

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

HEMPFIELD AREA EDUCATION ASSOCIATION,
PSEA/NEA

v.

HEMPFIELD AREA SCHOOL DISTRICT

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Case No. PERA-C-05-227-W

FINAL ORDER

The Hempfield Area School District (District) filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on October 31, 2005, challenging the Proposed Decision and Order (PDO) of October 14, 2005, in which the District was found to have violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by refusing to arbitrate a grievance filed by the Hempfield Area Education Association PSEA/NEA (Association) over a unilateral change in vested retiree health care benefits. The Association filed a timely response to the exceptions on November 3, 2005.

The District argues that any right to protest the District's change in retiree health care benefits is exclusively held by the individual retirees, not the union. The District asserts that because current retirees are not presently "employees" and members of the bargaining unit, it cannot be found to have violated PERA by refusing to arbitrate, where the Association lacks standing to bargain for persons not currently employes under PERA.

The Board and the Pennsylvania courts have addressed existing contractual rights of retirees and prospective collective bargaining rights and obligations. Because current retirees are no longer active "employees" of the public employer, an employer owes no duty to collectively bargain with the union for new pensions or benefits for the current retirees. Township of Wilkins v. Wage and Policy Committee of the Wilkins Township Police Department, 696 A.2d 917 (Pa. Cmwlth. 1997). However, this is not the same as seeking to determine the vested rights and obligations previously negotiated when grievants were "employees" and members of the bargaining unit. In such cases, the public employer has contractually committed itself to conferring the retirement benefits in question to a person covered by an agreement with the union on or before the time of retirement. As the Third Circuit Court of Appeals recognized in United Steelworkers of America v. Cannon, Inc., 580 F.2d 77 (3rd Cir. 1978):

The issue here is not whether the employer must bargain with the union over the benefits of the retired employees ..., but whether Cannon did in fact *contractually* commit itself to underwrite the premium costs for the health and life insurance benefits of the retirees. ... If Cannon had contractually agreed in this 1972 labor contract to continue such premium payments for ... retirees, then under accepted contract principles the union has a legitimate interest in protecting the rights of the retirees and is entitled to seek enforcement of the applicable contract provisions. Even though retirement benefits of former employees already retired are not a mandatory subject of collective bargaining, "it does not naturally follow, as the company implies, that a union loses all interest in the fate of its members once they retire." Rosen v. Public Service Electric & Gas Co., 477 F.2d 90, 94 n.8 (3d Cir. 1973). We therefore hold that the plaintiff union has standing to represent the retirees in seeking arbitration under its labor contract with Cannon.

Cannon, Inc., 580 F.2d at 80-81.

As previously noted by the Board, with regard to contractual disputes concerning retiree benefits, an "appropriate forum for resolution of allegations of contract violations is the parties' grievance procedure." Upper Merion Township Police Officers v. Upper Merion Township, 35 PPER 74 (Final Order, 2004), and indeed, our Supreme Court has endorsed arbitration of a retiree's grievance. Danville Area School District v. Danville Area Education Association, 562 Pa. 238, 754 A.2d 1255 (2000).¹ The facts of Upper Merion Township illustrate the distinction between a present bargaining demand made on behalf of retirees, and a grievance filed to enforce existing contractual rights and obligations previously entered into for then employes to be effective after they reach retirement. As noted in Upper Merion Township, Danville Area School District, and Township of Wilkins, although an employer owes no duty to bargain new benefits prospectively

¹ The District points out that in the private sector, there is the potential for conflicts of interest for the Association in representing retirees where the rights of retirees and the interests of current employes may be at odds. Rossetto v. Pabst Brewing Company, Inc., 128 F.3d 538 (7th Cir. 1997). However, for purposes of public sector labor relations, the potential for divergent interest between retirees and current employes, alone is no basis for refusing to enforce the statutory dispute resolution procedure, compelling binding arbitration. See Ledain v. Town of Ontario, 746 N.T.S. 2d 760 (N.Y. Supreme Court, 2002) (directing arbitration under the collective bargaining agreement as the exclusive procedure for a retiree's claims involving a change in retirement benefits).

for present retirees, an employer may be compelled to arbitrate a grievance of a retiree seeking to enforce existing contractual retirement benefits.

Unlike private sector labor relations, pursuant to Section 903 of PERA, binding arbitration of grievances involving a dispute under a collective bargaining agreement is mandatory. It is now well established that any question of jurisdiction or substantive arbitrability under a collective bargaining agreement must, in the first instance, be submitted to an arbitrator. Pennsylvania Labor Relations Board v. Bald Eagle Area School District, 499 Pa. 62, 451 A.2d 671 (1982); Chester Upland School District v. Pennsylvania Labor Relations Board, 655 A.2d 621 (PA. Cmwlth. 1995); Danville Area School District, supra. Accordingly, after a thorough review of the exceptions and all matters of record, the hearing examiner did not err in concluding that the District violated Section 1201(a)(1) and (5) of PERA, and directing the parties to submit their dispute to arbitration.

ORDER

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 exceptions filed by Hempfield Area School District are hereby dismissed, and the October 14, 2005 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED 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 thirteenth day of December, 2005. 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.

**COMMONWEALTH OF PENNSYLVANIA
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 1201(a)(5) of the Act, that it has submitted to the Association in writing an offer to arbitrate the grievance, 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