

JOAN MICHALOWICZ, ET AL.,

Appellant

v.

WICOMICO COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-07

OPINION

INTRODUCTION

On behalf of Joan Michalowicz and several other nurse employees (Appellants), the Wicomico County Education Association (WCEA) appealed the decision of the Wicomico County Board of Education (local board) denying Appellants' grievance as untimely filed. The local board filed a Motion for Summary Affirmance. WCEA filed a Response. The local board filed a Reply.

FACTUAL BACKGROUND

This dispute arose on or about May 2, 2013 when the Assistant Superintendent sent a memorandum to all registered nurses employed by the school system advising them that the school system had reviewed the Fair Labor Standards Act and determined that registered nurses should be classified as "exempt" staff. Therefore, in her memo, the Assistant Superintendent explained that as of July 1, 2013, the registered nurses would no longer be eligible to earn overtime or compensatory time as set forth in the Negotiated Agreement. (Appellants Response, Ex. 1). On May 30, 2013, the WCEA sent a letter to the Director of Human Resources objecting to that action and asserting that the action violated the Negotiated Agreement. (*Id.*, Ex. 3). The Director of Human Resources responded on June 4, 2013, disagreeing with the WCEA's position and declining to change the school system's assessment of the exempt status of the nurses and its decision not to pay overtime/compensatory time. (*Id.*, Ex. 4). On June 18, 2013, WCEA acknowledged receipt of that letter. (*Id.* Ex. 5).

Thereafter, the new school year began; nurses reported for duty on August 2, 2013. Month after month, they received no payment for overtime nor were they given compensatory time. As the WCEA states, "[s]tarting the 2013-2014 school year, registered nurses have been denied enjoying [the benefits] of the Negotiated Agreement...."(Response at 4).

Following the procedure set forth in the Negotiated Agreement, on December 20, 2013, WCEA filed a grievance at Step C to the Office of Human Resources. (*Id.* Ex. 6). The grievance was denied as untimely. At Step D, the Superintendent denied the grievance as untimely. Again, following the procedures set forth in the Negotiated Agreement, the WCEA appealed the Superintendent's decision to the local board pursuant to Md. Code Ann. Educ. §4-205. On June 30, 2014, after hearing oral argument, the local board issued its Opinion finding that the grievance was untimely filed. This appeal ensued.

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05E.

LEGAL ANALYSIS

Both parties to this appeal have presumed that this Board has jurisdiction to hear this salary/wage dispute caused by the school system's decision not to pay overtime/compensatory time to the school system's registered nurses. Indeed, the grievance procedure in Article 11 of the Negotiated Agreement invokes the jurisdiction of this Board, set forth in Education Article §4-205, to hear appeals from local board decisions. That appeal procedure for resolving disputes arising under the collective bargaining agreement apparently has been in place for many years. Yet, at least 5 years ago, the General Assembly created the Public School Labor Relations Board (PSLRB) and gave it sole jurisdiction to enforce and decide all disputes arising under Education Article §6-401 *et seq.* and 6-501 *et seq.* See Md. Educ. Code Ann. §§6-806, 6-807.

Under §6-408 of the Education Article, after the public school employer and the employee union negotiate an agreement, both parties "shall honor and administer existing agreements" and "confer in good faith." The employee union asserted in various filings below that the local board violated several provisions of the Negotiated Agreement, in particular, Article 1 and 10. Those provisions, it argues, promised registered nurses that they would receive overtime/compensatory time payments. It is undisputed that in May, 2013 the school system announced that it would not pay nurses overtime/compensatory time. It did not confer with WCEA before making its decision.

The school system based that decision on the Fair Labor Standards Act, which allows employers to exempt certain nurses from overtime/compensatory time payments. The United States Department of Labor, however, explains:

Other Laws & Collective Bargaining Agreements

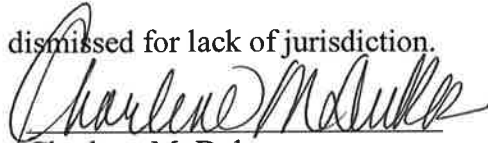
The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

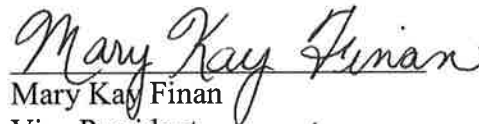
U.S. Dept. of Labor, Wage & Hour Division, Fact Sheet #17.

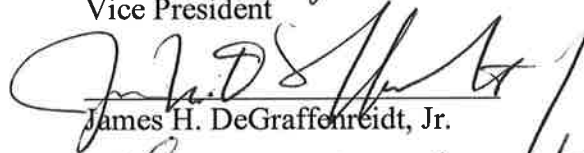
Given that FSLA does not preclude collective bargaining agreements that exceed FSLA requirements and given the union's allegations in this case that the local school system announced a change in the Negotiated Agreement without conferring with the Union, and thus failed to honor the Agreement or failed to bargain in good faith to amend the Agreement, we conclude that this matter falls within the jurisdiction of the PSLRB. If the PSLRB disagrees with that conclusion, that Board may remand the matter to us for further consideration.


CONCLUSION

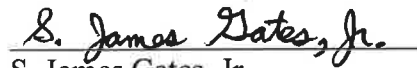
For the reasons stated herein, this appeal is dismissed for lack of jurisdiction.


Charlene M. Dukes
President


Mary Kay Finan
Vice President

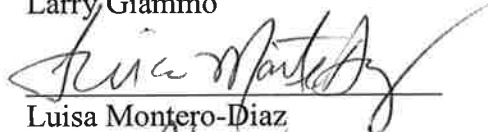

James H. DeGraffenreidt, Jr.


Linda Eberhart


S. James Gates, Jr.

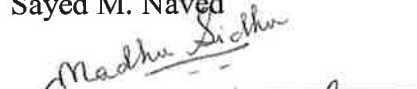
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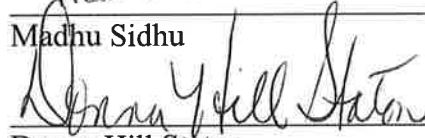
Larry Giammo

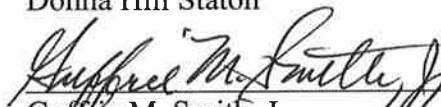

Luisa Montero-Diaz

Absent

Sayed M. Naved


Madhu Sidhu


Donna Hill Staton


Guffie M. Smith, Jr.