

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

DOWNINGTOWN AREA EDUCATION ASSOCIATION :  
PSEA/NEA :  
v. : Case No. PERA-C-07-247-E  
DOWNINGTOWN AREA SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On June 11, 2007, the Downingtown Area Education Association (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Downingtown Area school District (District) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA). On July 10, 2007, the Secretary of the Board issued a complaint and notice of hearing wherein this case was scheduled for hearing on August 16, 2007, in Downingtown, Pennsylvania. A series of granted continuance requests resulted in a hearing finally taking place on December 12, 2007, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

The examiner, on the basis of the testimony 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. (District Exhibit 1).
2. The Union is an employe organization. (District Exhibit 1).

3. On March 31, 2006, the Union filed a grievance on behalf of bargaining unit member Dennis Gliem<sup>1</sup>. At each level of the contractually mandated grievance process, the grievance was denied. It was then listed for binding grievance arbitration before Arbitrator Rochelle K. Kaplan, with a hearing scheduled for May 9, 2007. (District Exhibit 1, 32; Union Exhibit D).

4. In early April of 2007, Jeffrey Sultanik, a lawyer and partner in the firm of Fox Rothchild, LLP, acting as the School Board's attorney, e-mailed the Union's attorney, therein initiating discussions about the upcoming Gliem grievance arbitration. After a series of e-mails and telephonic conversations between the attorneys, a settlement was reached that was acceptable to the Union, the District's attorney, the District's director of human resources and the superintendent. The arbitration hearing date was continued to allow the parties time to finalize the settlement. The parties exchanged a series of proposals, each of which made minor language modifications, however, the District's participants and the Union had agreed to a final dollar amount. (N.T. 15, 16, 17, 19-22, 32-34; District Exhibit 32-37).

5. On May 3, 2007, the District's attorney e-mailed the Union's attorney that the School Board, at their meeting that day, refused to settle the matter and rejected his recommendation to adopt the then agreed-upon settlement terms. The District's attorney had not broached the settlement with the School Board before it was presented to the Board for its approval. The District's attorney and the administration were surprised by the School Board's refusal to accept their recommended settlement. (N.T. 23, 24, 35-38, 67, 68, 77).

DISCUSSION

The Union alleges that the District violated Section 1201(a)(1) and (5) of the PERA "by failing [to] bargain in good faith by representing that its counsel had authority to negotiate the resolution of [a] grievance, but by refusing [to] comply with the negotiated settlement."

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<sup>1</sup> Union Exhibit F recites the date of filing for the Gliem grievance as September 5, 2006, while District Exhibit 32 recites a filing date of March 31, 2006.

More specifically, the Union's allegation is that, after a grievance had been denied at all the lower contractual steps, but before the grievance arbitration hearing, the District's attorney suggested to the Union's attorney that settlement negotiations might prove fruitful. The parties not only discussed settlement, but also reached a resolution acceptable to the Union, the District's attorney, director of human resources and superintendent. After polishing some minor language, the Union was informed by the District's attorney that the School Board rejected his recommended settlement, and refused to settle the grievance.

The Union argues that the District had a duty to bargain in good faith with the Union over the grievance settlement, citing Section 1201(a)(5) of the PERA. To parry the District's argument that only the School Board may bind the District to a grievance settlement, the Union also argues, "[t]he [School] Board is not the only entity that may bind the District with regard to the settlement of grievances. In fact, the [parties' collective bargaining agreement] specifically provides for resolution of grievances at the various levels of the grievance procedure." (Union's brief at 13). Neither of these arguments, however, carries the day and this charge is dismissed.

The Union first argues that the District has a duty to bargain in good faith over the resolution of the grievance after it has been through the contractually mandated procedures and is merely awaiting a scheduled arbitration. In support of this argument the Union recites the language in Section 1201(a)(5) of the PERA which states that an employer commits an unfair practice by "refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussion of grievances with the exclusive representative." 43 P.S. § 1101.1201(a)(5).

