

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 :

**FINAL ORDER**

The Radnor Township Education Association, PSEA/NEA (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on August 13, 2008, challenging a Proposed Decision and Order (PDO) issued on July 24, 2008. In the PDO, the Board's Hearing Examiner concluded that Radnor Township School District (District) did not violate Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) because the parties had not reached a binding grievance settlement agreement. On August 27, 2008, the District filed a response to the exceptions and a supporting brief. After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED FINDING OF FACT

2. In a November 15, 2005 e-mail, Compitello proposed that the grievant "be granted retroactive pay and be placed 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).

DISCUSSION

The facts of this case are summarized as follows. On August 29, 2005, the Association filed a Level II grievance on behalf of Elizabeth McIlwain, President of the Association, with Dr. Thomas Compitello, the District's Director of Human Resources and designated representative for Level II grievances. The grievance alleged that Ms. McIlwain had been placed on the wrong pay step and requested that she be placed on the proper pay step and given retroactive pay in accordance with the Pennsylvania Supreme Court's holdings in Mifflinburg Area Education Association v. Mifflinburg Area School District, 555 Pa. 326, 724 A.2d 339 (1999)(concluding that Pennsylvania School Code requires schools to give rehired teachers credit for past years of service for placement on salary schedule) and Penns Manor Area School District v. Penns Manor Education Association, 556 Pa. 438, 729 A.2d 71 (1999)(per curiam)(upholding arbitration award that awarded retroactive pay to teachers improperly placed on salary schedule).

In an e-mail dated November 15, 2005, Dr. Compitello proposed that Ms. McIlwain be placed on the proper pay step and granted retroactive pay in return for the Association agreeing not to file any more grievances for other teachers based on Mifflinburg and Penns Manor. The Association responded on November 18, 2005, proposing that it be allowed time to poll its members to determine if any other teachers had been improperly placed on the salary schedule. On December 15, 2005, Dr. Compitello sent new proposed settlement language to the Association which stated that the Association would have to file Mifflinburg grievances by January 31, 2006 for any additional teachers, that Mifflinburg grievances filed after January 31, 2006 would be limited to teachers hired by the District after that date, and that retroactive pay for grievances filed after January 31, 2006 would only be paid from the date that the grievances were filed.

On January 10, 2006, Paul Wright, the Association's grievance chairman, requested that Dr. Compitello forward a rendition of the settlement so that the parties could finalize it. Thereafter, on January 24, 2006, the Association forwarded to Dr. Compitello the names of twenty-seven teachers who it believed might be on the wrong pay step and requested that the Association be able to examine their personnel files. The Association also inquired as to whether Dr. Compitello wanted the Association to file a grievance for

these teachers by the January 31, 2006 deadline. The Association then amended the alleged tentative agreement by removing the January 31, 2006 deadline and forwarded a copy of the amended agreement to Dr. Compitello on January 30, 2006. No grievance was filed for the other twenty-seven teachers.

On February 28, 2006, the Association e-mailed Dr. Compitello to add another name to the list of teachers who might be on the wrong pay step and to inquire as to when the Association could expect to receive some numbers regarding the alleged settlement agreement. On April 7, 2006, the Association sent Dr. Compitello a list of five teachers that it felt may be on the wrong pay step and indicated that it had not finished reviewing the District's files. In a memorandum dated May 23, 2006, the Association sent a chart to Dr. Compitello listing nine teachers, two of whom were on the April 7, 2006 list, who may be on the wrong pay step and suggested that it be allowed to review the District's payroll records. On July 12, 2006, the Association forwarded to Dr. Compitello a chart of eight teachers that it believed were in fact placed on the wrong pay step. The Association indicated that the chart represented its final review of the District's records and requested that the District review the numbers for the teachers named in the chart.

On September 27, 2006, the Association and the District met to discuss Dr. Compitello's questions concerning some of the teachers on the July 12, 2006 list. On November 1, 2006, Dr. Compitello informed the Association that he was meeting with Michael Levin, Esquire, the District's labor counsel, to discuss the matter. On December 17, 2006, Attorney Levin e-mailed the Association to inquire as to whether Ms. McIlwain had been considered during the prior settlement of Mifflinburg grievances in 2002, and disagreed with the Association's assertion that there was a settlement for the other teachers. In response to Attorney Levin's query as to whether the proposed settlement agreement had been signed, the Association explained that Dr. Compitello wanted to complete all the work, including the back pay calculations, prior to signing and finalizing the settlement agreement.

On January 16, 2007, the Association forwarded to Attorney Levin a chart proposing that the back pay for each teacher be calculated by looking at the amount received, the amount that should have been received, the difference between the two and total dollars due each year. Thereafter, the District made a settlement offer of \$15,000 to be split among all the teachers. On February 9, 2007, the Association refused the District's offer and moved the grievance concerning Ms. McIlwain to the next step.

The Association filed its Charge of Unfair Practices on March 2, 2007, alleging that the District violated Section 1201(a)(1) and (5) of PERA by failing to comply with an alleged grievance settlement agreement concerning Ms. McIlwain and eight other teachers. The Hearing Examiner concluded in the PDO that the Association and Dr. Compitello did not reach a binding settlement agreement for Ms. McIlwain and the other teachers because the alleged agreement lacked sufficient specificity to determine what the parties allegedly agreed to and what remedy should be granted. The Hearing Examiner found that, at best, "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." (PDO at 6). The Hearing Examiner further stated that even if the Association and Dr. Compitello had reached a binding settlement agreement, Dr. Compitello did not have the authority to bind the District concerning the teachers other than Ms. McIlwain because a grievance had not been filed on their behalf. Citing Moshannon Valley Education Association v. Moshannon Valley School District, 21 PPER ¶ 21126 (Final Order, 1990), the Hearing Examiner stated that Dr. Compitello "had the independent authority to settle grievances at his designated step in the grievance procedure, [but] did not have independent authority to bind the School Board in discussions about other issues." (PDO at 5). The Hearing Examiner finally determined that an independent violation of Section 1201(a)(1) of PERA was not established by the Association. Therefore, the Hearing Examiner held that the District did not violate Section 1201(a)(1) or (5) of PERA.<sup>1</sup>

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<sup>1</sup> The Hearing Examiner also denied the District's request that the Charge be deferred to arbitration, citing International Union of Operating Engineers Local #95 v. University of Pittsburgh, 29 PPER ¶ 29114 (Proposed Decision and Order, 1998)(denying request for deferral where dispute is rooted in alleged settlement agreement and not in collective bargaining agreement). Although the District has renewed its deferral request in its brief in opposition to the Association's exceptions, it waived this issue by not excepting to the Hearing Examiner's ruling. See 34 Pa. Code § 95.98(a)(3) (exceptions not specifically raised shall be waived).

In its exceptions, the Association initially argues that the Hearing Examiner erred in failing to make certain findings of fact. Upon review of the record, we have amended Finding of Fact 2 to more accurately reflect the District's proposal of November 15, 2005. With regard to the other findings proposed by the Association, the Hearing Examiner must set forth those findings that are relevant and necessary to support the conclusion reached, but need not make findings summarizing all the evidence presented. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975). The Board has declined to make the other findings suggested by the Association because they are not necessary or relevant to the conclusion reached in this order.

The Association additionally contends that the Hearing Examiner erred by concluding that the parties did not reach a binding settlement agreement concerning Ms. McIlwain and the other teachers. The Association alleges that the parties came to an agreement regarding the pay step placement of a bargaining unit member who is not at issue here (Susan Scartozzi) without agreeing to a specific amount of money owed and that the District complied with that agreement. Relying on the settlement concerning Ms. Scartozzi, the Association argues that the alleged settlement agreement in this case was sufficiently specific to be binding and enforceable even though the parties had not agreed to a specific amount of money owed to Ms. McIlwain and the other teachers. The Association further asserts that the Board can determine the specific amount of money owed to the teachers by identifying the proper pay step for each teacher.

The Board has held that a public employer commits an unfair practice when it refuses to comply with a grievance settlement agreement. AFSCME District Council 47 Local 2187 v. City of Philadelphia, 36 PPER 124 (Final Order, 2005). In order to establish that a binding settlement agreement exists, the complainant must prove that the parties reached a meeting of the minds concerning the subject matter at issue. PLRB v. Drivers and Dairy Employees, Local Union No. 205, 4 PPER 52 (Nisi Decision and Order, 1974); AFSCME District Council 88 v. Northampton County, 38 PPER 19 (Proposed Decision and Order, 2007). The Board will examine the underlying facts to determine whether the parties reached an agreement. Id. The Board will determine that the parties have not reached a binding settlement where the parties reach agreement on some terms, but are unable to come to a complete resolution of their dispute. Id. It is the objective conduct of the parties and not subjective beliefs that establishes the presence or absence of a meeting of the minds. Northampton County, supra.

