

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Labor Relations Board

**In the Matter of the Employees of
Minersville Area School District
Case No. ACT 88-11-15-E**

REPORT AND RECOMMENDATIONS

Diana S. Mulligan, Fact Finder

Hearing: July 19, 2011
Mark Featherman, Esq., for the Union
Nicholas Quinn, Esq., For the School District

BACKGROUND

Pursuant to ACT 88 of 1992 and the Pennsylvania Employee Labor Relations Act, Act 195 of 1970, notice was received by the Pennsylvania Labor Relations Board (PLRB) from the Bureau of Mediation that no agreement had been reached by the Minersville Area School District (SD or Employer) and Teamsters Local Union No. 429 (Union). By letter dated June 21, 2011, the PLRB appointed the undersigned to act as Fact Finder with the authority set forth above. Subsequent to such notice, the parties were duly notified and a hearing was held on July 19, 2011 in Minersville, Pennsylvania at which time all parties in interest were afforded a full opportunity to present testimony and introduce documentary evidence.

The following are the issues in dispute presented for Fact Finding:

MUTUAL ISSUES

1. Wages – Amount
2. Retroactivity

SCHOOL DISTRICT ONLY ISSUES

1. Wages – Exhibit “A”
2. Management Rights – Article III, Section 1
3. Definition of Work Week – Article VI, Section 1.A

The SD presented for Fact Finding a separate sheet naming its issues in dispute and an actual Collective Bargaining Agreement (CBA or Agreement) with a blank space for the beginning date and an ending date of June 30, 2013. This document also states, on the first page, that this is the SD’s May 18, 2011 counterproposal. Upon questioning by the Fact Finder, the Union stated that, except for the named issues in dispute, there is a tentative agreement on language contained in this document if it differs from that in the expired Agreement.

This Report contained Recommendations for the unresolved issues which constitute the settlement proposal upon which the parties are now required to act, as directed by statute and PLRB regulations. Without any comment, the issues already agreed upon by the parties and the undisputed portions of the CBA shall be incorporated without change as part of this Report.

Pursuant to statutory authority, this Report will be released to the public if not accepted. A vote to accept the Report does not necessarily constitute agreement with or endorsement of the rationales but, rather, represents only an agreement to resolve the disputed issues by adopting the Recommendations.

The parties are hereby directed to review the Report and, within ten (10) calendar days of its issuance, notify the PLRB and each other if they accept or reject the Recommendations.

RECOMMENDATIONS

Issue #1: Wages: Amount/Retroactivity

Position of the Parties

The Union wants an across the board increase of \$.35 per hour in each year of a 3 year CBA. The SD proposes no increase for 2010-2011, an increase of \$.10 per hour (\$.25 per hour for those currently classified as “Cleaning”) in 2011-2012 and \$.10 per hour for everyone in 2012-2013.

Discussion

The SD argues that this unit is already well paid and that a minimum increase in wages is sufficient, that this wage scale is appropriate for the job classification, and that other employees with greater responsibilities and skills get less. The Union acknowledges that the cleaners are paid slightly above the average of those similarly situated in contiguous school districts but the Custodial/Maintenance (C/M) employees are lower than average. In addition, this bargaining unit has a higher premium share than others in IU #29.

The parties are working under the terms and conditions of the prior Agreement and, as such, the cleaners continued to receive \$15.00 per hour and the CMs got \$15.15 per hour in the 2010-2011 school year. Constructively, however, if there is no wage retroactivity, these employees actually took a pay cut because the premium went up. They still pay 75% of the teachers’ premium share in accordance with the expired CBA, but, since the medical premium increased, the amount of money the bargaining unit employees now pay also increased.

Full time employees work 2,080 hours a year. At my request, the SD provided statistics showing the actual amount of premium share paid by the instant bargaining unit employees in 2009-2010 and the amount paid in 2010-2011. For single coverage, the annual increase was \$204.46 (\$.098/hour); for 2 party coverage, the increase was \$475.83 (\$.229/hour) and for family coverage, the increase was 513.05 (\$.24/hour). Even with a \$.35/hour increase in 2010-2011, those on the family plan get a net raise of \$.11/hour.

