

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

IN THE MATTER OF THE WEST *
MIDDLESEX AREA EDUCATIONAL * Case No. ACT 88-1-4-W
SUPPORT PROFESSIONALS PSEA/NEA *

FACT FINDING REPORT

Michael D. McDowell, Esq., Fact Finder
Report Dated: March 7, 2011

APPEARANCES

For the West Middlesex Area School District:

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For the West Middlesex Area Support Professionals PSEA/NEA:

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PSEA UniServ Representative
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BACKGROUND

The West Middlesex Area School District (“District”) is a public school district in Mercer County, Pennsylvania. The District serves the communities of West Middlesex, Shenango Township, and Lackawannock Township. The District has three buildings: Luther Low Elementary, Oakview Elementary, and the Junior/Senior High School.

The District employs forty (40) employees who are members of the West Middlesex Area Education Support Professionals PSEA/NEA (“Association”) in forty-two (42) bargaining unit positions. The positions in the bargaining unit include the following:

Custodial/Maintenance Department

Twelve-month building custodians (3)
Twelve-month maintenance employees (3)
Twelve-month, eight-hour cleaners (2)
Ten-month, five hour cleaners (6)

Secretarial/Clerical Department

Twelve-month secretaries (12)
Ten-month secretaries (3)
Nine-month duplicating operator (1)

Aides

Nine-month certified aides (6)
Nine-month non-certified aides (10)
Nine-month travel aides (2)

The parties CBA expired on July 1, 2010. The Association continues to work under the terms and conditions of the expired agreement while it continues to negotiate. The current round of negotiations began in January, 2010. To date there have been seventeen (17) bargaining sessions between the parties.

By letter from the Secretary of the Pennsylvania Labor Relations Board (“Board”) dated January 25, 2011, the undersigned was advised of his appointment pursuant to Act 88 of 1992 (Act 88) and the Public Employe Relations Act (PERA), as Fact Finder in an impasse between the District and the Association.

In accordance with the Board’s order of January 25, 2011, the parties filed written statements of the issues in dispute with the Fact Finder, and also advised of tentative agreements that are referenced in this Report. The parties raised issues at impasse involving the following provisions of the Collective Bargaining Agreement (“CBA”):

ARTICLE II:	Grievance Procedure
ARTICLE V:	Vacations, Section A
ARTICLE VII:	Illness or Disability, Section A and H
ARTICLE VIII:	Temporary Leaves of Absence, Section A
ARTICLE X:	Insurance Benefits, Section A, D and E
ARTICLE XI:	Merit Pay for Final Years of Service/Severance
ARTICLE XII:	Compensation, including retroactivity
ARTICLE XIV:	Permanent Job Vacancy, Section B and C
ARTICLE XXL:	Terms of Agreement
NEW PROVISION:	Training
NEW PROVISION:	Incorporate MOUs into CBA

The matter had come to this point because the parties have been unable to reach agreement on the disputed issues. They have, in a sense, agreed to have a third party review their respective positions on the disputed issues and recommend a result that, if the parties agree, would be incorporated in the CBA they would have otherwise forged through the give and take of the collective bargaining process.

On February 18, 2011, a Fact Finding Hearing was held at the Administrative Offices of the District at which time both parties were afforded a full opportunity to present testimony, examine and cross-examine witnesses, introduce evidence and argue orally in support of their respective positions.

The issues are addressed in the same order as the Articles involved appear in the predecessor CBA. To arrive at the recommendations in this Fact Finder's Report, reliance was placed on, among other things, the following considerations:

- The reliable and credible evidence presented at the Fact-Finding Hearing;
- The predecessor CBA;
- Comparisons of the unresolved issues relative to the employees in this bargaining unit and how those issues are addressed in other public and private settings where employees are doing comparable work, giving consideration to factors peculiar to the area and classifications involved;
- The interest and welfare of the taxpayer and the District to finance and administer the issues proposed;
- The understanding that each individual issue has been reviewed for its relative individual merit; at the same time, each individual issue has also been reviewed with consideration given to whether or not it appropriately fits into the CBA created through this process.

Although these reasons may not be specifically referenced in the Recommendations, the rationale for not recommending a proposal will include:

- The proposal was not sufficiently supported at the Fact Finding Hearing;
- The other party's arguments against a proposal's inclusion was more compelling;
- The matters addressed by the proposal were not deemed appropriate to be recommended at this time, given the other recommendations in this Report for change in the predecessor CBA.

The recommendations which follow constitute the settlement proposal upon which the Parties are now required to act, as directed by statute and Board regulations. Pursuant to statutory authority, this Report will be released to the public if not accepted. A vote to accept the Report does not constitute agreement with or endorsement of the rationales, but rather represents only an agreement to resolve the issues by adopting the recommendations. The Parties are directed to review the Report and, within ten (10) days of its issuance, notify the Board of their decision to accept or reject the recommendations.

DISCUSSION AND RECOMMENDATIONS

ARTICLE II: GRIEVANCE PROCEDURE

District Position:

The District proposed adding the following language to this Article:

When an appeal is not taken to the next step of the grievance procedures within the time allotted, such grievance shall be considered settled in the favor of the District.

The arbitrator shall not have any power, right or authority to add, subtract from, modify, change or alter any of the terms or provisions or the expressed intent of this Agreement. The arbitrator shall not have the power to make an award that requires an illegal act.

Any decision of an arbitrator must be within the scope of his or her authority and confined to the grievance as submitted for his or her determination.

Furthermore, no arbitrator shall have the authority to render an award pursuant to any federal statute or state statute or regulation, with the exception of the school code, imposing monetary or regulatory obligation on the School District.

The District believes that the current language relating to the Grievance Procedure is not restrictive enough. This not uncommon language and not unique. Most arbitrators do properly take a restrictive approach. However, an arbitrator has on occasion improperly taken a improperly broad interpretation of his or her authority and not in the contemplation of the parties and can be harmful for both parties.

Association Position:

The Association believes that the status quo should be maintained. The language of the grievance procedure is already appropriately limiting. For example, it already provides that it is the responsibility of the grievant or respondent to pass the grievance form to the next level within the specified time limit. It further provides that failure to communicate the decision in writing to the grievant within the specified time limit shall permit the grievant to proceed to the next prescribed step.

In the course of bargaining, the District has not cited any examples of past problems with the grievance procedure, and the Association believes that the grievance procedure has been working effectively for both parties to reduce disputes at the lowest possible level. In fact, over the past several years, the parties have proceeded to arbitration only once, and that case was resolved via a Consent Order from the arbitrator.

Recommendation:

The arguments of the District are persuasive, with exceptions. Arbitrators are called upon to decide grievances as written or may decide an issue not precisely stated in the filed grievance but stipulated by the parties as the issue submitted for decision by the arbitrator and the arbitrator's authority is so limited thereby, The language requested by the District arguably eliminates the parties submission agreement which may not be precisely as stated in the filed grievance. Further, a grievance asserting a contract violation may implicate a federal statute or state statute or regulation which, if sustained, could impose a monetary or regulatory burden on the District. The Grievance Procedure will not be so limited.

It is recommended that Article II, Grievance Procedure, be modified to add the following language:

When an appeal is not taken to the next step of the grievance procedures within the time allotted, such grievance shall be considered settled in the favor of the District.

Any decision of an arbitrator must be within the scope of his or her authority. The arbitrator shall not have any power, right or authority to add, subtract from, modify, change or alter any of the terms or provisions or the expressed intent of this Agreement.

The arbitrator shall not have the power to make an award that requires an illegal act.

ARTICLE V: VACATIONS

Association Position:

The Association proposes to amend Article V, Section A by increasing vacation days for twelve-month employees hired after July 1, 1994, who have ten (10) or more years of service from ten (10) days per year to fifteen (15) days per year.

The Association points out that this proposals and others as well have the goal of closing the gap between the tiers of benefits for employees in the Agreement. The hire date of the employee determines to which benefit tier they are assigned. For twelve-month employees hired before July 1, 1994, essentially have better vacation benefits than those hired after July 1, 1994.

Currently the District twelve month employees hired after July 1, 1994, top out at 10 vacation days. The Association maintains that they are seeking to close the gap between them and those hired before July 1, 1994. The Association presented comparables of other districts and points out that there is not a single other CBA where twelve month employees top out at 10 days as other districts top out at 20 days.

The Association argues that financial impact is essentially nil. There are only six twelve month employees in the lower tier and only four of those employees would be eligible for this benefit during the term of the Agreement. The only cost would be the cost of substitutes for them when they take vacations. However, the District has not had a practice of hiring subs for the 12 month employees who take vacation so there would be no cost to the District.

District Position:

The District's proposals with regard to the Article V appear to seek to eliminate all references to vacation for 9-month employees and 10-month employees in Subsection B of Article V. The District represented that the only 9-month employees were Aides. The provisions of Article V Section B are only applicable to two Aides as they are the only

current Aides who were hired on or before July 30, 2005. The number of Aides employed by the District in the last CBA went from 4 to 16. That would mean that Aides and 10 month employees would get no vacation under the CBA. The District asserts 9- month employees and 10-month employee are essentially getting three or two months of vacation a year because they do not work three or two months, respectively, during each year. The District proposes that Aides would receive additional sick days per year in addition to the two sick days provided in the current Agreement.

District also proposes a deletion of the provision that provides that if a non-bargaining unit employee of the District becomes a member of the bargaining unit, she will receive full credit for each year of service in the District.

Recommendations:

It is recommended that the Association proposal to increase vacation days for twelve-month employees hired after July 1, 1994 who have ten (10) or more years of service from ten (10) days per year to fifteen (15) days per year not be adopted.

The Association's proposal, and others in its package proposal, attack that tier concept and seek to bring the benefits of the affected employees of the District on the bottom tier closer to the benefits of the employees on the upper tier.

Past negotiations have established two tiers of benefits for twelve month employees depending on whether the employee was hired before July 1, 1994 or after that date. Those twelve month employees hired before July 1, 1994, have better benefits than those hired after that date. Here the Association has pointed to provisions from other districts, but there is no evidence of tiered structures in those provisions, so they are not appropriate comparisons. That the lower tier in the Agreement would not have the vacations in CBAs in other districts without a tiered structure is not surprising and those district comparables cited by the Association for this purpose will be given no weight.

This tiered structure was specifically negotiated to base benefits on date of hire rather than equality of the job or within the bargaining unit. I am reluctant, without more, to significantly impact such a negotiated structure based solely on an effort by the Association to achieve equality when the Association and the District agreed that these provisions would be structured to specifically not be based on equality.

It is recommended that the District's proposal to eliminate all references to vacation for 9-month employees and 10-month employees in Subsection B of Article V not be adopted as the District did not provide sufficient evidence to support this proposal.

It is recommended that the District's proposal for a deletion of the provision that provides that if a non-bargaining unit employee of the District becomes a member of the bargaining unit, she will receive full credit for each year of service in the District not be adopted as the District did not provide sufficient evidence to support this proposal.

ARTICLE VII: ILLNESS OR DISABILITY

Association Position:

The Association proposes to amend Article VII, Section A so that ten-month, five hour employees and aides will be credited with five (5) sick days per year. The Association maintains that aides and ten-month cleaners employed by the District receive substantially fewer sick days than their counterparts in comparable districts. The Association's proposal is a reasonable attempt to make sick leave benefits for the affected employees somewhat closer to (although still far lesser than) sick leave benefits enjoyed by similar employees in other districts. Currently, five-hour, ten-month cleaners and aides are granted two (2) sick days per year. The Association maintains that in no other school district in Mercer County do these employees receive such a low number of sick days. The Association maintains that the District rarely hires substitutes so the cost of the proposal is minimal. Substitutes have historically not been hired for aides except for travel aides. Substitutes are hired for ten month, five hour cleaners only half the time. The Association did not provide examples supporting the necessity of this proposal.

