COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

READING EDUCATION ASSOCIATION PSEA/NEA	:	
	:	CASE NO. PERA-C-12-202-E
v.	:	
READING SCHOOL DISTRICT	:	

PROPOSED DECISION AND ORDER

On July 13, 2012, the Reading Education Association (Union), filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Reading School District (District) violated Section 1201(a)(5) of the Public Employe Relations Act (PERA). The Union specifically alleged that the District violated its duty to bargain in good faith by rescinding a settlement agreement that had been ratified by the school board.

On August 21, 2012, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on February 1, 2013, in Harrisburg. At the hearing on that date, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. Both parties presented oral argument at the hearing, in lieu of filing written post-hearing briefs.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6).

2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6).

3. Charles Mullen was employed at the District as a special education/biology instructor in the professional unit from January 2008, until his administrative leave and subsequent termination in 2012. (N.T. 48; Union Exhibit B).

4. Karen B. Gokay is the Chief Human Relations Officer at the District. (N.T. 55).

5. Sometime in early 2012, the District learned that Mr. Mullen allegedly used language with a colleague that referenced a gun and the manner in which administration was treating special education. (N.T. 58).

6. Ms. Gokay immediately placed Mr. Mullen on administrative leave with pay until an investigation was completed. (N.T. 58).

7. After completing its investigation, human resources decided to terminate Mr. Mullen based on the gun-language incident and his performance record. (N.T. 58).

8. Ms. Gokay negotiated a severance and release agreement with the Union providing the terms and covenants of Mr. Mullen’s separation from the District. The agreement required Mr. Mullen to resign. (N.T. 41, 58; Union Exhibit A).

9. On April 17, 2012, Mr. Mullen signed the agreement. On April 18, 2012, the Union representative, Bryan Sanguinito, signed the agreement. At a

meeting on April 18, 2012, the District's board of directors passed resolution EP-134 wherein it voted to approve the agreement and accept Mr. Mullen's resignation. (N.T. 41-43, 58; Union Exhibits A & B).

10. The agreement provides, inter alia, in relevant part, as follows:

1. IRREVOCABLE RESIGNATION

Employee by virtue of this Agreement, hereby agrees to resign from the Reading School District effective December 31, 2012. Employee acknowledges that Employer is relying upon this resignation in providing the benefits contained herein.

Employee's signature upon this Agreement shall operate as a resignation from the District, provided Employer and Association also execute this Agreement.

2. CONSIDERATION FOR RESIGNATION

2.1 Upon the execution of this Agreement by the parties, Employee shall be entitled to the following from the Employer:

(a) full collective bargaining agreement medical coverage through May 1st, 2012;

(b) employee shall be placed on paid leave up to and including December 31st, 2012;

(c) a neutral letter of recommendation;

(d) a letter on district letterhead confirming the amount of accrued unused sick days;

2.2 The District agrees that in the event that it receives an inquiry from a potential employer of Employee, the District shall provide a written response as follows:

> "Charles Mullin was employed by the Reading School District from January 31st, 2008 until December 31st, 2012 at which time he voluntarily separated his employment. Mr. Mullin's last rating was satisfactory. Per School District policy, we do not share additional information including opinions regarding candidates for hire."
>
> No information other than the above will be provided to any potential employer of Employee.
>
> Employer shall also establish a procedure that any potential employer inquiries regarding Employee shall be answered by the Director of Human Resources who will restrict one's comments to those as set forth in the reference letter.

2.3 Employer shall also provide to Employee a letter on District letterhead signed by the Director of Human Resources, addressed "to whom it may concern," with the same language as set out in 2.2 hereinabove.

2.4 Employer will not file any report to Department of Education relating to Employee's alleged misconduct and/or teaching performance.

2.5 Employer agrees that Employee's personnel file shall be purged of unsatisfactory evaluations and the anecdotal records associated therewith.

2.6 Employer agrees not to contest any claim made by the Employee for unemployment compensation.

3. EFFECTIVE DATE OF THIS AGREEMENT:

This Agreement shall become fully effective and enforceable only when the Agreement has been executed by the parties.

