

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

RIVERSIDE EDUCATIONAL SUPPORT :  
PERSONNEL ASSOCIATION, PSEA/NEA :  
 :  
v. : Case No. PERA-C-10-129-E  
 :  
RIVERSIDE SCHOOL DISTRICT :

**PROPOSED DECISION AND ORDER**

On April 14, 2010, the Riverside Educational Support Personnel Association, PSEA/NEA (Complainant or Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Riverside School District (Respondent or District) alleging that the District violated Sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On April 27, 2010, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the matters in dispute through the mutual agreement of the parties and July 29, 2010, in Scranton was scheduled as the time and place of hearing if necessary.

A hearing was necessary but was continued to October 4, 2010 at the request of the complainant without objection from the respondent. At that time, all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The Riverside Educational Support Personnel Association, PSEA/NEA is an employe organization within the meaning of Section 301(3) of PERA, 43 P.S. § 1101.301(3).
2. The Riverside School District is a public employer within the meaning of Section 301(1) of PERA, 43 P.S. 1101.301(1).
3. The Association is the exclusive bargaining representative of the non-professional employes of the District and is party to a collective bargaining agreement (CBA) with the District covering the wages, hours and terms and conditions of employment of the professional employes. (N.T. 9, Joint Exhibit 1)
4. The CBA's Grievance Procedure contains four steps: Step 1 (grievance goes to the applicable supervisor); Step 2 (Superintendent); Step 3 (Board of Education); and Step 4 (neutral arbitrator). (N.T. 11-2, 22-23, Joint Exhibit 1, at 1-2)
5. Step 1 of the grievance process empowers the applicable supervisor to review, consider, and grant grievances. (N.T. 15)
6. When filing and processing grievances, the parties use a "Grievance Report Form" that reflects the CBA's grievance procedure and shows that the grievant's supervisor is empowered to review, consider, and grant grievances at Step 1. (N.T. 13-14, 15-16, Joint Exhibit 2)
7. The Association and District have used the grievance process and grievance report form for at least the past dozen years and for at least 30 grievances. (N.T. 11-12, 20-22; Association Exhibit 2)
8. Under these practices, the applicable supervisor has always had the authority to accept grievances. (N.T. 22)

9. On February 1, 2010, the Association filed a grievance on behalf of employee Elaine Orzel, a secretary who works in the guidance office of the Riverside Junior High School. (N.T. 28)

10. The grievance alleged that the District breached the CBA by failing to pay Orzel the proper pay for the work duty of processing student report cards. (N.T. 13, 17-18, Joint Exhibit 2)

11. Orzel had recently transferred to the guidance office and taken over the duties of secretary Nancy Evanish, who retired at the start of the 2009-2010 school year. (N.T. 13, 29; Association Exhibit 4, paragraphs 3, 19.

12. Although Evanish's regular rate of pay had been roughly \$13.00 an hour, the District had always paid Evanish the base rate of \$20.00 an hour for processing student report cards. (N.T. 17, 32, 15, 17, Association Exhibit 4, at paragraphs 11-13)

13. Evanish's base rate of pay for processing student report cards of \$20 an hour is confirmed by the District's time sheet and payroll records, which show that: (1) Evanish always reported separately the hours she spent processing student report cards; (2) Evanish was always paid the base rate of \$20.00 an hour for that work duty; and (3) Evanish received two separate payments (one for Ms. Evanish's other work duties (at a significantly lower rate of pay and reported under "regular earnings") and a second payment for the hours Evanish spent processing student report cards (at the higher base rate of \$20.00 an hour and reported in a separate column under "earnings T"). (N.T. 31-32, 52-53, 57-65, Association Exhibits 4 and 5)

14. After Evanish retired and Orzel had transferred to the guidance office, Orzel took over all the duties performed by Evanish, including the processing of student report cards. (N.T. 29-32)

15. When processing student report cards, Orzel followed the notes and directions she received from Evanish, including the practice of reporting separately the work hours spent on processing student report cards. (N.T. 31-33; Association Exhibit 3)

16. Evanish also told Orzel that the base pay for processing student report cards was \$20.00 an hour. (N.T. 32)

17. When reporting the hours spent on processing student report cards, Orzel turned the separate time sheets in to her supervisor, Principal Joseph Moceyunas. Principal Moceyunas informed Orzel that she would be paid "extra" and "the same amount that Nancy Evanish got paid" for that work duty (i.e., \$20.00 an hour). The time records showed Principal Moceyunas's signature (N.T. 33-34, Association Exhibit 3).

