

The Union represents a unit of Secretarial/Clerical, Transportation, Maintenance, Special Education, Technology, Custodial Employees, Nursing Assistant, Security Officer, Classroom Assistants and Lunch/Bus aides employed by the District. The District and Union are party to a Collective Bargaining Agreement effective by its terms from July 1, 2009 until June 30, 2012. (Referred to herein as the Agreement) The parties met in one form or another for purposes of negotiating a successor agreement on approximately four occasions, the last of which occurred on or about March 26, 2012. The parties reached tentative agreements on only a few issues and were unable to reach agreement on the several remaining outstanding issues. The Union thereafter initiated the instant Fact Finding.

Following notice of his appointment the Fact Finder and parties communicated with one another on a number of occasions in a continuing effort to narrow the issues and resolve hearing-related matters. On May 8, 2012 the Fact Finder met for a prehearing conference with the representatives of the parties in further effort to narrow the issues and resolve other hearing-related matters. On May 10, 2012 a formal fact finding hearing was held before the undersigned in Ambler, Pennsylvania, at which time the parties were given the opportunity to present the Fact Finder testimony, documentary evidence and oral argument relating to their outstanding issues.

This Report contains "recommendations" for resolution of all outstanding issues and constitutes the settlement proposal upon which the parties are now required to act, as directed by statute and PLRB regulations. Pursuant to statutory authority, this Report will be released to the public if not accepted. A vote to accept the Report does not constitute agreement with, or endorsement of, the rationales contained herein, but rather, represent only an agreement to resolve the issues by adopting the recommendations.

The parties are directed to review the Report and within ten days of its issuance, notify the PLRB of their decision to accept or reject the recommendations.

Introduction and Issues

Based upon representations made by the parties to the Fact Finder, the following issues are unresolved between the parties:

1. Salary
2. Health Care / Insurance Issue
3. Part-time Employee Issues
4. Special Education Issues
 - a. Special education assistants' salary reclassification
 - b. Recall of "one-on-ones" according to "seniority with flexibility"
5. Early Retirement
6. Microsoft Certification
7. Special Needs Days
8. Limited Random Drug Testing
9. Personal Days

10. Firm Establishment of Work Hours
11. Decisions by the position review committee
12. Position review submission date
13. Cost containment
14. Night-shift differential increase: 50 to 55 cents/hour
15. Long-term disability benefit

After full consideration of the arguments and careful study of the extensive submissions on the issues by the parties, the following recommendations are offered.

1) Salary (Article VIII, Sections B and C)

The District

a) The District proposes a 0% salary increase in the first year of the agreement and the following yearly salary increases in the final two years of the agreement:

Year 2 - 1.1% increase

Year 3 - increase would equal the corresponding Act 1 index, subject to a minimum of 1% and a maximum of 2%

b) The District further proposes that any salary increase would be calculated based on the application of the percentage increase (if applicable) to the Class 7 rate and the resulting dollar amount would then be applied to the existing rates of the other classes.

The District maintains that it has effectively managed difficult budget demands in recent years, has avoided tax increases and continues to recognize the appropriate need to avoid shifting the burden of additional costs to the taxpayers. The District cites the current challenging general economic conditions facing it and other Pennsylvania school districts resulting from reductions in Federal and State funding and District revenue from tax assessments, and the substantial projected increases in PSERS contribution rates as justification for continuing the District's goal of avoiding shifting further financial burden onto the taxpayers. That being said, in the District's view, the issue of wages here should not be characterized as what the District can arguably afford to pay. Rather, the issue is what is fair under the circumstances, and comparing its wage levels with those of other area school districts, the District's proposal is fair.

The Union

The Union proposes yearly increases for each wage classification as follows:

Year 1 - 4% increase

Year 2 - 4% increase

Year 3 - 4% increase

In support of its wage and other monetary-related proposals the Union presented substantial data relating to the District's relative financial position and health compared to other area school districts and argued that

the District can afford to grant the very reasonable wage increases proposed by the Union.

Recommendation:

Based upon the exhaustive data presented it is evident that the District has been an effective and prudent steward of the District's resources. The District has proactively attempted to strike a balance between the educational needs of its students and the interests of District taxpayers. That the District is challenged by the current economic realities cannot be reasonably subject to question. Similarly it cannot be the subject of honest debate that District employees have been and continue to face difficult personal economic conditions. The times demand prudence by all concerned. I believe it is a prudent and good investment for the District to recognize the valuable contribution of its employees to the mission of the District by granting realistic wage increases and find that 2.5% per year increases would be true to the District's interests in controlling costs and reflect a commendable recognition of the interests of bargaining unit employees, the community and District.

I recommend a 2.5% increase in each year of the agreement, as reflected in Appendix A hereto.

2) Benefits (Article IX, Sections A and B, Fringe Benefits)

The District

The District proposes the following benefit language:

- a) Year 1-all existing terms in Article IX, Section A, and subparagraphs remain in effect, *except no coverage shall be provided in Year 1 and thereafter for employees who regularly work less than 6 hours per day.*

- b) Year 2
Flex plan (C1/F1/01)-7% employee contribution
Core plan (PC 10/20/70) -11% employee contribution, but those employees who regularly work at least 6 but less than 8 hours per day shall have a 16% contribution.
PC 10- employee annual contribution under the PC 10 Program shall remain as an amount equal to the premium co-payments identified under the Core Plan paragraph above for Year 2, plus the actual premium cost difference between the PC 10 Plan and the Core Plan.

- c) Year 3
Flex plan (C1/F1/01)-8% employee contribution
Core Plan (PC 10/20/70)-12% employee contribution, but those employees who regularly work at least 6 but less than 8 hours per day shall have a 17% contribution

PC 10 -Employee annual contribution under the PC 10 Program shall remain as an amount equal to the premium co-payments identified under the Core Plan paragraph above for Year 3, plus the actual premium cost difference between the PC 10 Plan and the Core Plan.

- d) If agreement by the Association to joining a District agreed-to health care consortium occurs prior to and as effective as on July 1, 2013, under the terms as designated by that consortium, no percentage increases to employee premium contributions would occur in Years 2 or 3 of the contract.
- e) No orthodontics dental coverage.

The District observes that it seeks no increase in premium co-pays for year 1, and seeks a "modest increase" of 1% per year for both the Flex and Core plans while continuing contract requirements that employees who work at least 6 but less than 8 hours a day pay a slightly higher percentage per year. Moreover, the District offers no increases in premium co-pays in the event the Association agrees to join a District agreed-to health care consortium effective as of July 1, 2013. Moreover the District notes that employee contributions proposed are comparable to those obtained in the North Penn and North Dublin districts.

In regard to the possibility of joining a consortium, the District also expressed concern that the Bux-Mont consortium proposed by the Union could not guarantee the plan benefits - as would be agreed upon by the parties - for future years of the agreement, and that another Southeast Pennsylvania area insurance consortium would guarantee that whatever benefits agreed upon by the parties would be provided.

The Union

The Union proposes no change in co-pay and the addition of orthodontics coverage to dental benefit.

The Union seeks the District's agreement for inclusion into an existing Bucks/Montgomery healthcare consortium effective at the start of the Agreement. According to the Association, the Bux-Mont consortium would provide significant cost containment of benefits and although it is true that the consortium would not guarantee the exact plan benefits from year to year, it doubts that any other consortium can guarantee the future, and notes that the fact that there are 10,000 members in the Bux-Mont consortium would offer a level of assurance and predictability of stable healthcare insurance benefits for bargaining unit members.

Discussion and Recommendation

With the exception of provisions relating to Part-time (less than six-hours per day) employees more fully discussed below, I recommend the District's proposal. In making such recommendation, I note that the District has expressed a willingness to continue discussions with the Union about the possibility of joining a health care benefit consortium. I applaud the parties and their efforts and I encourage the parties to continue to explore all avenues of gaining control over health care and health care costs for District employees and bargaining unit members.

- 3) **Sick leave and "fringe" benefits with regard to part-time employees:**

The District

The District proposes to:

(1) Eliminate all fringe benefits as outlined in Article IX, Sections A through K (excepting G), as defined therein as "medical, dental, cost containment, life insurance, vacation, long-term disability, days for absence due to death, special needs, emergencies and personal reasons, and tuition reimbursement", for employees who regularly work less than 6 hours per day.

(2) Reduce sick leave benefits outlined in Article IX, Section G to two days per school year for employees working less than 6 hours per day. In addition, such employees would not be eligible for Extended Sick Leave benefit.

According to the District, there are 38 bargaining unit employees who regularly work less than six hours per day and receive fringe benefits without working as many hours per day as other bargaining unit employees. As a matter of fairness, such part-time employees should not receive the same benefits for which full-time employees work. Other area school districts do not provide full benefits to part-time employees; some provide no benefits and others provide pro rata amounts for only certain benefits. In regard to sick leave benefits, the District explained, particularly for part-time employee school bus drivers, it is very difficult to schedule substitute drivers when a driver calls out sick.

The Union

The Union seeks to retain the existing levels of benefits, consistent with Article IX, Sections A through K, for part-time employees. However, the Union would be agreeable to grandfathering existing part-time employees and applying the District's proposal to new part-time hires. According to the Union, these are benefits won for employees by the Union through collective bargaining and should not be arbitrarily stripped away from employees who have earned them and come to rely on them. The District wants to avoid raising taxes, but wants to fund its self by cutting employee benefits. Such an effort is unrealistic and disingenuous considering that the "sacrifices" noted by the District as examples of other employees doing their part involved the administration and teachers having taken a one-year pay freeze and really offers no comparison to the issue of stripping part-time employees of their benefits. Thus, the Superintendent is paid \$187,000.00 plus benefits and the average teacher is paid \$70,000.00 per year while many of the part-time employees at issue are paid less than \$20.00 an hour. According to the Union, these are bargained for benefits and represent a core issue to bargaining unit members and the Union as collective bargaining representative.

Discussion and recommendations

I recommend that there be no change in the benefits offered part-time employees and that the parties agree that future employees hired for positions of fewer than six hours per day not be paid benefits with the caveat that such will not result in the reduction of 6 hour, plus and full-time bargaining unit positions.

At a cursory level there is some attractiveness to the District's fairness/equity argument. But upon close examination, the argument for "fairness" does not hold. Once it becomes fair game to argue what may or not be fair relative to other employees of the District, subjective scales

of fairness enter the game. Thus, if perceptions of fairness become the standard, some could argue that it is not fair that the public would ask the least powerful employees who receive the least pay in the District to bear the cost of insurance or to bear a disproportional cost of financing the District's budget initiatives. Nor would some consider it "fair" for one segment of the District's employee population to receive full benefits and pay six or seven times what other employees of the District are paid while the District asks the least paid to give up something they bargained for in the past without any quid pro quo return. Rather than subjective concepts of fairness, what is relevant here is the objective observation that the involved employees gained their benefits through hard work and effective bargaining within the law. The District has made no offer of any quid pro quo in return for the sacrifices it seeks of these employees.

It could also be argued that the District's position on reducing sick leave for part-time employees actually supports the continued application of benefits to part-time employees. Thus, if it is so difficult to find substitutes for employees who fill these less than 6 hour a day jobs, such could be viewed as supporting a conclusion that the employees are somewhat irreplaceable and perform valuable service and fairly earn the compensation package they receive. Additionally, when considering sick leave, it should be remembered that sick leave is for sick time and although it may be a chore for the District to find substitute bus drivers when regular drivers are sick, I cannot in good conscience recommend any language that could arguably be interpreted as creating an incentive for sick employees to drive buses full of school children.

4) Special Education Issues

The Union

The Union proposes that Special Education Assistants with eight to eleven years of experience and Assistants with twelve or more years experience be re-classified from their current wage class 8 to wage class 9 and wage class 10 respectively.

The Union also seeks language providing that at the beginning of the school year Child Specific Assistants ("one-on-one's") will be called back to work based upon seniority.

According to the Union the reclassification of experienced Special Education Assistants is necessary because the last time positions were subject to a job study, some twelve years ago, the position was different and did not require a degree.

As for the One-on-One's, the Union asserted that they are the only employees who the District treats as at will employees and are not given assurance of continued employment notwithstanding that they are in the bargaining unit and subject to the just cause provisions of the Agreement. The Union further noted that it is agreeable to language that would allow the District flexibility in recalling less senior one-on-one employees where the reason for such can be justified by business necessity.

The District

The District is opposed to either a re-classification of Special Education Assistants or the requirement of calling back Child Specific Assistants each year based upon seniority.

In regard to reclassification, the District takes the position that the duties of the Assistants have not changed since the reclassification of only twelve years ago and that it is not correct that Special Education Assistants are required to have a degree. As it stands now, the wage rate for the District's Special Education Assistants is in the top 25% of area school districts.

In regard to the yearly recall of Child Specific Assistants, the District explained that the requirements for any particular assistant are largely determined by the unique needs of the child involved, state and federal regulations and the requirements of the students IEP. There are potentially significant adverse consequences should the District pair the wrong Child Specific Assistant with any particular student. Considering that there are various attributes of any Child Specific Assistant that may be needed to meet the needs of students with IEP's, including physical ability, academic skill and experience and behavioral skills, as well as personality issues that are often presented by students, the District cannot be limited in meeting such diverse needs by employee seniority.

Discussion and recommendations

Although it appears that the District requires at least a two year college degree to fill open Special Education Assistant positions, I am not convinced that the Union has made a case for it proposed two tier reclassification of Special Education Assistants, particularly where, as here, the rates paid such assistants by the District are competitive with other area school districts.

As for the recall of Child Specific Assistants based upon seniority and business necessity, I believe the Union has made a good case. The interests in meeting the needs of the students involved as expressed by the District are legitimate and controlling. However, there is nothing in the Union's proposal that would prohibit the District from assigning any student a Child Specific Assistant with the experience, skills and personality attributes required for the effective administration of the student's IEP. Consequently I recommend that the parties agree to the annual recall of Child Specific Assistants based upon seniority with the understanding that for any particular student the most senior Child Specific Assistant possessing the experience, skills and personality attributes required for the effective administration of the student's IEP will be recalled prior to less senior Child Specific Assistants.

