COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PENNSYLVANIA SOCIAL SERVICES UNION LOCAL 668 SERVICE EMPLOYEES INTERNATIONAL UNION	:	
v.	:	Case No. PERA-C-07-21-E
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE JEFFERSON CAO	:	

PROPOSED DECISION AND ORDER

On January 22, 2007, the PA Social Services Union SEIU Local 668 (PSSU) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Office of Administration of the Commonwealth of Pennsylvania (Commonwealth) violated section 1201(a)(1) of the Public Employe Relations Act (Act) on or about November 16, 2006, by notifying employes at the Jefferson County Assistance Office that they could not wear "union buttons." On March 15, 2007, the Secretary of the Board asked PSSU to amend the charge "to indicate the message printed on the buttons" and to "indicate in what areas the bargaining unit members were wearing these buttons." On April 4, 2007, PSSU filed an amended charge alleging that the employes "began wearing union buttons in support of the union's efforts at state contract negotiations," that "[t]here were two different buttons. One button read as follows, 'More staff, Quality Services'. The second button . . . read, 'Careful someone's listening,'" and that "[t]he buttons were worn by the workers in both the public and employee only areas of the Jefferson County Assistance Office."

On May 14, 2007, the Secretary issued a complaint and notice of hearing directing that a hearing be held on September 20, 2007, if conciliation did not resolve the charge by then. The hearing examiner subsequently continued the hearing upon the request of PSSU and without objection by the Commonwealth. On December 11, 2007, the hearing was held. At the outset of the hearing, PSSU withdrew the charge as to the first button (N.T. 4), and the Commonwealth moved to dismiss the charge as moot because the parties had reached a collective bargaining agreement after the charge was filed (N.T. 5-6). PSSU objected to the motion on the ground that the issue presented in the charge was capable of repetition yet evading review and therefore should be heard (N.T. 6-7). The hearing examiner took the motion under advisement pending the filing of briefs (N.T. 7). The parties thereafter stipulated that they entered into a collective bargaining agreement in January or February 2007 (N.T. 29). On February 21, 2008, the Commonwealth filed a brief. On February 22, 2008, PSSU filed a brief.

The Commonwealth's motion to dismiss is hereby granted.

The Board's mootness policy for a charge of this nature is as set forth in Hazleton Area School District, 29 PPER ¶ 29180 (Final Order 1998), where the Board, citing Temple University, 25 PPER ¶ 25121 (Final Order 1994), explained that

> "in certain circumstances the Board will exercise a policy of dismissing as moot unfair practice charges involving issues that are collateral to a collective bargaining impasse when that impasse is resolved via achievement of a collective bargaining agreement."

29 PPER at 419. There is an exception to the Board's mootness policy, however. As the Board recently explained in SSHE, Case No. PERA-C-07-276-E (Final Order, December 18, 2007), "within its discretion, [it] may hear a moot charge if the charge presents an issue of great public importance that is capable of repetition but likely to evade review." Slip opinion at 1-2.

The charge alleges that the Commonwealth engaged in conduct that was violative of the Act during the parties' negotiations for a collective bargaining agreement. As such,

the charge involves an issue that is collateral to a collective bargaining impasse as the Board defined the term in Hazleton Area School District, supra. As noted above, the record shows that the parties entered into a collective bargaining agreement after the Commonwealth engaged in the conduct alleged to be violative of the Act. Thus, unless the exception to the Board's mootness policy as set forth in SSHE applies, the charge is moot and is to be dismissed for that reason. As explained below, the exception to the mootness doctrine as set forth in SSHE does not apply under the circumstances of this case. The Commonwealth's motion to dismiss had been granted accordingly.

PSSU contends that the exception to the Board's mootness policy as set forth in SSHE applies because the charge presents an issue that is capable of repetition yet evading review. On a substantially similar record in SSHE, however, the Board found that the exception to its mootness policy did not apply. In that case, which involved an allegation that the employer interfered with the right of its employes to strike before the parties entered into a collective bargaining agreement, the Board dismissed the charge as moot, explaining that it

> "will not speculate as to whether [the employer] will make the same alleged threats to the bargaining unit members in the future. As such, [the charging party] has failed to demonstrate that the underlying factual situation presented here is one that is capable of repetition but likely to evade review."

Slip opinion at 2. Application of the same analysis to the facts of record here leads to the same result.

Moreover, in order for the exception to the Board's mootness policy as set forth in SSHE to apply, the charge also must present an issue of great public importance. PSSU does not allege, however, that the charge presents an issue of great public importance. Nor could it. As the Board further explained in dismissing the charge in SSHE, it

> "has previously stated that '"[c]ontinued 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."' Medical Rescue Team South Authority v. Association of Professional Emergency Medical Technicians, 30 PPER ¶ 30063 at 136 (Final Order, 1999)(quoting Ramapo-Indian Hills Regional High School District, 16 NJPER ¶ 21255 at 582 (Decision and Order, 1990)). Clearly, to continue this litigation over alleged past misconduct that no longer affects the parties cannot be said to be in the public interest. Thus, [the charging party] has failed to demonstrate that its Charge raises an issue of great public importance."

Id. Again, application of the same analysis to the facts of record here leads to the same result. See also Temple University, supra, where the Board dismissed as moot a charge alleging that an employer committed an unfair practice by threatening to have employes who were picketing during contract negotiations that resulted in a collective bargaining agreement arrested. As the Board explained in that case, the charge "relat[ed] to the bargaining impasse which was resolved by execution of the collective bargaining agreement." 25 PPER at 306.

In its brief, PSSU points out that in Hazleton Area School District, supra, where the Board rejected an employer's argument that a charge should be dismissed as moot, it explained that "[t]o adopt the Employer's mootness argument would permit the Employer to avoid its statutory obligation[.]" 29 PPER at 419. As the Board also explained in that case, however, in applying its mootness policy, it distinguishes between two categories of charges: (1) those that involve "unilaterally alter[ing] wages, hours or working conditions during bargaining in violation of [the employer's] collective bargaining duty" as in that case and (2) those that "involv[e] issues that are collateral to a collective bargaining impasse when that impasse is resolved via achievement of a collective bargaining agreement" as in cases like Temple University. Id. As the Board further explained in that case, charges in the first category need not to be dismissed as moot if the parties subsequently enter into a collective bargaining agreement, but charges in the second category are to be dismissed as moot if the parties subsequently enter into a collective bargaining agreement. Id. The instant charge falls under the second category.

There is, therefore, no basis for rejecting the Commonwealth's mootness argument here.

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 twenty-ninth day of February 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner