

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

IN THE MATTER OF
SOUTHMORELAND EDUCATION ASSOCIATION

and

Case No. Act 88-11-16-W
Fact Finding

SOUTHMORELAND SCHOOL DISTRICT

**REPORT AND RECOMMENDATIONS OF FACT FINDER
STEPHEN M. SCHMERIN**

APPEARANCES:

For the District: Bruce D. Campbell, Esq.

For the Association: Calvin Rockwell, PSEA Representative
Fred Dugger

BACKGROUND

Pursuant to the Pennsylvania Public Employees' Relations Act 195 of 1970 (Act 195) and Act 88 of 1992 (Act 88), the undersigned was appointed by the Pennsylvania Labor Relations Board (PLRB) on July 19, 2011 to serve as Fact Finder in the impasse between Southmoreland School District ("District") and Southmoreland Education Association ("Association").

A fact finding hearing was held on August 16, 2011 at the District's Administration Building. Both parties were afforded the full opportunity to present testimony, examine and cross-examine witnesses and introduce documentary evidence in support of its' respective position.

Both parties provided me with demographic and economic data pertaining to the District. In addition, state funding information was supplied by the District. Health insurance surveys and fair share contribution information was submitted. The Association provided data pertaining to salary information for Westmoreland County School Districts plus two contiguous school districts Connellsville and Frazier. The recently passed 2011-12 state budgets did not provide for level state funding for the current school year. Both parties acknowledged the difficulty negotiating a new agreement due in large part to the economic uncertainty facing the District.

This report will set forth recommendations for all open issues which shall constitute the settlement proposal upon which the parties are now required to act, as directed by applicable statutes and PLRB regulations. Where I have not recommended any change from the prior agreement, I recommend the language in said agreement remain as is, except where the parties have reached tentative agreements for change prior to the fact finding process.

FINDINGS AND RECOMMENDATIONS REGARDING UNRESOLVED ISSUES

Issue #1

Article III Terms of Agreement

The current agreement expired on June 30, 2011. The District has proposed a two year agreement expiring on June 30, 2013. The Association has proposed a three year agreement expiring on June 30, 2014. The Association proposes the additional year based on its' reasonable financial proposal and the uncertain economic conditions facing the District, the Commonwealth and the United States. Its wage proposal is approximately 3.6% per year which includes incremental and step movement during the length of the agreement. By presenting a reasonable financial proposal, the Association contends the District will be able to accept its proposal and not be faced with financial uncertainty during the next three school years.

The District desires a two year agreement based upon its economic proposals and other factors facing the District. The District is most concerned with its present financial condition together with tremendous uncertainty in Harrisburg and Washington as it pertains to school funding. This year's Education Funding subsidy was reset to nearly the 2008-09 level. Next year's subsidy remains in doubt although most experts do not expect an increase. That uncertainty forms the basis for its two year proposal.

Based on my wage and health care recommendations and the opportunity to have an additional school year without labor negotiations, I am proposing a three year agreement effective July 1, 2011 through June 30, 2014.

Issue #2

Article XXIV Wages and Salary Provision

Appendices

In each year, the Association is proposing an increase in step movement plus a dollar amount increase at the top step. The top step yearly increase will be \$800. In the second and third years of the proposed agreement, \$700 would be added to steps 1-8. No additional money would apply to steps 9-14 during any year.

In support of this position, the Association presented detailed District finances and analysis plus similar information from other districts in Westmoreland County plus Connellsville and Frazier School Districts. The District's fund balance on June 30, 2010 was approximately \$6.5 million. For four of the past five years, actual revenues have exceeded budget revenues. On the spending side, the District has consistently overstated its expenditures. For each of the past five years, actual expenditures have been less than budgeted expenditures. Based on this conservative approach, the District has ended each fiscal year with more than it projected.

The District ranked near the bottom for 2010-11 Starting Salary and 2010-11 Career Rate (top step for Master's degree) compared with other Westmoreland County School Districts plus Connellsville and Frazier. The District ranked 16 out of 19 for Starting Salary and 15 out of 19 for Career Rate. Based on those statistics, the Association argues its wage proposal is reasonable and must be implemented to prevent the District from falling further behind other districts.

