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**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE ACCOUNTS OF: JOANNE G. HARTLINE
JOAN B. KUMMERER
HELEN MARIE MOYER
REGINA HILT
NADINE K. LYDIC
CAROL L. CULP
CAROL S. KLINE
JEANNETTE A. RAUTZHAN
DAVID G. SLIDER
DOREEN Y. CECHAK
KAREN A. KATRINAK
KATHRYN A. KIRK
JANE A. PRUTZMAN
RICHARD A. SACHS
BRENDA G. MARION
RONALD D. BUTT
SUSAN C. ONDO
CYNTHIA CASE WAMPLER
MARGARET M. SCHELLINGER
PAULA T. FENNELLY
PATRICIA M. THOMPSON
SUSAN VISHIO FORRY
TERRY WALSH
PAMELA FERRARO
SUSAN M. FIX
CYNTHIA R. WERSTLER
ROXANNE FOX
GLEN A. BRUMBACH

DOCKET NOS.: 2012-14 through 2012-41

CLAIMS OF: HARTLINE, ET AL.

OPINION AND ORDER OF THE BOARD

The Public School Employees' Retirement Board ("Board") has before it a Motion for Summary Judgment filed by the Public School Employees' Retirement System ("PSERS"). The issue in this consolidated appeal is whether the salary increases that Claimants received during the 2011-2012 school year pursuant to the Salary Schedule

at Exhibit “B” of the “Boyertown Area School District Collective Bargaining Agreement” dated the 18th of May, 2011 (“Agreement”) should be included as compensation in the calculation of their final average salaries.

PSERS filed a Motion for Summary Judgment on November 7, 2013, and served a copy on Claimants as required by the General Rules of Administrative Practice and Procedure. 1 Pa.Code §§ 33.32-33.33, 33.35-33.36. On December 9, 2013, Claimants, through counsel, filed a response.

Where no factual issues are in dispute, no evidentiary hearing is required under 2 Pa.C.S. § 504. In the absence of disputed material facts, this Board has the authority to decide the legal issues in dispute without an evidentiary hearing. *United Healthcare Benefits v. Insurance Commission of Pennsylvania*, 620 A.2d 81 (Pa.Cmwth. 1993); *Mellinger v. Department of Community Affairs*, 533 A.2d 1119 (Pa.Cmwth. 1987).

PSERS asserts that the salary increases Claimants received during the 2011-2012 school year pursuant to the Agreement were “severance payments” and, therefore, not retirement-covered “compensation.” PSERS’ argument is premised on the assertion that only bargaining unit employees who submitted an irrevocable notice of retirement to the Boyertown Area School District (“District”) between June 15, 2011, and August 1, 2011, received a salary increase during the 2011-2012 school year, which carried over to the 2012-2013 school year. See PSERS’ Memorandum of Law in Support of Motion for Summary Judgment (“PSERS’ Memorandum of Law”) at pp. 14-16.

Claimants do not dispute that they received salary increases solely because they submitted their notices of retirement. See Claimants’ Memorandum of Law in Response to PSERS’ Motion for Summary Judgment (“Claimants’ Response”) at pp. 3-4. Rather, they argue that the Agreement is ambiguous as to whether the District’s non-retiring, bargaining unit employees were subject to a salary “freeze” or a salary “deferral” under the Agreement and, therefore, it is not clear whether Claimants received what the non-retiring employees eventually would receive. See *id.* at pp. 6-9. Claimants thus assert that summary judgment is not appropriate and that this matter should proceed to a hearing to determine the intent of the parties to the Agreement.

For the reasons set forth below, the Public School Employees' Retirement Board ("Board") concludes that Claimants have failed to assert any issue of material fact that would preclude the entry of summary judgment in this matter. The Board finds that the applicable law is clear and that the facts contained in the record are sufficient for the Board to resolve the legal issue of whether Claimants' salary increases should be included as compensation in the calculation of their final average salaries.

Based on the record, the Board finds the following material facts not in dispute:

FINDINGS OF FACT

1. Claimants individually filed an Appeal and Request for Administrative Hearing between August 9, 2012, and August 23, 2012, requesting that the salary increases that they received during the 2011-2012 school year be included as compensation in the calculation of their final average salaries. (See Claimants' Facts of the Case at p. 4; PSERS' Memorandum of Facts at p. 6-7, ¶¶ 19 and 20; see *generally* PSERS-5).
2. Between August 29, 2012, and September 10, 2012, PSERS filed its Answers and New Matters. (PSERS' Memorandum of Facts at p. 7, ¶21).
3. Between September 7, 2012, and September 25, 2012, Claimants filed responses to PSERS' New Matter. (PSERS' Memorandum of Facts at p. 7, ¶22).
4. On December 13, 2012, the Board consolidated Claimants' appeals. (PSERS' Memorandum of Facts at p. 7, ¶23; Claimants' Facts of the Case at p. 4).
5. An administrative hearing is not scheduled in this matter.
6. At all relevant times, Claimants were members of PSERS. (PSERS' Memorandum of Facts at p. 3, ¶1).
7. At all relevant times, Claimants were employed by the District. (PSERS' Memorandum of Facts at p. 3, ¶2; see Claimant's Response at p. 1).

