COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AVONWORTH EDUCATION ASSOCIATION, PSEA/NEA	:	
v.	:	Case No. PERA-C-03-449-W
AVONWORTH SCHOOL DISTRICT	:	

FINAL ORDER

Avonworth School District (District) filed timely exceptions and a supporting brief on March 9, 2004, with the Pennsylvania Labor Relations Board (Board) from a Proposed Decision and Order (PDO) issued February 26, 2004. In the PDO, the Hearing Examiner concluded that the District had committed unfair labor practices within the meaning of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by refusing to arbitrate a grievance involving the discharge of bargaining unit member John Lipchik. The Union filed a response to exceptions and brief in support on March 29, 2004.

The District exceptions may be summarized as follows. The Hearing Examiner erred by: (1) finding that the District was statutorily obligated to arbitrate the grievance under PLRB v. Bald Eagle Area School District, 499 Pa. 62, 452 A.2d 671 (1982) and Chester Upland School District v. Mildred McLaughlin and Chester Upland Education Association, 655 A.2d 621 (Pa. Cmwlth. 1995); (2) finding that the District's reliance on Penn Hills Municipality Employees Organization v. Penn Hills Municipality, 34 PPER 135 (Final Order, 2003), Chambliss v. City of Philadelphia, 17 PPER ¶ 17018 (Final Order, 1985) and other cited cases is misplaced; and (3) finding that the District committed unfair labor practices within the meaning of Section 1201(a)(1) and (5) of PERA.

The undisputed findings of fact are as follows. The District employs teachers who are represented by the Union. On November 8, 1999, the parties entered into a four-year collective bargaining agreement (agreement) effective July 1, 2000. By grievance number 07-03 dated July 24, 2003, the Union alleged that the District violated the agreement by discharging Lipchik without just cause. On October 15, 2003, the Union asked the District to strike from a panel of arbitrators provided by the Pennsylvania Bureau of Mediation to hear the grievance. On October 15, 2003, the District refused to strike from the panel.

The District first excepts to the Hearing Examiner's legal conclusions regarding Bald Eagle Area School District and Chester Upland School District. Specifically, the District asserts that these cases are inapposite to the present issue, and do not stand for the proposition that the District is statutorily obligated to arbitrate the grievance.

In Bald Eagle Area School District, *supra*, our Supreme Court held that conflicts between a public sector collective bargaining agreement and fundamental statutory policies of the Commonwealth have to be presented first to arbitration for determination. In so holding, our Supreme Court expressly condemned the practice of preliminarily litigating through one forum, the power of another to decide the substantive issue at hand. PLRB v. Bald Eagle Area School District, 499 Pa. at 68, 451 A.2d at 674; See also Neshaminy Federation of Teachers v. Neshaminy School District, 501 Pa. 534, 462 A.2d 629 (1983); East Pennsboro Area School District v. PLRB, 467 A.2d 1356 (Pa. Cmwlth. 1983); Alliston v. City of Allentown, 455 A.2d 239 (1983). In Chester Upland School District, *supra*, the Commonwealth Court interpreted Bald Eagle Area School District to stand for the following proposition: "all disputes arising out of the collective bargaining agreement, **including disputes as to whether issues are arbitrable under the agreement**, are to be arbitrated before an arbitrator." Chester Upland School District, 655 A.2d at 629 (emphasis added).

Bald Eagle Area School District and Chester Upland School District are directly on point with this case. In those cases, the Courts ruled that an employer must submit the issue of arbitrability first to an arbitrator. As the Commonwealth Court has stated, "allowing the employer to unilaterally refuse to submit a dispute to arbitration would in effect allow the employer's interpretation to control." East Pennsboro Area School District v. Commonwealth of Pennsylvania, 467 A.2d at 1359. The District merely argues its interpretation of the collective bargaining agreement is controlling regarding arbitrability. As such, the District's claim is dependent on an interpretation of the agreement, a matter reserved to the arbitrator. Accordingly, the Hearing Examiner's interpretation of these cases is correct and these exceptions are dismissed.

The District next excepts to the Hearing Examiner's determination that the District's reliance on Penn Hills Municipality, City of Philadelphia and other cited cases is misplaced. Specifically, the District cites these cases to stand for the legal proposition that employes may contractually waive their right to demand arbitration of a grievance. The District is correct in stating that a statutory right, such as the right to demand arbitration of grievances, may be waived. Chambliss v. City of Philadelphia, 17 PPER ¶ 17018 (Final Order, 1985). However, when the waiver appears in the collective bargaining agreement, questions regarding the interpretation of that waiver must first be submitted to an arbitrator. East Pennsboro Area School District v. PLRB, 467 A.2d at 1358, 1359.

In Penn Hills Municipality, the Board, noting that the employe entered into a last chance agreement waiving his right to arbitrate a grievance, found that the employer was under no statutory obligation to arbitrate the grievance. Had the waiver been contained in the collective bargaining agreement, however, as opposed to an extra-contractual agreement, the Board would have deferred the issue to an arbitrator. As the Board opined in that case, "questions involving the interpretation of a collective bargaining agreement, and whether those issues are arbitrable, must first be submitted to an arbitrator." Penn Hills Municipality v. Commonwealth of Pennsylvania, *supra*.

City of Philadelphia, *supra*, is also distinguishable on the facts. There, the Board found that an employe had no standing to file a charge seeking the enforcement of a grievance sustained by an arbitrator. The Board never discussed the arbitrability of the grievance in the first instance. Similarly, none of the other cases cited by the District are on point. Although, as the District observes, Central Dauphin Education Association v. Central Dauphin School District, Upper Moreland Township School District v. PLRB and Erie Forge and Steel Corporation v. Unemployment Compensation Board of Review hold that collective bargaining must be conducted in good faith, while Grottenthaler v. Pennsylvania State Police, FOP v. Hickey and Upper Saint Clair Police Officers Association v. PLRB hold that a party is bound by the terms of a collective bargaining agreement, they fail to address an employer's statutory obligation to arbitrate a grievance alleging a violation of a collective bargaining agreement. Therefore, these exceptions are dismissed.

Finally, the District excepts to the Hearing Examiner's conclusion that the District committed unfair labor practices within the meaning of Section 1201(a)(1) and (5) of PERA. As previously stated, our Supreme Court held that an employer commits unfair practices within the meaning of Sections 1201(a)(1) and (5) of PERA if it refuses to arbitrate a grievance alleging a violation of a collective bargaining agreement. PLRB v. Bald Eagle Area School District, *supra*. The record indicates that the grievance involving the discharge of Lipchik alleges a violation of the parties' agreement. Thus, the District was statutorily obligated to arbitrate the grievance. The record also shows that the District refused to arbitrate the grievance. Consequently, the District has committed the charged unfair practices. Therefore, this exception is dismissed.

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.

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 above case number be and the same, are hereby dismissed, and the 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, Member, and Anne E. Covey, Member, this twentieth day of April, 2004. 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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AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from its violation of section 1201(a)(1) and (5) of the Act, that it has posted a copy of the final order as directed and that it has served a copy of this affidavit on Avonworth Education Association, PSEA/NEA.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public