

ARBITRATION PROCEEDING

IN THE MATTER OF:)	OPINION AND AWARD
)	
)	BOM CASE NO.: 2017-0420
GREATER JOHNSTOWN EDUCATION)	GRIEVANCE No.: 24 of 2017-2018
ASSOCIATION)	
)	
AND)	
)	
)	
GREATER JOHNSTOWN SCHOOL)	ARBITRATOR SANFORD KELSON
DISTRICT)	

GRIEVANTS

CHRISTIAN WRABLEY, DEVIN CAROSI and STEVEN ROBB

ISSUE

STV EMPLOYEES SUBSEQUENTLY EMPLOYED
FULL-TIME DENIED CREDIT AND STEP INCREASES

HEARING

DECEMBER 20, 2018

POST-HEARING BRIEFS

RECEIVED BY JANUARY 31, 2019

APPEARANCES

FOR THE ASSOCIATION:

William K. Eckel, Esquire
132 Gazebo Park
Johnstown PA 15901

FOR THE SCHOOL DISTRICT:

Ronald N. Repak, Esquire
3366 Lynnwood Drive
Altoona, PA 16603-1311

I. ADMINISTRATIVE

Sanford Kelson, the undersigned arbitrator, was selected by representatives of the Association and School District to hear and decide a dispute pending between the parties. Both sides were afforded a full and complete opportunity to present any evidence including testimony and exhibits they deemed appropriate in support of their respective positions and in rebuttal to the positions of the other, to examine and cross examine witnesses and to make such arguments that they so desired in support of their respective positions. Pursuant to agreement of the parties, post-hearing briefs were timely received by December 20, 2018, at which time the hearing was closed. After reviewing the complete evidentiary record thus compiled, the undersigned enters the following disposition of the matter.

II. CITED PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE III, GRIEVANCE PROCEDURE

Section 1. Definitions

- (a) A “grievance” is any alleged violation of this agreement or any dispute with respect to its meaning, interpretation, or application.
- (b) An “aggrieved party” is a member or group of members of the bargaining unit who submit a grievance or on whose behalf it is submitted (when it submits a grievance) to the Board.
- (c) “Days” shall refer to the weekdays (Monday through Friday), excluding Saturday, Sundays, and holidays.

Section 2. Procedures

(a) Step 1

- 1) All grievances shall be submitted in writing on a form approved by the Board and shall identify the aggrieved party.
- 2) The grievance shall be deemed waived, unless it is submitted within ten (10) day after the aggrieved party knew of the events or conditions on which it is based.
- 3) All grievances by a member, or group of members, of the bargaining unit in the first instance shall be submitted to the first level supervisor. All grievances by

the Board in the first instance shall be submitted to the President of the Association.

- 4) The first level supervisor or the President of the Association (as the case may be) shall respond to the grievance, in writing, within ten (10) days after initial presentation.

(b) Step 2

If the action in Step 1 above fails to resolve the grievance to the satisfaction of the affected parties, the grievance shall be referred to the Superintendent of Schools/Designee, who shall respond to the grievance, in writing, within ten (10) days thereafter.

(c) Step 3

If the action in Step 2 above fails to resolve the grievance to the satisfaction of the affected parties, the grievance shall be referred to the Board, who shall respond to the grievance, in writing, within ten (10) days thereafter. Step 3 shall not apply in the case of grievances filed by the Board.

(d) Step 4

If the action in Step 3 above or in Step 2, in the case of grievances filed by the Board, fails to resolve the grievance to the satisfaction of the affected parties, the grievance shall be referred to binding arbitration pursuant to Section 903 of Act 195.

Section 3. Costs

The cost of arbitration shall be shared equally by the parties.

Section 4. Time Periods

Any grievance, which is not processed within the specified time periods, will be automatically referred to the next step in the procedure.

Section 5. Administration of Grievances

- (a) In the administration of the grievance procedure, the interest of the employee shall be the sole responsibility of the Association.
- (b) An Association Representative shall represent the grievant at all steps of the grievance procedure.
- (c) The Association shall have the sole and exclusive authority to decide if a grievance shall be appealed to binding arbitration.

ARTICLE V, RIGHTS OF PROFESSIONAL EMPLOYEES

Section 3. Just Cause Provision

No bargaining unit member shall be reduced in rank, compensation, deprived of professional advantage, or disciplined and/or reprimanded contrary to such rights as he/she may have under the Public School Code of 1949, and its amendments, or under the "Public Employee Relations Act" (Act 195

Section 6. Compliance With School Code

The Board and the Association agree to abide by the provisions of the Pennsylvania School Code of 1949, as amended, or any subsequent revisions or replacements which might be enacted. (Joint Exhibit 1 - Page 10)

ARTICLE IX, WAGE AND SALARY PROVISIONS

Section 1, Agreement

Bargaining unit members shall be paid in accordance with the salary schedules infra:

(a) 2013 – 14 Salary Schedule (1 Sep 2013 – 28 Feb 2014)

2013 – 14 SALARY SCHEDULE			
STEP	B		M / ME
M / ME + 30			
1	45,995	47,495	48,995
2	47,582	49,082	50,582
3	49,181	50,681	52,181
4	50,780	52,280	53,780
5	52,379	53,879	55,379
6	53,978	55,478	56,978
7	55,577	57,077	58,577
8	57,176	58,676	60,176
9	58,775	60,275	61,775
10	60,374	61,874	63,374
11	61,973	63,473	64,973
12	63,573	65,073	66,573
13	65,173	66,673	68,173
14	66,773	68,273	69,773

NOTE: For the 2013 - 14 school year only, employees shall remain at their 2012 – 13 step. Beginning March 1, 2014, employees shall receive a one-time increase of \$925.

(b) 2013 – 2014 Salary Schedule (1Mar – 31 Aug 2014)

2013 – 14 SALARY SCHEDULE			
STEP	B		M / ME
M / ME + 30			
1	46,920	48,420	49,920
2	48,507	50,007	51,507
3	50,106	51,606	53,106
4	51,705	53,205	54,705
5	53,304	54,804	56,304
6	54,903	56,403	57,903
7	56,502	58,002	59,502
8	58,101	59,601	61,101
9	59,700	61,200	62,700
10	61,299	62,799	64,299
11	62,898	64,398	65,898
12	64,498	65,998	67,498
13	66,098	67,598	69,098
14	67,698	69,198	70,698

(c) 2014 – 15 Salary Schedule

Beginning with the 2014 – 15 school year, employees will advance one (1) Step on the salary schedule each year of the agreement.

2014 – 15 SALARY SCHEDULE			
STEP	B		M / ME
M / ME + 30			
1	48,009	49,509	51,009
2	49,584	51,084	52,584
3	51,159	52,659	54,159
4	52,754	54,254	55,754
5	54,349	55,849	57,349
6	55,944	57,444	58,944
7	57,539	59,039	60,539
8	59,134	60,634	62,134
9	60,729	62,229	63,729
10	62,324	63,824	65,324
11	63,919	65,419	66,919
12	65,514	67,014	68,514
13	67,109	68,609	70,109
14	68,704	70,204	71,704

(d) 2015 – 16 Salary Schedule

2015 – 16 SALARY SCHEDULE			
STEP	B		M / ME
M / ME + 30			
1	49,997	51,497	52,997
2	51,320	52,820	54,320
3	52,643	54,143	55,643
4	53,966	55,466	56,966
5	55,541	57,041	58,541
6	57,116	58,616	60,116
7	58,691	60,191	61,691
8	60,266	61,766	63,266
9	61,841	63,341	64,841
10	63,416	64,916	66,416
11	64,991	66,491	67,991
12	66,566	68,066	69,566
13	68,141	69,641	71,141
14	69,716	71,216	72,716

Section 4. Salary Step Placement

- (a) Any bargaining unit member who works for ninety (90) or more days in any school year shall, for salary purposes, be credited with one (1) full year of service and shall move to the next step on the salary schedule. Salary placement shall take place at the initial time of employment in the next school year. Days of employment need not be consecutive in nature. All types of employment, including substitute work, shall be credited to this salary placement.
- (b) Any bargaining unit member, upon accumulating 180 days of employment over a period of more than one (1) year, shall, upon reaching 180 days, be moved to the next step on the salary schedule. All types of employment, including substitute work, shall be credited to the 180-day factor. Such accumulation shall commence from the school year.

Section 5. Substitute for a Long-Term Vacancy (STV)

- (a) Any substitute employed for a long-term vacancy, working ninety (90) or more days in a school year, shall be entitled to all of the provisions of the negotiated contract and each STV employee shall be paid at Step 1 of the salary schedule.
- (b) Any substitute employee, working less than ninety (90) days in a year, shall not receive benefits and be paid at a rate as determined by the Board.
- (c) Should any substitute employee, as described in Subsection (a) *supra*, be in such circumstance as to his/her employment extending to ninety (90) days or more, the employee shall, commencing with the ninety-first day, be entitled to the first salary step of the contract, which shall be retroactive to the first day of employment, sick days prorated, one (1) personal day, and one-half (1/2) of the contractual rate for unused personal day. Insurance benefits including PPO Blue, vision, dental, and life insurance, shall not be retroactive for any day prior to the ninety-first day but shall begin with the ninety-first day.
- (d) Should any substitute employee described above be hired as a regular employee of the District, he/she shall have no accumulation of sick leave for any or all time spent as a substitute employee.
- (e) None of the above shall apply to any recalled employee.

ARTICLE XIV, SEPARABILITY

If any provision of this agreement or application of this agreement to any member or group of members of the bargaining unit is held to be contrary to law, the subject provision or application shall not be deemed valid and subsisting except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect. (Joint Exhibit 1 - Page 35)

PENNSYLVANIA PUBLIC SCHOOL CODE PROVISIONS

Pennsylvania Public School Code § 11-1121 Contracts; execution; form (A-10)

- (a) In all school districts, all contracts with professional employees shall be in writing, in duplicate, and shall be executed on behalf of the board of school directors by the president and secretary and signed by the professional employee.
- (b) (1) Each board of school directors in all school districts shall hereafter enter into contracts, in writing, with each professional employee initially employed by a school district prior to June 30, 1996, who has satisfactorily completed two (2) years of service in any school district of this Commonwealth.

(2) Each board of school directors in all school districts shall hereafter enter into contracts, in writing, with each professional employee initially employed by a school district, on or after June 30, 1996, who has satisfactorily completed three (3) years of service in any school district of the Commonwealth.
- (c) ...“AND IT IS FURTHER AGREED by the parties hereto that none of the provisions of this act may be waived either orally or in writing, and that this contract shall continue in force year after year, with the right of the board of school directors (or board of public education) to increase the compensation over the compensation herein stated, from time to time, as may be provided under the provisions and proper operation of the established salary schedule, if any, for the school district, subject to the provisions of law, without invalidating any other provision of this contract, unless terminated by the professional employee by written resignation presented sixty (60) days before resignation becomes effective, or by the board of school directors (or board of public education) by official written notice presented to the professional employee; Provided, that the said notice shall designate the cause for the termination and shall state that an opportunity to be heard shall be granted if the said professional employee, within ten (10) days after receipt of the termination notice, presents a written request for such hearing.”

Pennsylvania Public School Code § 11-1142 Minimum Salary and increments; form (A-11)

- (a) Except as hereinafter otherwise provided, all school districts and vocational school districts shall pay all regular and temporary teachers, supervisors, directors and coordinators of vocational education, psychologists, teachers of classes for exceptional children, supervising principals, vocational teachers, and principals in the public schools of the district the minimum salaries and increments for the school year 1968-1969 and each school year thereafter, as provided in the following tabulation in accordance with the column in which the professional employee is grouped and the step which the professional employee has attained by years of experience within the school district each step after step 1 constituting one year of service. When a school district, by agreement, places a professional employee on a step in the salary scale, each step thereafter shall constitute one

year of service. When a district adopts a salary scale in excess of the mandated scale, it shall not be deemed to have altered or increased the step which the employee has gained through years of service.

Pennsylvania Public School Code § 11-1149 Increments when employed by another district; form (A-12)

The increments herein provided for are applicable only where the beneficiaries thereof remain in the service of the same school district. Where such teachers enter a new district, they shall enter at a point in the schedule to be agreed upon between said teachers and the employing districts, which agreements shall be made a part of the contract between them.

Issues

Issue 1. Was the Grievance Timely Filed?

Issue 2. Did Salary Freeze Deny The Grievants Credit on the Salary Schedule for Their Long Term Substitute Service With the School District When They Were Hired as Permanent Full Time Teachers?

Background, Facts and Discussion

This matter involves a grievance filed by the Association on May 21, 2018 by Mr Steve Robb for himself and Christine Wrabley, Devin Carosi, Megan Zadzilko and any and all other members affected. On May 23, 2018, the District denied the grievance based upon timeliness of filing and on the merits. The grievance was processed through the Labor Agreement provisions and then was submitted to the Pennsylvania Bureau of Mediation for arbitration. The arbitration hearing was held on December 20, 2018.

Issue 1. Was the Grievance Timely Filed?

The grievance article of the labor agreement provides that a grievance is waived unless it is submitted within ten (10) days after the aggrieved party knew of the events or conditions of which it is based.

The grievance was filed on May 22, 2018. The grievance is that the School District failed, upon hiring the grevants as full time permanent teachers to give them credit on the salary schedule for the year each had worked as a long term substitute.

The School District established that the grievants and Association knew of the events or conditions of which the grievance was based on two occasions, both beyond the ten (10) day period. The earlier date was during the 2013-14 school year when the Association contended that the grievants were incorrectly placed on the salary schedule. The later date was on March 16, 2018, when the grievant, Steve Robb, and an Association representative met with representatives of the School District and the matter was discussed.

Accordingly, the School District submits, the grievance was waived. The Association, in response, relies on the arbitration case of New Kensington-Arnold School District v. New Kensington-Arnold Educational Association, May 31, 2018, in which Arbitrator Ronald Talerico ruled that the failure to grieve issues of salary placement within the time limits of the labor agreement does not operate as a waiver of those rights by virtue of Section 1121 of the School Code. Neither an employee nor his/her Union may waive, either orally or in writing, rights granted in the School Code.

Arbitrator Talerico also relied on the well-recognized “continuing violation” doctrine. This doctrine fits like a glove with the requirement of the School Code that the right of salary placement cannot be waived, thus each day an employee is not on the correct salary schedule is a contract violation. This same continuing violation principle also is applied in situations where the grievance involves improper pay even where the School Code is not applicable, each pay that is improper is a grievable event.

The School District replies to the Association’s position by citing the arbitration case of Pennsylvania, Department of Corrections, State Correctional Institute of Pittsburgh v. Pennsylvania State Correction Officers Association, 535 CD 2012, Cmwlth. Ct. 10/10/2012 (56

A.3d 60 2010) in which the ‘continuing violation’ theory, as argued herein by the Association, was rejected. That case, however, was not under the School Code and it did not involve a salary issue, but instead a disciplinary issue, and thus is not applicable to the facts and labor contract involved in this matter. Based upon the above, the grievance was not waived; it was filed timely.

Issue 2. Did Salary Freeze Deny The Grievants Credit on the Salary Schedule for Their Long Term Substitute Service With the School District When They Were Hired as Permanent Full Time Teachers?

The grievants were hired as permanent full time teachers for the 2013-14 school year following employment as Long Term Substitutes (LTSs), also known as Substitutes for Temporary Vacancies, during the 2012-13 school year.

The Association’s position is that the grievants were not given credit on the salary schedule for the year they served as a LTSs upon being hired as permanent full time teachers. The School District’s position is that the teachers were not denied credit for the year they served as LTSs but that their salaries were frozen by an across the board freeze of all teacher salaries which was implemented due to the School District suffering a financial hardship.