8. At all relevant times, Claimants were members of the bargaining unit represented by the Boyertown Area Education Association (“BAEA”). (See Claimant’s Facts of the Case at p. 2; PSERS’ Memorandum of Facts at p. 3, ¶3).

9. The District and the BAEA entered into the Agreement dated May 18, 2011, that set forth, *inter alia*, the salary schedules and progression for employees of the District for the school years 2011-2012, 2012-2013, and 2013-2014. (See CE2; PSERS-2).

10. For the school years 2011-2012 and 2012-2013, the Agreement contained two salary schedules: (1) a salary schedule that contained the “salary provisions which shall prevail for the School Years beginning July 1, 2011, and ending June 30, 2014, for those Bargaining Unit Employees who did not give an irrevocable notice of resignation as set forth in the Agreement”; and (2) a salary schedule that contained the “salary provisions which shall prevail for those Bargaining Unit Employees retiring at the end of the 2011-2012 or 2012-2013 School Years only if such teachers provided an irrevocable retirement notification to the District as of August 1, 2011.” (CE2 at Article I, §§ 1.1 and 1.2; PSERS-2 at Article 1, §§ 1.1 and 1.2; see Claimant’s Facts of the Case at p. 2).

11. With respect to which employees were eligible to submit their irrevocable notice of retirement and the consequences of submitting such notice, the Agreement provided as follows, under Article IX “Salary Allowance for Retirement Year”:

Any full-time Bargaining Unit Employee who is eligible for superannuated retirement in the Commonwealth of Pennsylvania or early retirement as defined by [PSERS] with 25 years of experience and age 55, or any full-time Bargaining Unit Employee who achieves age 62 prior to July 1, 2013, with at least 5 years of experience in the system, who would not otherwise be eligible for a disability pension pursuant to PSERS or not eligible for retiring or resigning pursuant to a Separation and Release Agreement and who further provides for an irrevocable notice of retirement between June 15, 2011, and August 1, 2011 (notices of retirement submitted prior to June 15, 2011, would not create any eligibility) and retiring effective on or before July 1, 2013, shall not be subject to the salary schedules/agreed upon salary deferral for School Years 2011-2012 and 2012-2013 and will be subject to the salary schedule set forth in Exhibit “B” attached hereto

and made a part hereof so long as the Bargaining Unit Employee provides for the irrevocable notice of retirement as set forth in this provision.

(CE2 at Article IX; PSERS-2 at Article IX).

12. The Salary Schedule at Exhibit "A" to the Agreement for the 2011-2012, 2012-2013, and until the 14th pay of the 2013-2014 school years provided that there would "be no horizontal or vertical movement on this salary schedule" and that

This schedule shall remain in effect until the 14th pay of the 2013-2014 School Year for all teachers except those teachers retiring after the 2011-2012 or 2012-2013 School Year if they provide the irrevocable retirement notification to the District on or before August 1, 2011, in accordance with the terms set forth in this Agreement.

The salaries in the schedule were set forth as follows:

