COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORTH SCHUYLKILL EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION ESPA/PSEA/NEA	:	
v.	:	Case No. PERA-C-02-246-E
NORTH SCHUYLKILL SCHOOL DISTRICT	:	

FINAL ORDER

On May 17, 2002, the North Schuylkill Educational Support Personnel Association (Union or Association) filed with the Pennsylvania Labor Relations Board (Board) a charge of unfair practices alleging that the North Schuylkill School District (District) violated the Public Employe Relations Act (PERA) by failing to comply with a settlement agreement (Agreement). The Agreement resolved a prior charge, at Case No. PERA-C-01-410-E, which alleged that the District unlawfully subcontracted bus services. In the Agreement, the District agreed to rescind the subcontract for bus driving work, reinstate that work to the bargaining unit and make whole the affected employes. On March 27, 2003, the Hearing Examiner issued a proposed decision and order (PDO-1) concluding that the District engaged in unfair practices in violation of Section 1201(a)(1) and (5) of the PERA by failing to comply with the Agreement and ordering the appropriate make-whole relief. On May 20, 2003, the Board issued a Final Order affirming PDO-1.

Subsequent to the Final Order, the parties bargained subcontracting and, on August 28, 2003, the District offered reinstatement. Unable to agree to terms acceptable to both parties and thereby prevent future subcontracting, the employes resigned from their reinstated positions. However, the parties remained unsettled regarding backpay entitlements and calculations. On February 2, 2004, the Union filed a request for a compliance hearing to resolve factual disputes over backpay. The Union did not dispute the District's compliance with any other part of the Board's Final Order. On September 13, 2004, the Examiner issued a second proposed decision and order (PDO-2) concluding that the District was not in compliance with the Final Order. On October 4, 2004, the District filed timely exceptions and a supporting brief to PDO-2.

After a thorough review of the exceptions and all matters of record, the Board makes the following:

AMENDED AND ADDITIONAL FINDINGS OF FACT

20. In January of 2003, Mr. Harner was admitted to a hospital for treatment and testing after fainting. As a result, Mr. Harner did not drive a bus from an unspecified date in January 2003 to an unspecified date in June 2003. He drove again for the same contractor between June 2003 and August 2003. Harner earned $15,268.25 elsewhere during the 2001-2001 and 2002-2003 school years through August 28, 2003. (N.T. 24-26, 29; Association Exhibit 1).

23. On August 28, 2003, the District offered the affected employes reinstatement to their former positions as school bus drivers for the District. The employes accepted the offer of reinstatement and, unable to reach agreement after further negotiations over subcontracting, the affected employes resigned their bus driving positions effective October 10, 2003. The parties also remained unsettled regarding backpay entitlements and calculations. On February 2, 2004, the Union filed a request for a compliance hearing to resolve factual disputes over backpay. After the District reinstated the employes and bargained subcontracting, the Union raised the compliance issues before the Board relating to backpay entitlements and calculations. (N.T. 6-10, 17, 18, 23; Joint Exhibit 3).

24. Between June 4, 2001, and August 28, 2003, Mr. Andrews cared for his disabled mother-in-law who suffers from dementia and cannot be left alone. When Mr. Andrews was offered reinstatement at the beginning of the 2003-2004 school year, he arranged for the supervision and care for his mother-in-law and reported to work. (N.T. 16-17).

DISCUSSION

The facts of this matter are as follows. In June of 2001, the District subcontracted bus services. After the filing of a charge of unfair practices, the parties entered into the Agreement on February 12, 2002. The Agreement primarily required the District to rescind the subcontract, reinstate the work to the bargaining unit and make whole the five affected bus drivers for economic losses, less the appropriate offsets, from June 4, 2001. Thereafter, the parties exchanged information and letters concerning compliance with the Agreement. However, on April 11, 2002, the District affirmed the subcontract and the dismissal of the drivers and authorized the sale of district-owned buses. On May 17, 2002, the Union filed a second charge against the District, at this case number, for failing to effectuate the Agreement. The Examiner sustained the charge and the Board affirmed. In an effort to comply with the Board's Final Order, the District offered reinstatement to the affected employes on August 28, 2003, and bargained the subcontracting issues. Unable to agree after bargaining, the reinstated employes resigned. The parties, however, remained unable to agree on backpay entitlements and calculations, and the Union requested a compliance hearing to resolve the backpay issues. Accordingly, the only matter remaining at issue here is the determination of backpay.

In several of its exceptions, the District challenges the Examiner's conclusion that the positions offered to employes Andrews and Catizone were not substantially equivalent. The District claims that the Examiner ignored undisputed evidence establishing that substantially equivalent positions were made available to Andrews, Catizone, Harner and Krapf. In this context, the District challenges Finding of Fact No. 17, although the nature of the challenge to Finding No. 17 is unclear.

Findings of fact must be supported by substantial, legally competent evidence. PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942). Substantial evidence is "`relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Id. (quoting Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938)). In Finding of Fact Number 17, the Examiner merely quotes the content of a letter written by counsel for the District.

The letter was offered jointly by both parties, and the District did not object, in any way, to the letter. A review of the District's letter reveals that Finding of Fact Number 17 accurately reflects the content and language of the letter. Accordingly, Finding of Fact Number 17 is supported by substantial, legally competent evidence.

Also, the Hearing Examiner was required to set forth only those facts that were necessary to support his decision. He was not required to summarize all the evidence presented, make findings that are unnecessary or make findings that would support another decision, even if there is substantial evidence to support such findings. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988). The Board concludes that the facts contained in the letter and Finding No. 17 support the Examiner's conclusion that the District's offer of alternative employment as cafeteria/parking lot monitors was not one of substantially equivalent employment.

As recognized by the Examiner, our Supreme Court, in Delliponti v. DeAngelis, 545 Pa. 434, 681 A.2d 1261 (1996), held that an employer possesses the following two-part conjunctive burden in limiting its exposure to damages when an employe is unlawfully separated from his employment until a valid offer of reinstatement is made: (1) the burden is on the employer to establish substantially equivalent job availability; and (2) having satisfied the first prong, the burden is on the employer to establish that the discharged or furloughed employe failed to exercise reasonable diligence in securing those available positions. Id., 681 A.2d at 1265. An employer must prove that "there were actual vacant positions available" to the employe. Id. (emphasis added). An employer does not meet its burden by asserting that the nature of the job is such that availability is unquestionable. Id.

Rather than ignore "undisputed" evidence, as claimed by the District, the Examiner relied on the same evidence offered and relied upon by the District both at the hearing and here before the Board. The only "undisputed" evidence indicating that there were any other jobs offered or available to Andrews and Catizone was the District's offer of cafeteria and/or parking lot monitor positions for the same number of daily hours but at different times during the day. (F.F. 16 & 17). The District did not present evidence that it either offered other positions to Andrews and Catizone or that positions with other local or regional employers were available to them. As a result of relying on the District's "undisputed" evidence, the Examiner concluded that the District failed to meet its burden of proving that substantially equivalent jobs were available to Andrews and Catizone and specifically that the cafeteria/parking lot monitor positions offered by the District did not constitute substantially equivalent jobs.

Generally, the type of work that constitutes substantially equivalent employment for a given employe depends upon that employe's unique set of circumstances which include his abilities, skills, qualifications, experience, background, age and personal and physical limitations. Tubari, Ltd., Inc., 959 F.2d 451, 454 (3rd Cir. 1992); Mastro Plastics Corp., 136 N.L.R.B. 1342, 1359, enf'd, 354 F.2d 170 (2d Cir. 1965); Aircraft Helicopter Leasing and Sales v. Crowe, 227 N.L.R.B. 644, 647 (1976).[1] Substantially

[1] Where the policies of PERA are similar to those of the National Labor Relations Act, the Board may rely on federal law from the National Board. Appeal of Cumberland Valley Sch. Dist., 484 Pa. 134, 394 A.2d 946 (1978).

equivalent employment refers, not only to the hours worked, scheduling, pay and benefits of the available interim or replacement employment, but also to the nature of the work itself. Rainbow Tours, Inc., 280 N.L.R.B. 166 (1986). A discharged or furloughed employe need not seek, accept or retain interim employment that is either essentially different from his/her regular job, unsuitable to someone of his/her background, skill and experience, or involves substantially more onerous conditions. Id. at 185(citing Lozano Enterprises, 152 N.L.R.B 258 (1965), enf'd, 3567 F.2d 483 (9th Cir. 1966)).

The Board finds that the District failed to carry its burden under Delliponti in that the record is inconclusive and that the District failed to set forth sufficient evidence regarding the particular duties and responsibilities of both positions for the Board to compare. Although the pay rate, benefits and number of hours arguably would be similar, our Supreme Court, in Delliponte, required that that in determining whether a position is substantially equivalent, the party with the burden of proof must produce evidence of the actual job duties for examination by the Board when evaluating the status of a position. An employer does not meet its burden by relying on speculative job duties or by asserting that the nature of the job is such that availability is unquestionable. Delliponte, supra. Accordingly, the District failed to meet its burden of establishing that the training, skills, duties, responsibilities, challenges or authority of the cafeteria/parking lot monitor positions were substantially equivalent to those of the bus driving positions.

Alternatively, to the extent that the duties and functions of school bus drivers and cafeteria/parking lot monitors are generally understood, the Board agrees with the Examiner and concludes that cafeteria/parking lot duties are not substantially equivalent to those of bus drivers. The training, skills, challenges and responsibilities of school bus drivers charged with safely transporting children, often in adverse weather conditions, to and from school is unmatched by cafeteria/parking lot monitors. The Commonwealth of Pennsylvania, Department of Transportation Regulations require extensive training, physical and knowledge testing and retesting to ensure that bus drivers are adequately equipped and physically and mentally capable to meet those challenges. 67 Pa. Code §§ 71.3-71.6. Cafeteria/parking lot monitors are simply not required to obtain the extensive training or acquire a set of skills/knowledge as are the school bus drivers. Accordingly, we find that the District has not carried its burden to show that the cafeteria/parking lot monitor positions constitute substantially equivalent employment.

The District also seems to argue that it owes bus driver Krapf no backpay because she worked as a student teacher for the District during the backpay period. Contrary to the District's position, Krapf's replacement employment during the backpay period would absolve the District's backpay liability only if Krapf earned the same or more money during the backpay period. Delliponti, supra (opining that the measure of damages in an employment case is the wages which were to be paid less any amount earned).

The policies of reinstating employes under PERA are similar to those of the National Labor Relations Act (NLRA) and the Board is thereby guided by case authority arising thereunder. Also, the Board has previously relied upon precedent from the National Labor Relations Board in determining reinstatement and backpay issues. International Brotherhood of Firemen and Oilers, Local 1201 v. Upper Moreland Township Sch. Dist., 31 PPER ¶ 31106 (Final Order, 2000).

To the extent that Krapf earned less during the backpay period while student teaching, the District owes her the difference. Id.

The District also contends that Finding of Fact Number 16 is in error and claims that Andrews and Catizone knew about the availability of substantially equivalent positions offered to them by the District. Finding of Fact 16 quotes from a letter written from a Union representative to the District's attorney. In that letter, the Union indicates that the affected employes declined to accept the District's offer that the furloughed drivers become cafeteria monitors. A review of the letter indicates that Finding of Fact No. 16 accurately reflects the content of the letter. Therefore, Finding of Fact No. 16 is supported by substantial, legally competent evidence and will remain undisturbed. To the extent that the District objects to the relevance of Finding No. 16, the Board notes that the Union's letter was offered jointly without objection from the District.

Also, the District's argument that Andrews and Catizone knew about the District's offer of "substantially equivalent" jobs in September 2001, and thereby failed to exercise reasonable diligence to mitigate their losses, is wholly without merit. This argument assumes that the District's offer of alternative employment as cafeteria monitors instead of bus drivers constituted an offer of "substantially equivalent" employment. Whether the District's job offer or the regional jobs that were actually available to Andrews and Catizone constitute substantially equivalent jobs vis-à-vis their bus driving positions is a legal conclusion for the Board to decide, not the District. Having concluded that the District failed to prove that its offer for employment as cafeteria/parking lot monitors constituted an offer of substantially equivalent employment, i.e., absent evidence of actual job duties on this record, the premise for the District's argument is unavailing and the employes' knowledge of that offer of employment is inconsequential to the question of whether the employes exercised due diligence in mitigation of their damages.[2] In Appeal of Edge, 606 A.2d 1243 (Pa. Cmwlth. 1992), the Commonwealth Court stated that, assuming an employe failed to make an appropriate effort to secure replacement employment, the employer first has the burden to establish that there were actual vacant jobs available to the employe. Id. Delliponti modified this further by holding that the actual vacant jobs must be substantially equivalent. Accordingly, having failed to establish that the District's offer of alternative employment or the regional availability of employment was substantially equivalent, the Board need not reach the question of whether Andrews and Catizone exercised reasonable diligence in securing those positions. Delliponti, supra.

The District contends that the Examiner erred by disregarding his own proposed order issued on March 27, 2003, which allegedly "absolved" the District of any liability for back pay due to the Union's failure to account for economic losses sustained by Andrews, Catizone, Harner, Krapf and Smith[3]. Similarly, the District also contends that Findings of Fact Nos. 18, 19, 20, 21 and 22 are in error based on its argument on page 8 of the notes of

[2] Although inconsequential, the Board agrees with the District that Finding of Fact No. 16 establishes that furloughed bus drivers were made aware of the District's offer to become cafeteria monitors.

[3] Smith was deceased at the time of the compliance hearing. (N.T. 30). Therefore, the backpay due him shall be paid to the legal administrator of the estate or to any person authorized to receive such payment under applicable state law.

testimony from the compliance hearing on May 7, 2004. At that point in the hearing, the District objected to the admission of Association Exhibit 1, which provided backpay calculations for the affected employes. The District specifically limited its challenge to the backpay period contained in Association Exhibit 1, which therein begins on June 4, 2001, and alleged that the Final Order limited the backpay period beginning at April 11, 2003. We disagree. As the Examiner stated:

> By no means did the hearing examiner absolve the District of any liability it might have for back pay once the Association accounted for any wages Andrews, Catizone, Harner, Krapf and Smith earned to replace the wages they lost as the result of the District's unfair practices. Neither did the Board in the final order. To the contrary, the affidavit of compliance attached to the final order expressly provides that the District is to pay appropriate backpay with interest. Accordingly, the District's contention that it is under no current obligation to pay any backpay is without merit.

(PDO-2 at 6).

Even a cursory reading of PDO-1 and the Final Order reveals that the District's argument is blatantly and dauntingly contrary to those orders, which clearly required the District to pay the affected employes backpay from June 4, 2001. First, the District voluntarily and expressly recognized its obligation to provide make-whole relief and reinstatement to the furloughed employes "effective June 4, 2001" in the Agreement it entered with the Union on February 12, 2002. (F.F. 5). The District did not, at any time, challenge Finding of Fact No. 5. Also, Finding of Fact No. 14 provides that, in its April 11, 2002 motion affirming subcontracting and the furlough, the District again recognized that the employes were entitled certain benefits "upon termination" and would be determined based upon verification of the employes' wages and benefits received "since June 1, 2001". (F.F. 14)(emphasis added). This Finding also remained unchallenged throughout this litigation. The District did not appeal the Board's Final Order, which specifically affirmed the determination in PDO-1 that the backpay period began on June 4, 2001, and which provided, in Amended Finding of Fact No. 15, that the proper period for including backpay offsets begins on June 4, 2001. The District therefore is estopped from arguing that the backpay period does not begin on June 4, 2001, because it represented to the Union, and this Board on multiple occasions during this litigation, that it recognized that its backpay obligation began on June 4, 2001. Big Beaver Falls Area Sch. Dist. v. Cucinelli, 535 A.2d 1205 (Pa. Cmwlth. 1988) (stating that equitable estoppel prevents a party from assuming a position to another's disadvantage that is not consistent with a previously taken position which induced the belief in a certain set of facts).

Also, the Board and the Examiner made findings and conclusions to that effect, which were not challenged on appeal and were thereby waived. Under Section 95.98(a)(3) of the Board's regulations, exceptions not raised are waived. 34 Pa. Code § 95.98(a)(3). Also, "issues are waived for purposes of appellate review where they are not properly raised and preserved through the filing of timely exceptions with the Board." Fraternal Order of Police, Lodge No. 5 v. PLRB, 727 A.2d 1187 (Pa. Cmwlth. 1999); accord Muhlenberg Township Police Labor Organization v. Muhlenberg Township, 30 PPER ¶ 30142 (Final Order, 1999). Accordingly, the Board and the Examiner have consistently determined the backpay period to begin on June 4, 2001, which

remained unchallenged by the District, and thereby unpreserved for review herein. Consequently, Findings of Fact Nos. 18-22, which are premised on the backpay period beginning on June 4, 2001, that the District challenges, are supported by substantial evidence as well as other unappealed findings of fact, which are binding on the parties.

Moreover, in Plumstead Township v. PLRB, 713 A.2d 730 (Pa. Cmwlth. 1998), the Commonwealth Court recognized that the measure of monetary loss by employes is determined by the following two events: "(1) the point in time when a employer takes unilateral action which may occasion loss by employees; and (2) the time of the employer's rescission of the action by the PLRB's order, reinstatement of the status quo and consequent conclusion of the period of loss." Plumstead, 713 A.2d at 736 n.19. On this record, there is no dispute that the District furloughed the employes on June 4, 2001, which obviously occasioned their separation from employment and the immediate beginning of economic loss. Therefore, Plumstead mandates that the backpay period, to make the employes whole for their economic loss, begin on June 4, 2001, and end on August 28, 2003, when the District offered reinstatement.[4]

The District also challenges the Examiner's interest calculation in his order in that he allegedly failed to establish the proper period for which the employes may be entitled to interest. Additionally, the District argues that the Examiner erred by ordering that the interest on the outstanding backpay amount accrue until the date of actual payment rather than ordering the accrual of interest to terminate on October 10, 2003, the date the employes resigned from their bus driver positions with the District. Again, this issue is simply waived. FOP, supra. The Final Order affirmed PDO-1 wherein the Examiner expressly ordered the District to "[p]ay interest at the simple rate of six percent per annum on any backpay due . . . [the employes] from April 11, 2002 up to the date they are offered unconditional reinstatement." (PDO-1 at 8). The District did not appeal the Final Order and challenge the interest determinations therein. Therefore, the District is foreclosed from collaterally attacking the Final Order in a subsequent compliance proceeding. Under the Judicial Code, the

[4] The District's argument, that the Union's alleged failure to account for the employes' losses and offsets absolves the District of liability, is also without merit for the following reasons. First, the two months between February 12, 2002, the date of the Agreement, and April 11, 2002, the date the District repudiated the Agreement, during which time the District requested the information from the Union, does not constitute a delay or failure in providing the information. The information sought required contacting five different individuals, with different schedules and availability, and obtaining tax returns, unemployment and social security documents and records regarding interim employment. Two months is not an unreasonable time to coordinate contact with all five employes or to collect and process the pertinent documents and information. Further, under Plumstead, the Union's alleged conduct is not an event that affects the District's backpay liability. During this period, the District still had not offered reinstatement or rescinded the subcontract. The Backpay period remained open and the employes continued to suffer economic loss. Therefore, assuming, for argument only, that the Union did "delay", such delay would only affect the District's ability to make actual payments of backpay once the period is determined, not the District's backpay liability until reinstatement, which was within the District's control, not the Union's.

District possessed an unqualified right to appeal the Board's administrative order. 42 Pa. C.S. § 933(a)(1)(vii). Having failed to appeal the Final Order, the District cannot now collaterally attack that Order in a compliance action. Commonwealth, Department of Environmental Resources v. Wheeling-Pittsburgh Steel Corp., 348 A.2d 765 (Pa. Cmwlth. 1975). Although an aggrieved party is not obligated to appeal, such a party may not collaterally attack an administrative order in a subsequent proceeding. Id. An aggrieved party must exhaust its statutory remedies and, having not done so, the aggrieved party waives any right to challenge the administrative order. Id. A party does not possess the right to preserve a challenge to an unappealed order in indefinite types and numbers of future proceedings. Id. Also, in County of Beaver v. Commonwealth, Public Utility Comm'n, 369 A.2d 509 (Pa. Cmwlth. 1977), the Commonwealth Court held that "when a party chooses not to appeal an administrative order imposing some obligation upon it, that party cannot contest the unappealed order in some future proceeding." Id. at 512.

The Board possesses and exercises broad discretion to issue appropriate remedial orders under Section 1303 of PERA, which grants broad authority to the Board to fashion appropriate remedies "as will effectuate the policies of [PERA]." 43 P.S. § 1101.1303; Martinez, Jr. v. Commonwealth of Pennsylvania, Pennsylvania Human Relations Commission, 22PPER ¶ 22131 (Final Order, 1991). This broad authority empowers the Board to include make-whole relief, payments and benefits not specifically sought by the complainant. Mid Valley Education Association v. Mid Valley School District, 25 PPER ¶ 25138 (Final Order, 1994).

The Board and its examiners frequently order the payment of interest on backpay as part of the their discretion in fashioning an appropriate make-whole remedy and the purposes of the act in question are best served. Fraternal Order of Police, Lodge 5 v. City of Philadelphia, 27 PPER ¶ 27202 (Final Order, 1996). In this case, the Board and the Examiner ordered the District to pay interest, beginning April 11, 2002, at the simple rate of six percent per annum on the backpay amount. As long as the employes here have not received and are not in possession of the backpay owed, interest on that money continues to accrue to make these employes whole for the period during which they do not have possession or use of that money. Id. (holding that interest is appropriate where respondent fails to make the complainant whole in a reasonable time depriving the complainant of the use of the money). At the time of PDO-1, the Examiner could not have contemplated that the District would not have attempted to pay the employes at least some part of their backpay award during the one year and five months since reinstatement. Accordingly, the Examiner, within his discretion, properly ordered the District to pay interest on the backpay owed from April 11, 2002, through August 28, 2003, with interest continuing until the date the employes are actually paid as an appropriate make-whole remedy.

The District also makes reference to the fact that Mr. Harner began driving for one of the subcontractors the same day that the District drivers were furloughed in June 2001. The nature of the District's assignment of error respecting Mr. Harner is unclear. The Examiner agreed that Harner secured replacement employment as a bus driver. Mr. Harner earned less money working for the subcontractor than he did working for the District. Accordingly, the Examiner ordered that the District owed Mr. Harner the difference between his actual income during the backpay period and the income he would have earned working for the District during that period. Delliponti, supra. However, the record also reflects that Mr. Harner was

hospitalized for a fainting spell that precluded him from driving between January 2003 and June 2003. The Board has previously opined that an individual is not entitled to backpay during any period of time that their state of infirmity or convalescence removes them from the labor market. International Brotherhood of Firemen and Oilers, Local 1201 v. Upper Moreland Township Sch. Dist., 31 PPER ¶ 31106 (Final Order, 2000). The Board concludes that Mr. Harner's medical condition prevented him from performing his duties as a bus driver and substantially equivalent duties such that he was removed from the labor market and not entitled to backpay between unspecified dates in January 2003 and June 2003.

The District also claims that Mr. Andrews removed himself from the labor market to care for his mother-in-law and consequently is not entitled to back pay. The record does not support the proposed legal conclusion advanced by the District; indeed the record supports the opposite result. The record clearly establishes that, although Mr. Andrews supervised his mother-in-law during the time that he was separated from employment, caring for his mother-in-law did not keep him from the labor market nor did he remove himself from the labor market for the purpose of caring for his mother-in-law. As soon as Mr. Andrews was offered reinstatement, he arranged for others to care for his mother-in-law so that he could return to work at his job as a bus driver. (N.T. 17). Mr. Andrews would not have accepted reinstatement and returned to work had the condition of his mother-in-law removed him from the labor market.

The District also argues that Catizone is not entitled to backpay because he was retired and receiving social security benefits during the backpay period. Regardless of whether an employe, who retires after his separation from employment, is entitled to backpay, Mr. Catizone's retirement is not relevant to the backpay issues presented in this case. Mr. Catizone retired from other employment fifteen years ago, and received social security as a partial retiree during all six years that he drove buses for the district prior to his layoff in June 2001. His job driving school buses for the District supplemented his social security benefits. Accordingly, when Mr. Catizone lost his job at the District, he began collecting unemployment compensation benefits to replace the lost income from the District. Therefore, Mr. Catizone did not retire to remove himself from the labor market and receive social security benefits after his layoff from the District to diminish the losses sustained from his separation from District employment.

After a thorough review of the exceptions, response thereto and all matters of record, the Board shall dismiss the exceptions, in part and sustain the exceptions, in part, and sustain the Proposed Decision and Order of the Hearing Examiner, as amended, consistent with this Order.

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, in part and

sustained, in part; and that the Proposed Decision and Order, as amended herein, is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman and Anne E. Covey, Member, this eighteenth day of January, 2005. 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.

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

NORTH SCHUYLKILL EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION ESPA/PSEA/NEA	:	
v.	:	Case No. PERA-C-02-246-E
NORTH SCHUYLKILL SCHOOL DISTRICT	:	

AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has paid Andrews, Catizone, Harner, Krapf and Smith backpay plus interest as directed and determined in the Proposed Decision and Order, dated September 13, 2004, except Harner whose backpay is modified consistent with this Final Order; that it has posted a copy of the Final Orders and the Proposed Decisions and Orders within five (5) days from the effective date of this Final Order in a conspicuous place readily accessible to the District's employes for a period of ten (10) consecutive days; and that it has served a copy of this affidavit on the Union.

_____
Signature/Date

_____
Title

SWORN AND SUBSCRIBED TO before me
The day and year aforesaid.

_____
Signature of Notary Public