5) Article IX, Section M, Early Retirement Incentive Program and reimbursement for unused sick leave:

The District

The District proposes a one-time exception to the "20 year or more" service requirement provision of Article IX, Section M. In this regard, contingent upon a 10 person minimum participation, the Employer will offer retirement to those with a minimum of 10 years' completed service if retirement occurs by August 1, 1012. Unused sick leave would be reimbursed at the PSERS rate of \$25/day up to 150 days.

The Union

The Union would agree to the thrust of the District's proposal, but proposes reimbursement, in lieu of sick leave reimbursement, be determined at a rate of \$5,000 per year of service for each employee.

Discussion

The District explains that its position would provide for an incentive for employees to consider early retirement at a reasonable, one-time cost of approximately \$58,000, and that it does not know the basis for the Union's \$5000.00 per year of service incentive, but that the incentive could potentially cost the District an unreasonable \$850,000.00. The Union asserts that its language is similar to the language of the District's Teacher Agreement, would provide a real incentive to employees and that the resulting retirements could fund the incentive as well as other portions of the Agreement.

Recommendation

I recommend the District's proposal but, for financial reasons, do not recommend the Union's proposal.

6) Microsoft Certification, Article VIII, Section B; Certification for Technology Assistant positions

The District

The District proposes to require achievement of Microsoft Certification for all Technology Assistants by June 30, 2013, and offers to reimbursement as follows: reimbursement in amount not to exceed \$5000 for cost of course work and/or books purchased in the course of successful completion of certification; proof of cost incurred is required for reimbursement. Assistants not obtaining certification shall be placed in Class 7 with accompanying pay reduction.

(At the hearing the District made the proposal described above and the above-proposal is what I reference in my recommendation below. In the District's written explanation of its proposal it sought language that employees who received an A+ grade "in the areas of client, server and network under the Microsoft Certified Software Engineer Program" will immediately be placed in Class 9, and that technicians who do not receive a certification by June 30, 2013 shall be demoted to Class 6.)

The District explained that it is in the process of changing from Apple-based computer systems to Microsoft based systems and wants the Technology Assistants who will be tasked with helping others in the District who use the District's approximately 2000 computers with the new systems to be competent in the system. Under the District's proposal, the Technology Assistants who successfully gain certification will retain their current Class 8 pay status and that Assistants who do not gain certification by January 2012 will be moved down to Class 7.

The Union

The Union seeks to retain existing contract language and takes the position that if the District wishes the Technicians to add new skills they should be increased to Class 10 upon successfully gaining such skills and that if they do not gain the certification and remain at their current skill level they should retain their Class 8 status.

Recommendation

I recommend the District's proposal. It is reasonable for the District to exercise its managerial responsibilities and expect that its technicians who are employed in a fast changing and dynamic area such as information technology should keep up with the changing technology used by the District.

7) Special Needs Days

The District

The District proposes to revise the provisions of Article IX, Section J as follows: eliminate the ability to convert personal days to special needs days, and categorize all such time as "special needs days". Special needs days leave shall be taken in half, or full day increments.

The Union

The Union proposes to retain existing contract language granting the conversion of personal days into special needs days, and permitting the usage of special needs leave in hourly or more increments, and proposes that the reimbursement rate be increased to \$100.00 per day. Such increase, the Union maintains, will result in the reduction of the rate of conversion sought by the District.

Recommendation

I recommend no change in the existing language of the Agreement. The reality is that special needs often arise in increments of an hour or two and it is reasonable for bargaining unit employees to have a limited amount of such time available to address their legitimate needs. For financial reasons, I do not recommend the Union's proposed increase in the conversion rate.

Other Matters

Besides matters already subject to agreement by the parties, I recommend that as to all other proposed changes to the Agreement not the subject of recommendations for change herein the applicable contract language remain as is.

Please note

that the cover letter to this Report and Recommendation summarizes the responsibilities of the parties to notify the PLRB of their acceptance or rejections of this Recommendation and should be given careful attention.



Dated: May 21, 2012

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ACT 88-12-15-E FACT FINDING REPORT APPENDIX A
SALARY SCHEDULES

Minimum Hour Rates

	2012-2013	2013-2014	2014-2015
<u>Class</u>			
10 - \$25,31		\$25.94	\$26.59
9 - \$24.29		\$24.90	\$25.52
8 - \$23.29		\$23.78	\$24.47
7 - \$22.28		\$22.84	\$23.41
6 - \$21.28		\$21.81	\$22.36
5 - \$20.27		\$20.78	\$21.30
4 - \$19.27		\$19.75	\$20.25