

DPA Case No. 07-03-0031
SEOI Case No. 07-381-SARB

C. ALLEN POOL, Arbitrator
Arbitrator's Case No. 3-10-09

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

Service Employees International)	
Union Local 1000)	ARBITRATOR'S
)	
and)	OPINION AND AWARD
)	
California Department of Corrections)	March 19, 2010
& Rehabilitation/Division of Juvenile Justice))	
)	
(Involving Vocational Instructors Salary))	
Grievance))	
_____)	

This Arbitration arose pursuant to Agreement between the SERVICE EMPLOYEES INTERNATIONAL UNION Local 1000, hereinafter referred to as the "UNION", and the CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION/DIVISION OF JUVENILE JUSTICE and the California Youth Authority , hereinafter referred to as the "STATE", under which C. ALLEN POOL was mutually selected by the parties to serve as the Arbitrator. The Parties stipulated that the matter was properly before the Arbitrator and that his decision shall be final and binding.

The hearing was held in the Sacramento, California on March 10, 11, & 12, 2009 at which time the parties were afforded the opportunity, of which they availed themselves, to examine and cross-examine witnesses and to introduce relevant evidence, exhibits, and argument. The witnesses were duly sworn and a written transcript was made of the hearing.

At the close of the hearing, the parties instructed the Arbitrator to take no action on the case at the time. They had agreed to meet and confer in an attempt to resolve the grievance

themselves. They set a deadline for submission of post-hearing briefs if they were unsuccessful in reaching a resolution. In the months that followed, at the request of the parties, the deadline for submission was extended several times by the Arbitrator.

On October 23, 2009 the Arbitrator received post-hearing briefs from the parties with a request that no action be taken until after December 23, 2009. The parties had reached a “tentative” agreement to be proposed to the appropriate officials for approval. In early March 2010, a partial settlement was reached. The State agreed to forgive the outstanding Accounts Receivable: (1) the State would repay any collected Accounts Receivable the State had recouped as a result of those employees’ initial placement on the salary schedule and (2) the State would not recoup Accounts Receivable owed by other employees as a result of their initial placement on the salary schedule. The parties then directed the Arbitrator to proceed and address the merits of the grievance with respect to the remaining contract interpretation issue as stipulated by the parties.

Appearances:

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RELEVANT PROVISIONS FROM THE MOU

Master Agreement between the Service Employees International Union, SEIU Local 1000 and the State of California (Unit 3)

Article 23.1.3 Purpose (Unit 3) This article represents the full and complete understanding reached by the parties on March 10, 2006, at the conclusion of negotiations mandated by Alameda Superior Court, in Margaret Farrell versus Walter Allen III, Director California Youth

Authority, N. RG03079344, referred to as the **PLO Educational Remedial Plan**, effective April 1, 2006. (original emphasis)

23.10.3 CDCR, DJJ, Academic Teacher/Vocational Instructor Salary Schedule (Unit 3)

- A. A current DJJ/CEA Unit 3 eligible employee, effective April 1, 2006 shall be compensated in accordance with the DJ/CEA Unit 3 – 2005-2006 Salary Schedule for their respective high school (Appendix C).
- B. A current DJJ/CEA Unit 3 eligible employee shall be placed on the salary schedule first by education above the Bachelor's Degree or for career-technical teachers the equivalent of a Bachelor's Degree (High School Diploma plus seven (7) years of college work and in-trade work experience) and second by years of full-time credentialed teaching experience.
- C. No teacher will be paid below his her current daily rate salary earned on March 31, 2006. To calculate your daily rate, you must first calculate your annual salary by multiplying your current monthly pay times twelve (12). Then take your annual salary rate and divide by 220 and then multiply that number by 1.054...
- D. For current and new employees with less than ten (10) years of state service **outside qualifying experience in a full time credential teaching position** can be used to place the employee into the salary schedule up to a maximum of Step 10.
- E. Additional daily rate incentives may be paid for hard to fill classifications.
- F. Eligible employees shall be permitted to submit official documents by December 31, 2006, to support initial placement or advancement on the salary schedule. No documents shall be accepted from employees seeking reconsideration of their initial placement after December 31, 2006. Adjustments to initial placement or advancement will result in retroactive payments to the employees date of hire but in no case prior to April 1, 2006.
- G. Each step/range moving either down/across is a three and one-half percent (3.5%) increase. Steps are years of service. Range increases are attained by completing additional credits as described on the salary schedule.
- H. Current DJJ/CEA eligible employees who were initially placed on the salary schedule based upon salary, establishes the individuals' qualification for that range. All employees hired prior to April 1, 2006, who are initially placed into the salary schedule based upon salary, will move in range upon completion of twelve (12) credits through range E for Vocational Instructors and Range F for Academic Teachers.

