COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UPPER MORELAND EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION PSEA/NEA	:	
v.	:	Case No. PERA-C-06-305-E
UPPER MORELAND TOWNSHIP SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On June 30, 2006, Upper Moreland ESPA (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Upper Moreland School District (District) violated sections 1201(a)(1), 1201(a)(3) and 1201(a)(5) of the Public Employe Relations Act (Act) by refusing to participate in a fact finding hearing. On August 3, 2006, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on September 18, 2006, if conciliation did not resolve the charge by then. On August 18, 2006, the District filed an answer and new matter alleging that the charge should be dismissed as untimely filed and for failure to state a cause of action. The hearing examiner thereafter continued the hearing upon the request of both parties. On January 29, 2007, the Association requested that the hearing be rescheduled. On February 1, 2007, the hearing examiner rescheduled the hearing to April 3, 2007. The hearing examiner thereafter continued the hearing upon the request of the District and without objection by the Association. On April 13, 2007, the District requested that the hearing be continued pending the completion of a second round of fact finding. The District represented that the Association objected to its request. On April 12, 2007, the hearing examiner denied the request. The hearing examiner thereafter continued the hearing pending the parties' filing of stipulated facts. On May 29, 2007, the parties filed stipulated facts. On July 12, 2007, the Association filed a brief by deposit in the U.S. Mail. On July 13, 2007, the District filed a brief by deposit in the U.S. Mail.

The hearing examiner, on the basis of the stipulated facts and from all other matters of record, makes the following:

FINDINGS OF FACT

1. On June 13, 2002, the Board certified the Association as the exclusive representative of a bargaining unit that includes secretaries and aides employed by the District. (Case No. PERA-R-02-192-E)

2. On April 10, 2006, the Board, upon notification by the Bureau of Mediation that the parties had not reached a collective bargaining agreement, appointed a fact finder. (Case No. Act 88-06-13-E)

3. On May 10, 2006, the fact finder held a hearing. (Stipulation 9)

4. At the beginning of the hearing, counsel for the District read the following letter aloud:

> "This correspondence constitutes the District's position concerning this fact finding. As explained below, it is the District's position that this fact-finding is premature because the parties have not engaged in any negotiations towards a successor collective bargaining agreement. It is the District's understanding that the Association takes the position that the parties have been negotiating and now have reached an impasse. By correspondence dated April 12, 2006 from Vincent M. Putiri to you, he has alleged that the parties are at impasse and suggests that there only are three outstanding issues in dispute. In reality, there has been no impasse because there have been no negotiations.
>
> The parties entered into early-bird negotiations in November, 2005, which negotiations ended unsuccessfully in January, 2006 when the membership of the

Association rejected the Board's final early-bird proposal. I was not part of these talks. When the early bird negotiations began, a series of ground rules were prepared and although not signed by the Association representative, were agreed upon by both parties (copy attached). The first and fourth ground rules make clear that if the early-bird negotiations were not successful, 'all bets would be off' and the parties would need to begin bargaining under the normal Act 195 timelines. The Association clearly understood that the Board's Committee operated in accordance with these ground rules.

After the failure of the early-bird negotiations, the Association immediately requested fact finding without even seeking to begin bargaining under the normal timelines. Accordingly, there have been no negotiations on a successor collective bargaining agreement. Unfortunately, the Association since has taken the position that although the Association team knew that the Board's Committee took a position consistent with the ground rules, the Association never agreed to the ground rules because it did not sign them. The reality is that both parties knew what would happen if the early-bird was not successful. The Association now has reneged on its agreement.

While the Association takes the position that only three issues are outstanding, it is the District's position that every aspect of the collective bargaining agreement is at issue and strongly disagrees with the Association's position. Accordingly, it is clear that the planned fact finding cannot possibly lead to an amicable solution of these negotiations. In fact, because there has been no bargaining and there is no agreement between the parties as to the outstanding issues, we do not see how you possibly could formulate a viable report. Therefore, the District asks that you decline to issue a report because of this disagreement, thereby allowing the parties to meet at the bargaining table and negotiate. Again, given the wide disagreement as to what issues are outstanding, that District cannot fathom how you possibly can fashion a report that would be close to acceptable by both sides. If you issue a report, it is safe to say that under these circumstances, the District will be forced to reject such a report. The District does not like having to take such a position, but it believes that is has no choice. The District is more than willing to bargain at the request of the Association, unfortunately, there has been no such request. At some point in the future, it might be appropriate to engage in fact finding, but it is premature to do so []at this time.

While the District realizes this is a rather unusual situation, we suggest that these circumstances are not unique. Professor Jane Rigler faced a similar situation last year at the York County Vocational-Technical School. In that matter, the parties had not bargained and could not agree on the outstanding issues, and Professor Rigler decided that under those circumstances, she could not issue a viable report and, in fact, refused to make any recommendations. Attached is a copy of her decision. The District asks that you follow Professor Rigler's example and decline to make any recommendations."

