

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

PANTHER VALLEY SCHOOL DISTRICT, :
Appellant/Respondent :
 :
vs. : No. 09-0206
 :
PANTHER VALLEY EDUCATION :
ASSOCIATION and ROBERT J. THOMAS, :
Appellees/Petitioners :

Civil Law - Public School Code - Furloughed Professional
School Employee - Failure to Recall and Reinstatement
- Damages - Salary Step Determination -
Computation of Back Pay (Adjustment for
Mitigation) - Interest - Employment Status
(Entitlement to Tenure) - Fringe Benefits
(Reimbursement of Medical and Educational
Expenses) - Contempt

1. A furloughed professional school employee subject to recall, who would have been recalled and reinstated had his name been placed on a school district's recall list, is entitled to back pay and all other financial emoluments for the period for which he should have been recalled, less monies and other work-related benefits received by him during such period.
2. For purposes of placement on a school district's salary scale, a furloughed professional employee who has not been recalled and reinstated in accordance with the parties' collective bargaining agreement is entitled to recovery of his lost salary, inclusive of any increments in such salary attributable to annual salary step increases which he would have received had he been properly recalled and reinstated.
3. An employee who suffers a loss due to breach of an employment contract has a duty to make reasonable efforts to mitigate that loss. The applicable measure of damages is the wages which were to be paid less any amount actually earned or which might have been earned through the exercise of reasonable diligence and seeking other similar employment. The burden of showing that losses could have been avoided is upon the breaching party.

4. Pursuant to Section 1155 of the Public School Code, an employee of a school district who has not been paid his salary when due is entitled to interest at the rate of six percentum per annum from the due date.
5. The measure of damages for medical expenses incurred by a furloughed school employee who has not been timely reinstated in accordance with the parties' collective bargaining agreement is his actual losses for the period he was improperly denied reinstatement, i.e., his out-of-pocket expenses for insurance premiums or those medical expenses which would have been covered by the District's insurance program.
6. Tuition reimbursement to a furloughed professional school employee entitled to reinstatement who has paid for college credits necessary to retain his professional certification while on furlough are to be determined in accordance with the parties' collective bargaining agreement.
7. A temporary professional employee who works for a school district for three years without receiving an unsatisfactory rating shall thereafter be a professional employee with tenure rights associated with such status. This period of probation applies whether the employee was actually working for the school district, or was entitled to work, but was prevented from doing so by being improperly denied timely reinstatement. Consequently, a temporary professional employee who has been improperly furloughed and is entitled to reinstatement, and who has completed a three-year probationary period for which he has not received an unsatisfactory rating during the final four months - including in this computation the period of any improper furlough - is entitled upon reinstatement to be granted tenure status.
8. To be held in contempt of a court order, the complaining party must prove by a preponderance of the evidence: (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent. Contempt will not be found where legitimate disputes exist regarding tenure and the amount of back pay to which a claimant is entitled when adjusted for mitigation.

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Appellant/Respondent	:	
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vs.	:	No. 09-0206
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PANTHER VALLEY EDUCATION	:	
ASSOCIATION and ROBERT J. THOMAS,	:	
Appellees/Petitioners	:	
Robert T. Yurchak, Esquire		Counsel for Respondent
A. Martin Herring, Esquire		Counsel for Petitioners

MEMORANDUM OPINION

Nanovic, P.J. - June 18, 2012

On December 22, 2008, Robert J. Thomas ("Thomas") was the beneficiary of an arbitration award directing the Panther Valley School District ("District") to place his name on the District's recall list, to reinstate him to a position he was qualified to teach in the District, and to make Thomas whole for all wages, seniority and benefits he was denied between August 11, 2006 and the date of his reinstatement. This award, modified to make clear that the District was entitled to credit for any substitute wages and benefits received by Thomas during the period of his furlough, was upheld by us in our decision of December 11, 2009, which was later affirmed by the Pennsylvania Commonwealth Court on November 24, 2010.

On January 3, 2011, the District reinstated Thomas to a teaching position. Unfortunately, the parties have been unable to agree on what Thomas is entitled to receive to be made whole. This is the basic issue before us, including within it questions of back pay, mitigation of damages, seniority, employment status and accrued fringe benefits.

