

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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

FINAL ORDER

The Shamokin Area School District (District) filed timely¹ exceptions with the Pennsylvania Labor Relations Board (Board) on June 25, 2018, challenging a Proposed Decision and Order (PDO) issued on June 4, 2018. In the PDO, the Board's Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) when it dealt directly with Gerald Kramer and offered him additional compensation not set forth in the parties' collective bargaining agreement. The Shamokin Area Education Association, PSEA/NEA (Association) filed a response to the exceptions on July 13, 2018.

The facts of this case are summarized as follows. The Association is the exclusive bargaining representative for a unit of professional employees at the District. The Association and the District are parties to a collective bargaining agreement (CBA) effective from July 1, 2013 through June 30, 2018. The 2013-2018 CBA contains a salary schedule. The CBA does not contain any language providing for bonuses, wage or benefit incentives related to satisfactory evaluations or a set term of employment, or any compensation in excess of the salary schedule.

On August 15, 2017, the District hired Gerald Kramer as a professional employee with a Master's degree and chemistry and science certifications at a salary of \$57,899 plus benefits as described in the CBA. The salary of \$57,899 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 Mr. Kramer would 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." Mr. Kramer only agreed to work for the District if it paid him additional compensation along with the salary listed in the parties' CBA. The District did not bargain with the Association over the additional compensation offered to Mr. Kramer.

The Association filed its Charge of Unfair Practices on November 29, 2017, alleging that the District violated Section 1201(a)(1) and (5) of PERA when it dealt directly with Mr. Kramer by offering him additional

¹ The District's exceptions are timely because June 24, 2018, the twentieth day following issuance of the Secretary's decision, was a Sunday and therefore is excluded from computation of the twenty-day period for filing exceptions. 34 Pa. Code § 95.100(b).

compensation above that provided in the salary schedule in the parties' CBA. On December 13, 2017, the Secretary of the Board issued a Complaint and Notice of Hearing, directing that a hearing be held before the Hearing Examiner on March 5, 2018. The hearing was held as scheduled, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

In the PDO, the Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of PERA when it unilaterally offered Mr. Kramer an additional \$2,000 yearly compensation contingent upon satisfactory annual evaluations. By way of remedy, the Hearing Examiner ordered the District to immediately rescind, on a prospective basis only, the unilateral agreement with Mr. Kramer for additional compensation and return Mr. Kramer to the salary and benefits he would be entitled to under the CBA.

Initially, the District alleges that the Hearing Examiner erred in making certain findings of fact. For purposes of the exceptions, the Hearing Examiner's Findings of Fact will be sustained by the Board where there is substantial evidence in the record to support the finding. Pennsylvania State Rangers Association v. Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, 45 PPER 1 (Final Order, 2013). Substantial evidence is such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." PLRB v. Kaufman Department Stores, 345 Pa. 398, 29 A.2d 90 (1942). A review of the record shows that the 2013-2018 CBA, for the first-time, set forth a detailed salary schedule for bargaining unit employees. Additionally, the parties' 2013-2018 CBA does not contain any provisions concerning employee bonuses or incentives. Further, the District conceded that it did not bargain with the Association before offering the additional compensation to Mr. Kramer outside of the negotiated salary schedule. Therefore, the Hearing Examiner's relevant findings are supported by the record and the District's exceptions thereto are dismissed.

The District asserts that it was not required to bargain with the Association because the additional \$2,000 yearly compensation offered to Mr. Kramer is consistent with the parties' past practice of providing incentive bonuses for high-need positions. The District further asserts that the current CBA and salary schedule did not negate the parties' practice.

Contrary to the District's assertion, the "zipper clause" contained in the CBA does not authorize the District to offer compensation in excess of the wages found in the salary schedule. Commonwealth of Pennsylvania v. PLRB, 459 A.2d 452 (Pa. Cmwlth. 1983) (Venango County Board of Assistance) (boilerplate zipper clause does not authorize employer to unilaterally change mandatory subject of bargaining); Commonwealth of Pennsylvania v. PLRB, 467 A.2d 1187 (Pa. Cmwlth. 1983) (same). The 2013-2018 CBA does not establish only the minimum starting salaries, or authorize the District to unilaterally exceed the negotiated wages in the salary schedule. Instead, the inclusion of the parties' first negotiated salary schedule sets forth the salary steps for newly hired employees based upon their education and level of experience. To hold that the District may unilaterally exceed the contractual salary schedule would contradict both the general purpose of negotiating a salary schedule into the parties' CBA in the first instance, as well as the District's statutory obligation to bargain in good faith over employee wages.

