COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

PLUM BOROUGH EDUCATION ASSOCIATION	:	
	:	
v.	:	CASE NO. PERA-C-22-282-W
	:	
PLUM BOROUGH SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On October 11, 2022, Plum Borough Education Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (PLRB or Board) alleging that Plum Borough School District (District or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) when the District refused to implement the suggested relief in a grievance.

On November 29, 2022, the Secretary of the Board issued a complaint and notice of hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating February 1, 2023, in Pittsburgh, as the time and place of hearing.

The hearing was needed. The parties agreed to have the hearing on Microsoft Teams instead of in Pittsburgh. The hearing was held on February 1, 2023, via Microsoft Teams, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association submitted a post-hearing brief on March 17, 2023. The District submitted a post-hearing brief on April 24, 2023.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).

2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).

3. On March 17, 2022, the Association initiated an oral grievance with the District alleging that the District violated the collective bargaining agreement (CBA) between the parties when the District denied bargaining-unit member Kelly Haupt her request to use sick leave while receiving workers' compensation benefits. There was an informal meeting between J.R. Pilyih, then President of the Association and Denise Sedlacek, Human Resources Director, for the District. The meeting was on March 29, 2022, and the dispute was not resolved at this informal meeting. (N.T. 14-15).

4. As the informal meeting did not resolve the issue, the Association filed a formal written grievance on April 4, 2022. The grievance was submitted to the Level 1 supervisor, who was Sedlacek. On April 4, 2022, Sedlacek denied the grievance at Level 1. (N.T. 17; Association Exhibit 2).

5. The formal written grievance states the following issue:

> The District violated the collective bargaining agreement when it denied Kelly Haupt her request to use of sick leave while receiving workers compensation benefits and as a result, Ms. Haupt will lose compensation and creditable service in PSERS.

(Association Exhibit 2).

6. The suggested relief in the grievance is as follows:

> The District shall: (1) cease and desist from violating the CBA and applicable laws; (2) make the grievant whole in all respects including but not limited to retroactive application and compensation of the appropriate amount of the employee's accrued sick leave plus statutory interest for each day missed due to the injury subject to the workers compensation claim; (3) Any other remedy deemed appropriate by the arbitrator.

(Association Exhibit 2).

7. On April 22, 2022, the Association took the grievance to Level 2 which was with Dr. Highland, the Superintendent for the District. Highland denied the grievance on May 24, 2022. (N.T. 17-18; Association Exhibit 2).

8. The parties are subject to a CBA with the effective dates of July 1, 2018 to June 30, 2024. The CBA states in relevant part:

> Article VI
>
> Grievance Procedure
>
> . . . .
>
> C. Procedure:
>
> 1. Time Limits:
>
> (a) Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level shall be considered as a maximum and every effort shall be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

> (b) Failure at any level of this procedure to communicate the decision in writing to the Employee involved within the specified time limit shall permit the Employee to proceed to the next prescribed step. The Employee may withdraw a grievance at any time. Failure on the part of the Employee to appeal a decision rendered to him within the specified time limits will be deemed acceptance of the rendered decision. **Failure on the part of the Employer to render a decision to the Employee within the specified time limits will be deemed acceptance of the Employee's suggested relief.**
>
> . . . .
>
> 5. Level Three – School Board
> If the Employee is not satisfied with the disposition of his grievance at Level Two, then, within five (5) days following the receipt of the Superintendent's decision, the Employee may file the grievance form with the Secretary of the School Board. The Secretary, or his designee, shall schedule a conference with the committee representing the [School] Board and the Employee. **No later than five (5) days following the conference, the Secretary of the School Board shall communicate in writing the decision and the reasons therefore of the committee representing the [School Board].**

(Association Exhibit 1, pages 4-5)(emphasis added).

9. On May 25, 2022, the Association filed the grievance at Level 3, which was with the District's Board. The Association met with representatives of the District on June 6, 2022, to discuss the grievance. The District denied the grievance on June 15, 2022. (N.T. 19-20; Association Exhibit 2).

10. June 6, 2022, was a Monday. The fifth day following June 6 was Saturday, June 11. The first workday following Saturday, June 11 was Monday, June 13.

11. Jenna Romanelli, the new Association President, emailed Superintendent Hyland, on June 15, 2022, informing him that the Association viewed the grievance as sustained by the District as a result of its failure to comply with the timelines set forth in the grievance procedure. Romanelli requested that the District implement the suggested remedy, but Hyland, by reply email, refused to do so. Superintendent Hyland further responded to Romanelli's request by transmitting the Board's Level 3 denial of the grievance. On June 22, 2022, Pilyih, now serving as Association Vice President, emailed Hyland and again demanded that the District implement the relief sought in the grievance. Hyland responded on June 28, 2022, stating that the District will not implement the grievance, that timeliness is within

the discretion of an arbitrator, and that the Association is committing an unfair practice by refusing to arbitrate. (N.T. 34-35, Association Exhibit 5).

DISCUSSION

In its Charge, the Association asserts that the District violated Section 1201(a)(1) and (5) of the Act when the District refused to implement the grievance settlement in this matter after the District failed to meet the timeline as outlined by the CBA. Specifically, the Union argues that the District did not render a decision at Level 3 of the grievance process within 5 days of the conference between the Union and District and, therefore, the suggested relief the Association had listed in the grievance became effective pursuant to the plain language of the CBA.

This claim by the Association is, in essence, a claim that the District has repudiated the CBA. The Board will find an employer in violation of Sections 1201(a)(1) and (5) of the Act if the employer repudiates a provision of a collective bargaining agreement. Millcreek Township school District v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1994); Palmyra Area School District, 26 PPER ¶ 26087 (Final order, 1995).

Reviewing Board precedent, Ambridge Area School District, 28 PPER ¶ 28020 (Proposed Decision and Order, 1996), 28 PPER ¶ 28092 (Final Order, 1996), has very similar facts to this matter. In Ambridge Area School District, 28 PPER ¶ 28020, the CBA between the parties had a clause which read:

> Matters unresolved at the second level shall be referred to the Board of School Directors' Grievance Committee. A meeting shall be held with the employee within six (6) workdays of the receipt of the grievance appeal and a determination must be made on the same within six (6) workdays thereafter. **Failure to so respond after the meeting shall be deemed as sustaining the grievance position.**

(emphasis added). The District in Ambridge did not respond to the two grievances at issue within six workdays of their presentation at the third level and the District refused, similar to this case, to regard its failure to so respond as sustaining the grievance position. The Hearing Examiner in Ambridge held "it is apparent that the District has repudiated the parties' collective bargaining agreement insofar as it relates to the processing of grievances at the third level of the grievance arbitration procedure."

Further reviewing Board precedent, Palmerton Area School District, 33 PPER ¶ 33101 (Proposed Decision and Order, 2002); 33 PPER ¶ 33163 (Final Order, 2002); aff'd, 34 PPER 92 (2003), also has similar facts. In Palmerton Area School District, 33 PPER ¶ 33101, the Hearing Examiner found that the school superintendent failed to answer the union's grievance within the contractually mandated time period, that the grievance was deemed sustained under the terms of the parties' collective bargaining agreement, and that therefore, the district's

refusal to implement the requested remedy constituted a violation of Section 1201(a)(1) and (5).

Moving to this matter, the record is clear that at Level 3 of the grievance process there shall be a conference between the parties. The CBA is also clear that "[n]o later than five (5) days following the conference, the Secretary of the School Board shall communicate in writing the decision. . . ." The District did not respond to the Association within 5 days following the conference on June 6, 2022. The District responded on June 15, which is two days late. The language of the CBA in this matter is crystal clear: "Failure on the part of the Employer to render a decision to the Employee within the specified time limits will be deemed acceptance of the Employee's suggested relief." Following the District's late response, the Union demanded that the District implement the suggested relief in the grievance. The record shows that the District has refused to implement the suggested relief in the grievance and, therefore, has repudiated the CBA and committed an unfair practice pursuant to Section 1201 (a)(1) and (5) of the Act.

In its defense, the District argues that this dispute should be arbitrated and that the Board does not have jurisdiction over what is, in essence, a contractual dispute. District's Brief at 2-6. I will not overly belabor this argument as it has been raised before and rejected by the Board. In Palmerton Area School District, 33 PPER ¶ 33163 (Final Order, 2002), the Board upheld the Hearing Examiner's decision that the employer had violated Section 1201(a)(1) and (5) of the Act when it refused to implement the requested remedies in grievances after failing to reply to those grievances in the contractually mandated time period. The Board rejected an argument made by the employer that the Board lacks jurisdiction to entertain this matter because the dispute involves a disagreement over the interpretation of the terms of the CBA. The Board held:

> The courts and the Board have previously rejected the District's argument that the Union's refusal to bargain charge under Section 1201(a)(5) is solely a matter of contract interpretation and the Board accordingly lacks jurisdiction to entertain the charge. Millcreek Township Sch. Dist. v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1994); Ambridge, [28 PPER ¶ 28092 (Final Order, 1996)]. "The fact that the same act may give rise to both a violation of the collective bargaining agreement and an unfair labor practice, or that determination of whether an unfair labor practice has occurred may depend on interpretation of the collective bargaining agreement, does not oust the Board of jurisdiction." [631 A.2d at 737.]
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> Although some contract interpretation matters are indeed within the exclusive jurisdiction of an arbitrator, an "employer acts unilaterally in derogation of its statutory obligation to bargain in good faith when it reneges on an agreement reached during collective bargaining." Ambridge, 28 PPER at 50. Indeed the Commonwealth Court has

> expressly held that the Board has jurisdiction to determine whether an employer has engaged in unfair labor practices where, as here, the employer allegedly failed to comply with a contractually defined grievance process. Pottstown Police Officers' Ass'n v. PLRB, 634 A.2d 711 (Pa. Cmwlth. 1993).

