

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

AMALGAMATED TRANSIT UNION,
LOCAL 1552

v.

PENN HILLS SCHOOL DISTRICT

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CASE NO. PERA-C-11-226-W

PROPOSED DECISION AND ORDER

On July 19, 2011, the Amalgamated Transit Union, Local 1552 (Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Penn Hills School District (District) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). The Union essentially alleged that the District failed to bargain in good faith when it subcontracted transportation services and permanently furloughed bargaining unit bus drivers, mechanics and aides before the parties reached impasse.

On August 11, 2011, the Secretary of the Board issued a complaint and notice of hearing designating a hearing date of February 1, 2012, in Pittsburgh. A hearing was held on that date, and two more hearings were necessary. During the hearings on February 1, 2012, April 25, 2012 and June 13, 2012, both parties in interest were afforded a full and fair opportunity to present evidence and cross-examine witnesses. The complainant filed its post-hearing brief on August 30, 2012, and the Respondent filed its post-hearing brief on September 28, 2012.

The examiner, based upon all matters of record, makes the following findings of fact.

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 7-8).
2. The Union is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 7-8).
3. The bargaining unit includes school bus drivers, mechanics and matrons (aides). (N.T. 14).
4. The District and the Union were parties to a collective bargaining agreement (CBA) which was effective from July 1, 2006 through June 30, 2011. (N.T. 16-19; Union Exhibit 1; Respondent Exhibit AA).
5. At the beginning of the 2010-2011 school year, the bargaining unit contained 97 employes including the following: 12 aides; five mechanics; 78 drivers; and 2 drivers on disability. (N.T. 19).
6. The mechanics were twelve-month, full-time employes. The drivers were full-time/part-time employes who worked 10 months of the year. Under the CBA, drivers and mechanics had full medical insurance benefits covering prescription drugs and eye and dental care. Approximately 79 drivers and mechanics had health insurance through the District. (N.T. 20-21, 47).
7. Lori Krapf had been a bus driver since August 1996. She was furloughed by the District on June 10, 2011. Ms. Krapf has been the Union President since 2005. (N.T. 11-13).
8. Ingrid Stressnig is a bus driver and the Union Recording Secretary. (N.T. 53).

9. Thomas Washington became the Superintendent in March 2011. Rick Liberto has been the Director of Business Affairs since 2008. (N.T. 28, 36, 460; Union Exhibit 9).
10. Stephen Vak was the interim Superintendent from July 2010 through March 2011, and he was part of the District's negotiating team. (N.T. 629-632).
11. The District also provided in-house bus transportation to students attending private and parochial schools. Approximately 10% of the transportation was already outsourced to private subcontractors. Approximately 20 to 30 drivers were assigned to parochial or private school runs. Some bus runs are all public, some are all private or parochial and some are mixed. (N.T. 31-32; Union Exhibit 9 at 3).
12. Ms. Krapf and Mr. Liberto met on July 14, 2010. During that meeting, Ms. Krapf highlighted provisions of the CBA with Post-it notes that she wanted to address based on her review of other District bargaining units' collective bargaining agreements. (N.T. 38-40, 461; Respondent Exhibit A).
13. They reviewed Ms. Krapf's notes and discussed the possibility of increasing the sick-leave buyback for retiring drivers. Also, Mr. Liberto raised the issue of increasing employe healthcare contributions. They also discussed longevity and a buyout for employes who declined health insurance through the District. (N.T. 40-42, 462-463).
14. Sometime during the fall of 2010, the Union formed an eight-person negotiating committee. (N.T. 46).
15. Ms. Krapf and Mr. Liberto met again on October 27, 2010, in Mr. Liberto's office. During that meeting, Ms. Krapf and Mr. Liberto discussed the "prime time" clause for the mechanics. Mr. Liberto again addressed the issue of rising healthcare costs and told Ms. Krapf that the District wanted employes to contribute more towards their health care benefits. (N.T. 43-44, 462-464; Respondent Exhibit E).
16. After two meetings with Mr. Liberto, Ms. Krapf knew that healthcare and PSERS retirement were issues for the District. Mr. Liberto had indicated that the District would be willing to give more on other contractual items, such as sick days and higher wages, in exchange for employes paying more for their healthcare. (N.T. 47).
17. On or about November 17, 2010, Ms. Krapf went to the District's Transportation Department and received a letter by Bruce Dice, Esquire, the District's solicitor, dated November 16, 2010. This letter informed the Union that the District could obtain transportation services from a contractor at significant savings. (N.T. 49, 190-191; Respondent Exhibit C).
18. Mr. Dice's November 16, 2010 letter provides as follows:

Dear Ms. Krapf:

. . . . The Penn Hills School District has performed a cost analysis of the collective bargaining agreement referenced above. The District has concluded that the services performed under the collective bargaining agreement can be outsourced at a substantial savings to the District.

We are about to start collective bargaining and will want your input and direction on the proposed request for proposals/specifications. We believe that you can lend valuable

insight into this process and want you to participate as we continue to prepare such a request for proposals/specifications.

We would encourage you to take an active role in providing the District with your proposal if you are interested in bidding on a request for proposals / specifications. We will be setting a date for our first negotiation session in the very near future.

(Union Exhibit 4; Respondent Exhibit C).

19. Also on November 17, 2010, Ms. Krapf requested copies of the cost analysis referenced in Mr. Dice's November 16, 2010 letter. Ms. Krapf returned with Ms. Stressnig that same afternoon, at which time Mr. Liberto gave her two spreadsheets containing cost data and a calculator tape showing medical insurance costs for the bargaining unit in the amount of \$1.089M. Ms. Krapf and Ms. Stressnig reviewed and discussed these three documents with Mr. Liberto that afternoon. (N.T. 54-65, 192-193, 466; Union Exhibits 5, 6 & 7; Respondent Exhibit D).
20. One spreadsheet given to Ms. Krapf was titled "Comparison of 2009-2010 Contracted Transportation Rates." The calculations on this document demonstrated a savings to the District of \$1.7 million in estimated yearly costs. The first-year savings would be approximately \$3 million due to the sale of the bus fleet and the elimination of the need to purchase 7 new buses, imposed by the State Police, at a cost of \$80,000 per bus. Twenty-one buses at the time needed to be replaced over three years. (N.T. 56-60, 469, 471-472; Union Exhibit 5; Respondent Exhibit D).
21. The \$1.7M in savings included the elimination of both healthcare and PSERS retirement costs. The cost savings of \$1.089M contained on the calculator tape is based solely on the elimination of healthcare costs. (N.T. 64; Union Exhibits 5 & 7).
22. Also on November 17, 2010, Ms. Krapf wrote a letter to all bargaining unit members informing them that the District conducted a cost analysis of transportation costs and that the District believed it could save money by outsourcing the transportation department. (N.T. 66; Union Exhibit 8).
23. On November 24, 2010, the parties' full bargaining committees met for the first formal collective bargaining session. Not one person on the District's bargaining committee during the 2006 negotiations was a member of the District's Bargaining Committee during the 2010-2011 negotiations. The Union had all eight of its committee members in attendance that day. The District committee was comprised of Mr. Bruce Dice Esq., Mr. Craig Alexander, Esq., Mr. Rick Liberto and Ms. Becky Moser. The parties met at the administrative offices in the rear of the Linden Middle School. This is where all of the bargaining sessions were held. (N.T. 67-68, 276, 349).
24. At the November 24, 2010 bargaining session, Mr. Dice explained that the District was interested in outsourcing but that there were no decisions from the school board yet. The District informed the Union that it intended to send out a request for proposal (RFP). The Union was invited to obtain a copy of the RFP at Mr. Liberto's office on December 1, 2010. (N.T. 69-70, 475-476).
25. At the same bargaining session, Mr. Dice told the Union committee that the District wanted to work with the Union and wanted the Union to submit their own proposal/ offer in response to the RFP. The parties did not negotiate any other items that day and set another bargaining session date for December 9, 2010. (N.T. 70-71, 196-197).

26. The first RFP was distributed on December 1, 2010, and Ms. Krapf obtained a copy from Mr. Liberto on that date at his office. (N.T. 72, 196-197, 477; Union Exhibit 9; Respondent Exhibit E).
27. Ms. Krapf attended a school board meeting on December 6, 2010, and gave a speech to the school board during that meeting in an attempt to humanize the bus drivers. In her speech, Ms. Krapf addressed some of the District's recent expenditures, such as the new \$60M high school. She challenged aspects of Mr. Liberto's cost analysis as well as the list of other Districts that have outsourced transportation. (N.T. 74-77; Union Exhibit 10).
28. Additionally, Ms. Krapf stated to the school board members as follows:

We have proven time after time with our safety record, community roots and accountability that we are the correct choice for the transportation of Penn Hills students.

We are 98 strong and 73 of us are residents and taxpayers of Penn Hills. We are parents, grandparents, aunts, uncles, friends and protectors of your children. Why would you want to change that?

(Union Exhibit 10).
29. Also at the school board meeting, the Union presented a PowerPoint handout to the school board members. Ms. Krapf spoke at every school board meeting after December 6, 2010. (N.T. 79-80; Union Exhibit 11).
30. At the December 9, 2010 bargaining session, Mr. Dice reported to the Union committee that the school board had not yet given definite direction on whether they were going to subcontract, but they were proceeding with the distribution of the RFPs. Also at that meeting, Mr. Dice asked the Union whether it was going to make its own proposal. (N.T. 81-82, 481-482).
31. The Union responded that it could not bid because the RFP required a bidding company to have a place to keep and maintain buses, to buy buses and move buses to a non-District facility. At that point, Ms. Krapf closed her book and stated the following: "we [are] sorry that we wasted [your] time." Mr. Dice responded: "no, don't go, let's talk about this and see because the school board's not giving us a concrete way of going. Let's sit here and discuss what we can." (N.T. 82, 196-197).
32. The parties then discussed a possible wage freeze in year one and bonuses for primetime mechanics when they do extra driving. The Union also proposed increasing healthcare contributions from .5% of their monthly insurance premium to 3%. (N.T. 83-84).
33. The Union's and the District's proposals were not conveyed in writing during the December 9, 2010 bargaining session. The District proposed, and the Union was willing to agree, to eliminate overtime pay for mechanics who drive buses when substituting for other drivers during the regular workday. The District also asked for more than a one-year wage freeze. (N.T. 85-86, 93).
34. During the same bargaining session, Mr. Dice recommended to the Union committee that a successor clause be placed in the RFPs. The Union did not agree at that time. This was not a reference to the successor clause already contained in the parties' CBA at page 22 Article 11. After Ms. Krapf checked with the Union's national Union, she sent a letter to Mr. Liberto on December 13, 2010 requesting that the successor clause be placed in the RFPs. (N.T. 86-88, 196-197, 309-310, 482; Union Exhibit 12; Respondent Exhibit F).

35. Mr. Liberto performed a cost analysis, which was dated January 4, 2011, based on the Union's prior proposal, which was as follows: Eliminate 21 District operated runs for private and parochial schools; eliminate overtime wages for mechanics serving as substitute drivers; increase health care contributions from .5% to 3%; and a wage freeze in the first year. The proposed Union savings for the 11-12 school year was \$875,350 with a net savings of \$157, 150. (N.T. 483-486; Respondent Exhibit G).
36. The parties next met on January 10, 2011. Interim Superintendent Vak also attended this meeting on behalf of the District, and the parties discussed advertising the second RFP (containing the successor clause) for bidding. (N.T. 89-90, 488, 492; Respondent Exhibit H-2).
37. At this bargaining session, Mr. Dice suggested that the Union give up parochial and special needs bus runs. He stated that the District did not want the bargaining unit employes to lose their jobs and explained that this proposal was one way that they could keep their jobs. Eliminating the special needs and parochial school runs would eliminate the need for the District to purchase seven new buses. (N.T. 90-91).
38. The Union rejected eliminating the special needs runs because all the aides on those runs would lose their jobs. The Union counter proposed the following: eliminating private and parochial school runs, but maintain the special education runs; re-evaluate tool allowances for mechanics; eliminate overtime for mechanics substituting for bus runs; wage freeze; and no new hires. Also the parties discussed eliminating jobs through attrition. Every year as employes retired, their bus runs would be outsourced. The District again raised the issue of employes paying more for their healthcare. (N.T. 90-92, 282-283).
39. The District's position on health care at this time was that it wanted the employes to pay 100% of healthcare costs at 6000 thousand dollars per year or \$600 per month for a single 10-month employe and \$15,000 per year for family coverage or \$1500 per month for 10-month employes. Mechanics, who drove two times in one week, would receive an extra hour of overtime, even if they drove during their regular mechanic shift within the 40-hour period. (N.T. 92-93).
40. Although no written proposals were exchanged during the January 10, 2011 bargaining session, the parties agreed that mechanics, who received \$950 per year for tools, would now receive up to \$450 per year for tools with receipts. The Union proposed a five-year collective bargaining agreement, a wage freeze for the first year of the contract, a 2% wage increase for every year thereafter. The District Committee conveyed that the school board was still not providing them with any direction on subcontracting and rejected the Union's proposal based on the projected \$1.7M in savings. (N.T.93, 95-97, 359-360, 489; Respondent Exhibit G).
41. After the January 10, 2011 session, Mr. Liberto drafted the first written District proposal, designated at the hearing as Respondent Exhibit J, for presentation at the upcoming January 17, 2011 bargaining session. The District decided, however, not to present that proposal first and made a different offer first. (N.T. 495, 498-500).
42. There was also a school board meeting on January 10, 2011, at which Ms. Krapf requested that the board members attend negotiations. Five school board members appeared for the January 17, 2011 bargaining session: Cathy Mowry, Carol Faggioli, Margie Krogh, Carl Barbarino and John Zacchia. Margie Krogh left to avoid a quorum at the negotiation table, but she remained on the premises within the building. Going into this meeting the Union was aware that the District wanted to subcontract. (N.T. 97-99, 199, 253-254, 285-286, 326, 329-330, 344-345, 361-363, 497-498, 632-633).

43. During the January 17, 2011 bargaining session the District bargaining committee presented the Union bargaining committee with several written proposals. At 9:12 a.m. on January 17, 2011, before the bargaining session, Mr. Liberto revised Respondent Exhibit J which then became Respondent Exhibit I at the hearing. During the January 17, 2011 bargaining session, the District first proposed Respondent Exhibit I and initially proposed that the employees pay 100% of their healthcare. During that same bargaining session, the District changed its position and proposed requiring that the employees pay for 65% of their healthcare. (N.T. 99-100, 330-331, 498-500, 636-653; Union Exhibit 13; Respondent Exhibits I, J, K, N & HH).
44. During that same bargaining session, the Union changed its position on healthcare contributions. They moved from contributing 3% to 4%, to 5%, to 6%, to 7% and then finally they moved to 10%. The parties discussed outsourcing the special needs and parochial school bus runs. The Union held to its position of maintaining special needs runs in-house. Both sides agreed that no new employees would be hired if the current employees kept their jobs. They also discussed eliminating the \$.13 increase for employees when someone retires. The school board members did not actively participate in negotiations at the January 17, 2011 bargaining session, but they did participate in private discussions during caucus with their team. (N.T. 100-101, 285-286, 327, 330-332, 345, 363, 438-439).
45. The District's first written proposal given to the Union during the January 17, 2011 bargaining session, with school board members present, provides as follows:

Transportation Negotiation
District Proposal
January 17, 2011
(I)

DISTRICTS OFFER IS A PACKAGE PROPOSAL. IT IS EITHER ACCEPTED OR REJECTED IN TOTAL. ANYTHING NOT IN THE DISTRICT PROPOSAL STAYS AS IS IN THE CONTRACT.

- I. Three (3) Year Contract
- II. Salaries
 - a. 2011 - 2012 - Wage Freeze
 - b. 2012 - 2013 - Wage Freeze
 - c. 2013 - 2014 - 1% Increase
- III. Mechanics will give up over time wage for driving buses during normal working hours
- IV. Eliminate tool allows for mechanics
- V. Contract out all private, parochial and special education runs
- VI. All employees would contribute 65% of medical, dental and vision premiums
- VII. Any driver resignation, retirement or termination will be replaced with a contracted service
- VII. Eliminate hourly adjustment due to retirement

(Union Exhibit 14; District Exhibit I).

