COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

MOUNTAIN VIEW EDUCATION ASSOCIATION	:	
	:	
	:	
v.	:	Case No. PERA-C-12-28-E
	:	
	:	
MOUNTAIN VIEW SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On January 30, 2012 the Mountain View Education Association (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that Mountain View School District (District or Respondent) violated sections 1201(a)(1),(2),(5) and (8) of the Public Employe Relations Act (PERA). On February 17, 2012, the Association filed an amended charge. On March 21, 2012, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on September 12, 2012 in Harrisburg before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was held as scheduled at which time the parties were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. Mountain View School District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 8)

2. Mountain View Education Association is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 8)

3. The District and the Association are parties to a collective bargaining agreement for the term of July 1, 2007 to June 30, 2012. (N.T. 7, Association Exhibit 9)

4. The CBA includes a grievance procedure at Article XIII that states, in relevant part:

ARTICLE XIII

GRIEVANCE PROCEDURE

1. Definition

   A claim by a professional employee or the Association that there has been a violation, misinterpretation or misapplication of any provision of this Agreement may be processed as a grievance as hereinafter provided.

2. General Procedures and Provisions

   As arbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory under Section 903 of Act 195, and in order that such grievance be disposed of as expeditiously as possible, the parties agree to the following grievance procedure:

Step 1: Person or persons initiating the alleged grievance shall discuss the matter with the principal or other first level supervisor within ten (10) school days after its occurrence.

Step 2: If said grievance is not resolved at the informal discussion, Step 1, the grievance is to be filed in writing on a form provided by the school district with the superintendent or chief school administrator within ten (10) school days of the informal discussion step. The superintendent shall confer with the grievant and attempt to resolve the difference and shall render a written decision within ten (10) school days of said occurrence.

Step 3: If the action in Step 2 fails to resolve the grievance to the satisfaction of the affected parties, the grievance shall be referred by the grievant to the Board in writing on a form provided by the school district, within ten (10) school days of receiving the written decision in Step 2. The Board shall hear and consider the alleged grievance and shall send a written decision within fifteen (15) school days after said hearing, and communicate said decision through the superintendent to the parties concerned.

Step 4: If the action in Step 3 fails to resolve the grievance to the satisfaction of the affected parties, the grievance shall be referred to binding arbitration as provided in Section 903 of Act 195. The arbitrator shall be without jurisdiction to render an award contrary to law, or to add to, modify, vary, change, or remove any term of this Agreement.

It is mutually understood that, with respect to the above outlined grievance procedure, should the aggrieved fail either to file a grievance or follow the time procedures indicated in the various steps, then the grievance shall be considered void or resolved. (N.T. 7, Association Exhibit 9)

5. On January 27, 2011, the Association filed a grievance on behalf of Amy Getz over the District's placing a disciplinary letter in Ms. Getz' personnel file on January 14. (N.T. 4-5, Association Exhibit 1)

6. On March 3, 2011, the Superintendent denied the grievance. The Association took the grievance to the Board of School Directors. On March 18, 2011, the Board of Directors denied the grievance. (N.T. 4-5, Association Exhibit 1)

7. On March 21, the Association notified the District that it "requests arbitration" of the grievance. (N.T. 4-5. Association Exhibit 1)

8. On July 6, 2011, the Association filed a second grievance on behalf of Amy Getz over the District's placing a disciplinary letter in Ms. Getz' personnel file on June 13, 2011. (N.T. 4-5, Association Exhibit 2)

9. On September 21, 2011, the Superintendent replied:

> The request to remove the letter of review from the file is denied. As an alternate the Superintendent proposes that this grievance be combined with the grievance of 01-27-2011 and be heard by the one arbitrator for final resolution.

(N.T. 5, Association Exhibit 2)

10. Dr. Andrew Chichura, the District Superintendent, suggested to Sheila Saidman, the Association Uniserve representative that instead of going to arbitration, the parties could go to grievance mediation. The Association agreed with his suggestion. (N.T. 10)

11. On the parties' grievance form for the employe to accept or reject the Superintendent, Ms. Getz checked the line to "accept" and added these words:

> "I accept the decision of the Superintendent and request grievance mediation. A request has been submitted to the Pennsylvania Bureau of Mediation on 9-27-11."

(N.T. 5, Association Exhibit 2)

12. On September 29, 2011, the District and the Association filed a Request for Grievance Mediation with the Pennsylvania Bureau of Mediation. (N.T. 5, Association Exhibit 3)

13. The parties requested Jack McNulty, the Regional Director of the Pennsylvania Bureau of Mediation, appoint Dan O'Rourke "to mediate these grievances." (N.T. 5-6, Association Exhibit 4)

14. Mr. McNulty appointed Mr. O'Rourke to mediate the grievances. (N.T. 5-6, Association Exhibit 5)

15. On November 17, Mr. O'Rourke met with both sides at the District's Administrative Office. Attending for the District were Superintendent Chichura and Raymond C. Rinaldi, II, Esquire, the District solicitor. Attending for the Association were Amy Getz; Ms. Saidman, the PSEA Uniserve Representative and William A. Hebe, Esquire, the Association attorney. (N.T. 6, Association Exhibit 7)

16. The parties reached the following agreement before Mediator O'Rourke:

> The Parties agree that letter #1 regarding grievance #1 will stay in the employee file until June 30, 2013 at which time it will be removed from the file. Letter #2 regarding grievance #2 will stay in the employee file until June 30, 2012 at which time it will be removed from the file.

(N.T. 6, Association Exhibit 7)

17. There was no suggestion from the superintendent or the solicitor that Superintendent Chichura needed school board approval to resolve the grievances. (N.T. 10)

18. On December 27, 2011, Superintendent Chichura wrote a memorandum to Corrine McNabb, the Mountain View Education Association president that the District was not going to consummate the agreement reached before Mediator O'Rourke. The memorandum stated:

> The Board of Education reviewed the proposal of Daniel O'Rourke to settle the grievances of Amy Getz. The topic was reviewed at two separate executive sessions of the Board held on December 12, 2011 and December 19, 2011.
>
> The Board advised me to correspond that they are not in agreement with the recommendation and desire that the letters remain in the personnel file folder. Since they were not in agreement the item was not listed on the agenda for their approval nor will it appear on the agenda in January, 2012.
>
> Feel free to contact me if there any questions relating to this matter.

(N.T. 7, Association Exhibit 8)

DISCUSSION

The facts of the present case are not dispute. The Association filed two grievances in January and July, 2011. The grievances sought the removal of disciplinary letters from a teacher's personnel file. The grievances followed the grievance procedure in the collective bargaining agreement. The District denied the first grievance at the first three levels. The District denied the second grievance at the first two levels. Before proceeding to the third level on the second grievance, the parties agreed to consolidate the two grievances and take them both to the Pennsylvania Bureau of Mediation for a process called grievance mediation. This was instead of arbitration. The District Superintendent had suggested this approach. The mediator successfully resolved the grievances, obtaining the parties' agreement for the District to remove one of the letters in July, 2012 and to remove the second letter in July, 2013.

The parties' agreement said nothing about presenting this agreement to the school board for approval. However, the Superintendent sought the School Board's approval. The Board refused to approve the settlement agreement. The District Superintendent notified the Association of this turn of events, characterizing the agreement reached in front of the Mediator as a "recommendation." The settlement remains unconsummated.

The District defends its decision not to consummate the agreement by arguing that since the two grievances were resolved in front of the Bureau of Mediation and not as part of binding arbitration under the parties collective bargaining agreement, the District is not bound to an agreement. The District argues that the Bureau of Mediation only can obtain recommendations that must later be approved by the school board in order to be effective.

The Commonwealth Court's decision in **Moshannon Valley School District v. Pennsylvania Labor Relations Board**, 597 A.2d 229 (Pa. Cmwlth. 1991) provides a precedent for use in the present case. In that case, a tenured employe was suspended due to declining enrollment. The Association filed a grievance with her first level supervisor, Mr. Snyder. Snyder responded to the grievance as follows:

> It is the opninion of the First Level Supervisor that the above Alleged Grievance is valid.
>
> The Moshannon Valley School District should immediately apply the requested remedy. Mrs. DeLuccia should be reinstated to her former position without loss of salary or benefits with interest.

597 A.2d at 230-231.

In **Moshannon Valley, id**. neither party moved the grievance to the next level in the grievance procedure. The Union then filed a Charge of Unfair Practices for failure of the school district to comply with the first level supervisor's resolution of the grievance. The parties stipulated to the facts and the Hearing Examiner issued a proposed decision and order on February 25, 1990, directing the school district to consummate the settlement agreement entered into by the first level supervisor. 597 A.2d at 232.

As in the present case, the school district argued on appeal that the first level supervisor's response was not a resolution of the grievance but was, rather, a recommendation and did not preempt the authority of the school district to suspend a professional employe and, further, that whether or not the first level supervisor's response was binding must be decide by an arbitrator.

The Commonwealth Court disagreed with the District and framed the issue as: "[M]ay a collective bargaining agreement provide for the final resolution of suspension of professional employees under the Public School Code of 1949." 597 A.2d at 232. The Court concluded that the subject matter was clearly arbitrable and the only real issue was

whether the disposition by the first level supervisor was binding on the district. The Court concluded that since the grievance was properly submitted to the first level supervisor and there was no appeal to the next level, the resolution was a final and binding agreement pursuant to the collective bargaining agreement. 597 A.2d at 234.

The facts in the present case are even stronger with regard to the binding nature of the agreement. In **Moshannon Valley**, the response of the first level supervisor was stated in terms of an "opinion." The Court concluded that since no further action was taken in the context of the grievance procedure, the resolution in the nature of the opinion by the first level supervisor was binding.

In the present case, the parties did not arrive at an opinion, suggestion or recommendation. Rather, as the Mediator noted, the parties reached an agreement. Prior to meeting with the Mediator, the District said nothing about retaining the right to present the agreement to the school board for approval. The agreement was reached as a result of the parties agreeing to use an alternative to binding arbitration. Their agreement was a mutually developed outgrowth of the grievance procedure set forth in the collective bargaining agreement. The District's defense must be dismissed.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. The Mountain View School District is a public employer under section 301(1) of the PERA.

2. The Mountain View Education Association, PSEA/NEA is an employee organization within the meaning of Section 301(3) of the PERA.

3. The Board has jurisdiction over the parties.

4. The District has committed unfair practices under sections 1201(a)(1) and (5) of the PERA.

5. The District has not committed unfair practices under sections 1201(a)(2) and (8) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in PERA.

2. Cease and desist from refusing to bargain collectively in good faith with an employe representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Take the following affirmative action:

   (a) Consummate the settlement agreement of the two grievances entered into by the Superintendent on November 17, 2011;

   (b) Post a copy of this decision and order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its

employes and have the same remain so posted for a period of ten (10) consecutive days; and

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this decision and order by completion and filing of the attached affidavit of compliance.

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 nineteenth day of October, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner