

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

ASSOCIATION OF PENNSYLVANIA STATE :  
COLLEGE AND UNIVERSITY FACULTIES :  
 :  
v. : Case No. PERA-C-08-398-E  
 :  
STATE SYSTEM OF HIGHER EDUCATION :  
CALIFORNIA UNIVERSITY :

**FINAL ORDER**

The Association of Pennsylvania State College and University Faculties (APSCUF) filed timely<sup>1</sup> exceptions with the Pennsylvania Labor Relations Board (Board) on November 10, 2008. APSCUF's exceptions challenge an October 20, 2008 decision of the Secretary of the Board declining to issue a complaint and dismissing APSCUF's Charge of Unfair Practices filed against the State System of Higher Education, California University (SSHE).

APSCUF alleged in its Charge that SSHE made a unilateral decision to impose a parking fee on all bargaining unit employes who wished to park on campus and to relocate the existing free parking several miles away from campus. APSCUF attached to its Charge a copy of a June 24, 2008 e-mail to faculty and students which indicated, among other things, that the parking fees would become effective during the fall 2010 semester. APSCUF asserted that SSHE's actions violated Section 1201(a)(1), (5) and (9) of the Public Employe Relations Act (PERA).

The Secretary declined to issue a complaint, stating that APSCUF's allegations under Section 1201(a)(5) of PERA were premature because SSHE had not implemented its decision to impose a parking fee and to relocate the free parking lot, citing APSCUF v. PLRB, 661 A.2d 898 (Pa. Cmwlth. 1995), appeal denied, 542 Pa. 649, 666 A.2d 1058 (1995). The Secretary further stated that APSCUF had failed to state a cause of action under Section 1201(a)(9) of PERA because APSCUF did not allege that it requested a meet and discuss session with SSHE over the changes to the parking policy. The Secretary also indicated that APSCUF had failed to allege an independent or derivative violation of Section 1201(a)(1) of PERA. Therefore, the Secretary dismissed APSCUF's Charge.

In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

In its exceptions, APSCUF argues that its Charge under Section 1201(a)(5) of PERA is not premature because the resolution of the Council of Trustees approving the proposed parking policy is a definitive and irrevocable action. APSCUF relies on the fact that SSHE's parking policy will be funded by a bond and that SSHE has made the decision to pay back the bond through parking fees. As such, APSCUF asserts that the relocation of vehicles and the payment of parking fees do not need to occur in order for it to be determined that SSHE has implemented its parking policy. APSCUF further asserts that the impact of the change in parking policy can be determined by looking at the cost of the proposed parking fees and calculating the extra time it will take bargaining unit members to get to campus from the free parking lot.

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<sup>1</sup> APSCUF's exceptions are timely because November 9, 2008, the twentieth day following issuance of the Secretary's decision, was a Sunday and is therefore excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b).

The Board will dismiss as premature any unfair practice charge where it is alleged that a public employer has decided to unilaterally change terms and conditions of employment, but the change has not been implemented. APSCUF, supra; see also FOP, Queen City Lodge No. 10 v. City of Allentown, 19 PPER ¶ 19190 (Final Order, 1988). The Board has determined that a change in working conditions is implemented when the new policy becomes operational and has an actual impact on the employees. Temple University Hospital Nurses Association/PASNAP v. Temple University Health System, 39 PPER 45 (Final Order 2008); Allegheny County Deputy Sheriffs' Association v. Allegheny County, 35 PPER 75 (Final Order, 2004); Officer of the Upper Gwynedd Township Police Department v. Upper Gwynedd Township, 32 PPER ¶ 32101 (Final Order, 2001).

It is clear from the allegations in the Charge and the attached documentation that SSHE has not implemented its decision to impose a parking fee and move the free parking off campus. Further, APSCUF has not alleged in its Charge or exceptions that a parking fee has been imposed on the bargaining unit members or that the free parking has been moved off campus. Indeed, the e-mail attached to the Charge indicates that the parking fee will not become effective until the fall 2010 semester. Therefore, SSHE has not effectuated a change in the working conditions of APSCUF's bargaining unit members, which is a necessary element of a bargaining violation charge alleging a unilateral change.

APSCUF argues that the Board can determine the impact of SSHE's parking policy without parking fees being imposed and free parking being moved off campus. A similar argument was made in City of Allentown, supra, where the union argued that even though bargaining unit work had not been transferred, the Board could determine the impact of the employer's resolution authorizing the use of civilians in bargaining unit positions. In dismissing the union's exceptions in that case, the Board concluded that the employer's plan was subject to modification prior to actual implementation of the resolution and that it was not clear what impact the plan would have on the bargaining unit. Likewise, SSHE's plan for future parking is subject to change until it is actually implemented. Because SSHE has not implemented changes in employe parking, APSCUF's charge under Section 1201(a)(5) of PERA is premature. APSCUF, supra; City of Allentown, supra.

Concerning its allegations under Section 1201(a)(9), APSCUF argues that it could not have requested a meet and discuss session because it did not learn of the change in parking policy until after the change was implemented. Pursuant to Section 702 of PERA, a public employer is required to "meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employe representatives." 43 P.S. § 1101.702 (emphasis added). A public employer's obligation to meet and discuss arises only when a request to do so is made by the union. Correctional Institution Vocational Education Association PSEA/NEA v. Commonwealth of Pennsylvania Department of Corrections, 37 PPER 118 (Final Order, 2006); APSCUF v. SSHE, 24 PPER ¶ 24070 (Final Order, 1993).

The Board has already determined that SSHE's proposed changes in employe parking have not been implemented. Therefore, APSCUF was required to request a meet and discuss session in order for SSHE's obligation under Section 702 of PERA to arise. APSCUF has failed to allege in its Charge or exceptions that it requested a meet and discuss session with SSHE and that SSHE refused that request. As such, APSCUF has failed to state a cause of action under Section 1201(a)(9) of PERA.

Additionally, APSCUF has not made any further allegations or arguments in its exceptions concerning its Charge under Section 1201(a)(1) of PERA. Absent new factual allegations, APSCUF has failed to state an independent or derivative violation of Section 1201(a)(1). Accordingly, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and affirm the Secretary's decision declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Association of Pennsylvania State College and University Faculties are dismissed and the Secretary's October 20, 2008 decision not to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this twenty-first day of January, 2009. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.