

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LUZERNE INTERMEDIATE UNIT 18 :
EDUCATION ASSOCIATION, PSEA/NEA :
 :
v. : Case No. PERA-C-07-450-E
 :
LUZERNE INTERMEDIATE UNIT 18 :

PROPOSED DECISION AND ORDER

On October 18, 2007, the Luzerne Intermediate Unit 18 Education Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Luzerne Intermediate Unit 18 (Employer or IU) violated Section 1201(a)(1) and (3) of the Public Employee Relations Act (PERA). In its charge, the Union specifically alleges that IU board member Peter Halesey unlawfully and discriminatorily changed parking spaces for twelve IU employes stationed at the Wilkes-Barre Area Vocational-Technical School (VoTech) in August 2007 when he became the interim executive director of the VoTech. (Specification of Charges). On November 28, 2007, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on January 11, 2008. After several continuances, the hearing was held on Monday, May 5, 2008, at the IU in Kingston, Pennsylvania.

During the hearing, both parties in interest were afforded a full and fair opportunity to present testimonial and documentary evidence and cross-examine witnesses. I approved an extended briefing schedule to facilitate settlement discussions. On July 10, 2008 the Union filed with the Board a request on behalf of both parties to continue the briefing schedule indefinitely pending settlement discussions. I granted that request by letter dated July 21, 2008. On March 24, 2009, I held a telephone conference with the parties' attorneys regarding the status of settlement. During the conference, I established a new briefing schedule. On April 24, 2009, the Board received the Union's brief. The Board received the IU's brief on May 6, 2009.

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

FINDINGS OF FACT

1. The Luzerne Intermediate Unit 18 is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 3).
3. The parties stipulated and agreed that the Employer and the VoTech are separate and distinct entities and separate public employers. (N.T. 4).
4. The parties stipulated and agreed that the twelve employes at issue in this case whose parking was moved at the VoTech are employes of the IU and not the VoTech. (N.T. 4).
5. The parties stipulated and agreed that the Employer leases classroom space from the VoTech and the twelve IU employes at issue work at the VoTech as a result of the IU leasing the space from the Vo-Tech. (N.T. 4-5).
6. The parties stipulated and agreed that, at the beginning of the 2007-2008 school year, Peter Halesey was a board member at the IU and had been appointed interim executive director of the VoTech. Mr. Halesey is one of thirteen board members on the IU board. He is the Hanover School District representative. (N.T. 5, 53).
7. On the first day of school for the 2007-2008 school year, Boyd Weiss (Union President) and Tony Greco (Union Treasurer) parked in the faculty parking lot at the VoTech where they have parked for eighteen and seventeen years, respectively. Mr. Majikas, the VoTech principal, ordered Weiss and Greco to move their cars within fifteen

minutes or their cars would be towed. These statements were made in front of other employees. (N.T. 9-12, 14, 18, 29, 42).

8. Greco and Weiss moved their cars to the student lot to avoid being towed. All the IU employees stationed at the VoTech received parking assignments from the VoTech designating their parking in the student parking lot. (N.T. 12-13).

9. Mr. Halesey has no authority to act on behalf of the IU while performing his duties as interim executive director of the VoTech. (N.T. 53).

10. No member of the VoTech administrative staff has any affiliation with the administration of the IU. Mr. Halesey had no involvement in the parking planning for the 2007-2008 school year at the VoTech. Mr. Majikas and Mr. Testa -- who is the Dean of Students at the VoTech--planned the parking arrangements for the 2007-2008 school year at the VoTech, and they are responsible for deciding to move the IU employees to the student parking lot. (N.T. 62-66).

DISCUSSION

The twelve Union employees stationed at the VoTech and affected by the VoTech's parking changes are employed by the IU. The Union failed to prove on this record that the employer of the affected employees (the IU) is in any way responsible for the parking changes at the VoTech. The record merely shows that Mr. Halesey became interim executive director of the VoTech immediately prior to the parking changes and that he is one of thirteen board members on the IU board. Mr. Halesey has no authority to act on behalf of the IU while performing his duties as interim executive director of the VoTech. Mr. Halesey had no involvement in the parking planning for the 2007-2008 school year at the VoTech. Mr. Majikas and Mr. Testa planned the parking arrangements for the 2007-2008 school year at the VoTech and they are responsible for deciding to move the IU employees to the student parking lot. Indeed, no member of the VoTech administrative staff has any affiliation with the administration of the IU.

The record also shows that the VoTech--not the IU--administrators were responsible for the parking changes. Contrary to the allegations in the charge, the record does not show that Mr. Halesey was in any way involved in the parking changes. Even if he had been so involved, the record does not show that Mr. Halesey could act, or was acting, on behalf of the IU. Therefore, the charge must be dismissed because the IU is the named respondent and the record establishes that the VoTech, and not the IU, is responsible for the parking changes. There simply is no nexus between the IU and the parking changes at the VoTech. Absent the necessary factual predicate, that the IU is responsible for the parking changes, the charge cannot be sustained as a matter of law. Accordingly, the Union did not meet its burden of proving the necessary elements of its causes of action under Section 1201(a) (1), (3) or (5), and the charge of unfair practices is dismissed in its entirety.¹

CONCLUSIONS

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

1. The Luzerne Intermediate Unit 18 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. The Luzerne Intermediate Unit 18 has not committed unfair practices within the meaning of Section 1201(a)(1) of PERA.

¹ The Union included a clause (5) violation at the end of its specification of charges, although it failed to designate that it was filing a cause of action under 1201(a) (5) on the charge form.

5. The District has not committed unfair practices within the meaning of Section 1201(a)(3) of PERA.

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 nineteenth day of June, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner