

DOCKET NO. 184-R10-799

PEGGY SMITH and the AMARILLO § BEFORE THE
 FEDERATION of TEACHERS §
 §
 v. § COMMISSIONER OF EDUCATION
 §
 AMARILLO INDEPENDENT §
 SCHOOL DISTRICT § THE STATE OF TEXAS
 DECISION OF THE COMMISSIONER
 Statement of the Case

Petitioners, Peggy Smith and the Amarillo Federation of Teachers, appeal the decision of the Amarillo Independent School District board of trustees, Respondent, to deny their grievance concerning compensation following Senate Bill 4.

Christopher Maska was the Administrative Law Judge appointed by the Commissioner of Education. Petitioner is represented by A. Elizabeth Colvin, Attorney at Law, Austin, Texas. Respondent is represented by Don M. Dean, Attorney at Law, Amarillo, Texas. On December 20, 1999, the Administrative Law Judge issued a Proposal for Decision recommending that Petitioner's appeal be denied. Exceptions and replies were timely filed and considered.

Findings of Fact

It is concluded that the following Findings of Fact are supported by substantial evidence:

1. Petitioners, Peggy Smith and affected members of the Amarillo Federation of Teachers, are employed by Respondent, Amarillo Independent School District, under teaching contracts for the 1999-2000 school year.

2. The record does not contain any individual teacher's compensation was for either the 1998-99 or 1999-2000 school years. The teacher salary schedules for the 1998-99 and 1999-2000 school years are part of the record. All teachers received at least a \$3,000 raise required by Senate Bill 4 and any step increases provided under the 1998-99 compensation package for the 1999-2000 school year.

3. Respondent's administrative regulation DEA-R reads in part:

PAY SYSTEM The Superintendent or designee shall develop and recommend a pay system for all District Personnel to the Board for adoption. The pay system shall be designed to provide appropriate pay for the assessed worth of individual jobs. The system shall be administered with the intention that employee pay:

1. Stay competitive with appropriate labor markets for various categories of personnel.
2. Recognize the levels of skill, effort, and responsibility required of different jobs.
3. Reward the continued length of service to the District, and,
4. Be fiscally controlled and cost effective.

.....

SALARY
ADVANCEMENT

Pay ranges shall be structured to allow the opportunity to increase employee pay within the range for continued service to the District. The Superintendent shall make recommendations regarding employee increases on an annual basis. Recommendations shall be based on consideration of such factors as cost of living indexes, wage increases in competitive job markets, employee performance and budget resources.

Individual pay increases within a pay range shall normally be calculated on the midpoint rate of pay of the range. The midpoint rate shall be multiplied by the percent increase granted by the board to determine the individual pay increases.

4. Neither the Amarillo Federation of Teachers ("AFT") nor "similarly situated employees or persons" filed a grievance. Respondent treated the AFT as a party to the grievance at the board hearing.

5. A midpoint system bases salary changes on the midpoint salary for each salary range. A midpoint is determined by taking the average of the highest and lowest salary in the range. The board of trustees then determines a percentage to be multiplied by the midpoint salary to determine how much of a raise everyone in a pay range will receive. Everyone in a pay range receives the same dollar amount for a raise.

6. Respondent's compensation package for teachers for the 1999-2000 school year was not calculated using a midpoint system. Some teachers received just a step increase and the mandated \$3000 raise. Some teachers received a step increase, the \$3,000 raise, and a local supplement.

7. Respondent adopted its compensation package for the 1999-2000 school year on July 21, 1999.

8. Respondent has over thirty pay ranges for various positions.

Discussion

Petitioners contend that Respondent has failed to properly compensate them in violation of their contracts, board policy, administrative regulations and Senate Bill 4 (hereinafter, "SB 4").

Merits

Petitioners assert that both their contracts and SB 4 entitle them to receive an increase in the local supplement above the \$3,000 raise and the 1998-1999 step increases for the 1999-2000 school year. Petitioners rely upon regulation DEA-R that they contend requires Respondent to award raises based on a percentage of a midpoint salary:

Individual pay increases within a pay range shall normally be calculated on the midpoint rate of the range. The midpoint rate shall be multiplied by the percent increase granted by the board to determine the individual pay increase. The midpoint system is designed to ensure that everyone within the same pay range receives the same dollar amount for each raise.

Contract

Petitioners' argument that they are contractually entitled to a raise based on a midpoint calculation fails for two primary reasons. First, Petitioners base their argument on an administrative regulation, not a board adopted policy. While the regulations and operational policies adopted by a school board before making a contract of employment with a teacher form part of the contract, regulations adopted by a superintendent do not become part of a teacher's contract. See *Myrtle Springs Reverted Indepen. Sch. Dist. v. Hogan*, 705 S.W.2d 707, 709 (Tex. Civ. App. -Texarkana 1985, writ ref'd n.r.e) cert. Denied. A superintendent cannot enter into a contract with a teacher. *Pena v. Rio Grande City Conso. Indep. Sch. Dist.*, 616 S.W.2d 658, 659-660 (Tex. Civ. App. -Eastland 1981, no writ). Only a board of trustees can enter into a teaching contract. *Hix v. Tuloso Midway Indep. Sch. Dist.*, 489 S.W.2d 706, 711 (Tex. Civ. App.-Corpus Christi 1972, writ ref'd n.r.e.). To rule otherwise would allow superintendents to bind elected boards of trustees as to making contracts. The superintendent's regulation in question is not part of Petitioners' contracts.

But even if the regulation were part of Petitioners' contracts, it only states that midpoint calculations will be normally used to calculate raises. After the Legislature has taken the extraordinary step of enacting SB 4, it is

understandable that the normal procedure was not used. The administrative regulation itself does not require that a midpoint system be used in this case.
SB 4

Petitioners' SB4 claim is that Respondent has to set its compensation for 1999-2000 by the same method used in 1998-1999. In particular, Petitioners rely on the following language:

[F]or the 1999-2000 and 2000-2001 school years, a classroom teacher, ... is entitled to a monthly salary that is at least equal to the greater of:

(1) the sum of:

(A) the monthly salary the employee would have received for the 1999-2000 or 2000-2001 school year, as applicable under the district's salary schedule for the 1998-1999 school year, if that schedule had been in effect for the 1999-2000 or 2000-2001 school year, including any local supplement and any money representing a career ladder supplement the employee would have received in the 1999-2000 or 2000-2001 school year; and

(B) \$300; or

(2) the salary to which the employee is entitled under Subsection (a) [state minimum salary].

TEX. EDUC. CODE § 21.402 (c-1). Petitioners argue that the local supplement a teacher is entitled to in 1999-2000 is not the local supplement that a teacher would receive under the 1998-99 compensation package, but a local supplement that the district decides upon using the same method for determining the supplement as it did in 1998-99. This interpretation would in fact allow districts to give teachers less than a \$3,000 raise for 1999-2000. For example, if a district offered a local supplement of \$5,000 in 1998-99 and the district, using the same procedures it used in 1998-1999 establishes a \$2,000 local supplement for 1999-2000, the teachers would receive no raise at all. For this reason alone, this interpretation of SB 4 should be rejected. SB 4 was designed to ensure that all teachers would receive a significant raise.

To the Administrator Addressed Letter

Both Petitioners and Respondent rely upon the Commissioner's July 8, 1999 "To the Administrator Addressed" letter. Petitioners point to one sentence:

Whatever combination of years of teaching, experience with the district and job duties or other qualifications are present in 1999-2000 must be applied to the district's salary practices as they existed in 1998-99 to compute the base salary.

Petitioners assert that a district must follow the procedures it used in 1998-99 to set new salaries for 1999-2000. However, this interpretation is foreclosed by another portion of the letter:

The Legislature also required school districts to provide a \$300 per month salary increase to each classroom teacher and full-time librarian, counselor or nurse. That increase is required to be in addition to the salary that the employee would have been entitled to on the district's 1998-1999 salary schedule in the 1999-2000 and 2000-2001 school years, including any local supplements. The requirement is statutory and is not affected by whether the 1998-99 salary schedule would have been binding in 1999-2000 in the absence of legislative action. A disclaimer of the binding effect for future years on the 1998-99 salary schedule does not supersede the statutory requirement.

SB 4 requires that the 1998-99 compensation package be continued into 1999-2000 and 2000-2001 with at least a \$3,000 raise. The Legislature did not allow districts the option of reducing the local supplement, nor did it require the districts to increase local supplements except for step increases.

Regulation DEA-R

Petitioners claim that the district must use a uniform percentage of the midpoint salary range to apply to all salary ranges, in addition to the \$3000 state-mandated raise.

For 1999-2000, the district did not use a midpoint system to set teacher salaries. However, Respondent did use a midpoint system to set administrative salaries and clerical salaries. A percentage of 6% was used to calculate administrator salaries. A percentage of 6.5% was used to calculate clerical salaries.

Regulation DEA-R does not mandate that a uniform percentage be used for all salary ranges. While the words "the percent increase" are used, these words refer to the percent increase for each salary range. The regulation provides that each year the superintendent is to make "recommendations." The superintendent can make different recommendations for the percentage to be used for each salary range. This can also be seen by referring to the purpose of the regulation. The regulation was designed so that employee pay would "stay competitive with appropriate labor markets for the various categories of personnel." It is difficult to see how using one percentage would allow the district to be competitive with all the relevant labor markets. The fact that only rarely has the district adopted different percentages for different salary groups, is not evidence that the district must interpret the regulation as requiring it to adopt one percentage for all salary groups.

Respondent does not owe Petitioners any additional compensation. Petitioners' salaries for this school year represent the full amount required by their contracts and SB 4. Petitioners are not entitled to an enhanced local supplement.

Reply to Exceptions to Proposal for Decision

Petitioners contend that the Amarillo Federation of Teachers should have standing; that the grievance was on behalf of all similarly situated employees or persons; and that the grievance has not been adequately described in the Proposal for Decision. In response to the Exceptions to the Proposal for Decision, changes have been made throughout.

Standing

While it is true that the grievance documents only identify Ms. Smith as a grievant, the board agenda and minutes indicate that the board considered the AFT to be a grievant. The AFT has exhausted administrative remedies. However, "other similarly situated employees or persons" have not exhausted administrative remedies. Neither Ms. Smith nor the AFT has standing to represent them. The result is that the AFT is a party but "other similarly situated employees or persons" are not a party. If Petitioners were to prevail, only members of the AFT would be entitled to a recovery.

Grievance

Petitioners contend that their grievance was not properly characterized. They argue that they are not just claiming that their contracts were violated but also that Policy DEA(LOCAL) and Regulation DEA-R were violated. They contend that the relief sought is a ruling that the board must use a midpoint system to set salaries.

The Commissioner has ruled that school district policies are not encompassed by the phrase "school laws of this state" under Texas Education Code section 7.057. *Reeves v. Aledo Independent School District*, Docket No. 106-R10-496 (Comm'r Educ. 1999) "School laws of this state" means the first two titles of the Texas Education Code and the rules adopted under those titles. TEX. EDUC. CODE § 7.057(f)(2). The rules are promulgated by the Commissioner, the State Board of Education, and the State Board for Educator Certification. District policies are not rules under Section 7.057. A district's administrative regulations have even less claim to being "school laws of this state." The Commissioner only has jurisdiction over Petitioners' claim that Respondent violated a provision of a written employment contract.

Petitioners now argue that the language of their contracts makes administrative regulations part of their contract³. They cite *Barborak v Oakwood Independent School District*, Docket No. 224-R3-797 (Comm'r Educ. 1999), for this claim. However, the contract provision in *Barborak* contained a provision that any change in state and federal law and in District policies, rules, regulations, and administrative directives shall act as a novation of the contract. The contract provision at issue in this case is significantly different. It does not contain a novation provision dealing with changes in the law or policy. In the present case, teachers, not the district, are required to comply with all laws, rules, and policies. Changes in laws, rules, or policies do not constitute a novation. DEA-R is not explicitly made a term of Petitioners' contracts.

