COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEMPLE ASSOCIATION OF UNIVERSITY PROFESSIONALS LOCAL 4531 AFT	:	
v.	:	Case No. PERA-C-08-433-E
TEMPLE UNIVERSITY	:	

PROPOSED DECISION AND ORDER

On November 14, 2008, the Temple Association of University Professionals Local 4531 AFT (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Temple University (Temple) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). More specifically, the Union alleged that Temple engaged in direct dealing with bargaining unit members, and made denigrating public comments about the Union's handling of negotiations for a successor contract. On January 15, 2009, the Secretary of the Board issued a complaint and notice of hearing directing a hearing on February 19, 2009, in Philadelphia, Pennsylvania.

The Union filed an amended charge on January 22, 2009, and the Secretary to the Board issued an amended complaint and notice of hearing on February 5, 2009, setting the new hearing date as April 2, 2009. Another day of hearing was scheduled, and held on April 27, 2009

A second amended charge was filed by the Union on April 27, 2009, and another amended complaint and notice of hearing was issued on July 28, 2009. A third day of hearing was scheduled for, and held on July 28, 2009. On that date, as on the previous hearing dates, both parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties implemented a briefing schedule, and agreed to an extension of that schedule.

On October 15, 2009, Temple filed a Motion to Dismiss, and four days later the Union filed a brief in opposition thereto. The parties have agreed that I am to render a decision on Temple's Motion to Dismiss before I render a decision on the merits.[1]

FINDINGS OF FACT

1. Temple is a public employer.

2. The Union is an employe organization.

3. The Union is the certified bargaining agent for a unit of certain faculty and academic professionals employed by Temple. (N.T. 16, 17, 26; Union Exhibit 1).

4. The parties first met in May of 2008 and began formal negotiations in June of 2008 for a successor agreement to the contract that expired October 15, 2008. (N.T. 17; Union Exhibit 1).

5. The instant unfair practice charge was filed on November 14, 2008. (PERA-C-08-433-E).

6. The parties agree that they reached agreement on a successor collective bargaining agreement on August 25, 2009. They further agree that the Union ratified that agreement on September 14, 2009, and ten days later Temple approved it. (Memorandum of Law in Support of [Temple's] Motion to Dismiss; [Union's] Brief in Opposition to Motion to Dismiss).

DISCUSSION

[1] The disposition of this motion will also decide PERA-C-09-323-E, a similar charge filed by Temple against the Union, alleging a violation of Section 1201(b)(3) of PERA. 43 P.S. § 1101.1201(b)(3).

The facts necessary to decide Temple's Motion to Dismiss are not contested. In November of 2008, the Union filed this unfair practice charge alleging that Temple violated Section 1201(a)(1) and (5) of PERA.[2] The basis of the charge was that, during negotiations for a successor agreement, "Temple had engaged in unlawful direct dealing with [the Union's] membership in connection with ongoing negotiations for a successor contract by misrepresenting the negotiations and denigrating the Union and its approach to the negotiations...."
(Union's Brief in Opposition to Motion to Dismiss, p.1).

The parties also agree that on August 25, 2009, Temple and the Union agreed on the terms of a successor collective bargaining agreement; that on September 14, 2009, the Union ratified the agreement; and, that on September 24, 2009, Temple's Board of Directors approved the agreement.

Temple's position is that the Union's charge is now moot. The Union, needless to say, takes the antipodal position. Despite the Union's arguments to the contrary, its charge was rendered moot by the subsequent ratification of a new collective bargaining agreement between the parties. A review of the Board's law on this issue shows why the charge is now moot.

The Board will dismiss as moot any unfair practice charge involving alleged bad faith bargaining where the parties have resolved the issues forming the basis for the charge through bargaining and a subsequent contract. Temple University, 25 PPER ¶ 25121 (Final Order, 1994); City of Philadelphia, 36 PPER 95 (Proposed Decision and Order, 2005), 36 PPER 158 (Final Order, 2005). However, the Board, within its discretion, 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. Temple University, supra. The same holding results when the charge includes allegations of direct dealing. Hempfield School District, 34 PPER 75 (Proposed Decision and Order, 2003).

Additionally, the Board 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, and certainly does not subserve cooperative bargaining between these parties.