23.11 Credits for Salary Advancement (Unit3)

- A. Acceptable credits will be limited to new semester (or equivalent quarter) credits earned in an accredited college or university, including credits for continuing education courses if taken from an accredited college or university. In addition, vocational education teachers shall receive one unit of semester credit for each forty-five (45) hours worked in industry in a position directly related to the teacher's/instructor's vocational education instructional area. College credit, continuing education credits, and any work credits from industry for vocational education teachers will be pertinent to the employee's position and not be a repetition of previously acquired credits or work experience.
- B. Continuing education units required for current professional license/certification and/or continuing education units or work experience directly related to course curriculum and/or professional development, that are offered by approved providers may be accepted for salary advancement with prior approval from an immediate supervisor.
- C. For the purpose of salary advancement DJJ, CEA Unit 3 employees may also receive both professional growth and salary advancement as long as there has been prior approval for such an action from an immediate supervisor or program director as follows:
 - 1. Credits used for salary advancement shall have some relevance to the field of instruction of the teacher or specialist seeking credit.
 - 2. In lieu credit may be granted for engaging in projects and/or CEA approved workshops regarding the improvement of instruction and curriculum within the teacher's school or community at the rate of fifteen (15) hours equal to one credit. No more than more than three (3) credits will be granted in one year.

STIPULATED ISSUE

Did the State violate Article 23 of the parties MOU and the Salary Schedule of the MOU when it refused to give credits for salary purposes (placement/advancement) to Unit 3 Vocational Teachers for the following reasons:

- A. Requiring that credits be earned post-preliminary credential – bachelor's degree.
- B. Requiring that credits for hours worked in the industry consist of non-paid work experience. (Trans. I: pp 31-32)

BACKGROUND

In November 2004, private parties filed a lawsuit (Farrell v. Allen) in Alameda County Superior Court claiming that the State was illegally spending taxpayer funds with respect to the educational policies, procedures, and practices offered, at the time, to juveniles at the eight juvenile facilities located throughout the state. Prior to the lawsuit, a panel of experts had

reviewed the high school program and issued a report complete with findings of fact, conclusions, and recommendations. The parties to the lawsuit agreed with the expert panel's findings of fact and conclusions and agreed they were sufficient to support the remedies mandated in the resulting Consent Decree issued by the Court. The Parties agreed to take corrective action pursuant to the remedial plans identified in the Consent Decree.

The Consent Decree of November 2004 mandated that the parties, using as a model the structure and curriculum of a regular public high school system, negotiate an Educational Remedial Plan that was to be effective and operational as of April 1, 2006. The parties were successful in their negotiations. The negotiated Educational Remedial Plan, as expressed in Article 23 of the Memorandum of Understanding (MOU), provided for a school Intersession Period from April 1, 2006 through July 12, 2006. In addition, Article 23 specified that eligible Unit 3 academic teachers and vocational instructors, effective August 7, 2006, work a 220-day calendar school year that includes two 90-day semesters, a 30-day summer session and 10 professional staff development days.

The Consent Decree also mandated that the parties negotiate salary schedules modeled after those used in various County Offices of Education and that the salary schedules would become effective April 6, 2006 for placement of eligible employees. The negotiated salary schedules were to be competitive within the county where the eight juvenile facilities are located.

It should be noted that a *single salary schedule* that included academic teachers and Vocational Instructors was not the norm. (Emphasis added) However, this difficulty was overcome when a search by the parties revealed that the Ventura County Office of Education was using a single salary schedule that included academic and Vocational Instructors. Using this as a model, the parties were successful in negotiating salary schedules for use in the various

counties where the juvenile facilities were located.

The prime intent of the salary schedules, as mandated by the Consent Degree, was to recruit and retain qualified academic teachers and Vocational Instructors. The salary schedules were to be designed to provide academic teachers and Vocational Instructors with the opportunity for future professional growth and salary advancement. A single salary schedule was a new concept for the State, the Union, and the bargaining unit members. Up to this time, the State's academic teachers and vocational instructors had been compensated according to their respective Job Classifications.

The new salary schedules provided for six Salary Ranges, A through F, and Steps that reflect years of credential teaching. The maximum range for academic teachers was Range F. Academic teachers advancement across Ranges could be achieved with the attainment of additional college course units beyond a Bachelor's Degree. A Bachelor's Degree and a State issued teaching credential were required for placement on Range A, the lowest Range for academic teachers.

For vocational instructors, placement on a Range of the salary schedule required the Vocational Instructor to possess the equivalent of (1) a Bachelor's degree and (2) a State Preliminary Vocational Instructional Credential. Vocational Instructors do not normally possess a Bachelor's Degree and possession is not required to receive a Preliminary Vocational Instructional Credential from the State. For equity purposes, the parties mutually agreed that the equivalent of a Bachelor's Degree would be a combination of college units and in-trade work experience totaling seven (7) years

The maximum Range for vocational instructors was set at Range E. Advancement across Ranges for vocational instructors could be achieved with the attainment of additional credits as

defined in the MOU, i.e. hours of work in industry. For the initial placement of current eligible academic teachers and vocational instructors on the new salary schedule, the parties agreed that no employee would be placed at a salary below what the employee's salary was as of March 31, 2006. The parties also agreed that current Unit 3 eligible employees who were initially placed on the salary schedule, based upon salary, established the individuals' qualification for that Range.

Commencing with the April 1, 2006 through July 12, 2006 School Intersession and before the start of the first semester on August 7, 2006, current eligible employees needed to be placed at the appropriate Salary Range and Step on the new salary schedules for pay purposes. The evidence record did not show any problems with the initial placement of academic teachers on the salary schedules. However, the initial placement of Vocational Instructors on the salary schedules was a classic story of miscommunication between all parties; i.e. the State, the Union, vocational instructors, and school administrators and was a root cause for the dispute that led to this arbitration.

What happened went something like this. Faced with the April 1, 2006 and August 7, 2006 deadlines for placement of the current employees on the salary schedule, the parties opted for a "self-placement" procedure. The vocational instructors were told to use the guidelines and standards in the MOU and the Salary Schedule and place themselves on the salary schedule for pay purposes. To assist the Vocational Instructors through the self-placement procedure, Vocational Instructors were given a "worksheet" prepared by the parties to guide them through the procedure.

To the credit of the Vocational Instructors, many were more than a bit puzzled with the "self-placement" procedure and sought advice from their respective school Principals and/or

Vice-Principals. Some also called the Union and asked for advice with the “self-placement” and, as mentioned above, were told to follow the standards expressed in the MOU and the Salary Schedule. The “self-placement” procedure turned out to be a disaster.

Following an audit in February 2007, the State concluded that a number of Vocational Instructors had been wrongly placed on the new salary schedule and were being overpaid. This affected a number of Vocational Instructors, even those who had sought advice from their school administrators and the Union. Where it was found that a Vocational Instructor had been initially placed at the wrong Range, the Vocational Instructor was replaced at a lower Range. In addition, where an employee had received an overpayment (One employee was overpaid over \$11,000.), the employee was notified of the misplacement and that the overpayment would be deducted from his/her monthly salary according to a payment schedule devised by Accounts Receivable. An “all affected” grievance was filed by the Union on May 15, 2007 and processed to this arbitration.

POSITION OF THE UNION

The State violated Article 23 of the MOU and the Salary Schedule of the MOU when it required credits be earned post-preliminary credential – Bachelor’s degree and by requiring that credits for hours worked in industry consisted of non-paid work experience. By excluding paid trade work experience and college credit earned before issuance of the preliminary credential/Bachelor’s degree, the State unilaterally modified Article 23.

Seven years of in-trade work experience was used in combination with a high school diploma for attaining the equivalency of a Bachelor’s degree for initial placement on the salary schedule. After initial placement on the salary schedule, any prior unapplied college credit and work experience may be used for advancement on the salary schedule.

The State violated the MOU by requiring that work experience be “unpaid” before any credit is given. Article 23 does not expressly limit the use of work experience to unpaid work experience. Clear language of the MOU requires the State to accept all pertinent in-trade work experience regardless of whether it was paid or unpaid.

The grievance should be granted and all employees should be placed on the salary schedule by allowing them to use paid in-trade work experience and college credit earned prior to their Preliminary – Bachelor’s degree equivalency.

POSITION OF THE STATE

The State did not violate Article 23 of the MOU and the salary schedule of the MOU when it refused to give credits for salary purposes (placement/advancement) to Unit 3 Vocational Instructors. The criteria, the terms for placement and advancement on the salary schedule are clearly expressed in the Farrell Agreement and codified in Article 23 of the MOU. Credits must be earned post-preliminary credential –Bachelor’s degree and credits for hours worked in industry must consist of non-paid work experience.

The language of the MOU is clear. To qualify for salary advancement, work experience and education credits may not be repetitious of previous experience. The intent of the negotiated language was to impose a pre-credential restriction on credits for salary advancement. An employee cannot advance through a salary schedule until after he or she actually qualifies to be placed on that schedule.

Credits earned prior to the attainment of the teaching credential should not be counted toward salary advancement. In addition, the negotiated language intended a “Paid Work” restriction for advancement on the salary schedule. Paid work does not count toward salary advancement. The grievance should be denied.

DISCUSSION

The first step in contract interpretation is an analysis to seek evidence of the parties' actual intent of the language for which they bargained. If the language is clear and unambiguous there is no need to look for meaning elsewhere. If the language is obscure or subject to more than one meaning, extrinsic evidence can be helpful. However, in this instance the intent could be derived from the language agreed upon and codified in the MOU.

It was obvious that the parties' negotiators worked long and hard with an array of complex forces at the bargaining table to structure and develop an Educational Remedial Plan following the guidelines set forth the Court's Consent Decree. In this effort, they were successful and are to be commended. It was also obvious that they worked long and hard to design a new salary schedule that would make the current employees' move from the old compensation plan to the new salary schedule seamless and painless. In spite of the instant dispute, they are, again, to be commended.

One salient feature of the salary schedule was that in moving to the new salary schedule an employee would not suffer a loss in his/her daily salary. Article 23.10.C clearly stated that "no teacher will be paid below his or her current daily rate salary earned on March 31, 2006". To insure this would happen in an equitable manner, the parties include, in the provision, a formula employees could use to calculate their daily rate. The provision specified that an employee first be placed on the salary schedule, i.e. a Range/Step, based on his or her salary as of March 31, 2006. Article 23.10. H served to buttress an employee's initial placement by stating "Current DJJ, CEA Unit employees who were initially placed on the salary schedule, based upon salary, establishes the individuals' qualifications for that range". Thus, the clear language of the MOU provided for an employee's initial placement on the salary schedule, i.e.

his or her salary as of March 31, 2006.

Another salient feature of the salary schedule, found in Article 23.11, was that, following his or her initial placement on the salary schedule, an employee could advance across the salary schedule, by Range, with the attainment of acceptable credits, that included new college credits. In addition, vocational education instructors could receive one unit of semester credit for each forty-five (45) hours worked in industry.

The Union's contention that the State unilaterally modified Article 23 by excluding trade work experience and college credits earned before issuance of a preliminary credential-Bachelor's Degree was not supported by the clear language of the MOU. The language of the MOU was clear. After initial placement on the salary schedule an employee can, in the future, move across salary Ranges on the schedule with attainment of credits earned after initial placement.

In addressing attainment of credits for advancement, the negotiated language used by the parties was replete with words referring to the future, i.e. "Ranges are attained" (Article 23.10.3.G); "employees Initially place...will move in range upon completion of" (Article 23.10.3.H); "Acceptable credits will be limited to ... credits earned.... vocational education teacher shall receive one unit of credit for hours worked...work credits ... will not be a repetition of previously acquired credits"; "Continuing education units required ... are offered by approved providers with prior approval from an immediate supervisor".

The Union also contended that the State violated the MOU by requiring that hours worked in industry consisted of non-paid work experience. Nothing was placed into the evidence record to support this contention. By implication and logic, an employee cannot earn credit for advancement for in-trade work experience that was paid for by the State or while the

employee was, at the time of the training, receiving pay from the State. However, nothing in the MOU prevents the employee from earning credits for advancement if the in-trade work experience was obtained while off the clock, not paid for by the State, and the employee had obtained prior approval for the training.

Therefore, for the reasons discussed in the foregoing, the conclusion of the Arbitrator is that the State did not violate Article 23. The grievance is denied.

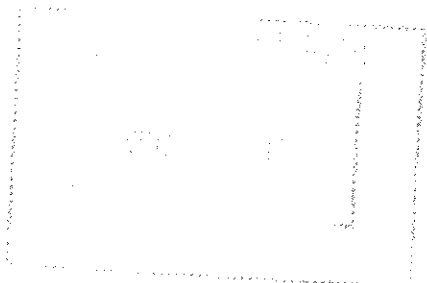
AWARD

The Grievance is denied. The State did not violate the MOU and the Salary Schedule of the MOU when it refused to give credits for salary purposes (placement/advancement) to Unit 3 Vocational Teachers for the following reasons:

- A. Requiring that credits be earned post-preliminary credential – Bachelor's degree.
- B. Requiring that credits for hours worked in industry consist of non-paid work experience.


C. ALLEN POOL, Arbitrator

DATE: March 19, 2010



Proof of Service by Mail

STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

)

I, the undersigned, say: I am a citizen of the United States of America and a resident of the County of Monterey; I am over the age of eighteen (18) years; and I am not a party to within action of proceeding. My business address is P.O. Box 2591, Monterey, California 93942.

On March 19, 2010, I served the within

Arbitrator's Award/Opinion in the matter of:

SEIU Local 1000 v. CDCR/DJJ (DJJ Vocational Instructors)
SEIU Case No. 07-381-SARB
DPA Case No. 07-03-0031

on the persons indicated below, by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid in the United States Mail at Monterey, California, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 19, 2010 at Monterey, California.




C. ALLEN POOL
Arbitrator