COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BROOKVILLE AREA EDUCATION ASSOCIATION	:	
	:	
v.	:	Case No. PERA-C-06-525-W
	:	
BROOKVILLE AREA SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On October 23, 2006, the Brookville Area Education Association/ PSEA/NEA (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Brookville Area School District (District) had violated section 1201(a)(1) of the Public Employe Relations Act (Act) when it placed in a newspaper of general circulation (the Punxsutawney Spirit) an advertisement "designat[ing] those members of the bargaining unit who are members of the Brookville Area Education Association bargaining team[.]" On November 8, 2006, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on January 4, 2007, if conciliation did not resolve the matter by then. On November 16, 2006, the District filed an answer admitting that it placed the advertisement but denying that it thereby committed an unfair practice.[1] The hearing was held as scheduled. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On February 26, 2007, each party filed a brief by mail.

The hearing examiner, on the basis of the evidence presented at the hearing and from all other matters of record, makes the following:

FINDING OF FACT

1. The Board has certified the Association as the exclusive representative of a bargaining unit that includes employes of the District. (Case No. PERA-R-277-W)

2. On June 30, 2004, the parties' collective bargaining agreement expired by its own terms. (Complainant Exhibit 1)

3. By letter dated July 8, 2005, the Association wrote to select members of the community as follows:

> "It is the intention of this letter to update you on the current status of contract negotiations between the Brookville Area School District and the Brookville Area Education Association.
>
> The contract under which the Association is currently working expired on July 1, 2004. The members of the Brookville Area Education Association have continued to work during the 2004-2005 school year under the terms and conditions of that expired contract. Seventeen months of bargaining have resulted in only a single issue being resolved. That there is an apparent lack of urgency on the part of the Board is demonstrated by their failure to attend recent bargaining sessions. (see attachment)
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> In order to avoid a work stoppage at the beginning of the 2005-2006 school year, the Brookville Area Education Association asked the board to enter into voluntary

[1] The District also filed new matter "rais[ing] the defense of statute of limitations pursuant to Section 1101.1505." Although the District did not present that defense at the hearing, it will be addressed nonetheless because the timeliness of a charge is jurisdictional. Delaware County, 29 PPER ¶ 29087 (Final Order 1998). In order to be timely, a charge must be filed within four months of when the charging party knew or should have known of the unfair practices charged. Thomas v. Commonwealth of Pennsylvania, PLRB, 483 A.2d 1016 (Pa. Cmwlth. 1994). The record shows that the charge was filed within four months of the placement of the advertisement. Accordingly, the charge is timely filed.

non-binding arbitration. The voluntary non-binding arbitration proposal would do the following:

- It would provide the parties who are at odds the benefit of the view of a neutral party.

- A compromise of each party's position on any or all issues would be a possible result from the arbitrator's latitude.

- The positions of the parties as of June 8, 2005 would be the only issues to be resolved through arbitration. No new issues would be introduced.

- The Association members and the Board of Education would need to ratify the arbitrator's recommendation to finalize an agreement.

The Association proposal also contained the following:

- To provide for public comment the positions of both parties shall be posted in the District office and in the office of each building for a ten-day period starting ten days after the selection of the arbitrator by the parties.

- Public comment in the form of a letter to the arbitrator will be accepted for a period of ten days following the posting.

Arbitration is voluntary prior to a strike and mandatory after a strike. It only makes sense to offer arbitration to avoid a work stoppage rather than to wait until after the disruption of services and have it imposed by the state. Voluntary non-binding arbitration can push the process forward and hopefully a settlement can be reached in a much shorter time.

Unfortunately, the Board will only submit to voluntary non-binding arbitration under the following conditions:

- A mutually agreed upon arbitrator.

The Association offer called for the opportunity for mutual selection. If we can't agree there must be some process for selection. The only logical one is to use the American Arbitration Association, which is included in Act 88.

- The entire process must be open to the public.

We believe that negotiations and impasse procedures are matters dealing with personnel issues and are therefore private. An 'open' hearing would stifle attempts by an arbitrator to mediate a settlement. The legislature never intended for these hearings to be public. That is why they provided public input through the posting of issues and the opportunity to write letters. 'Open' hearings lend themselves to posturing. Most people understand that grandstanding by each side in a dispute only increases the differences between them.

- There can be no restrictions placed upon the parties' abilities to communicate with the public.

The Association asked for a media blackout. The Board has had 18 months to communicate with the public; nothing has impeded them from making their case. It is critical to move bargaining forward or the situation will worsen. Bargaining in public does not erase tensions; it heightens the tension. The purpose of the blackout was to allow the parties to focus on bargaining, not try to convince the public they are correct. It is the Board and the Association that must vole on the agreement, not the public. Bargaining by media leads to longer disputes, not quicker settlements. Somerset School District is a prime example. Is this what we want for our district?

We hope that you, as a community member, will contact the members of the school board and ask them to accept voluntary non-binding arbitration without the restrictions they have placed on the proposal. We want to settle this agreement in a fair and equitable manner, not in a circus mode."

In an attachment to the letter, the Association identified members of the District's bargaining team by name. (N.T. 10, 18, 28, 43; District Exhibit A)

4. In an undated letter, the members of the Association's bargaining team wrote to the same members of the community as follows:

"The negotiations between the Brookville Area School Board and the Brookville Area Education Association continue to be at an impasse. We ask for your help in resolving this issue.

The teachers requested voluntary non-binding arbitration in an effort to end the work stoppage in the fall of 2005. The board reluctantly agreed to participate. This ended the strike and we worked for a second year without a contract. The arbitrator returned his award in June. Since the arbitrator was required to choose one side or the other on each issue, he was not permitted to choose a compromise position. Although he offered several times to mediate a settlement, the board refused to participate stating they had no faith in the process.

The arbitrator's award had several flaws as he himself indicated in an addendum to the award. The board voted to accept the award in spite of the fact that it did not include the health care co-premium that they claimed they needed and that has kept the parties far apart for two years. The Board wanted high co-premiums and refused to bargain any other issue until that stumbling block was removed. This position was the basis for the strike that occurred in September 2005.

The teacher's association voted to reject the award because the arbitrator chose the board's proposal for salary. In the board's proposal, steps would be added to the salary schedule and it would be impossible for teachers to ever reach the top of the schedule. The salary schedule that has served both sides well for many years would be, in effect, dismantled. We are satisfied with the set-up of the current salary schedule and do not want to destroy its form. Also, several parts of the award are vague and incomplete.

The Arbitrator also made compromise recommendations that he felt could be the basis for a settlement. The teachers voted to accept the recommendations that the arbitrator included in his award. These were his suggestions for settlement that he would have used if the board had permitted him to mediate a settlement. The recommendations included co-premiums for health care that were at least reasonable. It suggested the raise that the board had proposed without adding steps to the salary schedule. We felt these recommendations would provide a solid basis for a contract.

At the last two bargaining sessions the board has refused to even discuss the recommendations of the arbitrator. Their last proposal was the award which we had already rejected and no retroactive pay for the two years we have already worked. It seems obvious to us that the board has no intention of settling this contract.

We urge you to get involved. The protracted bargaining affects the whole community, especially our students. It is in the best interest of the students and community that this impasse be settled before the start of the new school year.

Call or write board members urging them to bargain seriously and to start making our students' futures a priority. Please attend the August board meeting and speak during the times for community comments. Ask the board to settle the contract using the arbitrator's recommendations as a basis for settlement.

Thank you for your help."

In an attachment to the letter, the members of the Association's bargaining team identified members of the District's board of directors by name and address. (N.T. 16, 19-20, 43; District Exhibit B)

5. On September 13, 2006, the Punxsutawney Spirit published an advertisement placed by the District with the heading "Brookville Teachers – How Much Is Enough?" that listed the costs of the salary and fringe benefits for each member of the bargaining unit by name and designated which members of the bargaining unit were members of the Association's bargaining team. (N.T. 11-12; Complainant Exhibit 2)

DISCUSSION

The Association has charged that the District committed an unfair practice under section 1201(a)(1) when it placed in a newspaper of general circulation (the Punxsutawney Spirit) an advertisement "designat[ing] those members of the bargaining unit who are members of the Brookville Area Education Association bargaining team[.]" As set forth in the specification of charges, the Association submits that the District thereby coerced the members of the bargaining unit in general and the members of the bargaining team in particular "in the exercise of their right to assist in employee organizations and to engage in lawful concerted activities for the purpose of collective bargaining[.]"

The District has answered that the charge should be dismissed because the Association and the Association's bargaining team members had publicly disclosed the names of the bargaining team members before the District placed the advertisement. The District submits that its placement of the advertisement was not coercive under the circumstances.

In Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 35 PPER 97 (Final Order 2004), the Board reiterated the law with respect to section 1201(a)(1) as follows:

> "An independent violation of Section 1201(a)(1) occurs where, based on the totality of the circumstances, the employer's actions would have the tendency to coerce or interfere with the protected activities of a reasonable employe, regardless of whether anyone was actually coerced. Fink v. Clarion County, 32 PPER ¶ 32165 (Final Order, 2001). The employer's motive for its actions is irrelevant. Northwestern Education Association v. Northwestern School District, 16 PPER ¶ 16092 (Final Order, 1985)."

35 PPER at 303. Of course, if the employer's conduct was not coercive, then no violation of section 1201(a)(1) may be found. Id. Nor may a violation of section 1201(a)(1) be found if the employer presents a legitimate basis for its conduct that outweighs any coercive effect the conduct may have. Temple University, 23 PPER ¶ 23118 (Proposed Decision and Order 1992), affirmed on another ground, 25 PPER ¶ 25121 (Final Order 1994); Philadelphia Community College, 20 PPER ¶ 20194 (Proposed Decision and Order 1989). But if the employer presents no legitimate basis for its conduct that otherwise is coercive, then a violation of section 1201(a)(1) must be found. Ringgold School District, 26 PPER ¶ 26155 (Final Order 1995).

