COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

RIVERVIEW INTERMEDIATE UNIT #6	:	
	:	
v.	:	
	:	CASE NO. PERA-C-21-176-W
RIVERVIEW INTERMEDIATE UNIT #6	:	
EDUCATION ASSOCIATION	:	

PROPOSED DECISION AND ORDER

On August 2, 2021, Riverview Intermediate Unit #6 (Employer or IU) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Riverview Intermediate Unit #6 Education Association (Association) violated Section 1201(b)(3) and (5) of the Public Employe Relations Act (PERA or Act) by refusing to reduce a collective bargaining agreement to writing and sign such agreement.

On November 2, 2021, the Secretary of the Board issued a complaint and notice of hearing designating January 14, 2022, via Microsoft Teams, as the time and manner of hearing.

The hearing was held on January 14, 2022, via Microsoft Teams, before the undersigned Hearing Examiner, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Employer filed its post-hearing brief on March 10, 2022. The Association filed its post-hearing brief on April 11, 2022.

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

FINDINGS OF FACT

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

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

3. The parties most recent collective bargaining agreement (CBA) ended in June, 2020. Negotiations on a successor CBA began in January, 2020. Over a period of approximately one and a half years, there were about eight or ten bargaining sessions between the parties. The last session was in May, 2021. The negotiations stopped when the instant charge was filed with the Board. (N.T. 15-17).

4. On June 9, 2021, Julie Smith, the Association's UniServ Representative, sent Robert Zaruta, counsel for the Employer, an email with the subject headings of "IU6 Tentative Agreement". The document was entitled "IU6 EA Working Draft". The email states in relevant part:

> Hi Bob,
> Attached please find a draft of the IU6 EA tentative agreement. Previously agreed upon language changes are highlighted in yellow. Please pay close attention to those changes highlighted in blue as they are new language that was created since our last negotiations session. I believe that we've captured the spirit of our agreement, but please be in touch with any questions, clarifications, or revisions. We would ask that Administration make every attempt to implement the 24-pay cycle prior to the first pay date on August 15, 2021. In addition, we hope that our newer employees can each receive their $5,000 bonus within 4 weeks of final ratification, sooner if possible. The Association negotiations team is planning to meet on June 21st to finalize our salary schedule, at which time we will provide it for Administrative approval. We intend to hold a full Association meeting on Friday, June 25th to ratify the new contract. Be assured that the Association negotiations team will fully recommend the approval of this tentative agreement. With that, I will cancel the two grievance arbitrations scheduled for June 21st, and will provide grievance withdrawal notices with the stipulations we've agreed upon, at a later date.
>
> Thank you, Julie

(N.T. 23; Employer Exhibit 1).

5. Attached to Smith's June 9, 2021, email was a redlined version of the draft successor CBA with the effective dates of July 1, 2020 to June 30, 2024 (Employer Exhibit 2). Page 31-32 of Employer's Exhibit 2 contains the following language:

> **APPENDIX A**
> **SALARY SCHEDULES**
> The Parties have agreed to a salary and step freeze in year 1. A one-time payment of $5,000 to any employee hired on step one in the 2019-2020 school year shall be paid within 4 weeks of final ratification of this contract. Salary increases in years 2, 3, and 4 shall be 2.75%, 2.75%, 2.25% respectively and inclusive of step movement.
> Salary Schedules and Step Movement Chart will be updated by Association with Board approval to reflect agreement.

(N.T. 25; Employer Exhibit 2).

6. At some point later in June, 2021, Smith prepared and sent Zaruta a salary schedule. On June 26, 2021, Zaruta sent an email to Smith which states in relevant part:

> Hi Julie,
>
> Thanks for sending the schedule. From a first glance it appears that all individuals on step 1 in year 1 have moved to step 2 in the year 2 resulting in a 4.21% increase in year 2, instead of 2.75%? Thoughts?

(N.T. 95-96; Association Exhibit 1).

7. On June 27, 2021, Smith replied to Zaruta's email with an email that states in relevant part:

> Hi Bob,
>
> Everyone, including those on step 1, move a step in year two. There is a longstanding agreement that the IU pays for those on step 1 to move to step 2. From what I understand, this was implemented when the IU negotiated an open step one. I can confirm that this practice has happened at least over the last three contracts, probably more if I dig deeper. We should have confirmed that earlier, but it was somewhat of an afterthought.

(N.T. 95-96; Association Exhibit 1).

8. After Smith's June 27, 2021, email, Smith and Zaruta talked about the issue. Smith told Zaruta that the Association would never agree to 2.75% if the Association were "paying for those costs" (more fully defined below) as there would not be enough money left over for bargaining-unit members at the top end of the salary schedule, which is a large portion of the bargaining unit. She told Zaruta that if the Association paid for the increase from step one to step two, in addition to the increase to insurance premiums paid by bargaining-unit members, the top end of the salary scale would be going backwards and that such a proposal would not pass a vote by the bargaining-unit members. She told Zaruta to create a salary schedule because she knew that Zaruta would not be able to make the numbers work. (N.T. 29, 96-97).

9. The Employer prepared a salary schedule and sent it to the Association. (Employer Exhibit 7). (N.T. 30).

10. After the Association received the alternative salary schedule from the Employer, the Association's bargaining committee reviewed the salary schedule and voted it down. The main reason the Association voted it down was because the Employer's salary schedule (Employer Exhibit 7) required the cost of the step movement from step one to step two to come out of the percentage raises through the whole schedule. Additionally, the Association did not approve of the Employer's proposed salary schedule freezing bargaining-unit members' salaries in some years and creating an additional jump step. The Association did not send anything to its bargaining-unit members for ratification. (N.T. 67-68).

11. Michael Stahlman is the Executive Director of Intermediate Unit #6. During the negotiations of the CBA at issue in this matter, Stahlman was not present in the bargaining room, but was present at every session. He was available in a caucus room to answer questions about the educational and financial impact of proposals in negotiations. He guided negotiations on behalf of the Employer. Though Stahlman was not at the table, he was provided copies of all written proposals. (N.T. 12-21).

12. In late June, Stahlman reviewed the Association's prepared salary schedule (Employer Exhibit 5). In Stahlman's review, he noticed that Employer Exhibit 5 showed a freeze in year one, a year two increase of 4.21%, a year three increase of 2.75%, and a year four increase of 2.5%. This was Stahlman's first knowledge that there was in issue over the understanding of what step inclusive meant between the parties. (N.T. 28-29, 36, 94).

13. This was the first round of contract bargaining with Association for Stahlman. (N.T. 42).

14. Gregg Barret is the president of the Employer's Board of Directors. He has been on that board for twenty-six years. He was a member of the Employer's negotiation team in this matter and was present for most of the bargaining sessions. He was not on the previous negotiation team (for the contract that ended in June, 2020), but was on the Employer's negotiations teams for the two to three contracts before that. (N.T. 47-50).

15. Andrew Lugg is a teacher and a member of the bargaining unit. He has been employed by the IU for 18 years. He is President of the Association. He has been President for nine years. He has been on the negotiations committee for the Association for four contracts. In every contract Lugg has been personally involved in, there has been an open first step. An open first step allows the Employer to bring in new employes at whatever salary they can agree on. The step is not defined, and the Employer can hire people at whatever salary they can convince the person to accept. From the Association's perspective, this means that the Association does not control what the salary is at the first step and therefore the Association does not include the first step in any salary matrix (which shows the cost of the contract in terms of salaries). In other words, the Association does not pay for those salaries in the give-and-take of bargaining with the Employer. Therefore, for the CBA at issue here, the Association assumed that the Employer would cover the cost of step one (which means that the Association does not bargain over step one) and the Association pays for costs starting at step two. (N.T. 60-66).

16. In Lugg's experience, it is understood between the two parties that step movement means steps two to 15, not step one to 15, because step one is open. In Lugg's experience, "inclusive of salary step" has always meant step two to 15. During negotiations of the contract at issue in this matter, Lugg testified it was the assumption of the Association that "inclusive of salary step" meant steps two to 15. (N.T. 60-66).

17. Lugg testified that once a tentative agreement had been reached between the parties, there normally is not a salary schedule yet. Lugg testified that once the parties agree on percentages for each year, the Association then creates the salary schedule according to what the negotiations committee says was agreed to. The Association then presents the salary schedule to the Employer. In this matter, the Association intended the salary schedule to be finalized prior to ratification. (N.T. 66-67).

