

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA LABOR RELATIONS BOARD**

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IN THE MATTER OF THE FACT FINDING BETWEEN

UPPER DUBLIN EDUCATIONAL	:	
SUPPORT PERSONNEL ASSOCIATION, PSEA/NEA	:	
and	:	FACT FINDING REPORT
	:	CASE NO. ACT 88-14-37-E
	:	
UPPER DUBLIN SCHOOL DISTRICT	:	

HEARING:        January 13, 2015  
                  Upper Dublin, PA

FACT FINDER: John M. Skonier, Esq.

**APPEARANCES**

**FOR THE DISTRICT:**  
Mark W. Fitzgerald, Esq.  
District Labor Counsel

**FOR THE ASSOCIATION:**  
Ms. Kelley M. Clouser  
PSEA UniServ Representative

**Procedural History**

Pursuant to Act 88 of 1992 (Act 88) and the Public Employee Relations Act, Act 195 of 1970 (PERA), notice was received by the Pennsylvania Labor Relations Board (PLRB) from the Bureau of Mediation that no agreement had been reached between the Upper Dublin Educational Support Personnel Association, PSEA-NEA (hereinafter Association) and the Upper Dublin School District (hereinafter District). By letter dated December 16, 2014, the PLRB appointed the undersigned to act as a fact finder, vested with the authority set forth above. Subsequent to such notice, the parties were duly notified and a hearing was held on January 13, 2015, in Upper Dublin, Pennsylvania; at which time both parties were afforded a full opportunity to present testimony, examine and cross-examine witnesses, and introduce documentary evidence in support of their respective positions. The matter is now ready for issuance of the subject Report.

During the hearing in this matter, the District provided information that it has sought Request for Proposals ("RFPs") from outside contractors for bids on the transportation work performed by this bargaining unit maintaining that it can save significant amounts of money should it outsource this work presently being performed by this bargaining unit. However, the proposals that the District submitted to Fact Finding retained all bargaining unit positions. In exchange for the retention of these positions, the District is seeking changes in the collective bargaining agreement that, even in today's difficult financial climate for school districts, I view as beyond what I believe, after a review of the record before me, are necessary. While I can appreciate the allure of outsourcing and the District's desire to match all the savings it would garner if it agreed not to outsource, *i.e.*, major changes to the collective bargaining agreement, I cannot conclude that either of these extremes is warranted. Upper Dublin is not a district in immediate financial distress. It falls within the upper echelon of state funded school districts for student aide which translates into one of the wealthier of the approximately 500 school districts in the Commonwealth. Further, as noted by the Association during the hearing, there are dangers to consider when outsourcing, including a negative effect on the community. It pointed to the problems experienced by school districts that are totally dependent on independent private contractors for segments of their operational needs. Therefore, I can not recommend outsourcing of the some bargaining unit work as addressed in the RFPs or implementing all of the changes to the contract sought by the District in order to retain all bargaining unit positions. However, I do see the need for changes in the contract as this District moves forward in a time of limited and restricted resources. I believe the changes I am recommending strike a fair balance between the

District's need for short term and long term financial relief and the Association's appropriate desire to retain a contract that provides contractual protections and maintains fair financial components.

I further note that the Association has made many adjustments to its bargaining position in an effort to address the District's financial concerns. There must be recognition of this bargaining unit's efforts in this regard. Make no mistake, with this report the Association is being asked again to make further adjustments. The changes I recommend should meet the needs of both parties without significant layoffs or disruption (labor unrest and litigation) that could ensue should this matter not be resolved.

The instant impasse involves unresolved issues with various sub-issues. This Report contains "recommendations" for these issues which constitute the settlement proposal upon which the parties are now required to act, as directed by statute and the regulations of the PLRB. 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 days of its issuance**, notify the PLRB of their decision to accept or reject the recommendations.

## **RECOMMENDATIONS**

### **TERM**

Under the current economic environment, it is recommended that the parties enter into a three year contract.

#### **Recommendation:**

This Agreement shall be effective as of July 1, 2014 and shall continue in effect until June 30, 2017

### **RECOGNITION (Article I)**

The position of "swimming pool employee" in this provision should be designated the "swimming pool custodian."

#### **Recommendation:**

The following language is recommended:

The Board hereby recognizes the Association as the sole and exclusive representative for collective bargaining in the following bargaining unit as certified by the Pennsylvania Labor Relations Board, on January 29, 2004 in Case No. PERA-U-03-62-E. The Order directs that the Certification of Representative issued on May 18, 1973, to Case No. PERA-R-3343-E and the Nisi Order of Certification issued on June 21, 1988, to Case No. PERA-R-88-159-E be amended to merge the two separately certified bargaining units into one consolidated unit; and Certifies that the Upper Dublin Educational Support Personnel Association, PSEA/NEA is the Exclusive Representative of the employees of the above-named Employer in the unit described below for the purpose of collective bargaining with respect to wages, hours, and terms and conditions of employment. All full-time and regular part-time nonprofessional employees including but not limited to secretaries, educational aides, custodians, custodian-bus drivers, groundskeepers, garage mechanics, warehouse employees, maintenance employees, swimming pool custodian, delivery and receiving employees and bus drivers; and excluding head custodians, grounds foreman, head mechanic, maintenance foreman, superintendent of buildings and grounds, transportation director, substitute bus drivers, and further excluding management level employees, supervisors, first level supervisors, confidential employees and guards as defined in the Act.

### **DEROGATORY MATERIAL (Article IV - Rights of Employees)**

The parties acknowledge the same language modification in this contractual provision.

**Recommendation:**

Modify Article IV - Rights of Employees, 1., E., Derogatory Material, as follows:

1. E. Derogatory Material  
No material derogatory to an employee's conduct, service, character or personality shall be placed in her/his personnel file unless the employee has had an opportunity to review the material. The employee shall acknowledge that s/he has had the opportunity to review such material by affixing her/his signature to the copy to be filed with the expressed understanding that such signature in no way indicates agreement with the contents thereof. If the employee refuses to sign the copy of the administration will note it on the document and place the document in the personnel file. The employee shall also have the right to submit a written answer to such material and her/his answer shall be reviewed by the Superintendent or her/his designee and attached to the file copy.

**PERSONAL FREEDOM (Article V)**

The current language of this provision reads, reads in pertinent part, as follows:

- A. Personal Life  
The personal life of an employee is an appropriate concern for the attention of the Board only as her/his actions violate local, state, or federal laws, or interfere with the proper performance of her/his job duties.
- B. Citizenship  
Employees shall be entitled to full rights of citizenship. No religious or political activities of any employee or the lack thereof shall be grounds for any discipline or discrimination with respect to the employment of such employee, provided that said activities do not violate any local, state, or federal laws and do not unreasonably interfere with the employee's regular work schedule and proper work performance.

The District seeks to expand the reach of this provision by including within its language and violation of "school district policies". The Association requests no change in the existing language.

**Recommendation:**

No change.

**PART-TIME EMPLOYEES (Article VIII)**

**Relating to Part-Time Versus Full-Time Status**

The District proposes modifying the language of this provision to define a full-time employe as one who works 30 hours or more per week and the effect that has on that employe's benefits. The Association would make the current contractual language only applicable to "Grandfathered Pre-Ratification Employees".

**Recommendation:**

Modify Article VIII - Relating to Part-Time Versus Full-Time Status as follows:

For purposes of determining accumulation of sick leave, entitlement to benefits, payment of insurance premiums, and entitlement to the personal holiday, employees shall be considered as full-time employees when they work a total of thirty (30) or more hours per week. In the case of employees who are regularly scheduled to work less than thirty (30) hours per week, the employee will not receive any medical, prescription drug, dental, and vision benefits. All leave benefits and holiday benefits shall be proportional to the hours the part time employee works in the District, e.g. if an employee works a 4-hour day, he/she will only receive a paid holiday for 4 hours.

Additionally, the District shall have the authority to create up to four (4) part-time custodial positions in conjunction with this language immediately upon ratification of the contract. While the District may create

part time positions within the bargaining unit moving forward, it is not the intent of the language to fill a current or future full time vacancy with two part time employees. An exception to this understanding is regarding bus and van drivers. The parties recognize and agree any and all future vacancies involving bus or van drivers, may be filled with part time employees. Current bus drivers working less than 30 hours per week and who are currently eligible for benefits shall be grandfathered and shall continue to be eligible for benefits

All new hires will be 30 hours per week.

**WAGES (Appendix A-2)**

**Recommendation:**

There shall be a wage freeze for the three years of the collective bargaining agreement.

