

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

INTERMEDIATE UNIT NO. 6 :  
EDUCATIONAL SUPPORT PERSONNEL :  
ASSOCIATION ESPA/PSEA/NEA :  
 :  
v. : Case No. PERA-C-07-269-W  
 :  
RIVERVIEW INTERMEDIATE UNIT NO. 6 :

**PROPOSED DECISION AND ORDER**

On June 21, 2007, the Intermediate Unit No.6 Educational Support Personnel Association (Union) filed a charge of unfair practices (Charge) with the Pennsylvania Labor Relations Board (Board) alleging that the Riverview Intermediate Unit No. 6 (Riverview) violated Section 1201(a)(1) & (5) of the Public Employee Relations Act (PERA) by unilaterally changing the leave policy. On July 17, 2007, the Secretary of the Board issued a Complaint and Notice of Hearing directing that a hearing take place on Tuesday, October 9, 2007, at 10:00 A.M. in Room 1513 of the Pittsburgh State Office Building in Pittsburgh, PA. The hearing occurred as scheduled on that date. During the hearing, the parties were afforded a full and fair opportunity to present testimony and documents and cross-examine witnesses. Both parties filed post-hearing briefs after agreeing to extensions.

The examiner, based upon all matters of record, makes the following findings of fact.

**FINDINGS OF FACT**

1. Riverview is a public employer within the meaning of Section 301(1) of PERA. (N.T. 4).

2. The Union is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 4).

3. On February 27, 2007, the Riverview Executive Director issued an administrative regulation (Regulation) that requires Riverview employees in both the professional and non-professional bargaining units to exhaust accrued personal leave for absences on scheduled work days for personal reasons before seeking to exchange a scheduled work day for a scheduled non-work day for personal reasons. (N.T. 17-18, 46, 59-60, 76, 79; Association Exhibit 2).

4. The effective date of the Regulation was July 1, 2007. Riverview did not implement the Regulation before July 1, 2007. (N.T. 79-80; Association Exhibit 2).

**DISCUSSION**

In its post-hearing brief, Riverview contends that the Charge should be dismissed as prematurely filed. In FOP, Queen City Lodge No. 10 v. City of Allentown, 19 PPER ¶ 19120 (Final Order, 1988), the Board held that a union's charge alleging that a public employer's plan or resolution seeking to unilaterally change working conditions is premature when filed before the plan or resolution is actually implemented. Id. The Allentown Board reasoned that, prior to implementation, the employer has not effectuated a "change" in working conditions, which is a necessary element of a bargaining violation. Id. Furthermore, the Board noted that, prior to actual implementation, the proposed change in working conditions "is subject to modification or total reconsideration." Id. at 459. "Implementation accordingly is the date when the directive becomes operational and serves to guide the conduct of employees, even though no employees may have been disciplined or corrected for failure to abide by the directive." Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001).

The Charge in this case was filed on June 21, 2007 and alleges that Riverview engaged in unfair practices when it "unilaterally changed its leave policy." The Charge further alleges the following:

Previously, employees were not required to exhaust all personal days and could accumulate up to five (5) personal days. On February 27, 2007, the Employer unilaterally implemented a new leave policy, which now requires 203 day employees to exhaust all personal days before they can request any alteration of their scheduled work days.

(Specification of Charges). However, the Regulation complained of, dated February 27, 2007, was not to be effective until July 1, 2007, by its own terms. Counsel for the Union conceded that, on February 27, 2007, the new Regulation "was announced, and then, actually implemented July 1." (N.T. 22). Also, the Riverview Executive Director credibly testified that the February 27, 2007 Regulation was not to be effective or implemented until July 1, 2007. (N.T. 79-80). The Charge was filed prior to the implementation of the Regulation. Therefore, the Regulation could not have effectuated the necessary "change" in terms and conditions of employment on the filing date of June 25, 2007.<sup>1</sup> Post-Charge events such as these cannot, as a matter of law, support the Charge. Commonwealth of Pennsylvania, Pennsylvania State Police, 37 PPER 4 (Final Order, 2006).

#### **CONCLUSIONS**

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

1. The Riverview Intermediate Unit Number 6 is a public employer under PERA.
2. The Union is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. Riverview has not committed unfair labor practices within the meaning of Section 1201(a)(1) & (5).

#### **ORDER**

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

#### **HEREBY ORDERS AND DIRECTS**

That the charge is dismissed and the complaint is rescinded.

#### **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 thirtieth day of January, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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Jack E. Marino, Hearing Examiner

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<sup>1</sup> The examiner notes that Association Exhibit 3 was not properly authenticated at the hearing and contains objected-to hearsay. Thus, it is not competent, veritable evidence, and shall be given no weight.