ATHENS AREA EDUCATIONAL SUPPORT PROFESSIONAL ASSOCIATION,	:	
Association	:	Pay Discrepancy Arbitration
- and -	:	Grievance No. 14-15-01
ATHENS AREA SCHOOL DISTRICT,	:	
District	:	

OPINION AND AWARD

I. HISTORY OF THE CASE

By letter dated May 6, 2015, the undersigned was notified of my selection by the parties to arbitrate the above grievances. A hearing was held at the District's Administrative Office, 401 West Frederick Street, Athens, Pennsylvania, on July 30, 2015. James T. Rague, Esquire, represented the Association. John G. Audi, Esquire, and Patrick J. Barrett, III, Esquire, served as counsel for the District. , Association President, and , PSEA UniServe Representative, appeared on behalf of the Association. , Business Manager, , Payroll Coordinator, and , Acting Superintendent, appeared on behalf of the District. These are the same individuals who appeared in the Change in Pay Arbitration, Grievance No. 14-15-02.

Both parties were given a full opportunity to present any testimonial or documentary evidence that they wished. Following the hearing, counsel indicated that they would present their

closing arguments in the form of written briefs. After both briefs were received, the record was closed, and the matter is now before me for final disposition.

II. ISSUE PRESENTED

After a careful consideration of the evidence presented to me at the hearing on July 30, 2015, and the arguments presented by both parties in their post-hearing briefs, the issue before me for determination is whether any employees failed to receive payment for all wages earned, as a result of the District's conversion of its payroll system in the initial payroll period of the 2014-2015 school year. If I find that a violation occurred, I am to craft the appropriate remedy.

III. OPINION

The legal guidelines governing this issue and decision are similar to those set forth in my Opinion and Award in the Change in Pay Arbitration, dealing with Grievance No. 14-15-02, and are incorporated herein. In addition, the testimony and exhibits in that case should be, and are, made a part of this record.

The Association contends that the District violated the parties' collective bargaining agreement by failing to pay members of the bargaining unit for eight (8) out of ten (10) days which they worked during the payroll period covering the latter part of August and the early part of September 2014, the time of the conversion of the District's payroll system. It references an audit which was mentioned by the District in its testimony and later in its post-hearing brief. The Association urges that since the District failed to produce the audit in evidence, I am to find that if it was submitted to me, it would have been unfavorable to the District. I cannot make such an

assumption nor can I determine from the evidence before me or the references in the respective briefs whether the audit in question will shed any direct light on the accuracy of the payments made for the payroll period in question. The Association urges, without contradiction, that the affected employees worked the full ten (10) days in the pay period, as required by the collective bargaining agreement and are to be compensated for them. The Association also urges me to award liquidated damages based on the alleged violation of Pennsylvania's "Wage Payment and Collection Law," 43 PS §260.1 et seq., contending that the District cannot demonstrate, by clear and convincing evidence, that it acted in good faith in withholding wages from the affected employees. Lastly, it asserts that although the grievants may have received a contractual pay raise two weeks earlier that mandated by the contract, this does not, in any way, eliminate the District's requirement to pay the employees for time that they worked.

The District contends that it has not withheld any monies owed to the affected employees. Its position is that in the transfer to its new payroll system, paying for "actual hours worked during each payroll period," the affected individuals had been paid previously for eight (8) days being claimed. Its position is that the grievants have been "pre-paid" and, therefore, no one lost any wages for any work performed. In addition, it notes that the grievants received a contractual pay raise two weeks earlier than required by the collective bargaining agreement.

The parties, at the time of the filing of the grievance, were governed by the terms and conditions of a collective bargaining agreement covering the period September 1, 2010 to August 31, 2013. The contract provides, in Article XV, Section 15.01, for "HOURLY RATES" for the various classifications in the bargaining unit. Section 15.02 provides for hourly wage increases for each year of the contract, and Section 15.04 provides for an additional number of cents per hour to be added, based on years of service. Even under the payroll system in place prior to the conversion in September 2014, the District's contractual and legal obligation was and is to pay the members of the bargaining unit the rate of pay per hour that the parties had agreed on, for all hours actually worked or credited to the individual as paid time off. This obligation did not change with the advent of the new payroll system.

The District gave the Association timely notice of its intent to change its payroll system and ultimately notified all employees on August 14, 2014. See Joint Exhibit 4. When the Association realized that certain members of the bargaining unit were to be paid for only two (2) days, when they had actually worked for ten (10), , the PSEA UniServ Representative who serves this unit, questioned the propriety of the payment and requested an explanation. He did so on April 27, 2014 in an email which is contained in District Exhibit 1. Apparently the parties met on September 3, 2014, but, as evidenced by Attorney Audi's email of September 11, 2014, no agreement or understanding was reached concerning the propriety of the District's action in computing the payments due for the final pay period prior to the conversion to the new system. In its grievance, the Association contends that certain individuals were not

compensated for eight (8) days of that period, while the District asserts that they had, in essence, been "prepaid" as part of the "salarized" payroll system, which existed prior to the conversion. As the District stated in its post-hearing brief, as part of its analysis of the pay adjustment:

- The remaining eight (8) days of that pay cycle of August 10, 2014 to August 20, 2014 were a part of the original calculation of the 'salarized' pay for the 2013-2014 school year.

- The 'salarized' pay periods for the 2013-2014 school year included August 18, 2013 through August 20, 2014.

- This covered the full twelve (12) months and the two hundred sixty (260) and/or +/- two hundred forty-one (241) for the twelve (12) month support employees.

- The remaining twelve (12) month support employees were prepaid for the days of August 10, 2014 to August 20, 2014 as part of a 'salary' calculation. For the custodians, these days would have been included in their two hundred sixty (260) days per the CBA (emphasis in the original). For the secretaries, these days would have been included in their +/- two hundred forty-one (241) days per the CBA."

It is clear and undisputed that in at least two (2) instances (See District Exhibits 7 and 8), individuals who left the District's employ had been overpaid under the prior system. As a result, the District was put to the expense and inconvenience of pursuing legal action against the former employees. While these examples clearly demonstrate a major flaw in the "salarized" system, after a careful examination of all exhibits and the testimony presented, I cannot determine, with absolute certainty, that those Grievants in this case were actually "prepaid" for the eight (8) days prior to the conversion.

The keystone of the employer-employee relationship is the obligation of the employer, this District in this case, to pay its employees the bargained-for hourly rate for all hours actually worked, or credited as paid time off. After very careful consideration, I believe that the only appropriate way to determine if the District's position concerning the prepayment is correct, is to audit the Grievants' actual hours worked and those credited as paid time off and the wages actually paid, from the beginning of the calendar year until the payroll period ending August 22, 2014. The testimony and post-hearing briefs refer to an audit. If that audit has been completed and it addresses whether the Grievants were, in fact, fully compensated for the hours they worked through the payroll period ending August 22, 2014, the grievance will be denied. If the audit does not specifically address that calculation, then the District must conduct an audit of the Grievants' wages and hours worked or credited as paid time off during the period noted above. I do not believe that this should be overly burdensome and would simply require determining the number of hours actually worked from the District's time-recording system, include the hours which constituted paid time off and multiply that number by the contractually mandated hourly rate. That amount should be compared to the actual wages paid during the same period. Again, if this demonstrates that the Grievants were paid in full for the hours worked or credited as paid time off, the grievance will be denied. If it does not, the grievance will be sustained and compensation will be required for the unpaid hours worked.

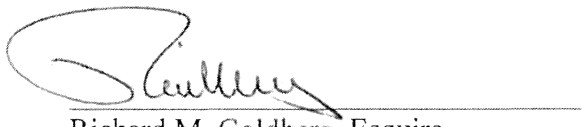
As to the early implementation by the District of pay increases, the District is entitled to credit for the amount of overpayment during the period prior to the mandated increases. Should

there have been an underpayment based on the audit, the amount of early implementation of the wage increase should be used as an offset to any monies owed by the District. If the grievants were fully compensated and the grievance itself is denied, the parties should meet to determine a mutually accepted method for the reimbursement to the District of the early implementation of the increases.

AWARD

The grievance is sustained in accordance with the above Opinion. I will retain jurisdiction for sixty (60) days to ensure appropriate compliance.

Date: February 11, 2016



Richard M. Goldberg, Esquire.