

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BRANDYWINE HEIGHTS AREA :
EDUCATION ASSOCIATION :
 :
v. : Case No. PERA-C-04-14-E
 :
 :
BRANDYWINE HEIGHTS AREA :
SCHOOL DISTRICT :

FINAL ORDER

On April 20, 2005, the Brandywine Heights Area School District (District) timely filed exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated April 4, 2005. In the PDO, the Hearing Examiner found that the District engaged in unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by refusing to deem a grievance sustained, upon the request of the Brandywine Heights Area Education Association (Union), after failing to respond to the grievance within the time limits established by the parties' collective bargaining agreement (CBA).

After a thorough review of the District's exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDING OF FACT

9. By letter dated September 5, 2003, Dr. Kim Slick demanded that the District "immediately return beginning and end times for all bargaining unit members . . . to those used for the 2002-2003 school term." On September 16, 2003, the District denied the Union's request and its position that the District's response was untimely. (Union Exhibits 4-6).

DISCUSSION

On August 8, 2003, Dr. Slick, the grievance committee chair of the Union, filed a grievance with Superintendent Robert L. Gilley. The Superintendent is the third step in the grievance procedure. The grievance provided that the Union was "seeking a grievance resolution for bargaining unit members being assigned unusual starting and ending times for contracted days. These times deviate from long established past practice." (F.F. 4). The Superintendent was on vacation from Monday, August 11, 2003, through Friday, August 15, 2003, and he returned on Monday, August 18, 2003. Step c of the grievance procedure in the CBA requires the Superintendent to hold a conference to discuss the grievance within 5 days of filing. Step c further provides that the Superintendent shall serve a written decision, with supporting reasons, upon the parties involved within 5 days after that conference is held. If the Superintendent "at any step fails to render his decision within the time periods established . . . the grievant shall be granted the action requested and/or the grievant's original position shall be established as correct and accepted and shall constitute a waiver of any further appeal." (F.F. 5). The term "day" is defined by the contract to mean "administrative school day." (F.F. 5). Section 3 of the grievance procedure allows the parties to extend the time limits set forth in the contract by mutual agreement and further provides that "[t]he absence of any involved party from his duties during the grievance process shall cause an extension of the grievance time limits." (F.F. 6).

On September 2, 2003, the Superintendent held a conference with Dr. Slick and other Union officials regarding the grievance. By letter dated September 3, 2003, the Superintendent informed Dr. Slick that the District was denying the grievance. By letter dated September 5, 2003, Dr. Slick demanded that the District "immediately return beginning and end times for all bargaining unit members . . . to those used for the 2002-2003 school term." (F.F. 11). On September 16, 2003, the District denied the Union's request.

In its exceptions, the District claims that the Examiner erred in failing to consider the fact that the Union did not declare the District in default of the grievance response requirements until after the District denied the grievance and the Union participated in the conference held on September 2, 2003. However, the Examiner was required to set forth only those facts that were necessary to support his decision. He was not required to summarize all the evidence presented, make findings that are unnecessary or make findings that would support another decision, even if there is substantial evidence to support such findings. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988). The District's claim implies that the Union owed an obligation to inform the District that it was in default of the grievance procedure before it rendered a decision on the grievance. Whether or not the Union informed the District that it violated the contractual timeline does not affect the conclusion of the Examiner that the District indeed violated those provisions. Accordingly, any finding that the Union either failed to notify the District of its default or declare it in default was not necessary or relevant to the Examiner's conclusion that the District violated the grievance procedure and the contractual provisions.

The District also argues that the Examiner erred on page three of the PDO where he states that "[u]pon the Superintendent's return to work he had 5 days to schedule a conference on the grievance, which would have been by Friday, August 15, 2003." (PDO at 3). The Board agrees with the District that the Examiner's statement is in error as written. The Superintendent was on vacation the week of August 11, 2003 through August 15, 2003 and did not return to work until Monday, August 18, 2003. Obviously, from the Examiner's own statement, he meant to calculate the five days from the Superintendent's return to work on August 18, 2003 which would be Friday, August 22, 2003, not August 15 while the Superintendent was still on vacation. The Examiner also erred in stating that the Superintendent was only obligated to "schedule" a conference within the 5 days. The use of the term "schedule" changes the timeline provisions significantly. The CBA expressly provides that the Superintendent shall "hold" a conference within five days. The Board notes, however, that the Examiner's Finding of Fact No. 5 properly comports with the express language of the CBA.¹

