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**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF ROBERT HOLDER  
DOCKET NO. 2016-20  
CLAIM OF ROBERT HOLDER

**OPINION AND ORDER OF THE BOARD**

The Public School Employees' Retirement Board ("Board") has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Officer, the Public School Employees' Retirement System's ("PSERS") Motion for Summary Judgment, Claimant's Cross-Motion for Summary Judgment in Response to PSERS' Motion for Summary Judgment, PSERS' Response to Claimant's Cross-Motion, Claimant's Brief on Exceptions, and PSERS' Brief Opposing Exceptions.

Claimant excepts to the Hearing Officer's proposed Opinion and Recommendation asserting the *Settlement Agreement and General Release* ("Agreement") he entered into with the school district supports the conclusion that some portion of the payment made pursuant to the Agreement is retirement-covered compensation for the 2014-2015 school year.

We note that Claimant's Exceptions merely reargue an issue previously raised in his Cross-Motion for Summary Judgment in Response to PSERS' Motion. The Hearing Officer adequately addressed this issue.

This Board finds appropriate the Hearing Officer's History, Findings of Fact, Conclusions of Law, Discussion, and Recommendation attached hereto, and we hereby adopt them as our own, and accordingly:

IT IS HEREBY ORDERED, that Claimant's request that the settlement payment he received pursuant to the Agreement be deemed retirement-covered compensation for the 2012-2013, 2013-2014, and 2014-2015 school years is DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: March 8, 2019

By: Melva S. Vogler  
Melva S. Vogler, Chairman

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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PSERB  
EXECUTIVE OFFICE

IN RE:

ACCOUNT OF ROBERT HOLDER  
CLAIM OF ROBERT HOLDER

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DOCKET NO. 2016-20

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OPINION AND RECOMMENDATION

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Ruth D. Dunnewold  
Hearing Officer

Submitted on Motion and Cross-Motion for Summary Judgment

Hearing Officer: Ruth D. Dunnewold  
For the Claimant: Joseph F. Canamucio, Esquire  
Mary Jo Miller, Esquire  
Ashley E. Macaysa, Esquire  
For PSERS: Dwight A. Decker, Jr., Esquire

## HISTORY

This matter is before the Public School Employees' Retirement Board ("Board") on an appeal filed by Robert Holder ("Claimant"). On September 29, 2016, through counsel, Claimant appealed a decision of the Executive Staff Review Committee ("ESRC") of the Public School Employees' Retirement System ("PSERS"), dated August 30, 2016 ("ESRC denial letter"), that denied Claimant's request to have a \$99,621.00 settlement payment deemed retirement-covered compensation for the 2012 – 2013, 2013 – 2014 and 2014 – 2015 school years. On October 19, 2016, through Deputy Chief Counsel Kathrin V. Smith, PSERS filed its *Answer* to Claimant's appeal.

By letter dated April 10, 2018, Ruth D. Dunnewold was appointed by the Board's Secretary, Glen R. Grell, to act as Hearing Officer for Claimant's administrative hearing. Additionally, by letter of April 10, 2018, the Board's Appeal Docket Clerk notified Claimant, through counsel, that the administrative hearing on his appeal was scheduled for August 29, 2018, in Harrisburg, PA. Thereafter, on August 6, 2018, PSERS filed the *Public School Employees' Retirement System's Motion for Summary Judgment* ("MSJ"), along with the *Public School Employees' Retirement System's Memorandum of Facts*, the *Public School Employees' Retirement System's Memorandum of Law in Support of Motion for Summary Judgment*, and exhibits marked PSERS Exhibits 1 – 11, requesting that the hearing examiner issue a proposed opinion and recommendation granting the MSJ and denying Claimant's request to have the \$99,621.00 settlement payment deemed retirement-covered compensation for the 2012 – 2013, 2013 – 2014 and 2014 – 2015 school years, and continue the hearing pending disposition of PSERS' MSJ.

By *Order Continuing Hearing* dated August 9, 2018, the hearing examiner granted PSERS' request for continuance but declined to rule on the MSJ because the Board had not delegated authority to the hearing examiner to rule on an MSJ. On August 14, 2018, Joseph F. Canamucio, Esquire, and Ashley E. Macaysa, Esquire, entered their appearances on Claimant's behalf. Thereafter, by *Order* dated

August 23, 2018, the Board delegated decision of PSERS' MSJ to the hearing examiner. On September 5, 2018, Claimant filed *Claimant's Cross-Motion for Summary Judgment in Response to the Public School Employees' Motion for Summary Judgment* ("CMSJ"), supported by *Claimant's Response to Public School Employees' Retirement System's Memorandum of Facts* and *Claimant's Memorandum of Law in Support of Cross-Motion for Summary Judgment*.

By letter dated September 26, 2018, PSERS, through Deputy Chief Counsel Smith, requested a 30-day extension of time for PSERS to respond to Claimant's CMSJ because of Deputy Chief Counsel Smith's schedule. The letter indicated that Claimant's counsel, Joseph F. Canamucio, Esquire, did not oppose the extension, so an *Order Granting Extension of Time* dated October 1, 2018 gave PSERS until November 5, 2018 to file its response to the CMSJ. On October 29, 2018, PSERS' Assistant Counsel, Dwight A. Decker, Jr., Esquire, filed the *Public School Employees' Retirement System's Response to Claimant's Cross-Motion for Summary Judgment*, closing the record. Accordingly, the matter is now before the Board for final disposition.

## FINDINGS OF FACT

1. In January 1992, Claimant was enrolled in the Public School Employees' Retirement System ("PSERS") through his employment with the Freedom Area School District. *Public School Employees' Retirement System's Memorandum of Facts* in support of MSJ ("PSERS' Memorandum of Facts"), paragraph 1; *Claimant's Response to Public School Employees' Retirement System's Memorandum of Facts* ("Response to Memorandum of Facts"), paragraph 1.

2. In October 2001, the Baldwin-Whitehall School District ("District") enrolled Claimant with PSERS through Claimant's position as a full-time, salaried employee. PSERS' Memorandum of Facts, paragraph 2; Response to Memorandum of Facts, paragraph 2.

3. Prior to October 2001, Claimant had accumulated approximately 8.51 years of service credit with PSERS. PSERS' Memorandum of Facts, paragraph 3; Response to Memorandum of Facts, paragraph 3.

4. For the 2012 – 2013 school year, the District reported Claimant to PSERS as having actively worked with a base salary of \$58,387.94. PSERS' Memorandum of Facts, paragraph 4; Response to Memorandum of Facts, paragraph 4.

5. Claimant earned one full year of service credit with PSERS for the 2012 – 2013 school year. PSERS' Memorandum of Facts, paragraph 5; Response to Memorandum of Facts, paragraph 5.

6. For the 2012 – 2013 school year, the employer contribution rate for PSERS was 12.36% of employee compensation. PSERS' Memorandum of Facts, paragraph 6; Response to Memorandum of Facts, paragraph 6.

