

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WARRIOR RUN EDUCATION ASSOCIATION :
 :
 v. : CASE NO. PERA-C-16-42-E
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 :
 WARRIOR RUN SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On February 8, 2016, the Warrior Run Education Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Warrior Run School District (District or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On March 30, 2016, the Secretary of the Board issued a complaint and notice of hearing, assigning the charge to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating June 15, 2016, in State College, as the time and place of hearing.

The hearing was necessary and was held on June 15, 2016, in State College, before the undersigned Hearing Examiner. All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief on August 25, 2016. The District filed a post-hearing brief on September 27, 2016.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer within the meaning of PERA. (N.T. 4).
2. The Association is an employe organization within the meaning of PERA. (N.T. 4).
3. The parties are subject to a collective bargaining agreement (CBA) for the period July 1, 2015, through June 30, 2018. (Joint Exhibit 1).
4. Pursuant to the CBA, when a new bargaining unit member is hired their starting salary is determined by the salary schedules contained in the CBA. The Superintendent, Dr. John Kurelja (Kurelja), determines the step on which a new bargaining unit member starts based on that new bargaining unit member's past experience. The CBA states: "The District reserves the right to establish the entry step of any new employee. This District, in its sole discretion, may or may not give credit for prior teaching experience attained outside the District." (N.T. 8-9; Joint Exhibit 1, pages 5, 23-26).
5. "School psychologist" is a position within the bargaining unit and on the same salary schedule as all professional employees. There are two full-time school psychologist positions in the District. (N.T. 10, 22).
6. In the beginning of 2014, Kurelja approached the Association President Michael Freeborn (Freeborn) to discuss Shaina Vasbinder (Vasbinder), a school psychologist. Kurelja said to Freeborn about Vasbinder: "This girl has been working very hard for the District. We want to do something. We want to see if she would resign and then we would hire her at a higher wage." Vasbinder did not agree to resign and be hired back at a higher wage and eventually left the District for another position. (N.T. 12, 19-20, 53).
7. Brian Linaburg (Linaburg) was hired as a school psychologist on January 20, 2015, on Step 1 with a Master's +30, an annual salary of \$40,808.00. Linaburg started at Step 1 because he did not have previous experience. (N.T. 10, 12, 49; District Exhibit 1).

8. Similar to Vasbinder, at some point in 2015, Kurelja told Linaburg that the only way Kurelja could pay Linaburg more money was for him to resign and be rehired by the District. (N.T. 51).

9. On or about October 19, 2015, Linaburg tendered his resignation of position as a school psychologist, effective in 60 days. The School Board approved Linaburg's tender of resignation on October 26, 2015. (N.T. 21; District Exhibit 1, Joint Exhibit 5).

10. The Association was not aware of Kurelja's discussions with Linaburg or the circumstances surrounding Linaburg's tender of resignation. (N.T. 13).

11. The open school psychologist position was advertised in the local paper and on the District's website for approximately one week. (N.T. 14, 23, 41, 48).

12. The District did not receive any applications for the position other than Linaburg's, who applied for the position from which he had tendered his resignation. Kurelja decided to employ Linaburg again approximately two weeks after Linaburg had tendered his resignation. (N.T. 48-49).

13. On November 16, 2015, prior to Linaburg's resignation becoming effective on or about December 23, 2015, the School Board approved Kurelja's recommendation to employ Linaburg at a new salary placement at Step 8. Linaburg was also placed at Master's +36 to reflect the fact that Linaburg had earned 6 credits since he was hired the first time. Linaburg and Kurelja negotiated Linaburg's placement at Step 8. (N.T. 15, 43, 50; District Exhibit 1, Joint Exhibit 4).

14. Linaburg's new salary was negotiated by Kurelja and Linaburg outside of the presence and knowledge of the Association. (N.T. 43).

15. Linaburg's increase in annual salary from when he was first hired to when the School Board approved a new salary was \$5,136.00. (N.T. 44).

16. Per the CBA, bargaining unit members move down a step every year. It is not possible under the CBA for a bargaining unit member to progress seven steps in one year. The CBA states: "Professional . . . employees employed by the District ninety (90) or more consecutive school days in the school year in which they work with the District will be entitled to a full increment for the succeeding year." A full increment means one step down the salary scale. (N.T. 15, 25-26; Joint Exhibit 1, page 5).

17. In general, Kurelja had experienced difficulty in attracting and retaining school psychologists for the District due to the District's inability to offer competitive salaries. (N.T. 30-31).