4. RELEASE

4.1 Unconditional and Irrevocable General Release- In exchange for the covenants and conditions contained, Employee, Employer, and Association unconditionally and irrevocably release and forever discharge and by this Agreement do for themselves and their dependents, heirs, executors, administrators, successors and assigns remise, release and forever discharge each other and any past, current and future employees, officers, directors, agents, owners, attorneys and legal representatives of Employee, Employer and Association (RELEASED PARTIES) from all claims, demands, damages, actions, causes of actions, suits at law or in equity, charges, attorneys' fees, accounts, bills, judgments, rights, demands of whatever kind or nature, both civil or criminal or mixed, known or unknown, contingent or non-contingent whether arising from the beginning of time up until the date of this Agreement that either party in any way might have or could have against each other.

(Union Exhibit A).

11. During the time that Mr. Mullen was on administrative leave, the special education department began reviewing and distributing his caseload. Shortly after the April 18, 2012, board of directors meeting, the special education department allegedly discovered that Mr. Mullen was allegedly non-compliant with a number of Individualized Education Program (IEP) files where electronic documentation allegedly indicated that he had completed the IEP process on those files. Special education concluded that he allegedly falsified IEP reports in the computer system and notified human resources. (N.T. 48-49, 58-59).

12. Non-compliance with the IEP process allegedly creates financial implications for the District. (N.T. 59, 70).

13. Ms. Gokay informed the superintendent and they in turn informed the board of directors. (N.T. 60).

14. On April 25, 2013, the board of directors passed resolution EP-163 wherein it voted to rescind resolution EP-134 and its prior approval of the agreement and Mr. Mullen's resignation. (N.T. 43-46, 60).

15. Chief Human Resources Officer Gokay issued a Loudermill notice to Mr. Mullen affording him an opportunity to appear for a Loudermill hearing with District administration officials. The Union and Mr. Mullen did not appear. The board of directors also issued a notice of charges under the school code and notice of hearing on those charges before the school board. Mr. Mullen and the Union did not appear for the school board hearing. (N.T. 48-50, 61).

16. At a meeting on June 27, 2012, the District's board of directors voted to terminate Mr. Mullin. (N.T. 49; Employer Exhibit 1).

17. Ms. Gokay believed that the grievance arbitration process regarding the termination of Mr. Mullin presented only a 50-50 chance of success for the District which factored into the District's decision to immediately sever the relationship with Mr. Mullin and move forward. (N.T. 70).

DISCUSSION

The issue in this case is whether the District violated its obligation to bargain in good faith when the school board of directors voted to accept and ratify a severance agreement and later rescinded that agreement after discovering that Mr. Mullin had allegedly engaged in other arguably terminable conduct. The Union argues that the District accepted Mr. Mullin's resignation on April 18, 2012, rendering him no longer an employe as of that date, and then treated him like an employe by requiring him to attend Loudermill and Board hearings, when he was not an employe. (N.T. 51-52). The District argues that the agreement was not valid because it was not signed by the school board members. (N.T. 72-73). Consequently, Mr. Mullin remained an employe and the post-ratification vote discovery that he allegedly falsified computer IEP documentation supported his termination. (N.T. 72-73).

Although I disagree with the Union's argument that Mr. Mullin was no longer an employe as of April 18, 2012, the effect of honoring the ratified agreement supports the Union's position. Although Mr. Mullen's resignation letter states that he resigned effective March 27, 2012 (Union Exhibit B), Section 2.1 of the agreement approved by the school board provides that he would remain in paid status and that his resignation would not be effective until December 31, 2012. Indeed, Section 2.2 of the agreement expressly provides that if the District receives inquiries from prospective employers of Mr. Mullin, the District would respond that "Charles Mullin was employed by the Reading School District from January 31st, 2008 until December 31st, 2012. Accordingly, the agreement that the Union seeks to have upheld expressly provides that the Union and the District agreed that, for the remainder of 2012, Mr. Mullin was indeed and employe of the District. However, if the agreement is upheld, the District could not terminate Mr. Mullin for any reason because they agreed to maintain him on paid leave until December 31, 2012. The District also forever released Mr. Mullin from all claims and demands of whatever kind or nature both known and unknown arising before April 18, 2012. (F.F. 10).

The Union further argues that the agreement in this case is no different than a grievance settlement agreement and must be upheld under **Mountain view Education Ass'n v. Mountain View School District**, 44 PPER 48 (Proposed Decision and Order, 1012). (N.T. 77-78). The Union further argues that principles of ratification of a collective bargaining agreement by a school board, held to be binding in **St. Clair Area Educ. Ass'n v. St. Clair Area School Dist.**, 18 PPER ¶ 18116 (Final Order, 1987), **aff'd, St. Clair Area School District v. PLRB**, 552 A.2d 1133 (Pa. Cmwlth. 1988), **aff'd without opinion**, 525 Pa. 236, 579 A.2d 879 (1990), are applicable to, and binding upon, the District in this case. I agree with both of these arguments.