46. Each of the items contained in District Exhibit I was discussed during the January 17, 2011 bargaining session. Also, the Union was provided with a copy of the RFP containing the successor clause. (N.T. 290-291, 318, 350-351).
47. The District's bargaining committee and school board members privately caucused during the January 17, 2011 bargaining session several times. During their caucus, they met in Mr. Liberto's office, and Mr. Liberto typed other versions

of their written proposals on Mr. Liberto's computer. School Board President, Carl Barbarino credibly testified that Respondent Exhibit I existed that day and that written package proposals were given to the Union. He specifically remembered that Respondent Exhibit I was given to the Union negotiating team and the Union rejected it. Mr. Liberto also credibly testified that he typed Respondent Exhibit I on January 17, 2011, and gave copies to the Union representatives that day. All items contained in Respondent Exhibit I were discussed at the January 17, 2011 session. Superintendent Vak credibly testified that he saw Respondent Exhibits I, J & K physically passed across the table to the Union. The parties stipulated and agreed that District bargaining committee member, Craig Alexander, would testify that Respondent Exhibits I, J & K were physically given to the Union on January 17, 2011. (N.T. 331, 363-364, 437-440, 499-500, 634-638, 641, 651-653; Union Exhibit 14; District Exhibits I & HH).¹

48. The Union expressly rejected Respondent Exhibit I, at which time the District team caucused in Mr. Liberto's office. They returned with the previously written proposal which contained more wages in the second year, which was Respondent Exhibit J. After the Union rejected Respondent Exhibit J, the District team again caucused and changed the proposal to reduce the healthcare contribution from 65% to 60%. They created a new written proposal and returned to the bargaining table and offered it to the Union. This third written proposal handed to the Union on January 17, 2011 was admitted as Respondent Exhibit K at the hearing. The order in which the District's written proposals were handed to the Union was Respondent Exhibits I, J, K. (N.T. 441, 501-504, 636-653; Respondent Exhibits K & HH).
49. The second District written proposal presented to the Union during the January 17, 2011 bargaining session provides as follows:

Transportation Negotiation
District Proposal
January 17, 2011

DISTRICTS OFFER IS A PACKAGE PROPOSAL. IT IS EITHER ACCEPTED OR REJECTED IN TOTAL. ANYTHING NOT IN THE DISTRICT PROPOSAL STAYS AS IS IN THE CONTRACT.

- I. Three (3) Year Contract
- II. Salaries
 - a. 2011 - 2012 - Wage Freeze
 - b. 2012 - 2013 - 1% Increase
 - c. 2013 - 2014 - 1.5% Increase
- III. Mechanics will give up over time wage for driving buses during normal working hours
- IV. Eliminate tool allows for mechanics
- V. Contract out all private, parochial and special education runs
- VI. All employees would contribute 65% of medical, dental and vision premiums
- VII. Any driver resignation, retirement or termination will be replaced with a contracted service
- VII. Eliminate hourly adjustment due to retirement

(Respondent Exhibit J).

¹ The Union objected to permitting District bargaining committee member Craig Alexander to testify as a fact witness regarding the exchange of the District's written proposals at bargaining sessions. Although Mr. Alexander is one of the District's attorneys, he did not participate as an advocate at the hearing and he did not examine witnesses. I found that he was competent to testify and that neither the rules of professional conduct nor the rules of evidence precluded his testimony. Although I was prepared to permit his testimony, the parties entered into a stipulation instead.

50. The second written package proposal contained an extra 1% wage increase during the second year of the contract. School board president Carl Barbarino credibly testified that this proposal was given to the Union and the Union rejected it. (N.T. 439-440).
51. Also during the same bargaining session, the District caucused and drafted a third written package proposal presented as Respondent Exhibit K. In that proposal, the District offered to lower the employe healthcare contribution from 65% to 60% and take back the 1% wage increase in the second year of the contract. (N.T. 109, 441; Respondent Exhibit K).
52. School Board President Carl Barbarino credibly testified that the District representatives actually handed to the Union and the Union actually received all three of the District's written proposals. Mr. Barbarino also received a copy of each written proposal. Once the Union received their copy of each proposal, the parties reviewed each proposal line by line. Five school board members were present at the January 17, 2011 bargaining session to close a deal with the Union. The Union rejected all three proposals because of healthcare. Had the Union accepted any of the three written proposals offered by the District, the board would have approved a contract that day. (N.T. 441, 446-447, 504, 621).
53. The District's proposals did not come close to closing the financial gap between the costs of maintaining in-house transportation and the cost of subcontracting, but the District would have agreed to these proposals to get a contract with its employes. (N.T. 626).
54. During the January 17, 2011 bargaining session, the District reduced its healthcare contribution proposal from 65% to 60%, and the Union increased its proposed contribution to 20%. (N.T. 109).
55. After the January 17, 2011 bargaining session, the Union sought legal counsel, and the parties next met on February 3, 2011. By letter dated February 1, 2011, the Union's new attorney, Robert Eberle Esquire, requested information from the District for bargaining. Any information, such as cost analyses, that was requested by the Union was provided by the District. (N.T. 110-111, 184, 199-200; Union Exhibit 16).
56. There were no school board members at the February 3, 2011 bargaining session. During this session the Union decided to hold to the same position that it held at the end of the January 17, 2011 bargaining session. The parties briefed Mr. Eberle on their positions and addressed the list of subjects covered in the prior bargaining sessions. Mr. Eberle advised the Union not to make any more concessions. (N.T. 112-113, 254-255, 536-539).
57. Prior to the February 9, 2011 bargaining session, Mr. Liberto created another written proposal at the request of the school board, which contained a written document that is identical in content to Respondent Exhibit J and which was admitted as Respondent Exhibit N at the hearing. The District gave this document to the Union as part of an orange packet that was given to the Union during their bargaining session on February 9, 2011. In this package proposal, the District proposed a wage freeze for the 2011-2012 school year, a wage freeze for the 2012-2013 school year and a 1.5% wage increase for the 2013-2014 school year. The District also proposed a medical contribution of 60%. Mr. Liberto gave the Union a document that he generated outlining the District's costs for employing bus drivers, mechanics and aides. The District written proposal, dated February 2, 2011 and designated proposal (III), is consistent with the District's verbal proposals during the February 3, 2011 bargaining session. The Union rejected this proposal. The District also provided documentation tracking the overtime for mechanics. (N.T. 113-115, 118-120, 148-

149, 176, 201, 205, 512-517; Union Exhibits 17, 18, 19 & 25; Respondent Exhibits N & II).

58. Also at the February 9, 2011 bargaining session, the Union presented a written proposal to the District which tracked the Union's position as of their prior meeting. The Union proposed that employees would contribute 15% to the monthly healthcare premium effective July 1, 2011 and 20%, effective July 1, 2014. (N.T. 120-121, 201; Union Exhibit 19).
59. During the February 9, 2011 bargaining session, Mr. Dice, told the Union committee that the employees would have to make a more substantial contribution to healthcare. Also, Mr. Eberle stated that the Union was going to stay at its current position and further stated: "if you think further concessions are warranted, you may as well contract this out." (N.T. 122-123, 207, 537, 586).
60. The District provided documents to the Union listing the medical contributions of the District for each employee and salaries. The District's monthly cost for employee medical in 2011-2012 school year was \$72,906.24; vision was 690.00; and monthly dental coverage was 5189.46. (N.T. 123-125; Union Exhibits 20 & 21).
61. Mr. Liberto performed a cost analysis of the Union's February 9, 2011 proposal, which did not include eliminating the .13 raise for employees whenever an employee retires. The cost of the Union proposal would be \$5.1M, and the cost of subcontracting would be \$4.05M at a savings of \$1.087M. During the 12-13 school year, Mr. Liberto projected that the District would save \$1.241M; in the 13-14 school year, the District would save \$1.168M; in the 14-15 school year, the District would save \$1.087M and during the 15-16 school year, the District would save \$1.062M. (N.T. 518-525, 539-542; Respondent Exhibits Q & JJ).
62. Later in February 2011, the District received bids from the outside contractors to provide transportation services to the District. The parties met again four more times in March 2011. (N.T. 126, 546-548).
63. Mr. Liberto provided copies of these bids to the Union. The two primary bidders were First Student and Durham. The bids were in the Union's possession before the March 10, 2011 bargaining session. (N.T. 126, 129-131; Union Exhibits 22 & 23).
64. The District provided Mr. Liberto's cost analysis to the Union, and at the Union's request, the District provided salary and healthcare figures for the bargaining unit employees. The actual cost figures were reduced by \$500,000 after the District received the sealed bids from Durham and First Student. (N.T. 524, 538, 543).
65. On March 8, 2011, Governor Corbett announced budget cuts of over \$4M to the District. (N.T. 590-591).
66. At the March 10, 2011 bargaining session, the Union committee was first introduced to the new superintendent, Thomas Washington. Also a state mediator was present from the Bureau of Mediation. (N.T. 132).
67. During this bargaining session, the Union was prepared to immediately increase its healthcare premium contribution another 5%, to 20%, rather than waiting until July 1, 2014. (N.T. 132-133).
68. At the March 10, 2011 meeting, the District informed the Union committee members that, due to Governor Corbett's March 8, 2011 education cuts, the District was going to lose at least \$4.5 million and that the school board needed time to determine how to accommodate the short fall. The District informed the Union committee that there was no point in proceeding with bargaining that day. (N.T. 133-135).

69. The next bargaining session was held on March 28, 2011, during which the parties exchanged verbal proposals. The District indicated that, in the first year, it would realize a \$2.9 million savings due to the sale of the buses. In the years after that, savings would average approximately \$1 million per year as a result of saving on the cost of healthcare and retirement contributions. The Union committee's response was that, even if the employees work for free, they could not match \$2.9 million in savings. (N.T. 135-136, 139).
70. At the same meeting, the Union offered to increase medical contributions to 30%, a salary freeze for the first two years, with a 2% raise for the last three years, and the elimination of two sick days. The Union still offered to outsource and eliminate jobs through attrition so no one would be furloughed. (N.T. 137-138, 140).
71. The Union also proposed early retirement incentives, similar to what was offered to the maintenance department at the District, and a severance package. Mr. Liberto prepared a cost analysis of the Union's proposal which the school board rejected. (N.T. 138-139, 548-552, 605-608; Respondent Exhibit R).
72. The parties and the state mediator next met on April 4, 2011. The District's bargaining committee indicated to the Union committee that the school board was seriously considering subcontracting transportation due to the cost savings and told the Union that the Board rejected the Union's proposed severance package and early retirement incentives. The District's attorney notified the Union committee during this meeting that the Union's proposals for a new collective bargaining agreement were not close to the savings contained in the bids received in response to the RFPs. (N.T. 143-144, 176, 209-210, 259-261, 374, 548, 607-608; Union Exhibit 34 at 4).
73. The Union bargaining committee members became very upset. They took a break. Upon return, the District brought up sick leave buybacks. The parties reached agreement about sick leave buybacks in a side letter of agreement. Nothing else was agreed to at the April 4, 2011 bargaining session. (N.T. 144-147, 553-556; Union Exhibit 24; Respondent Exhibit T).
74. The Side Agreement regarding sick days provides in relevant part as follows:
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2. In view of the possibility that the transportation department may be contracted out at the end of the term of the current labor agreement, and in order to maintain transportation service for the remainder of the current School Year, the District and the Union agree to the following provisions:
- a) In the event that the District contracts out the services covered under this Labor Agreement, or if the District and the Union failed to reach agreement on a collective bargaining agreement, the District will buyback all earned unused sick days at the rate of \$50.00 per day. In addition, any employee who does not use any sick days between April 6, 2011, and the end of the current School Year(s) will receive a one-time bonus of \$250.00.
- (Union Exhibit 24).
75. The Side Agreement placed the Union on actual notice that the District was seriously considering subcontracting transportation services. Also, Mr. Liberto represented that the District was leaning toward outsourcing transportation. (N.T. 211-212, 307, 386; Union Exhibit 24).

76. Ms. Krapf attended the April 5, 2011 school board meeting with prepared remarks that she presented in public to school board. In these remarks, Ms. Krapf reminded the school board that the bus drivers, mechanics and aides were members of the community with good safety records. Ms. Krapf sought an answer from the school board on whether the school board members were considering their bargaining proposals. (N.T. 150-153).
77. On April 12, 2011, Ms. Krapf wrote a letter to the school board members "formally requesting a vote on April 26, 2011 by the School Board members on retention or outsourcing of the Transportation Department." (N.T. Union Exhibit 48).
78. The parties met again on May 4, 2011 and signed the Side Agreement regarding sick leave buyouts. The parties further discussed healthcare and Mr. Dice tried to get an agreement on healthcare. He asked the Union if they would be willing to pay for 100% of their healthcare to keep their retirement. The Union said "Hell No!" The parties did not exchange new bargaining proposals during that bargaining session. They rehashed their prior proposals. No decisions were made or agreements reached during the May 4, 2011 session. (N.T. 154-155, 609, 619-620).
79. Ms. Krapf attended the school board meeting on May 9, 2011, with prepared notes. Ms. Krapf told the school board members that the District spent millions of dollars on new schools, gave 3% raises to the administration employees, gave \$1 million in a retirement buyout to 15 employees and spent \$75,000 in remodeling. (N.T. 156-157; Union Exhibits 29, 30 & 31).
80. At the May 9, 2011 school board meeting Ms. Krapf again publicly requested that the school board vote on contracting out transportation services. She requested the actual vote to occur during that meeting. The Board did not vote that day. In August 2011, a fact-finder found that the "Union requested and then vociferously pursued the request that the board take an up or down vote on the decision to contract out the work." On May 10, 2011, Mr. Dice wrote to Mr. Eberle stating that it has always been his opinion that the time was not right for the school board to vote on subcontracting because the District was continuing to negotiate. He also wrote that, while the Union may have wanted a vote, the District had not heard from Mr. Eberle that the time was right to bring the matter of subcontracting to a school board vote. (N.T. 153, 175-176, 378-379, 559-560; Union Exhibits 30 & 34).
81. Mr. Dice's May 10, 2011 letter provides, in relevant part, as follows:

In an effort to summarize where the parties are at the present time, I think it is important to point out that we have had approximately ten (10) negotiating sessions, with you and others with just the Union Representatives. Negotiations started last November and at that time we announced to the Union that the District is considering contracting out this service. We indicated to them at that time that the School District would be seeking requests for proposals to possibly contract this service out. We advised them that we would share those proposals with the Union and they would be given an opportunity to bid competitively on the bus driver service. That process then evolved and the District did receive proposals from two bus service providers. We have subsequently advised your negotiating team that the proposal of First Student is the proposal that the Board would consider in the event this service is contracted out. A provision in the proposal is that First Student will have to bargain with Local 1552, pursuant to a successor rights provision in our present CBA.

We have prepared detailed financial analysis [to] the Union's initial proposal and did a similar analysis on the First Student proposal. Both parties have shared this information back and

forth. We have kept up with other evolving proposals made by the Union costing each out and sharing those numbers with the Union in comparison to the First Student contract. At each instance, it was readily apparent that the First Student proposal was substantially cheaper than any proposal offered by the Union. I believe you said it best when you indicated that the Union could "never get close" to the First Student proposal and alternatively you argued that there is more of a personal touch with the present Union and drivers as it relates to the students. You raised safety concerns with going to First Student.

We have raised the issue of healthcare and asked that your Union consider paying 100% of the healthcare, should the school District be willing to offer such proposal, to see if we could close the Delta between First Student and the Union's position. The Union has rejected this concept outright.

This impasse is insurmountable at this point given the Governor's mandates concerning Pennsylvania Education and the other economic stresses that the Penn Hills School District faces at the present time.

We sincerely believe that, at this point in time, the Union "cannot get close" to the First Student offer and that any further bargaining along this line would not be fruitful. Your Union Representatives have repeatedly asked that the [School] Board go ahead and vote "up or down" to either keep or contract out the bus drivers. You have also indicated that there is no desire to "impact bargain" on the effects of contracting out the bus services.

We believe the Board of School Directors may hold a Special Meeting this Thursday, May 12, 2011 or they may have a meeting scheduled for Tuesday, May 24, 2011. In either of these sessions the vote on contracting this service out could happen.

If the Union is desirous of holding another session between now and then, we are prepared to do so; however, given the First Student proposal, the District can literally save millions of dollars each year and bargaining on the subject with the Union would not be fruitful. We would again offer to impact bargain if you are interested now or after the vote is taken.

As you know, with Governor Corbett's new proposed budget, the Penn Hills School District is even in worse financial shape than when these negotiations began. The School District must now make up an additional deficit in excess of four million dollars. With the continuing declining enrollment in the Penn Hills School [D]istrict, the net result will be significant professional and non-professional furloughs.

(N.T. 387; Union Exhibit 30; Respondent Exhibit U).

82. The Union had repeatedly requested that the school board take a vote on subcontracting while the District was willing to negotiate. (N.T. 213).
83. On Thursday, May 12, 2011, the school board called an emergency meeting and voted to outsource the transportation department at the District and contract with First Student after the expiration of the CBA. (N.T. 158-159, 213-214, 561-562; Union Exhibit 31; Respondent Exhibit U).

84. The District offered to impact bargain after the vote. (N.T. 214-215; Respondent Exhibits U, V & W).
85. On May 25, 2011, the parties met to engage in impact bargaining over the elimination of the transportation department jobs. The state mediator was present. The parties did not actually engaged in any impact bargaining. This was the first time that the Union raised fact-finding. (N.T. 160, 220, 377).
86. By letter dated May 27, 2011, Mr. Eberle, wrote to the District's attorneys acknowledging that "the negotiations had been significantly affected by, among other things, (1) the increasing cost of health insurance, (2) the fiscal restraint of the District, and (3) the Governor's announcement on March 8, 2011 of the proposed budgetary cuts for public school systems" and that "[t]he discussions at the table since February ha[d] been tempered by the knowledge that the District had a significant bid from First Student to take over the Transportation Department." Mr. Eberle further noted that "[he] felt that the Union was constrained by the fact that the District would be inevitably drawn to the First Student offer because that offer not only addressed the labor costs associated with the drivers but also allowed for a substantial one-time payment from First Student for the assets that was beyond the ability of the Union to address." In the same letter, Mr. Eberle informed the District's attorneys that he intended to request fact-finding from the PLRB. (N.T. 378; Union Exhibit 31; Respondent Exhibit Y).
87. By letter dated June 29, 2011, Mr. Eberle informed Mr. Dice that the PLRB granted the Union's request for the appointment of fact-finder. The letter further provides that "the District does not have the right to proceed with the outsourcing at this time because that amounts to a change in the status quo." (N.T. 170; Union Exhibit 33; Respondent Exhibit BB).
88. The bargaining unit employes' last day of bus driving was the last day of school, June 10, 2011, and their last day of employment with the District was June 30, 2011. (N.T. 188, 270).
89. The CBA contains a "successor clause" which provides as follows:
- The Penn Hills School District agrees that, in the event the transportation services operation is leased or sold to an agency other than the School District, this collective bargaining agreement shall be made part of the sales transaction and be binding upon the successor to the District, unless such terms of sale are found to be contrary to the law.
- (Respondent Exhibit AA, Article 11 at 22).
90. Collective bargaining agreements going back to 1974 contained the same successor clause. (N.T. 566-567; Respondent Exhibit GG).
91. On July 19, 2011, The Union filed the instant unfair practice charge. (Board File).
92. The District and Union participated in a fact-finding hearing before fact-finder Thomas L Hewitt on July 21, 2011. The fact-finder issued his fact-finding report on August 1, 2011. The District rejected the fact-finder's report on August 11, 2011. (N.T. 170-174; Union Exhibit 34).
93. The District challenged the fact-finding request and procedure as untimely both before the state appointed mediator and the fact-finder. (Union Exhibit 34; Respondent Exhibit Z).

94. Chelsea Dice, Esquire one of the District's attorneys, wrote to Mediator Michael Yagercik. Therein she rejected the timeliness of the Union's fact-finding request under Section 11-22-A of Act 88 and stated the following:

Penn Hills School District ends it[s] fiscal year on June 30th of each year and according to our records an Act 88 Mediation Notice was sent to you on November 30, 2010. Thus it is clear that it has been well over 45 days since this matter has been mediated and the [Union] has had ample time to request fact-finding, which they choose not to pursue. The first time we hear of "fact-finding" was May 25, 2011 after the vote by the Board of School [Directors] on May 12, 2011 was taken at the request of [the Union].

(Respondent Exhibit Z).

95. The fact-finder proposed a four-year contract with the Union contributing 30% to medical insurance premiums; a reduction in skill differential; elimination of the \$.13 per hour raise for employes when one employe retires and switch to a flat rate wage increase for employes with fifteen or more years with the District; a wage freeze for the first year; a 2% wage increase in the second year; a wage freeze in the third year; and a 2% wage increase in the last year. The fact-finder also rejected replacing employes with contracted employes through attrition. The fact-finder also denied an early retirement incentive, a severance proposal, as well as the immediate outsourcing of private, parochial and special needs runs. The fact-finder also concluded that the Union's concessions were considerably less than the projected savings to the District from outsourcing. (N.T. 245; Union Exhibit 34).
96. By letter dated August 8, 2011, the District notified the Secretary of the Board that it rejected the fact-finding report. By letter dated August 10, 2011, the Union notified this Board that it accepted the fact-finding report. On August 11, 2011, the Secretary of the Board issued a Notice of Fact-Finder's Report indicating the Board's intent to publish fact-finder's report, pursuant to Act 88 of 1992. (N.T. 170-175; Union Exhibits 34, 35, 36 & 37).

DISCUSSION

The Union argues that the parties were not at impasse when the District voted to contract out transportation services and then implemented that decision effective July 1, 2011. (Union's Post-hearing Brief at 14). The Union maintains that the parties were not at impasse because the fact-finding process had not concluded and the parties were not at de facto impasse because the District never provided any proposal that the Union could have taken back to its membership for a vote. (Union's Post-hearing Brief at 14). The Union contends that the District committee repeatedly maintained that the school board was not giving direction to them on subcontracting and that most of the bargaining consisted of the District's "requests for the Union to bargain against itself and give more and more concessions in a one-sided effort to find a point that the District Committee and the Board would find acceptable." (Union's Post-hearing Brief at 14).

The Union also argues that the District was not privileged to contract out transportation services pursuant to the successor clause of the CBA because the District never attempted to contract out these services *during the term of the CBA*. (Union's Post-hearing Brief at 13, 15) (emphasis added). The Union further contends that "[o]nce the District undertook to negotiate over the post-expiration contracting-out of the transportation function, the District was bound by the basic rule requiring the parties to reach impasse or agreement before the District could act unilaterally." (Union's Post-hearing Brief at 15). The Union's arguments, however, are not supported by the record.

The scope and procedures for bargaining between a public school district and its employes are governed by both PERA and the Act 88 amendments to the Public School Code of 1949. **Central Dauphin School District v. Central Dauphin Bus Drivers Association**, 966

A.2d 47 (Pa. Cmwlth. 2010). Where the two statutes are in conflict, Act 88 prevails. **Central Dauphin**, 966 A.2d at 51. Act 88 applies during the term of an existing contract. **Id.** Both PERA and Act 88 require the parties to bargain in good faith. In **Morrisville School District v. PLRB**, 687 A.2d 5 (Pa. Cmwlth. 1996), the Court opined as follows:

Good faith bargaining requires the parties to make a serious effort to resolve differences and to reach common ground. **The duty to bargain in good faith extends to the subject of subcontracting bargaining unit work.** An employer has the obligation to bargain in good faith to a bona fide impasse before subcontracting any bargaining unit work.

Morrisville, 687 A.2d at 8 (citations omitted) (emphasis added). "Good faith requires at a minimum that the parties negotiate with authority and define for their adversary an initial position which, if accepted, will bind the parties to at least a tentative agreement. Although Section 701 of PERA does not require a party to make any agreement or concession, it does require each party to bargain in good faith." **Upper Moreland Township School District v. PLRB**, 695 A.2d 904 (Pa. Cmwlth. 1997). An employer's failure to make a counterproposal after it makes clear to the union that it has exceeded its bottom line is not, by itself, a violation of PERA or the employer's duty to bargain in good faith, but it may be a factor if there is an overall failure to bargain in good faith. **Morrisville**, 687 A.2d at 9. In **Upper Moreland**, the Court held that "[t]he parties must set forth a position upon which the adversary may rely that the acceptance of which would result in a tentative agreement. At a minimum, each party must present an identifiable target for the adversary to shoot at which will result in at least a tentative agreement, if reached." **Upper Moreland**, 695 A.2d at 909. When determining whether an employer bargained in good faith, the Board examines the totality of the circumstances. **PSSU, Local 668 v. Lancaster County**, 45 PPER 94 (Final Order, 2014).

Our Supreme Court has defined the meaning of "impasse" in the following manner:

[T]hat point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless... [P]erhaps all that can be said with confidence is that an impasse is a "state of facts in which the parties, despite the best of faith, are simply deadlocked."

Norwin School District v. Belan, 510 Pa. 255, 208 n.9, 507 A.2d 373, 380 n.9 (1986). The **Norwin** Court further held that "[a]n employer may, after bargaining with the union to a deadlock or impasse on an issue, make unilateral changes that are reasonably comprehended within his impasse proposal." **Id.** The definition of impasse is not met when progress is perceptible, the Union has indicated by its conduct that substantial movement is forthcoming or the District has demonstrated that it is not interested in further movement or proposals. **Morrisville**, 687 A.2d at 9-11.

Moreover, a determination of whether a school district bargained in good faith to impasse under the totality of the circumstances must necessarily include consideration of whether the parties complied with the mediation and fact-finding mandates of Act 88. In **Williamsport Area School District v. PLRB**, 43 PPER 17 (Pa. Cmwlth. 2010), the Commonwealth Court reversed this Board's conclusion that all public school employers and employee associations must participate in fact-finding before reaching or declaring bona-fide impasse.

1. Fact-finding Obligation

Section 1122-A of Act 88 provides, in relevant part, as follows:

(a)(1) Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within forty-five (45) days after mediation has commenced or in no event later than eighty-one (81) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, the Bureau of Mediation shall notify the [B]oard of the parties' failure to reach an

agreement and of whether either party has requested the appointment of the fact-finding panel.

(2) No later than eighty-one (81) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year, either party may request the [B]oard to appoint a fact-finding panel. Upon receiving such request, the [B]oard shall appoint the fact-finding panel which may consist of either one (1) or three (3) members. The panel so or designated selected shall hold hearings and take oral or written testimony and shall have subpoena power. If, during this time, the parties have not reached an independent agreement, the panel shall make findings of fact and recommendations. The panel shall not find or recommend that the parties accept or adopt an impasse procedure.

24 P.S. § 11-1122-A.

The **Williamsport** Court examined the timeframe in which an individual party must request fact-finding, under Section 1122-A(a)(2) of Act 88, and concluded that a school district is not required to participate in fact-finding (before there can be a bona fide impasse) when the Union's fact-finding request is untimely. **Williamsport**, 43 PPER at 61. The Court opined, in relevant part, as follows:

[T]he timeframe for an individual party to request fact-finding under Section 1122-A (a)(2) is very specific; that section states fact-finding must be requested "no later than eighty-one (81) days prior to June 30 or December 31, whichever is the end of the school entity's fiscal year," 24 P.S. 11-1122-A(a)(2). Under these circumstances, we conclude that the Association's failure to timely request fact-finding under Act 88 is fatal to the Association's and the Board's reliance on that factor to establish that the District did not negotiate to a bona fide impasse. By the time the Association requested the appointment of a fact-finding panel on June 10, 2009, the District had already significantly changed its position by declaring an impasse, voting to enter into, and actually entering into the contract with [the subcontractor]. Despite Mr. Kurtz's statement at the May 21, 2009, bargaining session that the parties could not be at an impasse because they had not gone through fact-finding, **the Association did not request fact-finding until eight days after the District entered into the contract with [the subcontractor]. Further, to hold, as the Board proposes, that it may consider the refusal of a party to assent to an untimely request for the appointment of a fact-finding panel as evidence of that party's unwillingness to bargain in good faith converts a non-mandatory provision of Act 88 into a de facto mandatory provision. Such result is not supported by the plain language of Act 88.** Accordingly, we conclude that, in this matter, the District was not required to engage in fact-finding and the Board should not have considered this factor when determining whether the parties were at a bona fide impasse.

Williamsport, 43 PPER at 61 (emphasis added).

In this case, an Act 88 Mediation Notice was sent to the Bureau of Mediation on November 30, 2010. A state mediator was present at the March 10, 2011 bargaining session. Forty-five days from November 30, 2010, or the beginning of December is middle-to-late January 2011. Even counting from the later date of March 10, 2011, the parties were engaged in mediation for forty-five days as of April 24, 2011. However, no one requested, or even mentioned, fact-finding until May 25, 2011, after the Union forced a school board vote. Moreover, the District's fiscal year ends on June 30th. Eighty-one days prior to June 30, 2011 was April 11, 2011.² Under the Commonwealth Court's interpretation of Section 1122-A of Act 88, the District was under no obligation to participate in fact-finding after April

² April 11, 2011 was a Monday.

11, 2011, and a completion of the fact-finding process was not a necessary prerequisite to reaching or declaring bona fide impasse. **Williamsport**, 43 PPER at 61.

Moreover, not only did the Union neglect to timely request fact-finding, but it was the Union that forced the school board to change its bargaining position and take a vote on outsourcing transportation. It was only after an unfavorable vote late in bargaining that the Union decided to request fact-finding. Although the District participated in the fact-finding process, its Union-forced vote to subcontract on May 12, 2011, (after the statutory deadline for requesting fact-finding and before the Union's fact-finding request on May 25, 2011) is not an indication that it bargained in bad faith or unlawfully subcontracted.

2. Good Faith and Impasse

Although the District was not obligated to engage in fact-finding under Act 88, it remains necessary to determine whether the parties deadlocked such that unilateral subcontracting was permissible. For the reasons that follow, I conclude that the District bargained in good faith to bona fide impasse before it outsourced the transportation services.

Almost one full year before contract expiration, in July 2010, Mr. Liberto and Ms. Krapf informally met to prepare for contract negotiations. During the fall of 2010, the Union organized a bargaining committee, and Ms. Krapf and Mr. Liberto met again on October 27, 2010. At both the July and the October meetings, Mr. Liberto raised the issue of healthcare costs and wanted employees to contribute more towards their healthcare insurance premiums. After these two meetings, Ms. Krapf knew that healthcare and retirement were big concerns for the District. On November 17, 2010, Mr. Liberto gave Ms. Krapf a letter from the District's solicitor, Mr. Dice, clearly placing the Union on notice that it was considering subcontracting transportation services at a substantial savings to the District. The letter further invited the Union to participate in evaluating the costs, benefits and savings so as to bargain competitively and in essence bid competitively to keep transportation services in-house.

Throughout negotiations, the District responded to every Union request for information and provided the Union with every cost analysis performed and relied upon by the District. The same day that she was initially notified that the District considered subcontracting, the District gave Ms. Krapf the cost analysis referenced in Mr. Dice's November 16, 2010 letter. One spreadsheet demonstrated a cost savings of approximately \$1.7M. The District was going to save approximately \$3M the first year, including the sale of its bus fleet and the elimination of the need to purchase 7 new buses that year (and 21 new buses over the next three years) as required by the State Police. The cost savings included the elimination of healthcare insurance and PSERS retirement costs.

Prepared with all the information about costs, savings and the District's intent to subcontract, the parties met for their first negotiation session on November 24, 2010. At this meeting, Mr. Dice personally explained that the District wanted to work with the Union, but that it was planning on distributing RFPs. The District gave the Union a copy of the first RFP which was distributed on December 1, 2010. After the Union made a presentation to the school board at its December 6, 2010 meeting, the parties met again on December 9, 2010, during which time Mr. Dice invited the Union make a proposal. At this point, the parties had convened for five meetings: three informational meetings and two bargaining sessions. It was during the December 9, 2010 bargaining session that Union President Krapf indicated that the Union could not compete with an outside contractor and stated: "we are sorry that we wasted your time," and began to leave. To which the District's lead negotiator, Mr. Dice, pleaded with the Union to stay and continue bargaining.