STEP	Y.O.S.	B	B+15	MEQ	M	M+15	M+3	M+45
1	0	\$42,639.00	\$44,697.00	\$47,795.00	\$54,420.00	\$56,317.00	\$59,996.00	\$61,951.00
2	1	\$42,845.00	\$44,904.00	\$48,005.00	\$54,633.00	\$56,530.00	\$60,216.00	\$62,171.00
3	2	\$43,052.00	\$45,111.00	\$48,214.00	\$54,847.00	\$56,743.00	\$60,436.00	\$62,391.00
4	3	\$45,181.00	\$47,239.00	\$50,373.00	\$57,043.00	\$58,940.00	\$62,700.00	\$64,655.00
5	4	\$47,310.00	\$49,367.00	\$52,531.00	\$59,240.00	\$61,136.00	\$64,964.00	\$66,919.00
6	5	\$49,439.00	\$51,496.00	\$54,690.00	\$61,436.00	\$63,332.00	\$67,228.00	\$69,182.00
7	6-10	\$51,568.00	\$53,625.00	\$56,848.00	\$63,633.00	\$65,528.00	\$69,492.00	\$71,446.00
8	11-12	\$53,695.00	\$55,754.00	\$59,007.00	\$65,829.00	\$67,725.00	\$71,256.00	\$73,709.00
9	13-14	\$55,824.00	\$57,883.00	\$61,164.00	\$68,026.00	\$69,922.00	\$74,020.00	\$75,973.00
10	15	\$57,953.00	\$60,012.00	\$63,323.00	\$70,222.00	\$72,118.00	\$76,282.00	\$78,237.00
11	16	\$60,082.00	\$62,139.00	\$65,482.00	\$72,418.00	\$74,315.00	\$78,546.00	\$80,501.00
12	17	\$62,211.00	\$64,268.00	\$67,640.00	\$74,614.00	\$76,511.00	\$80,810.00	\$82,765.00
13	18	\$64,340.00	\$66,397.00	\$69,799.00	\$76,811.00	\$78,708.00	\$83,074.00	\$85,028.00
14	19	\$67,192.00	\$68,991.00	\$72,167.00	\$79,008.00	\$80,903.00	\$85,338.00	\$87,292.00

(CE2 at Exhibit "A"; PSERS-2 at Exhibit "A").

13. The Salary Schedule at Exhibit "B" to the Agreement for the 2011-2012 and 2012-2013 school years provided as follows:

Applies for Bargaining Unit Employees retiring at the end of the 2011-2012 or the 2012-2013 School Years ONLY if such Bargaining Unit Employees provided an irrevocable retirement notification to the District between Contract ratification and August 1, 2011. Such Bargaining Unit Employee will move one step and column (if applicable) prior to the 2011-2012 school year. No step or column movement in the 2012-2013 school year.

The salaries in the schedule were set forth as follows:

STEP	Y.O.S.	B	B+15	MEQ	M	M+15	M+3	M+45
1	0	\$48,741.00	\$50,829.00	\$54,329.00	\$61,496.00	\$63,436.00	\$68,081.00	\$70,096.00
2	1-3	\$49,641.00	\$51,729.00	\$55,229.00	\$62,396.00	\$64,336.00	\$68,981.00	\$70,996.00
3	4	\$50,541.00	\$52,629.00	\$56,129.00	\$63,296.00	\$65,236.00	\$69,881.00	\$71,896.00
4	5	\$51,441.00	\$53,529.00	\$57,029.00	\$64,196.00	\$66,136.00	\$70,781.00	\$72,796.00
5	6	\$52,341.00	\$54,429.00	\$57,929.00	\$65,096.00	\$67,036.00	\$71,681.00	\$73,696.00
6	7-11	\$54,501.00	\$56,590.00	\$60,128.00	\$67,343.00	\$69,283.00	\$74,016.00	\$76,031.00
7	12-13	\$56,662.00	\$58,751.00	\$62,327.00	\$69,590.00	\$71,530.00	\$76,351.00	\$78,367.00
8	14-15	\$58,822.00	\$60,912.00	\$64,526.00	\$71,838.00	\$73,777.00	\$78,685.00	\$80,702.00
9	16	\$60,983.00	\$63,071.00	\$66,726.00	\$74,083.00	\$76,024.00	\$81,020.00	\$83,037.00
10	17	\$63,144.00	\$65,232.00	\$68,925.00	\$76,331.00	\$78,271.00	\$83,356.00	\$85,372.00
11	18	\$65,305.00	\$67,393.00	\$71,125.00	\$78,578.00	\$80,518.00	\$85,691.00	\$87,706.00
12	19	\$68,200.00	\$70,026.00	\$73,538.00	\$80,825.00	\$82,764.00	\$88,026.00	\$90,041.00

(CE2 at Exhibit "B" (2011-2012 and 2012-2013)(emphasis in original); PSERS-2 at Exhibit "B" (2011-2012 and 2012-2013)(emphasis in original).

14. The Agreement also contained a Salary Schedule that became effective as of the 14th pay of the 2013-2014 school year. The Salary Schedule provided as follows:

Teachers to move one step and column (if applicable) after 13 pays.

* * *

This salary schedule shall become effective as of the 14th pay of the 2013-2014 School Year. Until the 14th pay of the 2013-2014 School Year, the 2011-2012 and 2012-2013 salary schedules shall apply without any horizontal or vertical movement. Years of service do not equate to steps on the salary schedule.

As of the 14th pay of the 2013-2014 School Year, Bargaining Unit Employees whose salary was frozen on step as set forth in the 2011-2012 and 2012-2013 salary schedule will be eligible to move only one (1) step as of the 14th pay of the 2013-2014 School Year.