18. Lugg testified that the Association did not mention during negotiations that it would not include step one in the salary proposal negotiations prior to the submission of the Association's proposed salary schedule. Lugg testified that there no references in prior CBAs to not including the movement from step one to step two. Lugg testified that it was never brought up because it was always understood by the parties that the Employer would cover the cost of moving from step one to step two. (N.T. 71-72, 79-80).

19. In the contracts between the parties, the first step has always been open. (N.T. 78).

20. Joe Gerzina is currently retired. Before retiring, he was an educational consultant and bargaining-unit member. He was employed by the IU for over thirty-six years. He retired in 2013. Gerzina was on many bargaining committees for the Association over thirty years. He was personally involved in bargaining the 1993, 1997, 2001, and 2006 CBAs. Gerzina testified that in all of the CBAs he personally negotiated, the salary schedules included an open first step. He testified that the practice of the parties was to not include the transition from step one to step two on the salary matrix because the parties did not know what that number would be as the Association did not know what salary the Employer would hire people at for step one. Gerzina testified that in his experience bargaining CBAs, the Employer would cover the cost of step movement from step one to step two. (N.T. 81-86).

21. Julie Smith is the UniServ rep for the Association. She was involved in the bargaining of the contract at issue in this matter. Smith did not include the movement from step one to step two when she costed out proposals during negotiations. Smith testified that when she started preparing for these negotiations in late 2019, she sat down with the Association's bargaining committee and clarified that where she had negotiated contracts with open steps, the employer covered the cost of movement from step one to step two. She pointed out to the Association's bargaining-unit committee that there were 6.6 full-time equivalent bargaining-unit members on step one (in late 2019) and that there would be a large cost to move them to step two. Smith testified that she was relieved when she realized that the Employer would cover the cost of moving those employes to step two. Smith testified that in every salary schedule she ran for the Association, including the one sent to the Employer, she did not include the step movement from step one to step two. (N.T. 87-89).

22. Smith created the Association's proposed salary schedule in late June, 2021. She testified that the proposed salary schedule was consistent with what the Association believed that had been agreed to

except for an error on her part where she transposed a 2.5% increase for the last year instead of the agreed upon 2.25%. (N.T. 94-95).

DISCUSSION

The Employer in this matter alleges that the Association violated Section 1201(b)(3) of the Act by refusing to submit a tentative agreement to its members for a vote on ratification. The Employer also alleged that the Association violated Section 1201(b)(5) by refusing to reduce a collective bargaining agreement to writing and sign such agreement.

Moving first to the Section 1201(b)(3) allegation, Section 1201(b)(3) of the Act prohibits employee organizations, their agents, or representatives or public employees from "[r]efusing to bargain collectively in good faith with a public employer, if they have been designated in accordance with the provisions of this act as the exclusive representative of employes in an appropriate unit." 43 P.S. § 1101.1201(b)(3). The Board has found that a refusal to submit a tentative agreement to ratification is evidence of bad faith. Richland School District, 22 PPER ¶ 22077 (Proposed Decision and Order, 1991)(citing NLRB v. Alterman Transport Lines, Inc., 587 F.2d 212 (5th Cir. 1979), "actions taken pursuant to a reserved right of ratification must be closely examined to determine whether those actions are consistent with the requirements of good faith bargaining.").

To establish that a binding agreement exists, the charging party must prove that the parties reached a meeting of the minds concerning the subject matter at issue. Philadelphia Community College, 52 PPER ¶ 77 (Final Order, 2020); Radnor Township School District, 40 PPER 44 (Final Order, 2009). Where the parties have a meeting of the minds concerning the subject matter of the agreement, a binding agreement exists. Larksville Borough, 48 PPER ¶ 82 (Final Order, 2017); Bethel Park School District, 27 PPER ¶127033 (Proposed Decision and Order, 1995); Northampton County, 38 PPER 19 (Proposed Decision and Order, 2007); Centre Area Transportation Authority, 53 PPER ¶ 31 (Proposed Decision and Order, 2021). It is the external conduct of the parties and not subjective beliefs that establishes the presence or absence of a meeting of the minds. Bethel Park School District, 27 PPER ¶ 27033 (Proposed Decision and Order, 1995), citing Mack Trucks, Inc. v. International Union, 856 F.2d 579 (3d Cir. 1988), cert. denied, 489 U.S. 1054 (1989).

