JERSEY SHORE AREA SCHOOL DISTRICT,	:	IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	
	:	
vs.	:	NO. 04-00,034
	:	
JERSEY SHORE AREA EDUCATION ASSOCIATION,	:	CIVIL ACTION - LAW
Respondent	:	APPEAL FROM ARBITRATION

Date: May 26, 2004

OPINION AND ORDER

The matter before the Court is the appeal from an arbitration award filed January 7, 2004 by the Jersey Shore Area School District (the "District"). The District is seeking to reverse an award rendered by an arbitrator, William Caldwell, dated December 8, 2003 (the "Award"), which ruled in favor of the Jersey Shore Area Education Association (the "Association") on the interpretation of a Collective Bargaining Agreement ("CBA") between the parties for the period of July 1, 2001 through June 30, 2006. The Association filed an Answer to the appeal January 13, 2004. Following a conference with counsel on February 5, 2004, it was determined that the matter could be decided by legal argument and the briefs of the parties. Briefs were submitted and argument was held on April 6, 2004. Upon consideration of the matters set forth in the Petition, the Answer, the briefs, and argument of the parties, this Court concludes that the decision of the arbitrator must be upheld.

Factual Background

The District and Association engaged in arbitration related to the application and interpretation of the CBA with respect to the calculation of wages in the second year of the contract. This was after the grievance procedure set forth in the CBA did not resolve the

issues. William Caldwell was selected as the arbitrator in accordance with the CBA provisions. The arbitrator's Award is set forth as Exhibit "B" to the Petition.

The grievance brought before the arbitration arose from a disagreement between the District and the Association over the interpretation of Article XI, Wages of the CBA. Under the terms of the CBA, the parties generally agreed that wage costs to the District would be set based upon the total compensation being paid as of June 30th of each year, with that wage cost to increase by any increase in the number of positions (stated as full-time equivalents) and a set percentage in each contract year. The Association was to have the right to apportion the total compensation the District was required to pay by establishing a salary matrix, that is, by setting salary schedules, which would apportion the total monies available for compensation among its members based upon longevity of service and other variables. The salary distribution schedule was to be formulated by the Association based upon the teachers who were to be employed by the District as they existed on the first Monday of August each year.

In the first year of the contract, 2001-2002, teacher salaries were set in accordance with the procedure set forth in the written language of the contract. In 2001, the total salaries as of June 30th ($10,561,598) were increased by the additional full-time equivalent positions added (1/2) and the 3.25% increase provided for that year by the CBA. As a result, $344,049 was available to increase salaries in 2001-2002. During that school year, the District realized the CBA salary expenses were excessive and advised the Association that beginning in the next year the total salaries being paid as of June 30th, which were to be used as the base for increment in the next year, would be adjusted downward by deducting from the base the

salaries of teachers who would take retirement as of June 30th, the end of school year date. The Association disagreed, which led to the grievance and arbitration.

The CBA

Specifically, the CBA provision in controversy provides in relevant part as follows:

> Section 11.01 – Professional Compensation
>
> The professional compensation reflected in Appendix A to this Agreement constitutes salary schedules and rates in effect during each of the five years of this five-year contract. Salaries will be increased at the inclusive rates listed below. The rates indicate the total cost to the School District, and any step increments are included in the rates.
>
> | | |
> |---|---|
> | 2001-2002 | 3.25% |
> | 2002-2003 | 3.50% |
> | 2003-2004 | 3.50% |
> | 2004-2005 | CPI + 1% with minimum 2.5% and maximum 3.5% |
> | 2005-2006 | CPI + 1% with minimum 2.5% and maximum 3.5% |
>
> Based on:
>
> - Percentage will be applied to the total teacher salaries on June 30th of the year just completed. (Schedules will be decided using the BS and MS column.)
>
> - The matrix that exists on the first Monday in August will be used to determine the salary.
>
> - If additional positions are added for the new school year the FTE (full time teacher equivalent) will be added to the June 30th total. Any positions still open will be calculated at step 3B for the purpose of developing a salary schedule. . . .
>
> - The year the vocational staff is added the salaries will be decided prior to including the vocational staff. The

vocational staff will then be placed properly on the scale and thereafter included in the matrix.

- The Association will decide the distribution, with approval by the board, across the matrix using the following priorities.
  - Move staff
  - Adjust the top step at least at the inflationary rate
  - Balance the increments between the bands
  - The matrix will be presented to the superintendent by the Association president

Collective Bargaining Agreement, pp. 21-23, Exhibit A to Petition

The Arbitration Award

The position of the parties before this Court is the same as it was before the arbitrator. Quoting from the Award the following is a statement of their positions:

Position of the Association

The Association argues that the parties were far apart in positions on wages, when the District proposed in December of 2002, a compromise, which included the essential elements that are now contained in the CBA. During the discussions concerning the District's proposal, the negotiation team requested an interpretation of the employer's position concerning the total increase in wages. The illustration provided by the employer indicated that the percent would be applied to the total payroll as of June 30th. There were no discussions or indications by the District that attritional savings would be considered. The District proposal makes no reference to a second calculation in August. The CBA is clear and unambiguous that the total increase in cost for wages is the percentage in the CBA applied to the total cost of wages from the previous year. The purpose of the second calculation in August is to allocate the total cost of wages calculated in June, to the employees who will be working in the following school year. The August calculation is necessary to allow for changes with regard to continuing employees who have attained degrees as well as new

employees who should be placed on the appropriate step of the salary schedule. The Courts have found that contracts, which are clear and unambiguous, must be accepted. Further, Courts have found that joint interpretation of contracts carried out by the parties prior to any dispute give further reason to accept the clear language of the agreement.

For all of the above reasons, the arbitrator should sustain the grievance and direct the employer to pay the salaries set forth in the Association's salary schedule of August 8, 2002, and for the remainder of the contract consistent with the procedure followed by the Association for the 2001-02 and 2002-03 school years together with 6 per cent interest on all unpaid salaries as mandated by statute.

Position of the School District

The School District argues that the savings from retirements and resignations, i.e. attritional savings, must be included in the second calculation called for in the CBA. The CBA calls for a two step process, one calculation to be made in June and another in August. The agreement therefore anticipates that there will be a change between the first and second calculation. Since all the language in the agreement must have meaning, then the attritional savings were intended to be utilized in the second calculation. The utilization of attritional savings makes eminent sense and is required by the CBA. No district in the County or in fact in the Commonwealth gives away its attritional savings. To give the attritional savings, there must be a language in the agreement requiring such. In addition, the employer and Association negotiated increases in retirement incentives. The employer would have no reason to bargain such retirement incentives if attritional savings were not available. Finally, in an attempt to resolve the dispute, in good faith the employer was willing to wave the mistake that occurred during the first year of the CBA. It was of no avail as the Association wants the privilege of increasing retirement incentives and also demands the attritional savings. The association cannot claim to have both, since mutuality must exist in bargaining.

Therefore, for the reasons stated, the arbitrator should deny the grievance.

Award, pp. 2-4.

The foregoing makes it clear the arbitrator knew and understood the parties' arguments, a prerequisite to making a rational decision.

In reaching his decision, the arbitrator first reviewed the language of the CBA. The arbitrator in doing so found that at "first glance" the provisions of Article XI, Section 11.01 quoted above appeared to be "not only clear but also very specific." Award, p. 4. The arbitrator went on to state about the CBA language clearly and specifically provided for the following: the total cost of wages for the next school year would be based upon the total cost of wages as of June 30th of the previous year plus a percentage increase; the CBA also provides for the adding and subtracting of monies from the June 30th total based upon changes in the number of teachers, that is, the full-time equivalency of the number of teachers or FTE. ***Ibid.*** The arbitrator also noted in his discussion that in the first year of the Agreement, during the summer of 2001, the CBA language was followed precisely to establish the total cost basis for wages to be paid by the District in 2001-02. ***Ibid.*** Specifically, the arbitrator pointed out the language of the CBA was applied in this manner: the District determined its payroll that existed on June 30, 2001, added a ½ FTE, included the 3.25% increase and determined that $344,049 was available for salary increases; the salary schedule of the allocation of the total amount of wages among the various teachers was then created by the Association allowing for staff movement, an acceptable rate at the top step and balanced increments; and, this salary matrix was the presented to the District. ***Ibid.*** The arbitrator deemed that all of this procedure had been in accordance with the CBA as written, which confirmed its meaning. ***Id.***, at 4, 6.

The arbitrator then reviewed the CBA language he found to be very specific, including that: the CBA provided for specific rates of increase for each of five years of CBA's

existence, that the prior year's June 30th salary total was to be used as a base; FTEs would be added or deleted as appropriate; and, the Association was to construct the salary schedule in accordance with specific guidelines.

The arbitrator's discussion points out that despite the specific language of the CBA, which details the compensation setting procedure, there was absolutely no mention of an adjustment or consideration to be given to "attritional savings." ***Id.***, at 6. The arbitrator also reviewed the "ancillary" evidence presented by the parties that had led to the formulation of the CBA. *See* Award, pp. 5, 6. The arbitrator specifically noted that the District's original proposal to utilize this compensation setting formula contained no mention of attritional savings. The arbitrator also noted that the District's proposal to recalculate the base salary for purposes of increases for each year of the contract was unusual. This proposal deviated from the usual approach in such contracts by which subsequent annual raises would be based upon the cost of the initial matrix. The usual approach would obviously allow the District to gain the benefit of any attritional savings (without the use of any specific language). The arbitrator further pointed out that during the negotiations the Association requested the District to state what it meant in terms of the total monies available for salaries in the proposal. The District's response advised the Association that it had meant the total cost of the schedule each year on June 30th, increased by the agreed-upon percentage, would be available. The arbitrator found that the evidence from the negotiations reinforced the clear language of the CBA. The arbitrator found the testimony by the District to be inconclusive concerning any discussion of attritional savings at the negotiation table, and further, that it did not appear in any of the proposals or tentative agreements that attritional savings were be to retained in favor of the District.

The arbitrator specifically rejected the District's argument that inasmuch as the CBA provided for a second day for the creation of the salary schedule, the first Monday of August, that attrition (by implication) was to be included in the CBA wage calculation. In supporting his rejection of the District's argument, the arbitrator stated:

> Both parties well know that two elements are necessary to produce a viable salary schedule. First, one must know the total monies that are available for salary and that is provided clearly in Section 11.01. Secondly, one must know the positions of all members of the bargaining unit. Certainly changes occur between June 30 and the start of the next school year. Bargaining unit members leave service through retirement, acceptance of other positions, move to other locations, death, etc. Some teachers complete advanced degrees and new and experienced teachers are hired. The August calculation was designed to estimate the work force at the beginning of the school year and apply the monies available to that staff. This is reflected in the CBA, which provides for estimated salaries for open positions. The language is clear and unambiguous and is reinforced by the ancillary evidence. There is no provision relating to the employer's retention of attritional savings. Finally, the actions of the parties in carrying out the language of the CBA during the summer of 2001 are further confirmation of the meaning of Article XI.
>
> The negotiations relating to the retirement incentive may or may not have resulted in mutual benefit. Neither that issue nor any other issue negotiated in the current CBA would provide an unwritten benefit with regard to Article XI.

Award, pp. 5, 6.

Discussion

The law which governs this Court's determination as to whether the arbitrator's Award must be upheld or vacated is very clearly set forth in a recent decision of our Pennsylvania Supreme Court in the matter of ***The Office of the Attorney General v. Council 13, AFSCME, AFL-CIO***, 844 A.2d 1217 (Pa. 2004). Both parties agree with the Supreme

Court's statement in ***Council 13*** that the standard of review to be utilized when a court reviews a grievance of a labor arbitration award is the "essence test." The analysis of Pennsylvania law set forth in ***Council 13*** makes it clear that in determining if the essence test is met, that the Court must apply a differential standard of review in evaluating the arbitrator's decision. The Supreme Court stated in ***Council 13:***

> '. . .(A)rbitration is a favored means of resolution of labor disputes, *a fortiori*, courts should play a limited role in resolving such disputes. . . .' (citation omitted) For this reason, it is the very differential standard of review that is the essence test that is to be utilized in analyzing the arbitrator's award and the court will vacate that award only where it 'indisputably and genuinely is without foundation in or fails to logically flow from, the collective bargaining agreement.' ***Cheyney University***, 743 A.2d at 413.

844 A.2d at 1223.

The essence test has two prongs. The first prong is to determine whether the issue submitted to arbitration is encompassed within the terms of the collective bargaining agreement. ***Council 13***, 844 A.2d at 1222. Secondly, whether the arbitrator's award can be rationally derived from the collective bargaining agreement. ***Ibid.*** The District and Association both acknowledge that the first prong has been met.

As to the second prong of the essence test, the District argues that there was no rational basis for the arbitrator's interpretation because it could not rationally be derived from the CBA. The District contends that the arbitrator's interpretation was irrational because "the arbitrator exceed [sic] his power and authority when he effectively wrote the requirement of an August meeting and matrix proposal out of the CBA." District's Brief filed 3/1/2004, at 9. The District further argued that if parol evidence was to be used then the parol evidence sustained its position that the interpretation of the arbitrator did not take into account that the Association

wanted retirement incentives at the bargaining table and therefore the Association meant for the District to receive the mutual benefit of attritional savings in compensation resulting from those retirements. ***Ibid***.

The District's argument made to the arbitrator and this Court seems premised upon the fact that each provision of this CBA or any labor agreement implies that there is a mutual benefit to the parties. As would pertain to this specific CBA, the District argues it was to receive in return for offering the benefit of retirement incentives in Article XVIII, the mutual benefit of reducing the total wages to be paid under the terms of the contract in Article XI. The arbitrator obviously rejected this contention. The arbitrator appropriately reasoned that negotiations concerning the retirement and incentive issue did not necessarily have to result in a mutual benefit.

Moreover, this Court can think of at least two mutual benefits the District obtained from the CBA, if in fact a mutual benefit must be presumed to arise under a CBA. The District obtained the benefit of a long-term contract running from 2001 through 2006, or 5 school years, where the wage issue would not be subject to dispute and the education of the students would not be interrupted by strikes over wages and other teacher-related issues covered by the CBA. It also had the benefit of knowing the exact amount of money that was going to be necessary to pay teachers' salaries as of June 30th and it could then timely set its school budget for the ensuing fiscal year beginning July 1st. In addition, it is obvious that many other provisions of the CBA's twenty-one Articles would bestow some benefits upon the District. It is not necessary in any labor situation that each Article confer a distinct benefit to both sides. It

is the overall labor contract which the parties mutually find beneficial that is solidified by collective bargaining agreements.

The CBA does provide for a Retirement Incentive Program in Article XVIII. The incentives include payment of a 45,000 lump sum and for unused sick leave and payment of health insurance to retiring employees, 50 years and older who have 15 years of service. To be eligible, however, the retiring teacher must submit an irrevocable retirement notice before April 1st of each year and must retire effective either "the last day of the school term or the 1st day of July immediately following the notification. . . ." CBA Article XVIII, pp. 31, 32. This provision makes it clear that by offering the option of retiring effective July 1st the district surrendered the right to have the retiree's salary excluded from the June 30th payroll used as the compensation base in Article XI. If the retirement incentives had been linked to the compensation base certainly the Association would not have overlooked utilizing consistent dates and explicit language.

The dates used in the retirement incentive provisions further undermine the District's argument that the only reason for the second meeting (the first Monday of August) was to determine who had retired so that the District could get the benefit of the retirements induced by the CBA. In fact, those retirements and corresponding salaries would have been known as of April 1st and could have been calculated and deducted as of June 30th if such was the intent of the CBA. That deduction was not the CBA's intent.

Nevertheless, early retirements may be a benefit to the District, even though a reciprocating mutual benefit is not required as a prerequisite for the validity of these incentives. The Retirement Incentive Program does encourage higher salaried employees to retire, and

while the benefit to the District is not a direct reduction in its wage base there very likely is replacement of these older employees with younger ones who may be less prone to illness and absence, which would decrease the total of accumulated sick leave, thereby reducing the costs of insurance and substitute teachers. Whether this is so or not is really immaterial since the CBA is clear and unambiguous in the Article XI provisions concerning the setting of salaries.

The Court finds the arbitrator had a clear and rational basis for his interpretation of the CBA. His analysis, quoted above, is a rational interpretation of the words contained in the CBA, which are capable of no other meaning. In essence, the District had argued that it was so irrational for the District to agree to the words in the CBA without the words, "The base salary as of June 30th will be reduced by the total salaries then being paid to any teacher who retires during the school year ending June 30th," that such words must be implied and read into the contract. The arbitrator rationalized to the contrary.

Certainly the District was not acting irrationally when it agreed to the CBA. It may be that the District negotiators overlooked a significant provision. Perhaps they made a mistake in their own calculations as to the total compensation costs of the life of the CBA. Yet, clearly the arbitrator found they meant something different from the usual contract when they proposed that the base salary for increase purposes would be adjusted in each year of the five-year contract. This was an obvious departure from the usual way in which business had been done in the past between the parties and departure from the usual way of negotiating such contracts across the state. When the District made this proposal there is no reason for the Association to have assumed that the usual benefit for retirement incentives was to be utilized, especially when the District gave a specific statement to the Association that it would make

awards for salaries a sum equal to the total salaries paid as of June 30th plus the contracted increase.

In this case, the arbitrator found it notable that the District's position was contrary to both its representation to the Association as to total salaries before the CBA was finalized and its conduct in the first year the CBA was applied. This is certainly a clear statement of the District's intent as of the time the CBA was entered into.

Nevertheless, there was no need to consider any intentions of the parties that were stated in negotiation. It was not error for the arbitrator to consider such parol evidence in his analysis even though the CBA language was unambiguous. The arbitrator did not use the parol evidence to alter the CBA. Instead, the arbitrator, in properly reviewing the contentions of the parties, and particularly in order to give the District every opportunity to prevail under its theory of the contract, looked at the parol evidence of the negotiations and initial practice of the District and determined both also supported the clear language of the Agreement.

This Court agrees with the arbitrator's decision. As reasoned by the arbitrator there is no patent or latent ambiguity in the CBA. The District's argued interpretation of the CBA would require the CBA to be rewritten to specifically provide that the total monies available for salary as initially calculated on June 30th must then be adjusted downward by the total of salaries then being paid to teachers who had considered retirement or perhaps considered such retirement by the first Monday in August. It would have been improper for the arbitrator to have written into the CBA such a provision. Instead, the CBA clearly states that the teaching staff as it exists on the first Monday in August will be put into a salary matrix in

order to allocate the June 30th total base salary plus the percentage increase among the teachers who would be employed by the District in the upcoming year.

The argument of the District asserts that the CBA language requires two separate discussion and calculation points, one at the end of the school year (June 30th) in order to calculate the dollar amount for the increase and a second at the beginning of the next school year (first Monday of August) to apply "that increase to the then existing actual salary matrix." District's Brief filed March 1, 2004, p. 4. However, the second bulleted point of §11.01 of the CBA (page 3, *supra*.) states only "The matrix that exists on the first Monday in August will be used to determine the salary." The argument as set forth in the District's brief implies the word "matrix" includes "total available compensation so that the second bulleted point of §11.01 (page 3, *supra*.) the following words would have to be added or inferred: "with the total teacher salaries of June 30th being reduced to the total salary of teachers who have retired between June 30th and this date." In the first year of the CBA the parties met as indicated on the two separate dates. At the first meeting, they applied the fixed percentage to the salaries that existed as of June 30, 2001 in order to compute a figure for increases. In August, the Association applied that increase to a matrix and submitted it to the District in August as required and obtained approval.

Matrix is appropriately defined in these circumstances as follows: "That within which, or within and from which, something originates, takes form or develops;….a set of numbers or terms arranged in rows and columns between parenthesis or double lines…. Webster's New World Dictionary, Second College Edition, p. 875, 1984. Matrix as used in the CBA obviously refers to the listing of the teacher-employees along with their appropriate

longevity, degrees, and other relevant information. It is to that matrix that the salary dollar amount that is available for increases as calculated on June 30th is to be applied. The District recognized this in its argument. The fact that matrix is not to include the total amount of salaries is referenced in the terms of the Agreement itself when it provides that, "The Association will decide the distribution, with approval by the board across the matrix using the following priorities." CBA, Article XI, *supra*. It is clear from this term that matrix means those individuals or table of individuals who make up the teaching staff among whom the total salaries are to be apportioned.

Even if the term matrix were to be defined so as to assume the total salary figure is included within the term matrix, there is nothing in the CBA that states that after the June 30th total dollar amount for salaries available to be calculated it is to be reduced by the salaries of the retirements occurring between June 30th and the first Monday of August. In fact, to do so would seem in and of itself to be irrational. The District's argument recognizes that the salary amount, which exists at the end of one school year, with the appropriate percentage increase added to it, will be apportioned among those who are employed at the beginning of the next school year. It is clear that the parties contemplated that there would be an increased amount of money available for salaries. If the District's argument were to be accepted, it certainly is feasible that in the right circumstances and the right number of retirements at a high salary scale the actual money to be allocated along the same number of staff (assuming the retired individuals are replaced) in the second and subsequent years of the contract would be less than in the preceding year. There is no indication whatsoever that the Association or the District contemplated that the Association would have less money available to pay the teaching staff rather than more.

Further, it is abundantly clear that the CBA does not state that the total teacher salaries on June 30th are to be reduced to correspond to the matrix that exists on the first Monday in August.

