

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ASSOCIATION OF PENNSYLVANIA STATE :
COLLEGE AND UNIVERSITY FACULTIES :
 :
v. : Case No. PERA-C-00-32-E
 :
STATE SYSTEM OF HIGHER EDUCATION :

FINAL ORDER

On January 31, 2001, the Association of Pennsylvania State College and University Faculties (APSCUF) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated January 12, 2001. In the PDO, the Hearing Examiner found that State System of Higher Education (SSHE) did not engage in unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by consistently proposing a salary schedule that is purportedly inconsistent with the State College Faculty Compensation Law (Act 182),¹ as alleged by APSCUF. By letter dated February 14, 2001, the Board Secretary granted APSCUF's request for a 20-day extension to file its brief in support exceptions. On February 21, 2001, APSCUF timely filed its brief. On March 20, 2001, SSHE filed its brief in opposition to APSCUF's exceptions.

In 1951, the General Assembly established a pay structure of general application for most state employes under the governor's jurisdiction. Each pay range consisted of seven steps, with approximately 5% increments between steps. This pay structure did not apply to state college faculty, whose salaries were separately established by legislation. The General Assembly enacted Act 182 in 1963, which established a pay structure for state college faculty that was similar to the existing structure for other state employes under the governor's jurisdiction. Act 182 established the following four pay ranges: Professor, Associate Professor, Assistant Professor, and Instructor. It also provided a minimum bi-weekly salary step within each pay range and six pay steps to follow. Act 182 expressly provides specific dollar amounts for each step. Act 182 further provided the following:

The minimum salary ranges prescribed in this act may be adjusted upward by the Executive Board of the Commonwealth through the adoption of a higher minimum salary step for each of these salary ranges, or through the adoption of additional salary steps beyond the maximum salary step of each of these salary ranges, or both.

(24 P.S. § 1864.2). Following the enactment of Act 182, pay ranges were established for each classification of state college faculty, which consisted of seven steps with an increment between steps of approximately five percent. Until collective bargaining commenced in the 1970's, salary increases were granted to state college faculty members in a manner similar to that followed for other state employes.

¹ 24 P.S. § 1864.2.

Such increases ordinarily took the form of a shift in a whole pay step, yielding a salary increase of approximately five percent. From 1963 through 1969, the actual increments between salary steps ranged from 4.85% to 5.12%.

Following APSCUF's certification as faculty bargaining representative, the seven-step salary structure was maintained and the negotiated salary schedules continued to provide employees with step increases of approximately 5 percent. The actual increments between salary steps during the 1970's through the mid-1980's ranged from 4.72% to 5.32%. By the 1984-85 school year, all increments between steps were slightly less than five percent (ranging from 4.72% to 4.97%). During negotiations for a new collective bargaining agreement effective July 1, 1985, SSHE agreed to APSCUF's proposal that all increments between salary steps would be five percent. From 1985 to 1999, the increments between salary steps for faculty members were essentially five percent. SSHE and APSCUF were parties to a collective bargaining agreement, which was effective from July 1, 1996 to June 30, 1999. The salary schedule in that agreement consisted of eight pay steps for each faculty classification (Steps A through G and Step Z).

SSHE and APSCUF held a bargaining session for a successor collective bargaining agreement on or about April 9, 1999. SSHE presented a proposal that included the implementation of a fifteen-step salary schedule in the second year of a new contract, with step increments of 2.5%. At a bargaining session in May 1999, APSCUF informed SSHE that if it remained firm on its salary proposal, the potential outcome was a strike. APSCUF and SSHE held a bargaining session on or about June 4, 1999. SSHE presented a proposal which stated that its April 9, 1999 proposal regarding salary increments "remains as proposed." SSHE informed APSCUF that it "was very important to the chancellor and very important to the Board of Governors to have . . . the increments reduced to two-and-a-half percent." (F.F. 13). At a bargaining session on June 18, 1999, SSHE advised APSCUF that its proposal regarding step increments "is a very serious proposal. It's not going to come off the table next week or probably not going to come off the table ever." (F.F. 14). SSHE and APSCUF held a bargaining session on June 25, 1999. SSHE presented a proposal, which included implementation of a fifteen-step salary schedule in the first year of a new contract, with step increments of approximately 2.5 percent. At the same session, APSCUF made a proposal that added additional steps to the existing salary schedule and provided that step increments would be reduced to 4.5 percent in the third year of a new contract. SSHE rejected APSCUF's proposal, which APSCUF later withdrew. On or about July 23, 1999, SSHE submitted a proposal to APSCUF that mirrored its June 25, 1999 proposal regarding the number of salary steps and increments between steps. On or about August 6, 1999, SSHE again submitted a proposal to APSCUF which included implementation of a fifteen-step salary schedule in the second year of a new contract, with increments of approximately 2.5 percent.