Horizontal and vertical movement will be effective as of the 14th pay during the 2013-2014 School Year.

The salaries in the schedule were set forth as follows:

STEP	Y.O.S.	B	B+15	MEQ	M	M+15	M+3	M+45
1	0	\$48,741.00	\$50,829.00	\$54,329.00	\$61,496.00	\$63,436.00	\$68,081.00	\$70,096.00
2	1-5	\$49,641.00	\$51,729.00	\$55,229.00	\$62,396.00	\$64,336.00	\$68,981.00	\$70,996.00
3	6	\$50,541.00	\$52,629.00	\$56,129.00	\$63,296.00	\$65,236.00	\$69,881.00	\$71,896.00
4	7	\$51,441.00	\$53,529.00	\$57,029.00	\$64,196.00	\$66,136.00	\$70,781.00	\$72,796.00
5	8	\$52,341.00	\$54,429.00	\$57,929.00	\$65,096.00	\$67,036.00	\$71,681.00	\$73,696.00
6	9-13	\$54,501.00	\$56,590.00	\$60,128.00	\$67,343.00	\$69,283.00	\$74,016.00	\$76,031.00
7	14-15	\$56,662.00	\$58,751.00	\$62,327.00	\$69,590.00	\$71,530.00	\$76,351.00	\$78,367.00
8	16-17	\$58,822.00	\$60,912.00	\$64,526.00	\$71,838.00	\$73,777.00	\$78,685.00	\$80,702.00
9	18	\$60,983.00	\$63,071.00	\$66,726.00	\$74,083.00	\$76,024.00	\$81,020.00	\$83,037.00
10	19	\$63,144.00	\$65,232.00	\$68,925.00	\$76,331.00	\$78,271.00	\$83,356.00	\$85,372.00
11	20	\$65,305.00	\$67,393.00	\$71,125.00	\$78,578.00	\$80,518.00	\$85,691.00	\$87,706.00
12	21	\$68,200.00	\$70,026.00	\$73,538.00	\$80,825.00	\$82,764.00	\$88,026.00	\$90,041.00

(CE2 at Exhibit "B" (2013-2014); PSERS-2 at Exhibit "B" (2013-2014))

15. Claimants submitted their irrevocable notices of retirement to the District between June 15, 2011, and August 1, 2011, stating that they would retire on or before

July 1, 2013, and, accordingly, they received a salary increase during the 2011-2012 school year pursuant to the Agreement. (Claimants' Facts of the Case at pp. 3-4; PSERS' Memorandum of Facts at p. 6, ¶14; PSERS-3; PSERS-4).

16. Claimants received the salaries identified in Exhibit "B" (2011-2012 and 2012-2013) to the Agreement for the 2011-2012 school year and, for Claimants who agreed to retire during the 2012-2013 school year, the 2012-2013 school year as well. (CE2 at Exhibit "B" (2011-2012 and 2012-2013); PSERS-2 at Exhibit "B" (2011-2012 and 2012-2013); PSERS-4; *see generally* Claimant's Facts of the Case at p. 3-4).

17. Claimants would not have received salary increases during the 2011-2012 school year if they had not notified the District between June 15, 2011, and August 1, 2011, that they were retiring effective on or before July 1, 2013. (CE2 at Article IX; PSERS at Article IX; *see* Claimants' Facts of the Case at pp. 3-4).

18. Bargaining Unit Employees who did not submit an irrevocable notice of retirement received salaries identified in Exhibit "A" to the Agreement for the 2011-2012 and 2012-2013 school years and up through the 13th pay of the 2013-2014 school year. (CE2 at Article 1, §§ 1.1 and Exhibit "A"; PSERS-2 at Exhibit "A" and Article 1, § 1.1).

19. Bargaining Unit Employees who did not submit an irrevocable notice of retirement were scheduled to receive the salaries identified in Exhibit "B" (2013-2014) to the Agreement after the 13th pay of the 2013-2014 school year. (CE2 at Exhibit "B" (2013-2014); PSERS-2 at Exhibit "B" (2013-2014)).

20. Article XX of the Agreement provided that the "Agreement represents a complete salary deferral for the 2011-2012 and 2012-2013 School Years and a partial salary deferral for the 2013-2014 School Year and shall not be precedent setting." (CE2 at Article XX; PSERS-2 at Article XX).

21. In or around October 2011, PSERS learned of the salary increases that Claimants received during the 2011-2012 school year pursuant to the Agreement and informed the District that the increases were severance payments. (PSERS' Memorandum of Facts at p. 6, ¶16; Claimants' Facts of the Case at p. 4).

