

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

RADNOR TOWNSHIP EDUCATION :
ASSOCIATION PSEA/NEA :
:
v. : Case No. PERA-C-07-104-E
:
RADNOR TOWNSHIP SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On March 2, 2007, the Radnor Township Education Association PSEA/NEA (Union) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Radnor Township School District (District) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by "failing to comply with the terms of [a] grievance settlement." On April 20, 2007, the Secretary of the Board issued a complaint and notice of hearing assigning the charge to conciliation and directing that a hearing be held on June 25, 2007, if conciliation did not resolve the charge by then. After a series of continuance requests the hearing was finally held on September 6, 2007, when both parties were afforded a full opportunity to present evidence and to cross-examine witnesses. Each party filed a post-hearing brief.

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 August 29, 2005, a level II contractual grievance was filed by the Union, alleging that the grievant, Elizabeth McIlwain, was placed on the wrong pay step according to the holding in Mifflinburg Area Education Association v. Mifflinburg Area School District, 555 Pa. 326, 724 A.2d 339 (1999). Thomas Compitello, the director of human resources was the District's designated representative for level II grievances. (N.T. 128; Union Exhibit 2, pp. 1, 2; District Exhibit 1; Joint Exhibit 1).

2. In a November 15, 2005, e-mail, Compitello proposed putting the grievant "on the proper pay step based on the Mifflinburg/Penns Manor cases[,]" in return for the Union agreeing not to file any more grievances for other teachers on this issue. (Union Exhibit 2, p. 26).

3. The Union, in a November 18, 2005, e-mail countered Compitello's settlement offer with a proposal that the Union be allowed time to poll its members to see if any other teachers thought they might be misplaced on the salary schedule, and that back-pay back-pay limits be set for any grievances the Union might file thereafter. (Union Exhibit 2, p. 25).

4. In a November 30, 2005, corporeal meeting, Compitello and the Union "came to a verbal agreement about how both parties will proceed from here, especially regarding [the Union] polling it's [sic] members and setting an ending date of January 30[, 2006], with a meeting to be scheduled before then." (Union Exhibit 2, p. 27).

5. In a December 15, 2005, e-mail, Compitello sent new proposed settlement language to the Union. Under this language the Union would have to file Mifflinburg grievances by January 31, 2006, for any additional teachers. For any teachers having Mifflinburg grievances filed after that date, back-pay adjustments could be made only from the date that grievance was filed, and would be limited to teachers hired by the District after January 31, 2006. In a January 10, 2006, e-mail to Compitello, Paul Wright, the Union's grievance chairman wrote "I hope you will forward me your rendition of this settlement so we can get it done." (Union Exhibit 2, p. 30, 31, 33).

6. In a January 24, 2006, e-mail, the Union sent Compitello the names of twenty-seven teachers who it thought might be on the wrong pay step. The Union also asked if Compitello wanted the Union to file a grievance for these teachers, "or do you want to handle this process as an ongoing discussion without any penalty for violation of our still tentative (unsigned) agreement?" (Union Exhibit 2, p. 34, 35).

7. In a January 30, 2006, e-mail to Compitello, the Union, having removed the January 31, 2006, deadline from the proposed settlement language asked, " if you want to maintain that January 31st date in #1, we can file the formal grievance as per the initial proposal. Please let me know as soon as you can...." (Union Exhibit 2, p. 37, 38).

8. In a February 28, 2006, e-mail to Compitello, the Union added another name to the list of teachers, and also acknowledged that Compitello was meeting with Michael Levin, Esq., the District's attorney, "to finalize the numbers." The Union also asked, "When can we expect some numbers on the settlement?" (Union Exhibit 2, p. 39).

9. On April 7, 2006, after perusing the District's files, the Union sent Compitello an "interim" list of five teachers the Union felt were on the wrong pay step under the Mifflinburg decision. The Union also informed Compitello that it had not yet finished reviewing files. (Union Exhibit 2, p. 43).

10. In a memorandum to Compitello, dated May 23, 2006, the Union sent a chart indicating nine teachers. According to the Union, "the attached chart presents what we believe to be issues that need to be resolved in order to complete work on the settlement." The Union then suggests that it be allowed to review the District's payroll records. (Union Exhibit 2, p.44, 45).

11. In a July 12, 2006, memorandum, the Union informed Compitello that the accompanying chart of eight teachers represented what the Union thought was the proper pay-scale movement for those teachers. The Union closed by asking, "[i]n conjunction with the calculations you have completed and Mike Levin has reviewed in Betsy's case, we request that you review the numbers for the named employees who, we believe, have been disadvantaged in accordance with Mifflinburg and Penns Manor." (Union Exhibit 2, p.48, 49).

12. At a September 27, 2006, corporeal meeting, the Union and the District discussed questions that Compitello had concerning some teachers on the list submitted in the July 12, 2006, memorandum. (N.T. 153, 154; Union Exhibit 2, p.52).

13. In a November 1, 2006, e-mail, Compitello told the Union he was meeting with Michael Levin, Esq., the District's labor counsel "regarding Mifflinburg." (Union Exhibit 2, p.54).

