IN THE MATTER OF ARBITRATION BETWEEN

INDEPENDENT SCHOOL DISTRICT NO.706 VIRGINIA, MINNESOTA	)	**BMS CASE NO. 08-PA-1178**
"EMPLOYER"	)	**DECISION AND AWARD**
And	)	
AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, LOCAL UNION NO. 85	)	**RICHARD R. ANDERSON ARBITRATOR**
"UNION"	)	**JANUARY 12, 2009**

JURISDICTION

The hearing in the above matter was conducted before Arbitrator Richard R. Anderson on December 18, 2008 in Virginia, Minnesota. Both parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced by both parties and received into the record. The hearing closed on December 18, 2008 at which time the record was closed and the matter was then taken under advisement.[1]

This matter is submitted to the undersigned Arbitrator pursuant to the terms of the parties' collective bargaining agreement, hereinafter the Agreement, which is currently effective from July 1, 2007 through June 30, 2009.[2]

The relevant language in Article IX of the Agreement [GRIEVANCE PROCEDURE] provides for the filing, processing and arbitration of a grievance including the authority of the

[1] The parties waived post-hearing briefs.
[2] Joint Exhibit No. 1.

arbitrator. The parties stipulated that this matter does not involve contract arbitrability or any other procedural issues; and that it is properly before the undersigned Arbitrator for final and binding decision on the merits of the grievance.

APPEARANCES

For the School District:

John M. Colosimo, Attorney
Phillip Johnson, Superintendent
Paul Cerkvenik, School Board Member
Tim Riordan, School Board Member
Dennis Hendricks, School Board Member
Spencer Aune, Business Manager

For the Union:

Dean Tharp, Staff Representative
Ida Rukavina, Staff Representative & Lead Negotiator
Steve Giorgi, Council 65 Assistant Director & Lead Negotiator
Tom Tammaro, Bus Driver, President & Negotiating Team Member
Liz Stevens, Vice- Para Professional, President & Negotiating Team Member
Brian Morgan, Grounds Keeper & Negotiating Team Member
Jerry Rogers, Lead Custodian & Negotiating Team Member

THE ISSUE

The parties did not stipulate to the issue. The Union phrased the issue as, "*Did the Employer violate the collective bargaining agreement when all full-time employees (except one employee) did not receive the full wage adjustment of 3.5% in 2007, 1.8% in 2008 and commensurate full back pay negotiated for all bargaining unit members? If so, what remedy shall apply?*" The District phrased the issue as, "*Whether the District violated the collective bargaining agreement by paying the employees affected by the grievance an hourly rate rather than a salary rate.*"

BACKGROUND & FACTS

Independent School District No. 706, hereinafter the District, is a public education institution located in Virginia, Minnesota. The American Federation of State County and Municipal Employees Local, Union No. 85 (AFSCME), hereinafter the Union, represents a unit consisting of support staff employees including inter alia custodial and maintenance employees, bus drivers, secretaries, licensed practical nurses and education para-professionals. The Union has represented this unit for approximately 50 years. Eighteen of the approximate 75 employees in the unit are full-time employees while the remaining are part-time employees.

Prior to the expiration of the 2005-2007 predecessor Agreement[3], which was set to expire on June 30, 2007 [4], the Union through Staff Representative Steve Giorgi sent the District a "Notice of a Desire to Negotiate" on April 4th.[5] On June 13th, Giorgi sent Superintendent Phil Johnson a list of six Union proposals which included a provision for an across–the-board wage increase of 4% effective July 1st and another 4% effective July 1, 2008.[6] On August 20th Johnson e-mailed Giorgi the District's proposals, which included a proposal that, "*The school board is notifying the union that the past practice of stipulating a monthly salary for full-time employees covered by the agreement is stopping effective the settlement of the agreement. The hourly wage scale only will be a part of this agreement, no column will be provided for time and one half or a monthly wage.*"[7]

[3] Joint Exhibit No. 2.
[4] Unless otherwise indicated all future dates are in the year 2007.
[5] District Exhibit 1-5.
[6] Employer Exhibit No. 1-7.
[7] Employer Exhibit No. 9.

Evidence adduced at the hearing disclosed that sometime in 2006, the District discovered that the amount of money budgeted for negotiated wage increases had a shortfall. In past contracts, the regular wage rates for full-time employees were listed both monthly and hourly on the wage scale.[8] While the hourly rate was correctly listed in each contract, it was discovered that the salary rates for full-time employees were inflated in every contract dating back to the late 1980's and perhaps as far back as the late 1960's.

According to the testimony of Business Manager Spencer Aune, certain full-time employees had been overpaid because their monthly salary was based on 22 work days a month or 264 (12×22) days a year rather than the number of actual work days, which was normally 261 days a year. These employees were paid bi-monthly based on their monthly salary rate (264÷12) rather than on their actual hourly rate, which should have been 261÷12.

Part-time employees were not involved. There was no reference to a monthly salary rate for part-time employees in prior contracts; however, they were also paid bi-monthly. Their pay was based solely on their hourly rates for actual hours worked during each bi-monthly period.

This error was never conveyed to the Union, rather, the District decided to correct the problem during the 2007-2009 negotiations by eliminating any reference to a monthly salary rate in the new agreement.[9] This would result in monthly wage rates being based on the hourly wage rate rather than a monthly salary.

[8] Overtime hourly rates were also listed, however, this elimination is not an issue in this matter and no reference will be made to its elimination further herein.

[9] Johnson testified that the District felt it could not correct the problem unilaterally, and that any changes had to be negotiated.

The initial bargaining session was held on August 22nd. During this session, various witnesses from both parties testified that the Employer's proposal to eliminate any reference to a salary scale in the new agreement was not discussed by either party. Witnesses for the Union testified that the reason being was they felt the proposal was merely "housekeeping" and would have no affect on full-time employees' wage rates or their pay in the new Agreement. The fact that there were no discussions over the District's proposed elimination of the monthly salary rate is corroborated by the Union notes of the session [10] and a "Summary of Negotiations" prepared by the Union on September 18th.[11]

The second bargaining session was held on October 3rd. Prior to this meeting, the Union pre-negotiating notes disclose that it agreed to the District's proposal to drop the reference to the salary schedule in the wage scale in the new agreement. Although the Union conveyed its agreement to eliminate this item from the wage scale to the District during this negotiations session, witnesses from both parties testified that the Union never inquired into the District's reason for this proposal since once again they assumed that it was merely a "housekeeping" matter.

On October 30th, Johnson e-mailed the Union a document outlining the current status of negotiations.[12] Johnson informed Giorgi in this submission of the reason behind the District's monthly salary elimination. The document stated, "*AFSCME is not objecting to dropping this past practice. However the district negotiators were caught off guard by the quick pace which AFSCME negotiators conceded on many issues. We have not yet had*

[10] Employer Exhibit No. 1-10.
[11] Employer Exhibit 1-13.
[12] Union Exhibit No. 5.

an opportunity to explain the reason this past practice was being dropped. There was a district clerical error in the monthly schedule that we have discovered and traced back to at least 1988, and the error resulted in some employees being slightly overpaid in past years." The Union did not respond to the District's explanation.

The Union prepared a "Summary of Negotiations" report for the December 19th session wherein it stated, "*Changes to the wage section that will here forth only reflect the hourly rate of pay was agreed upon by the parties (TA 8/11/07).*"[13]

A tentative contract agreement was reached at this session. Witnesses from both parties testified that the Union never inquired into the District's October 30th explanation for eliminating a reference to monthly salaries in the wage scale of the new Agreement during this session. After this session, the Union prepared a document titled "Summary of Negotiations Tentative Agreement" that contained the parties' agreement on wage increases. In this document the Union stated, "*10. WAGES — The District has offered a settlement equal to State funding for the 07-09 cycle equal to 5.3%. The Union is acceptable to 3.5% retro to July 1, 2007; and 1.8% effective 7/1/08 on the base wage schedule for all bargaining unit positions. The parties reached a tentative agreement on12/19/07.*"

In mid-January 2008, both parties ratified and signed the Agreement, which contained the 3.5% wage increase in the first year retroactive to July 1st and a 1.8% wage increase for the second year effective July 1, 2008. According to the Wage Scale provisions of the Agreement, employees received the wage increase of 3.5% based upon the hourly rate rather than the monthly salary amount they were receiving pursuant to the predecessor

[13]Report dated December 18th. Union Exhibit No. 6 and Employer Exhibit No. 1-20.