In **Mountain view School District**, the union filed two grievances seeking the removal of two disciplinary letters from an employe's personnel file. The district denied the first grievance at the first three levels and denied the second grievance at the first two levels. Before proceeding to the third level on the second grievance, the parties agreed to consolidate the grievances and take them both to the Pennsylvania Bureau of Mediation for grievance mediation in lieu of grievance arbitration. The mediator resolved the grievances obtaining agreement from both parties to remove one of the letters in July 2012, and the other in July 2013. The parties' agreement to utilize grievance mediation did not mention obtaining school board approval for any agreements reached before the mediator. However, the superintendent sought approval from the school board, which rejected the settlement agreement. Hearing Examiner Leonard relied on **Moshannon Valley School District v. PLRB**, 597 A.2d 229 (Pa. Cmwlth. 1991) (holding that an

unappealed grievance settlement reached at the first step of the grievance procedure is binding on the district) and concluded that the Mountain view School District engaged in unfair practices when it's superintendent reneged on the settlement because he did not expressly reserve the right of review by the school board. Moreover, the Board has held that a party commits an unfair practice when it refuses to honor the agreed upon oral ground rules of bargaining. **Port Authority of Allegheny County v. Amalgamated Transit Union Local # 85**, 34 PPER 98 (Final Order, 2003).

Although **Mountain View** and **Moshannon Valley** both involved the settlement of grievances, the fact that a grievance may not have been actually filed in this case does not negate the obligation to bargain in good faith when a separation agreement is negotiated between a union and a public employer. Indeed, Ms. Gokay testified that it was in contemplation that the District had only a 50-50 chance of prevailing before an arbitrator that motivated the District to enter into a negotiated settlement with the Union and Mr. Mullin. (F.F. 17).

Although the District argues that after-discovered facts justified the school board's rescission of the Resolution EP-134 and that school board ratification was insufficient to make the agreement binding, the Board and the Commonwealth Court rejected that position in **St. Clair**, **supra**. In **St. Clair**, striking teachers and the school district entered into a tentative agreement at the courthouse. The agreement was approved by five of the nine members of the district's board of directors. At a public meeting less than one week later, two of the school board members who voted in favor of the tentative agreement changed their vote and voted against acceptance. Another member, who originally voted in favor of the agreement, was absent. The tentative agreement was not ratified by a majority of the school board at that meeting. The Board noted in its final order that the school district offered evidence that a school board member who voted in favor of the agreement thereafter reviewed his collective bargaining materials and concluded that the agreement would be too costly. The Board concluded that the school board engaged in bad-faith bargaining and opined as follows:

> Had this member been unprepared to reach a tentative agreement as alleged at the hearing on the charge of unfair practices, it was his obligation to make this known at the meeting of January 29, 1987 and decline to sign a tentative agreement. For this Board to adopt any such notion that the majority of either the employer or the union for that matter could execute a tentative agreement and subsequently renege **for the simple reason that the agreement was subsequently regarded as not in that party's best interest would court disaster in the collective bargaining process**.

St. Clair, 18 PPER at 338 (emphasis added).

The Board has clearly rejected the argument that discovering information, that could have been discovered before a majority of the school board ratifies an agreement, does not justify the school board's reneging on that agreement. The instant case is even more compelling than that of **St. Clair** because a majority of the Reading school board actually ratified the agreement. The Commonwealth Court, in affirming both the Board and the court of common pleas, similarly held that "[w]here a majority of the nine members of the [s]chool [d]istrict approved the agreement and subsequently members changed their vote at a public meeting, it is a reasonable conclusion that the [s]chool [d]istrict was not exercising good faith in its negotiations." **St. Clair**, 552 A.2d at 1135.

Here, the District discovered Mr. Mullin's alleged computer file manipulations after April 18, 2012, but the information was available well before then. The District, after ratifying the severance agreement, acted in bad faith when it reneged on its ratification vote simply because it believed it was in its best interest to do so in light of the later-discovered alleged computer fraud.

The District maintains that **St. Clair** is distinguishable from the instant matter because negotiating a collective bargaining agreement is different than an agreement settling an employment termination matter. (N.T. 78). However, the obligation to bargain in good faith applies equally to negotiating a collective bargaining agreement and settlement agreements between a public employer and the certified collective bargaining representative of its employes.