DISCUSSION

The Association alleges that the District violated Section 1201(a)(5) of PERA when it engaged in direct dealing with Linaburg and unilaterally raised his wages. It is well settled that the Board considers a unilateral change to wages by a school district, even one which creates a benefit for one individual teacher, to be an unfair practice. **See Highland Sewer and Water Authority**, 4 PPER 116 (Final Order, 1974); **General Braddock Area School District**, 4 PPER 86 (Final Order, 1974). In **Millcreek Township School District v. PLRB**, 631 A.2d at 734 (Pa. Cmwlth. 1993), the Commonwealth Court of Pennsylvania explained the policy for this rule as follows:

The rationale for considering the unilateral grant of benefits to be an unfair labor practice is that, even if unintentional, the role of the collective bargaining agent as the sole representative of all employees would be undermined if the school district could unilaterally bargain to give individual employees greater benefits than those negotiated for employees who bargained collectively. The issue is not whether the change is a benefit or a detriment to the employees, but whether it affects a mandatory subject of bargaining,

i.e., wages, hours or other terms or conditions of employment. A unilateral change in a mandatory subject of bargaining constitutes a refusal to bargain in good faith and is an unfair labor practice because it undermines the collective bargaining process which is favored in this Commonwealth.

Millcreek Township School District, 631 A.2d at 73.

In this matter, the Association has presented sufficient evidence to support its charge. Kurelja, the Superintendent, was concerned that low pay was interfering with his ability to retain school psychologists in the District. However, Kurelja's ability to set salaries under the CBA was limited to new bargaining unit members. Bargaining unit members' salaries then followed the schedules posted in the CBA based on years served and education level. In an attempt to retain one of the school psychologists, Vasbinder, Kurelja devised a plan whereby Vasbinder would "resign" and then be "rehired" by the District at a higher wage. This plan for Vasbinder was communicated to the Association, but, ultimately, Vasbinder did not agree and left the District.

Linaburg was hired as a school psychologist in January, 2015, at Step 1 of the salary scale based on having no previous experience. Without telling the Association, Kurelja told Linaburg that the only way the District could pay Linaburg more money is if Linaburg "resigned" and was subsequently "rehired" by the District at a higher rate of pay. Linaburg tendered his resignation on or about October 19, 2015. The School Board approved Linaburg's tender of resignation on October 26, 2015. The resignation was to be effective in 60 days. Within three weeks, however, the School Board approved the "rehiring" of Linaburg at Step 8 of the salary scale (as well as increasing him to Master's +36 to recognize course work completed since his initial hire). This new salary for Linaburg was the result of direct negotiations between Kurelja and Linaburg outside of the knowledge of the Association. Thus, Linaburg received an annual raise of \$5,136.00 without separating from the District, outside of the step scale identified in the CBA, and outside of the knowledge and participation of the Association.

The record in this matter is clear that Kurelja devised a plan to pay a bargaining unit member more than the CBA would normally allow. The plan apes the formality of a resignation and separation from the District in order to invoke the Superintendent's authority under the CBA to set salaries for "new" employees. However, it is clear from this record that Linaburg was in no way a "new" employee. Linaburg never stopped working for the District. Indeed, his new salary was approved by the School Board more than a month before his resignation would have been effective. While Linaburg was still a bargaining unit member, he and Kurelja directly negotiated Linaburg's new salary outside of the knowledge and participation of the Association. This is a refusal to bargain and a bald violation of PERA which requires that public employers exclusively bargain wages with the bargaining representative for all employees. While the District has concerns about the salary of school psychologists for the purposes of retention, these concerns are properly discussed with the exclusive collective bargaining representative.

The record in this matter is clear that District committed a bargaining violation when it engaged in direct dealing with Linaburg and unilaterally granted him a higher wage. The normal remedy for bargaining violations is an order to return to the *status quo ante*. In this case, the *status quo ante* would be before Kurelja engaged in direct dealing with Linaburg. However, the normal remedy in this matter would be unduly harsh as it would punish Linaburg for the District's unfair practices. Thus, I will follow the Board's decision in **Warminster Township**, 31 PPER ¶ 31156 (Final Order, 2000), and order a return to the *status quo ante* with the provision that Linaburg will not be required to repay or reimburse to the District any wages he has earned as a result of the District's unfair practices.

CONCLUSIONS

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

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

2. The Association 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)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the Warrior Run School District shall:

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

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

3. Take the following affirmative action:

(a) Immediately rescind its October 26, 2015, approval of Linaburg's tender of resignation, its November 16, 2015, approval to hire Linaburg, and restore the *status quo ante* by returning him, on a prospective basis only, to the salary Linaburg would be entitled to but for the District's unfair practices;

(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 the bargaining unit employes and have the same remain so posted for a period of ten (10) consecutive days;

(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; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Associations.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirteenth day of October, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WARRIOR RUN EDUCATION ASSOCIATION

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CASE NO. PERA-C-16-42-E

v.

WARRIOR RUN SCHOOL DISTRICT

AFFIDAVIT OF COMPLIANCE

The Warrior Run School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a) (1) and (5) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as directed therein; that it rescinded its October 26, 2015, approval of Linaburg's tender of resignation, its November 16, 2015, approval to hire Linaburg, and restored the *status quo ante* by returning Linaburg, on a prospective basis only, to the salary he would be entitled to but for the District's unfair practices; that it has posted a copy of the Proposed Decision and Order as directed therein; and that it has served an executed copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

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

Signature of Notary Public