Case A –Union Brief IRL 402 - Arbitration

Brief – for the Silly Putty Teachers’ Association

STATEMENT OF ISSUES AND FACTS

The Association and the District entered into a collective bargaining agreement

for the period from July 1, 1997 through June 30, 2000. This agreement provided, in

Article 24 for a “Service Award upon Retirement”. The language of Article 24 follows:

One Time Service Award

A one-time service award for the first through the

third years of the 1997-2002 contract. This provision sunsets on June 30, 2000. Stipulations are as follows:

- Minimum 20 year of teaching service

- Minimum 10 years of District service

- Eligible to retire (Vested and at least age 50

- Notice of resignation by April 1, 1998 for 1997-98 award

- Notice of resignation by April 1, 1999 for 1998-

- Notice of resignation by July 31, 2000 for 1999-00 award

- Retroactive payments to be made within 2 weeks of

acceptance of resignation by the Board of Education....

Five teachers were eligible for the retirement award and all of them received

the award except for the grievant, Ms. Deborah P. The District’s rationale for not

paying Ms. P was their assertion that she had not provided a notice of resignation by the

required date.

The Association filed a grievance on September 20, 2000 asking that the one-time

service award be paid to Ms. P. The Association argued as follows: (1) that the District

had, throughout the negotiations, asserted that the contract would be fully retroactive and

that the refusal to pay Ms. P violated those assurances; and (2) that there was in fact no

requirement of a date by which notice of resignation had to be received in effect when

Ms. P retired.

This arbitration ensued.

POINT I

The District Repeatedly Asserted That

The Contract Would be Fully Retroactive

Both Association President Joe O. and former chief negotiator Andrew S. testified about the negotiations that resulted in the collective bargaining agreement. Both men testified that there was a continuing discussion of s service awards and that the District assured the Association that the service award would be “fully retroactive”.

On or about May 24, 2000, the District presented the Association with a proposal that removed the service award from the table. Both Mr. O. and Mr. S. testified that the Association made it clear immediately that without a service award there would be no agreement. As a result of these discussions, the proposal from the District made on June 12, 2000 restored the service award to the District’s proposal. A copy of the service award language in Exhibit A (II) follows:

A Service Award for the first through the third years of the

new contract. The provision sunsets. Stipulations are as follows;

- Minimum 20 years of teaching service

- Minimum 10 years of District service

- Eligible to retire (Vested and at least age 50)

- Notice of resignation by April 1, 1997 for 1997-98 award

- Notice of resignation by April 1, 1998 for 1998-99 award

- Notice of resignation by July 31, 2000 for 1999-00 award

- Retroactive payments to be made within 2 weeks of

acceptance of resignation by the Board of Education....

It can be seen from the above quoted language that the District’s proposals were flawed as drafted in that the notice of resignation would have to be received by the spring prior to the last year of service; that was not the understanding or intention of either party. When this was brought to the attention of Joan Ryan, who confirmed this in her testimony, she corrected the dates on the spot.

{The requirement for notifying the District did not even originate with the Service Retirement Award language. Rather, it was carried over from another provision of the contract, “Payment for Accumulated Leave Days”. In the current contract this is found in Section 8.6 and it provides that a unit member will be reimbursed for accumulated sick leave at a specific rate if notice is given by April 1 of the school year preceding retirement.}

All the teachers who were eligible for a sick leave pay out, in addition to the Service Award had accumulated sick leave and therefore met the April 1 filing requirement when they applied for their accumulated sick leave. The grievant, Deborah P., did not have accumulated sick leave; she testified she had used up her sick leave during a period in which she was unable to function because her daughter was being stalked.

On April 1, 1998, when the District argues the grievant should have given notice, there was no collective bargaining agreement in effect, nor was there any interim memorandum of agreement. On April 24, 1998, however, Ms. P did send the then current superintendent of schools a letter saying that she was interested in retiring from the Silly Putty School but that her decision was contingent upon her receiving all incentives, whether by legislation or by the collective bargaining agreement. The Superintendent responded that the Silly Putty District did not meet the statutory requirements for the state legislative incentive but that Ms. P. would be eligible for contractual requirement incentives and retroactivity including presumably the Service Award.

On May 31, 1998, Ms. P sent a formal letter of retirement to the Superintendent, again conditioning it upon the receipt of state and contractual awards and retroactivity. On July 6, 1998 the Account Clerk, wrote to Ms. P. on behalf of the Board of Education accepting her resignation and setting forth some additional and unrelated information regarding prescription benefits. This was followed on July 16, 1998, with a second letter from the Superintendent of Schools. Although Ms. P, in her two letters, expressly predicated them on receipt of contractual and legislative incentives, neither the letter from the Clerk, nor the letter from the Superintendent of School, indicated that the School District took issue with these conditions. Nonetheless, on September 15, 2000, Mario Cocci, the new Superintendent of Schools, indicated that the April 1 deadline, precluded the payment of the retirement incentive to Ms. P.

During the negotiation period, there were other teachers who retired. District Exhibit D (10) was a letter of retirement dated June 24, 1997 from Betty Boop. District Exhibit II was a similar letter dated June 25, 1997 from Popeye Pierce. District Exhibit 9 was an Addendum to the Agreement between the parties providing for payment of a service award. Of note is that the Addendum to the Agreement specifically sets the required notification of resignation dates conforming the dates of the two letters of resignation.