14. On December 17, 2006, Levin sent the Union an e-mail that questioned why the current grievant was not part of a prior settlement over the Mifflinburg issue for teachers, and disagreeing with the Union's assertion that there was a settlement for the other teachers. In a December 20, 2006, e-mail the Union wrote the District, "Tom [Compitello] wanted us to complete all the work, including all the back-pay calculations, prior to signing off on the final." (District Exhibit 30, 36).

15. In a January 16, 2007, e-mail the Union sent to Levin calculations for each teacher in question. The e-mail also stated "[t]his is how I would envision the calculations being done for everyone on the list: amount received, amount that should have been received, difference between the two and total dollars due each year." (Union Exhibit 2, p. 55, 56).

16. In a February 9, 2007, e-mail, the Union refused the District's settlement offer of \$15,000.00 "to be split among all the grievants." (District Exhibit 39).

DISCUSSION

The Union asserts that the District has reneged on a grievance settlement. The District counters that there was no grievance settlement for two reasons: the parties never agreed to the specific terms, and the necessary School Board ratification never occurred. Additionally, the District argues that this charge should be deferred. The deferral argument does not carry the day¹. However, a perusal of the record shows that the ongoing discussions between the parties never reached sufficient specificity to be considered an agreed-upon settlement. Moreover, to the extent that the Union had

¹ The Board's deferral policy was first set forth in Pine Grove Area School District, 10 PPER ¶ 10167 (Order Deferring Unfair Practice Charge Until Further Order of the Board, 1979). The Board does not defer refusal to comply with settlement agreement charges. University of Pittsburgh, 29 PPER ¶ 29114 (Proposed Decision and Order, 1998).

discussions with Compitello, the District's director of human resources, over matters not the subject of the grievance, he had no authority to bind the School Board. Consequently, the District has not violated Section 1201(a)(1) and (5) of PERA.

The genesis of this dispute was the filing of a contractual grievance, in August of 2005, over the alleged misplacement of a teacher on the contractual pay scale, pursuant to the holding in Mifflinburg Area Education Association v. Mifflinburg Area School District, 555 Pa. 326, 724 A.2d 339 (Pa. 1999). In the course of settlement discussions over that grievance, in a November 15, 2005, e-mail, Compitello proposed putting the original grievant on "the proper pay step," but also sought to stop any further grievances from other teachers alleging misplacement on the salary scale based upon the Mifflinburg rationale. The Union, in an e-mail on November 18, 2005, responded to Compitello's proposal by asking for the opportunity to poll other teachers about their possible pay-step misplacement before the door was closed. In a November 30, 2005, corporeal meeting, the parties agreed "about how both parties will proceed," and that the Union would poll teachers, "with an ending date of January 30 [2006], with a meeting to be scheduled before then."

On December 15, 2005, Compitello sent the Union some proposed language, which added additional restrictions on whether subsequent Mifflinburg-type grievances could be filed, and if so, how any recovery would be limited. After a phone conversation the next day, Compitello sent a confirming e-mail to the Union that the proposed language was acceptable to the Union. Nevertheless, on January 10, 2006, the Union e-mailed Compitello, "I hope that you will forward me your rendition of this settlement so we can get it done."

In a January 24, 2006, e-mail the Union sent the District a list of twenty-seven teachers' names whose personnel files the Union wanted to examine for Mifflinburg discrepancies. The Union also asked if Compitello wanted the Union to file a contractual grievance for these teachers, or whether he wanted "to continue to handle this process as an ongoing discussion without any penalty for violation of our still tentative (unsigned) agreement?"

In a January 30, 2006, e-mail, the Union sent Compitello its proposed language for settlement, sans the January 31, 2006, deadline for the close of polling teachers. The Union also stated in that e-mail, "[i]f you want to maintain that January 31st date. . . we can file the formal grievance as per the initial proposal. Please let me know as soon as you can. . . ." There was no grievance filed for the other teachers.

On February 28, 2006, the Union wrote Compitello, "We understand that Tom [Compitello] met with Mike Levin [Esq.] to finalize the numbers, and we are waiting for you to send us this settlement." At that time the Union had still not examined the District's files for teachers proposed to be on the wrong pay steps.

By April 7, 2006, the Union had looked through some of the District's files and sent a list of five named teachers that it believed to be on the wrong pay steps. On May 23, 2006, the Union wrote Compitello that it might need to review actual payroll records of some teachers "if we are unable to understand these situations through a review of the personnel files." That letter also stated, "The attached chart presents what we believe to be the issues that need to be resolved in order to complete work on the settlement."

In a July 12, 2006, memorandum, the Union sent Compitello a revised list of teachers it believed were eligible for Mifflinburg relief, and asked him to "review the numbers for the named employes...." Moreover, in a September 27, 2006, corporeal meeting the parties discussed only those teachers who were not the subject of the contractual grievance.

Later in 2006, the District involved its attorney in the settlement discussions. Essentially, after the attorney became involved, settlement discussions took a more adversarial and legalistic tack. Discussions dragged on until 2007, with disagreement over whether the grievant was covered by a previous settlement, and further disagreements over the additional teachers for whom no grievance was ever filed. Finally, the District's attorney offered a settlement amount for both the grievant and the other teachers that the Union thought was grossly inadequate. The Union then filed this charge.

This charge presents the interesting conundrum of how to treat a possible settlement agreement when part of the supposed agreement is the result of a grievance filed for one,

named employe, and another part is simply the result of discussions to cover similarly situated employes, for whom no grievance was filed. The District argues that School Board approval is necessary for any agreement, even for the settlement of a grievance by that person who is authorized to do so under the parties' collective bargaining agreement. The Union, on the other hand, argues that Compitello had the authority to settle not only the grievance but also the discussions over the other teachers, for whom no grievance was ever filed. Neither party's position accurately reflects the law.

Under Board law, Compitello, the District's human resources director, had the authority to bind the District in settling the contractual grievance at his level, but he needed specific School Board approval for any settlement of the other teachers' pay scale issues. Both the Union and the District each ignore that half of the bifurcation that hinders their case. A review of Board law concerning authority under the contractual grievance procedure provides a helpful framework.

The parties' collective bargaining agreement contains a bargained-for grievance procedure. At each step in the grievance procedure the parties have bargained a designated, District employe who has the authority to settle any grievance at that step. Compitello, the District's human resources director was the designated person for Level II grievances. (N.T. 207, 208). He did not need additional School Board approval to settle grievances at his step in the procedure. See Moshanon Valley School District, 21 PPER ¶ 21126 (Final Order, 1990)(district bound by decision of its designated representative at first level of contractual grievance process); Zelienople Borough, 27 PPER ¶ 27024 (Final Order, 1995)(the public employer exercises its discretion in negotiating the collective bargaining agreement and delegates its authority to designated representatives at lower stages in the grievance procedure).

So, while Compitello had the independent authority to settle grievances at his designated step in the grievance procedure, he did not have independent authority to bind the School Board in discussions about other issues. Both parties ignore this difference.

The District argues that Compitello needed School Board authority to bind the District in all parts of the purported agreement. The District ignores the fact that he had binding authority under the collective bargaining agreement and only needed School Board authority to bind the District in discussions about the other teachers for whom no grievance was filed.

The Union argues that, in the past, Compitello and the Union have often reached informal agreements over issues before, and after, grievances were filed. Ignoring the need for School Board approval of agreements that did not arise from the grievance process, the Union stresses that agreements were not always memorialized in formal, signed documents, but rather, were often agreed to verbally, or in exchanged but unsigned writings. Those kinds of relaxed procedures may be sufficient when no bugbears arise before performance. But, when discussions breakdown, those lax procedures provide little binding protection for discussions arising from a grievance, let alone those discussions that do not even have their genesis in the grievance process and therefore require School Board approval.

The record here shows that the parties, at best, had an agreement in principal. That is, the parties agreed to examine whether the grievant and the other teachers were on the proper pay steps, in accordance with a prior Commonwealth Court decision.

There was no binding agreement over the teachers for whom no grievance was filed, for two reasons. Firstly, Compitello had no binding authority, and there is no evidence that he got School Board approval. Secondly, even if he had binding authority, there was insufficient specificity in the discussions and writings for me to ascertain exactly what the parties had agreed to, and therefore, how to fashion any meaningful remedy.²

As for the grievance settlement, from the informality and vagueness of the parties' back-and-forth communications, I can tell little more than that the parties agreed to examine whether the grievant was on the correct pay step. The testimony about discussions

² The record here highlights the truth of Joseph Joubert's observation that, "Words, like eyeglasses, obscure everything that they do not make more clear."

over the grievance were so nebulous as to make it impossible to ascertain what the parties had agreed to, and therefore, what the appropriate remedy might be, other than the possibility of putting the grievant on "the proper pay step," whatever that may be.

The Union lastly argues that the District's actions constitute an independent violation of Section 1201(a)(1) of PERA. According to the Union, "[t]he District's clear message here was that it does not have to bargain in good faith with the Association or comply with grievance settlement agreements." (Union's brief at 26). The Union correctly identifies that such a violation occurs "where, in light of the totality of the circumstances, the employer's actions have a tendency to coerce a reasonable employe in the exercise of protected rights." Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001).

The record does reflect that settlement discussions between the Union and Compitello were of a different tenor after the District's counsel took over the dialogue. Counsel raised issues that Compitello had not, and then offered a monetary settlement that was grossly less than the Union's calculation. That more adversarial posture by the District's attorney ultimately scuttled any agreement. While the record may show that the District's tack changed from being cooperative to being adversarial, that change does not support an independent violation of Section 1202(a)(1) of PERA.

The Union has not shown that the parties reached a binding settlement in the grievance that was filed. The Union has not shown that the parties reached a binding settlement over the other teachers for whom no grievance was filed. The Union has not shown that the District committed an independent violation Section 1201(a)(1) of PERA. Therefore, this charge is dismissed.

CONCLUSION

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 within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The District has not committed unfair practices within the meaning of Section 1201(a)(1) and (5) 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 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 decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-fourth day of July, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

TIMOTHY TIETZE, HEARING EXAMINER