22. The District adjusted the base wages that it had reported to PSERS for Claimants. (PSERS' Memorandum of Facts at p. 6, ¶17; Claimants' Facts of the Case at p. 4).

23. Claimants individually appealed PSERS' determination that their salary increases were severance payments to the Executive Staff Review Committee. (PSERS' Memorandum of Facts at p. 6, ¶18; Claimants' Facts of the Case at p.4; see PSERS-5).

24. By letters dated July 24, 2012, the ESRC denied Claimants' requests that their salary increases be considered retirement-covered compensation. The ESRC explained that the increases were contingent upon retiring during the next two years and were "not in accord with the scheduled salary scale within the [District] for other school employees with the same educational and experience qualifications who were not terminating service." (PSERS-5; see Claimants' Facts of the Case at p. 4).

25. This matter is ripe for Board adjudication.

DISCUSSION

The Board's regulations authorize the use of summary judgment where there are no genuine issues of material fact. 22 Pa.Code § 201.6(b); Pa.R.C.P. Nos. 1035.1-1035.5. To determine whether the party moving for summary judgment has met its burden, the Board must examine the record in the light most favorable to the non-moving party and give him the benefit of all reasonable inferences. See *Thompson v. Nason Hosp.*, 535 A.2d 1177, 1178 (Pa.Super. 1988), *aff'd*, 591 A.2d 703 (Pa. 1991). Any doubts regarding the existence of a genuine issue of material fact must be resolved in favor of the non-moving party. *El Concilio De Los Trabajadores v. Commonwealth*, 484 A.2d 817, 818 (Pa.Cmwltth. 1984).

In responding to a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response identifying "(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion . . . , or (2) evidence in the

record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” Pa.R.C.P. No. 1035.3(a). “An adverse party may supplement the record or set forth the reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.” Pa.R.C.P. No. 1035.3(b).

Section 8102 of the Public School Employees’ Retirement Code (“Retirement Code”) provides the following definitions, which are pertinent to the issue on appeal:

“Final Average Salary.” The highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months . . .

“Compensation.” Pickup contributions plus any remuneration received as a school employee excluding reimbursements for expenses incidental to employment and excluding any bonus, severance payments, and any other remuneration or other emolument received by a school employee during his school service which is not based on the standard salary schedule under which he is rendering service, payments for unused sick leave or vacation leave, bonuses or other compensation for attending school seminars and conventions, payments under health and welfare plans based on hours of employment or any other payment or emolument which may be provided for in a collective bargaining agreement which may be determined by the Public School Employees’ Retirement Board to be for the purpose of enhancing compensation as a factor in the determination of final average salary . . .

24 Pa.C.S. § 8102. The Retirement Code, therefore, specifically excludes severance payments from retirement-covered compensation. “Severance payments” are defined in the Retirement Code as follows:

Any payments for unused vacation or sick leave and any additional compensation contingent upon retirement including payments in excess of the scheduled or customary salaries provided for members within the same governmental entity with the same educational and experience qualifications who are not terminating service.

24 Pa.C.S. § 8102. Pennsylvania courts have consistently held that a payment received as part of an agreement to terminate school service by a date certain is a “prima facie severance payment” that can only be rebutted by evidence that the payment was in accord with the customary or scheduled salary scale in that particular school district for personnel

with similar educational and experience backgrounds, who are *not terminating service*. *Christiana v. Public School Employees' Retirement Board*, 669 A.2d 940, 945 (Pa. 1996) (citing *Dowler v. Public School Employees' Retirement Board*, 620 A.2d 639, 643 (Pa.Cmwlt. 1993)); *Cannonie, et al. v. Public School Employees' Retirement System*, 952 A.2d 706 (Pa.Cmwlt. 2008); *Hoerner v. Public School Employees' Retirement Board*, 684 A.2d 112, 116 (Pa. 1996); *Wyland v. Public School Employees' Retirement Board*, 669 A.2d 1098 (Pa.Cmwlt. 1996); *Laurito vs. Public School Employees' Retirement Board*, 606 A.2d 609 (Pa.Cmwlt. 1992).

