

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

HOMER-CENTER EDUCATION ASSOCIATION PSEA :  
 :  
 v. : Case No. PERA-C-10-130-W  
 :  
 HOMER-CENTER SCHOOL DISTRICT :

**FINAL ORDER**

Homer-Center School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 15, 2010, challenging a Proposed Decision and Order (PDO) issued on October 28, 2010. In the PDO, the Board's Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by refusing to proceed to arbitration on a grievance filed by the Homer-Center Education Association, PSEA (Association) concerning the step placement of teachers hired in 2008 and 2009. The Association filed a timely response to the exceptions and a supporting brief on November 18, 2010.

The Hearing Examiner's findings of fact, as stipulated to by the parties, are summarized as follows. On August 18, 2005, the District and the Association entered into a five-year collective bargaining agreement (CBA) effective August 31, 2005 covering the Association's certified bargaining unit that includes teachers. On November 17, 2009, the Association filed a grievance alleging that the District violated the CBA and long-standing practice between the parties when it denied the grievants their proper placement on the salary schedule for prior teaching experience. On January 14, 2010, the Association requested arbitration of the grievance. On February 19, 2010, the Pennsylvania Bureau of Mediation provided the parties with a panel of arbitrators. In a letter to the Association dated March 2, 2010, the District stated as follows:

The initial response by the Homer-Center School District (12/03/09) to the above grievance was and continues to be that the subject matter of the above grievance is governed by the specific provisions of the Public School Code of 1949 and not any provisions of the collective bargaining agreement. The response states: "Therefore, the subject matter of the grievance is not subject to arbitration."

Under applicable Pennsylvania law, the question of whether or not an issue (substantive arbitrability) is subject to arbitration, is an issue for a court to decide and not an arbitrator.

Therefore, the Homer-Center School District will not submit the issue of arbitrability to an arbitrator.

In the PDO, the Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of PERA by refusing to arbitrate the grievance filed by the Association, citing PLRB v. Bald Eagle Area School District, 499 Pa. 62, 451 A.2d 671 (1982) (question of arbitrability of grievance is required to be decided by an arbitrator in the first instance) and Chester Upland School District v. McLaughlin, 655 A.2d 621 (Pa. Cmwlth. 1995), aff'd per curiam, 544 Pa. 199, 675 A.2d 1211 (1996) (same). By way of remedy, the Hearing Examiner ordered the District to strike from the panel of arbitrators provided by the Pennsylvania Bureau of Mediation and process the grievance to arbitration.

In its exceptions, the District now argues for the first time that the Board has the authority to interpret the parties' CBA and determine the arbitrability of the

Association's grievance.<sup>1</sup> As alleged support for this argument, the District cites Municipal Employees Organization of Penn Hills v. Municipality of Penn Hills, 876 A.2d 494 (Pa. Cmwlth. 2005), appeal denied, 586 Pa. 731, 890 A.2d 1062 (2005). The District further alleges that the Association's grievance is not arbitrable because it concerns a matter that is governed by the Public School Code of 1949<sup>2</sup>, not the parties' CBA.

However, as correctly noted by the Hearing Examiner, it is well-settled in the public sector in Pennsylvania that disputes concerning the arbitrability of a grievance must first be presented to an arbitrator. Bald Eagle, *supra*; Chester Upland, *supra*. Furthermore, where an employer refuses to proceed to arbitration, it commits an unfair practice, and neither the Board nor the courts on appeal from a Board order finding a refusal to arbitrate may decide the merits of the parties' dispute over arbitrability. Id. As the Supreme Court stated in reaffirming the holding in Bald Eagle in Township of Sugarloaf v. Bowling, 563 Pa. 237, 759 A.2d 913 (2000):

In Bald Eagle Area School District ... we held that it was the arbitrator who was to first determine the arbitrability of a dispute arising under PERA. We declared that it was "folly [to allow] a full preliminary bout in the courts over the issue of an arbitrator's jurisdiction..." 451 A.2d at 673. We stated that to permit such preliminary wrangling in the courts over the issue of whether a matter was arbitrable would permit these labor disputes to become mired down in litigation; the Bald Eagle court declared that such a scenario was to be avoided in light of the fact that the legislature demanded that these disputes be settled via arbitration rather than litigation.