There shall be a new tier system for employees:

Tier A: Post-Ratification New Hire Probationary Employees (60 days)

Tier B: Grandfathered (Pre-Ratification) Probationary Employees (60 days) and Post-Ratification New Hires (4 years then move to Tier C)

Tier C: Grandfathered (Pre-Ratification) Employees

On the anniversary day of the Post-Ratification New Hire's fourth year of employment, said employee shall move from Tier B to Tier C for purposes of salary.

**APPENDIX A-2  
SUPPORT STAFF HOURLY RATES**

<b>Year</b>	<b>Tier A</b>	<b>Tier B</b>	<b>Tier C</b>
<b>Clerical</b>			
2014-15	\$14.29	\$15.04	\$15.72
2015-16	\$14.29	\$15.04	\$15.72
2016-17	\$14.29	\$15.04	\$15.72
<b>Secretaries</b>			
2014-15	\$15.71	\$16.54	\$17.28
2015-16	\$15.71	\$16.54	\$17.28
2016-17	\$15.71	\$16.54	\$17.28
<b>Executive Secretaries</b>			
2014-15	\$19.29	\$20.31	\$21.21
2015-16	\$19.29	\$20.31	\$21.21
2016-17	\$19.29	\$20.31	\$21.21
<b>Staff Nurses</b>			
2014-15	\$18.28	\$19.24	\$20.10
2015-16	\$18.28	\$19.24	\$20.10
2016-17	\$18.28	\$19.24	\$20.10
<b>Assistants (Educational)</b>			
2014-15	\$14.58	\$15.35	\$16.02
2015-16	\$14.58	\$15.35	\$16.02
2016-17	\$14.58	\$15.35	\$16.02

**Assistants (Instructional Support)**

Faced with continuing economic pressures, the District seeks to save additional monies by having the bargaining unit increase their percentage of prescription premium payments. The Association opposes.

2014-15	\$19.34	\$20.36	\$21.06
2015-16	\$19.34	\$20.36	\$21.06
2016-17	\$19.34	\$20.36	\$21.06

**Custodians**

2014-15	\$16.42	\$17.28	\$18.07
2015-16	\$16.42	\$17.28	\$18.07
2016-17	\$16.42	\$17.28	\$18.07

**Groundskeepers**

2014-15	\$17.15	\$18.05	\$18.85
2015-16	\$17.15	\$18.05	\$18.85
2016-17	\$17.15	\$18.05	\$18.85

**Garage Mechanics**

2014-15	\$24.27	\$25.55	\$26.71
2015-16	\$24.27	\$25.55	\$26.71
2016-17	\$24.27	\$25.55	\$26.71

**Delivery Employee**

2014-15	\$22.86	\$24.06	\$25.14
2015-16	\$22.86	\$24.06	\$25.14
2016-17	\$22.86	\$24.06	\$25.14

**Bus Drivers**

2014-15	\$20.72	\$21.81	\$22.77
2015-16	\$20.72	\$21.81	\$22.77
2016-17	\$20.72	\$21.81	\$22.77

**Maintenance Employees**

2014-15	\$21.44	\$22.57	\$23.57
2015-16	\$21.44	\$22.57	\$23.57
2016-17	\$21.44	\$22.57	\$23.57

**HVAC/Plumber**

2014-15	\$25.73	\$27.08	\$28.29
2015-16	\$25.73	\$27.08	\$28.29
2016-17	\$25.73	\$27.08	\$28.29

**Electrician**

2014-15	\$27.15	\$28.58	\$29.85
2015-16	\$27.15	\$28.58	\$29.85
2016-17	\$27.15	\$28.58	\$29.85

**WAGES (Article IX - Wage Rate)**

Under the current economic environment and with the current state of health care and the expected impact of the ACA, the District is trying to make the work force more economically efficient.

The change recommended would allow the District to attain needed savings yet protect the incumbent job positions for the term of the contract.

In view of the above, the following recommendation shall be made.

**Recommendation:**

A. Wage Rate

2. Each employee shall receive any increase in individual wage rate, effective July 1 of each year of the contract.

B. Salary Calculation Formula for Ten (10) Month Secretaries, Educational Assistants, Instructional Support Assistants, Staff Nurses and Cafeteria/Office Assistants

1. Salary calculations for all employees in the categories listed above will be based on one hundred and eighty (180) student days plus holidays. If there are days worked over the minimum number of one hundred and eighty (180) student days plus holidays, an adjustment for the additional days worked will be paid in the first scheduled pay day in July.
2. Three (3) additional paid days, for the purpose of professional development, will be required of all Educational Assistants, Instructional Support Assistants and Staff Nurses. Any additional training for other employee categories may be developed and scheduled accordingly when mutually agreed upon with the Association leadership.

G. Probationary Employees

For the first sixty (60) work days of employment, a newly hired employee shall be a probationary employee. During an employee's probationary period, she/he may be terminated by the Board at its discretion. Probationary employees do not have recourse to the grievance or arbitration provisions of this Agreement for said termination. When an employee has successfully completed sixty (60) work days of employment, her/his seniority date will be the date of hire.

**WAGES (Article IX, I. Overtime Pay)**

The current relevant contractual language of this provision at issue, reads as follows:

1. Employees shall be paid at the rate of one and one-half (1-1/2) times their regular hourly rate for hours worked in excess of forty (40) hours in any workweek. For purposes of calculating overtime, paid holidays, personal, vacation, and sick days up to the maximum allotted per year shall be counted as regularly scheduled assigned hours in the week in which taken. Any employee working over forty (40) hours in a week will receive double time for Sundays.
2. Custodial /maintenance /grounds/delivery worker overtime shall be distributed on a rotating seniority basis. Head custodians and supervisors may share in this overtime. All overtime for the ensuing week shall be posted by the Head Custodians and Grounds Supervisor and assigned on the last day of the preceding week, except in unforeseen circumstances.

The District seeks to restrict what shall be utilized for purposes of calculating overtime. In addition, the District seeks to modify the manner in which overtime opportunities are afforded bargaining unit employees.

The Association is opposed to any language change in this area.

**Recommendation:**

No change is recommended.

## **VAN DRIVERS (New Language)**

The Association proposes to create a new job classification of van driver and allow current bus drivers to drive vans at the grandfathered van rate. The District seeks to create a new job classification of van driver, but make all employees with a CDL drive a bus and then replaced by a driver who does not have his CDL

### **Recommendation:**

A new classification and wage rate shall be established for van drivers. This rate shall be lower than the current rate for bus drivers. The parties shall agree to meet and develop language for this position by June 30, 2015. The position, and reduced rate, shall be formally approved by both parties upon completion of the parties discussion. First consideration will be given to current bus drivers who may wish to drive vans as the reduced rate but these employees who opt to drive vans shall still be considered Grandfathered (Pre-Ratification) Employees. Due to an overall shortage in available drivers and the fact the van position does not require a CDL license, it is recommended any current CDL license holders operate larger buses while non-CDL employees operate the van driver positions.

## **VACATIONS (Article X)**

The Association proposes that seniority and date of request should be considered for scheduling of vacations. It seeks to eliminate the provision which states that employees may lose opportunities for vacation due to "maintaining efficient operations". The Association recognizes that vacations should be submitted through Aesop or a similar leave system.

The District proposes that the relevant language should include additional managerial prerogative to approve or deny vacations based on "working conditions" and that seniority and date of request should be considered for scheduling of vacations. The District recognizes that vacations should be submitted through Aesop or a similar leave system

### **Recommendation:**

That the following language changes be implemented to the Article X, Vacation, of the parties' collective bargaining agreement:

3. All vacation schedules shall be arranged with the building principal or the employee's immediate supervisor and shall be approved by the Director of Human Resources. Maintenance/Custodial/Grounds/Transportation and Delivery employees must submit vacation day requests at least five (5) working days prior to the first day of the vacation period.
5. Twelve (12) month employees may carry up to ten (10) days of unused vacation time into the next school year.
6. Vacations shall be scheduled for periods of time requested by the employee, subject to the District's need to maintain efficient operations. If it is necessary to limit the number of employees in a building on vacation periods shall be based on seniority and date of request.
9. Vacations shall be arranged with the building principal or the employee's immediate supervisor until such time that a leave system (such as Aesop) can be utilized. Once the new leave system is implemented, employees shall submit all leave requests through said system.

## **HOLIDAYS (Article XI, D. Personal Holiday)**

The current relevant contractual language at issue reads in pertinent part as follows:

All bus drivers are entitled to one (1) personal holiday each contract year. Driver's are required to give their

supervisor at least one week's notice of their intent to take their personal holiday. The scheduling of the personal holiday shall be subject to management approval. No driver may take a personal holiday during their probationary period nor may unused personal holidays be accumulated year to year. This provision does not apply to any twelve (12) month position.