In studying both the expired CBA and the one presented by the SD for “ ___ through June 30, 2013,” I find the language in Article VIII very interesting. The parties are supposed to be currently working under the terms and conditions of the expired CBA. In that Agreement, Article VIII, Section 13 states that the premium share begins with the first pay of the school year with the exception of 2007-2008 and that the co-pay will coincide with pay raises. 2007-2008 is excepted because the CBA begins on October 22, 2007 and, since there was no retroactivity, the pay raises and new premium share also began on that date. In the SD’s current premium share statistics, these employees are still being assessed 75% of the teacher’s co-pays for the Traditional Plan, but they got no raises with which these increased dollar amount co-pays coincide. When the new CBA is executed, the bargaining unit will be offered a Traditional Plan at 100% of the teacher’s premium share and a PPO with 85% of the teacher’s premium share. This new CBA also states that the premium share will be paid beginning with the first pay of the school year and excepts no time period. The SD is effectively assessing the increased dollar amount in premium share retroactively, but is unwilling to increase pay retroactively.

In 2011-2012, the Traditional Plan (still at 75% of the teacher’s premium share in the SD’s May 18th proposal), according to the SD’s statistics, will result in an annual increase for single coverage of \$128.66 (\$.062/hour); \$309.56 (\$.149/hour) and \$311.75 (\$.150/hour). Except for those with single coverage, the employees still take a pay cut with the SD’s proposed \$.10/hour increase. When those choosing the Traditional Plan have to pay 100% of the premium (or 85% for the PPO), the pay cut will be even more pronounced.

Even setting aside the increased premium share and any inflation, according to the SD’s proposal, these employees will get a zero per cent increase in the first year, 0.66%/hour (1.67% for the current cleaners) in the second year and 0.66%/hour in the third year. Excluding the deduction for premium share, the Union’s proposal would provide the cleaners with a 2.33% raise in the first year, 2.28% in the second year and 2.23% in the third year. The C/M employees would get 2.30% in the first year, 2.26% in the second year and 2.21% in the third year. These amounts would, of course, be offset by the increased premium share.

According to the Superintendent, although the prior CBA was not signed until 16 months after the previous Agreement expired, both the premium share and raises became effective on or about the date of the signing of the successor document (October 22, 2007). The way the proposed current CBA is worded, the SD wants to assess premium share beginning with the first pay period of the school year (Article VIII, Section 14) but wants to pay no wage increases until the CBA is signed. Retroactivity applies both to economic improvements and assessments charged to the employee. If an employee is to get no pay increases until the new CBA is signed, then that employee should not have to pay additional fees for health insurance. Even though these employees are still paying 75% of what the teachers pay, it costs them more money for their coverage.

Recommendations

1. There should be no retroactive salary increases until the CBA is signed.
2. The employees should continue to pay the same dollar amount for health insurance that they did under the Agreement which expired on June 30, 2010. Any additional premium share paid by the employees after June 30, 2010 shall be returned to the employee on the first pay period after the new CBA is signed. IN THE ALTERNATIVE, raise the pay retroactively in the same amount as the increase in premium share.
3. Increase pay by \$.35/hour in 2011-2012 and \$.35/hour in 2012-2013.

Issue #2: Exhibit “A”. Custodial Salary Schedule

Position of the Parties

The SD wants to merge the current “Custodial/Maintenance” and “Cleaning” classifications into “Custodian” at the same pay rate (\$15.25/hour in 2011-2012 and \$15.35/hour in 2012-2013). The SD also proposes to pay new hires at the same rate as substitutes (The expired Agreement pays new hires the greater of the substitute rate or \$7.55/hour for cleaners and \$7.80/hour for C/Ms.) and to decrease the probationary period from 90 to 45 days. The SD finally proposes to delete the “Temporary Transfer” clause from Exhibit “A” which pays the employee transferred to a higher job the rate of pay for that work from the first day of reassignment. The Union proposed to keep the distinct classifications but add a raise of \$.35 per hour to both. (They both got the same raise in the prior Agreement.)

Discussion

The elimination of the temporary transfer language corresponds to the SD’s proposal to merge the Cleaning and C/M employees into one “Custodian” classification. Obviously, if there is only one classification, there is no higher job position to which to transfer. Since

the probationary period decreases from 90 to 45 days, I see little problem in paying the substitute rate since the new employee will move to the rate paid to veteran employees in about 2 months.

The Superintendent proposed that the C/M employees take courses at the “Vo-Tech” and be “skill tested” in such disciplines as plumbing, carpentry, etc. in order to keep their maintenance classification, a proposal the Union rejected.

Most people living in houses know how to do basic maintenance chores such as painting, fixing a leaky faucet, etc. When they want to put a new addition onto their house, they hire a skilled contractor. The SD presented no evidence that its C/M employees were deficient in school building maintenance. Just as in a household, there is no need for them to learn, for example, how to install a new heating system. An expert, who was likely certified by the Intermediate Unit Career and Technology Center (and who earns a lot more than \$15/hour) would be called in to handle that task.

Recommendations

1. Keep the Cleaning and C/M classifications as is.
2. Pay new hires the same rate as substitute employees for the 45 day probationary period.
3. Keep the temporary transfer clause as is.

Issues # 3 & 4: Article III, Section 1. Management Rights and Article VI. A. Hours and Wages

Position of the Parties

The SD wants to add the following sentence to the Management Rights clause: “The District, through its administration and supervisors, has the unilateral right to specify employee work hours and make changes at its sole discretion of satisfy operational requirements.” The SD also wants to add Section 1. A to Article VI which defines the work week as beginning on Saturday and ending the following Friday.

Discussion

The Superintendent stated that the Union filed several unfair labor practices (ULP) mostly because management made unilateral work assignments. Most of the ULPs (and all of the grievances) were filed by the Pennsylvania State Education Association (PSEA), the bargaining representative in prior CBAs. Currently, this unit is represented by Teamsters Local Union No. 429 which filed one ULP. The Superintendent also stated that the work week has not changed in 30 years and the SD proposal only codifies that practice.

The Union has no complaint about the SD changing start times and the SD’s proposed successor Agreement does allow for a 2 hour window for the beginning of each shift. The Union also did not voice any objection to weekend security checks which occur once every 16 weeks and for which the employees get compensatory time. The Union’s chief concern is about Saturday overtime. At one point, the SD paid straight time when the unit employees had to work extracurricular events on weekends, then shortened the regular work week to that the employees would work no more than 40 hours. After “lengthy” negotiations, according to the Union, the SD gave the overtime pay for these events.

On March 16, 2010, the PLRB reaffirmed its Hearing Examiner’s ruling that the SD committed an ULP by, inter alia, unilaterally issuing a weekend coverage schedule on September 4, 2008, that required custodial and maintenance employees to work 2 to 4 fewer hours during their normal work week and work those hours on the weekend instead, thus depriving the employees of overtime pay. (41 PPER 112). This case also refers to 2 grievances filed by PSEA on the same issue. The PLRB concluded that the SD violated Section 1201 (a)(1) and (5) of the Public Employe Relations Act (PERA) and ordered the SD to bargain the changes in scheduling.

On July 9, 2009, the Superintendent issued another memorandum shortly after the Union filed an ULP in the case previously cited hereinabove which stated, inter alia, that, “Should the arbitrator (sic) rule as requested by your union, you will *never* (Italics in original.) see personnel changed to day shift in the summer or holidays.” And “Complaining that the district implemented the action your leadership demanded makes one wonder who is speaking for the majority of the membership.” The Hearing Examiner found, and the PLRB affirmed, that such statements violated Section 1201 (a) of PERA and were threatening in nature by attempting to coerce employees from exercising their rights under the law.

The SD now proposes to convert its prior unilateral actions, for which it was found guilty of an ULP, into a clause in a negotiated Agreement which would give it the right to revert to paying employees straight time for working at extracurricular events on the weekend and cutting their schedule later in the week. The Superintendent alleges that this proposed language merely codifies a long standing past practice. The Union stated, without contradiction, that, only after lengthy negotiations, did the SD put the employees back on overtime for weekend activities.

