

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

INDIAN RIVER EDUCATION ASSOCIATION :
and JAMES LOBO, :
Charging Parties, :
v. : U.L.P. No. 88-11-027
BOARD OF EDUCATION OF THE INDIAN :
RIVER SCHOOL DISTRICT, :
Respondent. :

The Indian River Board of Education (hereinafter "District") is a public school employer within the meaning of 14 Del.C. section 4002(m). The Indian River Education Association (hereinafter "Association") is the exclusive bargaining representative of the public school employer's certificated professional employees within the meaning of 14 Del.C. section 4002(h). James Lobo is a public school employee within the meaning of 14 Del.C. section 4002(1).

FACTS *

At all times relevant to this dispute, the Indian River Education Association and the Board of Education of the Indian River School District were parties to a current collective bargaining agreement.

* The relevant facts are not in dispute.

On September 22, 1988, Charging Party received the Superintendent's Level II answer denying his previously filed grievance. On September 26, 1988, an Association representative addressed and mailed to the School Board President an appeal of the grievance to Level III. At the same time, a courtesy copy of the appeal was mailed to the District Superintendent. The formal appeal was received by the Board on September 30, 1988, one day after the expiration of the contractually permitted period for appealing grievances to Level III. The Superintendent received his courtesy copy on either September 27 or 28. On October 4, the Board refused to honor the appeal claiming that it was not timely filed, in accordance with the provisions of Article XV, Grievance Procedures, section 3, Level Three.

POSITIONS OF THE PARTIES

The Association maintains that...

...by its refusal to accept the appeal, respondent has violated 14 Del.C. section 4013(c) by denying to charging parties, without lawful basis, the use of a negotiated grievance procedure, 14 Del.C. section 4007(a) (6) by refusing to comply with a provision of Chapter 40, viz. section 4013 (c), and 14 Del.C. section 4007 (a) (5) in that the refusal to allow reasonable access to the grievance procedure constituted a refusal to bargain in good faith.

[Charging Parties' Charge, p. 2, 11/02/88].

The District denies that...

...the Board of Education of Indian River School

District, has violated 14 Del.C. section 4013 (c) since that section requires that the public school employer, in this case, Board of Education of Indian River School District, and the Bargaining Representative, in this case, Indian River Education Association, negotiated a written grievance procedure. Such a written grievance procedure was included in the Collective Bargaining Agreement between the public School Employer, Board of Education of Indian River School District and the exclusive representative, Indian River Education Association, but the procedure for a Level Three hearing was not followed by the teacher, James Lobo. It is denied that the respondent, Board of Education Indian River School District, violated 14 Del.C. section 4007 (a) (6) or 14 Del.C. section 4007 (a) (5), since the Collective Bargaining Agreement procedure for a grievance procedure allows reasonable access to the grievance procedure prescribed in the Collective Bargaining Agreement, but the teacher, James Lobo, did not comply with the procedure established in that Agreement. [Respondent's Answer, p. 3, 11/15/88]

ISSUE

Whether or not the actions of the respondent, Indian River School District, constituted an unfair labor practice(s) in violation of section 4013 (c) and sections 4007 (a) (5) and (6), of the Public School Employment Relations Act, as alleged?

OPINION

Section 4013 (c), of the Public School Employment Relations Act (14 Del.C. Chapter 40), provides:

The public school employer and the exclusive bargaining representative shall negotiate written grievance procedures by which bargaining unit employees, through their collective bargaining representatives, may appeal the interpretation or application of any term or terms of an existing collective bargaining agreement; such grievance procedure shall be included in any agreement entered into between the public school employer and the exclusive bargaining representative.

Clearly, the parties have executed a written grievance procedure, as required by the statute. The charging party availed himself of the negotiated procedure to initiate and process a grievance through Level II.

Article XVII of the collective bargaining agreement sets forth the terms of the negotiated grievance procedure. Section D, Initiation and Processing, provides at step 3, paragraph (a):

In the event the aggrieved is not satisfied with the disposition of his grievance at Level II, he may appeal the decision of the Superintendent to the President of the School Board in writing within five (5) days. The appeal shall include a copy of all decisions rendered at Levels One and Two.

The Public Employment Relations Board has previously determined that:

While an unfair labor practice is statutory in origin and raises a question of statutory interpretation to be resolved by the Public Employment Relations Board, an alleged contract violation is proper subject matter only for the negotiated grievance procedure. The unfair labor practice forum is not a substitute for the grievance procedure and the Public Employment Relations Board has no jurisdiction to resolve grievances through the interpretation of contract language. It may, however, be necessary for the Board to periodically determine the status of specific contractual provisions in order to resolve unfair labor practice issues properly before it. Brandywine Affiliate, NCEA/DSEA/NEA v. Brandywine School District Board of Education, (Del PERB, ULP No. 85-06-005 (02/05/86)).

The determination of whether the District's action in this matter was proper necessarily requires the interpretation of Article XVII, Section D. This determination is, by statute, the function of the negotiated grievance procedure. In exercising its authority the Board cannot, as it is requested to do here, serve as an alternative to the negotiated grievance procedure. Lastly, the complaint contains no allegation, nor does the record establish, that the Board's refusal to honor the appeal to Level III was for any reason other than its good-faith perception of its rights under the relevant contract language.

DECISION

For the reasons set forth above, there is no apparent basis upon which to reasonably conclude that probable cause exists to believe that an unfair labor practice has occurred in violation of 14 Del.C. sections 4013 (c), 4007 (a) (5) or 4007 (a) (6), as alleged. Therefore, in accord with Article V, Unfair Labor Practices, Section 5.4, of the Board's Rules and Regulations, the complaint is dismissed.

D. Murray-Sheppard

DEBORAH L. MURRAY-SHEPPARD

Principal Assistant/Hearing Officer

Delaware PERB

Charles D. Long, Jr.

CHARLES D. LONG, JR.

Executive Director

Delaware PERB

ISSUED: December 16, 1988