7. For the 2013 – 2014 school year, the District reported Claimant to PSERS as having actively worked with a base salary of \$60,484.00. PSERS' Memorandum of Facts, paragraph 7; Response to Memorandum of Facts, paragraph 7.

8. Claimant earned one full year of service credit with PSERS for the 2013 – 2014 school year. PSERS' Memorandum of Facts, paragraph 8; Response to Memorandum of Facts, paragraph 8.

9. For the 2013 – 2014 school year, the employer contribution rate for PSERS was 16.93% of employee compensation. PSERS' Memorandum of Facts, paragraph 9; Response to Memorandum of Facts, paragraph 9.

10. For the 2014 – 2015 school year, the District reported Claimant to PSERS as having actively worked with a base salary of \$62,600.01. PSERS' Memorandum of Facts, paragraph 10; Response to Memorandum of Facts, paragraph 10.

11. The District reported to PSERS that Claimant's base salary for the 2014 – 2015 school year was \$60,344.16, but the District later adjusted the base salary by \$2,255.85 to equal \$62,600.01. PSERS' Memorandum of Facts, paragraph 11; Response to Memorandum of Facts, paragraph 11.

12. Claimant earned one full year of service credit with PSERS for the 2014 – 2015 school year. PSERS' Memorandum of Facts, paragraph 12; Response to Memorandum of Facts, paragraph 12.

13. For the 2014 – 2015 school year, the employer contribution rate for PSERS was 21.40% of employee compensation. PSERS' Memorandum of Facts, paragraph 13; Response to Memorandum of Facts, paragraph 13.

14. On October 4, 2014, Claimant sent to PSERS, and on October 6, 2014, PSERS received, a *Request for Retirement Estimate* from Claimant in which he identified his final average salary as \$62,600.00. PSERS' Memorandum of Facts, paragraph 14; Response to Memorandum of Facts, paragraph 14.

15. Exhibit PSERS-1 is a true and correct copy of the *Request for Retirement Estimate* that Claimant sent to PSERS on October 4, 2014 and PSERS received on October 6, 2014. *Id.*

16. By letter dated October 10, 2014, PSERS provided Claimant with an *Early Retirement Estimate* based on an estimated final average salary of \$60,490.00, and Claimant received that *Early*

*Retirement Estimate*. PSERS' Memorandum of Facts, paragraph 15; Response to Memorandum of Facts, paragraph 15.

17. Exhibit PSERS-2 is a true and correct copy of the *Early Retirement Estimate*, minus letterhead and printing identifiers, that PSERS provided to Claimant by letter dated October 10, 2014. *Id.*

18. On June 25, 2015, PSERS received an *Application for Retirement* from Claimant. PSERS' Memorandum of Facts, paragraph 16; Response to Memorandum of Facts, paragraph 16.

19. Exhibit PSERS-3 is a true and correct copy of the *Application for Retirement* that PSERS received from Claimant on June 25, 2015. *Id.*

20. On June 30, 2015, Claimant terminated service with the District. PSERS' Memorandum of Facts, paragraph 17; Response to Memorandum of Facts, paragraph 17.

21. On September 3, 2015, the District informed PSERS' Employer Service Center that the District had entered into a *Settlement Agreement and General Release* ("SAGR") with Claimant. PSERS' Memorandum of Facts, paragraph 18; Response to Memorandum of Facts, paragraphs 18 and 19.

22. Exhibit PSERS-4 is a true and correct copy of the SAGR. PSERS' Memorandum of Facts, paragraph 19; Response to Memorandum of Facts, paragraph 19.

23. Among others, the SAGR contained the following provisions:

1. **Consideration.** In consideration for signing this Settlement Agreement and General Release, the District will pay the sum of \$99,621.00 as follows:

- (a) The District will immediately place Grievant on pay Step 19 for purposes of the ERI and Grievant will be eligible to receive the benefits of the ERI as if he had been on pay Step 19 for the 2014-2015 school year; and
- (b) Payment of \$79,697.00 less all legally required withholdings and deductions shall be issued to Grievant with the September 25, 2015 payroll, for which the District will issue Grievant a W-2.



- (c) Payment of \$19,924.00 shall be issued to Rothman Gordon, P.C. (Tax ID 25-1310422) on or before September 25, 2015, for attorney's fees and costs, for which the District will issue a Form 1999 to Rothman Gordon.

2. **General Release of all Claims.** Grievant knowingly and voluntarily releases and forever discharges the District and its current and former School Board Members and Administrators, both individually and in their official capacities (collectively referred to throughout the remainder of this agreement as "Releasees"), of and from any and all claims, known and unknown, asserted and unasserted, which Grievant has or may have against Releasees of the date of the execution of this Agreement and General Release, including but not limited to, any alleged violation of the Equal Pay Act of 1963, 29 U.S.C. § 206(d), Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967 (ADEA), Sections 1981 through 1988 of Title 42 of the United States Code; the Employee Retirement Income Security Act of 1974 (ERISA) (except for any vested benefits under any tax qualified benefit plan); the American with Disabilities Act of 1990 (ADA); the Pennsylvania Human Relations Act, 43 P.S. § 951 et. seq.; the Pennsylvania Pay Law as amended 43 P.S. § 336.1 et seq.; the Pennsylvania Wage Payment and Collection Law, as amended, 43 P.S. § 260.1 et seq.; any other federal state or local law, rule, regulation or ordinance; any basis for recovering costs, fees or other expenses including attorney's fees incurred in these matters or any claim for unpaid wages and/or bonuses or incentive payments.

\* \* \*

7. **Amendment.** This Agreement and General Release may not be modified, altered or changed except in writing and signed by all parties wherein specific reference is made to this Agreement and General Release.

8. **Entire Agreement.** This Agreement and General Release sets forth the entire agreement between the parties hereto, and fully supersedes any prior agreements or understandings between the parties. Grievant acknowledges that s/he has not relied on any representations, promises or agreements of any kind made to him/her in connection with his/her decision to accept this Agreement and General Release, except for those set forth in the Agreement and General Release.

\* \* \*

11. **Intention to Enter into Contract.** Grievant freely and knowingly, and after due consideration, enters into this Confidential Agreement and General Release intending to waive, settle and release all claims s/he has or might have against Releasees.

12. **Knowing and Voluntary.** The Parties have read the foregoing Settlement Agreement and General Release and fully understand it and its legal significance. The Parties knowingly and voluntarily sign this Agreement and General Release as of the dates set forth below. . .

Exhibit PSERS-4.

24. On September 10, 2015, PSERS informed the District that the settlement amount set forth in the SAGR did not constitute retirement-covered compensation. PSERS' Memorandum of Facts, paragraph 20; Response to Memorandum of Facts, paragraph 20.

25. By letter dated September 30, 2015 ("*Finalized Retirement Benefit Letter*"), which Claimant received, PSERS informed Claimant of his finalized retirement benefit based on a final average salary of \$60,490.65. PSERS' Memorandum of Facts, paragraph 21; Response to Memorandum of Facts, paragraph 21.

26. Exhibit PSERS-5 is a true and correct copy of the *Finalized Retirement Benefit Letter* dated September 30, 2015, minus letterhead and printing identifiers. *Id.*

27. By letter dated November 17, 2015, Claimant notified PSERS that he disagreed with PSERS' calculation of his final year's salary. PSERS' Memorandum of Facts, paragraph 22; Response to Memorandum of Facts, paragraph 22.

28. Exhibit PSERS-6 is a true and correct copy of the November 17, 2015 letter by which Claimant notified PSERS that he disagreed with PSERS' calculation of his final year's salary. *Id.*

29. PSERS sent, and Claimant received, a letter dated January 5, 2016. PSERS' Memorandum of Facts, paragraph 23; Response to Memorandum of Facts, paragraph 23.

30. Exhibit PSERS-7 is a true and correct copy of the letter dated January 5, 2016. *Id.*

31. PSERS' letter to Claimant dated January 5, 2016, included the following determination:

Because the settlement did not include any language regarding the appropriation of the settlement money to any specific school/fiscal years, the payment is not Retirement Covered Compensation and cannot be included in the calculation of your retirement benefit.

Exhibit PSERS-7.

32. By letter that PSERS received on January 21, 2016, Claimant appealed PSERS' January 5, 2016 determination to the Executive Staff Review Committee ("ESRC"), requesting that his final

average salary be recalculated to \$93,697.65 based on the SAGR. PSERS' Memorandum of Facts, paragraph 24; Response to Memorandum of Facts, paragraph 24.

33. Exhibit PSERS-8 is a true and correct copy of Claimant's January 21, 2016 appeal letter.

*Id.*

34. The ESRC reviewed Claimant's January 21, 2016 appeal and, by letter dated August 30, 2016, denied his appeal. PSERS' Memorandum of Facts, paragraph 25; Response to Memorandum of Facts, paragraph 25.

35. Exhibit PSERS-9 is a true and correct copy of the ESRC's letter to Claimant dated August 30, 2016. *Id.*

36. The ESRC's letter to Claimant dated August 30, 2016, included the following explanation for the ESRC's denial of Claimant's appeal:

. . . The [SAGR ("*Agreement*")] did not identify [the \$99,621.00] amount as back pay or allocate that payment to any specific school year. Rather, the *Agreement* simply identifies the lump sum payable and then splits the payment into two payments: \$79,697.00 to you and \$19,924.00 directly payable for your attorney's fees and costs.

The *Agreement* does not evidence the parties' intent to pay you salary. While the amount on the top step of the standard salary schedule may have been the starting point used by the parties to reach a total settlement payment of \$99,621.00, the final terms of the *Agreement* do not identify the \$99,621.00 as representing the annual step raises each year nor is the amount segregated into each school year in the *Agreement*. Thus, the information you provided is outside the scope of the *Agreement*, and is, in fact, inconsistent with the terms of the *Agreement*. Moreover, you actually only received \$79,697.00, as \$19,924.00 of the total settlement payment was payable directly to your counsel for legal fees. Legal fees are not retirement-covered compensation.

Exhibit PSERS-9.

37. Claimant, through counsel, appealed the ESRC's decision on September 29, 2016. PSERS' Memorandum of Facts, paragraph 26; Response to Memorandum of Facts, paragraph 26.

38. On October 19, 2016, PSERS filed an Answer to Claimant's appeal. PSERS' Memorandum of Facts, paragraph 27; Response to Memorandum of Facts, paragraph 27.

39. On August 6, 2018, PSERS filed the *Public School Employees' Retirement System's Motion for Summary Judgment* ("MSJ"), along with the *Public School Employees' Retirement System's Memorandum of Facts* ("PSERS' Memorandum of Facts"), the *Public School Employees' Retirement System's Memorandum of Law in Support of Motion for Summary Judgment* ("PSERS' Memorandum of Law"), and exhibits marked PSERS Exhibits 1 – 11. Record, *passim*.

40. By Order dated August 23, 2018, the Board delegated decision of PSERS' MSJ to the hearing examiner. *Id.*

41. On September 5, 2018, Claimant filed *Claimant's Cross-Motion for Summary Judgment in Response to the Public School Employees' Motion for Summary Judgment* ("CMSJ"), along with *Claimant's Response to Public School Employees' Retirement System's Memorandum of Facts* ("Response to Memorandum of Facts") and *Claimant's Memorandum of Law in Support of Cross-Motion for Summary Judgment* ("Claimant's Memorandum of Law"). *Id.*

## CONCLUSIONS OF LAW

1. Claimant was afforded notice and an opportunity to be heard in connection with his appeal. Findings of Fact 27 – 41.

2. PSERS is a creature of statute which derives its authority from the provisions of the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq. ("Retirement Code"), and has no authority to grant rights to members beyond those specifically set forth in the Retirement Code, because its members have only those rights created by the Retirement Code. *Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Bittenbender v. State Employees' Retirement Board*,<sup>1</sup> 622 A.2d 403 (Pa. Cmwlth. 1992).

3. Claimant bears the burden of proof in this proceeding. *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 (Pa. Cmwlth. 1999), *petition for allowance of appeal denied*, 751 A.2d 194 (Pa. 2000); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991).

4. The Retirement Code, defines "compensation," in pertinent part, as follows:

### **§ 8102. Definitions.**

The following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

*"Compensation."* — Pickup contributions and mandatory pickup participant contributions plus any remuneration received as a school employee excluding reimbursements for expenses incidental to employment and excluding any bonus, severance payments, any other remuneration or other emolument received by a school employee during his school service which is not based on the standard salary schedule under which he is rendering service, payments for unused sick leave or vacation leave, bonuses or other compensation for attending school seminars and conventions, payments under health and welfare plans based on hours of employment or any other payment or emolument which may be provided for in a collective bargaining agreement which may

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<sup>1</sup>Cases interpreting provisions of the State Employees' Retirement Code "are equally applicable in deciding issues arising under similar or identical provisions" of the Retirement Code. *Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

be determined by the public school employees' retirement board to be for the purpose of enhancing compensation as a factor in the determination of final average salary. . .

24 Pa.C.S. § 8102.

5. The purpose of a summary judgment motion is to avoid a useless trial. *Penn Center House, Inc. v. Hoffman*, 553 A.2d 900, 902 (Pa. 1989).

6. Summary judgment is appropriate only in those cases where the record, in the form of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, clearly demonstrates there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Yount v. Pa. Dep't of Corr.*, 966 A.2d 1115, 1118 (Pa. 2009), citing *P.J.S. v. Pa. State Ethics Commission*, 723 A.2d 174, 176 (Pa. 1999); see also *Kelly by Kelly v. Ickes*, 629 A.2d 1002, 1004 (Pa. Super. 1993).

7. In deciding a motion for summary judgment, the court must examine the record in the light most favorable to the non-moving party and accept as true all well-pleaded facts in the non-moving party's pleadings, as well as give the non-moving party the benefit of all reasonable inferences drawn from those pleadings. *Kelly by Kelly*, 629 A.2d at 1004, citing *Dibble v. Security of America Life Ins.*, 404 Pa. Super. 205, 590 A.2d 352 (1991); *Lower Lake Dock Co. v. Messinger Bearing Corp.*, 395 Pa. Super. 456, 577 A.2d 631 (1990).

8. A proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to the adjudicator. *McCarthy v. Dan Lepore & Sons Co.*, 724 A.2d 938, 940 (Pa. Super. 1998).

9. Principles of contract law govern the enforceability of settlement agreements. *Miller v. Clay Township*, 555 A. 2d 972, 974 (Pa. Cmwlt. 1988).

10. When contract terms are clear and unambiguous, the intention of the parties must be ascertained from what the agreement itself expressed, not from what the parties may have silently

intended; it is not appropriate, under the guise of contract construction, to alter the terms to which the parties expressly agreed. *Boro Constr. v. Ridley School District*, 992 A.2d 208, 214 (Pa. Cmwlth. 2010).

11. On its face, the SAGR is a contract complete within itself which leaves no uncertainty in the reader about the District's obligations or Claimant's obligations under its terms: the District is to pay \$99,621.00, and the Claimant is to release all claims of any kind against the District, and for this reason, the SAGR is conclusively presumed to be the entire and only agreement between the parties. Findings of Fact 1 – 41; *see Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436 (Pa. 2004).

12. Because the SAGR has been determined to be the parties' entire contract, the parol evidence rule applies, and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the SAGR is inadmissible to explain or vary the terms of the contract because Claimant has not alleged ambiguity in the terms of the SAGR, nor has he alleged fraud, accident or mistake in the execution of the SAGR. *Yocca, supra*, 854 A.2d at 436 – 437.

13. The payment by the District of \$99,621.00 pursuant to the SAGR was a cash award that the District paid to Claimant and his attorneys in exchange for Claimant's release of any and all claims against the District, so the payment is not "compensation" within the meaning of the Retirement Code. Findings of Fact 1 – 41; 24 Pa.C.S. § 8102; *see Miller v. State Employees' Retirement System*, 616 A.2d 679, 682 (Pa. Cmwlth. 1993).

14. The Retirement Code defines "final average salary," in pertinent part, as "the highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months. . ." 24 Pa.C.S. § 8102.

15. Because the payment by the District of \$99,621.00 pursuant to the SAGR was not compensation within the meaning of the Retirement Code, the payment cannot be included in the calculation of Claimant's final average salary. 24 Pa.C.S. § 8102.

## DISCUSSION

The sole issue before the Board on PSERS' MSJ and Claimant's CMSJ is whether the sum of \$99,621.00 that the District agreed to pay pursuant to the SAGR with Claimant is "compensation" within the meaning of the Public School Employees' Retirement Code, 24 Pa.C.S. § 8101 et seq. ("Retirement Code"). That definition, found at 24 Pa.C.S. § 8102, provides, in pertinent part, as follows:

### **§ 8102. Definitions.**

The following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

*"Compensation."* — Pickup contributions and mandatory pickup participant contributions plus any remuneration received as a school employee excluding reimbursements for expenses incidental to employment and excluding any bonus, severance payments, any other remuneration or other emolument received by a school employee during his school service which is not based on the standard salary schedule under which he is rendering service, payments for unused sick leave or vacation leave, bonuses or other compensation for attending school seminars and conventions, payments under health and welfare plans based on hours of employment or any other payment or emolument which may be provided for in a collective bargaining agreement which may be determined by the public school employees' retirement board to be for the purpose of enhancing compensation as a factor in the determination of final average salary. . .

24 Pa.C.S. § 8102.

In this case, both parties have made motions for summary judgment. The purpose of a summary judgment motion is to avoid a useless trial. *Penn Center House, Inc. v. Hoffman*, 553 A.2d 900, 902 (Pa. 1989). Summary judgment is appropriate only in those cases where the record, in the form of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, clearly demonstrates there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Yount v. Pa. Dep't of Corr.*, 966 A.2d 1115, 1118 (Pa. 2009), *citing P.J.S. v. Pa. State Ethics Commission*, 723 A.2d 174, 176 (Pa. 1999); *see also Kelly by Kelly v. Ickes*, 629 A.2d 1002, 1004 (Pa. Super. 1993). In deciding a motion for summary judgment, the court must



examine the record in the light most favorable to the non-moving party and accept as true all well-pleaded facts in the non-moving party's pleadings, as well as give the non-moving party the benefit of all reasonable inferences drawn from those pleadings. *Kelly by Kelly*, 629 A.2d at 1004, citing *Dibble v. Security of America Life Ins.*, 404 Pa. Super. 205, 590 A.2d 352 (1991); *Lower Lake Dock Co. v. Messinger Bearing Corp.*, 395 Pa. Super. 456, 577 A.2d 631 (1990).

Here, the pleadings comprise PSERS' MSJ, PSERS' Memorandum of Facts, PSERS' exhibits attached to and referenced in PSERS' Memorandum of Facts, Claimant's CMSJ, Claimant's Response to Memorandum of Facts, and the *Public School Employees' Retirement System's Response to Claimant's Cross-Motion for Summary Judgment* ("Response to CMSJ"). (Both parties also filed memoranda of law in support of their respective summary judgment motions, but those contain legal arguments rather than factual averments.)

In his Response to Memorandum of Facts, Claimant admitted PSERS' Memorandum of Facts paragraphs 1, 2, 5, 8, 12, 16, 17, 18, 24, and 26 in their entirety, so there is no genuine issue of material fact as to the facts averred in those paragraphs. Additionally, by admitting the factual averments in those paragraphs, Claimant also admitted the authenticity and relevance of the exhibits referenced in them: Exhibit PSERS-3 (referenced in paragraph 16), Exhibit PSERS-8 (referenced in paragraph 24), and Exhibit PSERS-10 (referenced in paragraph 26).

Similarly, Claimant admitted PSERS' Memorandum of Facts paragraphs 3, 4, 7, 10, 22, and 28 in their entirety, so there is no genuine issue of material fact as to the facts that PSERS averred in those paragraphs. However, in each of his response paragraphs, Claimant added additional averments of fact of his own "by way of further response." But his additional averments of fact did not contradict or dispute PSERS' averments of fact. Moreover, by admitting paragraph 22, Claimant admitted the authenticity and relevance of Exhibit PSERS-6, which that paragraph referenced. As to the facts that

PSERS averred in Memorandum of Facts paragraphs 3, 4, 7, 10, 22, and 28, then, there is no genuine issue of material fact.

Also, in his Response to Memorandum of Facts, Claimant admitted the material facts in Memorandum of Facts paragraphs 6, 9, 13, and 20, but denied “all other conclusions and inferences.” An examination of paragraphs 6, 9 and 13, which allege the employer contribution rate for PSERS for the school years of 2012 – 2013, 2013 – 2014 and 2014 – 2015, respectively, indicates that Claimant specifically admitted the employer contribution rate for PSERS for those respective school years, but did not specifically admit (although neither did he specifically deny) that the employer contribution rates were set pursuant to Public School Employees’ Retirement Board Resolutions 2011-59, 2012-63, and 2013-55, respectively.

However, the manner in which the employer contribution rates for PSERS were set, and the number of the specific Board Resolutions by which they were set, are not material facts, because they are not necessary to a determination of the legal issue in this matter. And with regard to paragraph 20, Claimant specifically admitted everything in that averment of fact except the date on which PSERS informed the District that the settlement amount did not constitute retirement-covered compensation. That date is not material, however, because it is not necessary to a determination of the legal issue in this matter. And while Claimant’s denial of “all other conclusions and inferences” obviously disputes PSERS’ *legal conclusion* that the settlement amount in the SAGR did not constitute retirement-covered compensation, Claimant clearly does not dispute the *fact* that PSERS informed the District of that conclusion. Accordingly, there is no genuine issue of material fact as to the facts set forth in paragraphs 6, 9, 13, and 20.

In similar fashion, Claimant admitted the material facts in paragraph 19 but denied “all other conclusions and inferences,” and added additional averments of fact “by way of further response.” He admitted that he entered into the SAGR with the District, and referenced the copy of the SAGR that

PSERS marked and offered as Exhibit PSERS-4, but Claimant denied all other conclusions and inferences, apparently thereby denying PSERS' averments of fact as to some of the contents of the SAGR. However, he did not deny that Exhibit PSERS-4 is a true and correct copy of the SAGR, and by referencing it in his response, he tacitly admitted that, indeed, it is a true and correct copy. He also provided, through his additional averments of fact, background information about the circumstances that he asserts gave rise to the SAGR, but in so doing, he did not challenge any of the factual averments in PSERS' Memorandum of Facts. Therefore, there is no genuine issue of material fact as to the facts set forth in this paragraph or the exhibit referenced in it.

Moving to Memorandum of Facts paragraphs 11, 14 and 15, in his Response to Memorandum of Facts, Claimant admitted those paragraphs in part, denied them in part, and added additional averments of fact "by way of further response." In answering the averments in those paragraphs, Claimant denied, respectively, that his base salary for the 2014 – 2015 school year was \$62,600.01, his retirement benefit amounts to \$62,600.00, and his retirement benefit amounts to \$60,490.00; his additional averments of fact reflect his assertion that his SAGR with the District impacted his base salary for the 2014 – 2015 year, final average salary, and retirement benefit.

However, Claimant's denials in paragraphs 11, 14 and 15 go to an issue of law, i.e. whether the amount the District paid under the SAGR is "compensation" to Claimant or not, so his denials do not raise issues of material fact. Also, in these paragraphs, Claimant referenced and relied on the exhibits that PSERS marked and offered as Exhibit PSERS-1 and Exhibit PSERS-2, and he did not deny that those exhibits are true and correct copies, respectively, of his *Request for Retirement Estimate* and the *Early Retirement Estimate* that PSERS provided to him. By referencing those exhibits in his response, he tacitly admitted that, indeed, they are true and correct copies. Accordingly, there is no genuine issue of material fact as to the facts set forth in paragraphs 11, 14 and 15, or the exhibits referenced in them.

In his Response to Memorandum of Facts, Claimant also “admitted in part and denied in part” Memorandum of Facts paragraphs 21, 23, 25 and 27, but he did not specifically deny any averment of fact in any of those paragraphs. Rather, Claimant’s denial is formulated as an objection to PSERS’ determinations being contained in these four averments of fact to the extent that such determination is being offered as a fact or a conclusion of law. Once more, however, Claimant’s objections go to an issue of law, i.e. whether the amount the District paid under the SAGR is “compensation” to Claimant or not, so his objections do not raise issues of material fact. And as he did in his response to other paragraphs, Claimant referenced and relied on the exhibits that PSERS marked and offered as Exhibit PSERS-5 (referenced in paragraph 21), Exhibit PSERS-7 (referenced in paragraph 23), Exhibit PSERS-9 (referenced in paragraph 25) and Exhibit PSERS-11 (referenced in paragraph 27), and he did not deny that they were true and correct copies of the documents they represent. Again, then, by responding in that way, he tacitly admitted that, indeed, they are true and correct copies. Finally, Claimant again added additional averments of fact “by way of further response” to PSERS’ averments of fact in paragraphs 21, 23, 25 and 27; as was true in the preceding discussion, his additional averments of fact reflect his position on the issue of law to be decided here, but do not raise genuine issues of material fact.

This review of Claimant’s Response to Memorandum of Facts indicates that Claimant admitted all of the material facts that PSERS averred in PSERS’ MSJ, so there are no genuine issues of material fact with regard to PSERS’ averments of fact. Since the material facts averred by PSERS are undisputed, the grant of PSERS’ MSJ would appear to be proper. *C.f. McCarthy v. Dan Lepore & Sons Co.*, 724 A.2d 938, 940 (Pa. Super. 1998) (a proper grant of summary judgment depends upon an evidentiary record that either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to the adjudicator).

Furthermore, by making his CMSJ, Claimant asserted that the material facts are undisputed and that summary judgment is proper, albeit in his favor rather than in PSERS' favor. But Claimant did not make any separate averments of fact in support of his CMSJ; instead, he made additional averments of fact in paragraphs 3, 4, 7, 10, 11, 14, 15, 19, 21, and 22 of his Response to Memorandum of Facts. But in its Response to CMSJ, PSERS denied and objected to the factual averments that Claimant made in paragraphs 3, 4, 7, 10, 11, 14, 15, 19, 21, and 22, so those factual averments would appear to be in dispute. *See* Response to CMSJ, p. 2 ("To the extent Claimant's response contains new "facts," PSERS objects to those facts and denies them"). This creates a conundrum: Claimant asserts that there are no genuine issues of material fact, in terms of the facts asserted in PSERS' MSJ, but Claimant presents additional averments of fact that PSERS clearly disputes.

Since a proper grant of a summary judgment motion depends on whether the record clearly demonstrates there is no genuine issue of *material* fact, *Yount, supra*, 966 A.2d at 1118, and the deciding adjudicator must accept as true all *well-pleaded facts* in the non-moving party's pleadings, *Kelly by Kelly, supra*, 629 A.2d at 1004, the question becomes whether Claimant's additional averments of fact are *material* and *well-pleaded*. If they are not, then the record contains insufficient evidence of facts making out a *prima facie* cause of action in support of the conclusion of law for which Claimant advocates, and there is no issue to be submitted to the adjudicator, so that the grant of the CMSJ would not be proper. *McCarthy, supra*, 724 A.2d at 940.

The additional averments of fact that Claimant made in his Response to Memorandum of Facts constitute evidence about the circumstances under which Claimant entered into the SAGR with the District. In essence, Claimant maintains that those averred facts support the correct interpretation – his interpretation – of the SAGR. His interpretation is that the \$99,621.00 settlement payment which the District agreed to pay under the SAGR was intended as "compensation" or "back pay" based on Claimant's assertion that he was underpaid for most or all of his employment by the District.

The only evidence in the record to establish the facts underlying Claimant's interpretation arises out of Claimant's averments in his Response to Memorandum of Facts. For example, he *averred* that he was hired by the District at a salary step that did not take into account his nine years of prior teaching experience. Response to Memorandum of Facts, paragraph 3. He *averred* that the SAGR retroactively placed him on a different step of the salary schedule, with a higher base salary, for the 2012 – 2013 and 2013 – 2014 school years. Response to Memorandum of Facts, paragraphs 4 and 7. He *averred* that the SAGR gave him a retroactive salary increase for the 2012 – 2013, 2013 – 2014 and 2014 – 2015 school years. Response to Memorandum of Facts, paragraphs 7, 10, 14, 15, 21. He *averred* that the SAGR was calculated based on the standard salary schedule for the District for the 2009 – 2015 school years. Response to Memorandum of Facts, paragraph 19. However, aside from Claimant's *averments*, the record contains no actual evidence to support these facts.

The courts in this Commonwealth have long recognized that “[p]rinciples of contract law govern the enforceability of settlement agreements.” *Miller v. Clay Township*, 555 A. 2d 972, 974 (Pa. Cmwlth. 1988). When contract terms are clear and unambiguous, the intention of the parties must be ascertained from what the agreement itself expressed, not from what the parties may have silently intended; it is not appropriate, under the guise of contract construction, to alter the terms to which the parties expressly agreed. *Boro Constr. v. Ridley School District*, 992 A.2d 208, 214 (Pa. Cmwlth. 2010).

The SAGR in this matter is clearly and unambiguously drafted. It provides, in pertinent part, as follows:

1. **Consideration.** In consideration for signing this Settlement Agreement and General Release, the District will pay the sum of \$99,621.00 as follows:
  - (a) The District will immediately place Grievant<sup>[2]</sup> on pay Step 19 for purposes of the ERI and Grievant will be eligible to receive the benefits of the ERI as if he had been on pay Step 19 for the 2014-2015 school year; and

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<sup>2</sup>The SAGR identifies Baldwin-Whitehall School District as “the District,” and the Claimant in this matter, Robert Holder, as “Grievant.” Exhibit PSERS-4, page 1.

- (b) Payment of \$79,697.00 less all legally required withholdings and deductions shall be issued to Grievant with the September 25, 2015 payroll, for which the District will issue Grievant a W-2.
- (c) Payment of \$19,924.00 shall be issued to Rothman Gordon, P.C. (Tax ID 25-1310422) on or before September 25, 2015, for attorney's fees and costs, for which the District will issue a Form 1999 to Rothman Gordon.

2. **General Release of all Claims.** Grievant knowingly and voluntarily releases and forever discharges the District and its current and former School Board Members and Administrators, both individually and in their official capacities (collectively referred to throughout the remainder of this agreement as "Releasees"), of and from any and all claims, known and unknown, asserted and unasserted, which Grievant has or may have against Releasees of the date of the execution of this Agreement and General Release, including but not limited to, any alleged violation of the Equal Pay Act of 1963, 29 U.S.C. § 206(d), Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967 (ADEA), Sections 1981 through 1988 of Title 42 of the United States Code; the Employee Retirement Income Security Act of 1974 (ERISA) (except for any vested benefits under any tax qualified benefit plan); the American with Disabilities Act of 1990 (ADA); the Pennsylvania Human Relations Act, 43 P.S. § 951 et. seq.; the Pennsylvania Pay Law as amended 43 P.S. § 336.1 et seq.; the Pennsylvania Wage Payment and Collection Law, as amended, 43 P.S. § 260.1 et seq.; any other federal state or local law, rule, regulation or ordinance; any basis for recovering costs, fees or other expenses including attorney's fees incurred in these matters or any claim for unpaid wages and/or bonuses or incentive payments.

\* \* \*

7. **Amendment.** This Agreement and General Release may not be modified, altered or changed except in writing and signed by all parties wherein specific reference is made to this Agreement and General Release.

8. **Entire Agreement.** This Agreement and General Release sets forth the entire agreement between the parties hereto, and fully supersedes any prior agreements or understandings between the parties. Grievant acknowledges that s/he has not relied on any representations, promises or agreements of any kind made to him/her in connection with his/her decision to accept this Agreement and General Release, except for those set forth in the Agreement and General Release.

\* \* \*

11. **Intention to Enter into Contract.** Grievant freely and knowingly, and after due consideration, enters into this Confidential Agreement and General Release intending to waive, settle and release all claims s/he has or might have against Releasees.

12. **Knowing and Voluntary.** The Parties have read the foregoing Settlement Agreement and General Release and fully understand it and its legal significance. The Parties knowingly and voluntarily sign this Agreement and General Release as of the dates set forth below. . .

Exhibit PSER-4.

From the language quoted above, it is clear, first of all, that the District agreed to pay the sum of \$99,621.00 *in consideration for* Claimant's signing the SAGR, and by signing the SAGR, Claimant released all claims he had against the District at that point. The term "consideration" has a specific legal meaning when used in this fashion in a contract. In the context of a contract, "consideration" is defined as "something of value given or done in exchange for something of value given or done by another, in order to make a binding contract." WEBSTER'S NEW WORLD DICTIONARY 297 (3d coll. ed. 1994). The term "consideration" is generally used in the contractual context to signify a validation device. *Greene v. Oliver Realty, Inc.*, 526 A.2d 1192, 1200 (Pa. Super. 1987), *quoting Darlington v. General Elec.*, 504 A.2d 306, 314 (Pa. Super. 1986). In other words, "consideration" in a contract means the parties agreed to a specific exchange of things of value, which creates a binding contract. Here, the District paid the sum of \$99,621.00 (a "thing of value"), allocated \$79,697.00 to Claimant and \$19,924.00 to his attorneys for their attorney fees and costs, *in exchange for* Claimant's signing the SAGR and releasing the District from any claims of any kind that he had against the District at that point (also a "thing of value").

Contrary to Claimant's assertions, the SAGR contains no reference to compensating Claimant for being underpaid in the past, nor is there any indication of what specific claim, if any, was resolved by execution of the SAGR. Rather, the SAGR, in paragraph 2, provides an extensive laundry list of types of claims, stating that Claimant is releasing claims

including but not limited to, any alleged violation of the Equal Pay Act of 1963, 29 U.S.C. § 206(d), Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967 (ADEA), Sections 1981 through 1988 of Title 42 of the United States Code; the Employee Retirement Income Security Act of 1974 (ERISA) (except for any vested benefits under any tax qualified benefit plan); the American with



Disabilities Act of 1990 (ADA); the Pennsylvania Human Relations Act, 43 P.S. § 951 et. seq.; the Pennsylvania Pay Law as amended 43 P.S. § 336.1 et seq.; the Pennsylvania Wage Payment and Collection Law, as amended, 43 P.S. § 260.1 et seq.; any other federal state or local law, rule, regulation or ordinance; any basis for recovering costs, fees or other expenses including attorney's fees incurred in these matters or any claim for unpaid wages and/or bonuses or incentive payments.

Exhibit PSERS-4, paragraph 2. Some types of claims enumerated in paragraph 2 of the SAGR could have to do with issues other than underpayment of wages, but the SAGR does not identify a particular claim from that list, if any, to which the District's payment relates. Therefore, Claimant's assertion that the payment was clearly for back pay is not supported by the SAGR itself.

In light of the foregoing, the SAGR appears, on its face, to be a cash award that the District paid to Claimant and his attorneys, not for any specifically-identified claim, but for release of *any* possible claims, of *any* type, that Claimant had against the District at that point. As a cash award paid in exchange for the release of any and all claims, the District's payment is, therefore, misnamed when Claimant says it is "compensation" within the meaning of the Retirement Code. *See Miller v. State Employees' Retirement System*, 616 A.2d 679, 682 (Pa. Cmwlth. 1993)<sup>3</sup> (an arbitration award paid to Miller to make up the difference between what he earned during his furlough period and what he should have earned if his rehiring rights had not been violated was not "compensation" because it was not wages for service performed, but rather, was a cash award received as a result of successful arbitration).

While Claimant may have wanted his settlement payment to be counted as compensation, there is no language to that effect to be found in the SAGR. The SAGR does not incorporate or reference any of the salary schedules on which Claimant averred it was based, nor does it identify the payment as being reimbursement for lost wages. The SAGR does not identify the time period in which the wages (if that's what the payment was) would have been earned, nor does it attribute any portion of the payment

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<sup>3</sup>Cases interpreting the State Employees' Retirement Code provisions are equally applicable in deciding issues arising under similar or identical provisions of the Public School Employees' Retirement Code. *Krill v. Public School Employees' Retirement Board*, 713 A.2d 132, 134 n.3 (Pa. Cmwlth. 1998).

to any specific period of time. Indeed, the SAGR does not even mention school years 2012 – 2013 and 2013 – 2014, two of the years to which, Claimant averred, the payment applied. *See Account of Jeffrey W. Rosenberg*, Docket No. 2016-18, at \*7 – 8 (PSERB Aug. 16, 2018); *Martsolf v. State Employees' Retirement Board*, 44 A.3d 94, 97 (Pa. Cmwlth. 2012). And while the SAGR states that the District will place Claimant on Step 19 so he will be eligible to receive the benefits of ERI as if he had been on pay Step 19 for the 2014 – 2015 school year, the SAGR does not reference or incorporate any salary schedule and does not state that any portion of the payment is to be allocated to the 2014 – 2015 school year.

In light of the SAGR's silence on these issues, the only way that Claimant's \$99,621.00 settlement amount can be construed as "compensation" under the SAGR is to allow Claimant, through the additional averments of fact that he tacked onto his Response to Memorandum of Facts, to provide information from outside the four corners of the SAGR which changes the terms of the SAGR. Indeed, Claimant's arguments in his Memorandum of Law rests exclusively on those additional averments of fact. But to allow Claimant such latitude would violate the express terms of the SAGR, which specifically provides that it "may not be modified, altered or changed except in writing and signed by all parties wherein specific reference is made to this Agreement and General Release." Exhibit PSERS-4, p. 3, paragraph 7.

Moreover, to allow Claimant to explain that the SAGR means something other than what is specifically stated in the SAGR would contravene the time-honored rule announced by our Pennsylvania Supreme Court in *Gianni v. Russell & Co.*, 126 A. 791 (Pa. 1924), in which the Court stated as follows:

Where parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the *only*, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract. . . and *unless fraud, accident or mistake be averred*, the writing constitutes the agreement between the parties, and its terms cannot be added to nor subtracted from by parol evidence.

*Id.* at 792 (citations omitted)(emphasis added). For the parol evidence rule referenced in *Gianni* to apply, there must first be a writing that represents the entire contract between the parties. To determine that entirety, the contract must be examined, and if it “appears to be a contract complete within itself, couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent” of the parties’ obligations under the contract, it is conclusively presumed to be the entire and only agreement between the parties. *Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 436 (Pa. 2004).

In particular, the presence in a writing of an integration clause, which states that the writing is meant to represent the parties’ entire agreement, is “a clear sign that the writing is meant to be just that and thereby expresses all of the parties’ negotiations, conversations, and agreements made prior to its execution.” *Yocca, supra*, 854 A.2d at 436 (citations omitted). Here, in the SAGR, the parties expressly agreed that

This Agreement and General Release *sets forth the entire agreement between the parties hereto, and fully supersedes any prior agreements or understandings between the parties.* Grievant acknowledges that s/he has not relied on any representations, promises or agreements of any kind made to him/her in connection with his/her decision to accept this Agreement and General Release, except for those set forth in the Agreement and General Release.

Exhibit PSERS-4, p. 3, paragraph 8 (emphasis added). This is an integration clause. Its presence in the SAGR is a clear indication that the SAGR represents the entirety of the District’s and Claimant’s negotiations, conversations and agreements prior to its execution. *Yocca, supra; see also Toy v. Metro. Life Ins. Co.*, 928 A.2d 186 (Pa. 2007); *Cumru Township Auth. v. Snekul, Inc.*, 618 A. 2d 1080 (Pa. Cmwlth. 1992). Furthermore, the language of the integration clause, and its presence in the SAGR, when coupled with an overall review of the SAGR, leaves no uncertainty in the reader about the District’s obligations or Claimant’s obligations under the terms of the SAGR: the District is to pay \$99,621.00, and the Claimant is to release all claims of any kind against the District. From this it is

logical and reasonable to conclude that the SAGR is the entire contract between the District and the Claimant. *Yocca*.

Once a writing is determined to be the parties' entire contract, the parol evidence rule applies, and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the contract is almost always inadmissible to explain or vary the terms of the contract. *Yocca, supra*, 854 A.2d at 436 – 437. The exception to the general application of the parol evidence rule allows the introduction of parol evidence, to vary a writing that is meant to be the parties' entire contract, in the limited circumstances in which a party asserts that a term was omitted from the contract because of fraud, accident, or mistake, or that the contract is ambiguous. *Id.*, 854 A.2d at 437.

Here, Claimant has not alleged ambiguity in the terms of the SAGR, nor has he alleged fraud, accident or mistake in the execution of the SAGR, so there is no basis for resorting to parol evidence to determine what the SAGR means or how it should be interpreted. Claimant is, therefore, foreclosed from adding to or subtracting from the SAGR's terms through the use of parol evidence, i.e. evidence outside the four corners of the document's terms. Accordingly, Claimant's additional averments of fact are neither material – because they cannot be introduced to vary the terms of the SAGR – nor are they well-pleaded – because they are irrelevant, since the parol evidence rule prohibits their introduction into the record. It follows that Claimant's additional averments of fact cannot properly be considered. For that reason, the record contains insufficient evidence of facts to make out a *prima facie* cause of action in Claimant's favor and, therefore, there is no issue to be submitted to the adjudicator with regard to Claimant's CMSJ. *McCarthy, supra*. Consequently, there is no factual support in the record for Claimant's CMSJ and it should be denied.

