

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

GOVERNOR MIFFLIN EDUCATION :
ASSOCIATION, PSEA/NEA :
 :
v. : Case No. PERA-C-08-66-E
 :
GOVERNOR MIFFLIN SCHOOL DISTRICT :

FINAL ORDER

The Governor Mifflin Education Association, PSEA/NEA (Association) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) on March 14, 2008. The Association's exceptions challenge a March 4, 2008 decision of the Secretary of the Board declining to issue a complaint and dismissing the Association's Charge of Unfair Practices filed against Governor Mifflin School District (District).

The Association alleged in its Charge that it filed a grievance regarding the District's assignment of duties to secondary special education teachers prior to the contractual workday. The Association acknowledged that the Arbitrator issued a decision on December 2, 2007, denying the grievance. However, the Association alleged in its Charge that the Arbitrator's award "clarified the number of duty-free self-directed work periods that special education teachers were respectively entitled to per six-day work cycle (seven)." The Association asserted that the District refused to comply with the Arbitrator's interpretation of the contract to require that the secondary special education teachers be given seven free periods to use as they wish for special education work. The Association alleged that the District's refusal violated Section 1201(a)(1) and (8) of the Public Employee Relations Act (PERA).

In dismissing the Charge, the Secretary stated that the Association had failed to state a cause of action under Section 1201(a)(8) of PERA because its grievance had been denied and the Arbitrator did not direct the District to assign seven free periods to the secondary special education teachers. Rather, the Arbitrator affirmed the District's right to assign work duties to the secondary special education teachers prior to the contractual workday. The Secretary further stated that the Association had failed to allege facts to support a finding that the District had committed an independent violation of Section 1201(a)(1) of PERA. The Secretary also noted that the Association's Charge would more properly be brought as a new grievance. Therefore, the Secretary declined to issue a complaint and dismissed the Charge.

In its exceptions, the Association challenges the Secretary's decision declining to issue a complaint. In determining whether to issue a complaint, the Board assumes that all facts alleged are true. Issuance of a complaint on a charge of unfair practices is not a matter of right, but is within the sound discretion of the Board. Pennsylvania Social Services Union, Local 668 v. PLRB, 481 Pa. 81, 392 A.2d 256 (1978). A complaint will not be issued if the facts alleged in the charge could not support a cause of action for an unfair practice as defined by PERA. Homer Center Education Association v. Homer Center School District, 30 PPER ¶ 30024 (Final Order, 1998).

When the complainant alleges a refusal to comply with a grievance arbitration award, the Board's inquiry is limited to determining whether (1) an award exists; (2) no appeal of the award has been filed or stay of the award issued; and (3) the respondent has failed to comply with the provisions of the arbitration award. East Hempfield Township Police Association v. East Hempfield Township, 38 PPER ¶ 138 (Final Order, 2007); Teamsters Local 401 v. Hazle Township, 38 PPER ¶ 157 (Final Order, 2007). The complainant bears the burden of establishing that the respondent has failed to comply with the arbitration award. McCandless Police Officers Association v. Town of McCandless, 30 PPER ¶ 30141 (Final Order, 1999).

Although the Arbitrator issued an award and the time for filing an appeal has expired, the Association has failed to allege facts that if proven would demonstrate a

failure to comply with the award. Indeed, the Arbitrator denied the Association's grievance, stating that the District was complying with the provisions of the parties' collective bargaining agreement (CBA). Further, the Arbitrator's decision was limited to determining whether the District's assignment of morning duties to the secondary special education teachers prior to the instructional day violated the provisions of the CBA. The Arbitrator found that the contractual language relied on by the Association was not intended to limit the District's ability to schedule secondary special education teachers outside of the instructional day. Accordingly, the Arbitrator denied the grievance filed by the Association over the assignment of duties before the commencement of the instructional day.

The Association now seeks to rely on what is essentially dicta in the Arbitrator's award as requiring the District to provide the secondary special education teachers with a particular number of duty-free work periods during the instructional day. However, that was not the issue posed in the grievance and the Arbitrator did not direct the District to provide the teachers with a specified number of duty-free work periods during the instructional day. Therefore, as stated by the Secretary, the Association's claim must be brought as a new grievance. Because the Association has not alleged facts that would support a finding that the District violated Section 1201(a)(1) or (8) of PERA, the Secretary did not err in declining to issue a complaint and dismissing the Charge.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Secretary's decision declining to issue a complaint.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Governor Mifflin Education Association, PSEA/NEA are dismissed and the Secretary's March 4, 2008 decision not to issue a complaint be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this fifteenth day of April, 2008. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.