

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LOYALSOCK TOWNSHIP EDUCATION :
ASSOCIATION :
 :
v. : Case No. PERA-C-06-290-E
 :
LOYALSOCK TOWNSHIP SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On June 23, 2006, Loyalsock Township Education Association (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Loyalsock Township School District (District) alleging that the District violated Sections 1201(a)(5) and (6) of the Public Employe Relations Act (PERA).

On August 8, 2006, 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 October 4, 2006, in Harrisburg was scheduled as the time and place of hearing if necessary.

The hearing was necessary, but was continued at the request of the Association, without objection from the District, to permit additional conciliation. On May 1, 2007, the Association notified the Board that conciliation was not successful and requested a hearing. A new hearing date was set for September 19, 2007. The Association again requested a continuance, without objection from the District. A new hearing date was set for February 5, and continued again to May 22, 2008

The hearing was held on the rescheduled date, at which 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. That the Loyalsock Township School District is a public employer within the meaning of Section 301(1) of the Act.
2. That the Loyalsock Education Association is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Association is the exclusive certified bargaining representative of the professional employes of the District.
4. That on June 30, 2005, the parties' collective bargaining agreement for the professional unit expired. Through the balance of 2005, the parties engaged in negotiations for a successor agreement. (N.T. 8)
5. That the expired CBA included a 16 step salary schedule. The first two steps were denominated as Step 0.1 and Step 0.5. The last step was denominated as Step 14. (N.T. 9-10, 34, Association Exhibit 1)
6. That when negotiations began for a successor CBA, the District's proposal included a 17 step salary schedule. (N.T. 9, 34, Association Exhibit 1)
7. The parties' negotiations eventually concluded in late December, 2005, when the parties reached a tentative agreement with regard to all issues. The agreement was for three years; 2005-06, 2006-07 and 2007-08. As for salary, the parties agreed that there would be a 17 step salary schedule. (N.T. 7-9, Association Exhibits 1 and 2)
8. That the parties agreed that a salary schedule would be attached to the CBA as in past CBAs. (N.T. 11-15, Association Exhibit 2)

9. That the 17th step was reflected in Exhibit A-2, which lists approximately 17 teachers at 17th step, earning \$68,123 in 2007-08. (N.T. 10-11, 17-18, 31-32, Association Exhibit 2)

10. The Association's membership ratified the CBA on December 20, 2005. The District's Board of Directors ratified the CBA on December 21, 2005. (N.T. 15, 40, Respondent Exhibit 2)

11. That on May 19, 2006, the School District's Business Manager, Gerald L. McLaughlin, delivered a collective bargaining agreement to the Association signed by the President of the Board of School Directors and attested by the Secretary. The CBA did not include a salary schedule. When the Association representative objected, Mr. McLaughlin prepared a salary schedule and sent it to the Association. Ms. Meyers objected because the schedule was not what was agreed to. McLaughlin sent another schedule to Ms. Meyers. She repeated her objection. He then sent her a schedule with 18 steps, 17-A being the last step. (N.T. 39, 42-43, Association Exhibits 3, 4, 5 and 6)

12. Ms. Myers objected to a salary schedule that added a step 17-A in the second and third years of the CBA because the parties agreed that these salaries should have been on Step 17. (N.T. 14, 23, 34, Association Exhibit 5)

13. That in response, the District then produced a signed CBA that did include a 17 step salary schedule but that did not include the salaries agreed to by the parties for employees at the 17th step. For example, a teacher at the 17th step would earn a salary of \$66,000 instead of \$68,123 as was agreed and set forth in Association Exhibit 2. (N.T. 21, 34, 43, Association Exhibit 7)

DISCUSSION

The Association's charge of unfair practices alleges that the District violated Sections 1201(a)(5) and 1201(a)(6) by not bargaining in good faith and by refusing to reduce a collective bargaining agreement to writing and sign such an agreement. The Association complains that the District has refused to transmit to the Association a CBA with the salary schedule the parties agreed to. The Association complains that the District added a step to the salary schedule, which was contrary to the parties' agreement with a salary schedule of 17 steps, not 18.

The Association requests that the extra step be stricken and that the District be directed to provide the Association with a 17 step salary schedule showing salaries for the employees at the 17th step that correspond to the agreement reached by the parties in early December, 2005.

The District contends that it has bargained in good faith and has produced a final contract document that contains every item that has been bargained and that it has bargained in good faith. The District contends that by adding an 18th step it has produced a salary schedule that is better formatted to reflect the parties' agreement of the salaries for individual employees. The District contends that throughout the negotiations, the parties recognized there would be employees who were already at the top step who would receive a certain pay increase and that it developed salary schedule to reflect this.

The Section 1201(a)(6) charge will be discussed first. A public employer violates Section 1201(a)(6) of PERA when it refuses to reduce a collective bargaining agreement to writing and sign such agreement. As stated by the Board in Abington School District, 11 PPER ¶ 11126 (Final Order, 1980):

Section 1201(a)(6) can be violated only if the parties have, in fact, reached an agreement and the employer refuses to execute a written contract. If there are genuine differences of opinion as to the substance of the understanding, the employer will not commit a section 1201(a)(6) violation by refusing to sign a contract.

Tussey Mountain School District, 8 PPER ¶ 332 (1977).

A violation of Section 1201(a)(6) presupposes the existence of a collective bargaining agreement requiring only reduction to a written, executed contract. Abington School District, supra at 303.

The Association has proven that the District has not reduced to writing the collective bargaining agreement that was reached by the parties in December, 2005. The Association's chief negotiator, Cary Kurtz, testified credibly as to what was agreed to by the parties. He recounted the history of the negotiations. He explained the background documents the parties used to reach the agreement for a 17 step salary schedule.

The District argues that this is a case of either a mistake on the District's part or an unintentional effort by the District to create a salary scale that accurately accounted for every employe. The District contends that no employes are being incorrectly paid.

The Association does not complain about individuals being incorrectly paid. The Association's charge is about the improper salary schedule. but contends that this misses the point of its charge. As for the District's argument that its motivation was to properly recognize individuals on a salary scale, the Association notes that it, too, was concerned about individuals. Indeed, the evidence reveals that the Association was well aware that there were 17 employes at the top of the scale. The Association knew what they would be earning in salary each year and how a 17 step salary schedule would provide for increased salary for these employes. Furthermore, the District's explanation of its actions is inconsistent with its actions when it eventually presented the Association with a signed 17 step salary schedule. Using Robert Barrett as an example, he is a 17th step employe who should be making \$68,123 in 2007-08. However, according to the District's salary schedule in its signed CBA (Association Exhibit 7) he would be earning \$66,000.

Furthermore, in the collective bargaining setting, it is important for the salary schedule to be an accurate reflection of the agreement the parties reached. Having an accurate salary schedule is essential for the Association to represent individual employes during the term of the agreement and then to represent the unit in collective bargaining when the present CBA expires.

There is nothing in the record to indicate that the parties ever agreed to anything other than a 17 step schedule. In fact, when the negotiations began, the District proposed a 17 step schedule and this schedule was the premise for all future negotiations about wage increases over the term of the CBA. The Association has proven that the District has violated Section 1201(a)(6) by failing to reduce a collective bargaining agreement to writing that reflected the agreement reached by the parties.

As for the allegation that the District violated Section 1201(a)(5), the Board has set forth the standard to judge allegations that an employer has met its obligation to bargain in good faith under the Act.

[G]ood faith bargaining cannot be discharged simply by counting the number of meetings between the parties or by weighing the amount of information exchanged during such negotiations. The totality of circumstances must be considered in determining whether good faith bargaining did in fact take place. After examining all the circumstances one can reasonably conclude that one or the other party never intended to achieve agreement, demonstrated unreasonableness or displayed a single-minded purpose to thwart the public policy, then good faith bargaining did not occur.

Carlisle School District, 24 PPER ¶ 24,168 (Final Order, 1993)(quoting North Penn Water Authority, 22 PPER ¶ 22,166 (Proposed Decision and Order, 1991).

Examining the totality of the circumstances in the present case, the conclusion that must be reached is that the District did not bargain in good faith in the last stages of the negotiations. Taken as a whole, the District's actions in this case, done after the parties ratified their negotiators' tentative agreement, demonstrate an unwillingness to properly conclude negotiations in a way that was consistent with the December, 2005 agreement to resolve the contract dispute. Despite reaching an agreement in December, 2005 that provided for 17 steps, the District then engaged in a series of transmittals of documents to the Association that failed to include the proper salary schedule. The District's first transmittal did not even include a salary schedule. The District's second and third transmittals to the Association included an 18 step salary schedule. Finally, the eventual CBA signed by the District and transmitted to the

Association did have 17 steps but a lower salary for the 17th step than agreed to by the parties. The Association has met its burden of proving the District violated Section 1201(a)(5) by not bargaining in good faith.

CONCLUSIONS

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

1. That the Loyalsock Township School District is a public employer within the meaning of Section 301(1) of PERA.
2. That the Loyalsock Township Education Association 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)(5) and (6) 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 refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in the professional unit, including but not limited to the discussing of grievances with the exclusive representative.
2. Cease and desist from refusing to reduce a collective bargaining agreement to writing and sign such agreement;
3. Take the following affirmative action that the hearing examiner finds necessary to effectuate the policies of the Act:
 - (a) Provide the Association with a signed collective bargaining agreement containing a 17 step salary schedule that shows, inter alia, Masters Degree Teachers at Step 17 earning \$68,123 in 2007-08;
 - (b) 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; 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 with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this nineteenth day of September, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

LOYALSOCK TOWNSHIP EDUCATION :
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v. : Case No. PERA-C-06-290-E
LOYALSOCK TOWNSHIP SCHOOL DISTRICT :

AFFIDAVIT OF COMPLIANCE

Loyalsock Township School District (District) hereby certifies that it has ceased and desisted from its violation of Sections 1201(a)(5) and (6) of the Public Employe Relations Act; that it has provided the Association with a signed collective bargaining agreement containing a salary schedule of 17 steps that shows, inter alia, Masters Degree teachers at Step 17 earning \$68,123 in 2007-08; that it has posted a copy of the decision and order as directed and that it has served a copy of this affidavit on the Association.

Signature/Date

Title

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

Signature of Notary Public