

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Labor Relations Board

**In the Matter of the Employees of
Old Forge School District
Case No. ACT 88-17-11-E**

REPORT AND RECOMMENDATIONS

Diana S. Mulligan, Fact Finder

Hearing: June 16, 2017

John G. Audi, Esq., for the School District

Kieran G. Kenny, Esq., for the Union

BACKGROUND

Pursuant to ACT 88 of 1992 and the Pennsylvania Employee Labor Relations Act, Act 195 of 1970, notice was received by the Pennsylvania Labor Relations Board (PLRB) from the Pennsylvania Bureau of Mediation that no agreement had been reached between the Old Forge School District (SD) and the Pennsylvania Social Services Union, SEIU 668, Clerical Unit (Union). By letter dated May 16, 2017, the PLRB appointed the undersigned to act as Fact Finder with the authority set forth above. Subsequent to such notice, the parties were duly notified and a hearing was held on June 16, 2017 in Old Forge, Pennsylvania at which time all parties in interest were afforded a full opportunity to present testimony and introduce documentary evidence.

The parties identified the following issues as still being in dispute:

1. Article 6 – Wages
2. Article 8 – Benefits
3. Article 8 – Life Insurance

This report contains Recommendations for the unresolved issues which constitute the settlement proposal upon which the parties are now required to act, as directed by statute and PLRB regulations. Without any comment, the issues already agreed upon by the parties and the undisputed portions of the Collective Bargaining Agreement (CBA or Contract) shall be incorporated without change as part of this Report.

A vote to accept the Report does not necessarily constitute endorsement of the Recommendations but, rather, represents only an agreement to resolve the disputed issues. Pursuant to statutory authority, the Report will be released to the public after the consideration period if rejected by either party.

The parties are hereby directed to review the Report and, within ten (10) calendar days of its issuance, notify the PLRB and each other if they accept or reject the Recommendations. It is imperative that confidentiality of the Report be maintained during the ten (10) day consideration period.

Issue #1 – Wages

Position of the Parties

	Union	SD
2011-2012	\$.75/hr., added to base, paper raise	\$0
2012-2013	\$.75/hr., added to base, paper raise	\$.75/hr., paper raise
2013-2014	\$.75/hr., added to base	\$.75/hr., paper raise
2014-2015	\$.75/hr., added to base	\$.50/hr., paper raise
2015-2016	\$.65/hr. Added to base	\$.50/hr., retro
2016-2017	5% added to base	2.1%
2017-2018	5% added to base	2.1%
2018-2019	5% added to base	3%

Since the 2016-2017 school year is over, post-hearing, the parties agreed to add another year to the Contract. The Union proposed a 5% salary increase for 2019-2020; the SD proposed to change the 2018-2019 increase to 2.1% and add 3% for 2019-2020.

Discussion

The prior CBA expired on August 31, 2011 as did the Agreement for the professional employees (teachers). This unit decided to wait until the teachers' Agreement was finalized before it executed its own CBA. Since it is difficult to predict the future, I think no one anticipated that the negotiations for the teachers would last five (5) years, with an intervening unsuccessful Fact Finding, a strike and an unsuccessful Final Best Offer Interest Arbitration. According to the SD (Hearing Binder, tab 1, p. 1), the support staff felt that, in the past, when they settled before the teachers, they ended up making concessions (especially in pay and benefits) which the teachers refused to make in their own Agreement. This prolonged wait seems to have done no one any good, including the teachers. It is difficult to determine when the teachers had the better deal since there is no information about the cost of step movement, but it appears their best result would have been from the Fact Finder (freeze in 2011-2012 by agreement; 2.25% plus step in 2012-2013; total freeze in 2013-2014; 2.25% plus step in 2014-2015). The Interest Arbitrator recommended the SD's final offer of \$0 increase through 2013-2014 and 2.75/2/2% inclusive of step from 2014-2017. While the teachers did get step movement plus ½ retro step for five (5) years, their current Agreement shows them receiving 2.1/2.1/3%, step inclusive, from 2016-2019. One can only speculate what Contract the clerical and aide units might have had if they agreed to a successor CBA in 2011 when the SD still had a positive fund balance. In 2009, the SD's fund balance was \$547,677, declined to \$57,631 in 2011 and was a negative \$22,308 in 2012, a situation the Interest Arbitrator found to be "shocking." Things deteriorated even further in 2013 when the fund balance declined to a minus \$264,582. The SD climbed out of the hole in 2015 to reach a positive fund balance of \$113,765, but only because it had a bond refinance and reissue.

I have had numerous Fact Findings (mostly with teachers) over a long career and have become familiar with how either party can skew statistics in order to promote its position. For example, a SD will show that its teachers earn a higher average salary than the majority of the SD's population (in which calculation the SD will include infants and retirees); that it should not be penalized for its prudent fiscal policies by keeping a fund balance well above the recommended amount, much of which is restricted anyway; that its teachers enjoy better benefits and working conditions than others in the comparison group. The Association might show how a district could well afford its demand by arguing that the higher pay of retirees will be offset by young new hires (without taking into account the expense of

retiree payouts, such as unused sick days, early retirement incentive, etc.); that the tax effort is low; that the cost of artificial turf on the football field costs twice as much as their “modest” proposal. I heard none of this in Old Forge because the SD is simply running out of money with few resources it can tap to find more in the future. The Final Interest Arbitrator for the teachers' Agreement was of the opinion that a diminished pay is preferable to the financial failure of the SD in which case there would be no pay at all. The SD's unfortunate financial situation is further complicated by increasing PSERS obligations, lower or static contributions from federal and state governments and a renewed effort in the Pennsylvania legislature to repeal property taxes which are a large part of the SD's income.

Prior to the hearing, I asked the parties to confirm my understanding of their offers. The “paper” raises are increases for a period in the past which the employees will receive in the future and the “retro” is a lump payment for a period in the past. According to the Union's demand, if we take the actual current salary of the lowest paid clerical worker (\$9.42 per hour), by the 2019-2020 school year, that employee (according to my calculations) would be earning \$15.89 per hour; the current highest paid clerical employee (now \$20.11 per hour) would be earning \$28.89. According to the SD's proposal, the lowest paid clerical employee would earn \$13.05 by 2019 and the highest paid would earn \$24.79.

I also note there was no SD proposal to eliminate the Early Retirement Incentive (ERI) for this unit. (A 25+ year employee, according to the expired CBA, gets 70% of her final pay, a contribution of \$8,500 toward the retiree's health care premium until she reaches Medicare age with any excess premium cost split 50/50. Therefore, this unit still retains this generous benefit. They also get a longevity payment ranging from \$45 for each year of service after fifteen (15) years to \$200 for each year of service after thirty five (35) years (although only two (2) employees will be eligible for this benefit by 2018). With the SD even struggling even to survive, I do not see how anyone could possibly recommend the Union's proposal. Both parties are not that far apart in the first few years (especially if the \$.75/\$0 proposals are not considered). The major divergence comes when the salaries increase on a percentage basis. I have not seen 5% raises in years. Even in the situation where an employer acknowledges that certain of its employees are underpaid relative to others in similar job classifications, it will make a “market adjustment” to bring their pay up to standard and then apply the percentage rate given to the other employees in the unit.

Recommendation

2011-2012	\$.25 paper
2012-2013	\$.75 paper
2013-2014	\$.75 paper
2014-2015	\$.50 paper
2015-2016	\$.50 retro
2016-2017	2.10%
2017-2018	2.10%
2018-2019	2.50%
2019-2020	3.00%

Issue #2 – Benefits

Position of the Parties

The SD proposed the following for health care benefits:

Office Visit Copays: Primary Care/GP - \$20; Specialist - \$25; Urgent Care - \$40; ER - \$75
Prescriptions: \$15/\$30/\$50
Premium Share: \$125/yr. For individual to maximum \$375/yr, for family
Deductible: \$250 for individual to maximum of \$750 (3 individuals)

The Union did not offer its own proposal, but agreed to accept the SD's language on this issue PROVIDED that the SD agrees to the Union's wage proposal.