FACTUAL AND PROCEDURAL BACKGROUND

On August 10, 2006, the District elected not to renew Thomas' employment contract as a temporary professional employee in the District's alternative education program due to a change in status of that program. Thomas' employment with the District under this contract began on November 12, 2004. Between November 12, 2004 and August 10, 2006, Thomas received four performance evaluation reviews: three satisfactory and the last, dated August 1, 2006, unsatisfactory.

As a temporary professional employee, Thomas did not have tenure at the time his contract ended. However, prior to his employment in the District's alternative education program, Thomas had worked for the District as a substitute teacher with certification as a health and physical education teacher.

In his position as a temporary professional employee, Thomas was subject to the provisions and protections of the collective bargaining agreement existing between the Panther

Valley Education Association ("Association"), the collective bargaining agent for the District's professional employees, and the District.¹ Under this agreement, teachers with professional certifications who had been laid off and furloughed - Thomas' official status as determined in prior proceedings in this case - were to be placed on the District's recall list and given preferential consideration in filling any future vacancies in their areas of certification. (Collective Bargaining Agreement, Article X (Lay Off and Recall), Section 2). When Thomas was neither recalled nor reinstated by the District to fill a vacancy which had opened within his field of certification, the Association, on September 13, 2006, filed a grievance on Thomas' behalf. That grievance, as previously stated, was sustained by the arbitrator on December 22, 2008.

During the District's appeal of the arbitrator's decision to this court and the appellate litigation which followed, Thomas received unemployment compensation benefits and miscellaneous income, incurred medical expenses which otherwise would have been covered had he remained an employee of the

¹ On August 10, 2006, the collective bargaining agreement in effect between the District and the Association was that dated May 25, 2006, for the period from August 2005 until August 2008. (Thomas Exhibit P-3). This contract was later succeeded by that dated November 6, 2008, for the three-year period between August 2008 and August 2011. (Thomas Exhibit P-2). As there is no need to distinguish between these contracts for purposes of this opinion, both are referred to collectively as the collective bargaining agreement.

District, and also expended money for continuing education to maintain his profession certification.

After the Commonwealth Court affirmed our December 11, 2009 decision, the District reinstated Thomas as a high school physical education teacher on January 3, 2011. Specifically, the District hired Thomas as a temporary professional employee, subject to tenure status after the receipt of six consecutive satisfactory ratings over the next three years. Moreover, he was placed on Step 3 of the salary scale as provided by the collective bargaining agreement. Thomas contends that he should have been reinstated with tenure, as he did not receive any unsatisfactory ratings between August 2006 and January 2011, and that at the time of reinstatement he was entitled to be placed on Step 7 of the salary scale, where he would have been had his employment with the District continued during his period of furlough.

When the parties were unable to resolve their differences, the Association and Thomas filed a joint Petition for Contempt on March 17, 2011, seeking to have the issues between them decided by this court and further requesting payment of their attorney fees as relief for the District's alleged willful violation of our December 11, 2009 order upholding the

arbitrator's award.² A hearing was held on August 16, 2011. At that time, Thomas also requested interest on any award rendered.

DISCUSSION

As delineated by the Petition for Contempt, the arguments made by the parties, and the hearing held on August 16, 2011, the following six issues are to be decided:

1. The proper salary step at which Thomas was to be reinstated;
2. The amount of back pay, with appropriate adjustments for mitigation, which Thomas is entitled to receive;
3. Thomas' claim to interest on any back pay awarded;
4. Thomas' request for reimbursement of medical and educational expenses incurred by him while on furlough;
5. Whether Thomas is entitled to be reinstated with tenure; and
6. Thomas' request that the District be held in contempt and ordered to pay his attorney fees.

(N.T. 08/16/2011, pp. 3-6). Each will be addressed in the order presented.³

² The interests and contentions advocated by both the Association and Thomas are identical. For this reason, unless otherwise indicated, both are encompassed within our singular reference to Thomas hereafter.

³ Prior to filing the instant Petition for Contempt, the Association filed another grievance on Thomas' behalf alleging that "upon return to employment by direction of an arbitrator, Robert Thomas was improperly denied tenure and placed on the incorrect salary step." Following our review of this Petition, we ordered the parties to provide us with legal authority as to "whether the court has jurisdiction at this time to entertain the issues raised in the Petition for Contempt, or whether this matter needs to be remanded back to the original arbitrator (John J. Dunn, Esquire) or to be resolved by a grievance procedure under the Collective Bargaining Agreement." (Order, 05/2/2011). Subsequently, the parties agreed to our jurisdiction and asked that we resolve the issues presented. (N.T. 08/16/2011, p. 3).

