

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-16-04

(UNFAIR LABOR PRACTICE)

ENTERPRISE EDUCATION ASSOCIATION,)
)
 Complainant,)
 v.)
 ENTERPRISE SCHOOL DISTRICT)
 NO. 21,)
 Respondent.)
 _____)

RULINGS AND ORDER
ON PETITION FOR
RECONSIDERATION

This Board issued an Order on October 6, 2005. On October 20, 2005, Complainant filed a timely petition under OAR 115-035-0050(4) which asks this Board to reconsider Conclusions of Law 3 and 4. We grant reconsideration and modify our Order.

The amended complaint alleged in four separate counts that the District violated ORS 243.672(1)(g) in regards to its contractual early retirement program. One count involved employees who had already retired from the District. We unanimously concluded that the District violated subsection (1)(g) when it froze the amount it contributed to the health insurance premiums for these retirees (Conclusion of Law 2). The petition does not challenge this conclusion.

The remaining three counts involved employees who announced their intent to retire but had not yet retired. We unanimously concluded that the District did not violate subsection (1)(g) when it applied the provisions of the 2003-2008 contract regarding post-retirement insurance to those employees who retired after that contract was ratified in February 2004 (Conclusion of Law 5). The petition does not challenge this conclusion.

A majority of the Board, with one member dissenting, then determined that the District did not violate subsection (1)(g) when it terminated the retiring teachers' stipend in the middle of their final year of employment (Conclusion of Law 3), nor when it failed to

base the amount of the retiring teachers' stipend on their 2003-2004 salary as specified in the 2003-2008 collective bargaining agreement (Conclusion of Law 4). The Association asks us to reconsider both of these conclusions. The Association's arguments are well taken. We therefore grant reconsideration and modify our Order accordingly.

Conclusion of Law 3 concerns the entitlement of the retiring teachers to a stipend established in the 1999-2003 collective bargaining agreement. Under that agreement, teachers who give notice of their intent to retire at least a year in advance, and who meet certain other qualifications, receive a monthly stipend during their final year of teaching. During the life of the agreement, several teachers gave timely notice of their intent to retire at the end of the next school year. The contract then expired and the parties did not reach agreement on a successor prior to the start of the next school year (the last work year for the teachers who gave their notice). The District initially paid the monthly stipend to the teachers who announced their retirements. Then, in February 2004, the Association and the District reached a new agreement that eliminated the stipend, at which time the District ceased paying the stipend to the retiring teachers. The question is whether the teachers are entitled to continue to receive the stipend under the expired agreement, or whether the District properly ceased the payments under the new agreement.

The majority analyzed the issue as a question of vesting. It concluded that the employees did not retire during the life of the 1999-2003 contract and therefore did not meet all of the conditions precedent for early retirement benefits before the new contract took effect. This conclusion assumes that actual retirement was a condition precedent to receipt of the stipend. The petition points out that actual retirement was not a contractual condition for receiving the stipend. On closer review of the contract language, we conclude the point is well taken. The contract establishes four conditions a teacher must meet to qualify for the stipend. Actual retirement is not one of those conditions. The retiring teachers met all of the conditions for receiving the stipend, and their right was therefore vested.

Member Gamson's dissent to the October 6 Order makes the same point. We adopt the reasoning of the dissent on this issue and conclude that the retiring teachers were entitled to the stipend for the entire 2003-2004 school year. We will amend Conclusion of Law 3 and our Order to indicate that the District violated ORS 243.672(1)(g) when it ceased paying the retiring teachers' stipend in February 2004.

With regard to Conclusion of Law 4, Complainant correctly points out that the majority's reasoning is inconsistent with its conclusion. We stated that "a stipend which is calculated on salary would also be recalculated based on a retroactive salary increase." (Order at p. 15 n. 7). We nevertheless concluded that the District did not violate subsection (1)(g) when it declined to recalculate the stipend based on the retroactive salary increase.

Under the 1999-2003 contract, the stipend is calculated as a percentage of the retiring employee's salary. When the District agreed to a retroactive salary increase, the amount of the stipend also increased retroactively. The District's failure to pay the increased amount violated subsection (1)(g). We will revise Conclusion of Law 4 and our Order accordingly.

RULINGS

1. Complainant's request for reconsideration is granted.

2. Conclusions of Law 3 and 4 of our Order dated October 6, 2005, are revised to read as follows:

"3. The District violated ORS 243.672(1)(g) when, in February 2004, it ceased stipend payments to the retiring teachers.

"4. The District violated ORS 243.672(1)(g) by failing to pay the retiring teachers' stipend based on their 2003-2004 salary as specified in the 2003-2008 agreement."

ORDER

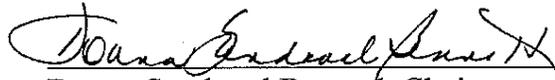
We amend our Order of October 6, 2005 to add the following:

"2. The District shall cease and desist from failing to base the amount of the retiring teachers' stipend on their 2003-2004 salary as specified in the 2003-2008 agreement, and shall make them whole, including back pay plus interest at the statutory rate from the time each payment became due until paid.

"3. The District shall cease and desist from refusing to pay a stipend to the retiring teachers for the entire 2003-2004 school year, and shall make them whole, including back pay plus interest at the statutory rate from the date each payment became due until paid."

We adhere to our Order of October 6, 2005, in all other respects.

DATED this 19th day of December 2005.


Donna Sandoval Bennett, Chair


Paul B. Gamson, Board Member

* 
James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.

*Member Kasameyer, concurring and dissenting:

I agree that Complainant's request for reconsideration should be granted and thereafter part company with the majority. I would not change Conclusion of Law No. 3, for reasons set forth at pp. 14-18 of our Order of October 6, 2005. (When reviewing that Order, the reader should be aware that I no longer speak for the majority on this issue and that Member Gamson is no longer my dissenting colleague). I do not accept the current majority's characterization of the former majority's reasoning on this issue. Our decision on October 6, hinged on the ability of the Association and the District to modify prospectively the preretirement stipend received by the retiring teachers.

I would modify Conclusion of Law No. to read as follows:

"The District violated ORS 243.672(1)(g) by failing to pay the retiring teachers' stipend based on the 2003-2004 salary after ratification of the 2003-2008 agreement."

As stated in the Board's October 6, 2005 Order, "a stipend which is calculated on salary would also be recalculated based on a retroactive salary increase." (Order, p. 15, n. 7) I would not extend the payment of the stipend beyond the date the parties entered into the 2003-2008 agreement.