759 A.2d at 915-916.

Bald Eagle also refutes the District's argument that it may refuse to proceed to arbitration because an arbitrator may possibly fashion an award that conflicts with the District's interpretation of the Public School Code. Bald Eagle involved a dispute over striking teachers' entitlement to pay. The Commonwealth Court held that the dispute was not arbitrable because, in that Court's view, any award favorable to the teachers would violate PERA's prohibition against payment to public employes for any period in which they engaged in a strike. In reversing the Commonwealth Court, the Supreme Court held that the possibility that an arbitrator may issue an illegal award does not justify a refusal to arbitrate, stating as follows:

We have consistently held that "[t]he question of the scope of the grievance arbitration procedure is for the arbitrator, at least in the first instance" ... As the dissenting opinion in Commonwealth Court noted, that court itself in North Star School District v. PLRB, 35 Pa. Commonwealth Ct. 429, 435, 386 A.2d 1059, 1062 (1978) has held that: "arbitration is not an improper remedy simply because an arbitrator might possibly fashion an invalid award"... We remain convinced that on this issue North Star properly reflects the public policy articulated by the General Assembly in Section 903 of the PERA, 43 P.S. § 1101.903: "Arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory." We so hold.

...

Courts have no reason to assume an arbitrator will ignore the law and award a payment based on a contractual interpretation which conflicts with a fundamental policy of this Commonwealth expressed in statutory law. If so, judicial relief is available.

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<sup>1</sup> As the Hearing Examiner noted in the PDO, in its Answer to the Complaint, the District alleged that neither an arbitrator nor the Board has authority to decide substantive arbitrability, and that such a determination is reserved for the courts.

<sup>2</sup> Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §§ 1-101-27-2702.

...

We ... hold that hereafter issues involving conflicts between a public sector collective bargaining agreement and fundamental statutory policies of this Commonwealth must be presented first to arbitration for determination, subject to appropriate court review of any award in conflict with such policies.

451 A.2d at 672-674 (citations omitted; emphasis in original). Thus, under the well-settled case law cited by the Hearing Examiner, the District must proceed to arbitration on the Association's grievance and committed an unfair practice by refusing to do so.

Further, the District's reliance on Penn Hills, supra, is misplaced. In Penn Hills, the Board did not decide whether a grievance was arbitrable under a collective bargaining agreement. Rather, the Board determined that an employe and the exclusive bargaining representative clearly and unmistakably waived any right to challenge the employe's discharge in a last chance agreement settling prior disciplinary action against the employe, which only covered the particular employe and not the entire bargaining unit. This case does not involve a claim of waiver in an individual employe's last chance settlement agreement that is not part of the collective bargaining agreement. Therefore, Penn Hills is inapplicable to this case. See also Pennsylvania State System of Higher Education v. Association of Pennsylvania State College and University Faculties, 39 PPER 101 (Final Order, 2008) (Penn Hills only applies to cases involving claims of waiver in an individual employe's last chance settlement agreement); Allegheny Intermediate Unit #3 Education Association v. Allegheny Intermediate Unit #3, 36 PPER 17 (Final Order, 2005) (same); Avonworth Education Association, PSEA/NEA v. Avonworth School District, 35 PPER 44 (Final Order, 2004) (same).

A review of the facts as stipulated to by the parties shows that the Association filed a grievance concerning the step placement of teachers hired in 2008 and 2009, that the Association requested that the parties proceed to arbitration on the grievance, and that the District refused the Association's request on the ground that the grievance was not arbitrable. Whether the Association's grievance is arbitrable is for an arbitrator to determine in the first instance. Bald Eagle, supra; Chester Upland, supra. Thus, the Hearing Examiner properly concluded that the District violated Section 1201(a)(1) and (5) of PERA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Homer-Center School District are hereby dismissed, and the October 28, 2010 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this twenty-first day of December, 2010. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

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Pennsylvania Labor Relations Board

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**AFFIDAVIT OF COMPLIANCE**

The District hereby certifies that it has ceased and desisted from its violations of sections 1201(a)(1) and (5) of PERA, that it has struck from the panel of arbitrators provided by the Pennsylvania Bureau of Mediation and processed the grievance to arbitration, that it has posted a copy of the Proposed Decision and Order and Final Order as directed and that it has served a copy of this affidavit on the Association.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

\_\_\_\_\_  
Signature of Notary Public