The District argues that unless total compensation is to be reduced in August, the August meeting has no purpose. This argument ignores the fact that the distribution of the total compensation must be reported to the District by the Association, since unlike the usual contract, a detailed apportioned matrix is not part of the CBA. The District recognizes in its brief the obligation of the Association to present their apportionment to the District after the total compensation has been put into specific salary schedules, a logical requirement so the District knows whom to pay and how much.

The District's brief states the following:

> Unfortunately, the District did not carefully review the matrix proposed by the Association, and the testimony explained that oversight. The Association did no adjustment from the June matrix to the August matrix, despite substantial retirements. The Association's matrix thus gave none of these savings to the District.

District's Brief, s*upra*. at p. 4.

This Court can believe that the District did not make a "careful" review of this first matrix, because the CBA makes it clear the District did not wish to involve itself in apportioning the total salary amounts among its teachers. However, this Court cannot believe that if the District had meant the CBA to be interpreted as it now argues, the District would not have recognized the June 30th total salaries had not been adjusted downward and balked at the total amount being paid since it was this <u>total</u> that was important to the District.

There is another practical reason that the District's argued interpretation is not a rational interpretation of the CBA. The District further states in its argument the salaries at the

end of the school year are calculated to determine the amount available for increases so they can be applied to the then-existing actual salary matrix at the beginning of the next school year. District's Brief, *supra* at p. 4. This in fact is what the arbitrator's award puts into effect. If, in fact, as the District contends salary reductions for retirements occurring between June 30th and the start of the school year were to be made, the Association would have an unrealistically short and limited time in order to calculate an appropriate distribution schedule since the amount of money available to distribute would not have been made certain on June 30th, but would only have become certain on the first Monday in August. This would create an impractical situation to expect an almost instantaneous distribution schedule to be created. That short time frame is certainly one that no one signing onto the CBA would have reasonably anticipated.

Finally, this Court must note it is somewhat confused by the argument presented by the District in its brief, at page 5, where it argues there was testimony presented to the arbitrator that during the Contract negotiations:

> (T)he District understood and explained at the bargaining table that the Association would be entitled to receive the benefit of the attritional savings that occurred between June and August, but that, in August, attritional savings would inure to the benefit of the District.

District's Brief, *supra*, at p. 5. In essence, this is what the arbitrators' award provides. The Association gets the benefit of attritional savings occurring between June and August by virtue of the fact that those attritional savings are not deducted from the June 30th total salary costs. After August, attritional savings would inure to the benefit of the District. It is not obvious on the basis of the evidence before us to determine what that benefit may or may not be, especially dollar wise. It would appear, however, that if an individual teacher retires during the school

year who is at a high-salaried position, and assuming the replacement teacher would be at a lower salary, the District then gets the benefit that its total salary paid is going to be reduced for the remainder of the school year.

The District is also wrong when it states in its brief and argument that there was to be a new calculation in August. No place in the CBA does it say that the total amount of monies available for payment of compensation are to be recalculated in August. Also contrary to Defendant's position that if the total salaries are not to be reset in August, then there is no reason for an August meeting, the CBA provides an August meeting is necessary in order for the District to approve the manner in which the Association has distributed the salaries over the matrix. The CBA specifically reserved the right to have the Association determined matrix "presented to the superintendent by the Association president." CBA, *supra*.

Similar to the reasoning of the arbitrator, this Court finds support for the clear words of the CBA in the testimony relating to the negotiation procedures and statements that add to this provision of the CBA. It was the District which came forward with the compensation proposal and a method of calculating available total monies for compensation. It was this proposal that the Association accepted. It was this proposal the District willingly followed in the first year of the CBA. It was rational for the arbitrator to hold the District to its proposal and to the terms of the CBA.

Even if this Court did not agree with the decision of the arbitrator it is clear that it still could not vacate the arbitrator's award. The arbitrator carefully considered all of the evidence and made an interpretation of the CBA based upon its specific terms. The interpretation is not irrational. In order for this to be declared an irrational decision it would

have to be stated that for every benefit a collective bargaining agreement gave to an employee that the employer in return received a specific off-setting benefit. That in and of itself is not a rational presumption. The various give and take in labor negotiations often results in one party agreeing to terms and relinquishing a particular position so that the negotiations can be brought to a conclusion and an overall agreement finalized.

Accordingly, the District's appeal is DENIED.

O R D E R

The Appeal of the Jersey Shore Area School District from the Arbitration Award dated December 8, 2003, filed January 7, 2004, is DENIED. The Arbitrator's Award is SUSTAINED and shall be implemented.

BY THE COURT,

William S. Kieser, Judge

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