COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CORRECTIONAL INSTITUTION VOCATIONAL EDUCATION ASSOCIATION	:	
v.	:	Case No. PERA-C-07-293-E
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CORRECTIONS MUNCY SCI	:	

PROPOSED DECISION AND ORDER

On July 7, 2007, the Correctional Institution Vocational Education Association (CIVEA or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Commonwealth of Pennsylvania, Department of Corrections, Muncy SCI (Commonwealth or Respondent) alleging that the Commonwealth violated Sections 1201(a)(3) (5) and (8) of the Public Employe Relations Act (PERA).

On August 13, 2007, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was scheduled for hearing on November 15, 2007 in Harrisburg.

The hearing was continued at the request of CIVEA, without objection from the Commonwealth, to January 24, 2008, 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. The Commonwealth of Pennsylvania, Department of Corrections (DOC), is a public employer within the meaning of Section 301(1) of PERA.

2. That the Correctional Institution Vocational Education Association (CIVEA) is an employee organization within the meaning of Section 301(13) of PERA.

3. CIVEA represents professional employes working in Pennsylvania's 26 state correctional institutions (SCIs). The employes are teachers, counselors and activity specialists. (N.T. 16)

4. Sometime in the 1990's the Department of Corrections decided that it would begin offering high school diploma programs within the various SCIs because of the increasing number of inmates who were juveniles or who were coming into prison without a high school diploma. To satisfy the Department of Education diploma requirements, DOC began to require its teachers to obtain DOE certification if they did not possess it. (N.T. 17-19)

5. That in response to the DOC's decision to require DOE certification, many teachers had to return to college to obtain education credits. To assist its members, CIVEA began negotiating with the Commonwealth over a way to help these teachers who had to return to college to obtain certification. (N.T. 28, Association Exhibits 1 and 2)

6. On or about July 9, 2003, CIVEA also filed a grievance on behalf of Marlene Weitzel, a business education instructor at the Department's State Correctional Institution at Muncy, (SCI-Muncy), alleging a violation of Article 25, Section 8b, of the collective bargaining agreement between the Commonwealth and CIVEA. The grievance sought the following as a remedy:

> 1)Reimburse employee 100% of all costs relative to Certification requirements (all fees, course materials, exams and praxis tests); 2) Grant past and future requests for earned compensatory leave when the employee has no choice of class schedule and time exceeds regular work schedule. 3) Do not charge any type of leave when classes are scheduled during the employee’s regular work schedule.

(N.T. 14, Association Exhibit 1)

7. The Weitzel grievance proceeded through the contractual grievance procedure to the point where CIVEA notified the Governor's Office of Administration, Labor Relations Bureau, that the matter would be taken to arbitration. The arbitration was scheduled for February 5, 2005. (N.T. 30, 49)

8. The grievance was not arbitrated as scheduled. (N.T. 30, 35-36, 45)

9. That by a letter dated April 7, 2005, CIVEA and the Commonwealth entered into a side agreement providing prospective relief to CIVEA members, which provided, in pertinent part:

> For Teachers and Counselors in a Level 1 certification program working on an emergency certification:
>
> A. As required by the certifying university, we will release the teachers and counselors to take courses up to 23 days per fiscal year. (3 self-initiated days and 20 days – 535.3)
>
> B. We will pay for tuition as required in Article 25 of the CIVEA contract (the Graduate credit rate in the State University System).
>
> C. We will pay for fees and books for the approved courses.

(N.T. 10, 11, Joint Exhibit 2)

10. By letter dated June 9, 2006, CIVEA and the Commonwealth agreed to settle the Weitzel grievance by providing retroactive relief to the grievant. That letter states, in pertinent part:

> As agreed between the parties, the following resolves the above-reference grievance regarding tuition reimbursement for the grievant, a Business Education Instructor in a Level 1 certification program working on an emergency certification.
>
> 1. The grievant shall receive tuition reimbursement for academic years 2002-2003 and 2003-2004 consistent with paragraph one of the April 7, 2005, side letter, minus any payments previously received for those academic years.
>
> 2. This agreement will be effective upon the return to this office of the enclosed copy, properly executed. Acceptance of this agreement will dispose of all issued encompassed in these grievances.
>
> 3. It is distinctly understood and agreed to between the parties that this agreement is without prejudice to the contractual rights of either party, and shall set no precedent for any future grievance.