The Union argues that in certain unique circumstances the Board exercises its discretion to hear cases that are technically moot, but capable of repetition and likely to escape review. And, the Union offers citations to cases in support of the position that certain unique issues may be decided, even though they are technically moot. Those three cases, discussed below, however, involve issues materially different from the issue presented in the instant case.

Carroll v. Ringgold School District, 545 Pa. 192, 680 A.2d 1137 (1996), involved the Supreme Court's consideration of the trial court's preliminary injunction directing bargaining, even after the parties resolved the underlying issues by ratifying a collective bargaining agreement.

In Central Dauphin Educational Association v. Central Dauphin School District, 792 A.2d 691 (Pa. Cmwlth. 2001), our Commonwealth Court addressed the merits of a challenge to a previously granted preliminary injunction that preserved the status quo while an unfair practice charge was heard by the Board.

The last example the Union offers is the only Board case of the trine. Association of Pennsylvania State College and University Faculties v. PLRB, 962 A.2d 709 (Pa. Cmwlth.

[2] The two amendments to this charge merely recite additional instances where Temple allegedly dealt directly with bargaining unit members and denigrated the Union's handling of negotiations.

2008), *Order Granting Allowance of Appeal*, August 17, 2009, 70 MAP 2009, (APSCUF) involved the propriety of the Board's refusal to issue a complaint. The underlying alleged offense in that case, however, was the State System of Higher Education's threatening of bargaining unit members with the loss of previously earned benefits if they struck. And, even in that case the Board found the charge mooted by the signing of a successor agreement.[3]

The Union also argues that "under these circumstances, the current charge should be decided on the merits, as the violations alleged are capable of repetition[,] yet evading review." (Union's brief at 3).

Yet, the Union recites only two-thirds of the test. The complete language is that charges which are technically moot may be heard in the Board's discretion, when they "present an issue of *great public importance* that is capable of repetition but likely to evade review." Temple University, *supra.* As the above-cited cases clearly show, the Board does not consider the instant charge to be one of great public importance.

There is certainly no doubt that this current situation may be capable of repetition, but that fact itself does not further the Union's argument. The Union asks me to take administrative notice of prior charges it filed against Temple over just this issue. In doing so, the Union refers to mere *allegations* of prior bargaining violations, since none of those charges was ever decided by the Board. Tellingly, the Union admits that one of those charges was dismissed as moot after a successor agreement was reached (1990), and another was withdrawn by the Union itself (2004), "consistent with the Board's general policy of dismissing such charges." (Union's brief at 5-6).

And, as far as evading review, it is the Union that holds the key there. All the Union needs do is not sign a successor agreement until the unfair practice is decided, the mootness issue never comes to fruition and the charge is reviewed on the merits.[4] *See* AFSCME District Council 33 and AFSCME Local 159 v. City of Philadelphia, 36 PPER 95 (Proposed Decision and Order, 2005), 36 PPER 158 (Final Order, 2005)(withdrawing interest arbitration demand and signing successor collective bargaining agreement rendered unfair practice charge moot). Such a holding fosters an emphasis on future cooperation, promotes "orderly and constructive relationships" between bargaining representatives and employers, and results in just the kind of "harmonious relationships" PERA seeks to bring about. 43 P.S. § 1101.101

Because the Union's charge is now moot, Temple's Motion to Dismiss is granted.

CONCLUSION

The Hearing Examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. Temple is a public employer within the meaning of Section 301(1) of PERA.

2. The Union is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties.

4. The unfair practice charge docketed at PERA-C-08-433-E is dismissed for mootness.

ORDER

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

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[3] Albeit, Commonwealth Court overturned the Board's decision, however, the case is presently on appeal to our Supreme Court. Regardless, that case involved different facts, and Commonwealth Court's holding was explicitly limited to the "specific circumstances" of that case. 962 A.2d at 717-718.

[4] Both in the APSCUF case, *supra*, and in this case, it was the Union's action that rendered the charge moot. In APSCUF, the Union signed a collective bargaining agreement before the Board could issue a complaint on the charge, and in this case the Union signed an agreement after the Board issued a complaint, and a hearing was held thereon, but no decision rendered.

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint 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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fifth day of November, 2009.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, HEARING EXAMINER