

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD

IN THE MATTER OF THE FACT FINDING BETWEEN

Lancaster-Lebanon I.U. 13 :
and : CASE # ACT 88-16-12-E
Lancaster-Lebanon I.U.13 Education :
Support Professionals Association :

FACT FINDING REPORT AND RECOMMENDATION

APPOINTMENT: April 8, 2016
REPORT DATE: May 18, 2016
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Introduction

On April 8, 2016, the Pennsylvania Labor Relations Board (PLRB), pursuant to Act 88 of 1992 (Act 88) and the Public Employer Relations Act (PERA), appointed the undersigned as Fact Finder in the impasse between the Lancaster-Lebanon I.U. 13 (the IU or the Employer) and the Lancaster-Lebanon I.U. 13 Education Support Professionals Association (the Union or the Association).

Bargaining and Fact Finding History

The Union represents a unit of support professionals employed by the IU. The IU and Union are party to a July 1, 2013 through June 30, 2015 Collective Bargaining Agreement. (Referred to herein as the Agreement) The parties began meeting for purposes of negotiating a successor agreement in or about January 2015 and thereafter conducted negotiations by meetings of bargaining committees, meetings of representatives of the parties and email communications. The parties were assisted in their efforts by a state mediator. The parties reached tentative agreements on a number of issues and were unable to reach agreement on approximately 21 remaining outstanding issues. The IU and Association thereafter jointly initiated the instant Fact Finding.

On May 11, 2016 a formal fact finding hearing was held before the undersigned in Lancaster, Pennsylvania, at which time the parties were given the opportunity to present the Fact Finder testimony, documentary evidence and oral argument relating to their outstanding issues.

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

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.

Issues

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

1. Term
2. Definitions of Full-time and Part-time employees
3. Deadline Date
4. Rights of Employees/Transfer language
5. Release Time for Meetings
6. Employee Work Hours
7. Summer Hours
8. Personal Leave
9. Maternity Leave
10. Bereavement Leave
11. Life/ADD Insurance
12. Medical Program
13. Salary Schedules
14. Pay Periods
15. Qualified Sign Language interpreter
16. Fair Share
17. Excise Tax
18. Vacation
19. Retirement Payment
20. Layoff & Recall
21. Retroactivity

After full consideration of the evidence offered at the Fact Finding hearing, arguments by the parties and careful study of the extensive submissions on the issues by the parties, the follow recommendations are offered:

1. Term

The Association seeks a five-year term and the IU seeks a three-year term. Under the circumstances, and considering the economic climate and uncertainty, I recommend a three-year term of September 1, 2015 to August 31, 2018.

2. Definition of Full-time and Part-time Employees – Article 1, Section B(4) and B(5)

Both parties offered very similar language to modify the current language of the Agreement relating to the definitions of full and part time employees to reflect an increase from 28 hours per week to 30 hours per week for the requirement for full-time status.

Recommendation

I recommend the current language of Article I, Sections B(4) and B(5) of the Agreement be amended to read:

4. The term “full-time employee” as used in this Agreement shall mean: (1) those non-instructional support staff regularly scheduled to work 260 days and thirty (30) or more hours per week; or (2) instructional support staff regularly scheduled to work 185 days or more and who are regularly scheduled to work thirty (30) or more hours per week. Employees hired by the IU 13 prior to the ratification of this Agreement shall be subject to the definition of “Full-time Employee” as that term is defined in the 2013-2015 Collective Bargaining Agreement. The term full-time employee in this Agreement shall not include employees who may be assigned to work full-time but who are classified as temporary employees, e.g. seasonal or summer staff and staff hired for limited, defined projects.

5. The term “part-time employee” as used in this Agreement shall mean: (1) instructional support staff regularly scheduled to work 185 or fewer days and less than thirty (30) hours per week; or (2) those non-instructional support staff regularly scheduled to work 185 or fewer days and less than thirty (30) hours per week. The term part-time employee in this Agreement shall not include employees who may be assigned to work on a part-time basis but who are classified as temporary employees, e.g. seasonal or summer staff and staff hired for limited, defined projects.

3. Deadline Date - Article II, Section A

In the current Agreement the parties agreed to enter collective bargaining for a successor Agreement no later than January 10, 2015; the year of the expiration of the Agreement. Each party herein proposes similar language differing only according to the terms, and consequently the expiration date, of it respective proposal.

Recommendation

As I have recommended a three-year term of the agreement, I recommend that Article II, Section A: Deadline Date be modified to provide that “the parties agree to enter into collective bargaining over a successor agreement no later than January 10, 2018.”

4. Rights of Employees/Transfer language – Article IV, Section E

The agreement currently provides that when employees are involuntarily reassigned or transferred they shall be given the opportunity to meet with management to discuss the reassignment and that no transfer or reassignment shall be subject to the grievance procedure “except to compel compliance with the above procedure or unless such transfer is for disciplinary reasons.”