At the urging of the District, the Union continued to negotiate. Although no written proposals were exchanged during the December 9, 2010 bargaining session, the parties discussed a possible wage freeze in year one of the contract and the elimination of overtime bonuses for mechanics who substitute drive during their regular shift. The Union also proposed increasing employees' contribution to their health insurance premiums from .5% to 3%. The idea of giving up certain bus runs was not raised at this time. Also,

the District recommended modifying the RFPs to include a Union successor clause, to which the Union agreed by follow-up letter, dated December 13, 2010.

Between the parties' second and third bargaining session, Mr. Liberto prepared a cost analysis based on the Union's proposal to do the following: Eliminate 21 bus runs and Mechanics' overtime for substitute driving; increase healthcare contributions to 3%; and accept wage freeze first year. The Union's proposal would have yielded a net savings for the 11-12 school year of \$157, 150. The parties met again on January 10, 2011, during which Mr. Dice proposed eliminating parochial, private and special needs runs to eliminate the District's need to purchase 7 new buses in the first year. The Union rejected that offer. The Union counter-proposed eliminating only private and parochial runs, eliminating mechanics' overtime; decreasing mechanics' tool allowance by almost half; accepting a wage freeze for the first contract year, with 2% increases every year thereafter for a five year contract; and outsourcing bus runs through attrition. However, the District also wanted employees to pay 100% of their health care insurance. Family medical coverage was approximately \$15,000 per employee per year, and single coverage was \$6,000. Without considering the bus sales, the District identified a target savings of \$1.7M and rejected the Union's proposal. That same evening, Union President Krapf attended the school board meeting and invited the school board members to attend the next bargaining session.

Five school board members appeared for the January 17, 2011 bargaining session, and one was dismissed to avoid a quorum, although she remained on the premises to provide a quorum to tentatively approve any potential agreements. The District came to this bargaining session intent on making a deal with the Union. All three of the District's written proposals given to the Union during the January 17th bargaining session were package proposals. The Union knew that the District could save approximately 1.7M per year by outsourcing. The District came prepared to enter into a contract with the Union which would not result in that level of savings but would keep the transportation services in-house. Accordingly, the District changed its position on healthcare from the end of the last bargaining session, when it was looking to have employees pay 100% of their healthcare insurance, to having employees pay the reduced contribution amount of 65%. This compromise was contained in the District's first of three written proposals presented on January 17th.

Ms. Krapf, and every Union committee member, testified that the District committee did not give the Union any written proposals, during the January 17, 2011 session, to take back for a Union vote. The Union bargaining witnesses all maintained that the District did not provide any written proposals, claimed by the District to have been given to the Union during negotiations, until the fact-finding hearing on July 21, 2011. However, every District witness testified to the contrary that these written proposals were in fact given to the Union during negotiations. I resolve this conflict in favor of the District.

During the fact-finding, no one from the Union made it known that they had not received any of the District's written offers admitted as Respondent Exhibits I, J, K & N, during this hearing. Therefore, the Union's claims of non-receipt of District written proposals were raised for the first time during these unfair practice proceedings and not at the fact-finding. (N.T. 572, 611). Moreover, Superintendent Vak credibly testified that he observed that Respondent Exhibit I was physically passed across the table to the Union. He personally observed that the Union committee members read and reviewed the written proposal admitted as Respondent Exhibit I and discussed the enumerated items contained therein. (N.T. 636). He also credibly testified that the Union rejected the written proposal admitted as Respondent Exhibit I, which is why the District returned with another written proposal admitted as Respondent Exhibit J. (N.T. 636-638).

Also, the documentary and testimonial evidence provided by Mr. Liberto corroborates Superintendent Vak's testimony that the District committee and school board members privately caucused during the January 17th session in Mr. Liberto's office and used his computer to type other written proposals to reflect the compromises the District was making during that negotiation session to get a deal. School Board President, Carl Barbarino credibly testified that copies of the written proposals were indeed handed out

to both District and Union committee members, including himself so that individuals present could follow along with discussions about the enumerated proposals, all of which the Union concedes were discussed. Accordingly, I find as fact and conclude that every written proposal drafted by the District was given to the Union during negotiations when and where the District claimed to have provided those documents.

The District's first written proposal also contained a wage freeze for the first two years; a 1% increase in the third year, with no overtime for substitute driving mechanics; no mechanics' tool allowance; outsourcing all parochial, private and special education runs; no \$.13/hour adjustment for remaining bargaining unit members when someone retires; and subcontracting through attrition. However, the Union expressly rejected this written proposal causing the District to caucus and return with another written proposal, in which it increased wages to a 1% increase during the second contract year and 1.5% during the third. All other terms remained the same. The Union physically received and expressly rejected this second written proposal, causing the District committee to caucus yet again and return with a third written proposal. In its third package proposal the District withdrew the 1% wage increase in the second year, but reduced the healthcare insurance premium contribution from 65% to 60%. The parties reviewed each of the terms of the three proposals line by line. The Union received and rejected the third proposal. Although these proposals did not come close to closing the financial gap between in-house transportation and subcontracting, the District would have agreed to any one of the three to close a deal with the Union.

The parties met again on February 3, 2011, and the District was introduced to the Union's new attorney, Mr. Eberle, who had previously requested certain information from the District, which the District provided. Even though this was only the fifth bargaining session, Mr. Eberle advised the Union not to make any more concessions. The parties bargained again on February 9, 2011, during which the District gave the Union an orange packet. The orange packet contained a written proposal that was identical to the second written proposal given to the Union during the January 17th session. That proposal included a wage freeze for the first two years and a 1.5% increase for the third year with a 60% healthcare insurance contribution. Also during this bargaining session, the Union gave the District a written proposal that tracked its position at the prior session, i.e., a 15% contribution to healthcare insurance effective July 1, 2011 and 20% effective July 1, 2014. At that point, Mr. Dice informed the Union that it needed to contribute substantially more towards healthcare. Mr. Eberle responded that the Union was going to stay at its current position and "if you think any further concessions are warranted, you may as well contract his out." (F.F. 60). The District again provided more documents itemizing the costs for medical, dental and vision coverage.

Mr. Liberto subsequently analyzed the cost of the Union's February 9, 2011 proposal for a five-year contract. Also, after receiving the actual bids, the District adjusted down its cost savings, in favor of the Union, by \$500,000 from his original estimate of \$1.7M, and gave copies of the bids and Mr. Liberto's cost analysis to the Union. Mr. Liberto concluded that the District could save approximately \$1.08M by subcontracting in the first year, \$1.24M during the second, \$1.16M during the third, \$1.087M during the fourth year and \$1.062M during the fifth year.

During the March 10, 2011 bargaining session, the Union proposed immediately contributing 20% to healthcare premiums rather than waiting until July 1, 2014. During the March 28th session, the parties discussed a \$2.9M savings in the first year, which included the bus sales, and an average of \$1M annually thereafter as a result of savings on healthcare and retirement contributions. The Union leadership told the District Committee that, even if they worked for free, they could not match that amount of savings. The Union also proposed a severance package and early retirement incentives. Subsequently, Mr. Liberto analyzed the severance and retirement incentives and presented his cost analysis to the school board.

At the April 4th session, the District informed the Union that the school board rejected the Union proposal for an early retirement incentive and severance package. Mr. Dice also emphasized that the Union was not close enough to the cost savings that the

District would realize if they subcontracted. However, the parties did reach agreement on sick leave buybacks during this session to give an incentive for drivers not to call off sick during the school year, if the District subcontracted.

