

American Arbitration Association

In the Matter of the Arbitration between:

Scranton School District

and

Scranton Federation of Teachers

AAA Case No. 14 390 02013 00 RVB

)
)
) Opinion of the
) Impartial Arbitrator
) Stanley J. Schwartz
)

) Grievance:
) Improper Placement
) of Salary Schedule
)

This case has been submitted to arbitration in accordance with Article 19, Grievance Procedure, of the agreement between the parties dated September 1, 1998 until August 31, 2002. The undersigned was chosen impartial arbitrator by the parties in accordance with the procedures of the American Arbitration Association. A hearing concerning this matter was held before the arbitrator at the Scranton School District Administration Building, Scranton, Pennsylvania on February 27, 2006 and by telephone conference call on March 3, 2006 from 10 a.m. until 12 noon and 3:30 p.m. until 4 p.m. respectively. At those times, both parties were afforded full opportunity to examine and cross examine witnesses, submit evidence and present arguments in support of their respective positions. The parties agreed to submit post-hearing briefs, and the hearing record was declared closed on May 1, 2006.

Appearances:

For the Federation:

Marc Gelman, Esq. Attorney

Thomas W. Jennings, Esq. Attorney

For the School District:

Harry F. McGrath, Esq. Solicitor

In Attendance:

For the Federation:

Rosemary Boland President, SFT
(2/27/06)

Patrick McDonough Sec./Treas., SFT
(2/27/06)

For the School District:

M. Lewis Paris

Supv., Special Programs
(3/3/06)

John F. Vail

Mgr., Personnel Services
(2/27/06)

The Issues:

1. Whether the School District may limit the amount of years credited on the salary schedule to a maximum of seven years except when an employee's years of experience within the School District, including long-term substitute service, exceeds the seven year limit. If not, what shall be the remedy?
2. May the School District deny a per-diem substitute credit on the salary schedule, at time of initial hire as a permanent employee, for prior service as a per-diem substitute? If not, what shall be the remedy?

Pertinent Contract Provisions:

ARTICLE 70
CREDIT FOR EXPERIENCE

Newly appointed teachers shall, receive year for year credit on the salary schedule for no more than seven (7) years of prior teaching experience including service as a permanent substitute in Scranton. In Vocational Education this shall include experience in industry or related fields.

September 1, 1998 until August 31, 2002 (contract in effect at time of grievance)

ARTICLE 70
CREDIT FOR EXPERIENCE

Newly appointed teachers shall, receive year for year credit on the salary schedule for no more than four (4) years of prior teaching experience including service as a permanent substitute in Scranton. In Vocational Education this shall include experience in industry or related fields.

September 1, 2002 until August 31, 2008 (the current contract)

Background:

The dispute in this case came about when the Mifflinburg Area School District and the Penns Manor Area School District

decisions came down. In Mifflinburg, the Supreme Court held that Sections 1142 and 1149 of the School Code mandated that professional employees, after an interruption in employment, must receive credit on the salary schedule for past years of experience within the same school district when rehired by that school district. The Penns Manor Area school district court ruling held that Section 1142 of the School Code required salary credit for long-term substitute service when a long-term substitute is subsequently hired by the same school district where such service occurred. This, in effect, applied the Mifflinburg ruling to long-term substitutes.

The dispute here involves credit for experience under Article 70 of the collective bargaining agreement dated September 1, 1998 to August 31, 2002.¹

The Federation submitted a grievance on November 22, 2000 protesting that various teachers within the School District were denied proper placement on the salary schedule by the School District.²

The parties originally appeared before Arbitrator Richard Kasher. Apparently, they agreed to the application of credited service under Article 70 involving a joint stipulation of facts entitled "Stipulated Facts As to Interim Orders 1 & 2." Arbitrator Kasher issued the Stipulation of Facts, Interim Orders 1 & 2, and Addendum "A" on June 2, 2004. Paragraph 13 of the Stipulated Facts stated as follows:

Based on Mifflinburg and Penns Manor the bargaining unit members listed on Addendum "A" to this stipulation are entitled to the placement on the salary schedule and pay correction listed on Addendum "A" to recognize certain prior full-time service and/or long-term substitute service with the Scranton School District.

¹ Article 70, Credit for Experience, in this contract provided that newly appointed teachers would receive a maximum of seven years of prior teaching experience, including long-term substitute service. The subsequent contract dated September 1, 2002 to August 31, 2008 reduced the seven years to four.

² See the entire grievance in the presentation submitted by the Federation dated February 27, 2006. The parties agreed that this packet be admitted into the record at the end of the telephone hearing.

The parties agreed at the hearing that the members involved here have been paid in accordance with the Interim Orders and Addendum "A."

However, the parties indicated that there remained two disputes which are now before me.

1. The parties have not been able to agree concerning credit for prior teaching experience earned outside of the School District.
2. The parties have not been able to agree concerning whether per-diem substitute teachers who subsequently obtain permanent appointments within the School District should get the same credit as long-term substitutes.

Contentions of the Parties:

The briefs submitted by the parties were quite lengthy. Please see those briefs for a presentation of the arguments advanced by the parties concerning their respective positions.

