

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

UPPER ST. CLAIR EDUCATION SUPPORT :
PROFESSIONAL ASSOCIATION, PSEA/NEA :
 :
 : CASE NO. PERA-C-14-265-W
v. :
 :
 :
UPPER ST. CLAIR SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On August 15, 2014, Upper St. Clair Educational Support Professional Association, ESP/PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Upper St. Clair School District (District) violated Section 1201(a) (1) and (5) of the Public Employee Relations Act (PERA).

On September 14, 2014, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of October 16, 2014, in Harrisburg before Hearing Examiner Jack Marino, Esquire. The hearing was continued and on December 18, 2014, the parties jointly submitted stipulations and exhibits in lieu of a hearing and these joint stipulations and exhibits were incorporated into the record.

The parties simultaneously filed post-hearing briefs on January 30, 2015. This matter was reassigned to the undersigned hearing examiner on July 21, 2015.

The hearing examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The Association is an employe organization within the meaning of PERA. (Stip. 4).
2. The District is a public employer within the meaning of PERA. (Stip. 3).
3. The Association is the exclusive collective bargaining representative for a unit of the District's employes including bus drivers and bus attendants as certified. (Stip. 5).
4. The Association and the District are parties to a collective bargaining agreement (CBA) with effective dates from July 1, 2013 through June 30, 2017. (Stip. 6; Joint Exhibit 1).
5. The CBA contains a just cause provision which provides, in relevant part, that "the board shall not discharge any employee without just cause except during the employee's 60 work day probationary period." (Stip. 8; Joint Exhibit 1, page 35).
6. The CBA contains a provision which provides, in relevant part, that "[t]he Association shall have the right to take up the suspension and/or discharge, except the suspension or discharge of a probationary employee, as a grievance. . . ." (Joint Exhibit 1, page 35).
7. The CBA contains a statutory savings clause which provides, in relevant part, that "nothing contained herein shall be construed to deny or restrict to any employee such rights as he/she may have under the Public School Code of 1949, as amended, or the Public Employee Relations Act ("Act 195") or other applicable law or regulations. The rights granted to employees hereunder shall be deemed in addition to those provided elsewhere." (Stip. 9; Joint Exhibit 1, page 39).

8. On or about April 11, 2014, the District terminated the employment of Terry Rayman (Rayman), bus driver and bargaining unit member. At the time of his dismissal, Rayman was a probationary employe. (Stip. 10).
9. The Association timely filed a grievance on behalf of Rayman alleging that he was terminated in violation of the CBA and the law. Specifically, the grievance alleges that the District failed to provide due process as required by the Public School Code of 1949 including, but not limited to, failing to provide a Loudermill hearing, union representation, and the opportunity for a School Board hearing. The grievance further alleges that Rayman was discriminated against on the basis of disability and that the District lacked just cause for the dismissal. (Stip. 11; Joint Exhibit 2).
10. The District denied the grievance on May 22, 2014. (Stip. 12; Joint Exhibit 3).
11. On May 27, 2014, the Association appealed the denial to arbitration. (Stip. 12; Joint Exhibit 4).
12. On May 27, 2014, the District notified the Association that it would not agree to arbitrate the grievance. (Stip. 12; Joint Exhibit 5).
13. The District continues to refuse to arbitrate the grievance. (Stip. 13).

DISCUSSION

The facts in this matter are not in dispute and the parties submitted joint stipulations and exhibits. Rayman was discharged, the Association filed a grievance, and the District has refused to arbitrate the grievance. In its brief, the District relies on **Municipal Employees Organization of Penn Hills v. Municipality of Penn Hills**, 876 A.2d 494 (Pa. Cmwlth. 2005), to argue that arbitration is not mandatory in this matter because the Association waived its right to arbitration through language in the CBA.

The Board recently addressed refusal to arbitrate issues in **Susquehanna Township School District**, 45 PPER 46 (Final Order, 2014), and the law on this issue is well settled. Pursuant to Section 903 of PERA, arbitration of grievances arising out of interpretation of provisions of a collective bargaining agreement is mandatory. 43 P.S. § 1101.903. All disputes concerning arbitrability of a grievance under a collective bargaining agreement must first be presented to an arbitrator for determination. **PLRB v. Bald Eagle Area School District**, 499 Pa. 62, 451 A.2d 671 (1982); **Chester Upland School District v. McLaughlin**, 655 A.2d 621 (Pa. Cmwlth. 1995), *aff'd per curiam*, 544 Pa. 199, 675 A.2d 1211 (1996); *see also* **Township of Sugarloaf v. Bowling**, 563 Pa. 237, 759 A.2d 913 (2000) (holding that in the context of Act 111 the arbitrator has jurisdiction to make the initial determination of whether an issue is arbitrable). When an employer refuses to process a grievance to arbitration, it commits an unfair practice. **Bald Eagle Area School District**, *supra*.

In this matter, the Association filed a grievance on behalf of Rayman challenging his discharge while he was in a probationary period. The District has refused to process the grievance on the ground that pursuant to the CBA the issue of a discharge of a probationary employee is not arbitrable. However, under the well-settled case law, whether Rayman's grievance is arbitrable is for an arbitrator to determine in the first instance, and the refusal to process the grievance is an unfair practice. **Bald Eagle Area School District**, *supra*; **Chester Upland School District**, *supra*; **Township of Sugarloaf**, *supra*.

The District's reliance on **Penn Hills** is misplaced. In **Penn Hills**, the Board set forth a limited exception to the general rule that disputes concerning the arbitrability of a grievance must be submitted to an arbitrator. **Penn Hills**, at 497. In that case, the Board did not decide whether a grievance was arbitrable under a collective bargaining agreement; rather, the Board determined that an employe and the exclusive bargaining representative clearly, expressly and unmistakably waived any right to challenge the employe's discharge in a last chance agreement. **Id.**, *see* **Association of Pennsylvania**

State College and University Faculties, 39 PPER 101 (Final Order, 2008) (**Penn Hills** only applies to cases involving claims of waiver in an individual employe's last chance agreement); **Allegheny Intermediate Unit # 3**, 36 PPER 17 (Final Order, 2005) (same); **Avonworth School District**, 35 PPER 44 (Final Order, 2004) (same).

The limited holding in **Penn Hills** was specific to the circumstances which gave rise to the last chance agreement and does not exist in this matter. In this matter there is no clear, intentional, express and unequivocal agreement outside of the CBA which waives the right to grieve. The facts of this matter show a clear dispute over the interpretation of the provisions of the CBA. If, as the District argues is the case in this matter, a waiver appears in the collective bargaining agreement, questions regarding the interpretation of that CBA language must first be submitted to an arbitrator. See **Avonworth School District**, *supra*. I therefore find that the District has committed an unfair practice in violation of Section 1201(a)(1) and (5) by refusing to arbitrate Rayman's grievance.

CONCLUSIONS

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

1. That the District is a public employer within the meaning of Section 301(1) of PERA.
2. That the Association is an employe organization within the meaning of Section 301(3) of PERA.
3. That the Board has jurisdiction over the parties hereto.
4. That the District has committed an unfair practice in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the District shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.
2. Cease and desist from refusing to bargain collectively with the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.
3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:
 - (a) Immediately submit Terry Rayman's April 25, 2014, grievance to arbitration;
 - (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;
 - (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 and
 - (d) Serve a copy of the attached affidavit of compliance upon the Association.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-seventh day of July, 2015.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