Attempting to put a finer point on its argument, the Union then cites Philadelphia State Hospital, 17 PPER ¶ 17062 (Proposed Decision and Order, 1986) for the proposition that "[i]n meeting their good faith bargaining obligation, public employers are expected to cooperate with unions in an attempt to resolve grievances." 17 PPER at 164. While at first blush this quote seems to support the Union's position, a discriminating look at the case reveals it to be materially different from the instant facts.<sup>2</sup> The Philadelphia case involved the employer's sustaining the union's grievance at a lower step in the process.

In the Philadelphia case, the employer sustained the union's grievance at the second step in the parties' contractually mandated grievance process. As a result, the union ceased processing the grievance. The union later found out that the employer was not abiding by its own voluntary agreement.

The union, in the Philadelphia case filed a charge with the Board alleging a violation of Section 1201(a)(5) of the PERA. The above-quoted language, then, refers to an employer's duty to abide by its sustaining a grievance at a lower step in the contractually mandated process, not to any duty by an employer to bargain in good faith with the union after the grievance has gone through all the contractual steps and been denied at each one, as in this case. Here, the District had "discussed" the grievance with the Union by proceeding through all the contractual steps.

Moreover, the *District* did not offer to explore an irenic avenue, but rather the District's attorney opened those discussions, albeit with the sanction of the superintendent and the director of human resources. (N.T. 52). The difference between the actions of the School Board and its attorney is an important distinction that the Union seeks to muddle for purposes of its argument.

The Union's constant use of the term "District," regardless of whether it refers to the District (i.e. the School Board), the District's attorney or its administrative officers, serves only to cloud the issue. This practice results in some arguments that mislead, and, indeed, on occasion misstate the facts in this case.

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<sup>2</sup> The Philadelphia case does not involve a school district, and therefore does not involve the authority of a school board vis-à-vis its attorney's authority.

By way of example, the Union states on page twelve of its brief that "the District never indicated to the [Union], explicitly or implicitly, that the District had reservations about any terms of the agreement." (emphasis in original). It was the District's attorney that negotiated the agreement with the Union, but it was the School Board that nixed the agreement. The record shows that the District's attorney had not broached the agreement with the School Board until the Union had agreed to its specifics. (N.T. 67-69). Despite the Union's allegation otherwise, as soon as the District (i.e. the School Board) became aware of its attorney's recommended settlement, the School Board rejected it. And, that rejection was timely transmitted to the Union by the District's attorney.

The Union also states on page thirteen of its brief that "the true issue here [is] whether the District's actions in the negotiation of the settlement of the Gliem grievance were in good faith when the District never intended to settle the grievance." The uninformed reader would conclude that there was a conscious intent to mislead the Union by the "District." Such an insinuation is completely at odds with the record. Referring to both the District's attorney and the School Board as the "District" is simply a self-serving misstatement and borders on verbicide. The District's attorney negotiated with the Union over the settlement of a grievance awaiting arbitration. When the District's attorney presented his recommended settlement to the School Board, the Board summarily rejected the recommendation. There was no cabal here, intent on misleading the Union. The District's attorney was as surprised as the Union when the School Board rejected the recommended settlement. (Union Exhibit L).

Another example of the obfuscation caused by the Union's use of the term "District," regardless of who the actor was in reality, is expressed in this excerpt from page sixteen of the Union's brief: "Had the District communicated its true position to the [Union] at the outset of the ill-fated settlement talks in April 2007, the grievance underlying this matter would be resolved by now." The "District" (i.e. the School Board) had no position, true or otherwise, when these negotiations started because it was unaware negotiations were going on! The District's attorney believed, in good faith, that he was negotiating a settlement that would be acceptable to the School Board, as had his prior recommended settlements. The District's "true position" was not known until the School Board, upon being told of the recommended settlement, summarily rejected it.<sup>3</sup>

Given the fact that in the past virtually all the negotiated settlements between the Union's attorney and the District's attorney had been approved by the School Board, it is no wonder that the Union was blindsided by the School Board's rejection of this recommended settlement.<sup>4</sup> Nevertheless, every prior settlement entered into this record required the signature of the School Board president, and many of the e-mails between the parties refer to the fact that settlement documents must be completed by the date that School Board meetings were scheduled, since the School Board must approve them before they become final. (N.T. 56, 57, 58; District Exhibit 13, 14, 16, 22, 23, 24). Every draft of the Gliem settlement clearly required the signature of the School Board president. (Union Exhibit F, I, K). While the School Board's prior consistent acceptance of its attorney's recommended settlements may have lulled the parties into an expectation of routine, rubber-stamped ratifications, clearly, both parties were aware that the District's attorney was not a plenipotentiary when it came to binding the District in grievance settlement discussions. (N.T. 26, 27, 67, 68, 86).

