

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CLARION-LIMESTONE :
EDUCATION ASSOCIATION :
 :
v. : Case No. PERA-C-04-119-W
 :
CLARION-LIMESTONE SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On March 5, 2004, the Clarion-Limestone Education Association (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Clarion-Limestone School District (District or Respondent) violated Sections 1201(a)(1) and (5) of the Public Employe Relations Act (Act) by refusing to comply with the provisions of the grievance arbitration procedure in the parties' collective bargaining agreement.

On April 23, 2004, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of seeking resolution of the matters in dispute through mutual agreement of the parties and July 26, 2004, in Pittsburgh, was assigned as the time and place of hearing, if necessary.

The hearing was necessary and was held as scheduled before Thomas P. Leonard, Esquire, a hearing examiner of the Board. The hearing was continued to November 18, 2004, to January 20 and to March 2, 2005, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The Examiner, on the basis of the testimony presented at the hearing, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That Clarion-Limestone School District is a public employer within the meaning of Section 301(1) of the Act. (N.T. 8)
2. That Clarion-Limestone Education Association is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 8)
3. That the Association is the exclusive representative of the professional employes of the District. (N.T. 9, 52, Joint Exhibit 1)
4. That the Association and the District are parties to a collective bargaining agreement ("CBA") that contains a grievance procedure and certain timelines for processing grievances. (N.T. 9, 52 Joint Exhibit 1)
5. That on or about October 7, 2003, the Association filed a grievance on behalf of Gary Piper, a professional educator employed by the District, alleging that "The District has refused hospitalization, medical/surgical, and major medical insurance to grievant's spouse in violation of the collective bargaining agreement." (N.T. 9, Joint Exhibit 2)
6. That the grievance was properly processed through the first two steps of the grievance procedure. (N.T. 9, Joint Exhibit 2)
7. That the District denied the grievance at both Step I and Step II of the grievance process. (N.T. 9, Joint Exhibits 1 and 2)

8. That Step III of the grievance procedure required the grievant to submit an appeal of the Step II decision to the Clarion-Limestone Area School Board ("School Board"). (N.T. 9, Joint Exhibit 2)

9. That the Association filed a timely appeal to the School Board. The School Board held a hearing to review the grievance on November 19, 2003. (N.T. 13, Joint Exhibit 2)

10. That under the terms of the parties' CBA, the School Board is required to "file a written reply within seven (7) days of the meeting at which the grievance was reviewed." (N.T. 9, 52, Joint Exhibit 1)

11. That based on a previous arbitration award and the parties' past practice, the term "days," as it is applied to the parties' CBA, is calculated as "calendar" days. (N.T. 40, 52, Association Exhibit 1)

12. That the grievant, Gary Piper, checked his mailbox three times per day and did not receive a written reply to his grievance until 3:30 PM on December 4, 2003. (N.T. 42-43)

13. That the School Board's written response was filed with the Association fifteen (15) days after the School Board met to review the grievance. (N.T. 9. 42-43, 52)

14. That the filing of the School Board's written response was in excess of the seven (7) day filing deadline permitted under the parties' CBA.

15. That the School Board ultimately denied the grievance.

16. That Article XIX of the parties' CBA provides that "[i]f a party fails to take the required action within the time limits set forth herein, the grievance shall conclusively be determined in favor of the other party." (N.T. 9, 52, Joint Exhibit 1)

17. That by letters dated December 8 and December 11, 2003, the Association, through UniServe Representative Anne Mathewson, requested that the District provide the relief granted in the grievance, as required by Article XIX of the CBA, for the District's failure to file a timely reply with the Association. (N.T. 9, 52, Joint Exhibit 2, 3)

18. That to this day, the District has not granted the relief requested in the grievance.

DISCUSSION

The Association's charge of unfair practices alleges that the District has violated Sections 1201(a)(1) and (5) of the Act by failing to comply with the grievance filing process requirements of the parties' collective bargaining agreement, a process that deems a late response by the District to a grievance as binding the District to the relief sought. The Association requests that the Board remedy this unfair practice by providing the relief that was sought in the grievances regarding Gary Piper and other similarly situated Association members.

The District contends that the Board has no jurisdiction to decide the case, arguing that because the charge involves an interpretation of the collective bargaining agreement, an arbitrator should determine the outcome of the dispute. The District has moved for the dismissal of the charges, citing PLRB v. Bald Eagle Area School District, 451 A.2d 671 (Pa. 1982), and East Pennsboro Area School District, 467 A.2 1356 (Pa. Cmwlth. 1983).

