



11 15 2016 Grievance Hearings 10 30 AM

For ADA assistance, contact the Office of Equity and Compliance, 534-0781, at least 3 business days before the meeting.

Call to Meeting to Order

Acceptance of Agenda

1. [Accept the Agenda for the November 15 2016 Grievance Hearings](#)

Motions:

Motion to accept the agenda. - PASS

Vote Results

Motion: Lynn Wilson

Second: Tim Harris

Hunt Berryman - Aye

Lori Cunningham - Not Present

Kay Fields - Aye

Tim Harris - Aye

Dick Mullenax - Not Present

Hazel Sellers - Aye

Lynn Wilson - Aye

Grievance

2. [PEA Step III Grievance #383- Teacher Class Action - Provisional Substitutes](#)

Attachment: [11-15-16 Superintendent's Executive Summary - #383 PEA Step III Provisional Substitutes.pdf](#)

Attachment: [383 Provisional Sub PEA Step III Grievance Hearing Packet 41p.pdf](#)

Attachment: [Article 28 Teacher Grievance Procedure.pdf](#)

Minutes:

Angela Dawson, Polk Education Association (PEA) Representative, discussed the details of the Teacher Class Action filed on behalf of the Provisional Substitute Teachers on August 24, 2015. The grievance was filed on November 9, 2015. The Step 2 hearing with Brian Warren, Senior Director of Human Resources, was held March 14, 2016. The response was received July 11, 2016. This is an ongoing situation to date. She commented their appearance today is to discuss the next level of grievance. PEA would like to know if the District violated the contract when they hired teachers with Bachelor's Degrees that were working toward providing documentation to satisfy subject matter competency for permanent positions and then not pay them according to the salary schedule.

She discussed contract language that defines the parameters surrounding the teacher probationary period in regard to certification which is now the contract year according to the new State Statute. She further stated that when this grievance was filed last year there was also a grievance filed regarding alleged unfair labor practices. At that time, there was a lack of communication, therefore, there was a great deal of frustration experienced on both sides. A list of staff members has, to date, still not been provided because of technology barriers that are attached to staff information that is removed once certification has been achieved. Staff members who are not eligible to receive certification are also not eligible to be part of the PEA group. This grievance was created to address these concerns as they relate to newly hired employees only and she believes there is confusion in Human Resource Services that encompasses those that failed to meet certain certification requirements after being hired. Because of this, she stated more in depth conversations need to take place to identify these people. One area that may be agreed upon is that teachers who fail to maintain their teaching certificate are no longer eligible to hold their position or be a member of the PEA. This practice is harmful to the teachers and therefore harmful to the District and the various ways need to be identified. In particular, they feel that it is deceiving and is causing teachers to leave. Provisional Substitute is not an accurate title for the following reasons:

- they create lesson plans
- they are the teacher of record
- they are evaluated with student learning data

She would like to have the following addressed in further conversations:

- A salary schedule was set for a group of people without discussing it with PEA.
- Why was the Provisional Substitute category created?
- Why were these teachers paid a salary that was less than contract?
- Who are these staff members and how they do or do not fit into the unit?

Ms. Dawson commented that this practice was abolished in 2007-2008.

Attorney Don Wilson, Counsel for the Board, stated this is a unique grievance. Whereas standard grievance hearings are to interpret provisions of the Collective Bargaining Agreement (CBA); however, today's grievance is requesting a new provision be added that is not currently there. He explained this can only be done by amendment, during collective bargaining negotiations.

The staff members being addressed are those that have not attained or maintained their certification which prevents them from being a teacher. Until they do so, they remain a substitute. There is no provision in the CBA for the District to treat a person as though he/she was a teacher when the person has not completed the necessary requirements to become certified. He explained these staff members have not been diligent; therefore they are not eligible to be teachers. Rather than terminate these individuals, the District allows them to be Provisional Substitutes and continues their retirement and healthcare benefits, but they do not make a teacher's salary. Once the individuals do what is required of them to fulfill the certification requirements, they become a teacher again. There is no provision in the CBA that requires the District to treat someone as a teacher under the CBA if the person is not qualified and certified for that position. In reference to this practice being abolished in 2007-2008, he stated the conclusion remains that these people were not qualified to be teachers under the CBA and was ruled in favor of the District. This addresses an obligation that rests with the employees, who are aware of the steps that are required to maintain certification. If there are extraordinary circumstances such as health problems, the person has the option to request an extension that may be approved by the Superintendent. He urged the Board to deny this grievance.

Mrs. Sellers stated she would like to know if some of the people in question have received temporary certification. Attorney Don Wilson explained newly hired teachers are paid as teachers. The Provisional Subs do not have a temporary or permanent certificate or they have allowed the time to lapse and have not properly maintained the certification. She would like to know who the different groups are.

Mr. Harris asked if it is fair for staff who are not fully certified to be paid the same as those who have fulfilled the DOE certification requirements. He asked Annissa Wilfalk, Director of Recruitment and Educator Quality, to provide clarification of the differences of D1, D2, Provisional 1 (P1), and Provisional 2 (P2).

Ms. Wilfalk explained that D1/P1 "provisionals" are former teachers that did not meet the requirements to retain their status as teachers. This provided the District an opportunity to retain those employees that administrators wanted to bring back; allowing them to remain employed and not experience a break in service in terms of seniority and retirement benefits.

D2/P2 provisionals are new applicants that joined the District with deficiencies but are not fully qualified and are working toward certification. This was done to allow career changers to get their foot in the door. D1 and P1 are basically synonymous as are D2 and P2. Temporary certificate holders can be hired and brought on as a fully salaried teacher. If they are not certified, qualified, or highly qualified they are not hired on as teachers which is in alignment with State Statute with the exception of Social Science. The state changed the law stating Social Studies applicants can be hired as long as the state has deemed them eligible to receive a certificate but time is allotted that will allow them to

take the subject area exam to make them highly qualified. Historically, Polk's expectations were higher than the States eligibility requirements to teach.

Today's staff members being discussed as part of this grievance are applicants that were hired as Provisional Substitutes who did not fulfill the certification requirements.

Mr. Wilson expressed his understanding that this premise is not part of the current contract and should be negotiated. He stated there appears to be an inference that this occurred mid-stream instead of something the District was doing all along. He asked for clarification if this was a practice in place all along. Mr. Warren commented that per CBA it has been the policy all along with the exception that those that would have previously been terminated are now offered provisional substitute status to avoid a break in service. He commented that staff members are sent reminders regarding the expiration of their certification and either have not done so in a timely manner or did not pass the exam.

Mr. Wilson asked PEA to respond to the question is this a change that was made recently or has it been an ongoing policy. Ms. Dawson commented after the decision in 2007-2008 that this practice was stopped, the group was not aware of it until it was brought to their attention last year. She reiterated that the group being discussed are new teachers who are, in some instances, waiting on paperwork from another state.

Mr. Wilson stated this is \$2.3 million at stake and he feels this matter should be renegotiated.

Wes Bridges, Counsel for the School Board, commented renegotiation will likely be the result if the Board denies the grievance and the PEA requests renegotiation.

Marianne Capozziello, President of PEA, commented denial of the grievance would lead to arbitration as the next step. She commented this grievance is already extraordinarily out of timeliness and in order to maintain the timeline, discussions must be timely and not drag on for months at a time for the group to consider renegotiation. Part of the reason they have come before the Board at this time is to avoid a situation where the group has, through inaction, waived their right. She commented that when the District unilaterally set up a sub class of employees there should have been conversations with PEA right away. She commented she is unsure where this will lead at the end of the day but denial of the grievance will lead to arbitration.

Mrs. Fields asked if P1 and P2 substitutes are made aware in writing when they are hired that if they do not fulfill the requirements what the consequences are. Mr. Warren explained these individuals receive a communication that outlines information such as time allowable to be in that position, eligibility for benefits, pay frequency, what next steps are once they have achieved certification, etc. Teddra Porteous, Associate Superintendent of Human Resource Services, commented this is not something that the employee signs, it is an email that they receive from Ms. Wilfalk when they go into a provisional position.

Mrs. Fields commented she would like to find a way to work through this because both sides appear to have some validity and the Board wants what is best for the teachers and the students. She stated it is important to communicate and try to reach common ground

through negotiation if possible. Also, this information should be a signed document showing the employees understand the agreement they are entering into and what the consequences are.

Mr. Warren clarified the timeliness raised by Ms. Capozziello. He commented his response was dated in July whereas the PEA notification to elevate this case to a Class 3 grievance was not until November.

Mr. Wilson commented that the group should shy away from placing blame and try to move forward.

Mrs. Porteous stated she feels her group is always available and willing to talk with Ms. Capozziello or her staff regarding issues of this nature. She stated if the Board's desire is further communication between the groups she will do so; however, based on what is right, she believes the grievance should be denied and then determine the path PEA decides to take (arbitration or negotiation) after that decision has been made.

Mrs. Fields stated it is in everyone's best interest to communicate and try to find some common ground.

Mr. Berryman asked how many teachers and what period of time are being identified. Mr. Warren and Dr. Porteous confirmed it was 2015-2016 for the 84 staff members involved in the grievance. Moving forward, Mr. Berryman asked if things are in order today to proceed, or are there still discrepancies. Mr. Warren commented his belief that in respect to compliance with certification matters, CBA, and state statute things are in order. Mr. Berryman asked if \$2.3 million is the total for a single year. Mr. Warren confirmed it is for one year. Mr. Berryman recommended that PEA drop the grievance, establish a timeline, the groups participate in further discussions together; and then, if things are not reconciled during this time, PEA can return with a grievance.

Ms. Capozziello stated PEA is not willing to drop the grievance, but they are willing to communicate to try to achieve a resolution.

Mrs. Porteous proposed that, if the Board denies the grievance, Human Resource Services would agree to meet with PEA within 30 days to try to reach a resolution. Attorney Don Wilson commented that would also give PEA the continuance to file the arbitration.