Agreement. They also received 1.8% effective July 1, 2008 based upon their 2007 hourly rate.[14] According to unrebutted testimony of District witnesses, all prior contractual wage increases were based on the previous contract's hourly wage rate rather than the monthly salary rate reduced to hours.

When 17 full-time employees received their January 31, 2008 bi-monthly check, which was the first payroll period after the contract settlement, they discovered that the 3.5% wage increase was based on their prior hourly rate rather than their prior monthly salary rate. The Union then raised this issue with the District. Johnson responded to Union Staff Representative Ida Rukavina by e-mail on February 4, 2008.[15] [Rukavina had replaced Giorgi, who was promoted to AFSCME Council 65 Assistant Director, as the chief negotiator prior to the December 19th bargaining session.][16] In the e-mail transmission Johnson stated that,

> *This problem affects all year around employees which is two handyman/drivers and all custodial department employees with the exception of Jerry Rogers. The first payroll after our first settlement went out last Thursday. Some of the employees feel they are not being paid the agreed upon amount.*
>
> *They are being paid the agreed upon amount. Here is the long version.*
>
> *Two years ago at the end of negotiations between the district and AFSCME I noticed that there was a problem. The cost to the district of the 2006 settlement as prepared by the business manager was actually different than payroll was paying out. We discovered that since at least 1988 the district was paying more to year around full time employees than was actually agreed upon. That is the monthly rate was figured incorrectly. The actual work year might have been 260 days, 261 days or 262 days but the district was paying for 264 days. Apparently somewhere in the past a payroll person used 22 days a month times 12 months for 264 days.*
>
> *When I inquired about why the monthly and overtime rate were in the agreement I*

[14] The wage increase in 2008 would be the same whether it was calculated on a hourly rate or monthly salary rate since they were now equivalent.
[15] Union Exhibit No. 13.
[16] Exact date unknown Rukavina also attended the August 22nd bargaining session.

was informed that it was not a part of the agreement. Instead it was something computed by payroll for their convenience and just attached to the agreement. Therefore it was my belief we had a past practice and it would have to wait until negotiations commenced in 2007.

Thus number 2 for the District's first offer reads as follows;
The school board is notifying the union that the past practice of stipulating a monthly salary for full time employees covered by this agreement is stopping effective the settlement of this agreement. The hourly wage scale only will be a part of this agreement, no column will be provided for time and a half or a monthly wage.
The Union's response was verbal that they agreed to the district position on Employers #2. This meeting was dated October 3;

The District's proposal dated October 30 reads as follows*:*

AFSCME is not objecting to dropping this past practice*. However the district negotiators were caught off guard by the quick pace which AFSCME negotiators conceded on many issues. We have not yet had an opportunity to explain the reason this past practice was being dropped. There was a district clerical error in the monthly schedule that we have discovered and traced backed to at least 1988, and the error resulted in some employees being slightly overpaid in past years.*

The Union's response on their proposal dated December 18 reads as follows;
Changes to the wage section that will from here forth only reflect the hourly rate of pay was agreed upon by the parties. [TA 8/22/07]

The agreement was typed, ratified and signed by both sides.

Spencer Aune (district business manager) will sit down with Tom and show him what he and others are entitled to, what they were paid from July 1 to January 15, and what the new paycheck amount will be. If that does not ease the frustration, then we all should sit down and go over it.