On September 13, 1999, APSCUF filed a petition in the Commonwealth Court of Pennsylvania for a declaratory judgment that SSHE's salary step proposal was contrary to Act 182. APSCUF also filed an application for equitable relief seeking to enjoin SSHE from maintaining this allegedly unlawful position in negotiations. At no time before filing of the declaratory judgment action in September

1999, did APSCUF advise SSHE that it was of the opinion that SSHE's salary proposal violated Act 182. SSHE filed preliminary objections with the Commonwealth Court alleging that the complained of conduct was arguably an unfair practice within the exclusive jurisdiction of the Board. APSCUF v. SSHE, 744 A.2d 387 (Pa. Cmwlth. 2000), aff'd per curiam, ___ Pa. ___, 762 A.2d 1084 (2000). In late September 1999, the APSCUF membership voted to authorize a strike. SSHE was advised of the strike vote on or about October 1, 1999.

On October 2, 1999, SSHE made a proposal to APSCUF which included implementation of an eleven-step salary schedule in the second year of a new contract, and step increments of 5%, 3.5% and 3.5% in years one, two and three, respectively. SSHE and APSCUF held a bargaining session on October 6, 1999. At that session, SSHE advised APSCUF that "[t]his increment proposal is a very serious issue with the Board of Governors, and, you know, we're not moving." (F.F. 22).

SSHE and APSCUF continued to negotiate after October 6, 1999. SSHE made additional proposals to APSCUF on October 8 and 9, 1999, which included salary step increments of less than five percent. On or about October 20, 1999, SSHE and APSCUF reached a collective bargaining agreement, which is effective from July 1, 1999 through June 30, 2002. The agreement was executed on January 13, 2000 and provides for the implementation of a twelve-step salary schedule in its third year, with some step increments of less than 5%. On January 13, 2000, Commonwealth Court issued an opinion and order sustaining SSHE's preliminary objections and dismissing the action brought by APSCUF, holding that the conduct at issue was arguably an unfair labor practice within the exclusive jurisdiction of the Board. The Pennsylvania Supreme Court affirmed Commonwealth Court's order on November 28, 2000. APSCUF, ___ Pa. ___, 762 A.2d 1084 (2000).

On February 3, 2000, APSCUF filed a charge of unfair practices alleging that SSHE violated Section 1201(a)(1) and (5) of PERA for consistently proposing salary increments of less than five percent. In his PDO, the Hearing Examiner concluded that Act 182 does not explicitly and definitely prohibit bargaining over salary step increments of less than five percent. Accordingly, the Hearing Examiner determined that SSHE's proposals were not illegal, and he dismissed the charge.

In its first three exceptions, APSCUF quotes statements made on pages 7 and 8 of the PDO and argues that those statements are legal conclusions instead of "findings". APSCUF does not address its first three exceptions in its supporting brief, and the nature of the error being claimed in exceptions 1 through 3 is not clear. However, these exceptions seem to imply that the Hearing Examiner somehow disguised legal conclusions as findings of fact or referenced such conclusions as findings of fact.

Section 95.91(k)(1) of the Board's regulations provides that a hearing examiner's "proposed decision shall be in writing and shall contain a statement of the case, findings of fact, conclusions of law and the order." 34 Pa. Code § 95.91(k)(1). To ensure compliance with this mandate, the Hearing Examiner separately and distinctly addressed each of these required categories. On page one of the PDO, the Hearing Examiner composed a separate section dedicated solely to his findings

of fact with the heading in capital typeface "FINDINGS OF FACT". In this section of the PDO, the Hearing Examiner made 26 separately enumerated findings of fact from page 1 through page 5. The statements quoted by APSCUF were extracted from page 7, which contains the Hearing Examiner's analysis, and page 8, which contains his analysis and his conclusions of law. Therefore, none of the statements quoted by APSCUF in its first three exceptions constitute "findings" as characterized by APSCUF therein and the Hearing Examiner did not represent legal conclusions as findings of fact. Also, even assuming that APSCUF is correct in characterizing the statements as legal conclusions, the nature of the error remains unclear. APSCUF failed to assert a substantive challenge to those statements or conclusions. The Board, therefore, is unable to review exceptions 1-3 for error. Accordingly, exceptions 1 through 3 are dismissed.

In exceptions 4 through 9 inclusively, APSUF objects to the Hearing Examiner's failure to make the following findings of fact: (1) the deviations from the mandated 5% pay steps referenced in findings 6 and 7 were due to rounding and to the addition of de minimus residuary monies from a faculty awards program; (2) prior to Act 182, salaries of faculty employes were set by legislative acts, and the number of wage increments and the differences between increments varied; (3) Act 182 replaced the system of irregular pay increments and number of increments with a regular system of pay ranges consistent of seven steps, 5% apart, and prescribed a method for future pay adjustments; (4) in 1985 AFSCUF demanded and SSHE agreed to the restoration of 5% intervals between all steps; (5) in the negotiated salary scale for academic year 1988-1989, the parties agreed to the adoption of additional steps beyond the maximum salary step of each of the salary ranges in the manner prescribed by Act 182; (6) in 1989, the parties agreed to "Principles of Salary Calculation," which provides that increases shall be added to the lowest pay step and each succeeding step shall be determined by calculating a 5% increment per step.

In Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556, 561 (1975), the Pennsylvania Supreme Court stated that "[w]hen the fact finder in an administrative proceeding is required to set forth his findings in an adjudication, that adjudication must include all findings necessary to resolve the issues raised by the evidence and which are relevant to a decision." Id. The Board has consistently followed the Velardi rule concluding that its hearing examiners need to make only those findings necessary and relevant to the resolution of the issues presented. Ford City Borough, 19 PPER ¶ 19117 (Final Order 1988) (stating that the examiner did not err when he omitted findings that were unnecessary to support his conclusions); Police of the City of Chester, Fraternal Order of Police v. City of Chester, 18 PPER ¶ 18,084 (Final Order, 1987) (concluding that the examiner's failure to make additional findings requested by the employer on exceptions is not error and exceptions will be dismissed where the examiner made all findings necessary to support his conclusion); Jenkins v. Commonwealth, Dep't of Labor and Indus., Office of Vocational Rehabilitation, 18 PPER ¶ 18141 (Final Order, 1987) (concluding that the Board, as an administrative agency, is required only to make those findings of fact which provide a basis for its decision and for appellate review and that it is not required to summarize all the evidence presented).

After a thorough review of the record and the applicable case authority, the Board concludes that the Hearing Examiner made all the relevant findings of fact that were necessary to support his decision. The issue in this case was whether SSHE's consistent bargaining position insisting on a pay schedule for bargaining unit members comprised of more than 7 pay steps for each pay range, where each incremental step was less than a 5% increase, constituted bad-faith bargaining. The relevant facts that are necessary to resolve this issue are governed by the requirements of the applicable case law, which was correctly and comprehensively delineated in the PDO by the Hearing Examiner and which the Board adopts herein. Accordingly, the relevant inquiry is whether Act 182 explicitly and definitely prohibits bargaining over a greater number of salary step increments where each increment is less than 5%. None of APSCUF's proposed findings of fact in exceptions 4-9 inclusively, which are listed above, are relevant or necessary to determining whether Act 182 explicitly and definitely prohibits bargaining over a greater number of salary step increments where each increment is less than five percent.² Therefore, pursuant to Page's Department Store and its progeny, the Hearing Examiner did not err by excluding APSCUF's proposed findings of fact, and exceptions 4-9 will be dismissed.

In exception No. 10, APSCUF objects to finding of fact No. 19 in the PDO and argues that it is not supported by substantial evidence. In Shive v. Bellefonte Area Bd. of Sch. Dir., 317 A.2d 311 (Pa. Cmwlth. 1974), the Commonwealth Court stated that "[s]ubstantial evidence is more than a mere scintilla and must do more than create a suspicion of the existence of a fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. at 313. Finding of Fact No. 19 states the following:

19. That before filing of the declaratory judgment action in September 1999, APSCUF never advised SSHE that it was of the opinion that SSHE's salary proposal violated Act 182. (N.T. 79-81).

(PDO, F.F. 19). After a thorough review of the cited references to the record and the record as a whole, the Board concludes that the record contains substantial, legally competent evidence to support Finding of Fact No. 19.³

In its last exception, APSCUF objects to the Hearing Examiner's legal conclusion that "SSHE has not committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA." The Board, however, concludes that the Hearing Examiner's legal conclusions were proper. The Board finds nothing in the record or the applicable case and

² In its brief, APSCUF relies on the Statutory Construction Act, 1 Pa. C.S. § 1921, to argue in favor of its interpretation of Act 182, i.e., that Act 182 mandates that each pay range contain seven salary steps at 5% increments. However, the process of constructing APSCUF's interpretation of Act 182 under the Statutory Construction Act violates the applicable authority requiring that Act 182 contain an express and definite prohibition.

³ The Board notes that the testimony of AFSCUF's own witness corroborates the testimony cited by the Hearing Examiner in support of Finding of Fact No. 19. (N.T. 60-70).

statutory authority that expressly and definitely prohibits SSHE from proposing more than 7 pay steps at increments that are less than 5% increases in the process of bargaining a new collective bargaining agreement with APSCUF. Simply stated, Act 182 does not definitely prohibit the negotiation of a pay scale for this bargaining unit consisting of more than seven steps and providing less than five percent increases between the steps.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and sustain the Proposed Decision and Order of the Hearing Examiner.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed; and that the Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this twenty-seventh day of March, 2001. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.