18. The District, however, refused to pay Orzel \$20.00 an hour for processing student report cards and instead paid Ms. Orzel the lower rate of pay she received for her other work duties, \$13.00 an hour. (N.T. 34-35)

19. Thereafter, Association President David Prislupsky filed the grievance on Orzel's behalf and, pursuant to Step I of the Grievance Procedure, hand-delivered the Grievance to Orzel's supervisor, building principal Joseph Moceyunas. (N.T. 14-15, 18)

20. Principal Moceyunas reviewed the Grievance. On February 3, 2010, he granted the Grievance, and stated on the Grievance Form: "Elaine Orzel should be paid the amount as she has earned." (N.T. 14-15, 18, Joint Exhibit 2)

21. When granting the Grievance and signing the Grievance Report Form, Principal Moceyunas stated to Association President David Prislupsky that Orzel was entitled to the greater rate of pay, \$20 an hour, for the duty of processing student report cards. (N.T. 14-15, 19)

22. Principal Moceyunas also discussed the Grievance with Elaine Orzel, informed Orzel that he approved the Grievance, and told Orzel that she would receive \$20 an hour for processing student report cards. (N.T. 35-36)

23. After Principal Moceyunas granted the Grievance, the Association understood that the District would pay Orzel \$20 an hour for processing student report cards. (N.T. 19)

24. Due to the disposition of the Grievance by Principal Moceyunas, the parties did not advance the Grievance to Step 2 of the Grievance Procedure. (N.T. 29)

25. After Principal Moceyunas accepted the Grievance, the Association wrote to District Superintendent David Woods requesting that the District pay Orzel the base rate of \$20.00 an hour. (N.T. 20, Association Exhibit 1)

26. The District did not provide the greater rate of pay to Orzel and, to date, has never paid Orzel the base rate of \$20.00 an hour for processing student report cards. Orzel has received only \$13.00 an hour for that duty. (N.T. 20, 36)

#### DISCUSSION

The Association's charge of unfair practices alleges that the District violated Sections 1201(a) (1) and (5) of PERA by failing to honor the settlement of a grievance.

As set forth in the findings of fact, the Association filed a grievance on behalf of member Elaine Orzel seeking to be paid the same rate of pay her predecessor received for processing student report cards. The grievance was settled at the first step of the grievance procedure when Principal Joseph Moceyunas by agreed to pay Orzel the higher rate of pay of \$20 an hour for doing the report card work. The settlement was made on February 3, 2010 yet the District has not paid Orzel the amount due.

It is an unfair practice for a public employer to repudiate a settlement of a grievance. Moshannon Valley Education Association v Moshannon Valley School District, 21 PPER ¶ 21070 (Proposed Decision and Order, 1990), 21 PPER ¶ 21126 (Final Order, 1990), aff'd 597 A.2d 711, 714 (Pa. Cmwlth. 1993). The Board has also found an unfair practice where a first level supervisor settles a grievance and then the District refuses to honor the settlement. Moshannon Valley School District, Id.; Old Forge School District, 11 PPER ¶ 11318 (Nisi Decision and Order, 1980).

The District is not complying with the grievance settlement because it contends that the amount of the settlement is in dispute. The District contends that it does not owe Orzel the amount of \$20 an hour for the time spent on the report card work but only an "overtime" rate of pay for any time spent over her regular hours. The District also asserts that this was the amount sought by the Association.

The District's argument is not persuasive. The grievance does not mention the term or concept of overtime. Instead the grievance sought compensation for "processing student report cards." When sustaining the grievance, Principal Moceyunas informed both the Association president, David Prislupsky and the grievant, Ms. Orzel, that Orzel was entitled to the base pay of \$20 an hour for processing report cards. His statement is binding on the employer as an admission by the District's agent. Pa. Rules of Evidence § 803(25). Moceyunas' settlement of the agreement is a perfectly reasonable decision because it was consistent with the rate of pay given to Orzel's predecessor.

The District's failure to pay the amount agreed to in the settlement of the grievance is an unfair practice in violation of Sections 1201(a) (1) and (5) of PERA. The District should immediately pay Orzel the amount of \$20 an hour for the time she spent processing student report cards, retroactive to the start of the 2009-2010 school year, with interest.

#### CONCLUSIONS

The examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That Riverside School District is a public employer within the meaning of Section 301(1) of PERA.

2. That the Riverside Educational Support Association, PSEA/NEA is an employe organization within the meaning of Section 301(3) of PERA.

3. That the Board has jurisdiction over the parties hereto.

4. That the District has committed unfair practices in violation of Sections 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

that the 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 organization 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) Consummate the settlement agreement for the Grievance No. 9-10-1 entered into by Principal Joseph Moceyunas;

(b) Pay Elaine Orzel the amount of \$20 an hour for processing student report cards, retroactive to the start of the 2009-2010 school year.

(c) Pay interest on this amount at the simple rate of six per cent per annum;

(d) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to its employes and have the same remain so posted for a period of ten (10) consecutive days;

(e) 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

(f) Serve a copy of the attached affidavit of compliance upon the Association.

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 from Harrisburg, Pennsylvania this fourth day of February, 2011.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner