

Open Discussion of Pending Grievances Permitted At School Board Meetings

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Abington Heights School District (Case No. PERA-C-11-221-E) (Pa. LRB 2015) (Decided December 15, 2015). A Pennsylvania Labor Relations Board hearing examiner determined that the District was permitted to openly discuss pending grievances and unfair labor practice charges filed by the Association at school board meetings where individual employees were not identified and no sensitive personal information was disclosed.

SUMMARY AND FACTUAL BACKGROUND

In April 2011, a representative of the Abington Heights Education Association (“Association”) appeared at a school board meeting of the Abington Heights School District (“District”) to criticize the District’s handling of grievances. At the May meeting one month later, the District Superintendent, without identifying individual teachers, responded by publicly discussing pending grievances and announced his intention to do so on an ongoing basis to allow the public to draw their own conclusions as to the conduct of the District. At the June board meeting, an Association representative announced that the District had spent money fighting forty-nine grievances and had won only two. The board also discussed specific grievances at the June meeting. After the June meeting, the Association demanded that the District cease discussing individual grievances at board meetings. When the Superintendent discussed additional specific grievances at the July board meeting, the Association filed an unfair labor practice charge.

The Association claimed that open discussion of these items violated the established grievance procedure at the District and would have a chilling effect on the willingness of bargaining unit members to file grievances if they knew that the grievances were to be made public. Further, the Association alleged that although the collective bargaining agreement was silent as to confidentiality, the District was violating a longstanding past practice of keeping grievances and unfair labor practice charges strictly confidential.

A hearing was held before Hearing Examiner Jack E. Marino of the Pennsylvania Labor Relations Board in October 2012.

DISCUSSION

The hearing examiner first reviewed the Association’s claim that a past practice existed regarding the confidentiality of grievances and unfair labor practices. He noted that the Supreme Court has defined a past practice, in part, as “an accepted course of conduct characteristically repeated in response to the given set of underlying circumstances.” The record showed that the Superintendent had publicly disclosed grievances at school board meetings “five or six times” over a nine-year period. The examiner found that the Association had failed to prove “that the absence of conduct, in the absence of contractual language prohibiting the conduct” constituted a past practice which became part of the grievance procedure. Accordingly, he determined that there was no established past practice of keeping grievances and unfair labor practice charges confidential.

The Association also attempted to distinguish between litigated and pending grievances, relying in part on the Pennsylvania Right-to-Know Law which exempts records relating to pending grievances from disclosure. In contrast, arbitration decisions are public records. The examiner held that this was a “distinction without a difference” since every unlitigated grievance has the potential to be arbitrated and published. Moreover, unfair labor practice charges are not confidential by their nature and are subject to public audit and Right-to-Know requests. The Association claimed that grievances address sensitive workplace issues and often disclose potentially embarrassing information about employees.

However, the examiner found that there was nothing in the record which indicated that the Superintendent had ever disclosed this type of personal information at a public meeting. Additionally, any arbitration awards published as a result of such grievances would be subject to disclosure to the public regardless of whether they contained sensitive personal information.

The final argument addressed by the examiner was whether or not the District's public discussion of these labor issues was unlawfully coercive and interfered with the rights of the bargaining unit members to file grievances. The examiner rejected this argument as well, finding that the District was within its rights of free speech to accurately disclose the grievances to the public since those grievances impacted the District, its finances and its students. He also pointed out that the Association had publicly challenged the District's handling of grievances and it was therefore proper for the Superintendent to respond publicly in order to defend the District's conduct before the public and the press.

Accordingly, the hearing examiner concluded that the District had not committed unfair practices by discussing pending grievances in public.

PRACTICAL ADVICE

Generally, discussion of labor issues such as grievances and arbitrations should be conducted in executive session to ensure confidentiality and to maintain attorney-client privilege. However, there may be circumstances in which a school district might wish to publicly discuss such issues. Based on this decision by the Pennsylvania Labor Relations Board, it may be permissible for districts to discuss pending grievances publicly where there is no contractual prohibition against such discussion. However, individual employees should not be identified and districts must be careful not to disclose sensitive personal information. Districts should consult with their solicitor and/or labor counsel prior to making the decision as to whether it is in the best interests of the district to disclose details of grievances at a public meeting.

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