(Stipulation 9)

5. After reading the letter, counsel for the District left the hearing. No other representative of the District was present for the hearing. (Stipulation 9)

6. On May 22, 2006, the fact finder issued a report. (Case No. Act 88-06-13-E)

7. On May 30, 2006, the Association accepted the fact finder's report. (Case No. Act 88-06-13-E)

8. On May 31 and June 12, 2006, the District rejected the fact finder's report. (Case No. Act 88-06-13-E)

9. On April 10, 2007, the Board, upon notification by the Bureau of Mediation that the parties still had not reached a collective bargaining agreement, appointed a second fact finder. (Case No. ACT 88 07-17-E)

10. On May 23, 2007, the second fact finder issued a report. (Case No. ACT 88 07-17-E)

11. On June 5, 2007, the Association accepted the second fact finder's report. (Case No. ACT 88 07-17-E)

12. On May 30, 2007, the District accepted the second fact-finder's report. (Case No. ACT 88 07-17-E)

DISCUSSION

The Association has charged that the District committed unfair practices by refusing to participate in a fact finding hearing. After the charge was filed, however, both parties accepted a fact finder's report issued following a second round of fact finding. Under the circumstances, the charge is moot and must be dismissed for that reason.

In Southeastern Pennsylvania Transportation Authority, 37 PPER 119 (Final Order 2006), the Board dismissed as moot a charge alleging that an employer committed unfair practices during negotiations for a collective bargaining agreement. As the Board explained:

> "Charges of unfair practices arising out of the bargaining process, essentially alleging refusal to bargain in good faith are generally mooted by entering into a new collective bargaining agreement. Temple Association of University Professionals, Local 4531 v. Temple University, 23 PPER ¶23118 (Proposed Decision and order, 1992), *affirmed,* 25 PPER ¶25121 (Final Order, 1994). In Temple University the Board's Hearing Examiner adopted the rationale of the New Jersey Public Employee Relations Commission in Ramapo-Indian Hills Regional High School District, 16 NJPER ¶21255 (Decision and Order, 1990), wherein the New Jersey PERC stated
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> > We have often held that the successful completion of contract negotiations may make moot disputes over alleged misconduct during negotiations…. Continued 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.
>
> Temple University, 23 PPER at 304 (*quoting* Ramapo-Indian Hills Regional High School District, 16 NJPER at 580-581)."

Id. at 395-396.

As the Board earlier explained in City of Philadelphia, 36 PPER 158 (Final Order 2005):

> "Under Section 1302 of [the Act], which recognizes that the Board may issue a complaint to determine if the respondent 'has engaged in . . . any such unfair practice[,]' it is within the discretion of the Board whether to adjudicate and remedy past violations of [the Act]. Fraternal Order of Police, Queen City Lodge #10 v. City of Allentown, 27 PPER ¶27250 (Final Order, 1996). In determining whether alleged past violations of bargaining obligations occurring during negotiations should be heard, the Board considers as paramount whether its involvement after a successor agreement has been reached, is appropriate under the facts of any particular case. In this regard, the Board distinguishes between those charges where the employes continue to suffer residual effects of an unlawful, unilateral change to wages, hours and working conditions, which are typically not moot, as opposed to those involving bargaining tactics which do not result in affirmative relief to the employes, but rather cease and desist orders, which are generally mooted by the parties' entry into a collective bargaining agreement. Hazleton Area Education Support Personnel Association v. Hazleton Area School District, 29 PPER ¶ 29180 (Final Order, 1998)."

Id. at 467-468 (footnote omitted).

Similarly, in City of Philadelphia, 29 PPER ¶ 29149 (Final Order 1998), the Board dismissed as moot a charge alleging that an employer committed unfair practices by

refusing to commence collective bargaining in a timely fashion. Noting that the parties had proceeded to interest arbitration, the Board explained that "[i]t is generally well accepted that charges of unfair practices contesting refusals to collectively bargain are rendered moot by the subsequent performance of the collective bargaining obligation." 29 PPER at 347 (citations omitted). See also Slippery Rock Area School District, 24 PPER ¶ 24175 (Proposed Decision and Order 1993), where the hearing examiner on a substantially similar record dismissed as moot a charge alleging that an employer committed unfair practices by prematurely releasing a copy of a fact finder's report.

In light of the cited precedent, it is apparent that the charge is moot because after the charge was filed both parties accepted the fact finder's report issued following a second round of fact finding.

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. The Association is an employe organization under section 301(3) of the Act.

3. The Board has jurisdiction over the parties.

4. The charge is moot.

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 third day of August 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner

Direct Dial
717-783-3050

Fax Number
717-783-2974

August 3, 2007

CHARLES L HERRING ESQUIRE
PA STATE EDUCATION ASSOCIATION
BUILDING C
601 BETHLEHEM PIKE
MONTGOMERYVILLE, PA 18936

RICHARD B GALTMAN ESQUIRE
SWEET STEVENS TUCKER & KATZ LLP
331 E BUTLER AVE
PO BOX 5069
NEW BRITAIN, PA 18901

UPPER MORELAND TOWNSHIP SCHOOL DISTRICT
Case No. PERA-C-06-305-E

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Upper Moreland Township School District