Petitioners also contend that DEA(LOCAL) makes DEA-R part of their contracts because the Superintendent is to "administer and maintain pay systems in accordance with administrative regulations for the District compensation plan." However, a board cannot delegate contracting authority. The better interpretation of this policy is that it directs the superintendent to follow administrative regulations, not that it makes administration regulations part of teacher contracts.

Monetary Harm

Petitioners argue that they are only seeking a ruling that Respondent be required to set salaries using a midpoint system and that the Commissioner need not determine how much teacher salaries should increase⁴. However, the Commissioner only has jurisdiction under Texas Education Code section 7.057(a)(2)(B) if a contract violation causes or would cause monetary harm. The Commissioner has found no contract violation. Not using a midpoint system in this instance does not violate the contract. Even if the failure to use a midpoint system was a contract violation, Petitioners cannot establish any type of monetary harm. Petitioner cannot show that any member of the Amarillo Federation of Teachers would be entitled to greater compensation if a midpoint system were used. There is no evidence that any member of the Amarillo Federation of Teachers received any less than any other teacher.

Conclusions of Law

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner of Education has jurisdiction to hear this case under Texas Education Code section 7.057(a)(2)(B).
2. To the extent that Petitioners are asking the Commissioner only to find that Respondent needs to set teacher salary schedules using a midpoint system, the Commissioner lacks jurisdiction over this claim.
3. The Amarillo Federation of Texas ("AFT") exhausted local remedies and is a party to this cause.
4. "Similarly situated employees or persons" lack standing because they have not exhausted local remedies. Neither Ms. Smith nor the AFT may represent "similarly situated employees or persons."
5. An administrative regulation not promulgated by the board of trustees is not automatically incorporated into a teaching contract.
6. Respondent's Regulation DEA-R is not part of Petitioners' teaching contract and does not bind Respondent's board of trustees.
7. Regulation DEA-R, by its own terms, does not require that a midpoint system be used for all years or for the 1999-2000 school year.
8. Regulation DEA-R does not require the superintendent to recommend a uniform percentage to be applied to all midpoint salaries in all salary ranges, nor does it require the board of trustees to accept the superintendent's recommendation of a percentage to be applied a salary range.

9. Respondent's 1999-2000 salary schedule provides Petitioners with all the compensation that Petitioners are contractually entitled to.
10. SB 4 requires that each school district must provide compensation for each classroom teacher, full-time librarian, full-time certified counselor, or full-time nurse that is equal to the greater of the state minimum salary or, the 1998-99 compensation package plus a \$3,000 per year raise. A teacher is entitled to any step increases that were part of the 1998-99 compensation package for the 1999-2000 and 2000-2001 school years.
11. Respondent's 1999-2000 salary schedule provides Petitioners with all the compensation they are entitled to under SB 4.
12. Petitioners' appeal is denied.

O R D E R

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as Commissioner of Education, it is hereby

ORDERED that Petitioners' appeal be, and is hereby, DENIED.

SIGNED AND ISSUED this 26th day of APRIL, 2000.

JIM NELSON
COMMISSIONER OF EDUCATION

1 Respondent does not generally use the terms "step increase" and "salary schedule" in order to distinguish its midpoint salary system from conventional systems. However, Respondent's system does give additional compensation for each year of service. Whether Respondent uses the terms "step increase" and "salary schedule" is not material.

2 By agreement of the parties, the minutes of the July 21, 1999 board meeting are part of the local record.

3 There is some question as to whether the document found at Exhibit Q is the contract for Ms. Smith as it is not signed by either party.

4 The Petition for Review does state, "[t]hus, for the 1999-2000 school year, AISD is required to apply the midpoint system used in 1998-99, which would give teachers, librarians, counselors, and nurses the same 6% local pay increase given to administrators.

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