In addition to the issues listed, prior to the August 16, 2011 hearing, the parties disagreed on whether Thomas was entitled upon reinstatement to seventy sick days and twelve personal days, which were claimed to have accrued prior to August 11, 2006 and during Thomas' period of unemployment with the District. At the time of hearing, the parties agreed that this

1. *Salary Step Determination*

A furloughed professional school employee subject to recall, who would have been recalled and reinstated had his name been placed on a school district's recall list, is entitled to back pay and all other financial emoluments for the period for which he should have been recalled, less monies and other work-related benefits received by him during such period. Colonial Education Association v. Colonial School District, 644 A.2d 211, 212 (Pa.Cmwlth. 1994), *appeal denied*, 652 A.2d 840 (Pa. 1994). In order to determine the amount of back pay Thomas would have earned with the District had he not been furloughed, we must first determine whether Thomas was entitled to annual step increases on the District's salary scale, each step corresponding to an additional year of service with the District, for each year of his furlough.

The parties agree that had Thomas' employment with the District continued for the 2006-2007 school year, Thomas would have been placed on Step 3 of the salary scale. The District contends that the salary step to which an employee is entitled to be placed depends upon his actual years of service with the District. Accordingly, since Thomas had only been employed in the District's alternative education program for two school

matter was no longer in dispute and that Thomas would be credited with seventy sick days and twelve personal days. (N.T. 08/16/2011, p. 4)

years prior to the non-renewal of his employment contract, the District argues that it correctly placed him at Step 3 upon his reinstatement on January 3, 2011.

In this regard, the District relies upon Section 11-1142(a) of the Public School Code of 1949 ("Code"), 24 P.S. §§ 1-101 - 27-2702, which provides:

(a) Except as hereinafter otherwise provided, all school districts and vocational school districts shall pay all regular and temporary teachers, supervisors, directors and coordinators of vocational education, psychologists, teachers of classes for exceptional children, supervising principals, vocational teachers, and principals in the public schools of the district the minimum salaries and increments for the school year 1968-1969 and each school year thereafter, as provided in the following tabulation in accordance with the column in which the professional employe is grouped and the step which the professional employe has attained by years of experience within the school district each step after step 1 constituting one year of service. When a school district, by agreement, places a professional employe on a step in the salary scale, each step thereafter shall constitute one year of service. When a district adopts a salary scale in excess of the mandated scale, it shall not be deemed to have altered or increased the step which the employe has gained through years of service.

24 P.S. § 11-1142(a). While this provision has been interpreted to require that a teacher's past years of service in the same district be credited upon rehire, following a voluntary break in service, for purposes of placement on the salary scale following a forced furlough and failure to reinstate, it does not address

the issue before us. Mifflinburg Area Education Association v. Mifflinburg Area School District, 724 A.2d 339, 343 (Pa. 1999).

Thomas argues that to be made whole the back pay to which he is entitled includes any increase in the salary step he would have received had he been permitted to continue his employment with the District. In other words, the risk of improperly furloughing Thomas must be borne by the District and not Thomas. This accords with principles of fundamental fairness and is consistent with the case law. See Mullen v. Board of School Directors of the DuBois Area School District, 259 A.2d 877, 881 (Pa. 1969) (finding improperly discharged teacher, a temporary professional employee, was entitled to "restoration to his position, damages for lost salary *together with any increments to his salary to which he would have been entitled had he continued in his position*, and a certification which would result in his becoming a 'permanent professional employee'") (emphasis added). Thus Thomas was entitled to a four-step advance within the salary scale while on furlough - from Step 3 for the 2006-2007 school year, to Step 4 for the 2007-2008 school year, to Step 5 for the 2008-2009 school year, to Step 6 for the 2009-2010 school year, and finally, to Step 7 for the 2010-2011 school year.