During the course of the hearing the Union alleged that the District deliberately withheld informing the Union of its reason to eliminate a reference to a salary rate in the new Agreement in order to undermine the Union in negotiations. It cited the failure of the District to preserve tape recordings of its internal negotiation meetings for the two-year period mandated by the Minnesota Data Practices Act.[17] The District denied any ulterior

[17] The District had retained the tapes for a one year period at which time they were destroyed.

motive in prematurely destroying the tapes citing a lack of knowledge of the two-year requirement. In addition, various District Board Members testified that they never discussed a strategy to withhold the reason for eliminating the monthly salary rate as a bargaining ploy designed to mislead or undermine the Union.

The Union through Local President Tom Tommaro, a bus driver who was one of the affected employees, filed a grievance on February 21, 2008.[18] The Grievance form stated the contractual violation as, "*Employer violated Article 1, Article V and any other applicable articles of the contract. Employer also did not bargain in good faith when they took away wages from full time employe (sic)".* The grievance requested a remedy to "*Reinstate the wages to all full-time employees and make grievant whole."* The parties could not resolve the grievance resulting in the Union filing for arbitration on or about April 17, 2008, and the undersigned Arbitrator being informed by letter from the Union on May 8, 2008 that I had been selected as the neutral arbitrator in this matter.

RELEVANT CONTRACT PROVISIONS

ARTICLE V—WAGE ADMINISTRATION

There shall be two pay periods and paydays in each calendar month, one of which will be a partial payment.

ARTICLE XIV—DURATION

The terms and conditions of this Agreement shall remain in full force and effect for a period of July 1, 2007 through June 30, 2009 and from year to year thereafter unless either party gives notice at least thirty (30) days prior to the annual renewal date of a desire to amend or terminate this Agreement.

[18] Joint Exhibit No. 3.

ARTICLE XIX—GRIEVANCE PROCEDURE

Section A.

A dispute or disagreement over the interpretation or application of the terms of this Agreement must be filed in writing with the Employer within twenty (20) calendar days from the date that the employee knew or should have known of the event that first gave rise to the grievance. Failure to so file a written grievance shall constitute a waiver of the grievance and any continuation thereof. The Employer and an aggrieved employee or the employee's representative shall attempt to adjust all grievances in the following manner:

WAGE SCALE—2005-2007 AGREEMENT [SEE ATTACHMENT A]

WAGE SCALE—2007-2009 AGREEMENT [SEE ATTACHMENT B]

UNION POSITION

The Union's position is that the District violated the Agreement by not implementing the July 1, 2007 3.5% negotiated wage increase based on employees' 2006 monthly salary rate, which then affected the July 1, 2008 1.8% wage increase. The Union argues that:

- The parties negotiated a 3.5% wage increase for the first year of the Agreement and 1.8% for the second year. These negotiated wage increases should have been implemented based on the predecessor Agreement's monthly salary rate rather than its hourly rate.
- The District failed to implement the wage increases based on the 40+ year past practice of applying all negotiated wage increases based on monthly salary of the expired Agreement rather than the hourly rate. This failure affected 17 full-time employees.

- The difference in the contractual hourly rate that the Employer had been paying employees in the past was approximately 1.5% lower than the contractual monthly salary rate.
- The negotiated wage increases required specific wage increases. As a consequence of the District's action, those 17 employees received less than the negotiated wage increases.
- All employees have historically been paid on a bi-monthly schedule with full-time employees' bi-monthly amount having been based on their contractual monthly salary rate. The District is still paying all employees monthly on a bi-monthly schedule; however, the full-time employees' monthly salary is now calculated on the contractual monthly hourly rate. What the District did was convert the previous contractual lower hourly rate back to a monthly rate and then continue to pay full-time employees the same as before making the "correction".

The Union further alleges that the District engaged in bad faith bargaining by the following:

- The District failed to disclose its discovery of the difference in the contractual monthly salary rate and the contractual hourly rate from the Union in order to affect negotiations for a new Agreement and undermine the Union in the negotiations. Further, it withheld how this mistake would affect employees in the new Agreement.
- The District intentionally misinformed the Union by telling the bargaining committee that only a "few" or "some" of the full-time employees would be affected by the

conversion to a strict hourly rate in the new Agreement, when all but one were affected.

