

PENNSYLVANIA LABOR RELATIONS BOARD

**Case No. Act 88-12-24-E
Ralph H. Colflesh, Jr., Esq.
Fact-Finder**

PANTHER VALLEY SCHOOL DISTRICT

and

**PANTHER VALLEY EDUCATION ASSOCIATION,
PSEA/NEA
(Fact- Finding 2012)**

Appearances

For the District:

Ellis H. Katz, Esq.

Sweet, Stevens, Katz & Williams LLP

New Britain, Pennsylvania

For the Association:

Charlie Shaffer

PSEA UniServe Representative

Allentown, Pennsylvania

**FACT-FINDER’S REPORT AND RECOMMENDATIONS
FOR SETTLEMENT**

Pursuant to action by the Pennsylvania Labor Relations Board and Act 88, the undersigned was appointed fact-finder in the above referenced case. Upon due notice to the parties, a Fact-Finding evidentiary hearing was convened on July 19, 2012 in the District’s administrative offices. At that time and place both parties had an opportunity to produce witnesses and present all forms of non-testimonial evidence as well as arguments in support of their respective positions. At the conclusion of the hearing, the record closed, and this matter is now ready for the within Fact-Finder’s Report and Recommendations for Settlement.

**PART I
ISSUES IN DISPUTE AND CURRENT BARGAINING PROPOSALS¹**

1. TERM OF AGREEMENT

Association Proposal

Four years, beginning with the 2011-2012 School Year and ending at the conclusion of the 2014-2015 School Year.

District Proposal

Three years, beginning with the 2011-2012 School Year and ending at the conclusion of the 2013-2014 School Year.

2. HEALTH INSURANCE

Association Proposal

No changes through the 2011-2012 School Year.

¹The parties’ proposals reflected above are their current positions as 7/19/12 and consist of both proposals initiated by the parties and counter-proposals made in response to the opposite party’s proposals in an attempt to reach settlement. Moreover, they also include certain tentative agreements, which are indicated with an asterisk.

Further, beginning with the 2013-2014 School Year introduce a \$100 deductible for all coverage levels. No other changes in the Health Insurance benefit for the life of the new contract except:

(a) Tentative agreement to increase prescription plan co-payments as proposed by the District; provided however, that the date of change proposed by the Association is beginning of the 2012-2013 School Year and not the 2011-2012 School Year as proposed by the District.

(b) Conform Health Benefit plan to federal Affordable Health Care Act requirements that children under the age of 26 are covered under their parent's (s') health care plan.*

District Proposal

Effective the beginning of the 2012-2013 School Year:

Introduce deductibles for any medical service to \$200 for single coverage; \$350 for husband and wife coverage; and \$500 for full family coverage.

Further, impose a \$20 co-pay for Primary Doctor visits in place of the current \$10; a \$40 co-pay for specialist and urgent care visits in place of the current \$10; and, a \$50 co-pay for emergency care visits in place of the current \$35.

Further, increase the formulary brand drug benefit co-payment to \$25 in place of the current \$10 and increase the non-formulary co-payment to \$40 in place of the current \$10.*

Further, eliminate the \$3000 opt out payment currently made to the employee-spouse of a bargaining unit member who does not have medical coverage but who remains as a dependent on the bargaining unit member's coverage; provided however, that employee-spouses will not be able to receive separate medical coverage from the District.

Further, tentative agreement on the Association's proposal to conform health care plan to the Affordable Health Care Act's requirement that children under age 26 be covered under their parent's (s') plan.*

3. RETIREE HEALTH CARE:

Association Proposal

Apply all co-pays and deductibles paid by active bargaining unit members to members who retire during the term of the new contract.

Further, apply a \$200 deductible for all medical services and a \$20 primary doctor visit co-payment and a \$40 specialist co-payment to all retirees who retired prior to July 1, 2008

District Proposal

Apply all changes in co-payments and deductibles that are effective for active bargaining unit members to retired bargaining unit members, regardless of the date of their retirement.

Further, for those retiring after July 1, 2008, restrict benefits to employees only and not to dependents.

4. DOCTOR'S NOTE REQUIREMENT

Association Proposal

Grant the Superintendent the authority to waive the current contractual requirement for a bargaining unit member to produce a doctor's note on the third consecutive work day of absence.

District Proposal

Require doctor's note as of the third consecutive work day of absence.

5. COMPENSATORY TIME FOR COVERAGE OF CLASSES AND OTHER DUTIES

Association Proposal

Grant compensatory time off with pay on a time-earned basis for coverage of classes or other duties required of bargaining unit members outside normal instructional responsibilities, with the time earned used as mutually determined by the bargaining unit member and his or her principal.

District Proposal

No such time shall be granted

6. ACCESSIBILITY OF LESSON PLANS

Association Proposal

Permit bargaining unit members to leave weekly lesson plans on their desks each Monday for review by the building principals.

District Proposal

Maintain current practice which does not include simply leaving the plans on the bargaining unit member's desk.

7. IMPACT AND PERMISSIBLE SUBJECT BARGAINING ON EVALUATION CHANGES

Association Proposal

Require mid-contract term negotiations on the mandatorily negotiable impact of any legislative or regulatory changes in professional evaluation and on any permissibly negotiable areas related to such changes.

District Proposal

Any mandatory areas of bargaining occasioned by such changes will be negotiated.

8. LAYOFF AND RECALL

Association Proposal

Maintain the status quo of the current practice under which any laid off bargaining unit member has recall rights if laid off.

District Proposal

Modify layoff and recall rights such that only tenured bargaining unit members would retain recall rights if laid off.

9. CYBER SCHOOL INSTRUCTION

Association Proposal

Prohibit use of cyber school instructors to provide education.

District Proposal

Permit the District to use cyber school instructors to provide instruction.

10. GREIVANCE PROCEDURE HEARINGS

Association Proposal

Require hearings (meetings) at each level of the grievance process at a date and time mutually agreeable to the parties with every reasonable attempt made to hold such sessions within the time permitted for the District's response at any given level of the process.

District's Proposal

Status quo, under which hearings or meetings are sometimes held and sometimes not during grievance processing.

11. RESTRICTIONS ON BARGIANING UNIT WORK

Association Proposal

Prohibit the assignment of bargaining unit members to non-bargaining unit work, including nursing and secretarial services.

District Proposal

Status quo, under which there is no such prohibition.

12. SICK LEAVE BANK

Association Proposal

Permit any bargaining unit member to contribute to the current contractual sick leave bank at any time to any member and modify membership of the committee that oversees the sick leave bank so that it includes only bargaining unit members, rather than the current mix of bargaining unit members, administrators, and member of the Board of School Directors.

District Proposal

Maintain the status quo.

13. EXTRA CURRICULAR AND SUPORT ACTIVITY STIPENDS

Association Proposal

Retain all stipends at the amounts in effect during the 2010-2011 School Year and add the position of Citizen Bee at a stipend of \$750 per year.

District Proposal

Retain all stipends for active non-consolidated extra curricular and support activity duties at the amounts in effect during the 2010-2011 School Year² with the addition of the following duties and annual stipend amounts: FBLA \$650; M.S. Data Coordinator \$625; and, E.E. Data Coordinator \$625.

16. MEMORANDUM OF AGREEMENT

Association Proposal

Continue the Memorandum of Agreement regarding the interpretation and intent of the 2008-2011 contract.

² See the District's Fact-Finding submission at pages 16-17 which appears to reflect deletions of certain presumably inactive or consolidated extra curricular duties.

District Proposal

No proposal on this subject.

17. SALARIES

Association Proposal

2011-2012 School Year: Freeze salaries at the levels of the 2010-2011 salary schedule, with neither step nor column movement.

2012-2013 School Year: 2010-2011 salary schedule but with step and column movement and an off-schedule payment of to those who were at the maximum step (Step 22) in 2010-2011 equal to 2% of the maximum step salary.

2013-2014 and 2014-2015 School Years: Step and column movement each year; and an off-schedule payment to those who are at the maximum step of 2% of the maximum step salary each year equal to 2% of the maximum step salary each year; and an increase in the salary schedule equaling a total of 5% distributed over the two years as the parties may mutually agree.

District Proposal

Same as Association proposal for 2011-2012 and 2012-2013 except no off-schedule payments for those who were at the maximum step in 2010-2011.

For 2013-2014 the D District proposes a 2% in the salary schedule and step and column movement.

18. TUTION REIMBUSREMENT*

Association Proposal

Tentative agreement to adopt District proposal.

District Proposal

Effective the beginning of the 2012-2013 School Year, limit tuition reimbursement to a total of nine credits earned to acquire Level II certification.

19. SICK LEAVE PAYMENT*

Association Proposal

Tentative agreement to adopt District proposal.

District Proposal

Increase amount of sick leave buy out upon retirement after 10 years of service from \$24 to \$25 per day and increase the amount after 20 years of service from \$29 to \$35 per day.

20. RETIREMENT INCENTIVE*

Association Proposal

Tentative agreement to adopt District proposal.

District Proposal

Increase incentive payment for voluntary retirement to \$15,000; \$13,000; \$11,000; \$9,000; and \$7,000 for those with 30-35, 36, 37, 38, 39 years of service, respectively.

Further, should five or more bargaining unit members retire in any year of the new contract, \$2,500 shall be added to each of the above dollar amounts. There shall be no incentive amount for employees retiring voluntarily with 40 or more years of service.

PART II ECONOMIC, COMPARABLE COMPENSATION, and LEGAL FACTORS

Evidence at hearing disclosed the following salient factors that must be considered in any fact-finding:

1. The Association's proposals, if granted, would increase the District's total payroll cost by \$258,852 for the bargaining unit, or from \$5,457, 860 in 2010-2011 to \$6,110,985, over the four years proposed by the Association.
2. The District's salary proposal, if granted would increase the District's total payroll cost for the bargaining unit from \$5,457, 860 in 2010-2011 to \$5,852,133 for the three years proposed by the District for a total payroll increase of 0.72%. The District's proposed health care changes would save it a total of \$139,203 a year—without increased premium sharing.
3. As of the 2010-2011 School Year, the bargaining unit's starting salary was \$3,783 below the average of the other four carbon County school districts, and the maximum (career) salary was \$4106 below the average of the other four districts.³
4. As of the 2009-2010 School Year, the District's total fair market value of real estate is the fourth lowest of the five school districts in Carbon County.
5. In the 2009-2010 School Year the District's "tax effort" is 4th among the five contiguous districts.
6. In the 2008-2009 School Year the District's percentage of total revenue spent on bargaining unit salaries was the 4th lowest of the five Carbon County districts.
7. In the five years beginning with 2007, the District's actual revenues exceeded budgeted revenues by an average of \$5,266, 246. During the same period its actual expenses were less than its budgeted expenses by an average of \$4,121,400.
8. Over the same five year period, the District's actual ending fund balance grew from \$24,068 to \$5,777,867 with the 2011 amount exceeding the budgeted amount for that year by \$4,113,826. The 2011 result put the ending fund balance 21.09% over the District's total expenditures for that year. In 2010-2011 the ending fund balance was \$5,777,867 or \$2,163,827 over its budgeted ending fund balance for that year.
9. The District's proposed salary increase would cost \$140, 719 in 2012-2013 and \$253,555 in 2013-2014, excluding any column (educational attainment) movement.
10. If the District raised taxes by the maximum allowed by law, that increase would generate \$394, 400 for the District's entire budget which is currently \$23,868,900.
11. The District is facing tax assessment appeals that could result in significant revenue losses.
12. Payments to Charter Schools servicing District pupils have increased more than ten-fold since 2006-2007, from \$57,926 in that School Year to \$691,000 in the 2010-2011 School Year.
13. The legislature of the Commonwealth has called for "open-campus" initiatives with respect to instruction via internet, video conferencing or other electronic media.
14. Act 82 of 2012, signed into law June 30, 2012, has effected a change to Section 1124 of the Pennsylvania School Code applicable to layoffs and limits a school district's obligation to recall only tenured staff in the event of a layoff.