Palmerton Area School District, 33 PPER ¶ 33163. In this matter, I am enforcing the statutory bargaining obligations that require an employer to honor the terms of its collective bargaining agreement. The record shows that the District has repudiated its agreement with the Association. This is an unfair practice within the jurisdiction of the Board and the issue is not within the exclusive jurisdiction of an arbitrator.

The District further argues in its Brief that the CBA should not be interpreted strictly as it contains a clause at Article VI(A) that reads: "Both parties agree that these proceedings will be kept as **informal** and confidential as may be appropriate . . . ." District's Brief at 6 (emphasis added). The District cites this language in the CBA for the proposition that the deadlines in the CBA should not be strictly interpreted. This argument is, in essence, a claim of contractual privilege.

Both the Commonwealth Court and the Board have recognized the affirmative defense of contractual privilege. Pennsylvania State Troopers Ass'n v. PLRB, 804 A.2d 1291 (Pa. Cmwlth. 2002); Jersey Shore Area Sch. Dist., 18 PPER ¶ 18117 (Final Order, 1987). The doctrine of contractual privilege requires the dismissal of a charge where the employer establishes a sound arguable basis for ascribing a certain meaning to the language of the collective bargaining agreement or other bargained for agreement and that the employer's conduct was in conformity with that interpretation. Fraternal Order of Transit Police v. SEPTA, 35 PPER 73 (2004). An employer's interpretation need not be the correct interpretation as long as a sound arguable basis exists for its interpretation, thus establishing a substantial claim of contractual privilege. Id.

In this matter, I find that the District cannot rely on the term "informal" in the CBA to ignore deadlines in the grievance process. I find that the District does not have a sound arguable basis for relying on this cited language because the CBA does not say the grievance proceedings must or shall be "informal", it merely says that the grievance proceedings will be as informal "as may be appropriate at any level" and then follows with approximately two pages of precise procedure to follow at every level of the grievance process. If I am to credit the District's interpretation of the word "informal" in the CBA, the entire CBA language on the grievance process would be unnecessary and non-binding on the parties. Since this argument would throw out the entire bargained-for grievance process, I find that this is not a sound arguable basis to support the District's interpretation.

Lastly, the District argues that it cannot conform with the suggested relief in the grievance as "it would not be in accordance with PSERS guidelines for PSERS credit to be given for the time an

employee is on workers' compensation leave." District's Brief at 7. If it is indeed impossible for the District to comply with the suggested relief, the District has the obligation to bargain with the Association to find an alternative solution. Wilkes-Barre Township Police Benevolent Ass'n v. Wilkes-Barre Township, 878 A.2d 977 (Pa. Cmwlth. 2005)("Obviously the statutorily mandated obligation to bargain in good faith is not met by permitting the governmental employer to avoid the performance of a term by questioning its legality after having received the advantages that flowed from the term's acceptance.") The District cannot merely refuse to implement the suggested relief in the grievance as that is an unfair practice (as discussed above). Good faith bargaining requires that questions as to the legality should be resolved by the parties. Id. at 984. There is no excuse for an employer to ignore contractual obligations because it believes it lacks the capacity to do so. Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, 391 A.2d 1318 (Pa. 1978). Such a proposition would invite discord and distrust and create an atmosphere wherein a harmonious relationship would virtually be impossible to maintain. Id. at 1322.

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 within the meaning of Section 301(1) of PERA.

2. The Association is an employe organization within the meaning of Section 301(3) of PERA.

3. The Board has jurisdiction over the parties hereto.

4. The District has committed unfair practices 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 PERA, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that Plum Borough School 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 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.

3. Take the following affirmative action:

(a) Immediately sustain the grievance found at Association Exhibit 2 and implement the suggested relief found therein;

(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 the bargaining unit 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 Union.

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 fifth day of May, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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	:	
v.	:	CASE NO. PERA-C-22-282-W
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AFFIDAVIT OF COMPLIANCE

The Plum Borough School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein; that it has immediately sustained the grievance found at Association Exhibit 2 and implemented the suggested relief found therein; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public