- The District's proposal to eliminate any reference to monthly salaries in the new Agreement was not described as an economic item; rather, it was grouped within "housekeeping" language changes. Other District proposed takeaways were clearly written and understood by the parties.
- The result of the District's concealment gave the District an unfair and unreasonable advantage in bargaining, and resulted in a harsh result to full-time employees

The Union also alleges that the District violated the Fair Labor Standards Act by the following:

- The District had knowledge that the 2005-2006 hourly contract rates did not reflect the true hourly rate of pay, but made no effort to provide for the correct overtime payment.
- The Employer is obligated to pay overtime on the hourly rate in accordance with the calculation methods mandated by Federal law. The District's willful concealment of the incorrect overtime rate mistake cheated employees and violated Federal law; and neither party can bargain away employees rights to full overtime payment.

The Union further alleges that the District violated the Minnesota Data Practices Act by the following:

- The District's School Board held closed meetings during the negotiations for the current Agreement. Pursuant to Minnesota Data Practices Act, tape recordings of

- The destruction of the tapes severely restricted the Union in its effort to prove its arbitration case.

Finally, the Union argues that the District's actions injured the right of employees to enjoy the fruits of the contract, and caused a harsh result to the 17 full-time employees while unjustly enriching the District.

DISTRICT POSITION

The District's position is that the Union has failed in its burden to establish that the District violated the Agreement by not giving the full-time employees the negotiated wage increases of 3.5% in 2007 and 1.8% in 2008. The District argues that:

- Prior to the expiration of the 2005-2007 Agreement, the employees' wage scale had a monthly salary listed for all full-time employees. While employees were paid pursuant to the monthly salary rate during this contract term as well as in predecessor contracts, there was no contract language that wages were based on salary.
- The District discovered that the monthly salary rates in previous contracts for full-time employees were erroneously higher than those employees' actual hourly rates. This practice of over paying those employees dated back to at least the 1980's and perhaps as far back as the late 1960's. As a result, the District proposed to eliminate the monthly salary rate in the new contract in order to correct this error.

- The Union, without question, agreed at the first bargaining session in August to the District's proposal to eliminate any mention of a monthly salary rate in the new contract. In spite of this, the District invited further discussion of this proposal by stating the reason why the District wanted to eliminate the reference to monthly salaries in its October 30th written submission to the Union. Again, the Union did not inquire further into the District's reasoning or inquire as to which employees would be affected.
- The parties then agreed to a wage increase of 3.5% in 2007 and 1.8% in 2008 for all employees, which obviously would apply to the hourly wage rate since the salary rate was eliminated. The District then implemented the negotiated wage increases based upon the hourly rates for all employees as it had done in all previous contracts. Thus, all employees, including the 17 full-time employees, received negotiated wage increases based on their past hourly rate.

It is also the District's position that it did not bargain in bad faith during the course of negotiations. It argues that:

- This Arbitrator has no jurisdiction to make a finding of a refusal to bargain and thereby undo what the parties have negotiated since this allegation is an unfair labor practice under the Minnesota Public Employment Relations Act (PELRA) [19], and its resolution is reserved for the Courts.
- Even if this Arbitrator had jurisdiction, the District did not bargain in bad faith as alleged. The District even went beyond its bargaining duty to ensure that the Union understood its salary rate elimination proposal by inviting further discussion on

[19] MINN. Statute §179A.

October 30th after the Union had agreed in August and early October to the District's proposal. The Union, which had experienced negotiators at the table, did not accept this discussion invite nor did it inquire into what effect the proposal would have on full-time employees. The Union is now calling foul for what was obviously their responsibility.