(N.T. 10, 11, Joint Exhibit 1)

11. Weitzel subsequently received tuition reimbursement for academic years 2002-2003 and 2003-2004. (N.T. 42)

12. Weitzel did not receive compensatory time requested in her grievance. (N.T. 42, 52)

13. That in August, 2006, Weitzel informed CIVEA representative Marc Kornfeld that the Department of Corrections was not recognizing her requests to take compensatory time for the courses she had already taken. Kornfeld discussed the situation with Amy Yokitis of the Governor's Office of Administration, who directed him to talk with the Department of Corrections. That did not resolve the situation, and on June 13, 2007, Ms. Yokitis advised him that the Commonwealth would not give Weitzel the compensatory time. (N.T. 53-54, 57)

DISCUSSION

CIVEA, representing the professional educators in the Commonwealth's correctional institutions, has filed the present charge alleging that the Commonwealth violated Sections 1201(a)(3),(5) and (8) of the Public Employe Relations Act (PERA) when it failed to implement that portion of a grievance settlement involving Marlene Weitzel. CIVEA contends that she should have received payment of compensatory time as well as tuition reimbursement, which she did receive. CIVEA requests that the Board find the Commonwealth should pay Ms. Weitzel 274.5 hours of compensatory time.

At the hearing, the Commonwealth moved to dismiss the Section 1201(a)(3) charge. CIVEA did not oppose the motion. Accordingly, the Section 1201(a)(3) charge is dismissed.

The Commonwealth also raised the defense that the charge of unfair practices is untimely. Section 1505 of PERA states that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge". 43 P.S. §1101.1505.

Because the union alleges that the Commonwealth has violated PERA by refusing to comply with a settlement agreement it is critical to know when the union knew the commonwealth was not going to comply with the settlement agreement. Under Board law, "'[t]he date of notice to the union (i.e. the time the union knew or should have known of the employer's alleged unfair practice) triggers the statute of limitations…'Upper Gwynedd Township, 32 PPER ¶32101 at 264 (Final Order, 2001)…" (citations omitted). 34 PPER at 350. In this case, the CIVEA representative was told by the grievant that the Department was not crediting her compensatory time for the courses she had taken. However, rather than file a charge of unfair practices based on this information, the representative contacted the Office of Administration labor relations representative with whom he had settled her grievance for an explanation. This person directed him to check with the Department of Corrections. That route proved unsuccessful and on June 13, 2007, he was informed by the Office of Administration representative that the compensatory time would not be paid. From this date, the statute of limitations began to run. The charge was filed within four months of this date and is therefore timely.

Turning to the merits of the charge, if an employee organization meets its burden of proving non-compliance with a settlement, it is an unfair practice under Section 1201(a)(5) of PERA, which prohibits public employers from "[r]efusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit…" 43 P.S. §1101.1201(a)(5). A public employer's failure to comply with a grievance settlement constitutes a violation of Section 1201(a)(1) and (5) of the Act. AFSCME District Council 47, Local 2187 v. City of Philadelphia, 30 PPER ¶30003 (Final Order, 1998). When examining the settlement agreement, where words are "clear and unambiguous, the intent of the parties is to be determined only from the express language of the agreement." Avery v. Commonwealth, PLRB, 509 A.2d 889 at 891 (Pa. Cmwlth. 1986).

At issue is whether the Commonwealth is in compliance with the settlement agreement between the parties dated June 9, 2006, which provides, in pertinent part:

> As agreed between the parties, the following resolves the above-referenced grievance regarding tuition reimbursement for the grievant, a Business Education Instructor in a Level 1 certification program working on an emergency certification:
>
> 1. The grievant shall receive tuition reimbursement for academic years 2002-2003 and 2003-2004 consistent with paragraph one of the April 7, 2005 side letter, minus any payments previously received for those academic years.
>
> 2. This agreement will be effective upon the return to this office of the enclosed copy, properly executed. Acceptance of this agreement will dispose of all issued encompassed in these grievances.
>
> 3. It is distinctly understood and agreed to between the parties that this agreement is without prejudice to the contractual rights of either party, and shall set no precedent for any future grievance.

The relevant portion of the side letter referenced in the settlement states:

> For Teachers and Counselors in a Level 1 certification program working on an emergency certification:
>
> A. As required by the certifying university, we will release the teachers and counselors to take courses up to 23 days per fiscal year. (3 self-initiated days and 20 days 535.3)
>
> B. We will pay for tuition as required in Article 25 of the CIVEA contract (the Graduate credit rate in the State University System).
>
> C. We will pay for fees and books for the approved courses.

In its charge of unfair practices, CIVEA admits that the Commonwealth "implemented the tuition reimbursement portion" of the settlement "but has refused to honor and implement the compensatory time portion of the settlement". CIVEA contends that the Commonwealth failed to credit Ms. Weitzel with the compensatory time for hours spent traveling to and sitting in classes. (274.5 hours). However, there is no mention of compensatory time in either the settlement or, for that matter, the side letter.

In this case, the words of the settlement are clear and unambiguous. The intent of the parties may be determined on the basis of the express language of the June 9, 2006 agreement. Here, the express language of the Weitzel grievance settlement agreement requires tuition reimbursement. CIVEA argues that the side letter referred to in the June 9, 2006 agreement must be used in the interpretation. However, the side letter contains no mention of compensatory time. CIVEA argues that paragraph one of the side letter can be interpreted so that compensatory time can be derived from the Commonwealth's duty to "release…teachers and counselors." However, release time is an entirely different concept from compensatory time. Accordingly, the interpretation of the agreement and the side letter suggested by CIVEA would not be reasonable. Thus, based on the plain language of the documents presented at the hearing, I cannot state, with any assurance, that the award has not been complied with by the Commonwealth.

CIVEA offered the testimony of Marc Kornfeld, its representative in the Weitzel grievance and the negotiations leading up to the side letter, to establish that "tuition reimbursement" actually means not simply reimbursement for tuition, but compensatory time for courses taken by Weitzel on her own time. The Commonwealth objected to this testimony on the grounds that it was inadmissible on the basis of the parol evidence rule.

In PennDOT, 17 PPER ¶17184 (Proposed Decision and Order, 1986), a hearing examiner of the Board had occasion to apply the parol evidence rule in an unfair practice proceeding:

> The parol evidence rule was stated by our Supreme Court in Bardwell v. Willis Company, 375 Pa. 503, 506, 100 A.2d 102 (1953) as follows:
>
> Where the alleged prior or contemporaneous oral representations or agreements concern a subject which is specifically dealt with in the written contract, and the written contract covers or purports to cover the entire agreement of the parties, the law is now clearly and well settled that in the absence of fraud, accident or mistake the alleged oral representations or agreements are merged in or superseded by the subsequent written contract, and parol evidence to vary, modify or supersede the written contract is inadmissible in evidence.
>
> 375 Pa. at 506 (footnote omitted, citations omitted).

PennDOT at 492. In that case, the hearing examiner determined that parol evidence offered by the union in an attempt to establish that the employer had agreed not to furlough any employees "flies in the face of the clear language of the collective bargaining agreement and must be rejected under the parol evidence rule". *Id*. At 492.

The same result must follow here. CIVEA's attempt to use Mr. Kornfeld's testimony to explain the meaning of the settlement agreement is exactly the type of evidence the parol evidence rule was designed to exclude, the alleged prior or contemporaneous oral represen-

tations or agreements of the parties. The written contract covers or purports to cover the entire agreement of the parties. The acceptance of the agreement by CIVEA disposed "of all issued encompassed" in the grievance. There was no allegation of fraud, accident or mistake. Thus, the alleged oral representations or agreements were merged in or superseded by the subsequent written agreement. Accordingly, parol evidence – the testimony of Mr. Kornfeld – which would serve to vary, modify, or supersede the written agreement is inadmissible.

CIVEA has not met its burden of proving that the Commonwealth did not comply with the settlement agreement. Accordingly, the charge of unfair practices alleging a violation of Section 1201(a)(5) must be dismissed.

Finally, the Union alleges that the Commonwealth violated Section 1201(a)(8) of PERA, which states that a public employer commits an unfair practice by "[r]efusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX". 43 P.S. §1101.1201(a)(8). CIVEA asserts that an alleged failure to comply with a settlement agreement could be a violation of Section 1201(a)(8) because the grievance which was settled had been moved to arbitration prior to the finalization of the settlement and "to the extent that arbitration was already requested and had been scheduled that thereafter we have a settlement agreement. This could be a refusal to implement an award that was arrived pursuant to the arbitration.

However, the Commonwealth points out the fact is that no arbitration award was ever issued on the Weitzel grievance, and therefore, the Commonwealth could not have violated Section 1201(a)(8), which as the plain language of PERA provides, makes it an unfair practice "for an employer to refuse to comply with a binding grievance arbitration award". Scranton Housing Authority, 33 PPER ¶33134 (Final Order, 2002) at 308.

CONCLUSIONS

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

1. That the Commonwealth of Pennsylvania is a public employer within the meaning of Section 301(1) of PERA.

2. That the Correctional Institution Vocational Education Association (CIVEA) is an employe organization within the meaning of Section 301(3) of PERA.

3. That the Board has jurisdiction over the parties hereto.

4. That the Commonwealth of Pennsylvania has not committed unfair practices in violation of Sections 1201(a)(3), (5) 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 charge of unfair practices is dismissed and the complaint is rescinded

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 sixth day of November, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

_____

THOMAS P. LEONARD, Hearing Examiner