Moreover, even if the employer had offered bonus compensation under prior contracts (which did not have a salary schedule), it is well-settled that the Association is not prohibited from asserting its right to bargain over future changes to the bargaining unit members' wages. Crawford County v. PLRB, 659 A.2d 1078 (Pa. Cmwlth. 1995), appeal dismissed as improvidently granted, 543 Pa. 482, 672 A.2d 1318 (1996); Temple University Hospital Nurses Association v. Temple University Health System, 41 PPER 3 (Final Order, 2010). This is especially true where, as here, the underlying circumstances from prior occurrences and contracts have changed, i.e., the first-ever negotiated salary schedule. Accordingly, the Hearing Examiner did not err in concluding that on this record, any alleged practices with regard to the payment of incentive bonuses for new hires was negated by the collectively bargained for salary schedule in the 2013-2018 CBA, and the District, in accordance with its statutory good faith bargaining obligation, cannot unilaterally deviate from that negotiated salary schedule.

The District further argues on exceptions that, because the parties' CBA does not preclude it from offering additional compensation to qualified individuals, the Hearing Examiner erred in concluding that it violated Section 1201(a) (1) and (5) of PERA. However, Section 701 of PERA requires public employers to bargain in good faith with the employees' exclusive bargaining representative "with respect to wages, hours and other terms and conditions of employment..." 43 P.S. § 1101.701 (emphasis added). Thus, an employer commits an unfair practice when it unilaterally changes a mandatory subject, such as wages, even where the change may benefit an individual employe. Warrior Run Education Association v. Warrior Run School District, 48 PPER 71 (Final Order, 2017); PLRB v. Jefferson-Morgan School District, 9 PPER ¶ 9056 (Nisi Decision and Order, 1978); PLRB v. Highland Sewer and Water Authority, 4 PPER 116 (Nisi Decision and Order, 1974); PLRB v. General Braddock Area School District, 4 PPER 86 (Nisi Decision and Order, 1974). As stated by the Commonwealth Court in Millcreek Township School District v. PLRB, 631 A.2d 734, 738 (Pa. Cmwlth. 1993), 537 Pa. 626, 641 A.2d 590 (1994), the rationale for considering the unilateral grant of benefits to be an unfair practice is that "the role of the collective bargaining agent as the sole representative of all employes would be undermined if the school district could unilaterally bargain to give individual employes greater benefits than those negotiated for employes who bargained collectively."

Here, the District offered Mr. Kramer an additional \$2,000 in yearly compensation above the salary found in the CBA without bargaining with the Association. The CBA does not contain any language authorizing the District to provide bonuses, wages in excess of the salary schedule, or incentives related to satisfactory evaluations or a set term of employment. Employe wages and compensation are expressly made mandatory subjects of bargaining. 43 P.S. §1101.701. Contrary to the District's arguments on exceptions, regardless of the fact that the CBA is silent on bonuses or incentives, the District is required by law to bargain with the Association (as the employees' exclusive representative) over the District's ability to pay represented employes compensation or wages that are above that permitted by the negotiated salary schedule of the 2013-2018 CBA. See Warrior Run School District, supra; Jefferson-Morgan School District, supra; Highland Sewer and Water Authority, supra; General Braddock Area School District, supra.; see also City of Erie v. PLRB, 612 Pa. 661, 32 A.3d 625 (2011) (it is a fundamental mandate that parties must bargain over mandatory subjects "regardless of whether the collective bargaining agreement expressly mentions such benefits; whether they have been incorporated into the agreement by reference; or whether the agreement is silent on that mandatory subject").

After a thorough review of the exceptions and all matters of record, the Hearing Examiner properly concluded that the District violated its duty to bargain under Section 1201(a)(1) and (5) of PERA when it unilaterally offered additional compensation to Mr. Kramer outside of the negotiated salary schedule in the 2013-2018 CBA. See AFSCME, District Council 33, Local 1637, AFL-CIO v. Philadelphia Parking Authority, 24 PPER ¶ 24145 (Proposed Decision and Order, 1993) (employer violated duty to bargain under Section 1201(a)(1) and (5) of PERA where it unilaterally granted performance bonuses). Accordingly, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Shamokin Area School District are hereby dismissed, and the June 4, 2018 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, James M. Darby, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this nineteenth day of February, 2019. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

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AFFIDAVIT OF COMPLIANCE

The District hereby certifies that it has ceased and desisted from its violations of Sections 1201(a) (1) and (5) of the Public Employe Relations Act; that it rescinded, on a prospective basis only, the unilateral agreement with Mr. Kramer for additional compensation and/or terms and conditions of employment beyond the CBA, and placed Mr. Kramer on the contractual salary scale at 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 and Final Order as directed; and that it has served a copy of this affidavit on the Association 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