It is also the District's position that it did not violate the Fair Labor Standards Act. It argues that:

- This Arbitrator has no jurisdiction to make a wage and hour violation finding. This jurisdiction is under the exclusive jurisdiction of State and Federal agencies.
- Even if this Arbitrator has jurisdiction, all overtime payments were properly made under existing overtime regulations. Time and one-half was clearly spelled out in the predecessor Agreement and in the New Agreement, and was justly based on the employees' hourly rate and not their monthly salary rate, which was erroneous.

Finally, it is the District's position that it did not deliberately destroy the tapes of School Board negotiation sessions. It argues that:

- The District believed that the tapes could be destroyed after one year. District witnesses also testified that if the tapes were available, they would demonstrate that the District did not foster a plan to deliberately conceal its motives in eliminating the salary rate in a new contract. Rather, they went overboard in trying to be up front with the Union as evidenced by their October 30th invite proposal.

OPINION

The parties could not agree on the wording or substance of the Issue. After a review of all the testimony and evidence in this matter, it is clear that the Issue before this Arbitrator

is, "*Did the District violate the Agreement and bargain in bad faith when it implemented a 3.5% wage increase on July 1, 2007 and a subsequent 1.8% wage increase on July 1, 2008, and if so, what is an appropriate remedy*".

The Union alleged in its opening statement that overtime pay for full-time employees was not properly calculated. No independent evidence was ever adduced at the hearing on this allegation. If the Union is raising this issue pursuant to the predecessor Agreement, it is clearly untimely as no grievance was ever filed within the contractual time frames. If it is been raised under the terms of the new Agreement, I assume that the Union is alleging that the hourly rate in the Agreement would be higher if it was calculated on the predecessor Agreement's monthly salary rate reduced to hours, rather than based on the erroneous hourly rate in the new Agreement. Therefore, overtime payments would be higher. This allegation was neither raised in the filing of the grievance nor was it ever raised during grievance processing. In any event if the Union prevails in the grievance, a back pay remedy will resolve this allegation.

The Union also alleges that the District violated the Minnesota Data Practices Act by prematurely destroying tapes of certain District negotiation meetings. This action affected its ability to present its case to this Arbitrator. The evidence clearly established that the destruction of the tapes was an inadvertent error rather than an attempt to interfere with the Union's grievance investigation. There is also no evidence that this inadvertent action affected the Union's ability to investigate the grievance or present its case before this Arbitrator.

The Union further alleges that the wage increases implemented in the new Agreement should have been based on full-time employees' monthly salary rate in the predecessor

Agreement rather than their hourly rate. The wage schedule in the 2005-2007 predecessor Agreement clearly reflects a higher monthly salary rate than the listed hourly wage rate if the monthly salary rate was reduced to an hourly rate. District Business Manager Aune's unrebutted testimony was that this was due to the way the monthly salary had been calculated for full-time employees. That being the employee's hourly rate times 22 work days a month or 264 days a year. According to Aune, full-time employees had been over paid for years. Their monthly salary rate should have been calculated based on the actual days they worked, which was normally 261 days.

Aune further testified that in each of the contracts negotiated in his four and one half year tenure, all negotiated wage increases were implemented based on the predecessor contract hourly wage rate rather than the contract monthly salary rate for all employees including full-time employees. He also testified that his review of prior contracts also bore this out. Thus, the District clearly had a past practice of using the predecessor contract's hourly wage rate as the benchmark for any negotiated wage increase.

This pattern of applying any wage increase to the predecessor Agreement hourly rate carried over to the new Agreement. Aune's testimony, corroborated by Union witnesses, was that all full-time hourly employees received the negotiated 3.5% and 1.8% wage increases in 2007 and 2008, respectively based on their previous hourly rate.[20]

The Union argued that employees are still being paid monthly. This is true; however, it does not in and of itself give credence to the Union's position. The only provision, other than the wage schedule, that pertains to wages is contained in ARTICLE V WAGE ADMINISTRATION. The entire provision states, "*There shall be two pay periods and*

paydays in each calendar month, one of which will be a partial payment." This provision was identical in the predecessor contract. Thus, both before and after the new Agreement, all employees were paid bi-monthly. The difference was that full-time employees were paid bi-monthly based on their monthly salary rate during the 2005-2007 predecessor Agreement. While they are still been paid bi-monthly, this amount is now based on their hourly rate, which is calculated monthly.