The salary schedule for 2013-14 and the language regarding the freeze are as follows:

- a. 2013 – 14 Salary Schedule (1 Sep 2013 – 28 Feb 2014)

2013 – 14 SALARY SCHEDULE			
STEP	B		M / ME
M / ME + 30			
1	45,995	47,495	48,995
2	47,582	49,082	50,582
3	49,181	50,681	52,181
4	50,780	52,280	53,780
5	52,379	53,879	55,379
6	53,978	55,478	56,978
7	55,577	57,077	58,577
8	57,176	58,676	60,176
9	58,775	60,275	61,775
10	60,374	61,874	63,374

11	61,973	63,473	64,973
12	63,573	65,073	66,573
13	65,173	66,673	68,173
14	66,773	68,273	69,773

NOTE: For the 2013 - 14 school year only, employees shall remain at their 2012 – 13 step. Beginning March 1, 2014, employees shall receive a one-time increase of \$925.

The Association’s position is that the grievants should have been placed on Step Two of the 2013-14 salary schedule based upon the School Code 24 P.S. Section 11-1142 and a series of Pennsylvania Supreme Court cases interpreting the School Code, including the Supreme Court cases of Mifflinburg and Penns Manor. The parties agree that the School Code and the Supreme Court cases require that school districts give credit for LTSs’ teaching service on the salary schedule and that the right of the teachers to that credit cannot be waived. Therefore, detailed review of the holdings in these cases is not necessary. The arbitration decision will be based upon principles of contract interpretation.

The Mifflinburg and Penns Manor cases do not involve a salary freeze. The freeze is the unique fact situation relied upon by the School District for its denial of the grievance. The issue then is does the freeze deny the grievants credit for their LTS service on the salary schedule.

An arbitrator’s responsibility is to give effect to the mutual intent of the parties. The labor agreement should be construed broadly, not narrowly, to accomplish its evident aims. In other words, to determine the parties’ intent when the language was written. To consider the intent solely on the effect of the freeze on the grievants is not sufficient. The freeze must be considered as it effects all teachers and their relationship with one another on the salary schedule. This will be explored below.

The reason the law requires credit for LTS service is that the position involves the same duties and

responsibilities as full time teachers. The law therefore requires treatment of LTS service equally with the service of permanent full time teachers.

The freeze resulted in all teachers being paid the same salary for the 2013-14 school year that they had received for the 2012-13 school year. The grievants salary in 2012-13 was \$45,995.

Simultaneously with the hiring of the LTSs in 2012, the School District hired nine (9) permanent full time teachers whose starting salaries were the same as the LTSs. The salaries of these teachers were also frozen for the 2013-14 year at \$45,995. The freeze was also applied equally to all other teachers, one or more of whom had 14 years of service with the district.

If the grievants would have been advanced to Step 2 on the 2013-14 salary schedule they would have earned more money than the nine (9) full time teachers who were hired simultaneously with them for the 2012-13 year. They also would have received a salary increase while none of the other teachers received an increase. And on March 4, 2014, the grievants would have received, along with all the other teachers, the one-time salary increase of \$925. Placing the grievants on Step 2 of the salary schedule would have treated the grievants in a more advantageous manner than all the permanent full time teachers. That interpretation would not be consistent with the requirement of the School Code to treat the grievants equally with the permanent full time teachers.

The freeze did not deny the grievants credit for their LTV service on the salary scale.

What the parties intended was to implement a new wage scale for the 2013-14 school year which had the same rate of pay as the pay scale had for the 2012-13 school year. Usually advancement on the pay scale provides a larger salary but this is not necessarily so and is not required by School Code. Wage freezes, even decreases in salaries, are generally legal.

To further drive this point, consider a salary schedule that provided for three school years.

Assume this salary schedule provided for the same salaries for all three years. A LTS worked the


first year and earned, say the same as the grievants had, \$45,995. The following year the LTS was hired as a permanent full time teacher and was advanced to the next step which provided the same wage as the previous year. The teacher advanced to the next step but there was no increase in the salary. That is in effect what the freeze accomplished in this matter and this must have been the intent of the parties otherwise the effect on the grievants would not be equality with the full time permanent teachers but a superior status.

Since the grievants were given credit on the seniority schedule as having entered their second year of service in 2013-14, the freeze did not and will not have any adverse effect on them in comparison with the other full time teachers.

For the above reasons, the grievance is denied.

Award: The grievance was not filed untimely. The grievance regarding the substantive issue is denied in accordance with the opinion expressed above.

Date: March, 25 2019


Sanford Kelson, Arbitrator