³ Thos Districts are Jim Thorpe, Lehighton, Palmerton and Weatherly

**PART III
RECOMMENDATIONS FOR SETTLEMENT**

After consideration of the foregoing factors and the parties' presentation at hearing, the undersigned makes the following recommendations for settlement:

1. TERM OF AGREEMENT

Given the already passed 2011-2012 and the fact that the parties would be engaged in bargaining within eighteen months for a successor contract were there to be a three-year term, the undersigned recommends:

A four year term, commencing with the 2011-2012 School Year and ending at the conclusion of the 2014-2015 School Year.

2. SALARIES

In consideration of the District's healthy fund balance , the lagging salaries for bargaining unit members compared to the other four Carbon County Districts, the similarity in costs of the District's and the Association's proposals for the first three years of the new contract, and the moderate cost of a fourth year salary increase under the Association's proposal, the undersigned recommends that:

Salaries for 2011-2012 remain unchanged (no step no column increases); salaries for 2012-2013 increase only as a function of step and column movement and with an off-schedule payment for bargaining unit members at the maximum step of 2% of that step; and each cell of the salary schedule be increased by 2% for each of School Years 2013-2014 and 2014-2015 with step and column movement but with no off-schedule payment for bargaining unit members at the maximum step.

3. HEALTH INSURANCE:

To assist the District in meeting the above salary increases and in recognition of the uncertainties introduced by the Affordable Health Care Act, generally rising premium costs experienced by most employers, and the fact that premium cost-sharing will remain constant over the next four years, the undersigned recommends that effective with the 2013-2014 School year:

- (a) **Yearly deductibles shall be \$200 per year for single coverage; \$350 for husband a wife coverage, and \$500 for full family coverage and such deductibles will apply to any covered medical service.**
- (b) **Co-payments for doctor visits shall be \$20 , \$20, and \$50 for primary, specialists and urgent care, and emergency care respectively.**
- (c) **The \$3000 opt out payment for employee-spouses of bargaining unit members when said employee-spouses decline their own coverage shall be eliminated and no employee spouse will receive his/her separate medical coverage.**

The undersigned further recommends that:

The health care plan conform to the requirements of the Affordable Health Care Act as those requirements become effective.

4. RETIREE HEALTH CARE

Based on the foregoing considerations, the undersigned recommends that:

Effective with the beginning of the 2012-2013 School Year all deductibles and co-payments effective for active retirees under the health care plan be imposed on retirees, regardless of when they retired or may retire

5. CYBER SCHOOL INSTRUCTION

To advance educational opportunities where appropriate for students in the District and at the same time to preserve bargaining unit work, the undersigned recommends that:

The District shall have the right to promote, offer and implement online instruction with instruction provided by either Bargaining Unit Members or instructors from other sources, at its discretion, for: (1) home-schooled students; (2) students attending public, parochial or independent schools; (3) students attending cyber schools; (4) students attending charter schools; (5) students whose medical conditions preclude their regular school attendance; (6) students who have travel, athletic or performance opportunities that preclude their attendance; (7) students who will be expelled or are expelled or suspended by the District; and/or, (8) students currently attending school who desire a blended approach [online and attendance at school] to learning. Those students in category (8) above must physically attend school for at least 6 hours of instruction daily to be eligible for online instruction.

During the term of this agreement, the District will not expand its online program opportunities beyond the limitations set forth above without first negotiating with the Association.

6. STIPENDS FOR EXTRA CURRICULAR AND SUPPORT ACTIVITIES

Based on the foregoing consideration as to salaries, the undersigned recommends that:

All stipends for extra curricular and support activities that are extant and have not been combined shall remain at the rate in effect in the 2010-2011 School Year with the addition of the FBLA stipend at \$650, the M.S. Data Coordinator stipend at \$625, and the E.E. Date Coordinator at \$625

7. Tentative Agreements

The undersigned recommends that:

The parties' tentative agreements on tuition reimbursement, sick leave payment, and retirement incentive be adopted in the new contract.

8. MEMORANDUM OF AGREEMENT

The undersigned recommends that:

The existing MOA concerning interpretation of the current contract be continued.

9. OTHER PROPOSALS

The undersigned recommends that all other proposals be withdrawn except to the extent that they propose necessary editing of dates, etc, to make the new contract current.

Respectfully submitted this ____ day of July, 2012.

Ralph H. Colflesh, Jr., Esq./ Fact-Finder