The Union, contrary to the District, argues that the District engaged in bad faith bargaining during the negotiations related to the District's salary implementation proposal and subsequently failed to implement wage increases based on the full-time employees' previous monthly salaries. The District argues that the Union's allegation that it engaged in bad faith bargaining is outside the purview of this Arbitrator because such allegations are unfair labor practices cognizable under PELRA and the Courts, which have jurisdiction to determine violations of PELRA, not this Arbitrator. While arbitrators cannot make unfair labor practice findings, they generally have authority to find contractual violations that may also violate Federal or as in here State statutes without making a determination exclusively within PELRA or the Court's jurisdiction.

The recognition clause of the parties' collective bargaining agreement generally requires that parties bargain in good faith. A failure to do so is cognizable under the contract resulting in arbitral authority, especially where this issue is raised by a grievance or flows from the essence of the collective bargaining agreement or is inextricably intertwined with an arbitral issue. Also, arbitrators have jurisdiction to determine whether

[20] The full-time Lead Custodian & Purchasing Agent received his wage increases based on his monthly salary since he had never been on an hourly wage rate.

an employer unilaterally implemented a different contractual provision than what was bi-laterally agreed to in negotiations. This is precisely what is before me in the instant matter.

The Union is alleging that the District deliberately withheld valuable information, which impacted its bargaining position. They believed that all employees would be getting wage increases based on their previous salary wage levels; however, when 17 full-time employees received their initial pay checks incorporating the negotiated wage increases, they complained to the Union that the amount they received was less than the negotiated wage increase. The Union then discovered that the hourly rate listed in the new Agreement was less than the predecessor Agreement's monthly wage rate reduced to hours times the 3.5% wage increase. Had they known that this was the District's intention, they would have never agreed to the District's proposal to eliminate the reference to monthly salaries.

The Union argues that the District deceived it into believing that the elimination of the monthly salary rate was a "housekeeping" proposal and had no idea that it would affect an economic item like wage rates. The District deliberately withheld the fact that full-time employees' wages would be impacted directly by the elimination of a reference to monthly salaries in the new Agreement.

I find no merit to the Union's arguments. The Union never questioned or for that matter discussed the District's monthly salary elimination proposal. They accepted it carte blanch, assuming that it was a "housekeeping" proposal. The District could have accepted the Union's agreement; but tried to generate further discussion through its October 30th explanation wherein it stated, "*AFSCME is not objecting to dropping this past*

practice. However the district negotiators were caught off guard by the quick pace which AFSCME negotiators conceded on many issues. We have not yet had an opportunity to explain the reason this past practice was being dropped. There was a district clerical error in the monthly schedule that we have discovered and traced backed to at least 1988, and the error resulted in some employees being slightly overpaid in past years."

This explanation for the District's reason for eliminating a reference to monthly salaries could not be clearer. The most plausible interpretation is that full-time employees had been overpaid because of an error in the salary schedule; and, henceforth, they would be paid correctly, e.g. according to their correct hourly rate. Again, the Union did not question or raise any discussion regarding the monthly salary elimination proposal. Finally, after the contract was ratified and reduced to writing with the new hourly rates listed, the Union could have attempted to correct this perceived error before they signed the Agreement.

It is understandable why the Union could act with less than due diligence and accept the District's proposal without further explanation. The parties have had a long and harmonious bargaining relationship. They expected the District to be completely up front and tell them succinctly why it wanted to eliminate the monthly salary proposal, rather than leave it to the Union to pry it out of them. It is unfortunate what happened here and the consequences could be the demise of a long standing trusting relationship. However, the District's actions do not rise to the level that warrants sustaining the grievance.