In its brief, the District argues that the Board does not have jurisdiction to interpret the provisions of the grievance procedure. As properly noted by the Examiner, however, this same argument has been consistently rejected by the Board and the Commonwealth Court. Palmerton Area Educ. Support Personnel Ass'n v. Palmerton Area Sch. Dist., 33 PPER ¶ 33101 (Proposed Decision and Order, 2002), aff'd, 33 PPER ¶ 33163 (Final Order, 2002), aff'd, sub nom., 34 PPER 92 (Court of Common Pleas of Carbon County, 2003); Ambridge Area Educ. Ass'n v. Ambridge Area Sch. Dist., 28 PPER ¶ 28020 (Proposed Decision and Order, 1996), aff'd, 29 PPER ¶ 28092 (Final Order, 1997). Moshannon Valley Sch. Dist. v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991), alloc. Denied, 530 Pa. 662, 609 A.2d 170 (1992). The Commonwealth Court has also held the following:

The fact that the same act may give rise to both a violation of the collective bargaining agreement and an unfair labor practice, or that determination of whether an unfair labor practice has occurred may depend on interpretation of the collective bargaining agreement, does not oust the Board of jurisdiction.

Millcreek Township Sch. Dist. v. PLRB, 631 A.2d 734, 737 (Pa. Cmwlth. 1993). Relying on Millcreek, supra, the Commonwealth Court has further stated that "the PLRB exists to remedy violations of statute, i.e., unfair labor practices, and not violations of contract. . . . However, the PLRB will review an agreement to determine whether the employer clearly has repudiated its provisions because such a repudiation may constitute

¹ Although not raised by the parties, for purposes of clarification, the Board notes that the Examiner incorrectly states on page 3 of the PDO that "[t]he parties' contract allows the Superintendent 10 days to answer a grievance." (PDO at 3). As noted in Finding of Fact No. 5, the CBA provides that the Superintendent has five days to hold a conference and five days from the conference to issue a written decision. Thus, the CBA provides for two five-day time lines for two separate obligations, both of which must be satisfied, rather than one ten-day time limit with one obligation to "answer", as implied by the Examiner. In this case, the District violated the first of the two time limits in Step c by failing to hold a conference on the grievance within five days of the Superintendent's return from vacation.

both an unfair labor practice and a grievance." Pennsylvania State Troopers Ass'n v. PLRB, 761 A.2d 645, 649 (Pa. Cmwlth. 2000) (citations omitted).

In deciding unfair practices of this nature, the Board is ensuring that the parties are fulfilling their statutory bargaining obligations by complying with voluntarily and mutually agreed to contractual terms and conditions. Section 1201(a)(5) defines a refusal to bargain unfair practice to expressly include the resolution of grievances with the exclusive representative of the employees. Permitting the District's failure to honor these bargained for provisions, undermines the collective bargaining process, the expectations of the union and enables the employer to unilaterally renege on an obligation agreed upon in fulfillment of its statutory bargaining duty. The repudiation of those bargained for terms constitutes a violation of that bargaining obligation within the Board's remedial jurisdiction.

Moreover, the Board has consistently found a bargaining violation where, as here, an employer repudiates the mutually bargained for and agreed to contractual timeline in the parties' collective bargaining agreement grievance procedure. Ambridge, supra. "The Board does so on the theory that the employer acts unilaterally in derogation of its statutory obligation to bargain in good faith when it reneges on an agreement reached during collective bargaining." Ambridge, 28 PPER at 50. In Ambridge, as here, the record established that the employer did not respond to the union's grievance within the contractually required period and that the employer did not request a waiver or extension of the prescribed time limit. Accordingly, the Board affirmed the examiner's conclusion that the district clearly repudiated the parties' collective bargaining agreement and ordered the employer to sustain the grievance.

Similarly, in Palmerton, the record showed that, without an agreement for an extension, the employer's response to the union's grievance was clearly beyond the timeline required by the collective bargaining agreement. In Palmerton, the Board held that the district violated the parties' agreement by refusing to sustain grievances after failing to respond within the contractual time limits, and the Court of Common Pleas of Carbon County affirmed the Board's decision. Accordingly, the Examiner properly relied on Ambridge, supra and Palmerton, supra, which are closely analogous to the instant matter, in concluding that the Board possesses jurisdiction over the Union's charge and in sustaining the charge based on the District's violation of the bargained for time limits in the grievance procedure and its subsequent refusal to deem the grievance sustained in accordance with the CBA.

