

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

TEMPLE UNIVERSITY HOSPITAL :
NURSES ASSOCIATION :
 : Case No. PERA-C-09-160-E
 v. :
 :
 :
TEMPLE UNIVERSITY HEALTH SYSTEM :

PROPOSED DECISION AND ORDER

A charge of unfair practices was filed with the Pennsylvania Labor Relations Board (Board) on April 28, 2009, by the Temple University Hospital Nurses Association (Association), alleging that the Temple Health System (Temple) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On May 15, 2009, the Secretary of the Board issued a complaint and notice of hearing wherein this case was scheduled for hearing on June 24, 2009, in Philadelphia, Pennsylvania. On that date, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Each party filed a post-hearing brief.

The Examiner, on the basis of the evidence presented, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. Temple is a public employer.
2. The Association is an employe organization.
3. On occasion, in the past, Temple has released nurses, with pay, to be on the Association's negotiating committee for successor collective bargaining agreements during the work day. (16-17, 32-33, 37, 41-44, 50, 72-74; Temple Exhibit 2).
4. At times, Temple has simply released bargaining unit members for negotiations during work time, when operational needs permit. (N.T. 78; Association Exhibit 6, Temple Exhibit 4, Temple Exhibit 5).
5. When bargaining over the inclusion of pool nurses in the bargaining unit, Temple refused to pay those bargaining unit nurses it released to negotiate for the Association. (N.T.77-79; Association Exhibit 4).

DISCUSSION

The Association charges Temple with violating Section 1201(a)(1) and (5) of PERA because Temple, according to the Association, unilaterally changed a past practice. As specifically stated in the charge, "[t]he employer has unilaterally changed the past practice of releasing members of the [Association's] bargaining committee from work without loss of pay to engage in collective bargaining."

According to the Association, Temple's current position is that bargaining unit members will be released during work time to negotiate for the Association, but Temple would not pay them, unless the employes utilized some form of personal leave.¹

As early as 1974 the Board recognized that "an employer may insist on bargaining after working hours since he [sic] has no obligation to pay its employes for doing work

¹ Any bargaining unit member's release by Temple is conditioned upon meeting the operational needs of the location where the employe works. (N.T. 72).

for the union." PLRB v. Highland Sewer and Water Authority, 4 PPER ¶ 116 at 117 (Nisi Decision and Order, 1974).

The Board has determined that leave time to perform union business during working hours is a matter of inherent managerial policy and not a mandatory subject of bargaining. And, since an established past practice can only be based upon a mandatory subject of bargaining, this charge is dismissed. Aliquippa School District 32 PPER ¶ 32034 (Proposed Decision and Order, 2001); Brookville Area Education Association, PSEA/NEA v. Brookville Area School District, 38 PPER 136 (Final Order, 2007); Montgomery Township Police Officers v. Montgomery Township, 37 PPER 140 at 436 (Final Order 2006).

Here, Temple still releases bargaining unit members to attend and participate in bargaining sessions during work time; it simply stopped paying them, with whatever frequency it paid them in the past. Since paying bargaining unit members to conduct the Association's affairs during work time is certainly not a mandatory subject of bargaining, as a matter of law there can not be a past practice established.

Because Temple has the managerial prerogative of whether to pay bargaining unit members it releases on work time to perform Association duties, there is no unfair practice under these facts. Consequently, this charge is dismissed.

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 Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. Temple has not committed unfair practices within the meaning of Section 1201(a)(1) and (5) of PERA.

ORDER

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

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-eighth day of April, 2010.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, HEARING EXAMINER