COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORTH HILLS EDUCATION ASSOCIATION PSEA/NEA	:	
v.	:	Case No. PERA-C-06-310-W
NORTH HILLS SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On July 10, 2006, the North Hills Education Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the North Hills School District (District) violated Section 1201(a)(1) and (8) of the Public Employe Relations Act (PERA). On August 4, 2006, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held before a Board hearing examiner on September 29, 2006. On that date, all parties in interest appeared before the examiner, entered into stipulations of fact and introduced documentary evidence. Both parties forwarded briefs to the Board on or before October 16, 2006.

The examiner, on the basis of the stipulations and exhibits 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 for purposes of PERA.

2. The Association is an employe organization for purposes of PERA.

3. On September 6, 2005, an arbitrator issued an arbitration award concerning a grievance filed on behalf of several bargaining unit members, including Linda Berggren. Before the dispute arose that culminated in the arbitration, Berggren had taught ninth grade English for approximately thirty years. The arbitrator found that the District violated the collective bargaining agreement by "realigning" Berggren from teaching ninth grade English to teaching seventh grade English effective with the 2005-2006 school year. The arbitrator's award provided in part as follows:

AWARD

The Grievance is sustained in part, and denied in part, as follows:

> In that the District violated the provisions of Article XVII, Section F of the Collective Bargaining Agreement when it realigned Ms. Berggren, Ms. Clark and Ms. Washington to teach English at different grade levels than previously taught, such assignments are improper.
>
> Ms. Clark, Ms. Washington and Ms. Berggren are to be returned to their previous grade levels in teaching English within two calendar weeks from receipt of this Award . . . .

(N.T. 5-7; Joint Exhibit 1)

4. The District appealed the arbitration award to the Court of Common Pleas of Allegheny County. (N.T. 6)

5. On May 17, 2006, the common pleas court issued an order dismissing the District's appeal. (N.T. 6; Joint Exhibit 2)

6. The District did not appeal the order of the common pleas court. (N.T. 6-7)

7. The District's director of human resources sent Berggren a letter dated July 24, 2006, which stated as follows:

> "In response to your letter of interest regarding a junior high English teacher position for the 2006-07 school year, please note the following:
>
> 1. You currently hold the position of junior high English teacher.
>
> 2. The building principal retains the right to schedule individual teacher's assignments, including grade level, within the teacher's certification area.
>
> 3. Although the arbitration award stated that you were to be returned to a 9th grade English teacher position effective with the 2005-06 school year, the arbitration decision was appealed, and the appeal determination was not made until June 2006, after the conclusion of the 2005-06 school year. Therefore, to comply with the arbitration award, this letter serves to acknowledge a return to a 9th grade English teacher position effective with the 2006-07 school year.
>
> 4. Additionally, this letter serves as notice of an anticipated involuntary transfer from 9th grade English teacher to 7th grade English teacher effective with the 2006-07 school year. You are to contact my assistant, Paula Perfetti, at 412-318-1010 to arrange a conference between you, your building principal and me to discuss the specific reasons for this transfer. You have the right to request that these reasons be placed into writing at the conclusion of that conference.
>
> 5. After this conference, you have the right to a conference with the Superintendent or his designee, provided such a conference is requested, in writing, within 72 hours of delivery of the written explanation referred to above. You are entitled to have two (2) NHEA representatives present at this meeting.
>
> In summary, please contact my office at your earliest convenience to arrange for a conference with your building principal. I appreciate your cooperation in this matter."

(N.T. 7-8; Joint Exhibit 3)

8. To date, Berggren has not been in the ninth grade classroom. (N.T. 8)

DISCUSSION

The Association alleges that the District violated Section 1201(a)(1) and (8) of PERA by failing to comply with the arbitration award which directed the District to return Linda Berggren to her previous grade level in teaching English. The District contends that the unfair practice charge should be dismissed because: (1) negotiation of a new collective bargaining agreement (CBA) moots any charge of unfair practices; (2) the parties settled any dispute concerning assignments for the 2006-2007 school year through negotiation of a new CBA; (3) the arbitration award only granted relief for the 2005-2006 school year; and (4) the arbitrator could not issue an award which applied beyond the 2005-2006 school year, due to the expiration of the CBA and the negotiation of a new agreement.

When an employer is charged with refusing to comply with a binding grievance arbitration award, the Board's inquiry is limited. As the hearing examiner stated in Municipal Authority of Borough of West View, 32 PPER ¶ 32122 (Proposed Decision and Order, 2001), 32 PPER ¶ 32175 (Final Order, 2001):

> "An employer commits unfair practices within the meaning of sections 1201(a)(1) and 1201(a)(8) of the Act if a grievance arbitration award exists, the employer's right to appeal the award has been exhausted and the employer has refused to comply with the provisions of the award. Commonwealth v. PLRB,

> 478 Pa. 582, 387 A.2d 435 (1978). Once the employer's appellate rights have been exhausted, the merits of the award are no longer at issue. Id. Thus, in deciding whether or not the employer has complied with the provisions of the award, the Board looks at the four corners of the award to determine the intent of the arbitrator as expressed in the award. City of Philadelphia, Office of Housing and Community Development, 24 PPER ¶ 24052 (Final Order, 1993)."