By letter to the school board members dated April 12, 2011, Ms. Krapf requested a board vote on outsourcing the transportation department. The parties met to bargain again on May 4, 2011, at which time they formally executed the sick leave buyback Side Agreement. Exploring options to close a deal, Mr. Dice asked the Union if they would consider paying 100% of their healthcare premiums. The Union said "Hell No!" and the parties reviewed prior proposals with no new proposals exchanged. I do not consider Mr. Dice's inquiry into whether the Union would agree to a 100% contribution as a regressive maneuver from his earlier position of 60% or 65% because it was not a proposal. Mr. Dice was merely making inquiries into the willingness of the Union to make certain concessions in an effort to find a deal. As Mr. Dice stated in his May 10, 2011 letter: "[w]e have raised the issue of healthcare and asked that your Union consider paying 100% of the healthcare, **should the school district be willing to offer such a proposal, to see if we could close the Delta between First Student and the Union's position.**" (F.F. 81).

At the May 9, 2011 school board meeting, Ms. Krapf publicly requested that the school board vote on subcontracting, even though the District was willing to continue negotiating. The next day, Mr. Dice wrote the Union stating that the District's position was that **the time was not right for the board to vote on subcontracting while the parties were still in negotiations.** The letter further summarized the bargaining history and detailed how far apart the parties were on cost savings, emphasizing the effect of healthcare costs and the budgetary shortfall generated by state cuts to the District. Moreover, Mr. Dice's letter informed the Union that the school may vote on subcontracting, as requested by the Union, on either May 12th or May 24th and invited the Union to continue negotiating during the interim. The school board voted to outsource transportation at a special meeting on May 12, 2011.

On May 25, 2011, the parties met to impact bargain in the presence of the state mediator and the Union raised for the first time the desire to proceed to fact-finding. In a letter to Mr. Dice, dated May 27, Mr. Eberle acknowledged that negotiations were affected by increasing healthcare costs, Governor Corbett's budget cuts to the District and other fiscal restraints on the District as well as bids from First Student, which would be providing transportation services without healthcare or PSERS retirement. Although the District challenged the timeliness of the Union's fact-finding request, and therefore its obligation to participate in fact-finding, the District did participate in the fact-finding process. The District rejected the fact-finders report, which kept the transportation services in-house.

I conclude that, under the totality of the circumstances presented by the record facts of this case and having resolved all conflicts in favor of the District, the District made a serious effort to resolve differences and reach an agreement with the Union even though the agreement it was prepared accept would not have saved the District anywhere near as much as subcontracting. It, therefore, bargained with the Union in good faith. I also conclude that, as a result of having bargained in good faith, the parties were at bona fide impasse when the District subcontracted transportation services and the subcontract was therefore permissible under the law.

The District, from the very beginning of formal negotiations in November 2010, informed the Union that it was sending out RFPs for subcontracting due to the high cost of maintaining transportation in-house that resulted from retirement contributions and the high, and ever increasing, cost of healthcare insurance. The District repeatedly provided one cost analysis after another to the District demonstrating the cost of salaries, overtime, tool allowances, healthcare, PSERS and buses as well as the cost savings of subcontracting. The District did not hide anything from the Union and, more importantly, the District did not move the ball farther away from the Union's reach. Rather it identified a target for the Union such that the Union could have had a contract if it hit the target, even though that target would not result in the cost savings the District was seeking. Further, the District actually reduced its subcontracting savings

calculation by \$500,000 when it received the bids from First Student and Durham. The Union could have had a contract with any one of the written proposals presented to and discussed with the Union between January and May 2011. Although the Union argues that it was required to give more and more concessions and to bargain against itself, PERA provides, and the Commonwealth Court has held, that an employer need not make concessions or counterproposals once it has made clear to the Union that it has exceeded its bottom line. **Morrisville, supra**. The fact that a quorum of the school board was standing by on January 17, 2011 demonstrated the District's intent to reach an agreement with the Union at substantially less savings than the District sought. Even though a deal did not happen that day, the District kept negotiating in good faith while stressing the substantial cost differential of subtracting.

Additionally, several times during negotiations, Mr. Eberle advised the Union not to make anymore concessions and told the District that it may as well subcontract because the Union simply could not save the District as much as a subcontractor. Then, against the District's wishes, the Union forced the school board to prematurely vote on subcontracting while the District's bargaining committee was still intent on continuing to negotiate in good faith, in an effort to keep the services in-house. The Union is estopped from claiming to this Board that the District bargained in bad faith and unlawfully subcontracted before reaching bona fide impasse, because fact-finding had not concluded, when the Union forced the governing body of the District to take a premature vote on subcontracting while its bargaining team was committed to continuing good-faith negotiations and before fact-finding was even requested. Also, the school board did not take a vote in haste, as the Union requested during the May 9, 2011 school board meeting; rather they notified the Union that they would vote on one of two dates in the future and invited them to bargain in the meantime to try to further negotiate a contract. By forcing a vote on subcontracting before negotiations had run their course, the Union effectively declared impasse, not the District. It was only after the Union's conduct projected that it no longer wished to negotiate and that the parties were at impasse, that Mr. Dice acknowledged that "further bargaining along this line would not be fruitful." (F.F. 81).

If impasse is "that point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless" and the parties are deadlocked despite the best of faith, then the District reasonably believed that the parties were at impasse when the Union forced a board vote on subcontracting rather than continuing to negotiate. At this point in negotiations, the parties were too far apart on their respective proposed savings on healthcare to reach a deal, especially since the Union told the District that, to meet the District's proposals, the employees would have to work for free. This chasm between the parties combined with the Union's statements and its push for a school board vote demonstrated to the District that progress was no longer perceptible and that any movement from either side was no longer forthcoming. Accordingly, the District and the Union were at bona fide impasse when the District voted to enter into a subcontract with First Student. The Union, and not the District, foreclosed further good faith bargaining. It effectively shouted impasse, by publicly pushing for the school board vote, thereby causing the District to change its bargaining position and subcontract. **Williamsport, supra**.

Moreover, the Union's argument, that the District never provided any proposal that the Union could have taken back to its membership for a vote, is simply not supported by the record. Indeed, the record establishes with, not just substantial, but overwhelming evidence that the District physical gave the Union bargaining committee members, not just one, but multiple written proposals that the Union could have taken to its membership for a vote. However, the Union bargaining committee rejected those written proposals without a membership vote.

Accordingly, the District bargained in good faith by notifying the Union early of its intent to subcontract and by providing all the financial data relevant and necessary to the Union for it to bargain effectively with the District. The District also identified the stationary target for the Union that would reach a contract, even without attaining the substantial cost savings sought by the District. Indeed, the District demonstrated

compromise even though the terms it sought were still difficult for the Union and its employees. After bargaining in good faith, the Union foreclosed bargaining by pushing for a school board vote and thereby declaring impasse. Certainly, the District did not bargain in bad faith by subcontracting before the fact-finding process concluded because the Union neglected to timely request fact-finding within the mandatory statutory timetable and, therefore, the District's good faith obligations did not include fact finding.

The Union concedes that the successor clause in the contract grants the District a privilege to subcontract during the term of the CBA. Under the Union's position, the District was contractually privileged to vote to subcontract on May 12, 2011, during the term of the CBA. The Union further maintains though that subcontracting post-contract expiration required the District to bargain in good faith post-contract because it engaged in post-contract bargaining. However, the record does not support the factual premise of the Union's argument. Other than fact-finding, which the District challenged, there was no bargaining post-contract expiration. The Union, not the District, pushed for a school board vote, thereby declaring impasse, after which it refused to bargain despite an express invitation to do so. Therefore, the District did not violate its duty to bargain in good faith because: it was privileged to subcontract (a Union concession) before contract expiration, which it did; subcontracting during the term of the CBA necessarily foreclosed post-contract bargaining; the Union, not the District refused to engage in post-vote bargaining; and the fact that there was no post-contract bargaining undermines the Union's argument that post-contract bargaining raised a new obligation to bargain again to impasse.

Accordingly, the charge of unfair practices is dismissed and the complaint rescinded.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The District is a public employer under PERA.
2. The Union is an employe organization under PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has **not** committed unfair practices within the meaning of Section 1201(a) (1) or (5).

ORDER

In view of the foregoing and in order to effectuate the policies of PERA, the hearing examiner

HEREBY ORDERS AND DIRECTS

That the charge of unfair practices is dismissed and the complaint is rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twentieth day of May, 2014.

PENNSYLVANIA LABOR RELATIONS BOARD

Jack E. Marino, Hearing Examiner