

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 :

PROPOSED DECISION AND ORDER

A charge of unfair practices was filed with the Pennsylvania Labor Relations Board (Board) on January 12, 2004, by the Brandywine Area Heights Education Association (Union) alleging that the Brandywine Heights Area School District (District) violated Section 1201(a)(1), (4), (5) and (8) of the Public Employe Relations Act (Act). On February 25, 2004, the Secretary of the Board issued a Complaint Notice of Hearing wherein this case was scheduled for hearing on May 3, 2004, in Allentown, Pennsylvania. After a series of unopposed continuance requests the hearing was held on October 24, 2004, during which both parties were afforded a full opportunity to present evidence and cross-examine witnesses. Both parties later submitted briefs.

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

FINDINGS OF FACT

1. The District is a public employer.
2. The Union is an employe organization.
3. The Union and the District are parties to a collective bargaining agreement that contains a procedure for filing grievances by, *inter alia*, the Union. (Joint Exhibit 1)
4. The Union, on Friday, August 8, 2003, filed a grievance under Step c of the contract. The grievance was filed under that step because it affected a number of bargaining unit employes. The grievance stated: "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." (N.T. 7; Joint Exhibit 1, Union Exhibit 1)
5. Step c of the grievance requires the Superintendent to hold a conference, within 5 days of the grievance's receipt, at which both parties may be heard. Further it requires the Superintendent to serve a written decision, with the reasons therefore, 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." The term day is defined by the contract to mean "administrative school day." (Joint Exhibit 1)
6. Number 3 in the grievance procedure allows the parties to extend the time limits set forth in the contract by mutual agreement. That section further provides, "[t]he absence of any involved party from his duties during the grievance process shall cause an extension of the grievance time limits." (Joint Exhibit 1)
7. The Superintendent was on vacation from Monday, August 11 through Friday, August 15, 2003. (N.T. 27; District Exhibit 2)
8. The Superintendent held a conference on the grievance September 2, 2003. The Superintendent issued his decision on the grievance on September 3, 2003. (N.T. 17, 18)

DISCUSSION

The Union charges the District with violating section 1201(a)(1), (4), (5) and (8) of the Act when the District refused to comply with the parties' contractual provision which states that any grievance not responded to within the stated time period is deemed granted. The District does not dispute that the Superintendent's answer to the Association's grievance was filed outside the contractually mandated time period. Rather, the District defends on the grounds that the Board has no jurisdiction to hear this case. Alternatively, the District urges even if the Board has jurisdiction; that the Superintendent's vacation essentially granted an extension of time for the Superintendent to answer the grievance; that the Superintendent could not comply with the contractual mandate to state the reasons for his decision since the grievance was vague; and that the Superintendent complied with the "spirit" of the procedure. The Board has jurisdiction to hear and decide this case. Moreover, even allowing for the Superintendent's vacation time, the District did not timely answer the grievance. Therefore, the District has violated section 1201(a)(1) and (5) of the Act. The District will be ordered to deem the grievance sustained.

The issue presented in this case is identical to the issue decided by the Board in Ambridge Area School District, 28 PPER ¶ 28020 (Proposed Decision and Order, 1996), 28 PPER ¶ 28092 (Final Order, 1997). "[T]he issue presented in this proceeding is whether the District is bound at a lower step of the grievance procedure by its failure to timely reply to a grievance as expressly provided in the parties' agreed upon collective bargaining procedure." 28 PPER ¶ 28092 at 191. Because the employer in Ambridge repudiated a contractual provision by its failure to timely reply to the grievance and subsequent failure to deem the grievance sustained, the Board found that the employer violated section 1201(a)(1) and (5) of the Act.

The District trots out the consistently rejected argument that only an arbitrator can resolve the issue over the timeliness of the District's response to the grievance. The Board has always, in the past, dismissed just that argument in Ambridge, supra, and in Palmerton Area School District, 33 PPER ¶ 33101 (Proposed Decision and Order, 2002), 33 PPER ¶ 33163 (Final Order, 2002). It is no more persuasive here.

The parties' contract allows the Superintendent 10 days to answer a grievance. The contract requires the parties to extend the time limits in the grievance procedure by the number of days an "involved party" is absent. The Superintendent was absent for 5 days, from Monday, August 11, to Friday, August 15, 2003.¹ The Union filed its grievance on August 8, 2003, the Friday before the Superintendent went on vacation. The District denied the grievance on Wednesday, September 3, 2003.

Upon 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. Within 5 days of the conference he was to issue his written response to the parties, which would have been by September 2, 2003.² Nevertheless, the Superintendent did not issue his response until September 3, 2003.

The District argues that it "complied with the intent" of the contract language. In support of that argument the District highlights contractual language that states the primary purpose of the grievance procedure is to solve the problem, equitably, at the lowest level possible. The District then posits: "The Superintendent could have denied the grievance without knowing what the [Union] intended which would move the matter to the Board of Directors [the next step in the process]; this would not result in securing an equitable solution at the lowest level possible." (District's Brief at 4)

Under the express terms of the contract, the Superintendent's responsibility was to answer the grievance, absent a mutually agreed upon extension of time, within 10 days of its filing. A grievance, too vague to evaluate, must, logically, be denied, unless the

¹ Consequently, the Superintendent's first day back was Monday, August 18, 2003.

² Because Friday, August 29, 2003 was a day school was closed it is not counted. Likewise, since Labor Day was on Monday, September 1, 2003, that day is also excluded from the computation. (Joint Exhibit 1)

Superintendent wanted to grant the grievance without understanding what he was granting. Missing the contractual time limit mandates the District deem the grievance sustained and grant the relief requested.

The District also argues that the Superintendent was precluded from answering the grievance because it was vague:

The vagueness, failure to set forth the section of the CBA [collective bargaining agreement] violated, and failure to set forth a remedy makes it impossible for the Superintendent to serve a decision with reasons therefore in writing upon the persons involved, as required by Step c - of the grievance procedure - last paragraph. In order for the Superintendent to state reasons for his decision, he needs to have sufficient knowledge of what the grievance is requesting.

(District's Brief at 4)

This argument is jejune. Quite simply, if the Union's grievance was too vague to understand, all the Superintendent needed to do was deny it and list his reason for doing so as vagueness. Because the District did not answer the grievance in a timely manner it must deem the grievance sustained and implement the relief, if any, therein requested.

CONCLUSIONS

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

1. The District is an employer within the meaning of Section 301(1) of the Act.
2. The Union is an employe organization within the meaning of Section 301(3) of the Act.
3. The Board has jurisdiction over the parties hereto.
4. The District has committed unfair practices within the meanings of Section 1201(a)(1) and (5) of the Act.
5. The District has not committed unfair practices within the meaning of Section 1201(a)(4) and (8) 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 and restraining 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 an appropriate unit.
3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of the Act:

(a) Deem the grievance filed on August 8, 2003, as having been sustained and implement the relief, if any, therein requested;

(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 employes 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 pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall be and become absolute and final.

SIGNED, DATED and MAILED this fourth day of April, 2005.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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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 as directed therein; 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