In view of the foregoing, the evidence established that full-time employees had apparently been overpaid for an extended period of time.[21] The District proposed

[21] It should be noted that the District is not requiring employees to reimburse the District for the overpayments.

eliminating the reference to the monthly salary schedule in the new Agreement, which the Union readily agreed to. The District attempted to generate a discussion over this proposal that the Union ignored. Thereafter, the District implemented the negotiated wage increases based on the hourly rates of all employees including full-time employees, a practice that had been historically followed. Accordingly, the Union has failed to sustain its burden that the District failed to implement the negotiated wage increases or establish that hourly wage rates contained in the Agreement are different than negotiated. I will, therefore, dismiss the grievance in its entirety.

AWARD

It is hereby ordered that the grievance be and hereby is dismissed in its entirety.

Dated: January 12, 2009

Richard R. Anderson, Arbitrator

ATTACHMENT A

WAGE SCALE—2005-2007 AGREEMENT

CLASSIFIED SALARY – 3rd YEAR (2.5%)
30 HOURS AND OVER

CLASSIFICATION	REG.MONTHLY	HRLY	1 1/2 HR
HEAD PLUMBER	$3,421.35 $1,710.68	$19.44	$29.16
LEAD CUST. & PURCH AGENT	$4,326.80 $2.163.40	NA	NA
STOCK ROOM CLERK	$3,244.06 $1,622.03	$18.43	$27.65
HANDYYMAN	$3,127.12 $1.563.56	$17.77	$26.65
PAINTER	$3,127.12 $1,563.56	$17.77	$26.65
ENG1NEER	$3,093.17 $1,546.59	$17.57	$26.36
HANDYMAN/DRIVER	$3,093.17 $1.546.59	$17.57	$26.36
CUSTODIAN ENGINEER	$3,068.66 $1,534.33	$17.44	$26.15
DRIVER	$3.04225 $1,521.13	$17.29	$25.93
AUDITORIUM CUSTODIAN	$3,042.25 $1.521.13	$17.29	$25.93
ATHLETIC CUSTODIAN	$3,042.25 $1,521.13	$17.29	$25.93
HEAD JANITOR	$3.019.62 $1,509.81	$17.16	$25.74
GANG MOWER OPERATOR	$3,000.76 $1,500.38	$17.05	$25.57
JANITOR/DRIVER	$3,000.76 $1,500.38	$17.05	$25.57
UTILITY CREW	$2,957.38 $1.478.69	$16.80	$25.20
JANITORS	$2,957.38 $1,478.69	$16.80	$25.20
CAFE. HLPR. EXPERIENCED	$2,864.96 $1,432.46	$16.28	$24.42
SECETARY CLASS 3	$2,925.31 $1,462.66	$16.62	$24.93

ATTACHMENT B

WAGE SCALE—2007-2009 AGREEMENT

FISCAL YEAR	2006-07	2007-08	2008-09
HEAD PLUMBER	$19.44	$20.12	$20.48
LEAD CUSTODIAN/PURCHASING AGENT (MONTHLY)	4,326.80	4,478.24	4,558.85
STOCK ROOM CLERK	18.43	19.08	19.42
HANDYMAN	17.77	18.39	18.72
PAINTER	17.77	18.39	18.72
ENGINEER	17.57	18.18	18.51
DRIVER/HANDYMAN	17.57	18.18	18.51
CUSTODIAN ENGINEER	17.44	18.05	18.37
DRIVER	17.29	17.90	18.22
AUDITORIUM CUSTODIAN	17.29	17.90	18.22
ATHLETIC CUSTODIAN	17.29	17.90	18.22
HEAD JANITOR	17.16	17.76	18.08
GANG MOWER OPERATOR	17.05	17.65	17.97
JANITOR/DRIVER	17.05	17.65	17.97
UTILITY CREW	16.80	17.39	17.70
JANITOR	16.80	17.39	17.70
CAFETERIA HELPER, EXPERIENCED	16.28	16.85	17.15
SECRETARY CLASS 3 ~ (12 MONTHS)	15.48	16.02	16.31
SECRETARY CLASS 3 @ 100% (18 MONTHS)	16.63	17.21	17.52