

# LEGAL MAILBAG – NOVEMBER 21, 2024



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*The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: [legalmailbag@casciac.org](mailto:legalmailbag@casciac.org).*

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Dear Legal Mailbag,

As the principal of a middle school, I find myself in the doghouse with my Superintendent, and I am hoping that Legal Mailbag can help me get out. One of the secretaries in my school woke up from a deep sleep last month to realize that she has been paid on the wrong step on the salary schedule for three years. She and her union representative came to me informally to complain, but I told them that there was nothing I could do about her problem.

The next thing I knew, the union representative filed a grievance on behalf of the secretary. As her supervisor, I heard her grievance at Step One, and she and the union representative made a compelling case. We looked at her annual salary notifications and the collective bargaining agreement, and it was clear that the HR Department overlooked her three years ago, and she was not advanced a step on the salary schedule that year. Subsequently, she was advanced a step each year, but given the error, she has been one step behind in her compensation for the last three years. Under the circumstances, I felt that I had no choice but to grant her grievance.

Based on my grievance decision, the secretary and her union representative sent the Business Office a written demand to make her whole for the shortfall in her pay for the last three years. That’s when I got a call from the Superintendent. He told me that there was no money in the budget for such a salary adjustment and that I had better “fix it.” But when I called the union representative to apologize for my error, he told me that a deal is a deal and that he expects the district to pay up.

I have the greatest respect for Legal Mailbag. How are you going to get me out of this one?

Signed,  
*Between a Rock and a Hard Place*

Dear Hard Place:

Legal Mailbag appreciates the kind words, but even Houdini couldn't get you out of this problem. When principals hear grievances at the first step of a grievance procedure, they act on behalf of the school district. Moreover, when principals issue step one grievance decisions, they can create binding obligations on the school district. Once a union accepts a grievance response, the grievance is "settled," even at the first step in the grievance procedure.

The State Board of Labor Relations has stated on many occasions that a failure to abide by a grievance settlement is a failure to bargain in good faith, which is a violation of the applicable collective bargaining statute (MERA for non-certified employees, and the Teacher Negotiation Act for certified employees). It is critically important, therefore, for school administrators who hear grievances at the first or second step to coordinate any grievance response with the central office administration, including the superintendent, before sharing the response with the union.

At the risk of making you feel even worse, Legal Mailbag offers a further observation. Mistakes in placing employees on the salary schedule or in advancing them from year to year are not uncommon, and sometimes the mistakes are discovered only after many years have passed. In correcting such mistakes, however, the employing board is not always obligated to make the employee whole for all wages lost through the mistake.

Contractual grievance procedures typically provide that a grievance must be filed within a specified number of days of the time when the employee knew or should have known of the contract violation. Moreover, employees have a responsibility to review their paychecks to ensure that they are being paid correctly. When such mistakes are made, employing boards of education certainly must correct the mistake going forward. But how far back in time to go in providing a remedy is a matter of contract interpretation and business judgment. Strictly speaking, a claim is waived over any underpayments made earlier in time than the deadline for filing a grievance as to that underpayment. Accordingly, any retroactive pay adjustments for such earlier periods are a business judgment for the board of education. Moreover, if a district decides to make an adjustment beyond that required by the contract, it should do so pursuant to a memorandum of understanding with the union to assure that it is not creating a past practice of "make-whole" remedies.

Legal Mailbag understands that this is not the answer you were seeking. But we can rest assured that you will not make this mistake again, wherever you might be working in the future.