

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA LABOR RELATIONS BOARD

IN THE MATTER OF

THE PENNS MANOR EDUCATION  
SUPPORT PROFESSIONALS, PSEA/NEA

and

THE PENNS MANOR AREA SCHOOL  
DISTRICT

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Case No. ACT 88-13-32-W

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**FACT FINDING REPORT & RECOMMENDATIONS**

Michael D. McDowell, Esq., Fact Finder  
Report Dated: July 1, 2013

**APPEARANCES**

For the Penns Manor Area School District:

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For the Penns Manor Educational Support Professionals/PSEA/NEA:

Ms. Brooke E. Elliot  
UniServ Representative  
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**BACKGROUND**

The Penns Manor Area School District ("District") employs four (4) Secretaries, four (4) Receptionist/Secretaries, five (5) Custodian/Maintenance Personnel, five (5) Cleaners, thirteen (13) Cafeteria Personnel, two (2) Monitors, and eleven (11) Instructional Assistants, for a total of 44<sup>1</sup> persons who are members of the Penns Manor Educational Support Professionals/PSEA/NEA ("Association") whose membership includes Cafeteria, Custodians, Instructional Assistants, Maintenance and Secretarial employees.

The prior Collective Bargaining Agreement ("Agreement") between the parties was effective July 1, 2007, to June 30, 2012, and currently governs the party's relationship.

By letter from the Secretary of the Pennsylvania Labor Relations Board ("PLRB") dated May 21, 2013, the undersigned was advised of his appointment pursuant to Act 88 of 1992 ("Act 88") and the Public Employe Relations Act (PERA), as Fact Finder in an impasse between the District and the Association.

In accordance with the PLRB order of May 21, 2013, the parties filed written statements of the issues in dispute with the Fact Finder. The parties raised issues at impasse involving the following provisions of the Collective Bargaining Agreement ("CBA"):

Article VIII, Hour and Other Conditions of Employment - Section 1: Work Schedules  
Article VIII, Hour and Other Conditions of Employment - Section 2: Overtime  
Article XIII, Paid Holidays - Section 1: Holidays  
Article XVI, Wages and Salary - Section 1: Wage Increases  
Article XVI, Wages and Salary - Section 1: New Section 7: Subcontracting

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<sup>1</sup> This number was derived from the exhibits. At the hearing, the Association stated that the total number of bargaining unit members is currently 42.

Article XVII, Insurance and Other Benefits - Section 1: Eligibility  
Article XVII, Insurance and Other Benefits - Section 2: Hospitalization Insurance  
Article XVII, Insurance and Other Benefits - Section 3: Co-Pay/Insurance Buyout  
Article XVII, Insurance and Other Benefits - New Section 4: Spousal Coverage  
(renumber remaining sections)  
Article XVII, Insurance and Other Benefits - Section 7: Retirement Severance  
Article XXII, Insurance and Other Benefits - New Section 13: Number of Pays  
Article XVII, Insurance and Other Benefits - Section 15: Benefits Upon Retirement  
Article XX, Duration, Section 1.

The parties have been unable to reach agreement on the disputed issues. They have, in a sense, agreed to have a third party review their respective positions on the disputed issues and recommend a result that, if the parties agree, would be incorporated into the CBA they would have otherwise forged through the collective bargaining process.

On July 20, 2013, a Fact Finding Hearing was held at the Penns Manor Area School District, at which both parties were afforded a full opportunity to present testimony, question witnesses, introduce evidence and argue orally in support of their respective positions. The Fact Finding Hearing was attended by five members of the School Board, the Superintendent and the Business Manager as representatives of the District. No members of the bargaining unit appeared at the Fact Finding hearing as representatives of the Association.

The issues are addressed in the same order as the relevant Articles appear in the Agreement. To arrive at the recommendations in this Fact Finder Report, reliance was placed upon, among other things, the following considerations:

- The reliable and credible evidence presented at the Fact-Finding Hearing as well as the presentations of the parties;
- The predecessor CBA;
- Other labor agreements with the District;
- Comparisons of the unresolved issues relative to the employees in this bargaining unit and how those issues are addressed in other public and private settings where employees are doing comparable work, giving consideration to factors peculiar to the area and classifications involved;
- The interest and welfare of the taxpayers and the District to finance and administer the issues proposed;
- The understanding that each individual issue has been reviewed for its relative individual merit; at the same time, each individual issue has also been reviewed with consideration given to whether or not it appropriately fits into the CBA created through this process;
- The lawful authority of this employer;
- Any stipulations of the parties.

The recommendations include, but are not limited to, overall considerations of the national economy; continually increasing health care costs and the further uncertainty of the impact on these costs by national health care legislation; the diminishment of state funding; what appears to be the projected increases in District payments to the Pennsylvania School Employee Retirement System ("PSERS"); mandatory contributions required toward cyber schools; and the moratorium on state aid for capital projects.

Although these reasons may not be specifically referenced in the Recommendations, the rationale for not recommending a proposal will include:

- The proposal was not sufficiently supported at the Fact Finding Hearing;
- The other party's argument against a proposal's inclusion was more compelling;
- The matters addressed by the proposal were not deemed appropriate to be recommended at this time, given the other recommendations in this Report for change in the predecessor Agreement.

The recommendations which follow constitute the settlement proposal upon which the Parties are now required to act, as directed by statute and Board 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, but rather represents only an agreement to resolve the issues by adopting the recommendations. The Parties are directed to review the Report and, within ten (10) days of its issuance, notify the Board of their decision to accept or reject the recommendations.

