

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

IN THE MATTER OF FACT FINDING

Between

Lackawanna County Area
Vocational-Technical Federation
of Teachers, Local 3876, AFL-CIO

And

Career Technology Center of
Lackawanna County

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PLRB No. ACT 88-14-19-E

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

Date of Hearing: July 17, 2014

Fact Finder: Mariann E. Schick, Esq.

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Background

The Undersigned was duly appointed by the Pennsylvania Labor Relations Board pursuant to its authority under Act 88 to hold a Fact Finding hearing between the two aforementioned parties. A hearing was held on July 17, 2014 in the offices of the International Brotherhood of Electrical Workers in Scranton, Pennsylvania where each side had the opportunity to present witnesses and documentary evidence on its own behalf. No witnesses were called, but each side made a presentation, with the assistance of the Power Point Program, laying out the issues in dispute. The parties also made oral rebuttals to the presentation of the opposing side, and this Fact Finder left the record open for the submission in writing of rebuttals, and for the submission of any documents each party felt relevant, in light of the presentations at the hearing.

The evidence made clear that the Federation had been conducting ongoing negotiations over a period of time with the CTC and, according to the Federation, had reached a tentative agreement with the Employer. However, the position of Administrative Director was undergoing a change, and a new Administrative Director, Dr. Tom Baileys was to arrive on the scene shortly. Inasmuch as the new Director would have to operate the CTC under any newly negotiated contract, the parties felt it appropriate to put off signing any agreement until it was reviewed by Dr. Baileys. Dr. Baileys felt, based on his assessment of the CTC's financial situation and, in his view, its need to improve services to the client schools, that the contract as negotiated was not acceptable to the CTC. He proposed certain changes, and an impasse between the parties subsequently resulted.

The record shows that, historically, the CTC provides technical skills training for students of various referring schools: Abington Heights, Carbondale, Dunmore, Lakeland, Mid Valley, North Pocono, Old Forge, Riverside, Scranton and Valley View. Unfortunately, the Riverside School District recently withdrew as a referring district, and thus, the CTC must now meet its financial responsibilities with one less school contributing to its coffers. This withdrawal occurs at a time when the CTC faces increases in its budget and cost per student coupled with declining enrollment. Thus, while the parties are in disagreement about numerous provisions of a new contract, the financial package, and a proposed extension to the school day,

lay at the heart of their disagreement.

Essentially, the Union argues that its teachers are underpaid in comparison with the salaries of teachers in the referring districts and even with those of surrounding CTC's. For example, the average salary for those at step one of all the referring schools is \$40,356, while the average at the CTC is \$35,306. For those at Step 8 of the wage scale, the average salary received in the referring districts is \$47,246 while the average at that step for CTC teachers is \$43,200. If the maximum steps are compared, the average of the CTC, \$61,251, lags behind the average of the referring schools, at \$67,251, by \$5,504.¹ The Union also submitted a comparison of the salary at the Lackawanna CTC compared to surrounding CTC's, which comparison showed the following:

Lackawanna	Susquehanna	Wilkes-Barre	Monroe County
Step 1: \$35,306	\$40,000	\$47,262	\$41,900
Step 8: \$43,200	\$49,352	\$53,185	\$49,300
Max.			
Step: \$61,747	\$68,750	\$71,275	\$77,200

The Union also points out that the Consumer Price Index increased 2.1% in the last 12 months. Further, the CTC has undertaken renovations in the amount of \$18 million, and has increased non-unionized staff salaries by more than the increases offered here. In light of these facts, and the comparisons above, the Union proposes to increase wages as follows:

- 2013-2014: 1.25% plus step
- 2014-2015: 1.25% plus step
- 2015-2016: 2.00% plus step

The CTC opposes the Union's proposals arguing, as noted above, that its student enrollment has decreased 20% over the past 5 years. Further, health insurance costs have increased by 59% over the past 6 years, wages have increased by 37.7% over the past 5 years, due to contractual increases and step movement,² and pension contributions have increased by 624.49% over the past 7 years.³ Its Fund Balance⁴ also has declined from a high in 2009-10 of \$242,847 to a low of \$188,295 in 2012-13.⁵

Dr. Baileys also feels that the school has been criticized in the past for not properly preparing students for technical jobs, despite its ongoing adaption over the years from a manufacturing orientation to a technical

¹The CTC takes issue with this comparison. At the sending schools, teachers have completed a PDE approved teacher preparation program with at least a bachelor's degree. As noted in its rebuttal to the Union's presentation: "Very few CTC teachers begin their career with a college degree or any pre-service teaching experience."

