

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ROSE TREE MEDIA :
EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-99-522-E
 :
ROSE TREE MEDIA SCHOOL DISTRICT :

FINAL ORDER

On March 23, 2001, the Rose Tree Media School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated March 13, 2001. In the PDO, the Hearing Examiner concluded that the District committed unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by refusing to supply the names of the witnesses and the complainant involved in a sexual harassment complaint and the District's investigation thereof for purposes of processing a grievance. On April 10, 2001, the Rose Tree Media Education Association (Union) filed its brief in opposition to the District's exceptions. After a thorough review of the record and the exceptions, the Board makes the following:

ADDITIONAL FINDINGS OF FACT

8. The District's sexual harassment complaint procedure (Procedure) provides the following:

[I]f the investigation is inconclusive, or the Liaisons do not agree as to the deposition [sic] of the case, the Liaisons shall so state in their report. . . . Under no circumstances shall an accused or a complainant be disciplined based upon an inconclusive investigation.

(Exhibit D-2).

9. The letter placed in Mr. Stein's personnel file was dated August 12, 1998, and was signed by Laird P. Warner, Ed.D., Superintendent of Schools. This letter provides, in pertinent part, the following:

Dear Mr. Stein:

A meeting was held in my office on June 12, 1998, from 3:15 p.m. until 4:15 p.m. Those in attendance were you, your attorney Robert DiOrio, Dr. Haviland, and myself. The purpose of the meeting was to review an investigation into charges of sexual harassment that were made against you by a student at Penncrest High School. The complaint went to Mrs. Tiernan and was reported to Dr. Haviland. Mrs. Anne Callahan, the Human Resources Administrator, completed the investigation. She interviewed the complainant, five other students, and two of the student's mothers. Three of the students stated that Mr. Stein engaged in some sort of inappropriate behavior including staring at legs, staring at chests of female students, and looking down blouses of female students. Three other students did not support those claims.

Mr. Stein denied the behavior, although he indicated that he checked student homework and that the manner in which he did so could be perceived as him viewing the breasts of female students.

Although the investigation of the charges was inconclusive, I caution you to exercise good judgment and appropriate discretion when interacting with female students. Be aware of your behavior around female students and how that behavior might impact them. A copy of this letter will be included in the district personnel file.

If there are no further complaints of sexual harassment at the conclusion of three years, Mr. Stein may request, in writing, the removal of the letter from the district personnel file, and it will be removed.

(Exhibit A-2).

DISCUSSION

The Union is pursuing a grievance to arbitration on behalf of Bernard Stein, who is a teacher at the District's Penncrest High School. The grievance challenges the District's placement of the letter in Mr. Stein's personnel file referenced in Finding of Fact No. 9. The letter provides a summary of allegations that Mr. Stein engaged in inappropriate conduct. The letter describes the extent of the investigation conducted by the District and provides that the District determined that the investigation was inconclusive. The letter further cautions Mr. Stein concerning his future behavior in the presence of female students. On September 15, 1999, the Union requested that the District provide it with the names of the student complainant and the student witnesses interviewed during the investigation of the complaint. The District did not reply to this request. The Union renewed its request on October 19, 1999 and again on October 25, 1999. On October 29, 1999, the District provided the Union with the record of its investigation, but redacted all students' names from those reports. The District advised the Union that neither the student complainant nor the student witnesses were in Stein's classes during the 1999-2000 school year.

The District has in place a sexual harassment policy (Policy) and a Procedure. The Policy defines sexual harassment and explains the District's policy to promote and maintain a learning and working environment that is free from sexual harassment. The Policy provides that a substantiated charge against a teacher will result in disciplinary action. The Policy also explains that the confidentiality rights of a complainant and an accused would be respected "consistent with the District's legal obligations, and with the necessity to investigate allegations of misconduct and to take corrective action when this misconduct has occurred." (F.F. 7). The Procedure provides that "if the investigation is inconclusive, or the Liaisons do not agree as to the deposition [sic] of the case, the Liaisons shall so state in their report. . . . Under no circumstances shall an accused or a complainant be disciplined based upon an inconclusive investigation." (F.F. 8). In the case of Mr. Stein, following the District's investigation of the students' complaints, he was advised in writing that the investigation was inconclusive, and therefore no discipline could be imposed.

In its exceptions, the District contends that the names of the students have no probative value or relevance to determining whether or not Mr. Stein

was disciplined, and those names should therefore remain confidential. The District essentially argues that because its investigation did not substantiate the allegations against Mr. Stein, the substance of those claims (and thus the names of the student complainant and witnesses) is not relevant to the determination in arbitration that the cautionary letter of August 12 was or was not "discipline".

The Board and the Commonwealth Court have held that public employers have a statutory duty under Section 1201(a)(5) of PERA to furnish relevant information that will enable a union to process grievances and determine whether it should proceed to arbitration. Commonwealth, Department of Corrections v. PLRB, 541 A.2d 1168 (Pa. Cmwlth. 1988); Commonwealth v. PLRB, 527 A.2d 1097 (Pa. Cmwlth. 1987)(citing San Diego Newspaper Guild v. NLRB, 548 F.2d 8632 (9th Cir. 1977)). "[Unions [are] entitled to reasonable discovery of relevant materials in order to make an intelligent evaluation of the merits of the underlying claim" in processing grievances and performing its duties under the applicable collective bargaining agreement. Commonwealth, 527 A.2d at 1099 (citing NLRB v. Acme Industrial Co., 385 U.S. 432, 87 S. Ct. 565 (1967)). The Commonwealth Court requires that a liberal standard must be applied to determine relevancy, Commonwealth, supra, and a union need only show that the information requested is either potentially or probably relevant to the grievant's case. Commonwealth, Department of Corrections, supra (adopting the standard set forth in Transport of New Jersey, 233 N.L.R.B. 694, 97 L.R.R.M. 1204 (1977)). The Board initially determines whether a certain request for information is relevant. Commonwealth, Department of Corrections, supra. "The Board's determination of relevancy in a particular case is given great weight . . . because it is . . . within the peculiar expertise of the Board." Id. at 1170. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Pa.R.E. 401. Specifically, "the Board need only find that (1) the union is advancing a grievance which on its face is governed by the parties' agreement, and (2) that the information will be useful to the union." Commonwealth, 527 A.2d at 1099.

The issue to be arbitrated is whether the placement in Mr. Stein's personnel file of the August 12, 1998 letter constitutes discipline within the meaning of the CBA. In its post-hearing brief, the District quotes the disciplinary provision of the CBA as follows:

Disciplinary actions which the Board or Administration may take provided that cause exists, shall include, but shall not be limited to, oral reprimand, written warning, written reprimand, suspension from employment duties without pay, demotion, unsatisfactory rating, or dismissal for cause. In the event that a grievance filed under this section is processed to the arbitration level, the arbitrator shall have exclusive jurisdiction to determine whether just cause exists, and if so, the appropriate penalty.

(District's post-hearing brief at 8)(emphasis added). The District argues that an arbitrator has jurisdiction to determine whether the cautionary letter constitutes discipline and, if so, whether just cause exists for disciplinary action. However, the District has repeatedly acknowledged that its investigation was inconclusive, it lacked cause for discipline and that the letter, therefore, did not constitute discipline. In fact, the District's own Procedure mandates that "under no circumstances shall an

accused or a complainant be disciplined based upon an inconclusive investigation." (F.F. 8). Under these circumstances, we must decide whether the identity of the student complainant, whose complaint spawned the inconclusive investigation, and the identity of the witnesses are relevant to the issue of whether the cautionary letter constitutes discipline. Because the District does not rely on the truth of the assertions in the complaints and statements against Mr. Stein to support its action, the additional information requested by the Union will not assist its contention that the action taken by the District was discipline. Therefore, the identities of the complainant and the witnesses are not potentially relevant to the issues presented by the grievance, as consistently required by the Board and the Court. Commonwealth, Department of Corrections, supra; Commonwealth, supra.

Accordingly, the Board concludes that the information sought by the Union is not potentially useful or relevant in evaluating its position or in resolving the issues before the arbitrator.

After a thorough review of the exceptions, the Proposed Decision and Order and all matters of record, the Board shall sustain the exceptions in part. As a result of the Board's disposition of the instant matter, it need not address the District's remaining exceptions.

CONCLUSIONS

CONCLUSIONS 1 through 3 of the Proposed Decision and Order are affirmed and incorporated herein by reference.

CONCLUSION 4 is vacated and set aside.

5. That the District has not committed unfair practices in violation of Section 1201(a)(1) and (5).

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order be and the same are hereby sustained in part; and that the Order on pages 3 and 4 of the Proposed Decision and Order be, and the same hereby is, vacated and set aside. The Board further orders and directs that the charge of unfair practices is dismissed and the complaint issued thereon is rescinded.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, and Edward G. Feehan, Member, this twenty-second day of May, 2001. 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.