2. *Computation of Back Pay Award*

When an employee is furloughed or discharged, he or she is entitled to all compensation lost if the employer's action is later determined to be illegal or improper. In *Shearer v. Commonwealth, Secretary of Education*, 57 Pa.Commonwealth Ct. 266, 269, 424 A.2d 633, 634 (1981), we held that:

[A] professional employee is entitled to back pay for any period of involuntary separation from his employment which is subsequently resolved in his favor. See *Theros v. Warwick Board of School Directors*, 42 Pa.Commonwealth Ct. 296, 401 A.2d 575 (1979), where we held that a wrongfully suspended professional employee be paid "an amount of money equal to the compensation he would have been paid during the period of his suspension." *Id.* at 301, 401 A.2d at 577.

Arcurio v. Greater Johnstown School District., 630 A.2d 529, 531

(Pa.Cmwlt. 1993) (Pellegrini, J. dissenting). Further,

[i]t is a well-established rule of law that one who suffers a loss due to breach of a contract has a duty to make reasonable efforts to mitigate that loss. *State Public School Building Auth. v. W.M. Anderson Co.*, 49 Pa.Commonwealth Ct. 420, 410 A.2d 1329 (1980). In a breach of contract of employment case, the measure of damages is the wages which were to be paid less any amount actually earned or which might have been earned through the exercise of reasonable diligence in seeking other similar employment. *Coble v. Metal Township School Dist.*, 178 Pa.Superior Ct. 301, 116 A.2d 113 (1955). Further, it is the breaching party who has the burden of showing that the losses could have been avoided. *Savitz v. Gallaccio*, 179 Pa.Superior Ct. 589, 118 A.2d 282 (1955).

Edge v. Chester Upland School District, 606 A.2d 1243, 1246

(Pa.Cmwlt. 1992).

For the relevant time period, the parties' collective bargaining agreement contained the following salary schedule for professional employees of the District with respect to the step levels for which Thomas was entitled to be compensated:

<u>School Year</u>	<u>Salary Step</u>	<u>Wages</u>
2006-2007	Step 3	\$33,157.00
2007-2008	Step 4	\$33,595.00
2008-2009	Step 5	\$34,470.00
2009-2010	Step 6	\$36,315.00
2010-2011	Step 7	\$19,142.50 ⁴

(Thomas Exhibits P-2, P-3). In accordance with this schedule, between August 11, 2006, the date of Thomas' furlough, and January 3, 2011, the date of his reinstatement, Thomas' wages would have totaled \$156,679.50.

During this same period, Thomas received unemployment benefits and earned income as follows:

<u>Calendar Year</u>	<u>Source</u>	<u>Amount</u>
2006	Unemployment Compensation	\$5,775.00
2007	Unemployment Compensation	\$4,325.00
	Access Services (part-time therapeutic support staff)	\$7,933.72 ⁵
	Vanak Detective Agency (part-time security guard)	\$3,298.00 ⁶
2008	Vanak Detective Agency (part-time security guard)	\$8,406.25

⁴ This figure for that portion of the 2010-2011 school year which preceded Thomas' reinstatement on January 3, 2011, represents one-half of the total salary provided in the District's salary schedule, \$38,285.00, for the 2010-2011 school year for a teacher at step 7 holding a bachelor's degree.

⁵ See School District Exhibit 3.

⁶ See School District Exhibit 2.

Thomas received no outside compensation for the years 2009 and 2010 as he elected to stay home and care for his mother.

In determining the amount of back pay Thomas is entitled to receive, "the measure of damages is the wages which were to be paid, less any sum actually earned, or which might have been earned, by [the employee] by the exercise of reasonable diligence in seeking other similar employment." Coble v. School District of the Township of Metal, 116 A.2d 113, 116 (Pa.Super. 1955). Under this standard, the District is entitled to credit for the amount of wages Thomas actually earned while he was on furlough, as well as the amount of unemployment compensation benefits he received. Shearer v. Commonwealth of Pennsylvania, Secretary of Education, 424 A.2d 633, 635 (Pa.Cmwlt. 1981) (noting the procedure for adjusting back pay awards for unemployment compensation benefits is set forth in Sections 704 and 705 of the Unemployment Compensation Law, 43 P.S. §§ 864, 865).⁷

⁷ These sections provide as follows:

§ 864. Deductions from back wage awards

Any employer who makes a deduction from a back wage award to a claimant because of the claimant's receipt of unemployment compensation benefits, for which he has become ineligible by reason of such award, shall be liable to pay into the Unemployment Compensation Fund an amount equal to the amount of such deduction. When the employer has made such payment into the Unemployment Compensation Fund, his reserve account shall be appropriately credited.

§ 865. Recoupment and/or setoff of unemployment compensation benefits
Currentness

Recoupment and/or setoff of benefits paid to a discharged employee, if any, shall be determined from employee's gross, not net, back wages

Additionally, Thomas voluntarily left his employment with Access Services as a TSS worker in October 2007, choosing instead to care for his mother. While certainly laudatory, the income foregone by this decision should not be underwritten by the District. Under the circumstances, we believe it appropriate to attribute \$15,867.00 to Thomas' earnings for each of the following years preceding Thomas' reinstatement.⁸ Cf. Pletz v. Dept. of Envir. Resources, 664 A.2d 1071, 1073 (Pa.Cmwlth. 1995) (finding employee who voluntarily chose to take sick leave without pay made herself unavailable for work thereby abrogating her right to back pay). The District has not otherwise met its burden of establishing a failure to mitigate.⁹ Edge, 606 A.2d at 1274 (noting that to meet its burden, the employer must demonstrate that substantially comparable work was available and that the employee failed to exercise reasonable due diligence in seeking alternative employment).

After adjustment for amounts actually received, or which might have been earned through the exercise of reasonable

if employee is reinstated by arbitrator with back pay during period back pay is awarded.

⁸ In 2007, Thomas was employed at Access Services from April 2, 2007 until October 3, 2007, during which period he earned \$7,933.72. (School District Exhibit 3). This equates to \$1,322.28 monthly or \$15,867.00 on a yearly basis.

⁹ Thomas was last employed by Vanak Detective Agency as a security guard in 2008. This employment ended through no fault of Thomas' when the detective agency lost its contract for security at St. Luke's Hospital in Coaldale, whereupon Thomas was laid off from this position.

diligence, Thomas is entitled to \$61,183.03 in back pay computed as follows:

<u>Calendar Year</u>	<u>School Salary</u> ¹⁰	<u>Mitigation Damages</u>	<u>Amount of Back Pay Due</u>
2006	\$16,578.50	\$ 5,775.00	\$10,803.50
2007	\$33,376.00	\$15,556.72	\$17,819.28
2008	\$34,032.50	\$24,273.25	\$ 9,759.25
2009	\$35,392.50	\$15,867.00	\$19,525.50
2010	\$19,142.50	\$15,867.00	\$ 3,275.50

3. *Interest*

Pursuant to Section 1155 of the School Code, Thomas is entitled to interest on his back pay award at the rate of six per cent per annum. This Section provides in relevant part:

In the event the payment of salaries of employes of any school district is not made when due, the school district shall be liable for the payment of same, together with interest at six percentum (6%) per annum from the due date. . . .

24 P.S. § 11-1155. Under this Section, Thomas is entitled to the payment of interest on the amount of salary withheld, the cause for which the salary was withheld being irrelevant. Shearer, 424 A.2d at 635; see also Pennsylvania State Education Association v. Appalachia Inter. Unit, 476 A.2d 360, 363 (Pa. 1984) (holding that absent an explicit statutory or contractual provision, interest is to be awarded at a simple, not compound, rate). This provision is self-executing and not, as the

¹⁰ We have adjusted the school salary for each year to a calendar year basis by taking the salary for the second half of each school year and adding it to the salary for the first half of the following year.

District argues, waived because not requested in the Petition for Contempt.

The total amount of interest due to Thomas is \$13,649.40 computed as follows:

<u>Year</u>	<u>Back Pay Amount By Calendar Year</u>	<u>Interest Due</u> ¹¹
2006	\$10,803.50	\$3,565.15
2007	\$17,819.28	\$4,811.20
2008	\$ 9,759.25	\$2,049.44
2009	\$19,525.50	\$2,928.82
2010	\$ 3,275.50	\$ 294.79

4. *Tuition Reimbursement and Medical Expenses*

While on furlough, Thomas attended, completed and paid for twelve college credits necessary to retain his professional certification. The cost for these credits was \$2,601.00, which Thomas seeks to have reimbursed by the District.¹² On this issue, the collective bargaining agreement provides:

The Panther Valley School District will provide tuition reimbursement for nine of the twenty-four (24) credits earned for certification. The reimbursement shall be limited to twelve (12) credits in any one calendar year and shall be at the actual cost of the Kutztown University fee for undergraduate and graduate credits.

(Collective Bargaining Agreement, Article VI (Professional Employee Benefits), Section 7). While ambiguous on its face,

¹¹ Cumulative interest for each calendar year has been computed at the rate of six percent simple interest from December 31 of each calendar year until June 30, 2012.

¹² Prior to the hearing, the parties stipulated that Thomas did in fact take and pay for the twelve credits. (N.T. 08/16/2011, pp. 9-10).

the District's Superintendent, Rosemary Poremba, testified without contradiction that under this contract a teacher who has a level one certification is entitled to be reimbursed for nine credits. Once the teacher achieves level two status - this is done by completing an induction program, receiving six satisfactory ratings, and taking twenty-four credits from an accredited Pennsylvania graduate or undergraduate school - the teacher is then entitled to receive twelve credits of reimbursement per calendar year. (N.T. 08/16/2011, pp. 72-74).

Ms. Poremba further explained that, at the time of the hearing, Thomas currently had a level one certification. Moreover, he had previously been reimbursed for six credits taken prior to August of 2006. Consequently, as of 2009, when Thomas enrolled in the twelve credits, he was only entitled to reimbursement for three additional credits. (N.T. 08/16/2011, p. 72). Accordingly, Thomas is entitled to be paid the cost of three of the twelve credits taken in 2009 to be calculated at the rate of the Kutztown University fee for the spring semester.

As to Thomas' claim for medical expenses incurred during the period of his furlough, "the proper measure of damages is limited to [Thomas'] actual losses, i.e., his out-of-pocket expenses for insurance premiums or those medical expenses which would have been covered by the District's insurance program."

Arcurio, 630 A.2d at 528. In this case, these expenses total \$608.27. (N.T. 08/16/2011, pp. 24-25).¹³

5. *Tenure*

Under the School Code, "teachers are professional employees with tenure rights unless newly hired, in which case they are temporary professional employees." Pookman v. School District of the Township of Upper St. Clair, 483 A.2d 1371, 1375 (Pa. 1984) (citing 24 P.S. § 11-1101) (Zappala, J., dissenting). Pursuant to Section 1108 (d) of the Code, 24 P.S. § 11-1108, temporary professional employees shall for all purposes, except tenure status, be viewed as full-time employees and shall enjoy all the rights and privileges of regular full-time employees. Pookman, 483 A.2d at 1374 n.3. ("[T]he only thing distinguishing temporary professional employees from professional employees is tenure."). "Temporary professional employees have no right of retention on the basis of seniority or ratings against professional employees or among themselves." *Id.* at 1376.

¹³ In computing this amount, we have credited Thomas for all medical expenses claimed except those billed by Vermillion Dental Office. As to the latter, the District's business manager, Kenneth Marx, Jr., testified that Vermillion Dental is not part of the approved network of providers for the District. (N.T. 08/16/2011, p. 89). Mr. Marx further testified that because of this fact, the reimbursement rate to Thomas will be significantly less than that for a covered provider, however, that rate was not available to him at the time of hearing. Additionally, Thomas acknowledged that part of the charges on the Vermillion billing were taken care of prior to his separation from the District. (N.T. 08/16/2011, pp. 57-59).

Under Section 1108 of the Code:

the non-tenured teacher or 'temporary professional employe' is employed for what is, in essence, a probationary period of [three] years. At least twice yearly the county or district superintendent is required to rate such a teacher's performance according to the procedure set forth in § 1123. After [three] consecutive years of satisfactory performance and upon a satisfactory rating during the last four months of the probationary period, the non-tenured teacher gains the status of a 'professional employe', i.e., he acquires tenure and is entitled to a professional employe's contract.

Board of Education of the School District of Philadelphia v. Philadelphia Federation of Teachers Local No. 3, 346 A.2d 35, 46 (Pa. 1975) n.7 (Pomeroy, J. dissenting) (citations omitted).¹⁴

¹⁴ Section 11-1108 of the School Code provides:

§ 11-1108. Temporary professional employes

(a) It shall be the duty of the district superintendent to notify each temporary professional employe, at least twice each year during the period of his or her employment, of the professional quality, professional progress, and rating of his or her services. No temporary professional employe shall be dismissed unless rated unsatisfactory,

(b) (1)

(2) A temporary professional employe initially employed by a school district, on or after June 30, 1996, whose work has been certified by the district superintendent to the secretary of the school district, during the last four (4) months of the third year of such service, as being satisfactory shall thereafter be a "professional employe" within the meaning of this article.