The record shows that after the parties' collective bargaining agreement expired by its own terms the Association wrote to select members of the community a letter urging them to contact members of the District's board of directors to accept voluntary non-binding arbitration without restriction as a means to bring their protracted negotiations for a successor collective bargaining agreement to an end (finding of fact 3). The record also shows that the letter identified members of the District's bargaining team by name. Id. In addition, the record shows that members of the Association's bargaining team subsequently wrote to the same members of the community a letter urging them to contact members of the District's board of directors to bargain seriously for a successor collective bargaining agreement (finding of fact 4). The record further shows that the letter identified members of the District's board of directors by name and address. Id. The record finally shows that the Punxsutawney Spirit thereafter published an advertisement placed by the District with the heading "Brookville Teachers – How Much Is

Enough?" that listed the costs of the salary and fringe benefits for each member of the bargaining unit by name and designated which members of the bargaining unit were members of the Association's bargaining team (finding of fact 5).

On that record, there is no basis for finding that the District's placement of the advertisement was coercive. Notably, a close review of the advertisement does not show that the District threatened an adverse employment consequence if employes exercised their right to assist the Association in bargaining in the future, so a reasonable employe would hardly be less likely to assist the Association in bargaining in the future because the District placed the advertisement. Compare Millcreek Township, 31 PPER ¶ 31056 (Final Order 2000)(no coercion found where an employer admonished an employe for inappropriate behavior he had the right to engage in but made no mention of future discipline if he ever did so again) and Lehigh County, 36 PPER 159 (Final Order 2005)(coercion found where an employer threatened an employe with future discipline if he ever exercised his right to complain about safety issues again). See also Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, supra (no coercion found where an adverse employment consequence resulting from the employes' exercise of their right to change their bargaining representative was not imposed by the employer).

Moreover, the record shows that the District only placed the advertisement after the Association and the members of its bargaining team had identified members of the District's bargaining team by name and members of the District's board of directors by name and address in an obvious effort to bring public pressure upon them to settle the parties' contract dispute. It is apparent, then, that the District was responding in kind to the tactics employed by the Association and the members of its bargaining team, which the District had the right to do. See Southeast Delco School District, 27 PPER ¶ 27258 (Final Order 1996), where the Board in finding that an employer did not coerce employes by causing their salaries to be broadcast over a television cable access station reiterated its "long held view that the parties to the bargaining process possess ordinary rights of free speech and that the parties have the right to communicate to the media regarding matters involved in collective bargaining." Id. at 584. Thus, the record shows that the District had a legitimate basis for placing the advertisement. See also Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, where the Board found that an employer had the right to argue to an arbitrator that its back pay liability in a discharge grievance should be limited because of the delay in the processing of the grievance caused by the employes' exercise of their right to change their bargaining representative.

The Association contends that in order to prevail on the charge it was under no obligation to show that the District intended to coerce employes when it placed the advertisement. The Association correctly states the law, but the Association nevertheless had to show that the Association's placement of the advertisement was coercive. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI.

The Association also contends that the District's placement of the advertisement was coercive because the District had no legitimate basis for placing it. As the Association points out, the District's superintendent testified that he did not think that it was "a good idea" to place the advertisement (N.T. 47) and that he thought that the placement of the advertisement "was a method used to bring awareness to the community of the amount of money that the District spent towards teachers' salaries and an effort to bring closure to a contract dispute" (N.T. 48). According to the Association, because the publication of the salaries and fringe benefits of the members of the bargaining unit alone would have met that objective, it is apparent that while the Association "identified individual School Board members only to encourage serious bargaining," the District "was unable to make a similar assertion" (brief at 8). Moreover, according to the Association, it and its bargaining team "communicated with the media and select members of the public with respect to the progress of negotiations and it was only in that context that any of those communications bore the names of the individuals" on the bargaining team. Id. As the Association points out, the District communicated with the public at large.

The Association's contention is without merit. The legitimacy of an employer's conduct is only to be considered if the conduct was coercive in the first place. Ringgold School District, supra. As noted above, the District's placement of the advertisement was not coercive because a close review of the advertisement does not show that the District referenced an adverse employment consequence if employes exercised their right to assist the Association in bargaining in the future. Thus, the legitimacy of the District's conduct is irrelevant. In any event, as also noted above, the record shows that the District had a legitimate basis for placing the advertisement—-responding in kind to the tactics employed by the Association and its bargaining team.

Whether or not the District had a legitimate basis for placing the advertisement is a legal question, so the fact that the superintendent did not think that it was "a good idea" to place the advertisement is irrelevant. The fact that the District may have been able to bring closure to the parties' contract dispute by publishing the salaries and fringe benefits of the members of the bargaining unit alone is irrelevant as well; the fact remains that the District responded in kind to the tactics employed by the Association and its bargaining team. The fact that the Association and its bargaining team only disclosed the names of the bargaining team members to select members of the public is irrelevant, too; again, the fact remains that the District responded in kind to the tactics employed by the Association and its bargaining team.

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 District has not committed an unfair practice under section 1201(a)(1) 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 sixteenth day of March 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner