COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AFSCME COUNCIL 13	:	
	:	
v.	:	Case No. PERA-C-07-295-E
	:	
COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF PUBLIC WELFARE	:	
TORRANCE STATE HOSPITAL	:	

PROPOSED DECISION AND ORDER

On July 5, 2007, the American Federation of State County and Municipal Employees (AFSCME) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Commonwealth of Pennsylvania, Department of Public Welfare, Torrance State Hospital (Commonwealth), had violated sections 1201(a)(1) and 1201(a)(5) of the Public Employe Relations Act (PLRA) "by failing to abide by and implement" a grievance settlement involving Stacey Enos. On July 25, 2007, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on October 12, 2007. On October 10, 2007, the hearing examiner, upon the request of the Commonwealth and over the objection of AFSCME, continued the hearing.

On April 16, 2008, AFSCME requested that the hearing be rescheduled because the parties had been unable to resolve the charge. On April 17, 2008, the hearing examiner rescheduled the hearing to June 20, 2008. On April 22, 2008, the hearing examiner, upon the request of the Commonwealth and over the objection of AFSCME, continued the hearing. The hearing examiner rescheduled the hearing to July 24, 2008. On July 9, 2008, the hearing examiner, upon the request of the Commonwealth and without objection by AFSCME, continued the hearing. The hearing examiner rescheduled the hearing to August 21, 2008.

On August 21, 2008, the hearing was held. The hearing examiner afforded both parties a full opportunity to present evidence and to cross-examine witnesses. On September 19, 2008, AFSCME filed a brief. On October 20, 2008, the Commonwealth filed a brief.

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

FINDINGS OF FACT

1. The Commonwealth employs psychiatric aides who are represented by AFSCME. (Case No. PERA-R-1207-C)

2. By October 20, 2005, Ms. Enos had been employed by the Commonwealth as a psychiatric aide first at Ebensburg State Hospital and then at Torrance State Hospital. (N.T. 8-9)

3. In late 2006 and early 2007, the parties entered into a grievance settlement as follows:

"The signatory parties agree to the following conditions in final resolution of the charges of inappropriate and unprofessional conduct involving Stacey L. Enos, Psychiatric Aide, at Torrance State Hospital.

1. Contingent on the signed acceptance of this settlement, that discharge action taken against Ms. Enos effective October 20, 2005 shall be converted to a Resignation in Lieu of Termination.

2. Ms. Enos will receive 15 weeks of pay at the appropriate Psychiatric Aide pay rate/pay level.

3. Torrance State Hospital agrees to provide a neutral reference of a p[ro]spective[1] employer of Ms. Enos.

[1] The word actually used by the parties is "perspective." In context, it is apparent that the parties meant to use the word "prospective."

4. It is understood and agreed by the parties involved that by acceptance of this agreement, Ms. Enos waives all contractual appeal rights with regards to the issues encompassed in this settlement. Ms. Enos agrees not to pursue an appeal before the State Civil Service Commission, the PA Human Relations Commission, or any other extra-contractual forum of appeal. If it is discovered that such an appeal has been filed, this settlement will become void and the action giving rise to this settlement will be reinstated.

5. The parties agree that this agreement resolves all issues related to the offense committed by Ms. Enos and is without prejudice to the contractual rights of either party and shall set no precedent for any future incidents."

(N.T. 8-9; AFSCME Exhibit 1)

4. In March 2007, Ms. Enos applied to the Commonwealth for reinstatement as a psychiatric aide at Ebensburg State Hospital. (N.T. 9-10)

5. A representative of the Commonwealth at Ebensburg State Hospital (Gail Yerty) punched Ms. Enos' state identification into a computer system containing the personnel records for all of the Commonwealth's employes. The personnel record for Ms. Enos read "Resign Contact Former Agency." (N.T. 10, 13-18; Commonwealth Exhibit 1)

6. On or about March 29, 2007, Ms. Yerty contacted a representative of the Commonwealth at Torrance State Hospital (Diana Rhea) about Ms. Enos' application for reinstatement. Ms. Rhea informed Ms. Yerty that Ms. Enos "resigned before they could fire [her] for failure to report patient abuse." (N.T. 10, 12-13)

7. On April 12, 2007, Ms. Yerty told Ms. Enos that neither "they" nor "any other state institution" would hire her. (N.T. 10)

8. During 2007, Ms. Rhea received a call from an employer other than the Commonwealth requesting references with regard to Ms. Enos. Ms. Rhea verified the position Ms. Enos held while employed by the Commonwealth and the dates Ms. Enos was employed by the Commonwealth. (N.T. 15-16)

DISCUSSION

AFSCME has charged that the Commonwealth committed unfair practices under sections 1201(a)(1) and 1201(a)(5) "by failing to abide by and implement" a grievance settlement involving Ms. Enos. As AFSCME points out, under the grievance settlement, "Torrance State Hospital agree[d] to provide a neutral reference of a p[ro]spective employer of Ms. Enos" (finding of fact 3). As AFSCME also points out, instead of providing a neutral reference for Ms. Enos when she subsequently applied for reinstatement at Ebensburg State Hospital, a representative of the Commonwealth at Torrance State Hospital (Ms. Rhea) informed a representative of the Commonwealth at Ebensburg State Hospital (Ms. Yerty) that Ms. Enos "resigned before they could fire [her] for failure to report patient abuse" (findings of fact 4-6).