Moreover, the Commonwealth Court's decision in **Athens Area School Dist. v. PLRB**, 760 A.2d 917 (Pa. Cmwlth. 2000) provides additional support for the Union's position. In **Athens**, a majority of the school board voted in favor of ratification of a tentative collective bargaining agreement and reported its ratification to the union. Subsequently, the school board voted unanimously to rescind its prior ratification. Soon thereafter, the union voted to ratify the tentative agreement. When the Union sent two signed copies of the agreement to the district for signature, the district refused to sign.

In **Athens**, the Board and the Commonwealth Court both relied on **St. Clair**, **supra**, and rejected the position taken by the District here that, under principles of civil contract law, a ratified, but unsigned, contract is not binding. The **Athens** Court expressly held that, "[i]t is of no consequence to the bad faith issue whether the agreement has at the time become a binding contract. Indeed, we believe this is the teaching of **St. Clair**." **Athens**, 760 A.2d at 920. Accordingly, the Reading School District engaged in unfair practices in violation of Section 1201(a)(5) of PERA by rescinding Resolution EP-134 and reneging on the settlement agreement with the Union and Mr. Mullin after a majority of the school board ratified the agreement. The District must comply with all the terms of the severance and release agreement ratified by the school board on April 18, 2012.

CONCLUSIONS

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

1. The District is a public employer within the meaning of Section 301(1) of PERA.

2. The Union 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)(5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the District shall:

1. Cease and desist from interfering, restraining and coercing employes in the exercise of the rights guaranteed in Article IV of PERA;

2. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of employes in an appropriate unit, including but not limited to discussing of grievances with the exclusive representative;

3. Cease and desist from refusing to honor or implement the severance and release agreement ratified by a majority of the school board on April 18, 2012, detailing the terms of Mr. Charles Mullin's separation from his employment with the District;

4. Take the following affirmative action:

   (a) Immediately take action to apply all terms of the Mullin Severance and Release Agreement including any make-whole relief including out-of-pocket medical expenses; back pay through and including December 31, 2012; a neutral letter of recommendation; a letter on District letterhead documenting accrued unused sick days;

   (b) The District shall prospectively provide the response to inquiries about Mr. Mullin in the manner prescribed in Section 2.2 of the agreement and provide a letter signed by the Director of Human Resources on District letterhead containing the same language as required by Section 2.3 and containing the quoted language set forth in Section 2.2;

   (c) The District shall withdraw any reports filed and shall not in the future file any reports with the Department of Education relating to Mr. Mullin's alleged misconduct and/or teaching performance;

   (d) The District shall purge Mr. Mullin's personnel file of unsatisfactory evaluations and any anecdotal records associated therewith;

   (e) The District shall withdraw any contest made to any claim by Mr. Mullin for unemployment compensation;

   (f) The District shall pay interest at the simple rate of six percent per annum on any and all backpay due Mr. Mullin from the date that the District placed him in unpaid status until December 31, 2012;

   (g) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days; and

   (h) 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 days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this seventeenth day of May, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

_____

JACK E. MARINO, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

READING EDUCTION ASSOCIATION PSEA/NEA	:	
	:	CASE NO. PERA-C-12-202-E
v.	:	
READING SCHOOL DISTRICT	:	

AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(5) of the Public Employe Relations Act; that it has ceased and desisted from refusing to bargain collectively in good faith with the Union; that it has ceased and desisted from refusing to honor and implement the severance and release agreement ratified by a majority of the school board on April 18, 2012, detailing the terms of Mr. Charles Mullin's separation from his employment with the District; that it has immediately applied and implemented all terms of the Mullin Severance and Release Agreement including any make-whole relief including out-of-pocket medical expenses; back pay through and including December 31, 2012; a neutral letter of recommendation; a letter on District letterhead documenting accrued unused sick days; that it has provided Mr. Mullin a letter signed by the Director of Human Resources on District letterhead containing the same language as required by Section 2.3 of the agreement and containing the quoted language set forth in Section 2.2; that it has withdrawn any reports with the Department of Education relating to Mr. Mullin's alleged misconduct and/or teaching performance; that it has purged Mr. Mullin's personnel file of unsatisfactory evaluations and any anecdotal records associated therewith; that it has withdrawn any contest to any claim by Mr. Mullin for unemployment compensation; that it has paid interest at the simple rate of six percent per annum on any and all backpay due Mr. Mullin from the date he was removed from paid status through and including December 31, 2012; that it has posted a copy of this Decision and Order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principle place of business.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public