32 PPER at 308-309.

Here an arbitrator issued an award requiring the District to return Linda Berggren to her former grade level in teaching English (ninth grade). Although the District appealed the award to the common pleas court, the court dismissed the District's appeal and no further appeal was taken. Thus, an arbitration award exists and the District has exhausted its right to appeal the award.

The remaining issue is whether the District has complied with the provisions of the award. The award plainly states that the District must return Berggren to her previous grade level in teaching English, which is ninth grade. Although the District stated in a July 2006 letter to Berggren that the letter "serves to acknowledge a return to a 9th grade English teacher position effective with the 2006-07 school year," the letter also stated that it "serves as notice of an anticipated involuntary transfer from 9th grade English teacher to 7th grade English teacher effective with the 2006-07 school year" (FF 7). True to its word, the District did not return Berggren to the ninth grade classroom (FF 8). Therefore, the District clearly did not comply with the arbitration award and simply stated on paper (during the summer when school was not in session) that it was returning Berggren to teaching ninth grade English, with no actual return being effectuated.

As noted above, the District contends that it is excused from complying with the award for several reasons. First, the District cites PLRB v. Littlestown Education Association, 70 Pa. D. & C. 2d 300 (1974) in support of its claim that the charge of unfair practices is moot. However, that case stands only for the proposition that charges of bad faith bargaining in negotiations are generally rendered moot by subsequent entry into a collective bargaining agreement. See also SEPTA, 37 PPER 119 (Final Order, 2006). Here the charge of unfair practices does not involve alleged bad faith bargaining in negotiations, but rather a refusal to comply with a grievance arbitration award. Therefore, Littlestown is not applicable here. Nor is this case moot because the District has yet to comply with the relief directed by the arbitrator.

The District also argues that the parties settled this matter in negotiation of a new CBA, citing Avery v. PLRB, 509 A.2d 888 (Pa. Cmwlth. 1986). In Avery, the Board dismissed a charge of unfair practices after finding that the parties had settled the charge and that the complainant had failed to prove a violation of the settlement agreement. This case is distinguished from Avery because there is no claim that the Association and the District agreed to settle the unfair practice charge. Nor is there any proof that the parties reached a settlement of the particular grievance that was addressed in the arbitration award. Indeed, the District conceded at the hearing that "there is no specific language in the contract that indicated that the purpose of the language was to resolve the award" (N.T. 11). The District similarly acknowledged that "there's nothing in the Collective Bargaining Agreement that says that this language settles the Berggren Arbitration or the grievance" (N.T. 12). While the District and the Association may have agreed on language in the new CBA to address realignments such as the one at issue here prospectively, there is no record evidence that they agreed to settle the unfair practice charge or the particular grievance that was addressed by the arbitrator. Accordingly, this case is distinguished from Avery and that decision does not excuse the District's failure to comply with the award.

The District's third argument is also meritless. The arbitrator certainly attempted to insure that Berggren would be returned to the ninth grade English classroom during the 2005-2006 school year, in that he directed the District to return Berggren to that grade level within two weeks of receipt of the award (which was issued in early September 2005). However, there is no indication that the arbitrator intended to excuse the District from returning Berggren to the ninth grade classroom if it voluntarily chose to delay the

award's implementation beyond the 2005-2006 school year, as it did here through filing of an appeal. The award simply directs that Berggren be returned to her previous grade level and does not support the District's claim that it may decline to comply with the relief directed by the arbitrator due to the delay caused by its own decision to take an appeal.

The District's final argument is equally meritless. Having voluntarily taken an appeal and thereby delayed implementation of the relief directed by the arbitrator, the District cannot persuasively argue that the arbitrator somehow exceeded his authority. The arbitrator did not attempt to fashion an award that would apply after expiration of the CBA. Rather, the District delayed implementation of the award until after expiration of the CBA by appealing the award. Having voluntarily chosen to postpone implementation of the award, the District cannot avoid compliance on the ground that the award's implementation will now occur during the term of a new CBA. Indeed, if the District's position was sustained, employers could avoid compliance with any grievance arbitration award by simply pursuing all available appeals until the applicable CBA expires. By failing to comply with the arbitration award, the District violated Section 1201(a)(1) and (8) of PERA. Therefore, the District will be directed to comply with the award and return Linda Berggren to teaching ninth grade English.

CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.

2. The Association is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The District has committed unfair practices in violation of Section 1201(a)(1) and (8) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, 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 PERA.

2. Cease and desist from refusing to comply with the provisions of an arbitration award deemed binding under Section 903 of Article IX of PERA.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Comply with the arbitration award and return Linda Berggren to teaching ninth grade English;

(b) Post a copy of this decision and order within five (5) days from the 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 twenty-third day of January, 2007.

PENNSYLVANIA LABOR RELATIONS BOARD

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PETER LASSI, HEARING EXAMINER

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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AMENDED AFFIDAVIT OF COMPLIANCE

The North Hills School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (8) of PERA; that it has complied with the arbitration award and returned Linda Berggren to teaching ninth grade English; that it has posted a copy of the proposed decision and order as directed therein; and that it has served a copy of this affidavit on the North Hills Education Association, PSEA/NEA 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