

PENNSYLVANIA  
LABOR RELATIONS BOARD

**FACT FINDING**

ACT 88-11-14-W

*IN THE MATTER BETWEEN:*

PENN HILLS SCHOOL DISTRICT  
*AND*  
AMALGAMATED TRANSIT UNION  
LOCAL UNION NO. 1552

**NON-PROFESSIONAL**

FACT FINDER:  
THOMAS L. HEWITT

**DISTRICT**

BRUCE E. DICE, Esquire  
of Bruce E. Dice & Associates

Craig H. Alexander, Attorney for District  
Chelsea Dice, Attorney for District  
Thomas K. Washington, Superintendent  
Rick L. Sero, Director of Business Affairs

**UNION**

ROBERT A. EBERLE, Esquire  
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Lori Krapf, President Local Union 1552  
Ingrid M. Streussney, Recording Secretary  
Karen L. Beers, Vice President  
Amanda Bundick, Law Clerk

FILED	MAY 31, 2011
APPOINTMENT	JUNE 21, 2011
HEARING	JULY 21, 2011
REPORT ISSUED	AUGUST 1, 2011
FINAL ACCEPTANCE/ REJECTION DATE	AUGUST 11, 2011

MICHAEL J. YAGERCIK, MEDIATOR

## BACKGROUND

Penn Hills School District has the seventh highest taxes in Allegheny County. It has an aging, declining population and a declining enrollment in the school. Property values have decreased and this total situation is similar to many other Districts with declining revenues and unfavorable demographics. Coupled with these facts, the State Aid was decreased by Three Million Nine Hundred Thousand (\$3,900,000) Dollars for the 2011-2012 school year, the fourth largest decrease in State Aid in Allegheny County. Declining tax revenues and this cut in State Aid created an extremely difficult budget problem for the District.

For in excess of thirty (30) years, the school bus drivers, aides and mechanics, totaling approximately ninety-seven (97), have been represented by Amalgamated Transit Union Local Union No. 1552. Their current labor agreement became effective on July 1, 2006, and its terms and conditions concluded on June 30, 2011.

Informal discussions were held by the President of the Local and the District's Director of Business Affairs on July 11 and October 27, 2010, regarding the possibilities of the content of a renewal of the current labor agreement. This Union had historically been a "ME TOO" group, guided by the settlements the District negotiated with its other unions.

On November 11, 2010, the District informed the Union that they had performed a cost analysis of the Bargaining Agreement and it was determined that outsourcing the student busing services performed under this Collective Bargaining Agreement could result in substantial savings to the District. A letter reiterating this position was sent to the Union, which also contained the statement, "We are about to start collective bargaining and will want your input and direction on the proposed request for proposals/specifications". A copy of the District's cost analysis was provided to the Union a week later.

The purpose of an informational meeting on November 24, 2010, was to summarize the Board's decision to contract out their work. The Union was informed that they could bid on the RFP (Request For Proposal), but it must include the purchase of the buses, which did not include the six (6) new buses which were required, at a cost of \$480,000.00 (6 buses @ \$80,000.00 each). The District stated they would provide a copy of the proposed RFP by December 1, 2010, accompanied by a request for any suggestions to be addressed at the first contract renegotiation session set for December 9, 2010. A Mediator was to be called to attend this meeting.

**The Board also provided the Union with the following Board Policy:**

No. 818

SECTION: OPERATIONS

**PENN HILLS  
SCHOOL DISTRICT**

TITLE: CONTRACTED SERVICES

ADOPTED: September 9, 2003

REVISED:

<b>818. CONTRACTED SERVICES</b>	
1. Purpose	In its effort to provide cost-effective programs, the Board may need to utilize contracted services. The district will supervise and evaluate such services to assure their effectiveness. This policy is to assist the Board in maintaining qualified and legally certified services.
2. Authority SC 111 23 Pa.C.S.A. 6301	The Board is required by law to ensure that independent contractors and their employees who have direct contact with students comply with the mandatory background check requirements for criminal history and child abuse.
3. Delegation of Responsibility	The Superintendent or designee shall prepare procedures to assure compliance with the legal requirements for contracted services.
School Code 111	Failure to comply with this policy and the background check requirements by an independent contractor shall lead to cancellation of the contract.
PA Statute 23 Pa.C.S.A. 6301	
Board Policy 610	

During this first negotiations meeting held on December 9, 2010, the District referred to Article 11.0 of the Collective Bargaining Agreement which read:

#### **ARTICLE 11.0 SUCCESSOR CLAUSE**

**The Penn Hills School District agrees that, in the event the transportations services operation is leased or sold to an agency other than the School District, this collective bargaining agreement shall be made a 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.**

It was obvious the Union was getting the message and their contract proposals of unrequested give backs or cost reductions contained:

#### **UNION PROPOSAL**

- Five (5) year contract;
- An increase in their contribution to medical insurance contributions from one-half (½%) percent of cost to thirty (30%) percent of cost;
- Elimination of a costly overtime/driving provision;
- Suggested out-source bus services to private/parochial schools which would eliminate approximately twenty (20) bus driver positions;
- Reduction in skill differential/tool allowance;
- An early retirement incentive;
- Wages in five year contract: 1<sup>st</sup> yr: Freeze; 2<sup>nd</sup> year: 2%; 3<sup>rd</sup> year: Freeze; 4<sup>th</sup> year: 2%; 5<sup>th</sup> year: 2%;
- Eliminate \$.13 automatic increase when top-rated employee retires which results in a significant savings;
- Elimination of multiple rates established as a result of the \$.13 automatic rate increase over the years.

Testimony revealed that the Union was willing to make any concessions it could in order to retain their jobs. They stated they could not, however, agree to the Board's proposal of one hundred (100%) percent contribution to cover medical insurance costs, as they would be working for nothing. **(Note: Fact Finder found Board's proposal to be sixty (60%) percent.)**

Three negotiation sessions were held without any significant progress, as discussions emphasized on the need to order six (6) new buses at \$80,000.00 each, the selection of an RFP bid by the Board and the successor clause. On February 1, 2011, the Union gave notice of the appearance of their attorney and consequently ten (10) more negotiation sessions were held, with little or no change except that the Board reduced their demand of a sixty-five (65%) percent contribution to sixty (60%) percent contribution of the medical insurance premium.

The Union advised the Board that they could not give any more and their attorney stated he could not advise them to give any more. The Union stated that they cannot meet the RFP dollars required. At this point, the Board's attorney considered the parties to be at impasse and so stated.

To exacerbate the situation, the District was advised by the State that they would suffer a \$3.9 million reduction from the amount of monies received the previous year and the Union was so advised. The Board stated they had to make a choice whether to lay off an additional thirty (30) teachers or outsource the busing. In addition to in excess of \$ 1.5 million savings, as the result of the reduction in labor costs, the District would receive approximately \$ 1 million for the sale of their buses, which could be used to alleviate other budget problems. The sale of the bus assets is a factor the Union is unable to address and it is therefore excluded from consideration by the Fact Finder. The wage comparison saving stands on its own as advanced in the District's presentation at the Fact Finding Hearing. Beginning in May, 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, as they wanted to know where they stood in relation to their employment.

As they were getting closer to contract termination, there were concerns about employees taking all of their sick days, which would cause a serious disruption of services. On April 4, 2011, the parties entered into a side agreement, and agreed that the District would pay \$ 50.00 a day for each unused sick day and a bonus of \$ 250.00 to any employee who did not use any sick days prior to the contract termination date.

Impact bargaining proposals were made by the Union on March 30, 2011, and at an April 4, 2011, meeting, the Board's attorney advised the Union that their proposals for the new contract were not close to the RFP savings. The Union again rejected the Board's last proposal of February 2, 2011, of:

- 3 year contract;
- 1<sup>st</sup> year: Freeze; 2<sup>nd</sup> year: Freeze; 3<sup>rd</sup> year: 1.5% increase;
- Give up mechanics' overtime - as per Union proposal;
- Eliminate mechanics' tool allowance - as per Union proposal;
- Contribute sixty (60%) percent of medical insurance premium;
- Driver resignation, retirement or termination replaced with contract driver.

The Fact Finder considered evidence, testimony, submissions and arguments presented relevant to the submitted issues, as well as all other factors required under Act 88. The District's presentation pertained to the economic condition of the District and the savings the District could make by outsourcing the busing of the students. The main thrust of the Union's presentation was the wage and benefit sacrifices the employees were willing to make in order to compete with the quote of the bidders on the busing routes. These positions were established early in negotiations and appear not to have varied except in the degree of concessions the employees were willing and able to make. In summation; the concessions were considerably less than the projected savings, excluding the sale of the bus assets.

Evidence in relation to other bargaining units of the employer normally presented in fact finding was not emphasized. The statement by the District that, "We would have to lay off thirty (30) teachers if we did not outsource" is not considered a turning point by the Fact Finder. Without sufficient information as to the performance of the teaching, class size, administrative staff manning, school budget and other cost data, no informed conclusion on this matter can be drawn

## **BOARD ISSUES**

### *These were additional issues presented to the Fact Finder*

1. Is the request for Fact Finding untimely as the School District's fiscal year ends June 30 and per the Union's request, the School District voted to contract out the services on May 12, 2011?
2. Did the parties bargain to impasse?
3. Is the Employer within its rights to contract out the service if it followed the language in Article 11 and the employees requested an "up or down" vote to contract out the services on May 12, 2011 and the vote was to contract out?
4. Should Local Union 1552 be bargaining with the contractor (First Student) pursuant to the facts and Article 11 of the contract in effect?
5. Did the parties bargain on the impact of contracting out the services?

### **FINDINGS on these issues:**

1. Request for Fact-Finding found timely as contract was still in effect. The Pennsylvania Labor Relations Board appointed the Fact Finder no less than eighty-one (81) days prior to the end of the fiscal year. The Board is required by law to make the appointment.
2. Not an issue for the Fact Finder.
3. The "up or down" vote was for the purpose of permitting the employees to have an idea of their situation so they could plan for the future. The fact that the Board chose to take this vote and voted to contract out does not affect the in-force language of the contract. This is a contract interpretation issue not under the province of the Fact Finder.
4. Not an issue for the Fact Finder.
5. Not an issue for the Fact Finder

## **FINDINGS ON CONTRACT PROPOSALS**

### **Article 2.0 - Term of Contract:**

Employer proposes a three (3) year agreement.  
 Union proposes a five (5) year agreement.

**Finding**

*Based upon the previous five (5) year contract between the parties and other considerations:*

2.1 The term of the agreement shall begin at 12:01 a.m., on July 1, 2011 and conclude at 12:00 midnight on June 30, 2015. The School District and the Union may, by a duly executed agreement, provide for the extension of the term to a later expiration date.

**Article 8.5 - Grievance Procedure:**

**Finding**

The parties agree that the Pennsylvania Bureau of Mediation shall be the agency for the selection of an arbitrator.

**Article 10.14.1 - Employee Assignments:**

**Finding**

Mechanic overtime & driving provision deleted as result of Union Proposal.

**Article 15.7 - Medical Insurance:**

The percentage of medical insurance premium paid by the Employees:

The last Union offer of thirty (30%) percent with caveat could be more. The last District offer was sixty (60%) percent paid by Employee. The largest percentage of medical insurance paid by other Penn Hills Unions appears to be seven (7%) percent.

**Finding**

Contribution rate shall be thirty (30%) beginning July 1, 2011.

**Article 16.1 - Skill Differential:**

**Finding**

Reduced from \$ 950.00 to \$ 475.00 for allowance upon submission of receipts for pre-approved purchases.

**Article 16.3 - Adjustment Rate Due to Retirement**

Various individual wage rates have developed over the years due to a contract clause that provided a .13¢ increase for all other drivers when a top-rated driver retired. This has created an accounting problem, which the Union has suggested be eliminated, and the parties discussed the method of correction.

