

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SOMERSET AREA EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-05-304-W
 :
 SOMERSET AREA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On July 15, 2005, the Somerset Area Education Association (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Somerset Area School District (District) violated Section 1201(a)(1), (5) and (8) of the Public Employee Relations Act (PERA). On August 17, 2005, the Secretary of the Board issued a complaint and notice of hearing. The District filed an answer to the complaint on November 2, 2005. On November 29, 2005, a hearing was held before a Board hearing examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief on February 6, 2006. The District filed a brief on February 9, 2006.

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

FINDINGS OF FACT

1. The District is a public employer for purposes of PERA.
2. The Association is an employe organization for purposes of PERA.
3. The Association and the District were parties to a collective bargaining agreement (CBA) that expired on June 30, 2000. Article IX of the CBA contained a salary schedule and stated in part as follows:

"5. Placement of New Employees: In determining the initial placement of a newly appointed employee on the salary schedule as set forth, credit for previous years of teaching experience will be given to a newly-appointed employee with the following provisions:

* * *

- b. Credit will be given for service in another public school district only if the newly-appointed employee had been previously employed on a full-time basis with a contract as a temporary professional employee or with a contract as a professional employee in such other public school district."

(N.T. 57; Association Exhibit 1)

4. After expiration of the CBA on June 30, 2000, the District and the Association reached various agreements to maintain the status quo until a new CBA was finally signed on August 8, 2005. The new CBA was retroactive to July 1, 2000 and was effective through June 30, 2009. (N.T. 8, 11, 33, 57; Association Exhibits 10, 11)

5. On April 26, 2002, during the five-year hiatus between collective bargaining agreements, the Association filed grievance number 5 of 2001-2002. The grievance alleged that "[f]our (4) members of the bargaining unit, Nicole Geer, Joey Maluchnik, Michael Fariss, and Amy Svonavec, have been placed on the incorrect step of the salary schedule. These employees were not give[n] proper credit for service in another public school

district where they had been previously employed as either Temporary Professional Employees or Professional Employees under contract." (N.T. 5-6; Association Exhibit 1)

6. The District denied grievance number 5 of 2001-2002 based upon the following rationale:

"[T]he District must deny these claims because there is currently no contractual basis upon which these claims can be judged. Since these employees were 'initially hired' during a period of the parties generally honoring the 'status quo' of an expired contract, there is no way of determining 'how far ahead of the beginning salary' they should be placed

[A] resolution of these claims must await the agreement upon a 'new contract' by the parties, which would contain the general salary structure; and then, there must be an analysis of the background facts of each employee to see where that employee may fit as to a specific salary in excess of the beginning salary"

(N.T. 5-6, 10; Association Exhibit 1)

7. On June 24, 2002, the District's school board passed a motion to "adjust the salary of professional employees who are entitled to credit for prior service as professional employees in the Commonwealth of Pennsylvania who have been hired, or will be hired, with an effective date of employment on or after July 1, 2000, by calculating the salary to which the respective employee would have been entitled had the employee been employed by the Somerset Area School District for the fiscal year 1999-2000, and using that salary as the status-quo salary of the respective employee, rather than the previously established starting salary of Twenty-Six Thousand and 00/100 (\$26,000.00) Dollars" (N.T. 5-6, 10; Association Exhibit 1)

8. Grievance number 5 of 2001-2002 was processed to arbitration along with another grievance (grievance number 6 of 2001-2002). On May 14, 2003, Arbitrator Philip Parkinson issued an opinion and award granting in part and denying in part the two grievances. (N.T. 6, 10; Association Exhibit 2)

9. The District did not take an appeal from Arbitrator Parkinson's award concerning grievance number 5 of 2001-2002. The Association appealed the portion of the award that concerned grievance number 5 to the Court of Common Pleas of Somerset County, which entered an order affirming the award on January 11, 2005. The Association then filed an appeal with Commonwealth Court from the order of the common pleas court, but discontinued that appeal in April 2005. (N.T. 6-8, 10, 21-22; Association Exhibits 3-9; District Exhibit 1)

10. Article X(E) of the 2000-2009 CBA between the District and the Association provides in part:

"COMPENSATION FOR SERVICES RENDERED FROM JULY 1 2000 THROUGH JUNE 30 2004:

The District shall pay a total sum of \$1.45 million to employees who were members of the bargaining unit from the 2000-2001 school year through the 2003-2004 school year

The parties agree that the \$1.45 million provided for above shall cover all remaining financial obligations of the Somerset Area School District to the members of the bargaining unit represented by the Somerset Area Education Association for the period from July 1, 2000 through June 30, 2004, with the exception of any payments which may be awarded to the members of the bargaining unit pursuant to the following Arbitration Awards:

1. Grievance #2 of 2001-2002, dealing with the number of days to be paid for the 2001-2002 school year, resulting after the rescinding of Act 80 days. Award by Ronald F. Talarico is on appeal to Commonwealth Court at No. 512 CD 2005.

2. Grievance #6 of 2001-2002, dealing with new hires and schedule placement for prior long-term substitute service in the Somerset Area School District. Award by Philip W. Parkinson is on appeal to Commonwealth Court at No. 364 CD 2005.

3. Grievance #1 of 2002-2003, dealing with the issue of whether permanent substitute positions are covered by the Collective Bargaining Agreement. Award by William E. Caldwell is on appeal to Commonwealth Court at No. 762 CD 2005.

4. Grievance #7 of 2002-2003, dealing with early dismissal on Holy Thursday, April 17, 2003. Award by Christopher Lepore is on appeal to Commonwealth Court at No. 637 CD 2005.

5. Grievance #9 of 2002-2003, dealing with whether long-term substitute teachers are covered by the Collective Bargaining Agreement. Award by Thomas K. Goldie is on appeal to Commonwealth Court at No. 663 CD 2005.

The parties agree that they shall abide by the results of the above cases, as finally determined by the appropriate court of highest jurisdiction.

The parties acknowledge that they have a difference of opinion as to whether payments to members of the bargaining unit dealing with certain salary entitlement for the school year 2001-2002, pertaining to Grievance #5 of 2001-2002, is included within the \$1.45 million provided for above. The parties have executed a separate Memorandum of Understanding concerning this issue."

(N.T. 8, 11; Association Exhibit 10)

11. The District and the Association executed a memorandum of understanding on August 8, 2005, which states that they have a difference of opinion regarding whether the \$1.45 million in retroactive pay covers the entitlement of the four grievants in grievance number 5 of 2001-2002 to credit for out-of-district service for the 2001-2002 school year. (N.T. 8, 10; Association Exhibit 11)

12. On or about April 13, 2005, the Association sent the District a letter concerning the grievants in grievance number 5 of 2001-2002, which stated in part as follows:

"The School District had adjusted those individuals . . . as of the 2002-2003 school year, for their years of out-of-district public school teaching service, as though they were hired for the 1999-2000 school year.

* * *

It is the Association's understanding that there are only four individuals who have a claim for out-of-district service for the 2001-2002 school year, as each was paid for that year at Step 1, or \$26,000. The correct pay for the 2001-2002 school year is as follows, and these amounts should be the same as the pay that each received for the 2002-2003 school year with the amount taken from the 1999-2000 salary schedule (copy enclosed):

1. Nicole Geer - Should have been on Step 2, or \$36,026, leaving an adjustment of \$10,026.

2. Michael Fariss - Should have been on Step 5, or \$39,172, leaving an adjustment of \$13,172.

3. Amy Svonavec - Should have been on Step 6, or \$40,220, leaving an adjustment of \$14,220.

4. Joseph Maluchnik - Should have been on Step 3, or \$37,074, leaving an adjustment of \$11,074.

The Association is requesting that payment be made to those four individuals of the amounts listed above, so that Grievance No. 05 of 2001-2002, can be brought to a conclusion."

(N.T. 8-10; Association Exhibit 13)

13. By letter dated June 23, 2005, the Association again requested that the District provide the compensation sought in its letter of April 13, 2005. (N.T. 8-10; Association Exhibit 14)

14. The District has not compensated the grievants in grievance number 5 of 2001-2002 separately from the \$1.45 million in retroactive pay. (N.T. 21-22)

15. The \$1.45 million in retroactive pay was distributed to the bargaining unit members pursuant to a schedule prepared by the Association and reviewed by the District. The schedule did not compensate the grievants in grievance number 5 of 2001-2002 for their incorrect salary step placement in the 2001-2002 school year. (N.T. 11-12, 23-31; District Exhibit 2; Association Exhibit 10)

16. The District and the Association reached the 2000-2009 CBA after persons who did not represent either party became involved in the negotiations in late 2004 or early 2005 in an attempt to bring the two sides together. The outsiders who assisted the parties in reaching an agreement included Jon Wahl, who is employed as an engineer, and Daniel Rullo, who is employed as an attorney. (N.T. 33, 36, 38-39, 51-52, 57-64)

17. As of late 2004 and early 2005, the District and the Association had not reached agreement on the salary scale or health care. The amount of retroactive pay had also become a major issue because of the number of years that had elapsed since expiration of the prior CBA. (N.T. 57-59)

18. James Cascio is a member of the District's school board and was the District's chief negotiator for the 2000-2009 CBA. Cascio participated in the negotiations that were held in or about February 2005 that culminated in a new CBA between the District and the Association. The Association was represented in the negotiations by Scott Dunlap, who was the Association's vice president and chief negotiator. Jon Wahl and Daniel Rullo were also present during the negotiations. (N.T. 32-33, 36, 38-39, 51-52, 56-64)

19. During the February 2005 negotiations, the parties discussed two options concerning retroactive pay for the bargaining unit members:

(1) payment of \$1.45 million in retroactive pay; or (2) payment of \$1.65 million in retroactive pay, in return for withdrawal of a grievance that was decided by Arbitrator Talarico concerning pay for three and a quarter Act 80/in-service days. However, while negotiations were continuing, the local common pleas court sustained the District's appeal from the Talarico arbitration award. Therefore, District Chief Negotiator Cascio stated that the District could no longer agree to the proposal for \$1.65 million in retroactive pay. The parties' negotiators then tentatively agreed that the District would pay the bargaining unit members \$1.45 million in retroactive pay, and that the three and a quarter day grievance would proceed through the appeal process. (N.T. 33, 40-43, 49-50, 52-53, 60-64)

20. During the February 2005 negotiations, the three and a quarter day grievance that was decided by Arbitrator Talarico was the only grievance that was specifically discussed by the parties. The parties did not have an understanding regarding what would happen with every other grievance.

(N.T. 39-40, 47-48, 52-54, 67)

DISCUSSION

The Association alleges that the District committed an unfair practice by failing to comply with a grievance arbitration award. The Association contends that the award requires the District to adjust the salary step of the grievants for the 2001-2002 school year, and to pay them the difference in salary.

The District contends that the unfair practice charge must be dismissed because the arbitrator did not specifically direct the District to provide the relief sought by the Association. Alternatively, the District contends that the Association waived any right to additional compensation for the grievants for the 2001-2002 school year by agreeing to the retroactive pay provision of the 2000-2009 CBA between the parties.

When an employer is charged with refusing to comply with a binding grievance arbitration award, the Board must determine if an award exists, if appeals have been exhausted, and if the employer has failed to comply with the provisions of the arbitrator's decision. PLRB v. Commonwealth, 478 Pa. 582, 387 A.2d 475 (1978). Once appellate rights have been exhausted, the merits of the award are no longer at issue. Id. Thus, in deciding whether the employer has complied with the provisions of the arbitrator's decision, the Board looks at the four corners of the arbitration award to determine the intent of the arbitrator as expressed in the award. City of Philadelphia, Office of Housing and Community Development, 24 PPER ¶ 24052 (Final Order, 1993).

Here the following facts are undisputed: (1) Arbitrator Parkinson issued a grievance award granting in part and denying in part grievance number 5 of 2001-2002; (2) the District did not appeal the portion of the award that concerns grievance number 5; (3) the Association did appeal the relevant portion of the award, but its appeal was dismissed by the common pleas court; and (4) the Association appealed the decision of the common pleas court to Commonwealth Court, but subsequently discontinued that appeal. Consequently, the grievance award is final and binding and the only issue concerning the award itself is whether the District has failed to comply with the provisions of the arbitrator's decision.

Close review of the arbitrator's opinion and award reveals a clear intent to require the District to adjust the grievants' starting salary to provide credit for their out-of-district service as of the beginning of the 1999-2000 school year.¹ The arbitrator initially found that teachers who were hired for the 2000-2001 or 2001-2002 school years, such as the grievants, were not given credit on the salary scale for prior service outside of the District:

"Those teachers who were hired since 2000-2001 were told that the starting salary was \$26,000 and all newly hired teachers regardless of prior service were paid at that beginning salary. The same situation transpired for newly hired teachers for the beginning of the 2001-2002 school year. These teachers included some without District or out-of-state service"

(Association Exhibit 2 at 5).

The arbitrator also found that the District provided newly hired teachers with credit for service outside the District in the 2002-2003 school year, but did not pay any backpay to the teachers who were hired in 2000-2001 or 2001-2002:

"The newly hired teachers in 2002-2003 with out-of-district, in-state service were paid at a rate equal to the salary they would have received in Somerset District in 1999-2000. According to the District, an individual 'status quo salary' was created for each newly hired teacher, based upon the years of service which that teacher would have had in the District in 1999-2000. They cite as an example one of the grievants in Grievance No. 005 herein, in which the employee was hired in 2001-2002 but had three (3) years of in-state service. For 2001-2002 she was paid the starting salary which is traditionally paid to teachers in the District and for 2002-2003 she was paid at step 2 which

¹ It should be noted that the arbitrator did not agree with the Association's argument that the grievants should receive credit for all of their out-of-district service as of the commencement of their employment with the District in the 2001-2002 school year. Rather, the arbitrator determined that the grievants' salary step placement should reflect their out-of-district service as of the beginning of the 1999-2000 school year, which was the final year of the expired CBA.

is some \$10,000 more than the starting salary. This is the step she would have been on in Somerset if she had been there in 1999-2000. According to the District they did this because her first year of teaching was 1998-1999, her second year was 1999-2000 and her third and fourth years were 2000-2001 and 2001-2002. Consequently even though she had three prior years when she was hired by the District in 2001-2002, her status quo is that she would have been on step 2 in 1999-2000. No adjustments have been made for back pay for any of those hired since 2000-2001, they received only the starting salary, i.e., \$26,000 which they actually received for 2000-2001 or 2001-2002. No one hired after July 1, 2000 has been given credit for out-of-state service"

Id. at 5-6.

The arbitrator noted that the expired CBA, which the parties were continuing to follow, provided that new employes were to receive credit on the salary scale for previous years of teaching experience. Id. at 13-14. The arbitrator then determined that the grievants' starting salary should be adjusted to provide credit for their out-of-district service before 1999-2000, consistent with the District's own decision to provide such credit for newly hired teachers in the 2002-2003 school year:

"This arbitrator is of the opinion that the new hires cannot and must not be placed in a position that would yield contractual benefits over and above those teachers employed prior to June 30, 2000. With this in perspective it is noted that . . . the expired Agreement, which is being administered and recognized by the District on a status quo basis . . . clarifies the requirements for credit to be given for service in another public school district. The clause provides that such credit will be given provided the newly appointed employee has been previously employed on a full-time basis with a contract as a temporary professional employee or with a contract as a professional employee in such other public school district. The District has, by their administrative actions, recognized this clause inasmuch as for newly hired teachers in 2002-2003 with out-of-district and in-state service they paid them at a rate equal to the salary step they would have received in the Somerset District in 1999-2000. Thus, these teachers were placed in the same position and/or standing with the District as the previously employed teachers . . . Thus new hires who had out-of-district service were accorded such credit and paid on the salary scale pursuant to the years of service that would have brought them up to the step . . . that they would have otherwise been on in 1999-2000 . . . **The Association concedes that the grievants in Grievance 005 are not seeking benefits greater than those received by individual teachers newly hired in the 1999-2000 school year, but rather are seeking the same credit for previous experience that new teachers hired for the 1999-2000 school year received. Thus pursuant to the status quo position of the District and their administration of the 'status quo Agreement,' those newly hired employees with out-of-district service should have their salary placement scale calculated on the same basis as though they would have been credited had they been with the school district in 1999-2000. Furthermore the District's obligation, with respect to out-of-district service, is the same as that which they themselves sanctioned in making adjustments for the year 2002-2003. The same principle must likewise be applied to those . . . newly hired employes with out-of-state service, i.e., they must be given credit and placed on the scale that they otherwise would have been had they been employed in the 1999-2000 school year provided they meet the other criteria of Article IX.**"

Id. at 15-17 (emphasis added).

Thus, close review of the Parkinson award discloses the arbitrator's clear intent to require the District to recalculate the grievants' starting salary to reflect their out-of-district service as of the beginning of the 1999-2000 school year, consistent with the District's own treatment of newly hired teachers in the school year after the grievants were hired. It is undisputed that the District did not recalculate the

grievants' starting salary to reflect their out-of-district service, and did not pay the grievants the difference between the salary they should have received and the salary they actually received. Therefore, the District did not comply with the provisions of the arbitrator's decision.

The remaining issue is whether the retroactive pay provision of the new CBA excuses the District from complying with the portion of the Parkinson arbitration award that concerns grievance number 5 of 2001-2002. The District contends that the contractual language "is clear that this \$1.45 million covered all pay claims" (brief at 13).

However, Article X(E) of the 2000-2009 CBA specifically provides that payments for certain grievances are not included in the \$1.45 million in retroactive pay (FF 10). Article X(E) then goes on to state that the parties have a difference of opinion regarding whether payments to bargaining unit members that pertain to grievance number 5 of 2001-2002 are included in the \$1.45 million. Id. A memorandum of understanding that is referenced in Article X(E) of the CBA similarly provides that the parties have a difference of opinion on this issue (FF 11). Thus, neither document contains a clear and unmistakable waiver of the grievants' right to relief under the Parkinson arbitration award, nor provides the District with a sound arguable basis for claiming that it is excused from complying with the Parkinson award.

The District also argues that "the individuals who framed the agreement whereby the District would pay the \$1.45 million testified, without any hesitation, that that \$1.45 million was to cover all claims, and there simply was not to be any special payment for these four (4) individuals" (brief at 13-14). However, the District executed a CBA which expressly states that the parties have a disagreement regarding whether the \$1.45 million in retroactive pay includes the relief due the grievants in grievance number 5 of 2001-2002. Therefore, the District is barred by the parol evidence rule from attempting to prove an alleged oral agreement that differs from the written agreement. Teamsters Local 205, 36 PPER 50 (Proposed Decision and Order, 2005), 36 PPER 85 (Final Order, 2005); Riverside School District, 27 PPER ¶ 27274 (Proposed Decision and Order, 1996); Commonwealth, Department of Transportation, 17 PPER ¶ 17184 (Proposed Decision and Order, 1986).

Indeed, even if it was appropriate for the District to rely on parol evidence, the witnesses' testimony does not support the District's position. The District contends that witnesses who were involved in the February 2005 negotiations testified that there was no agreement to pay the grievants affected by the Parkinson award compensation over and above the \$1.45 million in retroactive pay. However, such testimony is not surprising given the witnesses' testimony that they only discussed one grievance, not including the grievance at issue. When asked what was their understanding concerning the other grievances, the witnesses, including the District's chief negotiator, similarly responded that they understood that the other grievances would "play out," "seek their own level" or "run their course" (N.T. 47-48, 52-54, 69-70). In other words, the participants in the negotiations did not even attempt to resolve the many grievances pending at the time, with the exception of the three and a quarter day grievance that was decided by Arbitrator Talarico. Rather, the parties' negotiators and the outsiders who assisted them opted to allow those grievances to "play out," "seek their own level" or "run their course." Such testimony only further illustrates the absence of an agreement between the District and the Association to include the relief due the grievants under the Parkinson award in the \$1.45 million in retroactive pay. While the parties may not have had an agreement for those individuals to be paid separate and apart from the retroactive pay, the record also fails to show an agreement to waive the compensation they are due under the arbitration award.

In the 2000-2009 CBA, the parties acknowledged their lack of agreement concerning whether the retroactive pay provision covers the relief due the grievants under the Parkinson arbitration award. Accordingly, the new CBA does not excuse the District's failure to comply with the Parkinson award. Thus, the District committed an unfair practice and must recalculate the grievants' salary step placement for the 2001-2002 school year and pay them the difference between the salary they should have received and the salary they actually received.

CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has committed unfair practices in violation of Section 1201(a)(1) and (8) of PERA.
5. The District has not committed unfair practices in violation of Section 1201(a)(5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, 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 PERA.
2. Cease and desist from refusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX.
4. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:
 - (a) Comply with the arbitration award;
 - (b) Post a copy of this decision and order within five (5) days from the 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; and
 - (c) 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.

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 be and become absolute and final.

SIGNED, DATED AND MAILED this fifteenth day of March, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SOMERSET AREA EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-05-304-W
 :
 SOMERSET AREA SCHOOL DISTRICT :

AFFIDAVIT OF COMPLIANCE

The Somerset Area School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (8) of PERA; that it has complied with the arbitration award; that it has posted the proposed decision and order as directed therein; and that it has served a copy of this affidavit on the Association at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public

March 15, 2006

William K. Eckel, Esquire
Suite 210
Central Park Law Building
132 Gazebo Park
Johnstown, PA 15901

William R. Carroll, Esquire
131 North Rosina Avenue
PO Box 604
Somerset, PA 15501

SOMERSET AREA SCHOOL DISTRICT
Case No. PERA-C-05-304-W

Enclosed please find a copy of the proposed decision and order issued in the above-captioned case.

Sincerely,

Peter Lassi
Hearing Examiner

Enclosure

cc: Dr. Lonnie Lynn Luna
Dr. John M. Baraniak
Pittsburgh Regional Office