### **Discussion of Financial Issues**

The issues in this case are plainly impacted by the financial circumstances of the District. The parties presentations differed in their results. The District described a poor financial position and projections of a poor financial future representing a financial crisis

for the District. The Association asserted that the District is not in any financial difficulty. Their positions are further outlined as follows:

## **DISTRICT POSITION**

The District presented a great deal of undisputed evidence concerning its current position. This information was supplemented by the presentation and projections of Dr. William T. Hartman, Professor of Education, Department of Education Policies Studies, Penn State University. This is summarized as follows:

### **Wealth/Tax Base**

Local revenues from property taxes comprise approximately 17% of the total District budget. Of the 50 top employers in Indiana County, operating in the District are only a Sheetz, Inc. facility and a Rose Bud Mining Company facility, with only the Rosebud Mining Company appearing in the top ten largest District real property taxpayers - at #10. For the 2013–2014 year, the District approved a five (5) mill total real estate tax increase; 2.5 of those mills is going to the maximum of the Index and the other 2.5 mills is to address PSERS. The District only receives \$26,000 per mill. Since 2006–2007, the District increased its millage rates by 25.46 mills. The Association does not dispute that the District clearly has made a taxing effort.

Other local revenue are primarily local earned income taxes, delinquent tax receipts and earnings on investments. These make up another 8% of the total budget but they are not under district control and there is little expectation of growth in these areas in this economy.

### **PSERS**

In 2010-2011, the PSERS contribution rate was 5.64% but was raised to 8.65% in 2011-2012. The pension rates are scheduled to go to 12.36% in 2012-2013, with increases of 16.93% in 2013-2014, 21.31% in 2014-2015 and 25.8% in 2015-2016. The District maintains that approximately 10 years ago when the District's PSERS share for the District was 2.0%, the Association argued that the decrease should be used to fund the Association's proposals. The District now argues that the mandated increase in the District's contribution should support the reverse, that is, the concessionary proposals by the District.

### **State Funding**

The District's budget is largely dependent on state funding, which provides approximately 70% of the District's funding. However, since 2010-2011, the District has taken cuts in major instructional subsidies in the total amount of \$1,440,340. The cuts are broken down as follows:

Basic Education Funding	\$820,225
Accountability Block Grants	\$363,746
Charter School Reimbursement	\$123,373
Other Public Education Programs	\$132,995

School Districts are unlikely to gain much additional funding from state revenue. The Governor's proposal for Basic Education Funding for the District is minimal, approximately \$65,000.00, or about \$70 per student.

### **School Enrollment**

The District has experienced a 12% decline in student population over the last ten (10) years.

### **School Construction**

The District points out that as a result of Act 82, the Commonwealth of Pennsylvania and Department of Education placed a moratorium on reimbursement for state building projects. This moratorium is in effect from October 2, 2012 through June 30, 2013, and during that period no new Part A applications will be accepted.

### **Special Education**

Over the last 11 years (2003-2004 to 2011-2012) alone, the District has paid out \$1,668,532 more than it has received in revenue for special education.

## **Cyber School**

In 2010-2011, the district expended approximately \$155,891 for cyber education. That amount increased to \$160,681 and 2011-2012; and to \$285,770 in 2012-2013. Since Governor Corbett took office, the District no longer gets reimbursed for this cost. The state subsidy to districts to offset a portion of their mandatory charter school tuition payments was eliminated in 2011-2012 and has not been restored. That means in 2011-2012 and 2012-2013, the amounts listed above came out of the District's funds.

## **Interest Earnings**

In 2006-2007, a year before the effective date of the most recent Agreement between the parties, and prior to the recession, the District was earning approximately \$193,763 in interest. That revenue source declined to \$1,000 in 2012-2013. The district earns only .15% in its sweep account.

## **Cafeteria**

The Cafeteria is now suffering a \$106,000.00 deficit. The District has regularly increased its charge for lunches and is also considering increasing breakfast and lunch costs by \$.10 per meal this year.

## **Health Care Costs**

The District points out that the premium cost in 2006-2007 was \$1,582,300 and that it has increased to the point where, in 2013-2014, the premium cost is \$1,978,354. That is an increase of \$396,054. The annual costs of healthcare insurance and specific coverage areas is as follows:

	<b>2001-2002</b>	<b>2006-2007</b>	<b>2012-2013</b>	<b>2013-2014</b>
Individual	\$2,605	\$4,529	\$5,439	\$5,869
Parent, child(ren)	\$6,198	\$10,764	\$12,919	\$13,942
Husband/wife	\$7,028	\$12,215	\$14,666	\$15,827
Family	\$7,419	\$12,900	\$15,489	\$16,716

The District argues that it can no longer alone absorb the costs for medical insurance, particularly when this is coupled with the financial condition of the District and the \$106,000 deficit in the Cafeteria.

The District also notes that the Affordable Health Care Act placed additional burdens on the employer; in 2014 to 2016 an assessment of \$63 per member per year will be added to healthcare costs. Self-insured and self-funded plans will also have a one dollar cost (per employee) added to the plan in 2012-2013 and two dollar (per employee) for the period of 2013 through 2014. Plans that annually cost more than \$10,200 (single) or 27,500 (family) are subject to a 40% excise tax on the amount of those costs. This "Cadillac" provision will come into play in 2018. Due to the possibility that the plan does indeed qualify as a "Cadillac" plan, the District claims it is absolutely imperative to address the change in the level of benefits within the plan.

The District maintains that, based upon information that has been prepared on the State and National levels, it is anticipated that healthcare costs will continue to escalate close to 10% per year. The District argues that it would be naïve to think that this is not a reality, particularly given the current state of the economy and all the other economic indicators.

The Kaiser/HERT Survey covering the period through 2012 shows that for Pennsylvania employers the amount of employee contributions in 2011 for single coverage was \$1,064.00, \$2,425.00 per employee +1, and \$3,709.00 for family coverage. Thus, the request by the District to have employees in the bargaining unit contribute toward medical insurance is not out of line; in fact, most school districts across the nation will contribute to the cost of the annual premium for medical insurance coverage.