At approximately the same time that Ms. P was corresponding with the then current Superintendent, another teacher, Ms Penny Dandelion also submitted a letter with the same conditions as outlined in Ms. P’s letter. District Exhibit 4 was a letter from that Superintendent to Ms. Dandelion assuring her that she would receive the retirement incentives when they are negotiated. The only difference between District Exhibit 4 (to Ms. Dandelion) and Joint Exhibit III(B) (to Ms. P) is that the letter to Ms. P states that because of the salaries of the individuals involved, the District did not meet the requirements for the New York State statutory retirement incentives. Otherwise, both Ms. P and Ms. Dandelion were assured of retroactivity for contractual incentives.

There is no dispute between the parties that during their negotiations the parties discussed dates for notification of retirement. The dispute is that the Association representatives accepted the District’s assertions that the contract would be “fully retroactive” and understood that the dates would be prospectively applied. They further believed that the retroactive application was not in the cards because of the Superintendent’s assurance to Ms. P. and Ms. Dandelion and the special consideration afforded Boop and Pierce.

The District is essentially arguing that the April 1 date was a condition precedent and was fully retroactive, notwithstanding the fact that the contract was negotiated by April 1, 1998. The District’s own exhibits clearly demonstrate that the parties had discussed several different dates during the course of the negotiations. In one, an Association proposal, the date is set forth as June 24. In another, a District proposal, the date is March 10. In a third the date is April 10 for 1999-2000 and April 1 thereafter. In a fourth, the Addendum to the Agreement crafted specifically for Boop and Pierce, the date was June 24, 1997. The final language for the Service Award has two dates: April 1 for 1997-99 and July 31 thereafter.

The District’s attorney attempted in his cross examination of Andrew S. and his comments to blame the Union for not instructing the teachers to notify the district of their intention to retire. That theory runs counter to the evidence: (1) there was no agreement in effect in April of 1999, let alone agreement on the date; (2) the Association was told that the agreement was fully retroactive; (3) the parties had discussed many different dates as described above; and (4) the District had made assurance to the teachers (Dandelion and Deborah P.) and the Union that it would conform the dates of notification to the facts of each case (Pierce and Boop). Indeed, the language of the Service Award itself included a date of July 31 for the 1999-2000 academic year. Given the totality of these circumstances, to apply the April 1st date retroactively would be unjust.

POINT II

There Was No Date In the Collective Bargaining

Agreement For Ms. P To comply

With In 1998

The District’s argument that Ms. P should have known that she had to comply with a date is flatly contracted by their exhibits that show that provide us with the veritable cornucopia of dates cited above. Which date was she supposed to have complied with? The District apparently believes the Silly Putty teachers are all clairvoyant.

There was also the strange case of Harry Henderson, a teacher who retired and whose so-called letter of retirement was District’s Exhibit 14. The District argued that Mr. Henderson’s letter constituted a valid notice of intention to retire, whereas Ms. P’s did not. Mr. Henderson wrote as follows:

To whom it May Concern: Contingent upon a

negotiated contract agreement, and certain other

retirement benefits, it may be necessary to claim

payment for my unused sick days when such a

decision is made. Harry Henderson.

To argue that Mr. Henderson’s notice is sufficient, and Ms. P’s was not, is arbitrary and capricious.

Upon cross-examination, Mario Cocci, the Superintendent of Schools, argued strenuously that the rationale for the dates was the need for planning by the District. The Union specifically conceded that this was legitimate, but asked Mr. Cocci how this rationale compels applying the dates retroactively.

Complicating the District’s argument even more was the fact that both the earlier Superintendent, Superintendent Cocci and Joan Ryan testified that they did not know that the grievant had not submitted a letter of notice of resignation at the time that the language was negotiated. This further undermines the District’s position that the required notification was necessary for planning purposes. It suggests that the District did not really care about the dates; how could they if they assumed that all of the teachers had complied with them. There is no down side whatsoever in the collective bargaining agreement with regard to applying for payment for unused sick leave. The District therefore could not have specifically intended the dates to disqualify Ms. P because they did not know that she had not complied with them.

If the District thought that Ms. P had given timely notice, they obviously intended to give her the Service Award at the time the agreement was made. This intention should override their serendipitous discovery made in 2000 that she had submitted a letter after that date. The Union also intended that the Service Award be given to Deborah P. and the Arbitrator should follow the intention of the parties.

Moreover, on cross examination, both Superintendents of Schools expressly admitted that at the time that Ms. P put in her letter of resignation, that there was no legally required date in effect with which she was supposed to have complied. Had she requested payment for her sick leave she would have had to apply by April 1, but since she did not have any unused sick leave, there was no date for a notice of retirement. The collective bargaining agreement, Joint Exhibit 1, was only signed by the parties on July 5, 2000, two years after Ms. P’s letter of resignation.

CONCLUSION

For all of these reasons, the Arbitrator is respectfully requested to issue a Decision Award directing the District to pay Ms. P her service award and to conform with the collective bargaining agreement and for such other and further relief as may be just and proper.

Respectfully submitted,

Union Attorney