The IU seeks to delete the words “unless such transfer is for disciplinary reasons” and add: “...as it is understood that transfers may be made within the sole discretion of the Administration.”

Both parties propose language limiting the opportunity for to request transfer following a placement; the Association proposing a 3 month prohibition and the IU a six month prohibition following a placement.

Recommendation

I am not persuaded by the IU’s argument that the deletion it proposes will preclude transfers for disciplinary purposes; but instead preserve the Union’s ability to challenge the just cause of such discipline. In my view, removal of the exception would arguable permit the IU to discipline by transfer or reassignment without recourse to the grievance procedure. Such is contrary to principles of fairness and due process. I recommend the language providing “or unless such transfer is for disciplinary reasons,” remain and that the last sentence of Article IV, Section E be modified to read:

...Employees newly assigned to a position may not request a transfer for four (4) months from placement into the position, unless a reasonable accommodation is required to accommodate an employee’s recognized disability within the meaning of the Americans with Disabilities Act (ADA).

5. Release Time for Meetings – Article V, Section B

Article V, Section B of the Agreement currently provides that representatives of the Association may be absent with pay to attend Association conferences or meetings not to exceed a total of ten days per school year with a limit of five such days for any one individual. The Association proposes to increase the Association’s annual limit to 15 days and add language that no more than four consecutive days may be taken by any individual.

Section B also currently provides that in the event a substitute shall be employed for the officer or representative, the Association shall reimburse the Board (IU) for the cost thereof. The Association proposes that a caveated sentence be added after the reimbursement language providing; “Reimbursement will not be sought by the Board for any INSUP absences occurring during Extended School Year (ESY) to attend Association conferences or meetings.”

Recommendation

I am not persuaded that the Association needs the 33% increase in release days it requests and recommend no increase in such. Nor am I persuaded of the need for a consecutive day limitation. I do recommend the addition sentence sought by the Association relating to ESY.

6. Employee Work Hours - Art VIII, Section A

The parties both seek to add language to existing language defining the normal work year for Instructional Support Staff as 185 days and the normal work year for full-time Non-Instructional Support Staff as 260 days to also provide “...and thirty (30) or more hours per week.” I recommend such additions.

The Association also seeks to add an exception to the 30 or more hours per week language relating to Instructional Support Staff to reflect the hours of certain “grandfathered” employees providing: “...except where employees may be “grandfathered” under full-time definition from the 2013-2015 Collective Bargaining Agreement.” For purposes of clarity, I recommend the exception language proposed by the Association.

Both parties also propose language relating to Health Care Assistants, the Association providing definitions relating to days per year and hours per week and the IU proposing language limited to days per year. As the record does not reflect if there are part-time Health Care Associates, I recommend the language be limited to that proffered by the IU:

Health Care Assistants will work either a one hundred eight-five (185) day work year or a two hundred five (205) day work year as determined by the demands of the program as decided by the LLIU Administration within its discretion.

The IU also proposes Personal Care Assistants lunch-related language, which I do not recommend.

7. Summer Hours

The Association proposes new Summer Hours language that it claims in large part was originally proposed by the IU and is now not in the IU’s proposal at all.

In the absence of agreement to language by the parties, I recommend no new summer hours language.

8. Personal Leave - Article X, Section A

Both parties proposed new language relating to personal leave for part-time employees. The Association’s proposal incorporates language into the narrative of existing language and the IU proposes a separate introductory paragraph. I find the IU’s proposal more workable. As a consequence, I recommend a new paragraph 1 be added to Article X, Section A, (with original paragraphs being renumbered accordingly) providing:

1. Personal leave days shall be earned ratably throughout each school year. Part-time employees will receive a prorated amount of the three (3) personal leave days per year.

9. Maternity Leave - Article X, Section F

The Association proposed replacing the references in the Section to “Maternity” with the word “Parental.” The IU proposes removing Maternity language completely as it is governed by the FMLA.

I recommend the language remain as is.

10. Bereavement Leave - Article X, Section H

Both parties proposed removing language in the existing Bereavement Leave Section stating; “The Board may extend the period of absence with pay in its discretion as the exigencies of the case may warrant.” Consistent with the positions of the parties, I recommend removal of the sentence.

The Association proposed modifying the remaining language of the Section to bring consistency to bereavement leave language in the Agreement and the IU’s Teachers bargaining agreement.

Recommendation

The language proposed by the Association addresses both the consistency issue and better reflects the current character of family life. I recommend its adoption by the parties, and that the relevant language of the Section read:

Whenever a full-time bargaining unit employee shall be absent from duty because of the 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) work days. Whenever a part-time bargaining unit employee shall be absent from duty because of the 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 one (1) work day. Members of the immediate family shall be defined as an employee’s spouse, son or son-in-law, daughter or daughter-in-law, parent, parent-in-law, grandparent, grandchild, sibling or sibling-in-law.

