

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MOUNTAIN VIEW EDUCATIONAL SUPPORT :
PERSONNEL ASSOCIATION :
:
v. : Case No. PERA-C-07-395-E
:
MOUNTAIN VIEW SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On September 12, 2007, the Mountain View Educational Support Personnel Association(Union) filed a charge of unfair practices (Charge) with the Pennsylvania Labor Relations Board (Board) alleging that the Mountain View School District (District) violated Section 1201(a)(5) of the Public Employe Relations Act (PERA) by unilaterally implementing changes in medical and hospitalization insurance, on July 1, 2007, in contravention to the parties' collective bargaining agreement (CBA).

On October 18, 2007, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing take place on December 18, 2007 at the District in Kingsley, Pennsylvania. The examiner consolidated the Charge, for hearing purposes only, with several other charges. These other charges have different case numbers and involve the District and the Union, or the District and the union for the professional unit at the District. By letter dated November 20, 2007, the examiner continued the hearing to January 25, 2008, at the same location. During the hearing on that date, both parties in interest were afforded a full opportunity to present testimonial and documentary evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs. The Union also submitted with its post-hearing brief the arbitration award (Award) resolving the Union's grievance, which complained of the same facts and circumstances that gave rise to the Charge. The Award was issued on January 27, 2008, two days after the hearing in this case.

DISCUSSION

Due to the Union's submission of the Award, the examiner must determine whether post-arbitration deferral is appropriate. The Commonwealth Court has approved of the Board's post-arbitration deferral policy. AFSCME, Council 13 v. PLRB, 529 A.2d 1188 (Pa. Cmwlth. 1987). As set forth in PLRB v. Pine Grove Area School District, 10 PPER ¶ 10167 (Order Deferring Unfair Practice Charge Until Further Order of the Board, 1979), the processing of a charge is to be deferred pending completion of the grievance-arbitration process when (1) a grievance has been filed; (2) the parties' dispute is rooted in their collective bargaining agreement; and (3) no discrimination or enmity toward the exercise of employe rights under PERA has been alleged. The Commonwealth Court has endorsed the Board's deferral policy. York Paid Firefighters Ass'n, Local 627 v. PLRB, 630 A.2d 527 (Pa. Cmwlth. 1993). These are the pre-arbitration criteria, which must initially be satisfied in a post-arbitration deferral matter. AFSCME, supra.

The documents submitted to the Board reveal that there is no dispute that a grievance was filed and arbitrated regarding the issue of unilateral changes in health insurance provisions of the CBA and the Memorandum of Understanding or that the parties' dispute is rooted in the CBA as supplemented by the Memorandum of Understanding. Indeed, the Union alleged in the Charge that the "District unilaterally implemented changes in medical and hospitalization insurance in contravention of the agreed-upon provisions of the collective bargaining agreement." (Specification of Charges, ¶ 3), which would require contract interpretation within the unique jurisdiction and expertise of an arbitrator, not the Board. Also, the Union does not allege that the District discriminated against the employes for exercising protected rights. Thus, the initial requirements under Pine Grove have been satisfied.

As the AFSCME Court opined, "[a]fter arbitration, the Board will defer to the decision of the arbitrator if (1) the grievance procedure was fair and regular, (2) the dispute was amicably settled or resolved by timely arbitration and (3) the arbitrator's result was not repugnant to the policies of PERA." AFSCME, 529 A.2d at 1190. Neither party has complained about, and there is no reason to question, the fairness or regularity of the arbitration proceedings, which concluded prior to this hearing. Based on the Award, the examiner concludes that both parties amicably participated in the arbitration process. On January 27, 2008, Arbitrator Francis T. McGrath issued the Award, which timely completed the arbitration process and resolved the parties' contractual dispute. In the Award, Arbitrator McGrath sustained the Union's grievance and ordered the District to reimburse bargaining unit employees for the changes to their medical benefits and co-pays. Arbitrator McGrath based his decision on his interpretation of the medical insurance provisions of the CBA and the Memorandum of Understanding. Also, a review of the Award reveals that the Arbitrator's result is not repugnant to the policies of PERA.¹ Accordingly, the examiner concludes that the McGrath Award governs the resolution of the Charge in this case and hereby dismisses the Charge.

ORDER

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

HEREBY ORDERS AND DIRECTS

That the Charge 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 days of the date hereof, this order shall be final.

SIGNED, DATED and MAILED at Harrisburg, Pennsylvania, this twenty-fourth day of April, 2008.

Pennsylvania Labor Relations Board

Jack E. Marino, Hearing Examiner

¹ The Award is certainly not repugnant to PERA given that the examiner would have reached the same conclusion as Arbitrator McGrath, albeit in the context of a statutory violation caused by the repudiation of the parties' agreement. But for the Board's post-arbitration deferral policy, the examiner was in a position to issue a ruling on the Charge following the hearing, the close of the evidentiary record and the submission of post-hearing briefs containing legal argument on the same issues as addressed by Arbitrator McGrath. Indeed, the examiner reviewed and analyzed all matters of record before reaching the result herein obtained.