Discussion

Despite the fact that most employees, both in the public and private sectors, have been contributing to the costs of their health care for years, many school districts in Lackawanna and surrounding counties absorbed the entire cost until recently. The SD's proposal for deductible, copays and prescriptions is the same for the clerical and aides' units as those found in the teachers' Agreement. The only difference is that the teachers pay a \$250/750 premium share. This amount remains the same for the entire Contract term. This differs from the usual employer argument, when a union wants a lesser cost sharing arrangement for lower paid employees, that the premium is the same for everyone no matter how much or how little money the employee earns.

The Union has costed out, in its hearing binder, what the employees would pay under both the SD and Union proposals for medical costs v. pay increases. According to the Union, if its pay proposal is recommended, all employees would realize a net gain, but, if the SD's proposal is recommended, except for the highest paid employee, they would lose money. The Union bases its calculations for employee costs on a national average provided by the CDC, PA Health and Human Services, confirmed by the Kaiser Foundation and the AMA. Who am I to argue with these sources of information, but virtually everyone at the hearing was surprised to see that these numbers show that a person visits a doctor or urgent care facility 7.8 times a year (but not too surprising if these people are children or have chronic ailments). What is really surprising and causes one to question these statistics, is the prescription data (Tier 1 RX – 4 per person per year; tier 2 RX – 7 per person per year and Tier 3 RX – 4 per person per year, adding up to 15 prescriptions per person per year). These people in the survey must be incredibly sick. Of course, the logical thing to do, in order to assess the cost each clerical employee at Old Forge incurred, is to ask them how many times they visit a doctor or how many prescriptions they take. This would provide a more accurate picture, but I doubt if many employees would be willing to divulge such information because of privacy issues.

The current tendency is to have employees pay a percentage of the premium rather than a flat rate. Given that the clerical unit has heretofore paid nothing towards increasingly expensive medical costs, assessing the same flat rate for the term of the CBA, accompanied by increases in salary is not a bad deal. The lowest paid employee in this unit will pay a mandatory \$1,125 premium share for Family (F) or Parent/Child (PC) coverage over three (3) years. (The premium share for Single (S) coverage is a total of \$375 over three (3) years, but no one in this unit has S coverage.) All other health expenses will be due to usage of the benefit and could possibly result in a loss for the lowest paid clerical employee, especially if that employee and her dependents are really sick and need a lot of prescriptions. (Under my salary Recommendation, the gain in salary over the term of the Contract for the lowest paid employee is \$5,405). The highest paid employee will, of course, make our better and everyone will benefit somewhat because the copayments are flat over three (3) years.

Recommendation

Since the 2016-2017 school year is history, accept the SD's proposed language for medical benefits beginning in 2017 and continuing throughout the Contract term.

Issue #3 – Life Insurance

Position of the Parties

The Union wants to increase SD paid life insurance from \$20,000 to \$40,000, same as the teachers. The SD opposes this demand for financial reasons.

Discussion

Outside of the fact that the teachers got this increase, the Union offered no other reason for its demand on this issue. Historically, the amount of life insurance is tied to the amount of salary. Using this criterion, the clerical unit has the proper amount of life insurance.

Recommendation

Maintain the *status quo*.

SIGNED _____ DATE _____
Diana S. Mulligan, Fact Finder

SIGNED _____ DATE _____
John G. Audi, Esq., for the School District

ACCEPT

REJECT

SIGNED _____ DATE _____
Kieran G. Kenny, Esq., for the Union

ACCEPT

REJECT