The District seeks to eliminate this language and the Association seeks no change to the language.

**Recommendation:**

No Change is recommended.

**ILLNESS OR DISABILITY (Article XII)**

The District seeks

Accumulative Sick Leave Days

All employees in their first year of employment shall accrue sick leave days on the basis of one (1) day for each month worked. If an employee uses sick leave days prior to accruing them, such days shall be unpaid leave days. Unused sick leave days shall accumulate from year to year without limitation

4. All employees are required to report their absence for illness to their supervisor. The Director of Environmental Services or the Director of Transportation shall be provided with at least one (1) hours' notice by employees who work the day shift and two (2) hours' notice by employees who work the night shift, of the employee's intent to be absent due to illness. All employees shall be required to report in once daily on each consecutive day of absence.

**TEMPORARY LEAVES OF ABSENCE (Article XIII)**

The District seeks to establish the manner in which leave shall be arranged until such time that a leave system (software) is implemented. The Association opposes any change of the relevant language.

**Recommendation:**

Modify the collective bargaining agreement to read as follows:

A. Types of Leaves

Full-time ten (10) and twelve (12) month employees shall be entitled to the following temporary, non-cumulative leaves of absence with pay each school year.

Leave shall be arranged with the building principal or the employee's immediate supervisor until such time that a leave system (such as Aesop) can be utilized. Once the new leave system is implemented, employees shall submit all leave requests through said system.

**TEMPORARY LEAVES OF ABSENCE (Article XIII)**

The District propose to eliminate reasons to take personal leave and the Association seeks to maintain status quo.

**Recommendation:**

A. Types of Leaves, 1. Personal Days, First Paragraph

Each employee shall have three (3) days leave of absence for personal matters, which require the employee's absence during work hours. A written request to the Director of Human Resources that an

employee intends to take a personal leave day shall be given at least five (5) calendar days before taking such leave (except in the case of an emergency). Such leaves will be granted on a "first come, first served" basis. On no day shall more than ten percent (10%) of the entire District educational support personnel staff be granted personal leaves.

### **INSURANCE PROTECTION (Article XVI)**

Faced with continuing economic pressures, the District seeks to save additional monies by reducing health care costs to the District. The Association opposes.

#### **Recommendation:**

##### **A. Eligibility for Insurance Coverage**

The Board will pay the cost of benefits for employees who are regularly scheduled to work thirty (30) hours or more per week. In the case of employees who are regularly scheduled to work less than thirty (30) hours per week, the employee will not be eligible for benefits and the Board shall not pay towards the cost of medical benefits..

New hire (Post-Ratification Employees) who qualify for healthcare shall be eligible for Employee Only coverage for medical and prescription with the option to buy-up for dependent and/or spouse coverage at 100% of the cost difference. Dental and Vision coverages are the same as specified for other full-time employees.

##### **2. Duplicate Coverage**

In the event that employees are or become married to each other, the District shall not be obligated to pay insurance premiums that would provide duplicate coverage for either spouse or for dependents. Employees will be required to enroll in one plan (i.e. Family or Employee & Spouse).

##### **3. Retired Employees**

The Board will allow retired employees to retain coverage under the District's Medical, Prescription Drug, Dental and Vision Insurance Plans at the retiree's expense until the employee becomes eligible for medicare.

### **INSURANCE PROTECTION (Article XVI)**

Faced with continuing economic pressures, the District seeks to save additional monies by reducing health care costs to the District. The Association opposes.

#### **Recommendation:**

##### **B. Medical Care Insurance**

Each employee enrolled in one of the District approved health care plans will make the following monthly contribution towards the Keystone HMO POS 15S Plan. If the employee elects any of the other plans, the employee will buy-up 100% of the cost difference.

Post-Ratification New Hires that qualify for medical care insurance benefits, would be on the Keystone HMO POS 15S Plan - employee only coverage, with the opportunity to buy-up for spouse and dependents

2014-2015	Employee shall contribute:
	Keystone HMO POS 15S plan - 11% of the Premium
	Blue Cross 20/30/70 plan - 12% of the Premium
	Blue Cross 10/20/70 plan - 12.5% of the Premium

The employee will pay the difference for any buy up plans under any preferred plan selected.

2015-2016 Employee shall contribute:  
Keystone HMO POS 15S plan - 12.5% of the Premium  
Blue Cross 20/30/70 plan - 13.5% of the Premium  
Blue Cross 10/20/70 plan - 14% of the Premium

The employee will pay the difference for any buy up plans under any preferred plan selected.

2016-2017 Employee shall contribute:  
Keystone HMO POS 15S plan - 13% of the Premium  
Blue Cross 20/30/70 plan - 14% of the Premium  
Blue Cross 10/20/70 plan - 14.5% of the Premium

The employee will pay the difference for any buy up plans under any preferred plan selected.

### **INSURANCE PROTECTION (Article XVI)**

Faced with continuing economic pressures, the District seeks to save additional monies by having the bargaining unit increase their percentage of prescription premium payments. The Association opposes.

#### **Recommendation:**

##### **C. Prescription Plan**

The Board will provide a prescription plan for the employee and family equal to the Blue Cross/Blue Shield mandatory generic freestanding plan that requires the employee to pay \$10.00 for generic drugs and \$20.00 for name brand drugs with Mandatory Mail Order. Each employee will make the following monthly contribution:

2014-2015	11% of the Premium.
2015-2016	12.5% of the Premium.
2016-2017	13% of the Premium

### **PARITY PROVISION (Article XVI - New Language)**

The Association argues that the instant bargaining unit can least afford additional health care costs and seeks to attain parity with the professional bargaining unit, should it secure better rates of premium contributions in its collective bargaining agreement. The District opposes.

#### **Recommendation:**

In the event that the Board and Upper Dublin Education Association agree on a Collective Bargaining Agreement during the term of this Agreement that provides for employee premium contribution levels to medical or prescription that are less than those set forth in this agreement for the same plans, this Agreement shall be deemed to be amended to provide for those same employee premium contributions on the same effective date as set forth in the Upper Dublin Education Association's contract for post ratification grandfathered employees.

### **Memorandum of Understanding Authorizing Participation in Consortium**

#### **Recommendation:**

Include the following language in the collective bargaining agreement:

The District and Association have agreed and are party to a Memorandum of Understanding authorizing the District to participate in the Bucks and Montgomery County Schools Health Care Consortium (the "Consortium") for purposes of providing medical and prescription benefits. In addition, at the time when the Consortium provides dental and vision benefits, this Agreement authorizes participation of the District in the dental and vision benefits as well.

The parties agree that the District's participation in the Consortium is limited to the preferred plans offered by the Consortium at the time the instant collective bargaining agreement is ratified. Those plans available to the employees of the District covered by this Agreement and subject to the premium co-share as set forth herein, are as follows:

Blue Cross PC 10/20/70  
Blue Cross PC 20/30/70  
Keystone POS15S

The parties recognize and agree that the individual benefits, benefit limits and benefit co-pays set forth in the preferred plans may be changed by the Trustees of the Consortium during the course of this Agreement. Should the District determine to withdraw from the Consortium, the District shall maintain medical, prescription, vision and/or dental coverage equivalent to that provided by the Consortium at the time of the District's withdrawal.

### **AFFORDABLE CARE ACT PROVISION (ACA) (New Language)**

The District seeks to include language which protects it from any potential excise taxes, taxes, or penalties may be imposed on the Consortium or on the health benefit plan as the result of the health benefit plans exceeding the thresholds provided in the ACA. The Association argues that the language sought is unnecessary as it is prospective and there is no exigency for such language.

### **Recommendation:**

#### **AFFORDABLE CARE ACT LANGUAGE**

Effective January 1, 2017, the District and the Association agree to jointly request that the Consortium provide the District and the Association with projected information as to whether or not any of the health benefit plans offered by the Consortium would be projected to incur or actually incur an excise tax, tax, or penalty, as the result of the implementation of the Patient Protection and Affordable Care Act (ACA) on the Consortium. This process will be repeated every January thereafter.

In the event that it is determined and/or projected as of January 2017 or any subsequent January that any of the health benefit plans offered by the Consortium will have or actually incurs excise taxes, taxes, or penalties will or are imposed on the Consortium or on the health benefit plan as the result of the health benefit plans exceeding the thresholds provided in the ACA, the Association and the District shall take actions to withdraw from the Consortium as soon as practicable thereafter if the Consortium fails to provide additional health benefit plan offerings that would be below the threshold limitations for such an excise tax, tax, or penalty imposed upon the Consortium/Trust or health benefit plan pursuant to the ACA, prior to July 1, 2018, and each anniversary year thereafter. In the event that any new health benefit plans are offered, the parties shall agree on a premium share for such health benefit plans as aforesaid. If, on the other hand, the Consortium fails to provide or approve such other less costly health benefit plans that are projected to cost less than any expected excise tax, tax, or penalty, then in that event, the District and the Association will simultaneously start the process to withdraw from the Consortium, but prior to doing so, the parties will meet on a monthly basis from January 2017 to August 2017 at which time the parties will meet and attempt to bargain either increased premium shares to cover the expected costs imposed on the Consortium/Trust or the health benefit plan as the result of the imposition of excise taxes, taxes, or penalties pursuant to the ACA, in which case the parties would not withdraw from the Consortium/Trust or, in the alternative, the parties will attempt to bargain alternative health benefit plans that will be less costly than the health benefit plans that would cause an excise tax, tax, or penalty under the ACA during the 2018 calendar year and other calendar years thereafter following a withdrawal from the Consortium.

In the event that the District and the Association will fail during this eight (8) month period to either agree to increase premium share to cover the cost of such expected excise tax, tax, or penalty and remain in the Consortium or to agree upon less costly health benefit plan offerings and potentially increased premium

share that are projected to be under the threshold limitations for the ACA excise tax, tax, or penalty provisions in the 2018 calendar year and each year thereafter, then in that event, the parties shall mandatorily pursue binding arbitration with a binding arbitrator provided in a list by the Bureau of Mediation as soon as practicable and once agreed upon between the parties, the binding arbitrator's sole authority shall be to determine those health benefit plan or plans that Bargaining Unit Members could elect during the current plan year or the next plan year in question that would be under the threshold limitations established by the ACA so that an excise tax, tax, or penalty will not be triggered. It is understood that the binding arbitrator can only recommend plans that are not less rich than the highest plan offered by the exchange that does not trigger the excise tax, tax, or penalty provisions under the ACA. The binding arbitration shall be done on an expedited basis with the binding arbitrator being required to issue his/her binding opinion within thirty (30) days after entering into the process. The binding arbitrator shall have authority to take whatever evidence is necessary in order to provide his/her recommendation. This process will be repeated on an annual basis so long as the threshold limitations of such health benefit plan offerings exceed the excise tax, tax, or penalty thresholds under the ACA that may be imposed on the Consortium or the District/District's health benefit plan, as the case may be, with the understanding that the plans that would ultimately be offered cannot be less rich than the highest plan offered by the exchange that does not trigger the excise tax.

### **INSURANCE PROTECTION (Article XVI)**

#### **Recommendation:**

##### Dental Care Insurance

Each employee enrolled in the District's Dental Plan\* shall contribute \$10.00 per month for the duration of this Agreement.

\* The District approved dental plan is currently Delta Dental of Pennsylvania and provided by the Bucks and Montgomery County Schools Health Care Consortium. The District approved dental plan will be that which is provided by the Consortium in the event that a change is made by the Consortium.

##### Vision Plan

The Board's maximum monthly contribution for employee coverage shall be \$10.00 per month. The District's approved vision plan is currently Vision Benefits of America. In the event that the Bucks and Montgomery County Schools Healthcare Consortium adopts a preferred vision plan, the District will move to the new plan and maintain the same employee contribution rate.

### **INSURANCE PROTECTION (Article XVI)**

##### Medical Waiver

#### **Recommendation:**

Eliminate the medical waiver.

### **GRIEVANCE PROCEDURE (Article XVII)**

The District seeks to add a third level within the contractual grievance/arbitration procedure. The Association seeks no change in the language.

As resolution between the parties is always constructive for the labor/management relationship the additional step allows for another level in which resolution is possible short of arbitration.

#### **Recommendation:**

The following language should be added to the parties' collective bargaining agreement:

6. Level Three – School Board

If the aggrieved person(s) is not satisfied with the disposition of their grievance at Level Two or if no decision has been rendered under the timeline provisions outlined in Level Two, she/he may file the grievance with the Board of School Directors. The School Board shall hold a conference within fifteen (15) business days. The School Board shall file a decision within five (5) business days after the close of the conference.