(3) The attainment of the status under paragraph (1) or (2) shall be recorded in the records of the board and written notification thereof shall be sent also to the employe. The employe shall then be tendered forthwith a regular contract of employment as provided for professional employes. No professional employe who has attained tenure status in any school district of this Commonwealth shall thereafter be required to serve as a temporary professional employe before being tendered such a contract when employed by any other part of the public school system of the Commonwealth.

(c) (1)

(2) Any temporary professional employe employed by a school district after June 30, 1996, who is not tendered a regular contract of employment at the end of three years of service, rendered as herein provided, shall be given a written statement signed by the president

In Department of Education v. Jersey Shore Area School District, 392 A.2d 1331 (Pa. 1978), the Pennsylvania Supreme Court held that "a temporary professional employee who works for two years without receiving an unsatisfactory rating thereupon becomes a professional employee with the tenure rights associated with such status." Pookman, 483 A.2d at 1376. An affirmative satisfactory rating is not required. Elias v. Board of School Directors, 218 A.2d 738 (Pa. 1966). On this basis, we conclude, as did our Supreme Court in Mullen under similar circumstances, that Thomas is entitled to be reinstated as a permanent professional employee, that is one with tenure. 259 A.2d at 881.

6. *Contempt*

Lastly, Thomas argues that the Board is in contempt of our December 11, 2009 order. For contempt, the complaining party has the burden of proving, by a preponderance of the evidence: "(1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3)

and secretary of the board of school directors and setting forth explicitly the reason for such refusal.

(d) Temporary professional employees shall for all purposes, except tenure status, be viewed in law as full-time employees, and shall enjoy all the rights and privileges of regular full-time employees.

24 P.S. § 11-1108.

that the contemnor acted with wrongful intent." Lachat v. Hinchcliffe, 769 A.2d 481, 489 (Pa.Super. 2001).

In this case, while the first element has been met, neither the second nor third elements have been proven. As is evident from the foregoing discussion, legitimate factual disputes exist - some of which arose after entry of the December 11, 2009 order - which have prevented a clear determination of what was required for Thomas to be made whole under the December 11, 2009 order. On this basis, Thomas' request that the Board be held in contempt will be denied.

CONCLUSION

In accordance with the foregoing, we find Thomas should be accorded tenured status in his employment with the District and is due the following additional compensation attributable to the period prior to his reinstatement:

Back Pay	\$61,183.03
Accrued Interest	
(through June 30, 2012)	\$13,649.40
Medical Expenses	<u>\$ 608.27</u>
Total	\$75,440.70

In addition, Thomas is entitled to additional compensation since the date of his reinstatement on January 3, 2011 through the completion of the 2011-2012 school year measured by the difference in pay he actually received versus that amount he was entitled to receive had he been placed on step 7 of the salary

scale upon reinstatement. For the second half of the 2010-2011 school year, this difference is \$1,422.50 (\$1,507.85 with interest).¹⁵ Because the record does not include a copy of the collective bargaining agreement setting the salary scales for the 2011-2012 school year, we are unable to compute this difference.

Finally, Thomas is entitled to receive compensation for three additional college credits for courses taken by him in 2009. The amount of this compensation as provided for in the collective bargaining agreement is to be at the actual cost of the Kutztown University fee for undergraduate and graduate credits. Thomas is also entitled to partial reimbursement for \$1,496.00 in medical expenses he incurred with the Vermillion Dental Office at the rate provided by the District for out-of-network dental providers.¹⁶

BY THE COURT:

P.J.

¹⁵ This amount represents one-half of the difference between the salary as provided by the collective bargaining agreement for the 2010-2011 school year at step 7 (i.e., \$38,285.00) and the salary for the same year at step 3 (i.e., \$35,440.00).

¹⁶ This amount represents the total billings Thomas submitted from the Vermillion Dental Office, less \$249.00 which Thomas testified was no longer in issue having been incurred and accounted for prior to his furlough.