

Direct Communication to Employees of Status of Negotiations Is Not An Unfair Labor Practice

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Erie County Technical School v. Pennsylvania Labor Relations Board, 1818 C.D. 2016 (2017) (Commonwealth Court concluded that an employer's direct communication with its employees concerning the status of ongoing negotiations was not an improper coercive tactic or bad faith bargaining).

Background

In January 2014, Erie County Technical School (School) and the union representative of its teachers, the Erie County Technical School Federation of Teachers (Union), began negotiations for a successor collective bargaining agreement. The negotiations extended months beyond the expiration of the collective bargaining agreement in June 2014. In December 2015, the parties had an unsuccessful negotiation session in which a mediator was present. Several days later, the School sent a letter to the Union's members, which stated:

On September 21st, after nearly two years of negotiations, the [School's] Negotiating Committee presented a Final and Best Offer to the Negotiating Committee of the [Union]. We again met with the [Union's] team on December 2nd.

We have enclosed for your review the [School's] Final and Best Offer. If you should have any questions about this offer, you should direct them to the [Union's] Negotiating Committee as they are your exclusive bargaining representatives. At the December 2nd meeting, the Committee advised the [Union's representatives] that if an agreement was not ratified by December 14th, there was no guarantee the wage increases proposed would be retroactive.

As stated in the letter, the School attached a copy of its Final and Best Offer. Further, the memorandum contained the statement: "At the December 2nd meeting, the [School's] Committee advised the [Union's representatives] that if an agreement was not ratified by December 14th, there was no guarantee the wage increases proposed would be retroactive."

In response, the Union filed a complaint with the Pennsylvania Labor Relations Board (PLRB) charging that the School's direct communication to the teachers via the memorandum violated the Public Employee Relations Act (PERA) by engaging in a coercive tactic and not bargaining in good faith. The School contended that the communication was protected by the First Amendment and that the memorandum was an accurate depiction of what occurred at the bargaining table. The PLRB disagreed, concluding that the memorandum "was a direct communication to the bargaining unit members in an attempt to coerce employees, and contained a veiled threat of reprisals through the loss of retroactive pay increases."

On appeal, the Commonwealth Court reversed the PLRB's order, concluding that the School's informational communication to its teachers was not an unfair labor practice.

Discussion

The Commonwealth Court noted that both Pennsylvania courts and the PLRB have recognized that an employer has a First Amendment right under the Constitution of the United States to communicate its general views to his employees and

that such right remains operational during periods of labor negotiation? Further, the Court observed that it is well established that an employer is not precluded from communicating, in noncoercive terms, with employees during negotiations, so long as those communications are not an attempt to negotiate directly with bargaining unit members.

In this context, the Court first reviewed whether the School's memorandum to staff was threatening in nature. Although the memorandum stated that the retroactivity of proposed wage increases could be withdrawn by the School in further negotiations, the Court opined that, because employees did not have a vested right to retroactive wage increases, it was not coercive for the School to state that it could retract proposed retroactivity absent a prompt contract settlement.

Next, the Court considered whether the memorandum was direct dealing in derogation of the Union's status as the exclusive bargaining representatives. Relevant to this inquiry is whether a bargainable matter is not first presented to the union representative in a bargaining atmosphere where the union negotiator has a meaningful opportunity to consider the proposed matter in the context of bargaining without external influences or reactions from employees, who may not be privy to the full panoply of issues relevant to the proposal or the negotiations in general. Here, the School's memorandum recounted the terms of the actual proposal presented to the Union bargaining team days before. Thus, the Court concluded this factual recitation of what was presented at the bargaining table did not undermine the authority of the Union.

Consequently, the Court determined that the School's memorandum to staff was not coercive and did constitute improper direct negotiations with staff members. Accordingly, the Court reversed the PLRB's decision.

Practical Advice

This decision exemplifies the right of a school district to communicate directly with its employees regarding ongoing contract negotiations. A school district may speak freely to its staff about a wide range of issues including the status of negotiations, outstanding offers, its position, the reasons for its position, and objectively supportable, reasonable beliefs concerning future events. The school district cannot act in a coercive manner by making separate promises of benefits or threatening employees. As long as the school district communicates with employees in noncoercive and informational terms and those communications do not contain some sort of express or implied quid pro quo offer that is not before the union, an unfair labor practice is not committed.

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