7. Level Four - Arbitration

If the Association is not satisfied with the disposition of a grievance at Level Three, or if no decision has been rendered within five (5) business days after the close of the conference at Level Three, it may within five (5) business days after receipt of the written decision by the School Board, or twenty-five (25) business days after the grievance was delivered to the Superintendent of Schools, whichever is sooner, request in writing binding arbitration under Act 195.

Within ten (10) business days after such written notice of submission to arbitration, the Board or its' representative and the Association shall attempt to agree upon a mutually acceptable arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators may be made to the Pennsylvania Bureau of Mediation for a panel of seven (7) arbitrators. The Association and then the Board shall alternately strike three (3) names each and the remaining person shall be the arbitrator. The Board or its' representative shall strike the first name.

**OTHER CONDITIONS OF EMPLOYMENT (Article XVIII - Creating New Position)**

The District seeks to modify this language and the Association opposes any modification.

**Recommendation:**

The following language should be added to the parties' collective bargaining agreement:

G. Creating of New Position

In the event the District chooses to add a bargaining unit position, the District will develop a job description and inform the Association of the necessary qualifications for the position. This includes the creation of part-time positions the district may wish to create consistent with the newly developed language regarding Part Time employees and eligibility for benefits. Prior to any newly created position being posted, the District must discuss the salary classification with the Association. Bargaining unit employees may apply for any such position, but the final decision for filling the position rests with the Board.

**OTHER CONDITIONS OF EMPLOYMENT (Article XVIII - Work Schedule)**

The District seeks to discontinue the paid lunch period for bargaining unit members who currently receive this benefit. The Association seeks to preserve this benefit.

**Recommendation:**

H. Work Schedule

All employee work schedules will be established by the administration in order to meet the needs of the District. Work schedules of current employees may be changed by the administration after consultation with the Association President.

2. Ten-month Work Schedule

Ten (10) month secretaries, educational assistants, staff nurses and cafeteria/office assistants work on all student days. If the service of an employee in the categories listed above is required on a non-student day, the principal or immediate supervisor must request and receive approval

from the Director of Human Resources. Three (3) additional paid days, for the purpose of professional development, will be required of all Educational Assistants, Instructional Support Assistants, and Staff Nurses.

4. Lunch Period

- a. A thirty (30) minute paid lunch will be provided for employees working a minimum of seven and one-quarter (7¼) continuous hours in the following categories: Clerical, Secretarial, Educational Assistants, Staff Nurses, Custodians (except those custodians who work the majority of their shift when school is in session).
- b. Effective with the ratification of this contract, paid lunches will be discontinued for post-ratification new hires

P. Inclement Weather/Emergency School Closures

- 3. When school opens late for students due to inclement weather or emergency conditions, Twelve (12) Month Secretaries, Ten (10) Month Secretaries, Educational Assistants, Instructional Support Assistants, Staff Nurses and Cafeteria/Office Assistants may report for work at their regular time or make up the time by working at times mutually agreed to by the employee and his/her supervisor. If the time cannot be mutually agreed upon, the supervisor will advise the employee when the time will be made up. Bus drivers will have their schedules adjusted based on the emergency.

**SUBCONTRACTING (Article XXIII - Miscellaneous Provisions)**

The Association seeks no subcontracting of bargaining unit work and the District seeks to subcontract certain classifications and aspects of bargaining unit work:

**Recommendation:**

That the following language should be included into the collective bargaining agreement:

The District agrees that it will not subcontract bargaining unit work from the date the parties ratify the collective bargaining agreement until June 30, 2017. The prohibition on subcontracting shall sunset on June 30, 2017. It is understood that it is not the intent of this section to prohibit the District from continuing various outsourcing practices that it has utilized in the past. This may include: transportation outsourcing in conjunction with the utilization of Intermediate Unit services, shared transportation services with the School District of Springfield Township, use of third party transportation vendors for parochial school students, summer grounds support, and snow removal support during large storms. It is my recommendation that the parties meet and discuss what constitutes a past practice in drafting contract language for this provision in the next contract.

Any contractual language that has been mutually agreed upon by the parties is understood to be recommended by this Report. Any editorial changes regarding updating of relevant dates is understood to be recommended by this Report. All other issues in dispute for which no recommendation for change has been made in the subject Report should remain as is.

Having conducted a Fact Finding hearing pursuant to Act 88 and Act 195, having taken testimony under oath, and having considered the evidence to better understand the respective positions of the parties, I respectfully submit this Report.

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John M. Skonier  
Fact Finder

Date: January 26, 2015