The current plan of the Association provides for no in-network deductibles and no premium share. Significantly, an individual who is on a fixed income and currently receiving Medicare benefits contributes almost \$100.00-plus per month just for Medicare Plan B coverage. On any other additional coverage or the inclusion of prescription coverage for persons on Medicare, the cost is significantly higher, in the \$200.00-plus range per month. In July 1, 2009, the contribution rate toward healthcare plans for state employees rose to 1.5% of their salary for a basic healthcare plan.

The District pointed out that the PSEA in the Spring of 2012 published a White Paper entitled "Sounding the Alarm", and in June, 2013, published the additional White Paper entitled "Sounding the Alarm 2". These documents were in response to nearly \$860 million in cuts to school districts statewide in 2011-2012 and minimal increases since. It notes that "Pennsylvania Public Schools remain mired in their toughest fiscal crisis since the 1930s" and that "districts are being forced to make increasingly difficult decisions about how to meet the education needs of their students." It cites a statistical model created by John Trussel and Patricia Patrick

recently published "in the refereed *Journal of Education Finance*" which cites, "[T]he compounding effects of other factors specific to Pennsylvania school districts including payments to charter schools, pension costs, declining tax bases and rate limits, and state funding cuts are discusses." In addition, in 2011 and in response to potential spending cuts in state funding to districts, PSEA President Testerman called on school employees to consider a one-year pay freeze.

### **Dr. Hartman**

Dr. Hartman presented information concerning what he termed "a different fiscal environment - the New Fiscal Reality" for school districts. Dr. Hartman provided projections using the 2011-2012 numbers as a baseline and projected forward for 2013-2014 through 2016-2017 using assumptions about how each of the components of the projections would change in the next few years. His result of the comparison of the parties' proposals is that the cumulative differences in the two proposals would contribute to the District having a projected negative fund balance exceeding \$1,000,000.00 in 2016-2017. As the District is not permitted to operate with a negative fund balance, the District must adjust spending and taxing plans to achieve a balanced budget and a positive fund balance.

Dr. Hartman's analysis concluded that there is very small possibility for revenue growth in the District; it would be solely from real estate taxes which constitute less than 20% of the District funding. He points out that the District has sought substantial recent increases in its millage rate to raise additional revenue from that source. He also concluded that as salaries and health care benefits constitute 68% of the District's expenditures, those are the areas to look to for any necessary balancing reductions. He described a "budget share" concept which provided a mechanism for fair distribution of revenues and does not overly fund one area at the expense of another.

He notes that the Association characterizes the wage freeze it is offering in the first year of the agreement as a savings that would represent a \$175,000.00 savings over a five year agreement. He disputes this assertion noting that a wage freeze is not a savings and that the Association's attempts to characterize it as such proposes an invalid comparison to an imaginary number.

### **ASSOCIATION POSITION**

The Association maintains that the District is not in any financial difficulty and has taken steps over the past few years to continue financial stability.

The Association asserts that the District has challenges but has retained good control over its finances. From 2008 to 2012 (the last year of actual data), the District has had more revenue than expenses in each year but 2011. With regard to expenditures, only in 2007 were expenditures more than income. In each year, the District budgeted losses but in only one year did expenses exceed revenues and typically the District will budget for losses, but on average has a \$442,000 difference. The appropriable fund balances (the committed, assigned and unassigned) in every instance are less than the actual and the appropriable fund balance is trending up. The Association states that what is a reasonable fund balance is now not clear given the changes. However, it maintains that the District is able to put away money to a degree and is not a District that is in distress. It notes that the District pays 42% to PSERS and the rest is reimbursed by the state. It acknowledges that household taxes account for 17.2% of total revenue which is manipulatable and not by a great deal as the District has made strides to maximize that aspect. The Association wanted to point out that the District is not primarily funded by the local taxpayer.

The Association also points out that the District has reduced the teaching staff by 11 teachers and has not replaced several support professionals who have retired in the last few years. In addition, the Association maintains that the District has received additional retirement notices from five support staff and ten teachers for the 2012-2013 school year. The Association also states that the one year pay freeze that it proposes will reduce payroll costs to the District by at least \$35,000.00 based on a 3.5% increase forgone in one year. The Association maintains that the savings will be \$175,000.00 over the life of a five-year Agreement. The Association points out that the aid ratio is fourth among seven surrounding districts. It is below average but not an outlier within the county as well.

The Association states that it is compassionate to the difficulties that have been forced on Districts and employees by the recent budget cuts. The Association states that it understands that in difficult times, difficult decisions must be made, but those also must be decisions that are financially sound, as well as fair and equitable. The Association believes that making those who make the least sacrifice the most is neither financially sound nor fair and equitable.

### **CONCLUSION**

While recognizing that a portion of the positions of the parties must rely on projections that may change, on the state of this record the District is more persuasive in its overall argument that the District is a poor school district and one which has been heavily impacted financially by outside circumstances despite its tax efforts. The facts presented do not support the Association argument that

the District "is not in any financial difficulty". The bargaining unit members were the beneficiaries of a five-year labor agreement with generous wage increases and health care provisions which became effective prior to the significant economic and fiscal turmoil which has resulted in the precarious financial position of the District today. Significant changes are necessary to address what appears to be a "new reality" in school district financing and certain of the District's proposals will be recommended as proposed or modified to address the same. Recommendations in this report provide for significant reductions in Cafeteria workers' compensation in order to allow Cafeteria workers to keep their jobs, which they would likely not be able to do under the request by the District for a contracting-out provision. With regard to health care costs, it is noted that the employees currently have no in-network deductibles and do not pay a premium share. The following recommendations would require the employees to bear some of their health care costs.

