
RAYNHAM SCHOOL COMMITTEE AND RAYNHAM EDUCATION ASSOCIATION, MUP-6319 (8/14/87).

- 68.2 refusal to discuss grievances
- 68.4 frustrating the contractual grievance procedure

Hearing Officer:

Louise F. Pongracz, Esq.

Appearances:

- | | |
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| Eileen Cenci, Esq. | - Representing the Raynham Education Association |
| Joseph A. Emerson, Esq.
Joseph A. Emerson, Jr., Esq. | - Representing the Raynham School Committee |

HEARING OFFICER'S DECISION

Statement of the Case

This case arises from an allegation by the Raynham Education Association (Association) that the Raynham School Committee (Employer) refused to bargain in good faith, in violation of Section 10(a)(5) of G.L. c.150E (the Law), by refusing to process the grievances of Janet Sinkevich.

On June 27, 1986, the Association filed a charge with the Labor Relations Commission (the Commission) alleging that the Employer had engaged in prohibited practices within the meaning of the Law. Following investigation, the Commission issued a Complaint and Notice of Hearing on January 6, 1987, alleging that the Employer violated Sections 10(a)(5) and (1) of the Law by failing to process Sinkevich's grievances.

On April 13, 1987, the undersigned hearing officer held an expedited hearing at which the parties submitted testimonial and documentary evidence and had full opportunity to examine and cross-examine witnesses. Both parties submitted post-hearing briefs on May 22, 1987. All of the evidence has been duly considered.

Statement of the Facts¹

Prior to September 1985, Sinkevich had been employed as a teacher in the Raynham Public Schools. In August 1985, Sinkevich was offered a position in the Fall River School District. On September 10, 1985, shortly after the beginning of the 1985-86 school year, Sinkevich submitted a letter of resignation to William Sullivan, Superintendent of Raynham Public Schools, explaining that she was resigning from her position in Raynham in order to accept a teaching position in the Fall River schools.

¹The parties do not challenge the Commission's jurisdiction over this matter.



On September 12, 1985, Sullivan gave Sinkevich her pay check and told her she was released from her teaching position. The School Committee hired a substitute teacher to cover the vacancy that Sinkevich's departure created.

On September 15, 1985, Sinkevich began her job with the Fall River School District, but quickly discovered that she did not want the position. Therefore, on September 17, 1985, Sinkevich wrote to Sullivan to request that the Raynham School Committee take no action on her letter of resignation and to inform Sullivan that she was "ready, willing, and able" to resume her duties in the Raynham Public Schools. Notwithstanding Sinkevich's September 17 letter, the School Committee voted on September 23, 1985 to accept Sinkevich's resignation.

The School Committee subsequently posted Sinkevich's former position and Sinkevich applied for the position by the letter dated November 13, 1985. In mid-November 1985, the School Committee voted to fill the vacancy with the substitute teacher who had been covering the position.

At all times relevant to this action, the Association and the Employer were parties to a collective bargaining agreement (Agreement). Article IV of the Agreement provides for a four-step, self-processing grievance procedure. Level I provides for a discussion between the aggrieved teacher or his/her designated Association representatives and the teacher's principal or immediate supervisor. If the grievance is denied or is unresolved after ten (10) days, the teacher's grievance can be advanced to Level II. At Level II, a written grievance is submitted to the Association's Professional Rights and Responsibility (PR&R) Committee which, in turn, submits the grievance to the Superintendent. The Superintendent is then required to meet with the aggrieved individual. If the grievance is denied or remains unresolved after fifteen (15) days, the PR&R Committee can advance the grievance to Level III by submitting the grievance to the School Committee. The School Committee is then required to meet with the aggrieved individual. If the grievance is denied or remains unresolved by the School Committee after fifteen (15) days, the PR&R Committee can make a written request to advance the grievance to Level IV, arbitration.

On or about February 1, 1986, Sinkevich filed a grievance to protest the School Committee's failure to appoint her to the position she vacated in September. The Association submitted the grievance and processed it through each level of the grievance procedure. At Levels I, II and III, the Principal, Superintendent, and School Committee responded in writing to the grievance by stating that they could not accept the grievance because Sinkevich was not an employee of the Raynham School Committee and therefore was not entitled to the protections of the grievance procedure set forth in the Agreement. The Employer did not meet with Sinkevich at any level of the grievance procedure. The Association ultimately decided not to take the grievance to arbitration.

The Association and the Employer are parties to a Memorandum of Agreement regarding the distribution of Professional Development Grants. In April 1985, Sinkevich applied for, but did not receive, Professional Development Grant monies. Sinkevich subsequently filed a grievance on April 18, 1986. The Association agreed to act in a "technical" capacity and processed the grievance through Levels I, II, and III. By "technical capacity" the Association meant that, although the Association



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did not believe the grievance was meritorious, it nevertheless agreed to process the grievance through the grievance procedure.

Again, the Principal, Superintendent and School Committee each informed the Association that they could not accept the grievance because Sinkevich was not an employee of the Raynham School Committee and was, therefore, not entitled to the protections of the grievance procedure set forth in the Agreement. However, the Employer did not meet with Sinkevich at any level of the grievance procedure. The Association also declined to take this grievance to arbitration.

OPINION

The Association alleges that the Employer violated Section 10(a)(5) of the Law by refusing to process Sinkevich's grievances. For the reasons stated below, I find no violation of Section 10(a)(5) of the Law and, accordingly, dismiss the Complaint.

Section 6 of the Law obligates parties to meet at reasonable times in order to negotiate terms and conditions of employment. The Commission has long held that this statutory obligation encompasses the duty to participate in good faith in the grievance procedure. Ayer School Committee, 4 MLC 1478 (1977); Town of Braintree, 7 MLC 1400 (H.O., 1980). An employer violates the Law when it attempts to frustrate or delay the grievance procedure. Town of Braintree, 9 MLC 1443 (H.O. 1982); See also, Belmont Management, Inc., 7 MLC 2069 (H.O. 1981); Town of Braintree, 7 MLC 1400 (H.O. 1980).

On the facts before me, I find that the Employer did not violate Section 10(a)(5) of the Law, because the evidence does not demonstrate that the Employer failed to process Sinkevich's grievances or that the Employer's actions frustrated or delayed the grievance procedure. The Association argues that the Employer was required by the Agreement to meet with the aggrieved party and that its failure to do so constitutes a violation of the Law. However, as noted by the hearing officer in Town of Braintree, *supra* at 1445, "what might arguably violate the agreement need not also constitute a violation of the Law." This observation is applicable to the instant case.

Here, the Agreement states that the Employer shall meet with the aggrieved individual. While it is undisputed that the Employer did not meet with Sinkevich, the record demonstrates that the Employer responded to the grievances at each level by clearly articulating its reasons for declining to accept the grievance and, further, did nothing to prevent the Association from advancing the grievances to the next step of the grievance procedure. Moreover, there is no evidence that the Employer refused to take the grievances to arbitration.

I dismiss the Complaint based on the specific facts presented by this case. I do not find a violation because the Employer's failure to meet did not frustrate or delay the grievance procedure. The Employer fully informed the Association of its reasons for refusing to accept the grievance by responding in writing at each level of the grievance procedure, consistently gave the same response at each level. A meeting would have informed the Association only of what it already knew. Most



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Importantly, the Employer's failure to meet did not prevent the Association from advancing the grievance through all levels of the procedure. If the evidence had disclosed that the Employer consistently refused to meet or participate in the grievance procedure, I would be constrained to rule differently because such actions would frustrate the grievance procedure. However, the evidence in this case discloses no consistent refusal to participate in the grievance procedure.

CONCLUSION

On the basis fo the foregoing, I order that the Complaint be DISMISSED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

LOUISE F. PONGRACZ
HEARING OFFICER

