

IN THE MATTER OF ARBITRATION BETWEEN:

Great Valley Education Association	:	
PSEA/NEA	:	
The Union	:	Opinion
	:	
	:	and
- and -	:	
	:	Award
Great Valley School District	:	
The Employer	:	

Grievance: Stevenson – PIP

Before

Margaret R. Brogan, Esquire
Arbitrator

Appearances

For the Union

Annemarie Dwyer, Esquire
PSEA
1512 McDaniel Drive
West Chester, PA 19380

For the Employer

Michael D. Kristofco, Esquire
Wisler Pearlstine, LLP
460 Norristown Road, Suite 110
Blue Bell, PA 19422

This matter presents a threshold issue of arbitrability. On the merits, the Association protests the imposition of a performance improvement plan (PIP) upon the grievant, a teacher.

A hearing was conducted on September 29, 2017. The parties were afforded the opportunity to present all relevant evidence. A stenographic record was made of the proceedings. The parties filed written briefs that were received by the undersigned by November 13, 2017.

At hearing, the parties were unable to stipulate to the issues before me, but granted the undersigned the jurisdiction to frame the issues based upon the evidence and argument presented. (T. 5-11) Accordingly, I find the issues to be as follows:

ISSUES

- 1) Whether the grievance is arbitrable; and if so,
- 2) Whether the District violated the collective bargaining agreement (CBA) when it imposed a performance improvement plan (PIP) without just cause upon the grievant, Anthony Stevenson, in the 2016-2017 school year, and if so, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

11.024 Evaluation

Evaluation of teachers for the application of the salary policy is the responsibility of the School Administration under the direction of the District Superintendent of Schools.

Evaluation of a professional employee which does not result in a reduction of the employee's salary is not grievable – is not a just cause for initiating a grievance. In the case of dismissal of employees only the Pennsylvania School Code and the directives of the Secretary of the State Department of Education shall apply.

13.05 Managerial Rights

It is recognized that in addition to other functions and responsibilities which are not otherwise specifically mentioned in this Agreement, the employer has and will retain the sole right and responsibility to direct the operations of the District and to determine matters of inherent managerial policy which shall include but not be limited to the following: functions and programs of the District, overall budget, utilization of technology, organizational structure, selection, direction and transfer of personnel, and promulgation and enforcement of policy statements.

13.071 Just Cause Provision

Just cause shall be shown when any professional employee is formally reprimanded, disciplined or reduced in compensation. All information forming the basis for such action will be made available to the professional employee upon request. Any suspension of a professional employee, pending charges, shall be without pay.

14.011 Definitions

A "grievance" as used in this Agreement shall mean an assertion by a member of the bargaining unit or a group from within the bargaining unit represented by the Association, or the Association itself, that there has been as to him/her, them, or it, a violation of a specific provision of the written Agreement between the Board and the Association.

14.07 Step IV

The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement.

FACTS

In this case, the District has alleged that the matter is inarbitrable; accordingly, it argues that I am without jurisdiction to decide the merits of the Association's grievance. The Association contends that the matter is arbitrable, and the District violated the CBA. The parties agreed that I have the jurisdiction to decide the arbitrability issue. At hearing, the parties put on evidence with respect to both the arbitrability issue and the merits, without bifurcation, with the understanding that I would first determine the threshold issue, and only if I found the grievance to be arbitrable, would I then decide the merits of the dispute.

The grievant, Anthony Stevenson, has been employed by the District for ten years as a health and physical education teacher. The grievant is currently employed at the Sugartown Elementary School and teaches all 490 students in the school.

This grievance relates to the 2015-2016 school year, when the grievant had a split assignment, working both at Sugartown and at Charlestown Elementary Schools. Christopher Pickell was the Principal at Charlestown and Dr. Karen Schneck was the Principal at Sugartown. Mr. Pickell, as his assigned supervisor, prepared Mr. Stevenson's evaluation for the 2015-2016 school year, with input from Dr. Schneck. In his evaluation, the grievant received an overall performance rating of Satisfactory. Of the four domains, the grievant received three "Proficient" scores, with one "Needs Improvement" in the domain of Planning and Preparation. As a result of the Needs Improvement in his evaluation, the grievant was placed on a

Performance Improvement Plan (PIP). As of the date of hearing, the grievant had successfully completed the PIP and was performing well in his job. The grievant received no loss in salary, nor was he suspended as a result of the PIP. Prior to the 2015-2016 school year, the grievant had been placed on a PIP twice before. (SDXs 7-8)

In a meeting of August 16, 2016, the evaluation was presented to the grievant, and he had an opportunity to discuss the reasons why he received the evaluation, and an opportunity to consult with the Association. (T. 104) A second meeting was held on September 7, 2016, to discuss a draft PIP, which was created by Kyle Hammond, who had taken over as Principal of Sugartown. Mr. Hammond testified that the PIP was a result of the concerns raised by the Needs Improvement in planning and preparation and the model suggested was a template that was in use in the District. (T. 37-41) Mr. Stevenson and the Association offered feedback as to the duration of the plan, the turning in of lesson plans, the frequency of meetings with the Principal, and the use of a mentor. (T. 41-44) Another meeting was held on September 16, 2016, where a revised PIP, reflecting the input of the grievant and the Association, was signed. (SDX 5) The executed PIP states as follows:

Due to an overall performance rating of Satisfactory for the 2015-2016 school year with an Unsatisfactory in the areas of Planning and Preparation, this improvement plan focuses on gaining the appropriate knowledge of resources and designing coherent instruction as identified under the Planning and Preparation categories of the Danielson Framework and the components of professional practice. (SDX5)

District testimony indicated that as part of the evaluation process, there were concerns raised regarding the grievant completing a grade change request from a parent, his providing HIV/Aids curriculum to parents, and his use of a field day “Sign-up Genius” program. Based upon what were viewed to be deficiencies, the District determined that the grievant should receive a “Needs Improvement” in the area of planning and preparation, and a PIP was imposed to help him succeed. (T. 116)

On September 16, 2016, the Association filed a grievance alleging that the imposition of the PIP was not for just cause. (JX 2)

As part of the PIP process, the grievant met with Mr. Hammond, who monitored compliance weekly for the first semester, and then once every two weeks for the second semester. Mr. Hammond showed the grievant a template for lesson plans, but the grievant chose not to use it because it was not detailed enough. Mr. Stevenson testified that he felt that the PIP required him to do more than he needed to do in creating lesson plans. Mr. Stevenson testified that he felt he was being treated differently than other employees. The content of Mr. Stevenson’s PIP was the same as the content used for other District teachers who have difficulty with planning and preparation, and was issued as a means of providing him support. (T. 47-48, 54-55, 86-88, 92-93, 98)

At arbitration, the grievant was given an opportunity to testify regarding the PIP process, as well as the issues related to the grade change, the providing of the

HIV/Aids curriculum to parents, and the field day Sign-up Genius. According to the grievant, the District's concerns related to these issues were unwarranted. The grievant testified as follows:

I want to do my job and do it fairly and do it the best I can and I think I do that every single day I go in. Regardless if I was on a PIP or not, I go in there and I really try to do my best. (T. 93)

The meetings between Mr. Stevenson and Mr. Hammond proved to be productive. (T. 89-90) Mr. Stevenson successfully completed the PIP by the end of the 2016-2017 school year and received a "Proficient" in planning and preparation. (T. 49; SDX 6, 9)

DISCUSSION

The positions of the parties will be briefly summarized. Initially, the District raises a threshold issue, contending that the grievance is not arbitrable. The District points to the plain language of the CBA, which leads to the conclusion that the imposition of the PIP, based upon the evaluation of the grievant, is not a grievable subject. The District also contends that the PIP is not disciplinary in nature, and therefore does not fall under the Just Cause Provision of the Agreement. To the contrary, the Association argues that the grievance is arbitrable, in line with the strong preference expressed in Pennsylvania public sector labor law for the arbitration of disputes between management and labor. The Association cites case law for the proposition that the parties must express their intent clearly in order to exempt certain disputes from the grievance-arbitration process. According to the Association, the CBA does not expressly exempt from arbitration the disciplinary

imposition of a performance plan. The Association maintains that their grievance is not based upon the grievant's evaluation, but upon the imposition of the PIP which was a response to three events.

On the merits, and as an alternate argument to its position that the grievance is inarbitrable, the District contends that it did not violate the CBA by placing Mr. Stevenson on a PIP. The District argues that it has the right to improve the performance of an employee who is struggling, and no provision of the CBA prevents the District from doing so. The District maintains that the grievant has been placed on a PIP before, the PIP upon which the grievant was placed was the same format and included the same substance as PIP's used for other employees who had difficulties with planning and preparation, and the PIP was prepared with the input of the grievant and the Association. According to the District, no evidence was presented that Mr. Stevenson was treated any more severely than any other employee who has struggled in the area of planning and preparation, and it is undisputed that the PIP achieved its goal of improving the grievant's performance. The District urges that the grievance be denied.

As to the merits, the Association contends that the imposition of the PIP was not for just cause. According to the Association, the PIP was a disciplinary response on the basis of three events and the grievant's alleged behavior surrounding those situations. The Association maintains that the District has failed to establish that the grievant engaged in any misconduct, and he did not receive notice that a PIP would

be the disciplinary response to that alleged behavior. The Association argues that the grievant credibly testified concerning his behavior surrounding each of the three events, showing that the PIP was not for just cause, and the grievant was not given proper notice of the disciplinary consequences. The Association opines that the grievant's actions were in no way improper, proper notice was not provided, and the grievant believes that the District treated him differently than other employees, indicating that the District was not even-handed. The Association urges that the grievance be upheld, the arbitrator determine that there was no just cause for the imposition of the PIP, and by way of remedy, remove all documentation concerning the PIP from the grievant's personnel file, and any other reference thereto, as well as any other relief appropriate.

On the basis of the record evidence and the arguments of the parties, I conclude that the grievance should be denied as it is inarbitrable.

The record evidence clearly established that the Performance Improvement Plan imposed upon the Mr. Stevenson was a direct result of his 2015-2016 evaluation, in which he received a "Needs Improvement" in the domain of Planning and Preparation. As the grievant received Proficient scores for the other domains, he received an overall Satisfactory rating. But the District, in an effort to assist the grievant in the one "Needs Improvement" area, put him on the PIP, which it had done twice before with success. The grievant met all of his obligations under the PIP

resulting in his successful completion, and an ultimate score of Proficient in the Planning and Preparation domain.

The contract states in Section 11.024 that the “Evaluation of a professional employee which does not result in a reduction of the employee’s salary is not grievable.” In this case, the grievant’s 2015-2016 evaluation did not result in a reduction of the grievant’s salary. The PIP was a direct response to that evaluation, and a District effort to improve the grievant’s performance in the one domain in which he had received a Needs Improvement. Accordingly, under that contract section, the parties have clearly agreed that this grievance is not arbitrable. I have no authority to disregard this section. The PIP was not the proper subject of a grievance.

In addition, the District demonstrated that the PIP was not disciplinary in nature. In Section 13.071, the CBA clearly states that the standard of Just Cause is limited to formal reprimands, discipline, or reduction of compensation. The PIP was not recorded as discipline in the grievant’s personnel file, nor did he lose any pay, as indicated above. The grievant complained that the PIP required him to do longer lesson plans; however he rejected a template used by others which was offered by the District, as the grievant preferred a more detailed form. The record showed that the content of Mr. Stevenson’s PIP was the same as the content used by other District teachers who have difficulty with planning and preparation. While the grievant contended that the PIP was based upon particular incidents, those issues were addressed in the PIP, were reasonably encompassed within the areas of planning

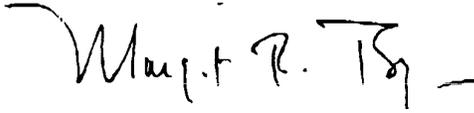
and preparation, and the PIP was used as a means of offering the grievant support. There was no evidence of discrimination or arbitrariness. I conclude that the PIP was not disciplinary in nature and therefore may not be grieved under the Just Cause provision.

A “grievance” is defined in the CBA, in Section 14.011 as a “violation of a specific provision of the written Agreement.” As explained above, this grievance does not fall within the parameters that contract section.

As an arbitrator, my jurisdiction flows from the CBA. In this case, the PIP imposed upon Mr. Stevenson is not grievable under the Agreement. I do note that the grievant, as of the time of hearing, successfully completed the PIP, he reflected a desire to teach well and successfully connect with all of his students, and he was performing well, indicating that the subject of this grievance should now be laid to rest.

AWARD

I find that the grievance is not arbitrable, and is denied.

A handwritten signature in black ink that reads "Margaret R. Brogan" followed by a horizontal line.

Margaret R. Brogan, Arbitrator

Dated: December 5, 2017