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PLRB RULING HIGHLIGHTS THE HIDDEN TRAP OF INFORMAL GRIEVANCE SETTLEMENTS

We recently prevailed in a case before the Pennsylvania Labor Relations Board (PLRB) which we wish to bring to your attention as a reminder of an issue that causes problems for school entities in various contexts. The case, *Blue Ridge Education Association v. Blue Ridge School District*, is about a disagreement with the union over whether a grievance had been settled based upon conversations between the director of special education and the union president.

In this matter, the union initiated a grievance over a directive to a special education teacher to provide remote instruction via Zoom to one of the teacher's students. Step one of the grievance procedure required an informal discussion with the appropriate department head—in this case the director of special education—before moving to the next step. That discussion took place, which led to a dispute, which led to the filing of an unfair labor practice charge by the union alleging that the district violated its bargaining obligation when it failed to comply with what the union asserted was a settlement of the grievance.

The union argued that the grievance had been settled based on its understanding of the statements made by the director. The district argued there had been no such agreement. The PLRB hearing examiner agreed with the district and concluded that no agreement had been reached. The case is a good reminder concerning a number of issues surrounding settling grievances and the problems that can arise.

- *First*, it is not uncommon that a grievance procedure, as was the case in *Blue Ridge School District*, includes as the initial step an informal discussion with the building principal or a department head. If a settlement is reached at that level, that settlement, according to PLRB precedent, is binding on the school entity. So, **it is crucial that those administrators who might be involved in a first level informal grievance meeting understand the significance of what they agree to do—that it could end up binding the school entity even if the superintendent or the board of school directors disagree.**
- *Second*, the ruling in this case spelled out the test that the PLRB uses to determine if a settlement has actually been reached. The party (whether it is the union or the employer) seeking to enforce a settlement must initially prove there has been a “meeting of the minds” concerning the subject matter at issue. The PLRB will not find a “meeting of the minds” if there is a genuine difference of opinion as to the substance of an agreement. In this case, the dispute occurred over the meaning of what was said during the informal process. The

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union argued that the director's statement that she would put the work "out to homebound" meant there was an agreement the teacher would not be required to perform the instruction but that one of the homebound teachers would perform the work. The director testified that she only agreed to "look into" having a homebound teacher perform the work, meaning that she would see if anyone was interested in the work and would review the issue with the superintendent. The PLRB hearing examiner agreed there was no "meeting of the minds." It is clear that **what is said during an informal grievance meeting can become the basis of a claim. Clarity is critical and written follow-up confirming statements made and the intent of those statements is needed.**

Another issue that has been addressed by the PLRB in the past relates to whether board of directors approval is needed for a grievance settlement to be binding. In *Mountain View Education Association v. Mountain View SD*, the district refused to implement a grievance settlement reached during grievance mediation when the board of school directors rejected the agreement. The PLRB hearing examiner in that case concluded that, because the agreement did not include a requirement of board of directors approval, the agreement that had been reached with the superintendent was binding.

Accordingly, if there is any concern that a grievance settlement might not be acceptable to the board of directors, either make sure the settlement includes a contingency that it is subject to board approval or seek that approval before the terms are agreed to. This requirement is important whether the settlement includes spending money or is just an agreement on contract interpretation.

Clients who have questions regarding issues discussed in this article, or any employment law matter, should feel free to call us at 215-345-9111.

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