

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

In the Matter of the Impasse Between)	
)	
Millersburg Area Education Association)	
)	Case No. Act 88-16-3-E
and)	
)	
Millersburg Area School District)	

Report and Recommendation

Appearances

For the Association:

Amy S. Wolfgang
UniServe Representative
Pennsylvania State Education Association

For the District:

Frank P. Clark, Esquire
Clark & Krevsky, LLC

Background

On February 16, 2016, the Pennsylvania Labor Relations Board (PLRB) appointed the undersigned as the fact-finder pursuant to Act 88 of 1992 (Act 88) and the Public Employee Relations Act (PERA) in the impasse between the Millersburg Area Education Association (MAEA or Association) and the Millersburg Area School District (MASD or District) for the District’s professional employees.

The parties to this fact-finding have a long collective bargaining relationship. The most recent collective bargaining agreement between the parties was a five-year agreement that expired on June 30, 2014. It was extended by a Memorandum of Understanding for one more year, making the ultimate expiration date June 30, 2015. The Association engaged in some discussions with the prior superintendent regarding the possibility of an early bird negotiations, but to no avail. The Association and the District began regular bargaining in early 2015. The parties have been unable to reach a successor agreement, despite holding eight bargaining sessions. The state mediator has been at all the negotiation sessions.

After the December 1, 2015 bargaining session, the Association declared an impasse and requested fact-finding. The PLRB granted the request and ordered fact-finding.

The fact-finding hearing was on March 10, 2016 at the District’s administrative offices. At that time, the parties were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence in support of their positions. The parties presented extensive documentary evidence and reports as well as testimony.

As is true with every school district in the Commonwealth in 2015, the parties conducted collective bargaining with an unresolved state budget and without knowing the precise amount of its state subsidy. After the Association declared an impasse, the General Assembly and the Governor finally resolved the historic state budget impasse for most of the budget, enacting a general fund budget for the 2015-2016 fiscal year. However, as of the date of the fact-finding hearing, the District had only received one-half of its \$6.2 million state subsidy. I have approached this case with the assumption that the District will receive at least the same amount that it received in 2014-2015.

The Millersburg Area School District is located in northwestern Dauphin County, bordering the Susquehanna River. It is approximately 30 miles from downtown Harrisburg. The District serves the municipalities of Millersburg Borough and Upper Paxton Township. The District is a rural one with the largest town being Millersburg Borough, population of 2,557 (2010 U.S. Census). The District is home to a few manufacturing plants.

The District is part of the Capital Area Intermediate Unit #15, which encompasses 26 districts, including two vocational schools (Cumberland-Perry Vo-Tech and the Dauphin County Technical School) and spans all of Dauphin, Perry and Cumberland Counties and parts of York, Franklin and Juniata Counties. The Intermediate Unit #15 employees are themselves covered by a collective

bargaining agreement. In this fact-finding proceeding, the parties have referred to the CBAs of other IU #15 for entities to argue for the fairness of their proposals.

The District's 2015-16 budget anticipates \$13.15 million in total revenue. The budget projects \$6.73 million in local revenue, \$6.24 million from state sources and \$185,911 from federal sources. Of the local revenue, \$4,574,141 is from real estate taxes. For the last 11 years, the District has increased its real estate millage rate each year except for 2011. In the last five years, the District has increased its millage rate to the maximum allowed by the Act I Index for every year except for 2012. The current millage rate is 18.99 mills.

This millage rate puts the District in the middle of the 10 Dauphin County school districts. Central Dauphin School District is the lowest at 14.86 mills and Harrisburg City is the highest at 27.91 mills. The District calculates that the average annual real estate bill for a residential property is \$1,612. One mill of real estate tax in the District generates \$273,870. (District Binder, Tab 4, p. 5)

The top ten real estate taxpayers in the District produce only \$360,067 in real estate taxes. The largest real estate taxpayer is the Charles P. and Margaret Polk Foundation (Elderly Care), which pays a real estate tax of only \$153,947. In 2014-15, 70% of the real estate taxes were paid by residential property owners: \$3.1 million of \$4.45 million, (Annual Financial Report filed with PDE). However, 67.74% of the District's households, who are not necessarily homeowners, have incomes of under \$40,000. (District Binder, Tab 4).

The District serves approximately 830 students from kindergarten to twelfth grade. There are three school buildings: Lenkerville Elementary, Millersburg Area Middle School and Millersburg Area High School. The staff includes 80 professional employees in the bargaining unit represented by the Association. 9 administrators and 31 support staff.

In the 2015-16 school year, 20 of the 80 teachers were at the top of the 15 step pay schedule.

Issues

The parties have identified 15 outstanding issues. Where it was possible, I have identified the corresponding Article and Section of the collective bargaining agreement.

1. Term of Agreement (Article I.C)

The Association and the District have each proposed a three-year term.

Recommendation

The term of the agreement should be three (3) years, from July 1, 2015 to June 30, 2018.

2. No strike, no lockout provision (Article I.D)

The District has proposed changing the term "bargaining agent" in this clause of the CBA to "employee organization" to make it consistent with the remainder of the document. The Association is amenable to this change.

Recommendation

Change the term "bargaining agent" in Article 1.D to "employee organization."

3. Interview Committee

The Association has proposed adding language to the CBA that would ensure that current educators are part of an interview committee when new teachers are hired. The District opposes this on the grounds that it is an improper delegation of accountability.

Discussion

The Association argues that this will allow the District will obtain the perspective of teachers who are currently in the classrooms every day. Their input into the process will also help the District assess the applicant's compatibility with his or her future colleagues. The Association also points out that the proposal is heavily inspired by Act 82 of 2012, which brought numerous changes

to the way that educators are evaluated in Pennsylvania. The changes have caused teachers to have an even more vested interest in attracting and retaining high quality candidates.

The Association's proposal is well intended. However, from what I observed in the Fact-Finding hearing, the District's administrators themselves are not that long removed from the classroom so as to have lost the ability to judge an applicant's compatibility and suitability. Furthermore, it was unclear that other Districts in IU 15 have undertaken such an approach to teacher interviews.

Recommendation

The Association's proposal is not recommended.

4. Working Hours (Article III.A)

The District proposes adding ten (10) minutes to the work day, to be added to the beginning of the day. The Association opposes it.

Discussion

The District argues that this proposal, if accepted, will greatly assist everyone - administrators, teachers and students - get the day off to a smoother start. This will especially help when absent teachers present the District with coverage issues. The Association argues that this will add a total of 3.95 days to the schedule, thereby nullifying any raises that may be bargained. The Association also points out that the District has the longest work day in the county.

The District's rationale is understandable. However, since the teachers already have the longest work day in the County, it is not fair to ask them for additional time, especially when any wage increases are likely not going to cover the added time.

Recommendation

The District's proposal is not recommended. Maintain the status quo in Article III.A.

5. Trade Days (Number of Working Days) (Article III.B)

The District has proposed leaving the 9 annual in-service days intact, but allow the use of up to three in-service days as "trade days." The three days would include one of summer room preparation and one exchange day for each semester. The Association did not have a position but requested clarification.

Discussion

The Association posed many important questions about the proposal that need to be answered before it could reply. Those answers would also help the fact-finder. In light of the clarification needed, it would be better to maintain the status quo and perhaps address this in an informal way in meet and discuss sessions with the administration.

Recommendation

The District's proposal is not recommended. Maintain the status quo.

6. Faculty Meetings (Article III)

The Association proposes adding language to Article III outlining specific guidelines for the length and number of faculty meetings each year. The proposed language is:

"There shall be a maximum of ten (10) faculty meetings per year. Faculty meetings shall be scheduled in advance of the first in-service day of each year and a schedule of meeting dates shall be given to the faculty on the first day of school. These meetings shall be considered a contractual obligation; however, if the dates are changed following distribution of the schedule, they shall become optional. Faculty meetings shall follow the regular instruction period of the day and shall last no longer than 4:00 PM. Staff shall make their best effort to attend emergency faculty meetings held during the contractual day;

however, they shall not be considered a contractual obligation. Faculty members who are absent from school on the day of the meeting shall not be required to make up the time missed.

Discussion

At the hearing the Association expressed its interest in having consistency among the buildings for the number and length of faculty meetings. The Association expressed concern about the misuse of time in these meetings. Also, faculty meetings have a financial implication, especially if teachers who have to stay late for a meeting have to pay for extra day care or penalties for missed medical appointments. The Association also points out that some of the issues in faculty meetings could be covered in the customary in-service days or even by the now omnipresent hand held smart phones.

The District opposes the addition of such language. The District argues that it has a managerial interest in holding faculty meetings when the entire bargaining unit is present together at the same time to hear the same message. This is especially true in the case of emergencies or special times of challenge facing the District. The District also does not want to be constrained by the language in a CBA that could lead to the filing of a grievance.

The Association has presented legitimate concerns, especially over its members sometimes being kept at school until 5 p.m. However, it may be better to raise these concerns with the administration in an informal way rather than being made part of the CBA. I recognize that other Districts in the I.U have such provisions in their CBA, but with a relatively new superintendent in this District, this year may be an opportune time for the Association to raise these concerns with him for resolution, outside the CBA negotiations.

Recommendation

The Association's proposal is not recommended. Maintain the language in the current CBA

7. Wages and Salary (Article IV.A)

The Association proposes the following:

- Retroactivity to the start of the CBA, July 1, 2015.
- Step movement to be determined depending on final settlement numbers.
- Maintain the current salary schedule of structure of 15 steps and column movement.
- New salary schedules for each year of the CBA.
- Percentage increase each year to be determined.
 - a. Association to create salary schedules
 - b. Association will attempt to "smooth" the schedule

The District has proposed the following:

- No retroactivity
- Reserving the right to withhold step movement if necessary due to financial constraints.
- Change the salary schedule structure as follows:
 - Increase number of steps in salary schedule from 15 to 30.
 - Move people to step closest to salary level they are at currently.
 - Devalue current top step in future years for anyone not currently at the top.
 - Keep same salary schedule for all three years of the contract.
 - Remove sentence in existing CBA stating that 90% of employees will receive a pay increase each year.
 - Add language requiring Master's degree to be in Education to qualify for movement to Master's column.

Discussion

By way of background, the history of the increases in wages and salaries in the District is unusual. Instead of step movement every year, there has been step movement every other year for as long as most current employees have been employed. The "step/freeze" progression is outlined in Article IV.A, at page 7. The last vertical step increase was in 2013-14. That remained the step for 2014-15 because the parties were under a MOU extending the 2013-14 expired contract. But under the historical pattern, the

employees in 2014-15 would have been at the freeze year anyway. Similarly, under the historical pattern, in 2015-2016 the employees would have seen a step increase.

In addition, the current salary schedule has unusual points of increase due to past CBAs, so that step increases are not even over the 15 years of the schedule. The District points out that this allocation has badly skewed the schedule and has created huge disparity in wage increases in which the more senior teachers are increased more dramatically than newer teachers. For example, a move from M+45, Step 13 to Step 14 yields an increase of \$3,762, while a move from B Step 1 to Step 2, yields an increase of \$1,179.

The current salary schedule has six columns: Bachelor's, Instructional II, Master's, Master's + 15, Master's + 30 and Master's +45.

On the salary and wage issue, the parties are widely apart. The District's proposal is the one seeking the greatest change to the status quo. The Association's proposal, meanwhile, leaves in place the basic structure of the salary schedule, which has included step movement every other year and column movement for teachers who have obtained additional education. The Association's proposal is not a hard number but rather seeks "step movement to be determined on final settlement numbers" and "percentage increase each year to be determined."

The District's proposal makes fundamental changes to the structure of the salary schedule. The District wants to change the current 15 step schedule to a 30 step schedule that will enable it to "smooth" the bumps of disparate increases for senior teachers while not harming any one teacher. (20 of the District's 80 teachers are at Step 15.) As mentioned above, the current salary schedule has uneven increases over the 15 years of the schedule. This unevenness has created disparity in wage increases in which the more senior teachers are increased more dramatically than newer teachers. The District also seeks the right to eliminate step movement if financial conditions so require it.

The District's proposal for a revised salary schedule will also allow it to increase the starting pay for new teachers. MASD has the lowest known starting salary in IU #15.

The District argues that the current salary schedule is untenable and that when the salary increases proposed by the Association are considered, the District will have to increase real estate taxes beyond the PDE Act 1 Index. The District points out that its 2015-16 budget was balanced with an approximate \$1 million draw from its reserves. The District's only source to create new revenue is the real estate tax, which the District may only raise at the established PDE Act 1 index, unless it chooses to proceed with a voter referendum to exceed the index limit. This year's PDE Act 1 index for the 2016-17 fiscal year is 3.2% which will generate approximately \$150,000 in new revenue.

The District points out that under the "every other year" step increase pattern, for 2015-16, the step increase alone would be approximately 3%, or about \$150,000.

The District argues that its teachers are fairly paid, using longevity as a measure. The District points out that its veteran teachers are among the highest paid in the IU. It also points out that their pay far eclipses the income of the average household in the District.

The Association has presented several concerns with the District's salary and wage proposal. The District's attempt to move people to as close on the schedule to where they are now will lengthen the time it would take to reach the highest place on the salary schedule. It also removes the opportunity for people to reach a salary that is at the top of the current salary schedule.

The most serious concern is how the District's proposed schedule affects employees at the top step, which is 25% of the bargaining unit. These employees will receive no pay increase over the next three years under the District's proposal. Since the same schedule has already been in effect for two years, and the District wants to keep their salaries the same for the next three years under their proposal, these veteran teachers would receive no pay increase for a total of five years, though their healthcare costs are rising substantially each year.

As for the District's argument that it does not have the ability to pay, the Association has put forth a convincing rebuttal. The District has consistently built up surpluses from which the Association's proposal could be funded. The District is conservative in its budgeting practices. On the income side, the District has historically underestimated revenues. For each of the past five years, actual revenues have exceeded budgeted revenues. The average over the past five years has been \$369,241 per year. On the spending side, the District has overstated expenditures. For each of the past five years, actual expenditures have been less than budgeted expenditures. The average over the past five years has been \$652,550 per year.

The District, therefore, produces surpluses every year. In accounting terms, the surpluses become Ending Fund Balances (EFBs). The trend in EFBs also demonstrates the District's conservative budgeting practices. As pointed out by the Association at its Financial Analysis Tab, Page 8, the Appropriable Ending Fund Balances as Percent of Total Expenditures has increased every year since 2011. In 2011, the Appropriable Ending Fund Balance was \$2,483,646, or 19.77% of the Total Expenditures. The EFBs increased in each of the next four years, so that in 2015, the Appropriable EFB was \$3,082.650, or 22.96% of total expenditures.

I see no evidence that this historical trend of generating surpluses is likely to end so as to negate the District's ability to pay the wage increases that the Association is seeking. The Association's proposed increases in salaries over the length of the new CBA would result in these added salary costs: \$ 142,620 in 2015-16; \$159,140 in 2016-17 and \$139,033 in 2017-18. These costs are well within the conservative budgets that the District has traditionally followed.

The Association's salary proposal also begins to address two of the District's concerns. Starting pay for new teachers eventually increases to \$42,169 by 2017-2018. Also, the Association's proposal begins to minimize the skewing of the steps for veteran teachers, a process that must take some time in order to be fair to all the employees.

Finally, it is necessary to discuss the District's proposal to allow column movement past the Master's column only for Master's degrees in Education. The District asserts that this would be a more legitimate reason for increasing compensation and also a way for the employee to have a stake in the advanced degree they are obtaining. The Association wishes for the column movement requirements to stay the same and not be so restrictive. For example, under the District's proposal, a science teacher would not obtain column movement if he or she obtained a Master of Science degree in Chemistry. It is recommended to maintain the status quo in Article V.C of the CBA.

Recommendation

Adopt the following language for a revised Article IV. A:

"Each qualified professional employee, as defined in Article II, Section C, shall receive increases in their salary effective the first scheduled pay date of the 2015-2016 school year and each subsequent year through the 2017-2018 school year. Each qualified professional employee shall be advanced one (1) vertical step on the salary schedule for the year 2016-2017. For the school years 2015-2016 and 20-17-2018, each professional employee will remain on the previous year's step, and pursuant to the attached salary schedule for those years will receive the increase indicated."

Adopt the salary schedules attached as Exhibit A to this Fact-Finding Report and Recommendation.

All other items in Article IV.A should remain the status quo.

8. Tuition Reimbursement (Article V.C)

The District has proposed completely eliminating graduate credit reimbursement for all bargaining unit members, unless a member is working toward a certification that the District has asked them to obtain or working toward their Level II certification. The District has also proposed allowing a designee of the Superintendent to approve graduate credit reimbursements.

The Association is amenable to the latter item, but not to the proposal to completely eliminate credit reimbursement.

Discussion

The District argues that this proposal will result in the employees having a financial stake in the degree they are obtaining. However, it is not clear what this provision has cost the District over the last few years. Furthermore, the District's proposal will overly restrict the obtaining of graduate credits that may assist the teacher in teaching. To be consistent with the recommendation for Salary and Wages, the District's recommendation will not be adopted.

Recommendation

Maintain the language in Article V.C of the existing CBA.

9. Retirement Incentive (Article V.D)

Both parties have presented proposals on this issue, as listed below:

The Association has proposed the following:

Raise sick day payout from \$60 per day to \$85 per day, (up to 125 days accrued).

Raise sick day payout to \$100 per day (for 126 or more days accrued).

Keep bonus structure in place for retirements, but change to amounts below in order to incentivize people to retire:

30 years of service: \$25,000

31 years of service: \$20,000

32 or more years of service: \$15,000

The District has proposed the following:

1. Allow payment of retirement monies only upon the employee's commencement of PSERS retirement and not resignation.
2. Completely eliminate lump sum bonus structure as outlined in the CBA.

Discussion

The current CBA, in relevant part, provides for the following retirement incentives:

1. **Upon retirement the Board will pay the professional employee Sixty Dollars (\$60.00) per day for each day of accumulated sick Leave, up to one hundred twenty-five (125) days.**
2. **The Board will pay a bonus for early retirement for each professional Employee according to the following formula:**

30 years of service: \$10,000.00

31 years of service: \$8,000.00

32 or more years of service: \$6,000.00

Neither party has presented a compelling argument for altering the current CBA's provision. The Association's proposal to increase the retirement incentives and bonuses is not realistic at this time, given the number of potential retirees and the financial impact this could have on the budget. The District's proposals will unfairly eliminate a bargained for benefit that veteran teachers have more than likely factored into their career plans and decisions.

Recommendation

The current CBA language will remain.

10. Personal Leave (Article VI.A)

The District has proposed changing the following provisions for personal leave:

Limit the accumulation of Personal Leave to not more than four (4) days.

(End the current practice of allowing unlimited accrual of personal days)

Limit the consecutive use of Personal Leave to not more than (4) days, down from six (6) days.

Persons who presently have more than three days accumulated shall be permitted to apply those days toward their own sick leave.

Disallow the use of personal days during first or last ten (10) days of each school year.

Require a doctor's note for even one day of absence during:

First or last ten (10) days of each school year

Professional development days.

The Association would like to maintain the status quo.

Discussion

In reviewing this many faceted issue, there is an implication that there is a widespread problem of employees who are abusing the personal leave provision. However, the District did not present convincing proof of the existence of such abuse. Accordingly, the status quo will remain.

Recommendation

The District's proposal will not be recommended.

11. Sick Leave Pool (Article VI.B)

The Association has proposed the addition of language in the CBA stating that if a medical situation arises which necessitates the use of additional sick leave time beyond what an employee has available to them, staff may choose to anonymously and voluntarily donate sick days to the individual.

The District opposes this addition to the CBA. The District pointed out that a pooled sick leave bank was in a past agreement with very little use. At the hearing, it also pointed out that the sick leave pool concept will require added accounting duties to the already burdened business manager.

Discussion

The Association points out that a sick leave bank and is a way for employees with dire health problems to receive assistance from their colleagues. It is a commonly seen provision in CBAs; at least 16 school districts in I.U #15 have a sick leave bank.

Recommendation

The new CBA should include a provision for a sick leave bank, as proposed at the fact-finding hearing and found on pages 40 and 41 of the Association's binder.

12. Class Coverage

This is a new proposal, in which the Association proposes that teachers who cover classes during their prep time will be paid at either comp time or supplemental pay at a rate to be determined. Such comp time shall be accumulative.

Discussion

When the District needs to cover a class for a teacher on leave, it has to re-assign a teacher or employ a substitute at some cost. The District pays its substitutes \$85 per day. Neighboring Halifax School District pays substitutes \$100 a day. Both parties agree that there is problem with finding substitutes throughout IU #15. In fact, it is a statewide problem.

The Association argues that when teachers have to cover for another teacher, they are either losing their planning and preparation time or (b) adding another entire class worth of students to their class. This causes great inconvenience, since they must find time elsewhere in their schedules to do things such as making copies, planning lessons, grading papers, writing IEPs or calling parents.

The Association points out that in IU #15, 13 of 27 districts compensate their employees for covering classes when there is no substitute available. Of these, 12 districts pay teachers from \$25 to \$40 per hour or period.

The District opposes the proposal because of its costs. Also, the District opposes it because the District and its teachers have developed a friendly and cooperative approach to dealing with the issue for both teachers who need leave as well as with teachers who are asked to cover for them.

Recommendation

The following language should be added to Article V, Employee Benefits: "Teachers who cover classes during their prep time, will be paid at a supplemental pay at a rate of \$25 per hour or class period."

13. Association Leave

The Association has proposed the addition of language allowing a total of four (4) Association Leave days per year, for the purpose of attending state or regional events of the Association and its affiliates. The Association also proposed to reimburse the District for the cost of the substitutes hired to cover for those taking Association leave on these days.

The District opposes the proposal. The District views Association Leave as a disruption to the educational continuity of the District.

Discussion

The Association has demonstrated the value of teachers attendance at these meetings. Attendance provides an important member voice to the regional and state meetings. Also, attendees learn about new federal and state laws and PDE regulations that effect the teaching profession and can bring back this information for their colleagues. The Association points out that 24 of the 27 Associations in IU #15 provide Association leave for their members. The leave ranges from 2 days to 15 days. The Association pays the full cost of such leave in 15 of the 24 locals.

The District 's concerns with disruption are not to be taken lightly. However, the Association has demonstrated that the disruption is minimal and can be ameliorated by the administration guaranteeing that the teacher on leave provides for a lesson plan for the substitutes. Furthermore, the Association has demonstrated the benefit to the Association and its members in ways that will result in a benefit to the District and its students.

Recommendation

The following language should be added to Article VI:

"Employees acting as Association representatives, as designated by the Association president, shall be granted paid leave for the purpose of attending special statewide or regionwide events of the Association and its affiliates. A total of 4 days per year shall be allotted for the Association, with additional days to be allowed at the discretion of the administration. The Board shall employ substitutes to allow for this leave time; the daily substitute salary rate for these substitutes shall be reimbursed by the Association. Employees shall suffer no loss of salary, benefits or other contractual advantage to which they are entitled on account of the use of such leave."

14. Medical Insurance (Article VII.A)

The District has proposed the following 11 items:

1. Discontinue the Traditional plan
2. Premium Share remain at 6.0% for 2015-16; increase to 7.0% in 2106-17 and to 8.0% in 2017-18.
3. Increase deductibles as follows: 2015-16 \$250/\$500; 2016-17 \$500/\$1,000 and 2017-18 \$500/\$1,000.
4. Increase office co-pays and add a 4th tier of payment as follows: Family Doctor: \$25; Specialist: \$40; Urgent Care: \$50 and Emergency Room: \$100.
5. Add spousal surcharge of \$600 per year.
6. Remove dependent exclusion language in the current CBA and allow dependent coverage to age 26, per PPACA
7. Cadillac Tax language:
 - Reopen agreement to redesign coverage to go below the threshold.
 - If no agreement on modification of plan by 10 days prior to deadline, District can unilaterally change coverage.
8. Addition of 10% coinsurance, to a maximum of \$1,000 per year, on all covered health care service.
9. Maintain opt-out amount of \$2250.
10. Maintain mail order prescription rates of \$35 (generic), \$50 (Brand) and \$75(Custom)
11. Remove supplemental dental coverage language.

Association Position

The Association is amenable to items 1,2, 3, 4, 6, 9, 10 and 11 set forth above, but with some modifications to four of the items. As for Item 1, the Association agrees to discontinue the Traditional plan, but not until as of July 1, 2016. As for Item 3, the Association agrees to increasing the deductibles, but not until July 1, 2016. As for Item 4, the Association agrees to increasing the co-pays, but not until July 1, 2016. As for Item 5, the Association agrees to adding a spousal surcharge, but only in the amount of \$300 per year.

The Association entirely opposes two of the items: Item 7, the Cadillac Tax and Item 8, Co-insurance.

Discussion

The parties have reached agreement on 5 of the 11 items in dispute in health insurance.

As for the remaining 6 items in dispute in health insurance, the Association's proposals are compelling and it is recommended that they be accepted.

As for Items 1, 3 and 4, the Association proposes that the District's proposals not be adopted until July 1, 2016 because the fact-finding is so late in the school year. This is reasonable and will be made part of the recommendation.

As for Item 5, the spousal surcharge, the current CBA has no such provision. The District seeks a spousal surcharge of \$600 per year. At the fact-finding hearing, the Association stated that it is agreeable to a spousal surcharge of \$300. This is a reasonable compromise given the amount of the pay raises and the increases in other health insurance costs recommended in this Report.

Item 7 deals with an excise tax on high-priced insurance, commonly called a Cadillac Tax. The tax was mandated in the Affordable Care Act. The Association is not in agreement with the District's proposal on the Cadillac Tax because it allows the District to unilaterally change the plan so as to avoid the tax.

In December, 2015, the U.S. Congress gave a reprieve to the District, and to all the country's employers, by delaying the imposition of the Cadillac Tax until 2020. This would be after the proposed CBA expires in 2018. The District, though, contends that the CBA should have a Cadillac Tax provision so that it is not an issue in the negotiations for the next CBA.

The Association, however, has a solution that recognizes the District's point but that allows the parties the opportunity to come to a mutual agreement on the issue. The Association's proposal (Tab 3, pages 23-25) is lengthy, but it centers on the Association and the District forming a joint committee on this item that would begin meeting on January 1, 2018 and make a recommendation no later than May 31, 2018. The Association's proposal is sound and will be recommended.

Item 8 deals with the District's proposal to add co-insurance in the third year of the CBA. The Association opposes this because its members are seeing an increase in their out of pocket costs. The federal government web page HealthCare.gov. defines coinsurance as: "Your share of the costs of a covered health care service, calculated as a percentage (for example, 20%) of the allowed amount for the service. You pay coinsurance after you've met your deductible. For example, if the health insurance plan's allowed amount for an office visit is \$100 and you've met your deductible, your 20% coinsurance payment would be \$20. The health insurance plan pays the rest." The Association's opposition to co-insurance is reasonable, especially given the increases in out-of-pocket costs that will become part of the CBA if this Report and Recommendation is accepted.

Recommendation

First, it is recommended that the District and the Association put into the CBA the District's proposals on Items 1, 2, 3, 4, 6, 9, 10 and 11 set forth above, as modified by the Association's counterproposals to Items 1,3 and 4.

Second, as for Item 5, it is recommended that the CBA add a provision for a spousal surcharge of \$300 per year.

Third, as for Item 7, the Cadillac Tax, it is recommended that the parties put into their CBA the language at Association Tab 3, pages 23-25.

Fourth, as for Item 8, it is recommended that the CBA not include a provision for co-insurance.

15. Fair Share

The Association proposes the addition of a Fair Share clause, as provided by Act 84 of 1988. The District opposes the addition of such a clause.

Discussion

The concept of Fair Share is a means for an employee organization such as the MAEA to compel employees to pay the costs associated with collective bargaining, i.e. the costs of representing all employees for issues of wages, hours and terms and condition of employment. Under Fair Share, the Association assesses the employees for only collective bargaining expenses and not for any other purpose. The Association has proposed Fair Share for several reasons. The primary reason is that under the law, the Association has a duty to represent all members of the bargaining unit, even if they are not members of the Association. The Association argues that it is unfair to burden the dues paying members of the Association with the costs of representing non-dues paying members. The non-dues paying employees benefit from the Association's services without paying for them. To the Association, these employees are "free riders."

The District opposes Fair Share on the grounds that requiring non- members to pay dues to a collective bargaining representative violates the First Amendment rights of freedom of association of the employees who choose not to be members. However, in **Abood v. Detroit Board of Education**, 431 U.S. 209 (1977), the United States Supreme Court addressed this concern, and held that the concept of Fair Share adequately protected the First Amendment rights of non-members because their dues would not be used to support activities or causes unrelated to collective bargaining.

The Association's arguments for including a Fair Share have merit. The proposal will cost the District virtually nothing. The business manager would simply add a deduction for Association dues to the payroll system and make adjustments for those employees who wanted to be considered as Fair Share employees. As pointed out by the Association, 12 of the 27 schools in the Intermediate Unit have CBAs with Fair Share provisions for their professional employees. Two nearby districts, Upper Dauphin Area School District and Juniata County School District, recently included Fair Share in their CBAs.

Recommendation

Add to the CBA a Fair Share clause that complies with the provisions of Act 84 of 1988.

All Other Matters

Any other matters not specifically addressed herein are recommended to be withdrawn. As noted above, any agreements mutually made prior to the commencement of fact-finding that are not specifically addressed in this Report are recommended to be included, as agreed upon, in the new Agreement.

March 28, 2016
Harrisburg, Pennsylvania

Thomas P. Leonard, Esquire
Fact-Finder

EXHIBIT A
SALARY SCHEDULES

2015-16

2016-17

2017-18

Millersburg Area EA							
Salary Schedule – Year 1							
2015-16							
From Top	Old System	B	Inst II	M	M + 15	M + 30	M + 45
14	1	40,360	41,762	43,152	44,561	45,961	47,337
13	2	41,539	42,948	44,355	45,760	47,167	48,550
12	3	42,718	44,141	45,561	46,981	48,403	49,800
11	4	43,897	45,329	46,756	48,185	49,622	51,026
10	5	45,853	47,298	48,739	50,177	51,622	53,041
9	6	47,909	49,364	50,817	52,271	53,731	55,163
8	7	50,091	51,555	53,022	54,488	55,961	57,404
7	8	52,415	53,895	55,372	56,849	58,338	59,791
6	9	54,911	56,401	57,892	59,382	60,881	62,348
5	10	57,598	59,100	60,602	62,105	63,620	65,097
4	11	60,500	62,017	63,530	65,044	66,572	68,064
3	12	63,644	65,171	66,700	68,226	69,766	71,269
2	13	67,053	68,593	70,131	71,670	73,227	74,793
1	14	70,666	72,211	73,758	75,303	76,866	78,413
Career	15	74,440	75,994	77,546	79,098	80,666	82,221

Millersburg Area EA
Salary Schedule – Year 2
2016-17

From Top	Old System	B	Inst II	M	M + 15	M + 30	M + 45
14	1	40,474	41,878	43,272	44,684	46,086	47,463
13	2	41,653	43,064	44,475	45,883	47,292	48,676
12	3	42,832	44,257	45,681	47,104	48,528	49,926
11	4	44,011	45,445	46,876	48,308	49,747	51,152
10	5	45,967	47,414	48,859	50,300	51,747	53,167
9	6	48,023	49,480	50,937	52,394	53,856	55,289
8	7	50,205	51,671	53,142	54,611	56,086	57,530
7	8	52,529	54,011	55,492	56,972	58,463	59,917
6	9	55,025	56,517	58,012	59,505	61,006	62,474
5	10	57,712	59,216	60,722	62,228	63,745	65,223
4	11	60,614	62,133	63,650	65,167	66,697	68,190
3	12	63,758	65,287	66,820	68,349	69,891	71,395
2	13	67,167	68,709	70,251	71,793	73,352	74,919
1	14	70,774	72,322	73,871	75,418	76,984	78,533
Career	15	74,532	76,089	77,643	79,196	80,767	82,323

Millersburg Area EA
Salary Schedule – Year 3
2017-18

From Top	Old System	B	Inst II	M	M + 15	M + 30	M + 45
14	1	42,169	43,616	45,051	46,503	47,946	49,341
13	2	43,348	44,802	46,254	47,702	49,152	50,554
12	3	44,527	45,995	47,460	48,923	50,388	51,804
11	4	45,706	47,183	48,655	50,127	51,607	53,030
10	5	47,662	49,152	50,638	52,119	53,607	55,045
9	6	49,718	51,218	52,716	54,213	55,716	57,167
8	7	51,900	53,409	54,921	56,430	57,946	59,408
7	8	54,224	55,749	57,271	58,791	60,323	61,795
6	9	56,720	58,255	59,791	61,324	62,866	64,352
5	10	59,407	60,954	62,501	64,047	65,605	67,101
4	11	62,309	63,871	65,429	66,986	68,557	70,068
3	12	65,453	67,025	68,599	70,168	71,751	73,273
2	13	68,862	70,447	72,030	73,612	75,212	76,797
1	14	72,386	73,972	75,555	77,137	78,736	80,321
Career	15	75,911	77,496	79,079	80,661	82,261	83,846