Under the Retirement Code, the Board has a right to question the propriety of any payment. *Finnegan v. Public School Employees' Retirement Board*, 560 A.2d 848 (Pa.Cmwlt. 1989) (PSERS cannot provide a benefit that would produce a result that is contrary to positive law), *aff'd without op.*, 591 A.2d 1053 (Pa. 1991). The evaluation of the type of payments at issue is part of the obligation imposed on the Board under the Retirement Code and endorsed by the courts. As enunciated by our Supreme Court, “[t]he restrictive definitions of compensation under the Retirement Code and regulations reflect the Legislature’s intention to preserve the actuarial integrity of the retirement fund by excluding from the computation of employees’ final average salary all payments which may artificially inflate compensation for the purpose of enhancing retirement benefits.” *Christiana*, 669 A.2d at 944 (quotation marks omitted). The Board is bound to follow the intent of the General Assembly in administering the provisions of the Retirement Code. 1 Pa.C.S. § 1921(a); *Hughes v. Public School Employees' Retirement Board*, 662 A.2d 701, 706 (Pa.Cmwlt. 1995). Therefore, while a member is entitled to a liberal administration of the retirement system, the Board is not permitted “to circumvent the express language of the Code, which does not permit inclusion of a severance payment in the computation of final average salary.” *Dowler*, 620 A.2d at 644. Following the Retirement Code’s mandate, and cognizant of the fact that the retirement benefit is based on the three highest years of compensation, this Board must disallow from the benefit computation amounts that are severance payments. Whether a payment constitutes a “severance payment” is a question of law. *Id.* at 643.

As noted above, the Retirement Code defines “severance payments” as “any additional compensation contingent upon retirement including payments *in excess of the scheduled or customary salaries provided for members* within the same governmental entity with the same educational and experience qualifications *who are not terminating service.*” 24 Pa.C.S. § 8102 (emphasis added). Here, the Agreement contains two salary schedules for the 2011-2012 and 2012-2013 school years that show the District’s retiring employees receiving higher salaries than the District’s non-retiring employees in the same years, for the sole reason that an irrevocable notice of retirement was submitted. (CE2; PSERS-2).

Claimants admit that they submitted irrevocable notices of retirement to the District between June 15, 2011, and August 1, 2011, stating that they would retire on or before July 1, 2013, pursuant to the Agreement. (See Claimants’ Facts of the Case at p. 3 (citing PSERS-3)). They also admit that they received the salaries set forth in Exhibit “B” to the Agreement for the 2011-2012 and 2012-2013 school years solely as a result of that notice. (*Id.* at pp. 3-4; see PSERS-4). Claimants, therefore, undeniably received increased salaries as part of an agreement to terminate school service by a date certain. (See *id.* at pp. 6, 11). The Board thus concludes, as a matter of law, that Claimants’ salary increases constitute “prima facie severance payments” under the Retirement Code.

To rebut a prima facie case, Claimants must show that the increases were “in accord with the scheduled or customary salary scale within the School District for personnel with the same educational and experience qualifications who are not terminating service.” *Dowler*, 620 A.2d 643. The Agreement, however, shows that Claimants were paid a higher salary pursuant to a *different salary schedule* during the 2011-2012 and 2012-2013 school years than District employees who were similarly situated as Claimants but not terminating service. Claimants, therefore, needed to assert in their response to PSERS’ motion that non-retiring District employees with the same experience and education earned the same salary as Claimants did *for the years at issue*. Claimants, however, have not made such an assertion. Indeed, Claimants have not raised a single, disputed fact. Nor did they supplement the record or set forth any reason why they could not present evidence essential to justify their opposition to

PSERS' motion or any action proposed to be taken to present such evidence. See Pa.R.C.P. No. 1035.2(a) and (b). Nor is there any claim that the parties to the Agreement were unable to perform it as drafted.

Instead, Claimants argue that, when the following language of the Agreement is compared, the Agreement contains an ambiguity that requires an evidentiary hearing:

- “Any full-time Bargaining Unit Employee . . . who further provides an irrevocable notice of retirement between June 15, 2011, and August 1, 2011 . . . and retiring effective on or before July 1, 2013, shall not be subject to **the salary schedules/agreed upon salary deferral for the School Years 2011-2012 and 2012-2013** and will be subject to the salary schedule set forth in Exhibit “B” attached hereto and made a part hereto as long as the Bargaining Unit Employee provides for the irrevocable notice of retirement as set forth in this provision.”
- The “Agreement represents a complete **salary deferral** for the 2011-2012 and 2012-2013 School Years and a partial **salary deferral** for the 2013-2014 School Year and shall not be precedent setting.”
- As of the 14th pay of the 2013-2014 school year, Bargaining Unit Employees whose **salary was frozen on step as set forth in the 2011-2012 and 2012-2013 salary schedule** will be eligible to move only one (1) step as of the 14th pay of the 2013-2014 School Year.”