## **DISCUSSION AND RECOMMENDATIONS**

### **Article VIII, Hour and Other Conditions of Employment - Section 1: Work Schedules**

*District Position:* The District proposes the deletion of the final sentence of Section 1 which reads as follows:

For the length of this agreement, no bargaining unit member will be scheduled for less regular hours than what they were working in the 2006-2007 school year.

The District supports this proposal with the argument that this is not viable contract language as the District has found itself in a fiscal crisis that, if not resolved, will prove catastrophic not only for the District but the school community and bargaining unit members. The District argues that this provision significantly hampers the District's ability to look at its overall operations and determine whether it continues to need a full-time employee.

*Association Position:* The Association proposes that the current contract language of the hourly guarantee be maintained. The Association argues that this modification would have a huge impact on its members. It could also create a domino effect of bumping across the District which would inadvertently impact the level of service provided. The Association also asserts that if a position becomes vacant, the District has the ability to post it at different hourly requirements. That is, if a secretary filling an 8-hour secretary position leaves the District, it can post one full time, or one part time position, or not fill the position. The Association notes that there are five retirements that will be effective in this unit at the end of the 2012-2013 school year. This all provides the District with flexibility.

**Recommendation:** It is recommended that the current language in Article VII, Hours and Other Conditions of Employment - Section 1: Work Schedules, be maintained.

### **Article VIII, Hours and Other Conditions of Employment - Section 2: Overtime**

*District Position:* The District proposes the deletion of the second sentence of Section 2 and Subsection B which read as follows:

"Double time will be paid after forty-eight (48) hours with the following exceptions:

.....

B. Cleaners who work on Saturday or Sunday will be paid time and one-half.

The District supports its argument with respect to the deletion of the double time over 48 hour requirement with information on 25 different school districts contracts, none of which paid double time for work over 40 hours, and none of which paid time and a half wages for less than 40 hours.

The District argues that the double time provision, it is a provision that simply is not viable in 2012-2013 and going forward. The District supports this proposal with the argument that the current provision found its way into the contract prior to 1995.

With respect to the time and one half compensation for the Cleaners working on Saturday or Sunday, Cleaners are currently working the third shift. They start on Monday evening at 10 PM and they work until 6 AM next day. Then on Friday evening, they start at 10 PM and work until Saturday at 6 AM. This is their current 40-hour workweek. The existing contract language is alleged by the District to have been put in a long time ago when cleaners only worked six hours a day, and that if the cleaner worked on Saturday or Sunday, they would get time and one half even if they didn't work 40 hours during the week (the regular work week would have been 30 hours - five days at six hours per day). What the District is seeking is that once they reach 40 hours, then that would begin overtime pay. The District maintains that over the years, the nature of the school has changed considerably. Now, the school is the hub of the community, with events occurring all of the time. The District has the ability to schedule 5 consecutive days. The downside is that the building also needs to be cleaned on Saturdays and Sundays. The reality is, however, this particular provision each year costs the district an additional \$7,200 that it would not otherwise normally need to expend.

*Association Position:* The Association proposes that the language of Section 2.B be revised as follows:

Cleaners who work on Saturday and Sunday will be paid time and one half up to Forty-Eight (48) hours per week. For any time worked in excess of 48 hours, Cleaners shall be paid two times their hourly rate.

The Association seeks to eliminate the restriction it asserts is unequally placed on the Cleaners. The current Agreement prevents the Cleaners from being paid two times their hourly rate on a Saturday or Sunday even when they have worked in excess of forty-eight hours per week. The Association position is one of equality and fairness. The Cleaners who work in excess of forty-eight hours per week should be given double time pay for those hours worked, even if those hours are worked on a Saturday or Sunday. The Association points out that Article VIII, Section 1 states that overtime is determined by the sole discretion of the employer. If the District requires that a Cleaner work overtime on a Saturday or Sunday, the Cleaner should be entitled to double time, as are other bargaining unit members.

As to the Cleaners' off shift, there is no dispute that this Cleaner's schedule was established at the request of the District. It was with the Association's consent and it just occurred this 2012-2013 year. The Association believes that the District incentivized the Cleaners to accept this, essentially a night shift, 11:00 pm to 6:00 pm, beginning Monday night and ending Saturday morning, with the overtime pay for the six hours working on the Saturday.

**Recommendation:** Given the District's comparables and its poor financial condition, it is recommended that the following language of Section 1 "Double time will be paid after forty-eight (48) hours with the following exceptions" be deleted from the Agreement. Given the undisputed representation of the Association that the Cleaners agreed to a change in shift fairly recently in this school year because they would be paid overtime for the last 6 hours of their 40 hour work week, the District's proposal to eliminate that overtime is not recommended.

#### **Article XIII, Paid Holidays - Section 1: Holidays**

*District Position:* The District proposes the deletion of the second paragraph of Section 1 the phrase "unless on approved leave" so that the second paragraph of Section 1 would read as follows:

To be eligible for paid holidays, the employee must work the day immediately before and the day immediately after a holiday.

The District supports this proposal with the argument that it is only common sense that in order to be paid for the holiday, the employee should be in working status. Accordingly, the employer believes that the language "unless an approved leave" should be deleted from the collective bargaining agreement.

*Association Position:* The Association proposes that the current contract language be maintained. It argues that eliminating the provision which allows employees to be paid for a holiday because they are on approved leave is an unnecessary deterioration of benefits of employees. The Agreement allows the employee certain leave as outlined in Article 12 of the Agreement. An employee should not lose a paid holiday while on approved leave and suffer such a financial impact.

**Recommendation:** It is recommended that the current language in Article XIII, Paid Holidays - Section 1: Holidays, be maintained.

#### **Article XVI, Wages and Salary - Section 1: Wage Increases**

*District Position:* The District proposes the following wage increases in Section 1:

Year 1	2012-2013	Wage Freeze
Year 2	2013-2014	*\$0.15 per hour
Year 3	2014-2015	*\$0.15 per hour

\*Increase does not apply to cafeteria workers.

The District notes that early in 2012, the District placed on the bargaining table possible outsourcing of its cafeteria operations indicating that the District needed to save \$106,000 per year. The District has maintained that for it not to outsource the Cafeteria Operation, Cafeteria employees shall have their hourly rate reduced by \$3.00 per hour for 2013-2014, and their hourly rate shall remain at that level for 2014-2015 as well.

The District also proposes to eliminate cafeteria workers from schedule structure. In addition, the starting rate for cafeteria workers shall be \$8.44 and remain at that rate for the balance of the Agreement.

The District maintains its proposal that the starting rate for any new employee into any position (hired on or after July 1, 2012) or someone moving into a full-time position shall be 70% of the current starting rate for 2011-2012. The District also notes that the salary increase proposal in Years 2 and 3 are part of a comprehensive package tied to changes in health insurance.

The District points to the \$106,000.00 in losses created in the Cafeteria Operation and also to comparables with other districts showing the high wages paid by the District for the Cafeteria employees. The District's rationale is cost based and is outlined above in the Discussion on Financial Issues.

*Association Position:* The Association proposes the following revisions to Section 1:

Wage increases:

2012-2013	Freeze
2013-2014	4.00%
2014-2015	3.75%
2015-2016	3.50%
2016-2017	3.75%

The Association represents that it will develop the salary schedules.

The Association states that the wage issue at the District is one of comparability and equity. It states that equity and fairness is determined by what increases other support professionals in Indiana County earn annually in relationship to their colleagues in neighboring school districts, as well as equality in pay increases given to other employees of the District.

The Association states that its proposal for a wage freeze is in response to the Districts threat to subcontract the Cafeteria Operation, and due to PSEA President Testerman's statement that employees should consider a wage freeze and that it is easier to take it in the first year which is essentially over.

The Association points out that its requests are less than the wage increases in the last contract and that these are not high paid workers and are less than what they are accustomed to.

The Association maintains that the District's proposal to reduce Cafeteria worker wages by \$3.00 per hour in order to prevent subcontracting of Cafeteria Operations is ridiculous as it would result in the Cafeteria worker earning almost \$5,000.00 per year.

The Association argues that the District is seeking to rectify the deficit of \$106,000.00 in the wrong place as the history of the management of the Cafeteria Operations will show. The Association states that in the summer of 2012, the District solicited bids from several companies for the cafeteria operations. In the beginning of the 2012-2013, school year, the District received bids from Nutrition, Inc. and Metz Culinary Management, Inc. for the Cafeteria Operations. At that time and as part of the bargaining process, the Association requested copies of the bids and an opportunity to bid against those proposals so the cafeteria work and the respective employees who do that work, could remain members of the Association and employees of the District. Since beginning in the 2007-2008 school year, the Cafeteria Operations have been managed by Metz Culinary Management, Inc. While under the Metz management, the Cafeteria Operations lost \$106,000.00. The Association argues that the losses were under the management of a company who has now lost over \$80,000.00 per year under its management and now looking to the Association members to reduce this loss to just under \$40,000.00 annually by creating \$106,000.00 in concessions based on the 2012-2013 budget.

The most senior cafeteria worker, who has been a District employee since 1976, earns \$22,538.00 per year. She also receives and is currently entitled to healthcare coverage for herself and her husband, at a cost to the District of \$16,300.00 for the 2011-2012 school year. If the District would decide to subcontract the Cafeteria Operations and she took employment with Metz or accepted the District's proposal, this employee's salary would be reduced by almost 25% to \$17,954.

The Association maintains that the District should have made changes at the top first as the Association argues that there be 25% reductions in the administrators' salaries.

The Association also proposes that the Aides' Salary schedule shall be broken out, with a column for Highly Qualified Aides, which includes the 5% differential and shall be considered a separate classification for all purposes (including seniority).

**Recommendation:** Given the financial condition of the District, it is recommended that the District's proposal be accepted with the only modification to its proposal being recommended as stated is that it is recommended that there be a \$0.20 per hour wage increase in year two and a \$0.20 per hour increase in year 3 of the Agreement, not applicable to the Cafeteria employees. The Association's proposal is not recommended. This will mean that the District's contracting proposal, discussed below, will not be recommended so



that the Cafeteria employees can remain employees of the District. As the parties advised at the Fact Finding hearing that they would work any schedules necessary if the Fact Finding Report and Recommendations are accepted, the Fact Finder should merely advise which position is recommended. With respect to the issue raised by the Association concerning the Highly Qualified Aides, the Association did not present any rationale for that proposition at the Fact Finding hearing and for that reason it is not recommended.

#### **Article XVI, Wages and Salary - New Section 7: Subcontracting**

*District Position:* The District proposes to add the following language as a new Section 7:

The District reserves the right to subcontract bargaining unit work during the term of this Agreement for (1) legitimate operational reasons resulting in reasonable cost savings; (2) legitimate operational reasons resulting from technological changes; (3) legitimate operational reasons resulting from improved delivery of service or efficiency. The District will provide the Union with as much advance Notice as possible of a proposed contract or assignment of bargaining unit work.

At the Fact-Finding hearing it was apparent that the District was focusing on the use of this provision to outsource the Cafeteria function in the District. The District maintains it is in a difficult position financially. Part of that is that the Cafeteria function has accumulated losses of \$106,000.00. The long-term viability of the District is in question and the District needs to have language within the four corners of the Agreement that will provide it with flexibility given the fact that the District bargains with the Association every two, three or four years to save money whenever it is in the best interests of the District to do so.

The proposed language demonstrates that certain precedent conditions need to occur for that provision to come in to play. That is, that there are legitimate operational changes resulting in: reasonable cost savings; technological changes; or improved delivery of service or efficiency. The District points out that the grievance procedure in the Agreement provides the Association has the ability to demonstrate, as does the District, that the actions of the District were improvident before an arbitrator. Given the fact that an arbitrator has the ability to review the matter, such a decision to outsource cannot be arbitrary if it is to stand muster before an arbitrator.

The District states that the Commonwealth of Pennsylvania bargains with various organize groups on a statewide level and that both the AFSCME Master Agreement, along with the SEIU and others, contains provisions addressing the outsourcing of work.

This language is necessary in the Agreement given the fact that cases may arise at the spur of the moment and need to be addressed. The District does not have the luxury to wait for the current contract to expire before it makes Requests for Proposals ("RFP"). This language is being sought to allow the District to address issues on a case-by-case basis or to give a appropriate review of the viability of moving in such a direction if it would provide cost savings based on legitimate operational reasons.

The District has received bids for the outsourcing of the Cafeteria function in the District; its analysis of its potential costs of operation as opposed to the anticipated costs for the outsourcing of the Cafeteria function shows a savings to the District of \$95,273.92.

The District anticipates the Association's pointing out the Homer Center Area School District and its decision to keep employees in-house as opposed to outsourcing the work where its employees became employees of the outsourced group. The District counters by pointing out that the food service staff hourly wage dropped almost \$2.50 an hour at the top step.

The District showed that nine school districts who have outsourced their cafeteria operations and those cafeteria employees are no longer employees of the District but rather of the Food Service Contractor. The District also pointed to Altoona Area School District in which all new employees in the cafeteria after 2006 were employed by the Food Service Contractor. It also pointed out that Bishop Guilfoyle and Somerset Area School District have similar arrangements to that of the Altoona Area School District. The District also points out that in the Danville Area School District any employee hired after July 1, 2013 for the cafeteria will be an employee of the Food Service Contractor.

The District maintains that should it receive the concessions requested in the compensation-related items it has requested with respect to the Cafeteria employees, it would prefer to keep the Cafeteria operation in-house rather than outsource the same. However, the District has argued that since it does not receive appropriate compensation concessions related to the Cafeteria function, and in view of the losses suffered in the Cafeteria Operation - which for purposes of the fact-finding the parties agree were \$106,000 at this point - the District requests that the Fact Finder recommend this proposed outsourcing language.

*Association Position:* The Association opposes the addition of a new language allowing contracting out bargaining unit work. The Association's position to ensure no subcontracting language is in the Agreement is clear; the District needs to follow the laws of the Commonwealth of Pennsylvania if it wants to privatize any of the operations which are performed by bargaining unit members.

The Association notes that the District's proposal basically allows privatization for almost any reason. The trend among school districts to have private, for-profit companies, come in to run the operations is flawed. It cites Keystone Group's Independent Research, which examined subcontracting transportation operations. Privatizing operations does not save the Districts money. It asserts that in the end it costs Districts significantly more. It points to Marion Center and Purchase Line taking management of its operations back in-house last year, as did Blairsville-Saltsburg after a trial period a few years ago.

**Recommendation:** As the Fact Finder has recommended most of the cost proposals of the District, it is recommended that this new Section 7 not be adopted.

## **Article XVII, Insurance and Other Benefits - Section 1: Eligibility**

*District Position:* The District proposes the revision of Section 1 to read as follows:

Eligibility. For those employees working in job categories less than a full day, the Employer shall pay prorated premiums for this insurance benefits listed in Section 2 through 5 in accordance with the following percentages of premiums:

	District Pays	Individual Pays
2 hours	33.33%	66.67%
4 to 5 hours	58.33%	41.67%
More than 5 less than 6 hours	66.67%	33.33%

The only employees working part time currently in the District are the Cafeteria employees. The District cites matters contained in its overall health care position as outlined above in the Discussion on Financial Issues.

*Association Position:* The Association seeks to retain the current contract language. Many of the current part-time employees were hired with the current health care provided as part of the benefit package. It asserts that there are only 8 part time employees who are eligible to receive these benefits. The impact of the cost shift for those few employees would be huge because they are the lowest earning, while the cost savings to the District would be negligible.

**Recommendation:** It is recommended that current language of the first sentence of Article XVII, Section 1 be maintained.

## **Article XVII, Insurance and Other Benefits - Section 2: Hospitalization Insurance**

*District Position:* The District proposes the revision of the first sentence of Section 2 to read as follows:

The Employer will provide each employee with a PPO Blue medical plan for employee, spouse and dependent coverage, subject to the provisions of Section 4 herein.

This revision would add the words "subject to the provisions of Section 4 herein" to the first sentence of Section 2. The effect of this change would be to include a new Section 4 to Article XVII concerning spousal coverage and its position is set forth in Article XVII, New Section 4 concerning spousal coverage below.

*Association Position:* The Association's position is set forth below in Article XVII, New Section 4 concerning spousal coverage below.

**Recommendation:** As it will not be recommended that the District's proposal on a new Section 4 of Article XVII, discussed below, be accepted, it is recommended that current language of the first sentence of Article XVII, Section 2 be maintained.

## **Article XVII, Insurance and Other Benefits - Section 3: Co-Pay/Insurance Buyout**

There are essentially three proposals for Section 3, which we will address individually.

## First Proposal

*District Position:* The District proposes to add language that would require a 5% premium contribution in year one of the Agreement to be increased 1% in each subsequent year. The District's rationale is cost based and is outlined above in the Discussion on Financial Issues.

*Association Position:* The Association opposes this proposal. The Association asserts that no one in the District contributes to their health care and that the District is starting to try to force premium sharing on this group first. Further, none of the bargaining units in the school district in Indiana County both contribute to health care premiums and have an in-network deductible. The Association argues that it is about baby steps and doing so in a manageable, affordable way because the employees have structured their lives around their compensation and benefits.

**Recommendation:** It is recommended that the employees make a premium contribution of 1% of premium in the second year of the Agreement beginning on January 1, 2014, and a premium contribution of 2% of premium in the third year of the Agreement beginning January 1, 2015. The recommended premium contributions are far less for all categories than the required for Medicare Plan B coverage, which is provided to retirees on fixed incomes and which is currently approximately \$100.00 per individual per month. This recommendation is to be effective January 1, 2014 and thus will be in effect for only half of the recommended term of the Agreement. As it is recommended that this be a 3-year Agreement, additional contributions to premium share may be addressed in future contract negotiations, as appropriate. It is recommended that the following language be added to Article XVII, Section 3:

*The premium for the health insurance will be shared by each employee in the amount of a 1% premium share beginning on January 1, 2014, which will increase to 2% on January 1, 2015.*

## Second Proposal

*District Position:* The District proposes a co-payment for physician office visits, an individual/family deductible, changes to prescription co-payments, and a copayment for certain spinal manipulation with a visit limit. The District's rationale is cost based and is outlined above in the Discussion on Financial Issues.

*Association Position:* In consideration for the elimination of any sub-contracting threat, the Association proposes modifications to the Health Care Plan, as set forth in Article XVII effective July 1, 2013. Insurance and Other Benefits, Section 3: Co-Pay/Insurance Buyout. The PPO plan will provide for co-payments as follows:

Physician Office:	\$20 per visit
Spinal Manipulation:	\$20 per visit
Emergency Room	\$50 per visit
Prescription Drugs	\$5 generic/\$20 brand (up to a 31 day supply) Main in program with 2X co-pay

The Association agrees that there should be some health care shifting but in a reasonable way. In addition, the Association will agree to an annual \$100 individual in-network deductible and \$200 family in-network deductible. For out-of-network services, the deductible will be \$250 for individuals and \$500 for a family annually. These modifications will also be effective July 31, 2013. The deductibles proposed by the District are too large. In Indiana County the largest in network deductible in any school districts for support professional employees is \$250.00 for individual and \$500.00 for a family member

**Recommendation:** The District arguments are more persuasive. It is recommended that the District's proposal be accepted. The same would go into effect on January 1, 2014, and thus be effective for only half of the term of the Agreement. It is recommended that the third paragraph of Article XVII, Section 3 be replaced with the following:

*The PPO Blue plan will provide a twenty dollar (\$20.00) co-payment for physician office visits, a \$500 individual/\$1000 family deductible, prescription co-payments of five dollars (\$5.00) generic, twenty dollars (\$20.00) brand formulary, and thirty-five dollars (\$35.00) brand non-formulary. In addition, the plan will provide for a \$20 co-payment for in-network spinal manipulation services with a twenty (20) visit limit.*

## Third Proposal

The District proposes to add the following language to Section 3:

Any employee hired on or after July 1, 2012, or someone moving into a full-time position shall only be eligible for individual medical insurance.

The District provides comparables showing that this or a similar provision has been adopted in other districts. It refers to it arguments on the financial condition of the District as additional support for this provision.

*Association Position:* The Association did not formally address this proposal.

*Recommendation:* It is recommended that the District's proposal be adopted as modified to apply only to new hires and read as follows:

Any employee hired on or after July 1, 2012, shall only be eligible for individual medical insurance.

**Article XVII, Insurance and Other Benefits - New Section 4: Spousal Coverage  
(renumber remaining sections)**

*District Position:* The District proposes to add a new Section 4 and to renumber the remaining sections. The new Section 4 would limit the circumstances under which it would make coverage available to spouses of employees who are employed and have health care coverage available through their employer. If an employee spouse has coverage available through their employer, the employee must pay fifty percent (50%) of the District premium each year to be insured by the District. At the Fact Finding hearing the District stated that it may be willing to restrict this provision to those spouses who are employed by, and have coverage provided by, a federal, state or local government entity. The District did not know how many employees' spouses this would impact but stated for each such employed spouse, the savings would be in the area of \$7,000.00 plus utilization.

*Association Position:* The Association argues that this type of proposal is pretty much unheard of in this area. It maintains that the District's proposal does not take into account the level of coverage or cost to the employee's spouse that the healthcare coverage may cost. The argument that the District has made to the Association for this addition has been one of principle as they cannot determine which of the employees this would affect, and have no way of determining what the cost savings may be if this language is added. The Association maintains that the cost of insuring an individual by the district was just under \$5,900.00 for the last school year. The cost for the District to ensure a husband and wife for the same period was about \$15,800.00. Consequently if an employee's spouse had coverage available to them, but they wanted to continue on the District's healthcare, the employee would have to pay \$5,000.00 per year for that coverage. For many employees, this would equate to almost 25% of their earnings annually. In addition, for most of the members of the Association whose spouses work and have benefits available to them, most will be forced to take subpar insurance or pay a large portion of their income to maintain adequate benefits. Further, no other employee in the District has a restriction like this placed on their spousal eligibility for healthcare coverage. The Association also maintains that the addition of this provision could be devastating to the financial well-being of the members of the Association who accepted their positions with fully-paid health care for their family as part of their compensation package. Eliminating coverage for spouses would unfairly alter the terms of their employment and negatively affect their overall financial well-being.

**Recommendation:** It is recommended that the new Section 4 to article XVII of the Agreement not be adopted. The Association's argument that eliminating coverage for employee's spouses who have healthcare coverage available to them through other employment alters some sort of contractual terms of their employment because that is governed by whatever terms are in effect by virtue of the current collective bargaining agreement has not been persuasive. However, as pointed out by the Association, the District has not quantified the cost savings that would be available if this provision were implemented.

**Article XVII, Insurance and Other Benefits - Section 7: Retirement Severance**

*Association Position:* The Association proposes to modify Section 7 to increase the per day amount from \$35.00 to \$45.00 and to delete the one hundred seventy-five (175) day maximum to read as follows:

Upon retirement, employees covered herein shall be paid for each unused accumulated sick leave day at the rate of forty-five Dollars (\$45.00) per day. In the event of the death of the employee, the beneficiary shall receive said pay.

The Association states that the rationale for this increase is simple: the \$45 day payment, without a limit as to the number of days it may be paid out, is what the confidential secretaries who are employed by the District receive. As such, the Association is requesting the increase to be in the same line as the "confidential" secretaries by the District.

*District Position:* The District does not oppose the deletion of the one hundred seventy-five (175) day maximum cap, but opposes the increase in the accumulated unused sick leave payment for cost reasons as outlined above in the Discussion on Financial Issues.

**Recommendation:** It is recommended that the phrase "to a maximum of one hundred seventy-five (175) days" be deleted from Section 7. Given the financial condition of the District, the increase in the daily payment will not be recommended. It is recommended that Section 7 be modified to read as follows:

*Upon retirement, employees covered herein shall be paid for each unused accumulated sick leave day at the rate of thirty-five Dollars (\$35.00) per day. In the event of the death of the employee, the beneficiary shall receive said pay.*

#### **Article XVII, Insurance and Other Benefits - New Section 13: Number of Pays**

*Association Position:* The Association proposes that employees who work less than 12 months may elect to receive their pay over 26 equal pays. This is a matter of convenience and enables better budgeting. This is a convenience extended to the professional staff and the Association would like this option as well.

*District Position:* The District maintains that the same is not a legally workable option for hourly employees, as opposed to salaried employees, over 26 equal pay periods when the hourly employees are not working during certain of those weeks.

**Recommendation:** It is recommended that the proposed new Section 13 not be adopted as the Association did not dispute the District's position.

#### **Article XVII, Insurance and Other Benefits - Section 13: Benefits Upon Retirement**

*Association Position:* The Association proposes that Section 13 be modified to add the following sentence to allow the purchase by the retiring employee of health benefits in lieu of a premium payment:

*In lieu of premium payment, the retiring employee shall be entitled to purchase the additional years of hospitalization, dental and vision insurance benefits with blocks of thirty (30) unused sick days per twelve (12) month period of coverage. In the event the employee dies before receiving the entire benefit, the employee's estate shall receive the remaining value of the unused sick leave days.*

The Association assert that this is a benefit that is afforded to the professional staff through their collective bargaining agreement and would put the support professionals in the same position as the professional employees in this regard. The Association believes that allowing a retiring employee to use their unused sick days to purchase healthcare will be a mutually beneficial option to both the Association and the District. The Association maintains that by allowing employees to use their sick days to purchase healthcare, better attendance is endorsed through this incentive. Further, using sick days to purchase healthcare would allow certain senior support professionals to be able to afford to retire at an earlier age. The retirements would create attritional savings for the District and would help cover the cost of insurance while providing an excellent benefit for the employee.

*District Position:* The District opposes the Association's position. The District's rationale is cost based and is outlined above in the Discussion on Financial Issues.

**Recommendation:** It is recommended that the proposal to modify Article XVII, Section 13 not be adopted.

#### **Article XX, Duration, Section 1**

*Association Position:* The Association proposes a five (5) year agreement with a term running from July 1, 2012, through June 30, 2017. It argues that the Association and the District have been negotiating for eighteen months and the current collective bargaining agreement has been expired for almost a year. It is the Association's belief that a five year agreement would be beneficial for both parties because it would allow the parties stability for the next four (4) school years. The Association also argues that for the last five agreements between the parties, four have had a four year duration, and the most recent was of a five year duration. Given the historical term lengths and amounts of time, effort and energy that both parties have expended over the last eighteen (18) months, the Association's proposed five (5) year term is more appropriate.

*District Position:* The District proposes a three (3) year agreement with a term running from July 1, 2012, through June 30, 2015. The District cites the financial and economic condition of the District at this point and the fact that over the last five years the District was bound by the most recent collective bargaining agreement from being in a negotiating position to address emerging issues

raised by health care, the economy, the availability of state funds, contribution requirements, and the financial condition of the District. These militate toward a shorter than normal agreement.

**Recommendation:** It is recommended that the duration of this agreement be for three years. What has occurred over the last five years from an economic and financial standpoint, including the diminishment of state funding and contribution requirements including for PSERS and Charter schools, as well as the current uncertainty, are persuasive for the District's position. It is recommended that the language of Article XX, Duration, Section 1 be modified to read as follows:

*Section 1. Pursuant to the requirements of Act 195, this agreement shall be binding upon the parties hereto, their successors and assigns, from July 1, 2012, to and including June 30, 2015, and thereafter from year to year, except that either party may notify the other by certified mail on or before January 10, 2015, of its desire to modify or terminate this agreement.*

#### **Tentative Agreements**

The parties have entered into tentative agreements, which agreements are incorporated herein as if fully stated.

This concludes the Report of the Fact Finder.

Respectfully submitted,

Pittsburgh, PA  
July 1, 2013

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Michael D. McDowell, Esq.  
Fact Finder

### **CERTIFICATE OF SERVICE**

This is to certify that, pursuant to the parties' agreement, .pdf and Word format electronic copies of the foregoing were emailed this 1st day of July, 2013, to the Pennsylvania Labor Relations Board at [plrb@dli.state.pa.us](mailto:plrb@dli.state.pa.us); and emailed to Ms. Brooke E. Elliott, UniServ Representative for the Association at [belliott@psea.org](mailto:belliott@psea.org); and emailed to Carl Beard, Esq., attorney for the District at [cbeard@andrewsbeard.com](mailto:cbeard@andrewsbeard.com).

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Michael D. McDowell, Esq.  
Fact Finder