The terms "immediate family" also includes any person who resides in the employee's household. The term "spouse" means a husband or wife as defined or recognized under Pennsylvania law. The term "parent" includes biological parents or an individual who stood in loco parentis to an employee when the employee was a minor. The terms "son" and "daughter" include biological, adopted or foster children, stepchildren, legal wards or children of an employee who stands in loco parentis to those children.

Whenever a full-time or part-time bargaining unit employee shall be absent from duty because of the death of a near relative, there shall be no deduction in salary of said employee for an absence on the day of the funeral. A near relative shall be defined as uncle/aunt, first cousin, or nephew/niece.

11. Life/ADD Insurance - Article XI, Section A

The Agreement currently provides for \$30,000.00 in term life insurance and accidental death and dismemberment coverage for full-time bargaining unit employees. The Association proposes increasing coverage for full-time employees to \$50,000.00; providing \$25,000.00 coverage for part-time employees working at least 15 hours per week and offering buy up provisions for full-time employees for additional coverage for themselves and/or their spouses.

I am not persuaded of the exigent need for a change in the benefit and recommend the language of the Agreement remain as is.

12. Medical Program – Article XI, Sections B, H(3) and H(4)

The IU offers a self-funded medical plan, a plan that has continued during the status quo period. The current Plan is a PPO and provides the following benefits:

Benefits	In Network /	Out of Network
Deductibles	\$250/\$500	\$500/\$1,000
Coinsurance	0%	20%
OOP Max-Medical	\$1,330 person	\$1,330 person
OOP Max – Rx	\$5,270 person	" "
Total Out of Pocket Max	\$6,600	--
PCP Copay	\$15	20%
Specialist Copay	\$25	20%
Urgent Care Copay	\$35	20%
ER Copay	\$75 (waived if admitted)	
Prescription Drugs	Retail /	Mail Order
Deductibles	n/a	n/a
Copay	\$10/\$25/\$35	\$20/\$50/\$70
Rx management	None	

The IU proposes to continue the plan during the first year of the Agreement and to offer a PPO Plan effective September 1, 2016 for the second year of the Agreement providing the following:

Benefits	In Network /	Out of Network
Deductibles	\$1,000/\$2,000	\$2,000/\$4,000
Coinsurance	7.5%	30%
OOP Max-Medical	\$1,000/\$2,000	\$4,000/\$8,000
OOP Max – Rx	\$1,000/\$2,000	\$4,000/\$8,000
Total Out of Pocket Max	\$6,600/\$13,200	n/a
PCP Copay	\$25	40%
Specialist Copay	\$50	40%
Urgent Care Copay	\$75	40%
ER Copay	\$125 (waived if admitted)	
Prescription Drugs	Retail /	Mail Order
Deductibles	\$50	--
Copay	\$10/\$25/\$35	\$20/\$50/\$70
Rx management	None	

The IU proposes a Qualified HDHP Plan for the third year (2017-2018 plan year) of the Agreement providing the following:

Benefits	In Network /	Out of Network
Deductibles	\$1,500/\$3,000	\$3,000/\$6,000
Coinsurance	n/a	40%
OOP Max-Medical	n/a	\$4,000/\$8,000
OOP Max – Rx	n/a	\$4,000/\$8,000
Total Out of Pocket Max	\$6,600/\$13,200	n/a
PCP Copay	\$30	40%
Specialist Copay	\$60	40%
Urgent Care Copay	\$75	40%
ER Copay	\$125 (waived if admitted)	
Prescription Drugs	Retail /	Mail Order
Deductibles	Integrated with Medical Deductible	
Copay	\$0	\$0
Rx management	None	

The Association proposes a five year Agreement and corresponding modifications in the medical program. (As I am recommending a three-year term, I am presenting only the Association's second and third year proposals.) In year two of the Agreement (2016-2017 plan year) the Association proposes the following:

Benefits	In Network /	Out of Network
Deductibles	\$250/\$750	\$500/\$1,000
Coinsurance	0%	20%
OOP Max-Medical	\$1,330 person	\$1,330 person
OOP Max – Rx	\$5,270 person	" "
Total Out of Pocket Max	\$6,600/\$13,200	--
PCP Copay	\$25	20%
Specialist Copay	\$30/50*	20%
Urgent Care Copay	\$40	20%
ER Copay	\$100 (waived if admitted)	
Prescription Drugs	Retail /	Mail Order
Deductibles	n/a	n/a
Copay	\$10/\$25/\$35	\$20/\$50/\$70
Rx management	None	

**\$50 only applies when specialist service available free of charge at onsite clinic*

For the 2017-2018 plan year the Association proposes the following:

Benefits	In Network /	Out of Network
Deductibles	\$250/\$750	\$500/\$1,000
Coinsurance	10%**	20%
OOP Max-Medical	\$1,330 person	\$1,330 person
OOP Max – Rx	\$5,270 person	" "
Total Out of Pocket Max	\$6,600/\$13,200	--
PCP Copay	\$25	20%
Specialist Copay	\$30/50*	20%
Urgent Care Copay	\$40	20%
ER Copay	\$100 (waived if admitted)	
Prescription Drugs	Retail /	Mail Order
Deductibles	n/a	n/a
Copay	\$10/\$25/\$35	\$20/\$50/\$70
Rx management	None	

**\$50 only applies when specialist service available free of charge at onsite clinic*

*** Medical Coin OOP Max of \$250/\$500*

Recommendation

As in any Fact Finding I have ever done and likely will ever do; the Employer complains of the rising costs and unpredictable nature of providing employees medical insurance coverage and the Union complains of the rising costs and pressure to have employees share more and more of those costs, efforts by the Employer to place more of the burden of the risk of future increases on employees who have incomes fixed by contract, and the unfairness of having employees placed in a circumstance where wage increases have to go to increased medical co-pays and coinsurance. Simply put, both parties are right.

The problem of how to provide medical insurance coverage for employees is a problem shared by management and labor. To address the problem the parties have to do more than bemoan the difficulty of their individual circumstance. The problem will simply not go away because it is unfair to their individual sides. Instead, the parties have to make tough choices that are seemingly paradoxical: they have to agree upon where to *reduce* coverage and (here is the paradox) how to pay for *increased* costs.

Unlike most situations in my experience however, here the parties are to be commended for their efforts to address the ever-present issues associated with medical benefits in an imaginative and pro-active manner through the establishment of the IU's on-site medical clinic and promotion of its use by employees. Such efforts are foresighted and place at least some of the means to meet the challenges of increasing costs of medical care in the hands of the parties. But it should be understood, (and I believe here management has a better grasp of this than do the employees), that the costs saved by the clinic - and/or the costs saved by efforts of both parties in the last bargaining negotiations to reduced costs - are not going to be realized in any actual dollars going into anyone's pocket, but rather are realized by decreases-in-the-increases-that-would-otherwise-be-required for medical insurance and care. Unfortunately, the reality is that increases in costs to both parties are still going to occur.

There are myriad reasons costs will continue to increase, and I am not an expert on such. But it is simply unrealistic to think that any Employer is going to be able to continue to provide exceptional medical coverage to its employees – even if such coverage is the same as previously provided - at little or no increased cost.¹ If the parties want to continue to have similar coverage, the tough reality is that they each have to pay for it. That said, I am not convinced that the High Deductible plan offered by the IU is realistic given the absence of means for the Employer to help these bargaining unit employees – some of whom are among the “working poor” of our “new economy” with the plainly challenging deductibles proposed in school year 2017-2018. A benefit that is out of reach financially may allow some to rationalize that they have done their job well by making such a valuable benefit available, but it really amounts to a benefit for the relatively well to do and no benefit at all for employees who work below a living wage and can not realistically be expected to participate.

Considering the shared interests of the parties and the economic realities they face, I recommend the following medical insurance benefit for the final two years of the Agreement:

Benefits	In Network /	Out of Network
Deductibles	\$400/\$800	\$1,000/\$2,000
Coinsurance	10%	30%
OOP Max-Medical	\$1,330 person	\$1,330 person
OOP Max – Rx	\$5,270 person	“ ”
Total Out of Pocket Max	\$6,600/\$13,200	--
PCP Copay	\$25	40%
Specialist Copay	\$40/60*	40%
Urgent Care Copay	\$60	40%
ER Copay	\$100 (waived if admitted)	
Prescription Drugs	Retail /	Mail Order
Deductibles	n/a	n/a
Copay	\$10/\$25/\$35	\$20/\$50/\$70
Rx management		None

**\$60 only applies when specialist service available free of charge at onsite clinic*

I recommend that Health and Dental contributions remain at 9% and 7.5% respectively for the term of the Agreement.

¹ Similarly, it is fiction for both labor and management to believe that they can carve out some exception to the Cadillac insurance coverage parked in their own garages and think that the goals of reducing the cost of medical care contained in the ACA will be ever be met. Some may say it's a “chicken and egg” debate, but I am convinced that the price of medical care will follow the dollars. The more dollars are made available to providers through rich insurance plans the higher the cost of services will become. In essence, those who insist there be no disincentive for Cadillac plans will eventually cost themselves (and others) right out of having insurance.

13. Salary Schedules Article XII, Section A(1)

The parties made salary proposals based upon percentage increases in the total payroll of the bargaining unit. The IU proposed the following increases in total payroll (with a cap inclusive of step increase and percent on scale of 3.75% to any one bargaining unit member):

2015-2016 - .64%

2016-2017 - 2.45%

2017-2018 – 2.60%

The Association proposed the following increases in total payroll:

2015-2016 - 3.5%

2016-2017 - 3.75%

2017-2018 – 3.75%

Additionally, the parties agree that; “in the case of any new bargaining unit position for which a salary schedule has not been established, the salary will be negotiated by the Executive Director or his/her designee and the Association” – language I recommend the parties adopt.

At the hearing in this matter, the IU expressed concern about remaining competitive and being able to offer its services to its constituent school districts at competitive costs. Such costs, the IU asserted, are substantially determined by the personnel costs the IU must pay to provide such services. The Association maintained that its bargaining unit members are not overly compensated considering the demanding services they provide and that although there may be occasions when individual school districts attempt to subcontract to an outside provider or attempt to offer the services on their own, it is often the case that those districts learn the value of the services offered by the IU and return to the IU.

Recommendation

The IU is in reasonably healthy financial condition. Considering the challenges of the work performed by bargaining unit employees and the importance of such work to the individual students involved and the overall educational goals of the IU and the districts it serves, I am persuaded that the employees within this bargaining unit deserve fair wage increases. To that end, I recommend the following increases as reflected in the salary/wages scales attached to this report as Appendix B:

-Year 1 (2015-2016 school year)- Employee pay rates are frozen at the rates in their respective 2014-2015 salary/wages scales. On the first payday following the first complete pay cycle immediately following ratification of this Agreement, each full-time bargaining unit employee who; (a) is on the payroll as of the date of contract ratification, (b) began work before or on January 15, 2016, and (c) is not a “grandfathered” employee already receiving a higher salary/hourly rate than the maximum on his or her respective wage schedule, shall receive a \$500.00 payment, and each part-time bargaining unit employee who; (a) is on the payroll as of the date of contract ratification, (b) began work before or on January 15, 2016, and (c) is not a “grandfathered” employee already receiving a higher salary/hourly rate than the maximum on his or her respective wage schedule, shall receive a \$250.00 payment, said payments will not be incorporated into employee wage scales or otherwise be added to employees base salaries.

- Year 2 (2016-2017 school year) step movement plus 1.5% on scale. *

- Year 3 (2107-2018 school year) step movement plus 1.5% on scale. *

**Excluding any employee already “grandfathered” at rates above the highest rate on his or her respective salary/wage schedule.*

14. Pay Periods Article XII, Section A(3)

The Agreement currently provides that full-time employees will be paid semi-monthly (24 payments per year) and that part-time employees will be paid semi-monthly (20 payments per year) in accordance with IU Procedure H231. The IU proposes adding new, additional language to the Section providing:

Notwithstanding the foregoing, full-time and part-time employees will only be paid for their hours worked as of each time period as of each pay period so that they will be paid currently as of that date.

According to the IU, the proposed language would save money and results in employees receiving their earnings more quickly than the current system. Additionally, the IU explained, the current language causes administrative challenges, particularly when new employees are hired in the last few months of a school year and have expressed displeasure with not being paid their full earnings because the IU spreads out their wages to cover summer months when they are not working.

The Association seeks no change in the language, and maintains that the current process assists bargaining unit members – many of whom are working poor - in budgeting to meet their recurring bills and loan payments.

Recommendation

Both parties have legitimate concerns in this regard. In an attempt to address the primary concerns of each of the parties on this issue, I recommend a sentence be added to the Section providing:

Notwithstanding the foregoing, full-time and part-time employees hired after January 15 of any school year will – for the remainder of that school year only - only be paid for their hours worked as of each time period as of each pay period so that they will be paid currently as of that date.

15. Qualified Sign Language Interpreter

The Association proposes new language to the Agreement providing:

In the event the IU requests the interpreting services of a current employed 'qualified sign language interpreter' as defined in Act 57 of 2004, then the IU shall pay said interpreter an additional rate differential of \$20/hour for hours worked outside of the regular scheduled workday(s) or hours (two hour minimum for all hours worked after a break in the course of a regularly scheduled day) on top of his/her base hourly wage regardless of whether the mutually agreed-upon assignment falls during or after the employee's normal work hours.

According to the Association, this new language would save the IU money as the IU currently contracts with an outside agency at a rate of \$70/hour for such services. The IU rejects the proposal claiming there has been no showing of a need to make such a change.

Recommendation

I do not recommend the new language proposed by the Association. The IU asserts there is no need, and as the language proffered is cumbersome and would impose multiple hour minimums, I am not convinced the language would result in savings.

16. Fair Share

The Association proposes adding a new Section A(6) to Article XII of the Agreement providing:

If, and for so long as, fifty percent (50%) or more of the School Districts in the Lancaster Lebanon IU 13 actually have fair share in effect, including School Districts that impose a membership requirement that must be met and is satisfied within a particular School District for Fair Share to be deemed in effect, the IU shall deduct from each nonmember in the bargaining unit represented by the Association an amount annually certified by the Association as the fair share fee as provided for by Act 84 of 1988. The Board and the Association agree to comply with all provisions of said law. The Association agrees to extend to all nonmembers the opportunity to join the Association.

According to the Association, this proposal cost the IU nothing and the proposal does not require non-member employees to pay full dues. Rather it requires that employees in the bargaining unit simply pay their fair share of the costs of representation and collective bargaining that is expended on their behalf. It is fair and it is the same provision that

teachers in the IU have in their agreement, and nearly all of the 22 districts in the IU have bargaining agreements with similar provisions.

The IU “emphatically rejects” the Association’s proposal as the Association has a very low percentage of membership among those employees in the bargaining unit and the Board believes “it cannot ethically entertain fair share for the association until such time as the membership increases to at least 95%.”

Recommendation

The IU is right – there is a question of ethics here. It would not be “ethical” for the IU’s constituent school districts to accept the services of the IU and not pay for them. Nor would it be “ethical” to have constituent school boards be subjected to a requirement that all referendums on tax issues in their respective school districts receive 95% of the vote to pass. The IU’s ethics-based argument proffered here is patronizing and likely insincere.

The Association’s proposal does not require that employees become members of the Association. There is nothing arguably unethical about the proposal, it reflects our democratic principles – our national ethic - of majority rule and it reflects the values of our society that individuals should pay their share.

The Association’s proposal is fair and I recommend its adoption.

17. Excise Tax

The current Agreement does not contain language relating to the potential ACA excise tax. The IU seeks new language to be placed in Article XII, Section A(7) providing a process beginning in January 2019 by which the parties may jointly address potential excise tax issues.

Recommendation

As I am recommending only a three-year term for this Agreement, a term that will expire prior to January 2019, I am not recommending the inclusion of excise tax language in this agreement.

18. Vacation

The Agreement currently provides a vacation schedule for “[a]ll Non-Instructional Support Staff on a 260-day employment term...” The Association proposes modification to the schedule to decrease the number of months of service required for expressed amounts of annual days of vacation. The IU proposes language modifying the introductory sentence to read; “[a]ll full-time Non-Instructional Support Staff on a 260-day, 30 or more hours per week, employment term...”

The Association asserts its language is more in line with similarly situated support staff in south-central Pennsylvania, and that the IU’s change in language will remove the vacation benefit from a small number of bargaining unit employees. The IU argues the Association’s claim is not supported and that the Association’s proposal to increase vacation benefits would cost the IU approximately \$75,000.00 over three years.

Recommendation

I am not convinced that any need for the changes proposed by the parties have been persuasively supported and recommend the language remain as is.

19. Retirement Payment, Article XII, Section D(6)

The Agreement currently provides that at retirement eligible employees will be awarded a non-elective, employer contribution to an approved pre-taxed, tax sheltered annuity or tax deferred plan chosen by the employee from an IU approved vendor in an amount equal to \$25 times the number of the employee’s unused sick leave days. The Association proposes increasing the per-sick-day retirement contribution from \$25 to \$50, arguing that such would incentivize employees to save their sick leave and reduce the need of the IU to hire substitutes. The IU opposes the change based upon cost and considering the amount is outside of the range of such benefits paid by constituent districts.

Recommendation

When employees working with students are sick they should take sick leave. Such is in everyone’s’ best interest. I recommend the language remain as is.

20. Layoff and Recall

Article XIV, Section B(8) currently provides that; “[e]mployees who are laid off shall be recalled in the order of seniority within their appropriate job classifications, subject to Paragraph 4 of this Section.”

The IU proposes the elimination of the recall language as it is the fifth factor to consider when recalling and hasn't been used since the inception of the Agreement.

The Association opposes the removal of the language arguing seniority is an important collectively bargained benefit.

Recommendation

Seniority is a hallmark benefit of collective bargaining. The IU has offered nothing substantial in return for its proposal. I recommend the subject language of the Agreement remain as is.

21. Retroactivity

The Association seeks retroactivity of any pay increases to the effective date of the Agreement. My recommendation relating to a cash payment for the 2015-2016 school year addresses this concern.

Other Matters

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

Please note

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



Dated: May 18, 2016

Timothy J Brown, Esquire
P.O. Box 606
Newtown, PA 18940

Appendix B

2015-2016						
To Top	Steps	ZONE 10 NISUP	ZONE 11 NISUP	BEHAVIOR SUPPORT ASSISTANTS	LEAD TRAINERS & ASSISTANT SOCIAL WORKERS	COTAs
9	1	11.49	12.91	17.61	18.56	20.89
8	2	11.72	13.25	18.10	18.81	21.16
7	3	11.95	13.60	18.59	19.06	21.44
6	4	12.19	13.96	19.10	19.31	21.72
5	5	12.43	14.33	19.63	19.56	22.00
4	6	12.68	14.71	20.17	19.82	22.29
3	7	12.93	15.10	20.72	20.08	22.58
2	8	13.18	15.50	21.29	20.35	22.88
1	9	13.44	15.91	21.88	20.62	23.18
Top	10	13.71	16.33	22.48	20.89	23.48

2016-2017						
To Top	Steps	ZONE 10 NISUP	ZONE 11 NISUP	BEHAVIOR SUPPORT ASSISTANTS	LEAD TRAINERS & ASSISTANT SOCIAL WORKERS	COTAs
9	1	11.66	13.11	17.88	18.84	21.21
8	2	11.90	13.45	18.37	19.09	21.48
7	3	12.13	13.81	18.87	19.34	21.76
6	4	12.37	14.17	19.39	19.60	22.05
5	5	12.62	14.55	19.92	19.86	22.33
4	6	12.87	14.93	20.47	20.12	22.63
3	7	13.12	15.33	21.04	20.38	22.92
2	8	13.38	15.74	21.61	20.65	23.22
1	9	13.65	16.15	22.21	20.93	23.52
Top	10	13.92	16.58	22.82	21.20	23.83

2017-2018						
To Top	Steps	ZONE 10 NISUP	ZONE 11 NISUP	BEHAVIOR SUPPORT ASSISTANTS	LEAD TRAINERS & ASSISTANT SOCIAL WORKERS	COTAs
9	1	11.83	13.31	18.15	19.12	21.53
8	2	12.08	13.65	18.65	19.38	21.80
7	3	12.31	14.02	19.15	19.63	22.09
6	4	12.56	14.38	19.68	19.89	22.38
5	5	12.81	14.77	20.22	20.16	22.66
4	6	13.06	15.15	20.78	20.42	22.97
3	7	13.32	15.56	21.36	20.69	23.26
2	8	13.58	15.98	21.93	20.96	23.57
1	9	13.85	16.39	22.54	21.24	23.87
Top	10	14.13	16.83	23.16	21.52	24.19

2015-2016				
		HEALTH CARE ASSISTANTS	ZONE 17 NISUP	ZONE 18 NISUP
To Top	Steps			
13	1	15.56	24.95	28.06
12	2	15.80	25.20	28.31
11	3	16.05	25.44	28.56
10	4	16.29	25.69	28.81
9	5	16.55	25.95	29.06
8	6	16.80	26.20	29.32
7	7	17.06	26.46	29.57
6	8	17.33	26.72	29.83
5	9	17.59	26.98	30.10
4	10	17.87	27.25	30.36
3	11	18.14	27.52	30.63
2	12	18.42	27.79	30.90
1	13	18.71	28.06	31.17
Top	14	19.00	28.33	31.44

2016-2017				
		HEALTH CARE ASSISTANTS	ZONE 17 NISUP	ZONE 18 NISUP
To Top	Steps			
13	1	15.80	25.33	28.48
12	2	16.04	25.58	28.73
11	3	16.29	25.83	28.99
10	4	16.54	26.08	29.24
9	5	16.79	26.34	29.50
8	6	17.05	26.60	29.76
7	7	17.32	26.86	30.02
6	8	17.59	27.12	30.28
5	9	17.86	27.39	30.55
4	10	18.13	27.66	30.82
3	11	18.41	27.93	31.09
2	12	18.70	28.20	31.36
1	13	18.99	28.48	31.64
Top	14	19.28	28.76	31.91

2017-2018				
To Top	Steps	HEALTH CARE ASSISTANTS	ZONE 17 NISUP	ZONE 18 NISUP
13	1	16.04	25.71	28.91
12	2	16.28	25.96	29.16
11	3	16.53	26.22	29.42
10	4	16.79	26.47	29.68
9	5	17.04	26.74	29.94
8	6	17.31	27.00	30.21
7	7	17.58	27.26	30.47
6	8	17.85	27.53	30.73
5	9	18.13	27.80	31.01
4	10	18.40	28.07	31.28
3	11	18.69	28.35	31.56
2	12	18.98	28.62	31.83
1	13	19.27	28.91	32.11
Top	14	19.57	29.19	32.39