Based on the foregoing, it is clear on the face of the SAGR that the \$99,621.00 payment by the District to Claimant and Claimant's attorneys was consideration for Claimant's agreement to release all claims, grievances, and the like, that Claimant had against the District. Period. The SAGR did *not*

provide for Claimant to receive wages for services performed or allocate the District's payment to any school year as remuneration earned while he was serving as a school employee. Rather, the \$99,621.00 was a cash award that Claimant received in exchange for his release of any and all claims he may or may not have had against the District. As such, the payment does not represent "[p]ickup contributions and mandatory pickup participant contributions plus any remuneration received as a school employee. . ." 24 Pa.C.S. § 8102. Rather, it represents "any other remuneration or other emolument received by a school employee during his school service which is not based on the standard salary schedule under which he is rendering service, . . ." and as such, is specifically excluded from the definition of "compensation" under the Retirement Code. *Id.*

Claimant bears the burden of proof in this proceeding. *Gierschick v. State Employees' Retirement Board*, 733 A.2d 29 (Pa. Cmwlth. 1999), *petition for allowance of appeal denied*, 751 A.2d 194 (Pa. 2000); *Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991). Because Claimant's additional averments of fact constitute impermissible parol evidence that would change the meaning of the SAGR, in contravention of the SAGR's clear use of an integration clause, none of the arguments Claimant makes, which are based solely on those additional averments of fact, can be credited. Claimant has not sustained his burden of proving that the District's payment of \$99,621.00 under the SAGR was anything other than a payment made in settlement of any claims Claimant may have had against the District at the time he signed the SAGR. Based upon the foregoing, then, the evidence does not support the finding that the \$99,621.00 payment is "compensation" within the meaning of the Retirement Code.

Under the Retirement Code, retirement benefits are based, in part, on a member's "final average salary," which the Retirement Code defines as "the highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months. . ." 24 Pa.C.S. § 8102. Since the payment under the SAGR was not "compensation," as it is defined in the Retirement

Code, the payment cannot be used in the calculation of Claimant's final average salary. Indeed, incorporating non-compensation into the calculation of Claimant's final average salary would artificially inflate Claimant's compensation, which is contrary to the General Assembly's intent to preserve the actuarial integrity of the retirement fund by, among other things, disallowing payments which may represent an artificial inflation of compensation for the purpose of enhancing retirement. *Laurito v. Public School Employees' Retirement Board*, 606 A. 2d 609, 611; *see also Christiana v. Public School Employees' Retirement Board*, 669 A.2d 940, 944 (Pa. 1996).

Moreover, the Board has both an obligation and a right to challenge the propriety of any payment made to a PSERS member, as well as to determine, even over the language of a negotiated agreement, what benefits are due under the Retirement Code. *Perry v. State Emps. Ret. Sys.*, 872 A.2d 273, 278 (Pa. Cmwlth. 2005). Additionally, while the Board must liberally administer the retirement system in favor of the members of the system, *Dowler v. Pub. Sch. Employees' Ret. Bd.*, 620 A.2d 639, 645 (Pa. Cmwlth. 1993), the liberal administration of the retirement system does not permit the Board to circumvent the express language of the Retirement Code. *Id.* The Retirement Code excludes, from the computation of final average salary, payments that are not within the definition of "compensation," such as "any other remuneration or other emolument received by a school employee during his school service which is not based on the standard salary schedule under which he is rendering service. . ." 24 Pa.C.S. § 8102. It follows that, even in liberally administering the retirement system, the Board cannot circumvent the definition of "compensation" by including, in the calculation of Claimant's final average salary, the District's cash payment under the SAGR, which was made in exchange for Claimant's release of claims rather than to compensate Claimant for any lost wages.

Notably, our Supreme Court has held that the Board is "not obligated to accept contributions on behalf of a member where contributions are made in accordance with a settlement agreement to which [the] Board was not a party." *Martsolf v. State Employees' Ret. Bd.*, 44 A.3d 94, 98 n.4 (Pa.

Cmwlth. 2012), *appeal denied*, 62 A.3d 380 (Pa. 2013), *quoting Hoerner v. Public School Employees' Retirement Board*, 684 A.2d 112, 117 n.10 (Pa. 1996) (*citing Watrel v. Department of Education*, 518 A.2d 1158 (Pa. 1986)). Therefore, even if PSERS had not challenged the nature of the payment made by the District pursuant to the SAGR, the Board is not bound to accept that payment as compensation, because the Board was not a party to the agreement. *Martsolf, supra*, 44 A.3d at 98 n.4.

Finally, PSERS is a creature of statute which derives its authority from the provisions of the Retirement Code. *Krill v. Pub. Sch. Employees' Ret. Bd.*, 713 A.2d 132, 134 (Pa. Cmwlth. 1998), *citing Estate of Rosenstein v. Public School Employees' Retirement System*, 685 A.2d 624 (Pa. Cmwlth. 1996) and *Cosgrove v. State Employees' Retirement Board*, 665 A.2d 870 (Pa. Cmwlth. 1995). Consequently, Claimant has only those rights created by the Retirement Code and none beyond that. *Id.*; *see also Forman v. Pub. Sch. Employees' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001); *Burriss v. State Employees' Retirement Board*, 745A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A.2d 403 (Pa. Cmwlth. 1992). Likewise, the Board has no equity powers by which it may provide an employee with a right that the Retirement Code does not explicitly provide. *Marinucci v. State Employees' Retirement System*, 863 A.2d 43, 47 (Pa. Cmwlth. 2004). Accordingly, based upon the foregoing, neither PSERS nor the Board has authority to grant Claimant the relief he requests, and so the following recommendation is made:

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

**IN RE:**

**ACCOUNT OF ROBERT HOLDER  
CLAIM OF ROBERT HOLDER**


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**DOCKET NO. 2016-20**

**RECOMMENDATION**

**AND NOW**, this 13<sup>th</sup> day of **November, 2018**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Hearing Officer for the Public School Employees' Retirement Board recommends that the Board

- (1) **DENY** Claimant's *Cross-Motion for Summary Judgment*;
- (2) **GRANT** PSERS' *Motion for Summary Judgment*;
- (3) **DENY** Claimant's request to have a \$99,621.00 settlement payment deemed retirement-covered compensation for the 2012 – 2013, 2013 – 2014 and 2014 – 2015 school years; and
- (4) **DISMISS** Claimant's administrative appeal.

  
\_\_\_\_\_  
**Ruth D. Dunnewold**  
**Hearing Officer**

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***Docket Clerk:*** Laura Vitale, Appeal Docket Clerk  
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***Date of mailing:*** 11/13/18