(See Claimants' Argument at pp. 6 and 7 (emphasis by Claimants)). Specifically, they claim that the Agreement is ambiguous as to whether the non-retiring District employees were subject to a freeze or a deferral. Claimants maintain that a “deferral in the case of salary increase means that a party will eventually get it while freeze means that the party will not.” (*Id.* at pp. 7-8).

Whether a contract is ambiguous is a question of law. See *Easton v. Washington County Insurance Co.*, 137 A.2d 332, 336 (Pa. 1957); *Metzger v. Clifford Realty Corp.*, 476 A.2d 1, 5 (Pa.Super. 1984). A contract is ambiguous “if it is reasonably susceptible of different constructions and capable of being understood in more than one sense.” *Murphy v. Duquesne University of the Holy Ghost*, 777 A.2d 418, 591 (Pa. 2001) (quoting *Hutchison v. Sunbeam Coal Co.*, 519 A.2d 385, 390 (Pa. 1986)). When interpreting a contract, the entire contract should be considered, not detached portions, and specific provisions are regarded as qualifying the meaning of broad, general terms. See *id.*; *In re*

Alloy Manufacturing Company Employees Trust, 192 A.2d 394 (Pa. 1963). When a contract “is clear and unequivocal, its meaning must be determined by its contents alone.” *Murphy*, 777 A.2d at 591 (citation omitted). Only where a contract’s language is ambiguous may extrinsic or parole evidence be considered. *Id.* Thus, if the Agreement is unambiguous, an evidentiary hearing is not required. See *Easton*, 137 A.2d 332; see also *City of Philadelphia v. Delaware County Board of Assessment Appeals Interboro School District*, 691 A.2d 992 (Pa.Cmwth. 1997).

Here, Claimants inappropriately parse the language of the Agreement in an attempt to create an ambiguity and survive summary judgment. The Agreement, however, is not ambiguous. The use of the term “frozen” in Exhibit “B” (2013-2014) and the use of the term “deferral” in Articles IX and XX are reconcilable. A review of the entire Agreement shows that non-retiring employees’ salaries were “frozen on step as set forth in the 2011-2012 and 2012-2013 salary schedule,” and that their salary increases were “deferred” until after the 13th pay of the 2013-2014 school year. (See CE2 at Exhibit “A”, Exhibit “B” (2011-2012 and 2012-2013), Exhibit “B” (2013-2014)). *The numerical salaries in the schedules themselves make that evident*, providing that only after the 13th pay of the 2013-2014 school year could non-retiring employees earn the higher salaries that Claimants had earned in prior years. (See *id.*) Thus, as noted in Article XX of the Agreement, the non-retiring employees were subject to a “complete salary deferral” in 2011-2012 and 2012-2013 and a “partial salary deferral” in 2013-2014. (CE2 at Article XX; PSERS-2 at Article XX.) The language in Article IX itself supports direct reference to the salary schedules, referring to the “salary schedules/agreed upon salary deferral” as one concept. Article IX also clearly provides that the retiring employees would not be subject to that deferral, “but subject to the salary schedule set forth in Exhibit ‘B.’” In short, the Agreement is clear as to what salaries were to be paid to which employees during the 2011-2012, 2012-2013, and 2013-2014 school years, and there is no provision that even suggests that the non-retiring employees may have *earned the same salary as Claimants during the years at issue*, but were to have a portion of that earned salary deferred and

paid at later date.¹ Thus, the Board concludes that the Agreement is not susceptible to differing interpretations and summary judgment is appropriate.²

Furthermore, contrary to Claimant's apparent belief, a showing that the non-retiring employees "will eventually" receive the same salary for future service that Claimants had received previously would not change the outcome in this matter. See Claimants' Response at pp.7-9. Claimants must show that non-retiring District employees with the same education and experience qualifications were, in fact, compensated with the same salary as Claimants *pursuant to the Agreement* for the service that the non-retiring employees rendered *during the 2011-2012 and 2012-2013 school years*. The salary schedules prove that was not the case. For example, Claimant Glen A. Brumbach's salary for the 2011-2012 school year was \$90,041 under Exhibit "B" (2011-2012 and 2012-213) because he submitted an irrevocable notice of retirement. (See PSERS-3; PSERS-4;

¹ Indeed, had a portion of the salary *earned* by the non-retiring employees during the relevant school years been paid in later years, the Retirement Code mandates that such amount be credited in the year it was earned, not paid. 22 Pa.Code § 211.2; see *generally Abramski v. Public School Employees' Retirement System*, 512 A.2d 106 (Pa.Cmwlth. 1986). There is nothing in the Agreement or the record before the Board that would suggest such a set up; nor have Claimants affirmatively made such an assertion.

