District might have had. See SSHE, 24 PPER ¶ 24070 (Final Order 1993)(charge under section 1201(a)(9) dismissed where there was no showing that the charging party requested a meet and discuss session before the employer took the action at issue). Accordingly, the charge under section 1201(a)(9) must be dismissed for lack of proof as well.

The charge under section 1201(a)(1)

An employer commits an unfair practice under section 1201(a)(1) if it commits any unfair practice under sections 1201(a)(2) through 1201(a)(9). PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978). As explained above, there is no basis for finding that the District committed an unfair practice under any of the other sections charged, so there is no basis for finding that the District committed an unfair practice under section 1201(a)(1). See Kennett Consolidated School District, 37 PPER 89 (Final Order 2006)(charge alleging a violation of section 1201(a)(1) dismissed where no violations of sections 1201(a)(2, 1201(a)(3) or 1201(a)(4) were found).

CONCLUSIONS

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

1. The District is a public employer under section 301(1) of the Act.
2. Local 1968 is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. The District has not committed unfair practices under sections 1201(a)(1), 1201(a)(3), 1201(a)(4) or 1201(a)(9) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaint is rescinded and the charge dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this fifth day of November 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

Direct Dial
717-783-3050

Fax Number
717-783-2974

November 5, 2007

RICHARD T RUTH ESQUIRE
1026 WEST 26TH STREET
ERIE, PA 16508-1516

MARK WASSELL ESQUIRE
KNOX MCLAUGHLIN GORNALL & SENNETT
120 WEST 10TH STREET
ERIE, PA 16501

ERIE CITY SCHOOL DISTRICT
Case No. PERA-C-07-14-W

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES LOCAL 1968
ERIE CITY SCHOOL DISTRICT