

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SHAMOKIN AREA EDUCATION ASSOCIATION, :
PSEA/NEA :
 : Case No. PERA-C-17-337-E
v. :
 :
SHAMOKIN AREA SCHOOL DISTRICT :
 :

PROPOSED DECISION AND ORDER

On November 29, 2017, the Shamokin Area Education Association, PSEA/NEA (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Shamokin Area School District (District or Employer), alleging that the District violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA or Act) by engaging in direct dealing with a professional employee and unilaterally hiring said employee for additional compensation and terms not set forth in the collective bargaining agreement.

On December 13, 2017, 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 March 5, 2018, in Harrisburg, as the time and place of hearing, if necessary.

The hearing was necessary and was held before the undersigned Hearing Examiner of the Board, as scheduled on March 5, 2018, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Association filed a post-hearing brief on April 23, 2018. The District filed a post-hearing brief on April 24, 2018.

The Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 3)
2. The Association is an employee organization within the meaning of Section 301(3) of PERA. (N.T. 3-4)
3. The Association is the exclusive bargaining representative for a unit of professional employees at the District. (Association Exhibit 1)
4. The Association and the District are parties to a collective bargaining agreement (CBA) for the period of July 1, 2013 through June 30, 2018, which contains a salary schedule. (N.T. 8-9; Association Exhibit 1)
5. On August 15, 2017, the District hired Gerald Kramer as a professional employee with a Master's degree and chemistry and science certifications, effective July 11, 2017 at a salary of \$57,899.00, plus

benefits described in the CBA. The salary of \$57,899.00 is consistent with the Master's level step 16 of the salary schedule negotiated by the parties in the CBA. The minutes from the District's School Board meeting also indicate that Kramer shall receive "[a]n additional \$2,000 yearly compensation contingent upon 5-year commitment with satisfactory evaluations, in the certification area of [c]hemistry based on a high-need area." (N.T. 9-10; Association Exhibits 1, 2)

6. The CBA does not contain any language providing for bonuses or payment in excess of the salary schedule. Nor does the CBA contain any incentives related to satisfactory evaluations or longevity. (N.T. 11-12; Association Exhibit 1)

7. The District did not bargain the hiring of Kramer with the additional compensation and/or terms and conditions of employment outside of the salary schedule with the Association. (N.T. 11-12)

8. Kramer was a chemistry teacher in another district, who only agreed to come work for the District if the District agreed to pay him additional compensation beyond the salary schedule contained in the CBA. (N.T. 36)

DISCUSSION

The Association alleges that the District violated Section 1201(a) (1) and (5) of PERA when it engaged in direct dealing with Kramer and unilaterally hired him for additional compensation and terms not set forth in the CBA. The District contends that the charge should be dismissed because the parties had an implied agreement and/or past practice, which permitted the District to hire Kramer in this fashion.

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 Warrior Run Education Ass'n v. Warrior Run School District, 48 PPER 37 (Proposed Decision and Order, 2016), 48 PPER 71 (Final Order, 2017); 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 case, the Association has sustained its burden of proving the District violated the Act by engaging in direct dealing with Kramer and unilaterally hiring him for additional compensation and terms not set forth in the CBA. Indeed, the record shows that the Association and the District are parties to a CBA for the period of July 1, 2013 through June 30, 2018, which contains a salary schedule. On August 15, 2017, the District hired Kramer as a professional employee with a Master's degree and chemistry and science certifications, effective July 11, 2017 at a salary of \$57,899.00, plus benefits described in the CBA. The salary of \$57,899.00 is consistent with the Master's level step 16 of the salary schedule negotiated by the parties in the CBA. The minutes from the District's School Board meeting, however, also indicate that Kramer shall receive "[a]n additional \$2,000 yearly compensation contingent upon 5-year commitment with satisfactory evaluations, in the certification area of [c]hemistry based on a high-need area." The CBA does not contain any language providing for bonuses or payment in excess of the salary schedule. Nor does the CBA contain any incentives related to satisfactory evaluations or longevity. The District did not bargain the hiring of Kramer with the additional compensation and/or terms and conditions of employment outside of the salary schedule with the Association. Further, the District's Superintendent James Zack readily conceded that the District engaged in direct dealing with Kramer by testifying that Kramer was a chemistry teacher in another district who only agreed to come work for the District for the additional compensation beyond the salary schedule contained in the CBA. As such, the District clearly violated the Act.