Discussion and Opinion:

The parties have presented me with an exceptionally complex and difficult dispute. Initially, I must point out, as both parties know, that the arbitrator's function is limited to the interpretation of the language of the collective bargaining agreement between the parties and that the arbitrator does not have the authority to add to or subtract from the contract.

Arbitrator Kasher's June 2, 2004 letter to Richard Briggs concerning the "Stipulated Facts as to Interim Orders 1 & 2" is an important aspect of this case as are the "Stipulated Facts as to 7/4 Contract Issue" contained in the records presented at the hearing on February 27, 2006.³

1. Credit for Prior Teaching Experience

Initially, the parties have agreed that the Mifflinburg decision provided for unlimited credit for placement on the School District salary schedule for professional teachers for past years of service within the School District upon reappointment in the same school district following a break in

³ Although the parties have, at times, used the term "Joint Exhibit," none of the documents contained in the information presented at the hearing were so marked, although the parties agreed that that presentation was placed in the record of the hearing without the objection of either party.

service.⁴ Further, the parties have also agreed that the Penns Manor decision requires salary credit for time spent for long-term substitute service in the same school district when the long-term substitute is subsequently employed as a temporary professional or professional employee.⁵

I must now consider Issue 1 concerning credit for outside the School District experience. First, it is clear that Mifflinburg/Penns Manor did not involve outside of School District experience. A perusal of these cases indicates that they dealt with the in-district experience of professional employees either upon their reappointment after a hiatus or upon prior long-term substitute service. Further, there is no question that, after Mifflinburg/Penns Manor, reappointed professional employees are given full credit on the salary schedule for previous work within the School District. This also includes full credit for long-term substitute service within the same school district. However, it does not appear that the School Code covers either type of experience outside of the School District. Both Section 11-1142 and Section 11-1149 provide for experience within the School District.

I now must consider and interpret the language contained in Article 70 of the collective bargaining agreement.⁶

The Federation argued that the unlimited credit for in-district service required by Mifflinburg/Penns Manor, including long-term substitute service, should not be considered under Article 70 and should be credited separately. The Federation argued further that, when a teacher appointed as a permanent teacher bringing out of district teaching experience, that teacher should have the out of district experience credited under Article 70 credit gap up to seven years and that the in-service credit be credited separately.⁷

However, this is not what the language of Article 70 states, and I can only follow the language of the collective bargaining agreement. The language contained in Article 70 does not separate

⁴ See Kasher June 2 letter, paragraph 8.

⁵ See Kasher June 2 letter, paragraph 11.

⁶ As both parties know, the grievance in this case was filed in the year 2000 when the language of Article 70 indicated seven (7) years' credit, and since then in the subsequent contract (September 1, 2002 to August 31, 2008), it was changed to four (4) years.

⁷ See Stipulated Facts section of the February 27, 2006 presentation, Positions of the Parties 1).

service within the School District, including long-term substitute service, from out of school district service and, in effect, does not accommodate both separately. The School District must adhere to the School Code and, of course, to Mifflinburg/Penns Manor which do not require such a separation and which only involve the in-service credits. It is clear that the parties must negotiate such a change in the contract. It is also clear that the School District must adhere to the School Code and to the findings in Mifflinburg/Penns Manor which do not have requirements concerning out of district service.

I find that the School District may limit the amount of years credited on the salary schedule to a maximum of seven years, except when an employee's years of experience within the School District, including long-term substitute service, exceeds the seven year limit.

2. Per-Diem Substitutes

Initially, it is important to note that anyone who states that per-diem substitutes are glorified baby sitters or that they do not perform valuable work does not understand the teaching function. Per-diem substitutes' work is an important and valuable function. Education in a school district could not function without them. This Award is not an evaluation of their contribution nor is it a negation of any comparisons. However, as stated earlier, and as the parties know, an arbitrator cannot add to or subtract from a collective bargaining agreement. Only the parties can do that.

In this case, there is nothing in the collective bargaining agreement concerning per-diem substitutes, and I do not have the authority to add to the contract, even by comparing them to the long-term substitutes. That, as in the situation earlier, must be negotiated by the parties. No matter how much the Federation compares per-diem substitutes to the long-term substitutes, it still must negotiate with the School District in order to make the changes proposed.

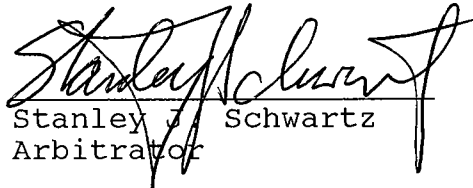
I find that the School District may deny a per-diem substitute credit on the salary schedule at the time of initial hire as a permanent employee for prior service as a per diem substitute.

Award:

Based upon the testimony at the hearing, a consideration of the exhibits, the arguments of the advocates at the hearings and in their briefs and the foregoing discussion and analysis, the arbitrator finds that:

1. The School District may limit the amount of years credited on the salary schedule to a maximum of seven years except when an employee's in-district work years of experience, including long-term substitute service, exceeds the seven year limit.
2. I find that the School District may deny per-diem substitutes credit on the salary schedule at time of initial hire as a permanent employee for prior service as a per-diem substitute.

Accordingly, the grievance is denied.


Stanley J. Schwartz 7-11-06
Arbitrator Date