The Employer argues that the Association violated Section 1201(b)(3) when the Association refused to submit a tentative agreement to the bargaining-unit members for ratification. However, in this matter I find that there was no meeting of the minds between the parties and therefore the document called the "Tentative Agreement" was not a binding tentative agreement for the purposes of determining if the Association committed an unfair practice when it refused to send it to ratification. The record shows that the parties did reach agreement on many issues except the important topic of the salary schedule, which is a critical pillar of any collective bargaining agreement.

With respect to the salary schedule, the parties did not have a meeting of the minds over the issue of whether "step inclusive" included the movement from step one (the "open step") to step two.

Since they did not have a meeting of the minds on that issue, the parties could not agree on a salary schedule. The core of this misunderstanding between the parties was the issue of whether the cost of moving bargaining-unit members from step one (the open step) to step two would be "paid" by the Employer or the Association. "Paid" in this context means which party is responsible for the cost of that move in the overall relative costs of the parties' positions in bargaining. (In other words, did the amount of money for salary raises the Association bargained for from the Employer cover the cost of moving employes from step one to step two or not.) The Association produced credible evidence at the hearing that the Association's bargaining team believed that all the salary proposals being made during bargaining were made with the step from step one to step two **not** included in the total cost of the salary schedule. I base this finding on the credible testimony of Andrew Lugg, Joe Gerzina, and Julie Smith that this was the long-established practice of the parties and that this was the assumption of the Association during bargaining. I specifically credit the testimony of Smith and Lugg about how the unpredictable nature of an open step makes calculation of the cost of a salary schedule unforeseeable. I additionally credit their testimony that it was the Association's belief that bargaining-unit members would never accept a proposal that included the movement from step one to step two in the total cost of a salary schedule due to the deleterious impact on salaries at the top of the scale. I find that the Association was always working under the assumption that "step inclusive" did not include the movement from step one to step two in the cost of the salary schedule.

With respect to the understanding of the Employer in this case, Michael Stahlman testified credibly that his understanding was that "step inclusive" meant including the step from step one to step two in the total cost of the salary schedule. This was Stahlman's first negotiation with the Association and I find that it is reasonable for him to assume that "inclusive of step" meant including the step from step one to step two even though that was not the assumption the Association was working from. To put it plainly, Stahlman just did not know that the Association meant steps two through 15 when it mentioned step inclusive. Thus, the parties were operating under conflicting assumptions and never had an agreement on the issue of the salary schedule.

The Employer points to the testimony of Gregg Barrett, who had served on previous bargaining committees for the Employer, to support the contention that in previous agreements between the parties "step inclusive" meant including the step from step one (the open step) to step two. (N.T. 50-55). Barrett, unlike Stahlman, was present at the table for bargaining sessions with the Association. However, based on his demeanor on the stand and the record as a whole, I find Barrett's testimony to not be as credible as the testimony from the Association's witnesses.

Therefore, there was no meeting of the minds between the parties and thus no tentative agreement. The fact that there was no meeting of the minds is explicitly demonstrated by the external conduct of the parties. When Smith sent her proposed salary schedule to Zaruta, Zaruta immediately noticed that there was a discrepancy between the Employer's understanding of how the salary schedule would work and the

Association's understanding. This is explicit, objective evidence that there was no meeting of the minds.

Had Employer Exhibit 2 included a salary schedule that was agreed on by the parties, this would be a different matter. But in this case, the parties never agreed on a salary schedule, an important piece of a collective bargaining agreement, and thus never had a tentative agreement subject to ratification.

Moving to the Employer's charge under 1201(b)(5), as I have found above that there was no meeting of the minds or tentative agreement on the successor collective bargaining agreement, the Association has not committed any unfair practice by refusing to reduce a collective bargaining agreement to writing and signing such agreement.

CONCLUSIONS

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

1. The Employer 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 Association has not committed unfair practices in violation of Section 1201(b)(3) or (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 charge is dismissed and the complaint rescinded.

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 second day of June, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

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STEPHEN A. HELMERICH, Hearing Examiner