The District's reliance on these cases is misplaced. In Ambridge Area School District, 28 PPER ¶ 28020 (Proposed Decision and Order, 1996), 28 PPER ¶ 28092 (Final Order 1997) and Palmerton Area School District, 33 PPER ¶ 33101, (Proposed Decision and Order, 2002), 33 PPER ¶ 33163 (Final Order, 2002) the Board has held that a District's failure to comply with the grievance processing requirements of the collective bargaining agreement violates Sections 1201 (a)(1) and (5) of the Act. In both cases the issue, like

the issue presented in this case, was whether the District was bound at a lower step of the grievance procedure by its failure to timely reply to a grievance, as expressly provided in the parties' collective bargaining agreement. In finding that the district had violated the Act, the Board in Ambridge explained:

"The Board will find an employer in violation of Sections 1201(a)(1) and 1201(a)(5) of the Act if the employer repudiates a provision of a collective bargaining agreement. Millcreek Township School District v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1994); Palmyra Area School District, 26 PPER ¶ 26087 (final Order, 1995). 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. If, however, a review of the collective bargaining agreement reveals a sound arguable basis for the employer to contend that it acted in conformity with the provision, the Board will not find the employer in violation of Sections 1201(a)(1) and 1201(a)(5) of the Act. Citation omitted."

Ambridge, supra. at 191.

In both Ambridge and Palmerton, the districts raised a jurisdictional challenge similar to the District's argument in the instant matter. In both cases, the Board rejected the districts' claims that an arbitrator must decide if the grievance arbitration procedure has been followed. Specifically, in Ambridge, the Board rejected the districts' reliance on Bald Eagle, 451 A.2d 671 (Pa. 1982), because the facts in Bald Eagle involved an association's attempt to arbitrate a grievance that the district argued was not arbitrable. Here, as in Ambridge, the arbitrability of the grievance is not in question and therefore there is no arbitrability question to defer to an arbitrator.

In Palmerton, 33 PPER ¶ 33163 (Final Order 2002), the Board reaffirmed its rejection of the jurisdictional argument. Citing Millcreek, 631 A.2d 734 (Pa. Cmwlth. 1994), the Board reiterated its position that "[t]he 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." Id. At 737. Based on the holdings in Ambridge, Palmerton and Millcreek, the Board has jurisdiction to hear and rule on the merits of the present case.

Moving on to the merits of the charge, the Board has long taken the position that a public employer must comply with the relief requested in a grievance that is sustained during one of the lower steps of the grievance procedure. In Old Forge School District, 11 PPER ¶ 11318 (NISI Decision and Order, 1980), the parties' collective bargaining agreement contained a provision which provided that the High School Principal had the authority to resolve grievances at Step 1 of the grievance procedure. A chemistry teacher in the High School had requested that the District approve a college course for purposes of salary advancement. The Superintendent denied the request whereupon the teacher filed a timely grievance with his building principal. The building principal sustained the grievance by approving the course. However, the District refused to provide such approval. In response, the association filed a charge with the Board alleging this refusal violated Sections 1201 (a)(1) and (5) of the Act. The Board agreed stating:

The parties in this case contractually agreed that grievances would initially be submitted to individuals such as Mr. Guzzi for possible resolution. For the Board to hold as the District in this case requests that grievance resolutions by first level supervisors be given no force or effect would be to write Step I out of the grievance procedure and the collective bargaining agreement. Clearly both parties must rely on and expect the other party to deal forthrightly in the dispute resolution process.

Old Forge, supra at 520.

The Board reaffirmed its position that the failure to adhere to and implement the resolution required by a grievance sustained at a lower step in the grievance procedure

violates Sections 1201 (a)(1) and (5) of the Act. Moshannon Valley School District, 21 PPER ¶ 21126 (1990). In that case, a teacher filed a grievance challenging his furlough. The CBA in that case provided grievances would be initially submitted to building principals whose reply constituted resolution of the grievance at the first step. The principal sustained the grievance, but the District refused to comply with his resolution.

Relying upon Old Forge, the Board found that the principal's resolution of the grievance was binding upon the District and that its failure to comply with the resolution violated Sections 1201 (a)(1) and (5) of the Act. The Board specifically rejected the District's claim the case should have been deferred to arbitration because the Association considered the matter settled and did not move the grievance beyond the first level. Moshannon Valley, 21 PPER at ¶ 21126.

On appeal, the Commonwealth Court affirmed the Board's decision. Moshannon Valley School District v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991), The Court held that the grievance was properly submitted to the building principal and that since there was no appeal to the next level, it was final and binding pursuant to the collective bargaining agreement. Therefore, once the applicable grievance processing deadlines have passed and the grievance is rightfully sustained, it is an unfair labor practice, in violation of Sections 1201 (a)(1) and (5) of the Act, for the District to refuse to comply with the requested remedy stated in the grievance.