The Commonwealth contends that the charge should be dismissed for lack of proof. According to the Commonwealth, the grievance settlement does not require that it provide itself with a neutral reference for Ms. Enos, so it did not fail to abide by or implement the grievance settlement when Ms. Rhea did not provide Ms. Yerty with a neutral reference for Ms. Enos. The Commonwealth also points out that it complied with the grievance settlement by providing a prospective employer other than itself with a neutral reference for Ms. Enos (finding of fact 8).

An employer commits unfair practices under sections 1201(a)(1) and 1201(a)(5) if it refuses to comply with the terms of a grievance settlement. Moshannon Valley School District v. PLRB, 597 A.2d 229 (Pa. Cmwlth. 1991). If the employer complies with the terms of a settlement agreement, however, then no such unfair practices may be found. East Stroudsburg School District, 29 PPER ¶ 29230 (Final Order 1998). Nor may any such unfair practices be found if the record does not show that the employer has refused to

comply with the terms of a grievance settlement. Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, 28 PPER ¶ 28060 (Proposed Decision and Order 1998).

There is no dispute that the Commonwealth complied with the terms of the grievance settlement to the extent that it provided an employer other than itself with a neutral reference for Ms. Enos (finding of fact 8). The dispositive question, then, is whether or not the Commonwealth refused to comply with the terms of the grievance settlement by not providing itself with a neutral reference for Ms. Enos when she applied for reinstatement at Ebensburg State Hospital. The record does not show that the Commonwealth thereby refused to comply with the terms of the settlement agreement. Accordingly, the charge must be dismissed.

As noted above, under the grievance settlement, "Torrance State Hospital agree[d] to provide a neutral reference of a p[ro]spective employer of Ms. Enos." Black's Law Dictionary (6th Edition 1990) defines the word "prospective" as meaning "[i]n the future; looking forward; contemplating the future." Miriam Webster's Collegiate Dictionary (10th Edition 1993) similarly defines the word "prospective" as meaning "relating to or effective in the future." Of course, when the parties entered into the grievance settlement, the Commonwealth, which includes both Torrance State Hospital and Ebensburg State Hospital, was not a future employer of Ms. Enos; rather, the Commonwealth was her employer. It is apparent, then, that the grievance settlement only obligated the Commonwealth to provide an employer other than itself with a neutral reference for Ms. Enos. Thus, there is no basis for finding that the Commonwealth refused to comply with the terms of the grievance settlement by not providing itself with a neutral reference for Ms. Enos when she applied for reinstatement at Ebensburg State Hospital.

The Board dismissed a similar charge on a substantially similar record in East Stroudsburg School District, supra. In that case, the parties entered into a grievance settlement under which an employer was to "create specific policies and procedures for the utilization of the parking lots by students for various activities, including but not limited to fire drills and the like." Id. at 561. The charging party alleged that the employer refused to comply with the terms of the grievance settlement when it drafted policies and procedures that were not to the charging party's liking. Noting that "[t]he grievance settlement literally requires that the [employer] would create policies, and not that the parties would negotiate such policies," id. at 562, the Board found that the employer complied with the terms of the grievance settlement by drafting the policies and procedures even though they were not to the charging party's liking.

A hearing examiner dismissed a similar charge on a substantially similar record in Commonwealth of Pennsylvania, Department of Corrections, Pittsburgh SCI, supra. In that case, the parties entered into a grievance settlement under which the employer was "to adhere to Comptroller Policy regarding 10% deduction for any and all future overpayments by employer, as per management directive." The charging party alleged that the employer violated the agreement by recouping overdrawn leave at a 20% rate. Noting that the management directive referenced in the grievance settlement applied to overpaid salary rather than to overdrawn leave, the hearing examiner in that case found that the employer had not refused to comply with the terms of the grievance settlement by recouping overdrawn leave at a 20% rate.

CONCLUSIONS

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

1. The Commonwealth is a public employer under 301(1) of the PERA.

2. AFSCME is an employe organization under section 301(3) of the PERA.

3. The Board has jurisdiction over the parties.

4. The Commonwealth has not committed unfair practices under sections 1201(a)(1) and 1201(a)(5) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the charge is dismissed and the complaint 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 days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-eighth day of October 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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Donald A. Wallace, Hearing Examiner