The District alternatively contends that the Superintendent's response complied with the "intent" of the grievance procedure contained in the CBA. The District argues that the Superintendent was contractually required to investigate the vague grievance before issuing a decision. However, the clear intent of the unambiguous timeline provisions is that the Union sought to ensure the timely resolution of grievances preventing the District from allowing grievances to accumulate without resolution for long periods of time. To ensure compliance, the Union bargained with the District for a clear, express and unequivocal waiver of the District's decision-making authority or its ability to appeal to arbitration where the District fails to comply with the unambiguous contractual timeline. In support of its argument that the District complied with the intent of the CBA, the District refers to other parts of the CBA, which provide that the District shall make an effort to investigate grievances to secure an equitable solution at the lowest level possible. (District Brief at 3)². The District contends that the Superintendent, upon his return from vacation, was delayed by fulfilling his contractual responsibility to investigate and make informed, equitable decisions and by Dr. Slick's refusal to discuss the nature and meaning of the grievance before the conference. However, the District is simply exalting one tangential contractual provision, which imposes a general duty to investigate and reach informed equitable decisions, over another dispositive contractual provision which clearly and specifically limits the response time to 5 days for a conference and thereafter another 5 days for a written decision. The District may not repudiate an express mandatory provision in derogation of its bargaining obligations in pursuit of the spirit of a general provision, which merely established a

² The CBA language provides that the "primary purpose of [the grievance] procedure is to secure, at the lowest level possible, equitable solutions to grievances." (Joint Exhibit 1, Appendix D, Section 1), and that "[a]ll grievances shall be fairly and impartially considered." Id. at Section 4.

policy for the grievance procedure. As noted by the Examiner, if the Superintendent's response time was expiring in the face of alleged non-cooperation from Dr. Slick, a denial of the grievance by the Superintendent within the time prescribed would have complied with the contract and preserved the District's ability to further investigate the grievance and the contractual goal of an "equitable solution" to the grievance.

The District also claims that the subject grievance fails to set forth a remedy. The subject grievance stated the following: "Please be advised BHEA [Brandywine Heights Education Association] is seeking a grievance resolution for bargaining unit members being assigned unusual starting and ending times for contracted days. These times deviate from long established past practice." (F.F. 4). It is clear from the above-quoted language that the Union was requesting that the District, which allegedly altered the hours of certain employees, return those employees' hours to those that existed under the past practice. Accordingly, the import of the Union's grievance contained a clearly identifiable and quantifiable remedy request.

The Board notes that the CBA of record in this case expired three years ago on June 30, 2002, one year prior to the filing of the grievance. Further, the record shows the District's action did not lengthen the school day and raise a compensation issue. The relief requested was limited to restoration of the prior work schedule for the affected employees. The hearing, which was held on October 25, 2004 (more than a year after the schedule unilaterally imposed by the District for the 2003-2004 school year), provides no information regarding the status of the parties' contract or whether this issue of "hours" under Section 701 was addressed in subsequent negotiations. Because the relief requested is a schedule change and the parties may have negotiated this issue in the course of reaching a successor contract, the relief issue may have been mooted. However, to the extent that the District has not satisfied its bargaining obligation with the Union in prospective negotiations and the schedule unilaterally imposed in 2003 remains in place, the District will be directed to restore the schedule to the status quo ante as ordered by the Hearing Examiner.

After a thorough review of the exceptions and all matters of record, the Board shall sustain the exceptions in part and dismiss the exceptions in part and shall sustain the Proposed Decision and Order of the Hearing Examiner consistent with this Order.

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 the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed, in part, and sustained, in part, that the Proposed Decision and Order, as amended, is hereby made absolute and final.

SIGNED, SEALED, DATED and MAILED this nineteenth day of July, 2005.

PENNSYLVANIA LABOR RELATIONS BOARD

L. DENNIS MARTIRE, CHAIRMAN

ANNE E. COVEY, MEMBER

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AFFIDAVIT OF COMPLIANCE

The Brandywine Heights Area School District hereby certifies that it has ceased and desisted from its violation of section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has deemed the grievance filed on August 8, 2003 as having been sustained and that it has granted the relief, if any, therein requested; that it has posted the proposed decision and order and the Final Order as directed; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

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

Signature of Notary Public