**Finding**

Thirteen (.13¢) cent per hour raise eliminated. One flat rate established to eliminate payroll problems, as discussed by the parties. Bus drivers with fifteen (15) years of experience with the School District shall be entitled to be moved to Line 2 of Appendix A. The Fact Finder adjusts the schedule as provided in Appendix A - Hourly Wage Rate Schedule.

**WAGES  
(See Appendix A – Hourly Wage Schedule)  
2011 – 2012 SCHOOL YEAR**

Both parties agree on freeze .

**Finding  
FREEZE**

**2012 – 2013 SCHOOL YEAR**

**Board proposal:** Freeze

**Union Proposal:** Two (2%) percent increase

**Finding  
2% INCREASE**

**2013 - 2014 SCHOOL YEAR**

**Board Proposal:** One and one-half (1.5%) percent increase

**Union Proposal:** Freeze

**Finding  
FREEZE**

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**2014 – 2015 SCHOOL YEAR**

**Board Proposal:** None

**Union Proposal:** Two (2%) percent increase

**Finding  
2% INCREASE**

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*The following additional proposals by the parties were made as result of the discussions on outsourcing and not addressed by the other party. Considering all the facts, discussions, and presentations the Fact Finder addresses these additional proposals to present a complete report.*

**Additional Board Proposal**

**Diminishment of Unit Positions by Attrition:**

Replace retired, quit or terminated employee with contracted employee was a proposal of the Board.

***Not addressed by Union.***

**Finding  
Denied**

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**Additional Union Proposals**

**Additional Provisions Regarding the Bus Operators:**

1. Modify Article 15.19.1 to provide for an Early Retirement Incentive (full-time bus operators only) – provide for an early retirement based on twenty (20) years of service and age fifty-eight (58) - \$ 8,000 plus health insurance benefits for five (5) years or up to age sixty-five (65), whichever is sooner, on same terms and with same employee contributions to premiums as apply to full-time operators.
2. Severance - \$ 422 per each year of service; no challenge to receipt of unemployment compensation benefits; clarification as to whether employee would still be permitted to maintain other pre-existing employment with District.
3. The District would immediately outsource all private/parochial work except special needs, and as bus operators and aides, separate their employment with District during the term of the CBA (including employees who accept severance at outset of CBA). The District would be under no obligation to fill those positions.

***Not addressed by the Board.***

**Finding  
1, 2 and 3 Above - Denied**

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**RESOLUTION OF ISSUES**

All collective bargaining proposals or issues not addressed in this Fact-Finding Report, except a signed Tentative Agreement, if any, are considered unchanged from the previous Agreement. There shall be no other changes, additions or modifications to this Labor Agreement and all unchanged language contained in the previous Agreement shall continue in effect and is incorporated into any new Agreement.

Issued at Latrobe, Pennsylvania the 1<sup>st</sup> day of August, in the year of our Lord Two Thousand Eleven.

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Thomas L. Hewitt, Fact Finder

**APPENDIX A**  
**HOURLY WAGE RATES**

	<b>7/01/11 6/30/12</b>	<b>7/01/12 6/30/13</b>	<b>7/01/13 6/30/14</b>	<b>7/01/14 6/30/15</b>
<b><u>Mechanics</u></b>	26.68	27.21	27.21	27.75
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<b><u>Drivers</u></b>				
<b>As of July 1<sup>st</sup>:</b>				
15 years of continuous service	21.23	21.65	21.65	22.09
10 years of continuous service	15.28	15.59	15.59	15.89
5 years of continuous service	14.50	14.79	14.79	15.08
1 year of continuous service	14.00	15.81	15.81	16.13
<b><u>Probationary Rate</u></b>	13.44	13.70	13.70	13.97
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<b><u>Bus Aides</u></b>	13.29	13.56	13.56	13.83

**Rates are adjusted for service on July 1<sup>st</sup> each year only.**