² Although not determinative, the Board notes that Claimants Paula T. Fennelly and Patricia M. Thompson attached to their responses to PSERS' New Matter an excerpt from a BAEA survey response that stated as follows:

Any employee eligible for an annuity from PSERS and irrevocably informing the District of their retirement by August 1, 2011, and retiring on or before July 1, 2013, shall be paid under the salary schedules that are in place and will not be subject to any salary deferral. This provision allows those planning to retire during the "salary freeze" to be exempted from the freeze, thereby preserving their average 3 highest years of salary for PSERS retirement purposes – which these teachers have worked all their career to attain.

This excerpt brings into question whether Claimants are raising an argument with this Board that they know is disingenuous. At least two Claimants knew or should have known that the Agreement provided for a "salary freeze" for non-retiring employees and that the retiring employees were not subject to the freeze for the sole purpose of preserving a higher salary for them for retirement purposes.

CE2; Claimants' Facts of the Case at pp. 3-4). No non-retiring employee, however, was scheduled to earn that amount in 2011-2012 or 2012-2013. (See CE2 at Exhibit "A"). Only after the 13th pay of the 2013-2014 school year, could a non-retiring employee receive a salary of \$90,041. (See CE2 at Exhibit "B" (2013-2014)). The Agreement does not provide that the non-retiring employee, who would earn \$90,041 in salary *after the 13th pay of 2013-2014*, would be paid the difference in salary between what Mr. Brumbach made in 2011-2012 and 2012-2013 and what the non-retiring employee made for the service that he or she performed during those same years at a later date. Moreover, there is no mention of the District repaying any amount deferred, as was the scenario in the wage deferral cases that Claimants cite. See *In re Tucker Freight Lines, Inc.*, 789 F.Supp. 884, 887 (W.D.Mich. 1991) (company deducted amounts from employees' paychecks, stating that it would accrue the deductions and pay each employee back gradually); *Deneen v. City of New York*, 453 N.Y.S.2d 140, 142 (1982) (salary increase was deferred with city promising to "seek to repay" the deferred wages by a certain date).

Nor was any non-retiring employee scheduled to receive a salary in excess of \$90,041 after the 13th pay in the 2013-2014 school year, which could indicate, when viewed in the light most favorable to Claimants on summary judgment, a possibility that the non-retiring employee may have earned the same as Mr. Brumbach for service rendered in 2011-2012 and 2012-2013, but that receipt of the full salary was deferred (or set aside) until a later date. (See CE2; PSERS-2). Further, the Agreement does not provide or even hint that a retroactive payment would be made in addition to the salaries set forth in Exhibit "B" (2013-2014) to make up for the freeze. The Agreement unequivocally shows that non-retiring District employees were not entitled to a raise until after the 13th pay of the 2013-2014 school year and were not eligible to earn the higher salaries that Claimants had earned until after the 13th pay of the 2013-2014 school year. (CE2 at Exhibits "A", "B" (2011-2012 and 2012-2013), "B" (2013-2014)).

In conclusion, the Board finds that: (1) the Agreement is clear and unambiguous; (2) the difference between the salaries that Claimants earned during the 2011-2012 and 2012-2013 school years and the salaries that the District's non-retiring employees earned for those same years are "severance payments" under the Retirement Code; (3) and

Claimants have not raised any issue of material fact that precludes this Board from granting summary judgment.

Accordingly, the salary increases that Claimants received pursuant to the Salary Schedule at Exhibit "B" (2011-2012 and 2012-2013) of the Agreement are not retirement-covered compensation and are not to be included in the computation of their final average salaries. For all of the above reasons, the Board grants PSERS' Motion for Summary Judgment.

**COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: JOANNE G. HARTLINE, ET AL.
 DOCKET NOS. 2012-14 through 2012-41
 CLAIM OF HARTLINE, ET AL.

ORDER

AND NOW, upon consideration of Claimants' Requests for Administrative Hearing, PSERS' Motion for Summary Judgment and Claimants' Memorandum of Law in Response to PSERS' Motion for Summary Judgment:

IT IS HEREBY ORDERED, that PSERS' Motion for Summary Judgment is GRANTED, and Claimants' Requests for Administrative Hearing are DISMISSED in compliance with 22 Pa.Code § 201.6, as no genuine issue of material fact exists and PSERS is entitled to judgment as a matter of law. As a result, this Board denies Claimants' requests to include as retirement-covered compensation the increases in salary that they received pursuant to the Boyertown Area School District Collective Bargaining Agreement dated May 18, 2011, because the increases constitute severance payments under the Public School Employees' Retirement Code.

PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD

Dated: May 1, 2014

By: Melva S. Vogler
Melva S. Vogler, Chairman