In the present case, the District failed to comply with the timelines set out in the parties' CBA. As a result, Article XIX of the CBA controls this matter and the grievance must be deemed sustained. Once it has been established that the grievances have been properly sustained, as it has in this case, it is incumbent upon the District to comply with the proposed remedy outlined in the grievance. To this day, the District has refused to recognize the grievance as being sustained or to implement the requested remedy. These actions, based upon the decisions in Moshannon Valley and Old Forge, constitute an unfair practice under the Act. Therefore, the District should be required to adhere to and implement the resolution required by the grievance in question. To come to any other conclusion would render meaningless Steps I and Step II of the parties grievance procedure and Article XIX of the CBA.

In defense to the merits of the charge, the District argues that it had a "sound arguable basis" for its interpretation of the contract to justify refusing to be bound by a lower level decision. Under the Board's decision in Jersey Shore Area School District, 18 PPER ¶ 18061 (Proposed Decision and Order, 1987) when an employer has a sound arguable basis for ascribing a particular meaning to his contract and his action is in accordance with the terms of the contract as he construes it, the Board will not enter the dispute to serve the function of arbitrator in determining which party's interpretation is correct. Essentially then when an employer can point to a contractual provision, specifically on point to the issue in dispute, and it is plainly apparent that the language in dispute has two, likely interpretations, the Board will not choose which is the correct interpretation, but rather conclude that the employer has a sound arguable basis for its decision and subsequent action.

It would be inappropriate to apply the "sound arguable basis" defense in this case. The District has chosen the wrong controversy to which to apply such a defense. The District incorrectly claims that the decision in this case relies on the definition of the word "file" as it appears in Article XIX, Step III, of the parties' CBA. However, this is not the case. Although much of the testimony at hearing centered around the filing and receipt of the District's Step III written response, that issue is not at the root of the dispute. If the "sound arguable basis" argument had any merit, it would be over whether the term "days," as it is used in the parties' grievance procedure, refers to "calendar" days or "school" days.

The Association has presented credible testimony from the current and past president of the Association that the terms "days" refers to "calendar" days and not "school" days. This interpretation and practice is fully supported by a prior, binding arbitration award issued by Arbitrator Robert Creo on January 26, 1998. (Association Exhibit 1) The Association thoroughly explained, within the framework of arbitration

practice, why the Creo award is entitled to precedential value that would defeat the District's "sound arguable basis" argument. (See, Elkouri & Elkouri: How Arbitration Works. Volz, Marlin M. and Goggin, Edward P. (Eds.), P. 610, American Bar Association, 5th Edition, 1997 on the matter of issue preclusion.)

The facts show that the Association did not receive a written reply to the Step III appeal until December 4, 2003, a full fifteen (15) days after the School Board met to review the grievance. This far exceeded the seven (7) day timeline set forth in the parties' Step III grievance procedure. The Association has established that the term "days" refers to calendar days. The District, therefore, "failed to take the required action within the time limits set forth" within the CBA. Consequently, the Association's grievance must be sustained in accordance with Article XIX of the parties' CBA and the remedy be fully implemented by the District.

Based on the preceding arguments, the Association has established that the term "days" refers to calendar days. As such, the District violated Article XIX of the parties' CBA by filing their Step III response on December 4, 2003, fifteen (15) days after the School Board met to consider the appeal. The District, therefore, "failed to take the required action within the time limits set forth" within the CBA. Consequently, "the grievance shall be conclusively be determined in favor of [the Association]" and the remedy requested be implemented in full.

The District was required to abide by and implement the remedy requested in the grievance. Failure to do so constitutes a violation of Sections 1201 (a)(1) and (5) of the Act.

CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That Clarion-Limestone School District is a public employer within the meaning of Section 301(1) of the Act.
2. That the Clarion-Limestone Education Association is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties hereto.
4. That the District has committed unfair practices within the meaning of Section 1201 (a)(1) and (5) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act;
2. Cease and desist from refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in the paraprofessional unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Take the following affirmative action that the hearing examiner finds necessary to effectuate the policies of the Act:

(a) Grant the remedy requested in the October 7, 2003 grievance filed on behalf of Gary L. Piper, namely, provide for the grievant's spouse and any other affected individual's hospitalization, medical/surgical, and major medical insurance in accordance with the collective bargaining agreement;

(b) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employees and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-second day of February, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CLARION-LIMESTONE EDUCATION ASSOCIATION :
: :
v. : Case No. PERA-C-04-119-W
: :
CLARION-LIMESTONE SCHOOL DISTRICT :

AFFIDAVIT OF COMPLIANCE

Clarion-Limestone School District (District) hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(1) and (5) of the Public Employee Relations Act; that it has complied with the relief requested in the October 7, 2003 Gary L. Piper grievance, namely provide for the grievant's spouse and any other affected individual hospitalization, medical/surgical, and major medical insurance in accordance with the collective bargaining agreement; that it has posted the proposed decision and order; 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