The District argues that the charge should be dismissed because the parties allegedly had an implied agreement and/or past practice, which permitted the District to hire Kramer in this fashion. However, this argument is unavailing. The District points to several other teachers, who it previously hired with the promise of additional compensation or an agreement to pay for the teacher to obtain a certification. However, the record shows that the District hired these teachers prior to the most recent CBA, which contains the first ever negotiated salary schedule between the parties. (N.T. 8; District Exhibit 2). Thus, even assuming the existence of such an alleged past practice between the parties permitting the District to hire teachers in this fashion, such a practice was changed by the express terms of the 2013-2018 CBA, which contains the negotiated salary schedule and which expressly provides for a salary of \$57,899.00 at Master's level step 16. It is well settled that a past practice cannot be used where it is proscribed by or conflicts with the language of the current collective bargaining agreement. Lackawanna County v. Lackawanna County Adult & Juvenile Probation & Domestic Relations Section Employees Ass'n, 49 PPER 51 (Pa. Cmwlth. 2018); Department of Corrections v. Pennsylvania State Corrections Officers Ass'n, 38 A.3d 975, 982 (Pa. Cmwlth. 2011). Likewise, the District cannot identify any language from the CBA which even arguably indicates that the Association expressly and intentionally authorized the District to unilaterally deviate from the salary schedule and provide additional terms and conditions not set forth in the CBA. See Port Authority Transit Police Ass'n v. Port Authority of Allegheny County, 39 PPER 147 (Final Order, 2008) (where the employer asserts a contractual right to change a mandatory subject of bargaining, it must point to specific, agreed-upon contract language which arguably indicates the union expressly and intentionally authorized the employer to take the precise unilateral action

at issue).¹ In any event, even if the Association had previously acquiesced to the District's unilateral offer of additional compensation and/or terms and conditions of employment, it is equally well settled that a union does not forever waive its right to bargain future changes to a mandatory subject by its acquiescence, either express or implied, to the employer's previous unilateral changes in the subject matter. Temple University Health System, 41 PPER 3 (Final Order, 2010).² Accordingly, the District will be ordered to rescind its unilateral agreement of additional compensation and/or terms and conditions of employment beyond the CBA for Kramer on a prospective basis only.

CONCLUSIONS

The 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 Association is an employee 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 Examiner

HEREBY ORDERS AND DIRECTS

That the District shall:

1. Cease and desist from interfering, restraining or coercing employees 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 the employee organization which is the exclusive representative of employees in the appropriate unit, including but not limited to discussing of grievances with the exclusive representative.

¹ While the District does not expressly make a contractual privilege argument in its post-hearing brief, the District appeared to posit such a defense at the hearing by eliciting testimony that the CBA allegedly does not preclude the District from offering additional compensation and/or terms and conditions of employment beyond the negotiated salary schedule. However, as previously set forth above, the additional compensation and/or terms and conditions of employment for Kramer did expressly contravene the negotiated salary schedule to the extent it went beyond what is specifically included for employees at the Master's level step 16 of the CBA.

² The District does not dispute that wages are a mandatory subject of bargaining.

3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:

(a) Immediately rescind, on a prospective basis only, the unilateral agreement with Kramer for additional compensation and/or terms and conditions of employment beyond the CBA and restore the status quo ante by returning him to the salary and benefits he 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 its employees, 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 Union.

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 from Harrisburg, Pennsylvania this 4th day of June, 2018.

PENNSYLVANIA LABOR RELATIONS BOARD

John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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AFFIDAVIT OF COMPLIANCE

The Shamokin Area 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, on a prospective basis only, the unilateral agreement with Kramer for additional compensation and/or terms and conditions of employment beyond the CBA, and restored the *status quo ante* by returning Kramer to the salary and benefits 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