

STEP ONE GRIEVANCE DECISION

(OLR #130493, UFT #R50622)

Grievant: Francesco Portelos
Title: Teacher
Union: UFT
School or Office/Region: JHS 49R, District 31
Article(s)/Agreement: 20 (Matters Not Covered)

- Reassignment Letter of Agreement between DOE & UFT, April 15, 2010

Nature of Grievance: The grievant asserts that he is improperly reassigned beyond the 60-day investigation period.
Date(s) of Conference: November 16, 2012
Persons in Attendance: Francesco Portelos, Grievant
John Torres, UFT Special Representative
Susan Mandel, District 31 Superintendent's Representative
Linda Hill, Principal (by telephone)

The grievant or his representative stated that the following occurred and argued that the cited provision of the Agreement was violated for the following reasons:

The grievant, a tenured general science teacher, has worked for the New York City Department of Education (DOE) for five years at JHS 49R and has received all "Satisfactory" ratings. (The grievant received an "N" rating in June 2012 while administratively reassigned.)

On April 26, 2012 the grievant was removed from JHS 49R and reassigned to administrative duties pending the outcome of an OSCI (Office of the Special Commissioner of Investigation) investigation. OSCI launched its investigation due to the principal's false allegations made as retaliation for his informing OSCI on January 26, 2012 that the principal was engaging in financial misconduct. He was also the subject of retaliation because on March 24, 2012 he made a FOIL (Freedom of Information Law) request for Principal Hill's and Assistant Principal Diacomanolis' per session time sheets and/or time cards. Further, on March 26, 2012 the grievant filed a complaint of harassment against AP Aguirre with OEO (Office of Equal Opportunity). OSCI informed the grievant that 22 allegations have been made against him. The Union representative read the 22 allegations and submitted them to the undersigned. None of the allegations fall within the exceptions to the 60 day time limit for returning a reassigned teacher to the classroom cited in the April 15, 2010 Reassignment Letter of Agreement between DOE & UFT ("April 2010 Agreement"). Thus the Department has violated this April 2010 Agreement with the UFT and as remedy, the Union seeks the grievant's immediately being reinstated to his teaching position at JHS 49R.

Administration stated that the following occurred and argued that the cited provision of the Agreement was not violated for the following reasons:

The April 15, 2010 Reassignment Letter of Agreement between DOE & UFT indicates that the DOE and UFT will meet to discuss "investigations and reassignments extending beyond 60 days and. . .

negotiate ways to address this issue.” Thus, the instant conference is the improper forum to discuss this issue and the undersigned may have no authority in this matter.

The undersigned concludes that the following happened and concludes that the cited provision of the Agreement was not violated for the following reasons:

First, this matter is in the appropriate forum as the grievant is claiming a violation of the April 2010 Agreement between the DOE and UFT concerning, among other things, reassignment of UFT represented titles.

Turning to the merits of the grievance, on April 26, 2012 the grievant was removed from his teaching position and administratively reassigned outside of his school pending the outcome of an OSCI investigation. The grievant submitted a document (see attached) which includes, according to him, the nature of the matters being investigated. Among the matters being investigated, according to the grievant, are: 1) allegations that he “conducted real estate business during class time;” 2) several allegations involving the grievant’s hacking into the school’s email account; and 3) allegations that the grievant mailed harassing letters to another teacher in the school who has accused the grievant of several forms of misconduct currently being investigated.

The April 2010 Agreement states:

[T]he DOE shall prefer charges pursuant to Education Law §3020-a within 60 days of an employee being reassigned or suspended, except in cases where the reassignment or suspension was. . . (ii) an allegation of serious financial misconduct involving more than \$1,000 that is being investigated by SCI. . . (v) an allegation of tampering with a witness or evidence, where the allegation of tampering is being investigated by SCI.

Based on the grievant’s submission, it is clear that the matters being investigated fall within two of the five exceptions to the 60 day timeframe set forth in the April 2010 Agreement. Thus, the Union has not proven a violation of Article 20 (Matters Not Covered) as the matter is expressly covered by the April 2010 Agreement. Further, based on the above the grievant remains reassigned beyond 60 days in accordance with the terms of the April 2010 Agreement between the parties.

Accordingly, the grievance is denied.

Heard by:

MARCEL KSHENSKY, Ed.D.
Chancellor’s Representative

IT IS SO ORDERED:

Dennis M. Walcott^{KS}
DENNIS M. WALCOTT
CHANCELLOR

12/20/2012
Dated

MK