

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL UNION, SECURITY, POLICE :
& FIRE PROFESSIONALS OF AMERICA, and its :
LOCALS 502 & 506 :
 : Case No. PERA-C-15-353-E
v. :
 :
PENNSYLVANIA STATE SYSTEM OF HIGHER :
EDUCATION :

PROPOSED DECISION AND ORDER

On December 21, 2015, the International Union, Security, Police & Fire Professionals of America, and its Locals 502 and 506 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Pennsylvania State System of Higher Education (PASSHE or Employer), alleging that PASSHE violated Section 1201(a)(5) of the Public Employe Relations Act (PERA or Act) by unilaterally altering employe health benefit plans without notice and refusing to bargain over such changes.

On January 20, 2016, the Secretary of the Board issued a Complaint. However, the Secretary did not issue a Notice of Hearing, pending receipt of the parties' positions on deferral of the charge to the grievance arbitration process. I issued a Deferral Order on January 20, 2016 consistent with the Board's pre-arbitral deferral policy set forth in Pine Grove Area School District 10 PPER 10167 (Order Deferring Unfair Practice Charge Until Further Order of the Board, 1979), finding that a grievance was filed that was rooted in the parties' collective bargaining agreement (CBA) and there was no discrimination alleged.

On September 2, 2016, the Union requested that the Board complete its investigation and recommence administrative proceedings, alleging that the arbitrator issued an award on August 8, 2016 that is repugnant to the Act, in that the arbitrator ignored clear and unambiguous language, thereby upholding a clear repudiation of the CBA. I denied the Union's request on September 2, 2016.

The Examiner, on the basis of all matters and documents of record, makes the following:

FINDINGS OF FACT

1. PASSHE is a public employer within the meaning of Section 301(1) of PERA.
2. The Union is an employe organization within the meaning of Section 301(3) of PERA.
3. On September 2, 2016, the Board received an arbitration award dated August 8, 2016, denying the Union's grievance and finding that PASSHE did not violate the CBA. (Board Exhibit 1)

DISCUSSION

In its charge, the Union alleged that PASSHE violated Section 1201(a)(5) of PERA¹ by unilaterally altering employe health benefit plans without notice and refusing to bargain over such changes. However, I issued a Deferral Order on January 20, 2016 finding that the Board's deferral policy set forth in Pine Grove Area School District 10 PPER 10167 (Order Deferring Unfair Practice Charge Until Further Order of the Board, 1979) was satisfied, i.e., that a grievance has been filed that is rooted in the parties' CBA and there was no discrimination alleged. The parties ultimately proceeded to arbitration, after which the arbitrator issued an award on August 8, 2016, denying the grievance and finding that PASSHE did not violate the CBA. The Union now requests that the Board recommence administrative proceedings, alleging that the award is repugnant to the Act, in that the arbitrator ignored clear and unambiguous language, thereby upholding a clear repudiation of the CBA.

In Pine Grove, the Board indicated that where the conditions for pre-arbitral deferral are satisfied, the Board will retain only limited jurisdiction so as to ensure upon timely filed notice that (a) the grievance arbitration proceedings were fair and regular; (b) the dispute was amicably settled or submitted promptly to arbitration; and (c) the result reached was not repugnant to the Act. In this case, I have reviewed the arbitration award and find that the result reached is not repugnant to the Act. In rendering the award, the arbitrator analyzed the language of the parties' CBA and made credibility determinations regarding the witnesses' testimony as to whether the parties have an established past practice in connection therewith. There is absolutely nothing contained in the award, which supports the Union's assertion that the result reached is repugnant to the Act. Instead, the Union's allegations constitute nothing more than an averment that the arbitrator erred in rendering his award, which is an averment that must be raised by appealing the award directly to a court of competent jurisdiction rather than seeking to collaterally attack the award via the Board's limited post-arbitral deferral policy.

In Pine Grove, the Board quoted from its decision in Allegheny County Port Authority, 8 PPER 57 (1977), indicating that:

It is our view that disputes which are contractual in nature should be resolved through the vehicle set forth in the contract. Indeed, the union here has grieved the instant matter as violative of the contract and the arbitration panel has denied the grievance...It is our view that disputes such as this, which are essentially contractual in nature, are best resolved in a grievance procedure. The grievance procedure is the means selected by the parties to resolve contract interpretation

¹ Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (5) 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 discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

disputes...However, in those rare occasions when the arbitration proceedings are tainted by fraud, collusion, unfairness, or serious procedural irregularities or that the award is clearly repugnant, the Board will not defer to the arbitrator's award.

Based on this language, I must conclude that the term "repugnant to the Act" must mean something more than one party assigning error to the arbitrator's award. The Union here does not allege that the arbitration proceedings were tainted in some manner. As it appears from the award that the grievance proceedings were fair and regular, the dispute was submitted promptly to arbitration, and the result reached was not repugnant to the Act, the Union's charge will be dismissed.

CONCLUSIONS

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

1. PASSHE is a public employer under Section 301(1) of PERA.
2. The Union is an employe organization under Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The Board's post-arbitral deferral policy has been satisfied.

ORDER

In view of the foregoing and in order to effectuate the policies of 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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 7th day of September, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner