

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

RIDGWAY AREA SCHOOL DISTRICT :
 :
 v. : Case No. PERA-C-06-538-W
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RIDGWAY AREA TEACHERS ASSOCIATION :
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RIDGWAY AREA TEACHERS ASSOCIATION :
 :
 v. : Case No. PERA-C-06-546-W
 :
RIDGWAY AREA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On October 30, 2006, the Ridgway Area School District (District) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Ridgway Area Teachers Association (Association) violated section 1201(b)(3) of the Public Employe Relations Act (Act) "by failing and refusing to respond to [the District's] contract proposals, despite repeated attempts that it do so." The Board docketed the charge to Case No. PERA-C-06-538-W.

On November 6, 2006, the Association filed with the Board a charge of unfair practices alleging that the District violated sections 1201(a)(1) and 1201(a)(5) of the Act by "attempt[ing] to expand bargaining to [non-salary and non-supplemental compensation] subject matter areas, in violation of the terms of the collective bargaining agreement controlling the reopening of the contract for a possible three-year extension."¹ The Board docketed the charge to Case No. PERA-C-06-546-W.

On November 7, 2006, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing on the District's charge be held on December 7, 2006, if conciliation did not resolve the matter by then.

On November 14, 2006, the Secretary issued a complaint and notice of hearing directing that a hearing on the Association's charge be held on December 7, 2006, if conciliation did not resolve the matter by then.

The hearing examiner subsequently continued both hearings upon the request of the Association and without objection by the District.

On January 23, 2007, a consolidated hearing was held. Both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. On January 26, 2007, the District filed a brief by mail. On February 1, 2007, the Association filed a brief by mail.

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

FINDINGS OF FACT

1. On January 5, 1971, the Board certified the Association as the exclusive representative of a bargaining unit that includes employes of the District. (Case No. PERA-R-604-W)

¹The Association also filed its charge under section 1201(a)(2), but that section relates to the formation of company unions, Kennett Consolidated School District, 37 PPER 89 (Final Order 2006), so the charge does not state a cause of action under that section. Thus, only the remaining portions of the charge will be discussed.

2. Effective July 1, 2003, the parties entered into a collective bargaining agreement providing at Article II as follows:

"The term of this agreement shall begin July 1, 2003, and shall continue in full force and effect until June 30, 2006, or until such later date as the two parties may hereinafter agree is to be the extended ending date. Any such extended ending date shall be evidenced by an amendment to this agreement, to which amendment both parties shall signify their approval by affixing their signatures thereto.

The Association and the District agree to reopen this contract in 2005/2006 for a possible three (3) year extension. The Association reserves the sole right to limit the items of negotiation to salaries (Appendix A) and supplemental (Appendix B) compensation. Should the Association desire to include additional items for negotiations, the collective bargaining agreement is subject to the terms of traditional bargaining under Acts 195 and 88. Under no circumstances does the Association forfeit any rights (including but not limited to mediation, fact finding, work stoppage, or arbitration) under Acts 195 and 88 if the Association should choose to open only salaries and supplemental compensation."

(Joint Exhibit 1)

3. In 2005-2006, the parties reopened their contract for a possible three-year extension, and the Association reserved the right to limit the items of negotiations to salaries and supplemental compensation. (N.T. 9-10; Joint Exhibit 2)

4. By letter dated July 5, 2006, the District's counsel/negotiator (Richard W. Perhaps, Esquire) submitted to the Association's chief negotiator (Terra Begolly) proposals to change the following provisions of the collective bargaining agreement: Article II Term of Agreement, Article IV(F) Hours of Work, Article VII Compensation, Article VIII(B) Medical Insurance, Article VIII(C) Waiver of Coverage and Article IX(A) Professional Development. (N.T. 10-11; Joint Exhibit 2)

5. The Association "resisted" bargaining over the District's proposals. (N.T. 11-12)

DISCUSSION

Each party has filed a charge alleging that the other party has violated their statutory obligation to bargain collectively in good faith. In support of their respective positions, each party relies on Article II of their collective bargaining agreement. For the reasons that follow, each charge must be dismissed because each party has a sound arguable basis for contending that it was contractually privileged to act as it did. Under the circumstances, neither party may be found in violation of their statutory obligation to bargain collectively in good faith, and only an arbitrator may decide whose interpretation of Article II is correct.

The District's charge

The District has charged that the Association committed an unfair practice under section 1201(b)(3) "by failing and refusing to respond to [the District's] contract proposals, despite repeated attempts that it do so." According to the District, because its proposals sought to change mandatory subjects of bargaining, the Association violated its statutory obligation to bargain collectively in good faith by refusing to respond to them.

The Association contends that the District's charge should be dismissed because under Article II it had the sole right to limit the items of negotiation to salaries and supplemental compensation and because the District's proposals were not limited to salaries and supplemental compensation. According to the Association, it was contractually privileged not to respond to the District's proposals under the circumstances.

An employe organization commits an unfair practice under section 1201(b)(3) if it is the exclusive representative of a bargaining unit and if it refuses a request by the employer to negotiate over a mandatory subject of bargaining. Indiana Area Education

Association, PSEA/NEA, 35 PPER 55 (Final Order 2004). If, however, the employee organization has a sound arguable basis for contending that its refusal of the request was contractually privileged, then no violation of section 1201(b)(3) may be found. SSHE v. PLRB, 821 A.2d 156 (Pa. Cmwlth. 2003); APSCUF, 20 PPER ¶ 20125 (Final Order 1989).

As set forth in finding of fact 2, the record shows that Article II provides in pertinent part as follows:

"The Association and the District agree to reopen this contract in 2005/2006 for a possible three (3) year extension. The Association reserves the sole right to limit the items of negotiation to salaries (Appendix A) and supplemental (Appendix B) compensation."

As set forth in finding of fact 3, the record also shows that after the parties reopened their contract in 2005-2006 for a possible three-year extension the Association reserved the right to limit the items of negotiation to salaries and supplemental compensation. As set forth in finding of fact 4, the record further shows that the District's proposals were not limited to salaries and supplemental compensation.

Given that Article II references the sole right of the Association to limit the items of negotiation to salaries and supplemental compensation if the parties reopened their contract in 2005-2006 for a three-year extension, that the Association reserved the right to limit the items of negotiation to salaries and supplemental compensation when the parties reopened their contract in 2005-2006 for a three-year extension and that the District's proposals were not limited to salaries and supplemental compensation, it is apparent that the Association has a sound arguable basis for contending that its refusal to respond to the District's proposals was contractually privileged. There is, therefore, no basis for finding that the Association committed an unfair practice as charged.

The District contends that the Association's refusal to respond to its proposals was not contractually privileged because the Association's right under Article II to limit the items of negotiations to salaries and supplemental compensation did not extend beyond June 30, 2006, and because it made its proposals on July 5, 2005. As the District points out, in addition to referencing the Association's right to limit the items of negotiations to salaries and supplemental compensation if the parties reopened their contract in 2005-2006 for a three-year extension, Article II also provides as follows:

"The term of this agreement shall begin July 1, 2003, and shall continue in full force and effect until June 30, 2006, or until such later date as the two parties may hereinafter agree is to be the extended ending date. Any such extended ending date shall be evidenced by an amendment to this agreement, to which amendment both parties shall signify their approval by affixing their signatures thereto."

Noting that the Association did not show that the parties extended the term of the agreement beyond June 30, 2006, the District would have the Board find that the Association incorrectly construes Article II to mean that it had the right to limit the items of negotiations to salaries and supplemental compensation after June 30, 2006.

In disposing of a charge of this nature, however, the Board's inquiry ends once it determines that the respondent has a sound arguable basis for contending that it was contractually privileged to act as it did. As the court explained in Pennsylvania State Troopers Association v. PLRB, 761 A.2d 645 (Pa. Cmwlth. 2000):

"The [Board] has recognized 'contractual privilege' as an affirmative defense to a charge of unfair labor practices alleging a refusal to bargain in good faith. The defense calls for the dismissal of such charges where the employer establishes a 'sound arguable basis' in the language of the parties' collective bargaining agreement, or other bargained-for agreement, for the claim that the [respondent]'s action was permissible under the agreement. See [Ellwood City Police Wage and Policy Unit v. Ellwood City Borough], 29 PPER ¶ 29213 (Final Order 1998), *aff'd*, 736 A.2d 707 (Pa. Cmwlth. 1999)]; Delaware County Lodge #27 of the Fraternal Order of Police on behalf of the Members of the Police Force of the Borough of Prospect

Park v. Prospect Park Borough, 27 PPER [¶] 27222 (Final Order 1996); Jersey Shore Area Education Association v. Jersey Shore Area School District, 18 PPER [¶] 18117 (Final Order 1987)(quoting NCR Corp., 271 N.L.R.B. 1212 (1984) as saying that 'where 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 [National Labor Relations Board] will not enter the dispute to serve the function of arbitrator in determining which party's interpretation is correct')."