Next, the Union argues, on page thirteen of its brief, that the School Board "is not the only entity that may bind the District with regard to the settlement of grievances. In fact, the [collective bargaining agreement] specifically provides for resolution of grievances at the various levels of the grievance procedure." While that assertion is true, it is of no import to the analysis here and reveals a level of sciolism in the Union's analysis.

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<sup>3</sup> To repeatedly suggest that the School Board was somehow aware of the ongoing negotiations and chose merely to string the Union along is not at all supported by the record and is such a mischaracterization that it is hard to attribute it to mere overzealousness.

<sup>4</sup> Admitting his own amazement, the District's attorney testified that, "the administration in this District and I were taken aback by the [School] Board's reaction, which we did not expect in this process." (N.T. 67).

The bargained-for, contractual grievance procedure gives named District administrators the authority to settle grievances at their respective steps in the procedure. As the Board opined in 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." Id. at 50.

This collective bargaining agreement gives the building principal and the superintendent the power to grant or deny the Union's grievances at Level One and Level Two of the procedure, respectively. (District Exhibit 1, p. 4). In order for the underlying grievance here to be awaiting arbitration, it must necessarily have been already denied by both the principal and the superintendent. Simple logic dictates that their authority to bind the School Board passes as the grievance passes their step in the procedure.

How the contractual grievance procedure somehow gives the District's attorney the power to bind the School Board remains a mystery, especially in light of the repeated references in correspondence between the parties about the need to have settlements ready for School Board meetings so final actions can be taken, and the signature line for the president of the School Board on each agreement.

The Union also charges an independent violation of Section 1201(a)(1) of the PERA. Such a violation "will be found if the actions of the employer, in light of the circumstances in which the particular act occurred, tend to be coercive, regardless of whether employes have been shown, in fact to have been coerced." Northwestern School District, 16 PPER ¶ 16092 at 242 (Final Order, 1985). Applying that general test to the specific facts of this case, the Union argues, on page eighteen of its brief that, "[t]he District's clear message here was that it does not have to bargain in good faith with the [Union], and even if it were to negotiate a grievance settlement agreement, it always has the option of backing out on a whim."

Once again, the Union fails to differentiate between the School Board and the District's attorney. Failing to recognize this distinction allows the Union to ignore the different role each plays in the process under scrutiny. Clearly, the School Board has the right to reject the recommendation of its attorney, and clearly, the School Board's attorney can only make recommendations to the School Board. The simple fact that the School Board chose to reject this recommendation upon its presentation does not coerce employes in the exercise of their rights. If that were the case, then every time the School Board did not accept its attorney's recommendation concerning an issue affecting bargaining unit members, and the Union thought it should have accepted the recommendation, it would be an unfair practice.

While the Union is understandably miffed that the settlement did not come to fruition, the District's attorney did not commit an unfair practice when he negotiated the agreement unbeknownst to the School Board, which then rejected his recommendation. And, the School Board did not commit an unfair practice when it, after being made aware of the recommended settlement previously negotiated by its attorney, rejected it.

One final matter needs to be made clear. To the extent it is not already evident, nothing in my discussion should be interpreted as implying that the District's attorney was in any way misleading the Union in his sincere efforts to reach an amenable settlement of this grievance, which he thought from experience would be fully acceptable to the School Board. It is clear from the testimony that he and the District's administrative officers fully expected the School Board's virtually automatic homologation of their recommended settlement, and all were quite chagrined when that did not happen. (N.T. 67-70, 86).

The Union has not proved a violation of Section 1201(a)(1) and (5) of the PERA, and consequently, 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 the PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of the 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 the PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the 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 sixth day of June, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

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TIMOTHY TIETZE, HEARING EXAMINER