COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ABINGTON HEIGHTS EDUCATION ASSOCIATION	:	
	:	
v.	:	Case No. PERA-C-11-176-E
	:	
ABINGTON HEIGHTS SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On June 2, 2011, the Abington Heights Education Association (Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the Abington Heights School District (District) violated sections 1201(a)(1) and (8) of the Public Employe Relations Act (PERA) by refusing to comply with the provisions of a grievance arbitration award "concern[ing] the District's assignment of 'independent study' to the Association's members (teachers) and, inter alia, requir[ing] the District to pay additional compensation to any of the teachers who had been assigned 'independent study.'"[1] On June 24, 2011, the Secretary of the Board informed the Association that she was unable to process the charge as filed because a copy of the award was not attached. On July 6, 2011, the Association filed an amended charge with a copy of the award attached. On July 13, 2011, the Secretary issued a complaint and notice of hearing directing that a hearing be held on September 12, 2011, if conciliation did not resolve the charge by then. The hearing examiner thereafter continued the hearing upon the Association's request and the representation that the District had no objection. On November 16, 2011, the hearing examiner held the hearing and gave both parties a full opportunity to present evidence and cross-examine witnesses. Both parties timely filed post-hearing briefs.

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. On February 26, 1971, the Board certified the Association as the exclusive representative of a bargaining unit that includes teachers employed by the District. (Case No. PERA-R-793-C).

2. On July 12, 2010, an arbitrator issued an award sustaining a grievance the Association filed alleging that the District violated the parties' collective bargaining agreement in assigning independent study students to five teachers during the summer prior to the 2008-2009 school year. (N.T. 14; Joint Exhibit 2).

3. In addressing the District's defense of the grievance, the arbitrator wrote:

> "Although the District asserted that there is a long history of assigning independent study students in this manner, the record does not demonstrate such to be the case. It does demonstrate that there is a history of offering 'blended' classes in the language department, however, no evidence was presented that there was a practice of offering/assigning independent study classes in a manner similar to the instant situations being grieved herein."

(Joint Exhibit 2).

4. As a remedy, the arbitrator directed the District "to cease making such assignments until it meets with the Association and negotiates the wage, terms and conditions of independent study assignments" and "to compensate the affected teachers at their daily rate that was in effect at the time of the assignment for one hour per week for each independent student assigned." (Joint Exhibit 2).

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[1] The Association also filed the charge under section 1201(a)(5) of the PERA, but the charge only states a cause of action under sections 1201(a)(1) and (8). Thus, no violation of section 1201(a)(5) may be found.

5. The parties stipulated and agreed that all appeal processes regarding the arbitration award have expired and the award is final and binding. (N.T. 14).

6. One of the grievants to whom the District assigned independent students was a Spanish teacher in the language department (Patricia Healey). (N.T. 16-19, 78; Association Exhibits 1 & 5).

7. The District did not compensate Ms. Healey as set forth in the award. (N.T. 29).

DISCUSSION

The Association has charged that the District committed unfair practices under sections 1201(a)(1) and (8) of the PERA by refusing to comply with the provisions of a grievance arbitration award "concern[ing] the District's assignment of 'independent study' to the Association's members (teachers) and, inter alia, requir[ing] the District to pay additional compensation to any of the teachers who had been assigned 'independent study.'" According to the Association, the District's refusal occurred when it did not compensate a teacher in the language department (Ms. Healey) as set forth in the award.

The District contends that the charge should be dismissed for lack of proof that Ms. Healey was covered by the award. In the District's view, the award is ambiguous in that regard and, therefore, unenforceable.

In Hazle Township, 38 PPER 157 (Final Order 2007), the Board restated the applicable law in a case of this nature as follows:

> "When the complainant alleges a refusal to comply with a grievance arbitration award, the Board must determine whether (1) an award exists; (2) the appeal period available to the aggrieved party has been exhausted; and (3) the respondent failed to comply with the provisions of the arbitration award. AFSCME, District Council 88 v. Upper Dublin Township, 27 PPER ¶ 27262 (Proposed Decision and Order, 1996)(citing PLRB v. Commonwealth of Pennsylvania, 478 Pa. 582, 387 A.2d 475 (1978)). 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). The Board's review is limited to ascertaining the arbitrator's intent from the four corners of the award, and it may not review the merits of the award. AFSCME, Local 1971 v. City of Philadelphia, Office of Housing and Community Development, 24 PPER ¶ 24052 (Final Order, 1993); Upper Dublin Township, supra. A collateral attack on the validity of an arbitration award is not an affirmative defense to a Section 1201(a)(8) charge. Id."

Id. at 462.

There is no dispute that an award exists and the appeals have expired. (F.F. 5). The dispositive question, then, is whether or not the District has complied with the provisions of the award.

A review of the arbitration award shows that, in the award, the arbitrator (1) sustained a grievance involving the District's assignment of independent study students to five teachers and (2) directed the District "to compensate the affected teachers at their daily rate that was in effect at the time of the assignment for one hour per week for each independent student assigned" (F.F. 4). Thus, if Ms. Healey was among "the affected teachers" referenced by the arbitrator, then the District was obligated to compensate her as set forth in the award.

The record shows that Ms. Healey was one of the grievants to whom the District assigned independent study students (F.F. 6). It is apparent, then, that she was among the "affected teachers" referenced by the arbitrator. The District, however, did not compensate her as set forth in the award (F.F. 7). Accordingly, the District must be found in violation of sections 1201(a)(1) and (8) as charged.

In support of its contention (that the charge should be dismissed because the award is ambiguous as to whether or not Ms. Healey is covered by it) the District points out that, in addressing its defense of the grievance on the ground that it did not change the manner in which it assigned independent students to the five teachers, the arbitrator wrote that “there is a history of offering ‘blended’ classes in the language department” (F.F. 3). The District also points out that Ms. Healey taught in the language department (F.F. 6) and that the arbitrator did not define what he meant by the term “blended.” The District would have the Board find the award to be ambiguous under the circumstances because, by not defining what he meant by the term “blended,” the arbitrator left doubt as to whether or not Ms. Healey, as a member of the language department, was covered by the award.

As noted above, however, Ms. Healey was one of the grievants. Moreover, as a close review of the record shows, the arbitrator wrote further that “no evidence was presented that there was a practice of offering/ assigning independent study classes in a manner similar to the instant situations being grieved herein” (F.F. 3). Thus, contrary to the District’s contention, it is apparent that the arbitrator intended the award to apply to Ms. Healey as one of the grievants notwithstanding the “history of offering ‘blended’ classes in the language department,” and no matter what he may have meant by the term “blended.” It is also noteworthy that the District paid Ms. Healy for her independent study in period one for the 2009-2010 school year but not her fourth period independent study for the same year, even though the arbitrator did not differentiate between her period one and period four independent study students, as the District has attempted to do here. Indeed, on this record, the fact that the arbitrator did not define what he meant by the term “blended” is of no moment.

CONCLUSIONS

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

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

2. The Association is an employe organization under 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 1201(a)(8) of the PERA.

5. The District has not committed an unfair practice under section 1201(a)(5) 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 Article IV of the PERA.

2. Cease and desist from refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.

3. Take the following affirmative action which the hearing examiner finds necessary to effectuate the policies of the PERA:

(a) Comply with the provisions of the award;

(b) Pay interest at the simple rate of six per cent per annum on the monies due Ms. Healey from the date of the award to the date she is paid the monies.

(c) 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

(d) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this 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 twenty-second day of February, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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JACK E. MARINO, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from its violations of sections 1201(a)(1) and (8) of the PERA, that it has complied with the provisions of the award, that it has paid interest as directed on the monies due Ms. Healey under the award, that it has posted the proposed decision and order as directed and that it has served an executed copy of this affidavit on the Association.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED TO before me
the day and year aforesaid.

_____
Signature of Notary Public