²The Union finds this statistic misleading since the CTC's analysis involved only 19 teachers who have been on the roles throughout the life of the contract. Thus, new hires are not included, and they are the lowest paid on the pay scale. Further, the savings from the retirement of teachers at the high end of the pay scale is discounted as they too are not included. Thus the 37.7% figure overstates the increase of any salary increases during the last contract.

³The Union takes issue with the 624.49% figure. Its rebuttal to the CTC's hearing presentation states:

Local #3876 asserts that the 624.49% pension contribution increase presented by the CTC is a misleading statistic. The year prior to the increase, the State of Pennsylvania temporarily reduced the pension contribution made by school districts. If this temporarily reduced rate is used as basis for the percentage of increase, the result is a figure that has shock value but is fundamentally flawed.

⁴Dr. Baileys indicated that the term "Fund Balance" is somewhat of a misnomer as all receipts in excess of expenditures must be spent. Funds may be transferred to the capital fund.

⁵The Union does not believe the picture is as bleak as that painted by CTC. According to the Union, the CTC can expect an additional \$33,507 from the State and local fund resources. Further, its actual revenue over the past several years has exceed budgeted revenue by the following numbers:

2011: \$65,236
2012: \$137,540
2013: \$386,026

one. Indeed, the school has been subject to "Perkins Program monitoring" by the Commonwealth. Further, students with special needs are now enrolled, and he feels the staff needs training on teaching such individuals. Among other things, therefore, discussed more fully below, he initially sought an increase of 3% per year in total labor costs, including step movement, but such offer was conditioned on a 45 minute extension of the work day, a proposal unacceptable to the Union. The latest CTC proposal, as of May, 2014, therefore seeks an annual increase of 2% per year in labor costs, including the step increases, with the length of the school day remaining as is. The proposal however is conditioned on the acceptance of the CTC's proposals on all other matters; in other words, it is an 'all or nothing offer'.

The other matters at issue are as follows:

Article 22: Classroom Coverage

The Union proposes keeping the current language which reads as follows:

Employees shall not leave their instructional areas occupied by pupils, unattended during instructional period except as required or as directed by the Administration. Where an employee needs to be temporarily relieved from his/her classroom for emergency personal convenience he/she shall notify the office to obtain relief.

I do not find in the materials submitted a position on this issue from the CTC.

Article 29: Job Posting

The CTC essentially seeks to modify the current contract to provide for job postings via posting on the CTC website and email to all bargaining unit members. The current contract provides for distribution of postings in mailboxes and posting in faculty rooms. Postings during the summer time that are to be filled before the reconvening of school are mailed.

The Union seeks to retain the current language.

Article 34: Federation Representation on Committees

The Union proposes changes to the current contract which reads as follows:

The Federation, as the exclusive representative for bargaining unit members, shall select teacher representatives on all committees.

The Union wishes to add a second paragraph:

2. A joint CTC/Federation (Local 3876) Insurance Committee may prepare specifications and seek bids on insurance coverage provided to bargaining unit employees. This committee shall also consult and communicate with other CTC employee groups. The goal of this committee will be to find ways to control, cut and contain costs, and yet maintain or improve benefit levels at reasonable costs

The CTC appears to have no objection to this provision stating in its rebuttal submission:

"The CTC wholeheartedly agrees that a committee could be formed to seek better pricing/service on health insurance. This committee can be most effective if all parties have a vested interest in the outcome. When all of the costs of health insurance are borne by one party, what incentive is there for the other party to negotiate. We agree with the concept and assert that it will be more effective if Federation members are contributing to their health insurance premiums."

Article 40: School Year

The CTC proposed additional language to the contract:

2. Guidance Counselor will work an additional ten (10) days at the agreed upon per diem rate. Such days will be assigned as the Administration deems necessary either immediately following the last school day and/or immediately preceding the first school day.

The Union offered the following counterproposal:

A) Guidance Counselor will report one (1) week following the last day of the school, and he/she will report one (1) week prior to the start of the school year.

Article 41 Normal Work Day

As noted above, the CTC originally proposed extending the workday by 45 minutes to assist the CTC in meeting its professional development goals. The Union opposed any such extension contending that such training could be accomplished during regularly scheduled in-service days. It was agreeable to forming a "PD Committee"⁶ to "collaborate with the Director of the CTC over matters dealing specifically with Professional Development."⁷

The Union further argued that the CTC was seeking to increase the school day without additional compensation. The CTC notes however that its March, 2014 offer provided for a 3% increase per year, including steps. In May, 2014, it eliminated the proposal to extend the school day but reduced its offer to a 2% increase per year, including steps. Thus, the CTC points out it was providing for additional compensation for the extension of the school day in its March proposal.

Article 44 Salaries

The CTC proposes to add the following language:

5. Practical Nursing instructors may adjust their schedule to accommodate the needs of the LPN Program upon approval of the LPN Program Administrator.

The Union proposes to keep the current language of the contract.

Article 45 Evening School Compensation

The current collective bargaining agreement provides fixed rates of pay which increase in each subsequent year of the contract.

⁶I presume "PD" stands for "Professional Development".

⁷See Union's last proposal to CTC.

The CTC initially proposed to delete this language. Dr Baileys explained during his presentation at the hearing that the market would not tolerate a straight dollar amount per instructor. Adherence to this system could affect the CTC's ability to have an evening program. It is difficult from the record to be certain respecting the Union's response. In its submission under the tab "CTC proposal" it sets forth the "Administration Response to Federation Contract Proposal dated June 2, 2014." In that last cited document, there is a proposal indicating that the Under Article 44, dealing with salaries, which article contains 4 paragraphs, there is new language proposed stating "No other adult evening school instructor shall be paid at a higher rate. I presume, this is a proposal of the Union. Yet, this proposal has a paragraph number "2" instead of a paragraph number "5". I therefore question whether this proposal properly belongs under Article 44.

Article 46 Advisor Compensation

The CTC proposed the following change:

SkillsUSA Advisor \$800 per year while the Union seeks \$1000 per year.

There is also a proposal, which appears to be a Union proposal to pay the NTHS Advisor \$350 per year.

Article 47 Longevity Payment

The CTC did not propose any changes to this language which currently provides for longevity pay as follows:

10-14 years: \$350.00
15-19 years: \$700.00
20-20+years: \$1050.00

The Union proposes the following changes:

10-14 years: no change
15-19 years: \$1000.00
20-20+ years: \$1500.00

Article 50 School Sponsored Activities

The current language provides:

1. Where bargaining unit members take part in school sponsored and pre-approved trips or activities, such as student competitions or club activities, on days other than assigned days of duty for teachers as provided in Article 40 of this Agreement, they shall receive a daily stipend of an amount equal to fifty percent (50%) of the applicable yearly salary as set forth in Article 44 for VOC II (Col C), Step 1, divided by one hundred ninety (190) plus expenses.

2. This rate shall be applicable only to those individuals essential to the activity, and shall not apply to other voluntary participants. All payments shall be approved in advance by the appropriate administrator.

The Union proposes that the existing language be kept in the new agreement. I do not find any opposition to this proposal on the part of the CTC.

Article 52 Tuition Reimbursement

Current language:

1. The employer shall provide reimbursement as specified in this article for tuition expenses incurred for approved courses as provide in this Article.
2. Employees shall be eligible for tuition reimbursement as provide herein for courses taken following the earning of a Vocational II or Instructional II Certificate or, in the case of Practical nursing instructors, the earning of a B.S. in nursing. All courses for which reimbursement is sought mut be approved prior to enrollment by the director of Vocational Education and must be relevant to the employee's development in their certificated or instructional area. The decision of the Director of Vocational Education may be appealed to the Joint Operating Committee and the decision of the Joint Operating Committee shall be final.
3. Reimbursement shall be in the amount of seventy-five percent (75%) of the tuition cost to a maximum of four hundred dollars (\$400.00) per credit.
4. Tuition reimbursement as provided in this Article shall not be included in salary. A transcript evidencing successful completion of the course with a grade of "C" or its equivalent or better is required for payment to be made. Courses completed in the fall semester shall be reimbursed by June 30th of the same year. Courses completed in the fall semester shall be reimbursed by the following January 31st. Courses completed in the spring semester shall be reimbursed by June 30th of the same year. Courses completed in the summer shall be reimbursed by September 30th of the same year.
5. Employees having received tuition reimbursement for approved courses are required to teach a minimum of one (1) year following the year in which reimbursement was given.
6. Employees separating from employment, except under conditions of disability or suspension, prior to one (1) year after the last reimbursement was given shall be required to return such reimbursement to the employer. Final payments due such employees shall be held by the employer until such repayment is made.

The Union proposed the following changes:

1. No change.
2. All courses for which reimbursement is sought must be approved prior to enrollment by the Administrative Director or designee. The courses must be relevant to the employee's development in their certificated or instructional area and must be of educational advantage to th Career Technology Center of Lackawanna County. The decision of the Administrative Director may be appealed to the Joint Operating Committee and the decision of the Joint Operating Committee shall be final.
3. The total amount to be paid by the employer for tuition reimbursement in any fiscal year (July 1 through June 30) shall not exceed Thirty Thousand (\$30,000) dollars. The employer shall reimburse the employee (75%) percent of the tuition paid if the grade received in the course is a "B" or better. Pass/fail credits will be reimbursed if passed. The maximum the employer shall be required to pay for tuition reimbursement under these circumstance shall be seventy-five (75%) of the rate charged by Temple University.
4. Any tuition reimbursement shall be subject to the employee remaining as an employee at the Career Technology center of Lackawanna County for at least three (3) years after

completion of the course for which tuition reimbursement was paid. Any employee leaving employment less than three (3) years after completion of the course shall be required to repay the Career Technology Center of Lackawanna county as follows:

(a) the employee remains two (2) years but less than three (3) years - employee shall pay back fifty (50%) percent of the amount of tuition reimbursement;

(b) the employee remains more than one (1) year but less than two (2) years - employee shall pay back seventy-five (75%) percent of the tuition reimbursed; and

(c) the employee remains less than one (1) year- employee shall pay back one hundred (100%) percent of the tuition reimbursed.

The Union submits that this language seeks to add to the contract a jointly developed plan with management, prior to the arrival of Dr. Baileys.

The CTC proposes to keep the current contract language.

Article 56 Sick Leave

Current Language:

2. When there is a reasonable basis for believing the employee has been abusing his/her sick leave, a doctor's certificate or other appropriate evidence of sickness may be required prior to payment. Employee shall present a doctor's note verifying illness when absent for three (3) or more days.

The Union proposes to keep the current language. The CTC proposes eliminating the first sentence in the second paragraph. Thus all employees would have to present a doctor's note verifying illness when absent for three (3) or more days.

Article 57 Bereavement Leave

The current language reads as follows:

1. Paid leave of absence for reason of death in the employee's family will be governed by the applicable provisions of the School Code.

2. Whenever an employee shall be absent from duty because of a death in the immediate family of said employee, there shall be no deduction in salary of said employee for an absence not in excess of three (3) days. The Joint Committee may extend the period of absence an additional two (2) days with pay at its discretion as the exigencies of the case may warrant. Such additional leave time shall not be unreasonably withheld. Members of the immediate family shall be defined as father, mother, brother, sister, son, daughter, husband, wife, parent-in-law, or near relative who resides in the same household or any person with whom the employee has made his/her home.

3. Whenever an employee shall be absent because of the death of a near relative, there shall be no deduction in salary of said employee for absence on the day of the funeral. The Joint committee may extend the period of absence an additional two (2) days with pay at its discretion as the exigencies of the case may warrant. Such additional leave time shall not be unreasonably withheld. A near relative shall be defined as first cousin, grandfather, grandmother, aunt, uncle, niece, nephew, son-in-law, daughter-in-law, brother-in-law, or

sister-in-law.

It appears from my reading of the record, that the Union proposes the following change to the second sentence of paragraph (3):

Professional employees are granted a leave of absence with pay for up to two (2) days when there is a death of near relative that requires the employee to travel more than one hundred (100) miles from his/her home or when the funeral is delayed due to weather emergencies. The employee will provide the funeral notice.

The CTC seeks to maintain the current language.

Article 64 Hospital and Medical Insurance

Currently, the CTC pays 100% of the premium costs for health insurance, which premium appears to run about \$7000 per employee. When the District proposed extending the work day, it also proposed no contribution by the employees to the payment of their health care premium. The CTC now proposes that premium increases beyond the base year of 2012-2013 be shared equally between the employer and the employees.

The Union proposes no changes to the existing language.

New Article - Substance Abuse Committee

The CTC proposes a new Article as follows:

The Employer and the Federation agree that it is in the best interest of all, including employee, to demonstrate a commitment to student safety, and a safe working and learning environment. In this spirit, the Employer and the Federation agree to collaborate in jointly developing a random substance abuse testing policy for all staff during the 2014-15 school year and implementing said random substance abuse testing program for all staff during the 2014-2015 school year.

The Union agrees to form a committee for study and review.

Retroactivity

The Union seeks full retroactivity on all economic issues to September 2013.

Length of Contract

Both sides agree to a three year contract.

Recommendations

Although each party disputes various facts cited by its respective opponent, several facts appear to be undisputed: 1)The Riverside school pulled out as a referring school, thus diminishing the sources from which the CTC can obtain funding; 2)student enrollment has declined precipitously, and 3)teachers are underpaid when compared with other CTC's in the area. The extension of the school day, presented to the Union at the "11th" hour, because of Dr. Baileys' recent appointment to the post as Director, obviously presented a big stumbling block to the conclusion of successful negotiations. The latest proposal of the CTC removes that stumbling block, but included a decrease in the wage proposal to reflect that 45 additional minutes per day would not be worked by teachers.

Considering the economic factors set forth above, I recommend that in the first year of the contract, there be an overall increase in salaries, including step, of 2%, the distribution of which should be determined by the Union. I would also recommend a 2.5% increase for the second year of the contract, including step increases, again with distribution determined by the Union. This two year time frame, in which there are only percentage increases in the "pot" of money available for raises should give the CTC, with its new director, an opportunity to address some of the difficult financial problems it faces. In the third year of the contract,⁸ I recommend that the employees be given a 2% increase, plus step, as proposed by the Union. This increase in the third year should work to alleviate some of the disparity now experienced by this CTC in comparison with its sister CTC's. I further find that the 2013-2014 economic increase, as well as all others economic parts of the contract, should be retroactive to September, 2013, as proposed by the Union. Thus, the economic package is as follows⁹:

2013-2014: 2% increase, including step increases¹⁰
2014-2015: 2.5% increase, including step increases
2015-2016: 2% increase, **plus** step increases¹¹

As to Article 22, both parties appear to agree that the current language should remain as is, and I so recommend. With respect to Article 29, I find that the CTC's proposal is an efficient means of communication in this age of the Internet. There was no showing that teachers at the CTC do not have access to the internet, and therefore I recommend that the language proposed by the CTC for Article 29 be adopted. As to Article 34, the parties seem to be in agreement with the proposed language of the Union, and therefore I recommend that this Article be modified, as proposed by the Union.

With respect to Article 40, I recommend adoption of the language as proposed by the Union. Such language gives the employee some certainty as to when he or she will be required to work, which certainly allows the employee to plan his or her life activities without, essentially being 'on call' at the discretion of the Administration.

Article 41 shall remain as is, inasmuch as I have favored the approach of the CTC with respect to wage increases in the first two years of the contract. The question of extending the school day was introduced conceptually at a very late point in the negotiations, and such a radical change, as a matter of fundamental fairness, should have been raised at a much earlier point. Obviously, the previous administration was not interested in such an extension, and the Union should have had a reasonable amount of time to digest the implications of such a proposal and plan its strategy accordingly. It did not, in my view have such an opportunity, and therefore, this change appears to be something better discussed at the negotiation of a subsequent contract.

As to Articles 44 and 45, dealing with compensation in the evening school program, there is much confusion in the record, as noted above. The matter was not fleshed out to any great degree during the hearing. Accordingly, absent agreement on changes to payments for evening school teachers, I recommend that the contract remain as is, with appropriate adjustments made to update the years of the contract to which the set hourly payments refer. As to Article 44, and the changes proposed with respect to the LPN program, the Union itself remains confused as to the need for a change in the current language. The CTC's reasoning was not explained in its submissions, from what I can determine, and therefore I recommend that the language remain as is.

⁸Both parties agree on a three year contract.

⁹Grade and step grids for each year are provided at the end of this Report.

¹⁰This is in accordance with the Employer's proposal.

¹¹This is in accordance with the Union's proposal.

As to Articles 46 and 47, I recommend adoption of the changes proposed by the Union in light of the fact that I have recommended the conservative economic approach of the CTC for the first two years of the Agreement. As to Article 50, I recommend that the current language be kept, a desire of the Union, without apparent opposition from the CTC.

With respect to the proposals on tuition reimbursement in Article 52, the Union contends that the matter was agreed to by the prior administrator. However, the Union agreed to let Dr. Baileys' review of the contract before signing of the Agreement, and the CTC now proposes to keep the language as is. Like the proposal for the extension of the school day, this proposal suggests extensive revisions to the current contract, and in my view, the CTC, under new leadership, should have had more of an opportunity to consider the proposal and plan its strategy accordingly. Thus, I recommend the language remain as is, and that the suggested revisions be the subject of future bargaining sessions on future contracts.

I also recommend no change in Article 56. There was no showing by the CTC that sick leave has been abused by the faculty, or that the number of sick days taken is excessive when compared with their sister CTC's or with the referring schools. Absent such a showing, I am loathe to recommend any change to the current contract language.

As to bereavement leave in Article 57, I find that the Union's proposal sets forth a reasonable change to the existing language. It removes the uncertainty for the employee as to whether or not bereavement leave will be approved for the 'near relative' and it gives the CTC certainty as well with respect to the time of the return of the employee in question. I therefore recommend that the Union's proposal be adopted.

As to Article 64, I take arbitral notice of the fact that the sharing of premium payments is becoming commonplace in employment settings, notwithstanding the fact that, from this record, it appears only Scranton requires co-pays by employees. Nonetheless, requiring an employee to meet an amount equal to 50% of an increase in the premium provides no certainty to the employee in his or her own budgeting with respect the amount he or she will be required to bear. A fixed cost which can be anticipated allows such employee to adjust his or her budget accordingly. Inasmuch as I have recommended that the CTC's economic approach respecting wage increases be adopted for the first two years of the contract, I do not recommend that employees be required to share in the co-pay for premium costs during those first two years.¹² However, in the third year of the contract, I recommend that employees be required to pay a fee of \$20 per month or 50% of the increase in the premium from the previous year, whichever is less for an individual plan and \$40 per month or 50% of the increase in the premium from the previous year, whichever is less for a family plan or dependent coverage. Such a recommendation recognizes the need for certainty on the part of employees while, at the same time, acknowledging the general upward trend in health care premiums.

As to the formation of the substance abuse committee, the rationale for the proposal was not articulated at the hearing, inasmuch as the parties were largely focusing on financial issues. Inasmuch as this is new language proposed for the contract, and the Union is not agreeable to it, I recommend that the Union's proposal for a formation of a committee to address the matter be adopted.

With respect to any other articles of the contract not discussed here, I recommend that the such articles continue with their current language, unless revisions have been agreed to by both sides during the course of negotiations.

Having dealt, as best I can determine, with all areas in dispute, my duties are concluded herewith.

¹²Further, such a proposal places bargaining unit employees on an equal footing with administrative personnel where 100% of health care premiums are paid by the CTC through June 30, 2014.

Done this 28th day of July, 2014 at Philadelphia, Pennsylvania.