2015-2016								
To Top	Steps	PARA-EDUCATORS	ZONE 12 NISUP	ZONE 13 NISUP	ZONE 14 NISUP	JOB TRAINERS	INTERPRETERS & ZONE 15 NISUP	ZONE 16 NISUP
17	1	11.21	14.07	15.41	16.64	18.61	19.03	21.72
16	2	11.57	14.29	15.68	16.95	19.04	19.40	22.03
15	3	11.93	14.50	15.96	17.26	19.49	19.79	22.34
14	4	12.31	14.72	16.24	17.57	19.94	20.17	22.66
13	5	12.70	14.95	16.53	17.90	20.40	20.57	22.98
12	6	13.10	15.18	16.82	18.22	20.88	20.97	23.30
11	7	13.52	15.41	17.12	18.56	21.37	21.38	23.63
10	8	13.95	15.64	17.42	18.90	21.86	21.80	23.97
9	9	14.39	15.88	17.73	19.24	22.37	22.23	24.31
8	10	14.84	16.12	18.04	19.60	22.89	22.66	24.65
7	11	15.31	16.37	18.36	19.96	23.42	23.11	25.00
6	12	15.80	16.62	18.68	20.32	23.97	23.56	25.36
5	13	16.30	16.87	19.01	20.70	24.53	24.02	25.71
4	14	16.82	17.12	19.35	21.07	25.10	24.49	26.08
3	15	17.35	17.39	19.69	21.46	25.68	24.97	26.45
2	16	17.90	17.65	20.04	21.85	26.28	25.46	26.82
1	17	18.46	17.92	20.39	22.26	26.89	25.96	27.20
Top	18	19.05	18.19	20.75	22.66	27.51	26.47	27.59

2016-2017								
To Top	Steps	PARA- EDUCATORS	ZONE 12 NISUP	ZONE 13 NISUP	ZONE 14 NISUP	JOB TRAINERS	INTERPRET ERS & ZONE 15 NISUP	ZONE 16 NISUP
17	1	11.38	14.28	15.64	16.89	18.89	19.32	22.05
16	2	11.74	14.50	15.92	17.20	19.33	19.70	22.36
15	3	12.11	14.72	16.20	17.52	19.78	20.08	22.68
14	4	12.50	14.94	16.49	17.84	20.24	20.48	23.00
13	5	12.89	15.17	16.78	18.16	20.71	20.88	23.32
12	6	13.30	15.40	17.07	18.50	21.19	21.29	23.65
11	7	13.72	15.64	17.38	18.84	21.69	21.70	23.99
10	8	14.16	15.88	17.68	19.18	22.19	22.13	24.33
9	9	14.60	16.12	17.99	19.53	22.71	22.56	24.67
8	10	15.07	16.36	18.31	19.89	23.23	23.00	25.02
7	11	15.54	16.61	18.64	20.26	23.78	23.45	25.38
6	12	16.04	16.86	18.96	20.63	24.33	23.91	25.74
5	13	16.54	17.12	19.30	21.01	24.89	24.38	26.10
4	14	17.07	17.38	19.64	21.39	25.47	24.86	26.47
3	15	17.61	17.65	19.99	21.78	26.07	25.35	26.84
2	16	18.17	17.91	20.34	22.18	26.67	25.85	27.22
1	17	18.74	18.19	20.70	22.59	27.29	26.35	27.61
Top	18	19.34	18.46	21.07	23.00	27.93	26.87	28.00

2017-2018								
To Top	Steps	PARA- EDUCATORS	ZONE 12 NISUP	ZONE 13 NISUP	ZONE 14 NISUP	JOB TRAINERS	INTERPRET ERS & ZONE 15 NISUP	ZONE 16 NISUP
17	1	11.55	14.49	15.87	17.14	19.17	19.61	22.38
16	2	11.92	14.72	16.16	17.46	19.62	20.00	22.70
15	3	12.29	14.94	16.44	17.78	20.08	20.38	23.02
14	4	12.69	15.16	16.74	18.11	20.54	20.79	23.35
13	5	13.08	15.40	17.03	18.43	21.02	21.19	23.67
12	6	13.50	15.63	17.33	18.78	21.51	21.61	24.00
11	7	13.93	15.87	17.64	19.12	22.02	22.03	24.35
10	8	14.37	16.12	17.95	19.47	22.52	22.46	24.69
9	9	14.82	16.36	18.26	19.82	23.05	22.90	25.04
8	10	15.30	16.61	18.58	20.19	23.58	23.35	25.40
7	11	15.77	16.86	18.92	20.56	24.14	23.80	25.76
6	12	16.28	17.11	19.24	20.94	24.69	24.27	26.13
5	13	16.79	17.38	19.59	21.33	25.26	24.75	26.49
4	14	17.33	17.64	19.93	21.71	25.85	25.23	26.87
3	15	17.87	17.91	20.29	22.11	26.46	25.73	27.24
2	16	18.44	18.18	20.65	22.51	27.07	26.24	27.63
1	17	19.02	18.46	21.01	22.93	27.70	26.75	28.02
Top	18	19.63	18.74	21.39	23.35	28.35	27.27	28.42