Regarding Ms. McIlwain, the Association asserts that the parties agreed to place her on the proper pay step and give her retroactive pay.<sup>2</sup> However, it is unclear from the evidence presented what the parties meant by the "proper pay step." Indeed, Association Grievance Chairman Paul Wright and Dr. Compitello both testified that the parties did not reach an agreement concerning the pay step on which Ms. McIlwain should be placed. (N.T. 75-76, 206). The amount of back pay to which Ms. McIlwain is entitled cannot be calculated absent an agreement on the specific pay step on which she should be placed.

Further, the Association's reliance on the parties' settlement of Ms. Scartozzi's pay step placement does not support its argument that there was a binding settlement agreement for Ms. McIlwain. Under the Scartozzi settlement agreement, the parties agreed to place Ms. Scartozzi on Step 6 of the pay scale and to pay her back pay for the years she was on the wrong pay step. (Association Exhibit 4, pgs. 7, 9, 13). In the present case, the specific pay step on which Ms. McIlwain should be placed is missing from the alleged settlement agreement. Therefore, Ms. Scartozzi's settlement provides no support for the Association's position and the Hearing Examiner did not err in failing to make a specific finding of fact regarding Ms. Scartozzi's settlement.

Concerning the other teachers, the language relied on by the Association to show that there was a binding settlement states that the Association would survey its members from December 2005 through January 2006 and that it would file a grievance if it found

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<sup>2</sup> The Association challenges Finding of Fact 5 for its failure to include the fact that Dr. Compitello agreed in his December 15, 2005 e-mail that Ms. McIlwain be placed on the proper pay step and be paid retroactively. The Hearing Examiner's findings reflect this general agreement in Dr. Compitello's November 15, 2005 e-mail. (Finding of Fact 2). However, the fact remains that the parties failed to agree to the proper step or to the amount of retroactive pay.

any members who had been improperly placed on the pay scale. (Association Exhibit 2, p. 38). However, the Association did not file a grievance on behalf of any of the other teachers after determining that their step placement was allegedly incorrect. In any event, the Association's argument that the parties had a binding agreement for the other teachers also fails because there was no agreement as to what pay step on which the other teachers should allegedly be placed or the amount of retroactive pay to which they were allegedly entitled.<sup>3</sup> Upon review of the record, the Board concurs with the Hearing Examiner's finding that the parties did not reach an enforceable settlement agreement for Ms. McIlwain and the other teachers because they did not achieve an agreement on all terms necessary to resolve the dispute. Drivers and Dairy Employes, supra; Northampton County, supra.<sup>4</sup>

The Association finally argues that the Hearing Examiner erred in failing to conclude that the District's actions were an independent violation of Section 1201(a)(1). The Board will find that an independent violation of Section 1201(a)(1) of PERA has occurred 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." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). Viewed within the totality of the circumstances, the District's actions would not tend to coerce a reasonable employe in exercising his or her protected rights in filing or pursuing grievances. Therefore, the Association has failed to demonstrate an independent or derivative violation of Section 1201(a)(1) of PERA. Accordingly, the Hearing Examiner properly concluded that the District did not violate Section 1201(a)(1) and (5) of PERA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

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 Radnor Township Education Association, PSEA/NEA are hereby dismissed, and the July 24, 2008 Proposed Decision and Order 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 nineteenth day of May, 2009. 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.

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<sup>3</sup> Therefore, the Association's exception regarding the Hearing Examiner's failure to find as fact that Dr. Compitello verbally agreed to proceed on these other teachers without the benefit of a separate grievance is of no moment. Even had Dr. Compitello agreed to proceed without the filing of a separate grievance, the parties still did not agree to specific terms regarding the settlement of their claims.

<sup>4</sup> Because the Board has concluded that the parties did not reach a binding settlement agreement, the Board need not make a determination regarding whether Dr. Compitello had the authority to settle the matter concerning the other teachers.