

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF PAINTERS AND :
ALLIED TRADES LOCAL UNION 1968 :
 :
 :
 v. : Case No. PERA-C-05-538-W
 :
 :
ERIE CITY SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On November 21, 2005, Local 1968, International Union of Painters & 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 the Public Employe Relations Act (Act) when it "ejected Local 1968's counsel from being present at" an investigatory interview of David Welz. By letter dated January 6, 2006, the Secretary of the Board informed Local 1968 that the Board was unable to process the charge as filed and that the charge had to be amended within twenty days "to specify the exact subsection ((a) or (b)) of the Public Employe Relations Act (Act) which you believe was violated." On February 8, 2006, the Secretary dismissed the charge because Local 1968 did not timely respond to her letter of January 6, 2006. On February 14, 2006, Local 1968 filed exceptions and an amended charge alleging that the District had committed unfair practices in violation of sections 1201(a)(1), 1201(a)(2), 1201(a)(3), 1201(a)(5) and 1201(a)(9) of the Act. On March 21, 2006, the Board issued an Order Directing remand To Secretary For Further Proceedings in which it found that Local 1968 had perfected the charge by filing the amended charge within the four month limitation period for the filing of a charge and in which it directed the Secretary to issue a complaint.

On April 25, 2006, the Secretary issued a complaint and notice of hearing directing that a hearing be held on June 20, 2006, if conciliation did not resolve the charge by then. Upon the agreement of the parties, a hearing examiner thereafter continued the hearing pending the receipt of stipulated facts. On August 21, 2006, Local 1968 requested that the hearing be rescheduled. On August 25, 2006, a hearing examiner rescheduled the hearing to October 17, 2006. Upon the agreement of the parties, a hearing examiner thereafter continued the hearing pending the receipt of stipulated facts. On October 26, 2006, Local 1968 filed a brief. On November 16, 2006, the District filed a brief. On December 6, 2006, the parties filed stipulated facts.

On February 28, 2007, a hearing examiner afforded the parties the opportunity to file supplemental briefs in light of the court's recent decision in Commonwealth of Pennsylvania, Office of Administration v. PLRB, __ Pa. __, 916 A.2d 541 (2007). On March 16, 2007, Local 1968 filed a supplemental brief. On March 22, 2007, the District filed a supplemental brief.

The hearing examiner,¹ on the basis of the stipulations presented by the parties and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Local 1968 is an employe organization. (Charge)
2. The District is a public employer. (Charge)
3. On November 7, 2005, the District conducted an investigatory interview of Mr. Welz. (Stipulation 9)
4. Local 1968's counsel (Richard T. Ruth), president (Robert Tirak) and business agent (Dean Bagnoni) appeared at the investigatory interview. (Stipulation 6)
5. Attorney Ruth appeared at the investigatory interview at the request of Local 1968. He did not appear at the request of Mr. Welz. (Stipulations 5-6)

¹The Board reassigned this case to the hearing examiner on April 3, 2007.

6. The District did not let Attorney Ruth attend the investigatory interview. (Stipulation 7)

7. Mr. Tirak and Mr. Bagnoni attended the investigatory interview. (Stipulation 9)

DISCUSSION

Local 1968 has charged that the County committed unfair practices when it "ejected Local 1968's counsel from being present at" an investigatory interview of Mr. Welz. As set forth in the specification of charges, Local 1968 avers that the District did so "in violation of the Union's rights to designate its own representatives at investigatory interviews[.]" As set forth in the findings of fact, the record shows that Local 1968 requested that its counsel attend the investigatory interview and that the District did not let him do so.

The District contends that the charge should be dismissed because Local 1968 has no right to designate its own representatives at investigatory interviews. Thus, according to the District, there is no basis for finding that it violated Local 1968's rights when it did not let Local 1968's counsel attend the investigatory interview. The District also contends that the charge should be dismissed because Local 1968's president (Mr. Tirak) and business agent (Mr. Bagnoni) attended the investigatory interview. In the District's view, Mr. Welz only had the right to a single union representative at the investigatory interview, so he had no right to have Attorney Ruth attend the investigatory interview as well.

In Commonwealth of Pennsylvania, Office of Administration, supra, the court held that the right to designate a union representative for an investigatory interview is the employe's, not the union's. Thus, although Mr. Welz as an employe had the right to designate Local 1968's counsel as his union representative at the investigatory interview,² Local 1968 as his union did not. Accordingly, the District did not violate any of Local 1968's rights when it did not let Local 1968's counsel attend the investigatory interview. There is, therefore, no basis for finding that the District committed the unfair practices charged.

Local 1968 has not charged that the District violated Mr. Welz's right to union representation at the investigatory interview, so the District's contention that the charge also should be dismissed because Mr. Tirak and Mr. Bagnoni attended the investigatory interview need not be addressed.

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)(2), 1201(a)(3), 1201(a)(5) 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

² In Cheltenham Township v. PLRB, 846 A.2d 173 (Pa. Cmwlth. 2004), the court held that employes have the right to designate their union's attorney as their union representative at an investigatory interview.

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 April 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

Direct Dial
717-783-3050

Fax Number
717-783-2974

April 5, 2007

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

MARK T WASSELL ESQUIRE
KNOX McLAUGHLIN GORNALL & SENNETT PC
120 W TENTH ST
ERIE, PA 16501

ERIE CITY SCHOOL DISTRICT
Case No. PERA-C-05-538-W

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: ERIE CITY SCHOOL DISTRICT