Ms. Capozziello commented PEA will agree to further discussions but will not agree to waive the steps.

Mr. Harris asked if the grievance is approved and these people are paid as full teachers, would that be fair to the existing teachers that did adequately fulfill the requirements. It is not a matter of the work they are doing. Ms. Capozziello commented this is a matter concerning wages, hours, and working conditions which are subject to renegotiation and the District created a subset of employees unilaterally without any discussion or input from PEA. She feels that they only found out about it in a round about way which did not allow them the opportunity to demand negotiation. In response to Mr. Harris's comments about teachers who have fulfilled the requirements, Ms. Capozziello stated these people are doing the work of teachers and it is unlikely that the District would allow these people to

be in front of classes teaching if it was outside the legal realm of what the Department of Education would allow.

Mrs. Sellers asked whether the people in question think they are being paid an inadequate salary? She stated retroactive pay should be acceptable in cases where the District is waiting for documentation. She said she needs to know what the circumstances are surrounding each individual situation. She does not feel that she can vote to approve retroactive pay for all or deny retroactive pay for all. She suggested a continuance.

Attorney Don Wilson explained the School Board is bound by the collective bargaining agreement.

Mr. Berryman asked if Mrs. Porteous's suggestion was acceptable and can the groups come together with a specified time limit that would provide time for some of the 84 people represented (if found justified) to receive the retroactive pay? Attorney Wilson stated anytime the Board feels an employee has been treated unfairly there is the ability to rectify it. Mr. Berryman stated the School Board should uphold the Superintendent's recommendation, stick to what the CBA says, deny the grievance, and return for renegotiation.

Attorney Don Wilson stated the CBA does not define pay for substitute teachers. These people lost their eligibility by not being certified as teachers which removed them from the CBA.

Mrs. Porteous explained that rather than terminate these individuals the District created the Provisional Substitute positions instead. Mr. Warren confirmed this was not addressed with PEA because of the break in service.

Mr. Wilson stated multiple classes of individuals are being lumped into one grievance. There will be significant consequences no matter how the Board votes. He suggested the various groups be identified and then determine what they are or are not entitled.

Mrs. Sellers commented the issue is not about the money but about whether or not these people are teachers or long term subs doing lesson plans, grades, and other associated work of a full time teacher. Mrs. Porteous stated long term substitutes are hired through Kelly Services. Mrs. Sellers sees no way to uphold this grievance but would like to see this resolved.

Mr. Bridges stated the options available to the Board at this time:

- uphold the grievance and pay the money.
- deny the grievance and return to the table to renegotiate.
- continue the grievance until a future time when it would be presented again.

Mr. Berryman asked how these people were treated before 2015-2016. Mrs. Porteous commented that if they did not attain certification they were terminated after 90 days. Mr. Berryman stated the grievance should be denied because these staff members are not certified and therefore should not be paid as such.

Superintendent Byrd commented both parties should be able to come together and work

through this. She commented that when the parties agreed to take positions as Provisional

Substitutes, they were given notice but were not required to provide a signature of acknowledgement. If the grievance is upheld to pay individuals who were not properly certified as teachers, what sort of message would that send?

Mr. Wilson commented there will be teachers caught in the middle that have not violated policies, procedures, or state laws. It appears that a policy has been reactivated without discussion with PEA and it will have a very negative impact on the district if no resolution is reached.

Mrs. Fields commented on the email notifying provisional subs of the consequences of not fulfilling the requirements of certification. She agrees with the Superintendent that a signature should be required validating the employee understands the consequences of not fulfilling certification requirements.

Mr. Harris commented it has been his experience that the District goes above and beyond to remind staff members that they must renew their certificate. Many employee resources are expended to encourage these professionals to fulfill the obligations needed to achieve or maintain certification.

Motions:

Motion to uphold the Superintendent's recommendation to deny Grievance 383. - PASS

Vote Results

Motion: Hunt Berryman

Second: Tim Harris

Hunt Berryman - Aye

Lori Cunningham - Not Present

Kay Fields - Aye

Tim Harris - Aye

Dick Mullenax - Not Present

Hazel Sellers - Aye

Lynn Wilson - Nay

3. ~~PEA Step III Grievance #391 Richard Arzillo, Teacher~~

Attachment: ~~11-15-16 Superintendent's Executive Summary - #391 PEA Step III Richard~~

~~Arzillo, Teacher.pdf~~

~~Attachment: 391 Richard Arzillo PEA Step III Grievance Hearing Packet 36p.pdf~~

~~Attachment: Article 28 Teacher Grievance Procedure.pdf~~

4. ~~PEA Step III Grievance #398 Virginia Young, Teacher~~

~~Attachment: 398 Virginia Young Step III Grievance Hearing Packet 26p.pdf~~

~~Attachment: Article 28 Teacher Grievance Procedure.pdf~~

~~Attachment: Superintendent's Executive Summary #398.pdf~~

Adjournment

Meeting adjourned at 11:47 am. Minutes were approved and attested 13th day of December, 2016.

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Kay Fields, Board Chair

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Jacqueline M. Byrd, Superintendent