The Association provided data for other Westmoreland County School Districts plus Connellsville and Frazier relative to salary increases for the next three years. Only Hempfield Area out of 15 districts accepted a wage freeze for school year 2011-12. In 2010, Hempfield's Starting and Career Rate Salary exceeded the District by approximately \$8,000 in each category. Connellsville School District has a Starting and Career Rate Salary lower than the District and provides for a wage increase of 2.9% for the 2011-12 school year and a 2.7% increase for the 2012-13 school year. These examples support the Association's argument against a wage freeze.

The Association believes the District has the ability to pay and when compared to other districts in the county, its modest proposed increases must be accepted. Even if the proposed increases are accepted in total, the District will be below the median starting and average salary among Westmoreland County School Districts plus Connellsville and Frazier. A two year wage freeze most certainly would widen the disparity among other districts.

The District provided detailed data pertaining to the local, state and national economy to support its position. In addition, state funding under the Corbett administration has changed which necessitates the District tighten its belt even further. The Governor and even PSEA President Testerman have called for wage freezes. Testerman was quoted as encouraging union members to "seriously consider" answering that call when responding to Governor Corbett's address to districts to hold the line on salaries.

The District does not dispute its conservative approach to its finances. That approach has served it well the past five years. However, the picture in 2011-12 has rapidly changed. Due to a decrease in state funding, estimated revenues in this school year will be \$24.2 million. Estimated expenditures will be \$26.3 million. That shortfall together with early pension obligations will considerably reduce the fund balance.

The District has proposed a wage freeze for two years. That proposal is necessary to insure financial stability at the District. The District has and will lose future revenue in years to come. For example, the Sony plant closing has resulted in \$800,000 lost revenue. That loss plus a similar \$800,000 loss in Basic Education funding has been a significant factor in reducing the 2010-11 fund balance. Additional capital expenditures for the Maintenance Building and Stadium Parking Lot will cost approximately \$1.8 million. Those capital projects will be completed in this school year. The District does not have the money to provide raises for the 152 members of the bargaining unit and believes a wage freeze is the only prudent option. Board President Accipiture testified labor negotiations with other District units have resulted in two year wage freezes.

Both parties made compelling arguments to support their positions. Uncertainty pertaining to funding, the economy and health care costs make these negotiations very difficult. Both sides made reasonable proposals based on their beliefs what could be accepted by their members and Board in order to reach a settlement.

My recommendations to resolve this issue are as follows:

- 1. A wage and step freeze for the first year (July 1, 2011 through June 30, 2012).**

2. In the second year (July 1, 2012 through June 30, 2013) step movement shall occur. \$700 shall be added to the top step and \$500 shall be added to steps 1-8.
3. In the third year (July 1, 2013 through June 30, 2014) step movement shall occur. \$800 shall be added to the top step and \$600 shall be added to steps 1-8.

Issue #3

Article XXIV Wages and Salary Provision

F. Extracurricular Activities

The District has proposed a two year wage freeze including all wages paid for extracurricular activities. The Association is willing to accept a wage freeze should its wage proposal be accepted and the District maintains the current health care plan at the same premium co-pays.

I realize the importance of extracurricular activities especially the long hours worked by bargaining unit members. Most members are involved based upon of their love of the activity and desire to help and assist students. The salary paid to perform these duties is nominal. However, in these difficult economic times I cannot recommend any increase for salaries involving extracurricular activities. **Salary and health care benefits are more important and thus I am proposing a three year wage freeze on salaries for extracurricular activities.**

Issue #4

Article XXIV Wages and Salary Provision

I. Hospitalization

The District has proposed a change from Highmark PPO Blue Plan G (Plan G) to Highmark PPO Blue Plan B (Plan B). The Association wants no change in coverage. In addition to the coverage change, the District has proposed eliminating the cap on premiums for employees. Currently, employees pay 10% of monthly premium costs with a maximum cost of \$40 per month for single members and \$100 per month for all others. Monthly premium rates for the current and proposed plan in the first year (July 1, 2011 through June 30, 2012) are as follows:

	<u>Plan G - current</u>	<u>Plan B - proposed</u>
Individual	\$453	\$411
Parent/Child	\$1096	\$998
Parent/Children	\$1130	\$1028
Husband/Wife	\$1223	\$1110
Family	\$1257	\$1139

The difference in benefits between the two plans is significant. The deductible in Plan B is double the amount compared to Plan G. In addition, Plan B provides for a payment level of 80% after the deductible has been satisfied. The current plan provides for 100% payment after the deductible has been met. Should Plan B be implemented, members most likely will incur additional costs when compared to the current plan. I question whether the reduction in premium costs justifies the change to Plan B as desired by the District. There would be potential savings in the first year of approximately \$500 for an individual policy to approximately \$1400 for the family policy. However, the reduction in benefits between the plans is so dramatic and could place unnecessary financial hardship on bargaining unit members.