761 A.2d at 651. Thus, whether or not the Association has incorrectly construed Article II is for an arbitrator rather than the Board to decide.

The Association's charge

The Association has charged that the District committed unfair practices under sections 1201(a)(1) and 1201(a)(5) by "attempt[ing] to expand bargaining to [non-salary and non-supplemental compensation] subject matter areas, in violation of the terms of the collective bargaining agreement controlling the reopening of the contract for a possible three-year extension." As noted above, those terms are set forth in Article II.

The District contends that the Association's charge should be dismissed because the parties' collective bargaining agreement had expired by the time it attempted to expand bargaining to non-salary and non-supplemental compensation subject matter areas. According to the District, it acted in conformity with rather than in violation of Article II under the circumstances.

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(5) if it repudiates a provision in a collective bargaining agreement. Millcreek Township School District v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1993), appeal denied, 537 A.2d 626, 641 A.2d 590 (1994). If, however, the employer has a sound basis for arguing that it was contractually privileged to act as it did, then no such unfair practices may be found. SEPTA, 35 PPER 73 (Final Order 2004).

As noted above, the record shows that, in addition to referencing the sole right of the Association to limit the items of negotiations to salaries and supplemental compensation if the parties reopened their contract in 2005-2006 for a three-year extension, Article II also references an expiration date of June 30, 2006. As set forth in finding of fact 4, the record further shows that the District only attempted to expand bargaining to non-salary and non-supplemental compensation subject matter areas on July 5, 2006.

Given that Article II references an expiration date of June 30, 2006, and that the District only attempted to expand bargaining to non-salary and non-supplemental compensation subject matter areas on July 5, 2006, it is apparent that the District has a sound arguable basis for contending that its attempt to expand bargaining to non-salary and non-supplemental compensation subject matter areas was contractually privileged. There is, therefore, no basis for finding that the District committed unfair practices as charged.

The Association contends that the District's expansion of bargaining to non-salary and non-supplemental compensation subject matter areas on July 5, 2006, was not contractually privileged because Article II provides that the Association had the sole right to limit the items of negotiations to salaries and supplemental compensation at the time. Noting that it presented testimony that the parties' intent in negotiating that provision was to preserve medical benefits for three years beyond June 30, 2006, unless the Association agreed to change them (N.T. 12-13), the Association would have the Board find that the District incorrectly construes Article II to mean that it could expand bargaining to non-salary and non-supplemental compensation subject matter areas on July 5, 2006.

Again, however, in disposing of a charge of this nature, the Board's inquiry ends once it determines that the respondent has a sound arguable basis for contending that it was contractually privileged to act as it did. Pennsylvania State Troopers Association, supra. Thus, whether or not the District has incorrectly construed Article II is for an arbitrator rather than the Board to decide.

CONCLUSIONS

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

1. The District is a public employer under section 301(1) of the Act.
2. The Association is an employe organization under section 301(3) of the Act.
3. The Board has jurisdiction over the parties.
4. The Association has not committed an unfair practice under section 1201(b)(3) of the Act.
5. The District has not committed unfair practices under sections 1201(a)(1), 1201(a)(2) and 1201(a)(5) of the Act.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaints are rescinded and the charges dismissed.

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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-second day of February 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

Donald A. Wallace, Hearing Examiner

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February 22, 2006

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RIDGWAY AREA EDUCATION ASSOCIATION
Case No. PERA-C-06-538-W

RIDGWAY AREA SCHOOL DISTRICT
Case No. PERA-C-06-546-W

Enclosed is a copy of my proposed decision and order.

Sincerely,

DONALD A. WALLACE
Hearing Examiner

Enclosure

cc: Sandra Hanes
Richard E. Burridge, Esquire
Ridgway Area School District