Plan B has a \$1000 out of pocket maximum cost for an individual and \$2000 out of pocket maximum for all others. Plan G has no out of pocket costs. In addition, Plan B provides for a 20% co-insurance to a maximum of \$50 for retail or maintenance drugs compared to a \$5, \$15 or \$30 co-payment in Plan G. The out of pocket costs for Plan B are significant when compared to the current plan.

Based upon my wage proposal recommendation, and my belief that in the second or third year of the agreement increased competition in the health care market will stabilize premium rates or provide better options, **I cannot recommend any change to the hospitalization benefit nor can I recommend removing the caps on premium**

costs for bargaining unit members. Since I have proposed a wage freeze for the first year and nominal increases in the second and third years, I recommend Plan G remain in effect for the life of the agreement. Finally, I do not recommend removing the cap during the entire three year agreement.

I am recommending an employee be given the option to accept Plan B rather than the current Plan G provided the employee co-pay is eliminated. An employee shall have the option to elect the plan change no more than two times during the three year agreement.

Issue #5

Article XXVIII Management Rights

New

The District has proposed management rights language to be included in the agreement. There is no such language in the expired agreement. The District believes management rights must be enumerated so the parties will not have any future question or issue relative to this most important right. The Association voiced its opposition to the proposal since it believes state laws provide for all rights sought by the District. The Association does not believe there is any need for this language and in support of that position notes that during the past 10 years only one issue has resulted in arbitration and there has been not been an unfair labor charge filed by the Association. The parties have maintained a good working relationship and there is no legitimate reason for the proposed language to be included in the agreement.

I believe a management rights article is a legitimate demand for the District. Even though state law gives most, if not all, of the rights sought by the District, I believe itemizing those rights in the agreement will not infringe on the Association's ability to conduct its business or grant the District any greater rights than it presently maintains. Most agreements contain a management rights article for the reasons identified by the District.

My proposed language is as follows:

Nothing in this agreement shall be construed to deny or restrict the District from such rights as the District may have under the Public School Code of 1949, as amended, or the applicable labor relations laws, including Act 195 of 1970 and Act 88 of 1992.

The Association recognizes the right and authority of the District to administer the business of the District and in addition to other functions and responsibilities which are required by law. The Association recognizes the District has the full right and responsibility to direct the operations of the District, to promulgate rules and regulations and to exercise the prerogatives of management which include but are not limited to the following which are not modified by the express terms of this agreement or Acts 195 or 88.

- 1. To manage and direct its employees, including the right to select, hire, promote, transfer, assign, evaluate, layoff and recall or to reprimand, discipline for just cause subject to applicable law and the express terms of this agreement.**
- 2. To manage and determine the location, type and number of physical facilities, equipment, programs and the work to be performed.**
- 3. To determine the District's goals, objectives, programs and services, and to utilize personnel in the manner designed to effectively meet these purposes.**
- 4. To determine the size and composition of the work force in the District's organizational structure.**
- 5. To determine when a job vacancy exists, the duties to be included in all job descriptions and the standards of quality and performance to be maintained.**
- 6. To maintain the security of records and other important information.**

7. To determine the overall budget.
8. To maintain and improve the efficiency and effectiveness of the District's operations.
9. To determine and implement necessary actions in emergency situations.

ALL OTHER MATTERS

During the fact finding hearing, the parties resolved language in **Article VIII Scheduling E** and **Article IX Individualized Education Programs**. I have not included the agreed upon language since neither party provided said language. I believe there is no issue pertaining to these changes and must assume the agreed upon language will be incorporated in the new agreement.

The undersigned was only presented with the issues identified in this report. Any agreements reached prior to the fact finding hearing date, August 16, 2011, are recommended to be included in the agreement.

Date

Stephen M. Schmerin, Esq.
Fact Finder