The Association also proposes to amend Article VII, Section H to increase the separate attendance bonus for aides from one (1) day of their normal compensation to four (4) days of their normal compensation if 98% attendance is achieved for the school year, excluding personal and funeral days. The Association maintains that aides in the bargaining unit are eligible to receive a lesser attendance bonus than other employees. The one day isn't much of an incentive as four days will provide an adequate incentive to achieve the objective of this provision. The Association's also states as one of the purposes of its proposal is to bring the attendance bonus offered to the aides more in line with the attendance bonus offered to all other employees in order to promote equality in the bargaining unit.

District Position:

With respect to the Association proposal that ten-month, five hour employees and aides be credited with five (5) sick days per year, the District argues that the status quo should be maintained.

With respect to the Association's proposal for increasing the attendance bonus for aides from one (1) day of their normal compensation to four (4) days of their normal compensation if 98% attendance is achieved for the school year, excluding personal and funeral days, the District proposes that Aides be eligible for the equivalent of two (2) days of normal compensation for 98% attendance.

The District proposes to add language that sick days for cafeteria and bus drivers shall be earned by hour and converted to sick days by dividing the hours by eight (8) hours to equal amount of sick days, with adjustments when they move to a Union five (5), seven and one half (7 1/2) or 8 hour position. The District did not provide evidence of the necessity of this proposal.

Recommendations:

It is recommended that the Association's proposal that ten-month, five hour employees and aides be credited with three (3) sick days per year, instead of the current two (2) sick days per year. The parties shall amend Article VII, Section A to reflect this recommendation.

It is recommended that the District's proposal to add language that sick days for cafeteria and bus drivers shall be earned by hour and converted to sick days by dividing the hours by eight (8) hours to equal amount of sick days, with adjustments when they move to a Union five (5), seven and one half (7 1/2) or 8 hour position, not be adopted as the District did not provide sufficient evidence of the necessity of this proposal.

It appears that the parties are in agreement on the concept of increasing the number of days compensation to aides for 98% attendance but differ as to the number of days. The Association's proposal appears to be the most suitable for the reasons it argues. It is recommended that Article VII, Illness or Disability, Section H be modified as follows:

H. BONUS FOR ATTENDANCE

All eligible employees will be eligible for \$100 bonus for 97% attendance, \$200 for 98% attendance, \$300 for 99% attendance and \$400 for 100% in last pay of the school year, exclusive of personal and funeral days. Aides are eligible for the equivalent of four (4) days normal compensation amount, if 98% attendance is achieved for the school year, excluding personal and funeral days.

ARTICLE VIII: TEMPORARY LEAVES OF ABSENCE

Association Position:

The Association proposes to amend Article VIII, Section A so that all employees may be absent for personal reasons, without loss of pay, not more than three (3) days in any one work year (non-accumulative) for twelve-month employees and two (2) days in any one work year (non-accumulative) for those employees working less than twelve (12) months. This would eliminate the tiers in his provision. Currently, personal days are tiered based on when the employee was hired. It is the Association's position that employees working in the same job should receive the same benefits, regardless of when they were hired. By granting all twelve-month employees the same number of personal days and all employees working less than twelve months the same number of personal days, there is equality based on job classification, not based on date of hire.

District Position:

The District is not interested in changes in this provision and proposes to keep the status quo.

Recommendation:

It is recommended that the Association's proposal that all employees may be absent for personal reasons, without loss of pay, not more than three (3) days in any one work year (non-accumulative) for twelve-month employees and two (2) days in any one work year (non-accumulative) for those employees working less than twelve (12) months not be adopted.

It appears that under the current CBA there is a tiered system for personal days. For those hired prior to July 1, 1994, twelve-month employees have three personal days and less than twelve-month employees have two personal days. For those hired after July 1, 1994, twelve-month employees have two personal days and less than twelve-month employees have one personal day.

As stated previously, this tiered structure was specifically negotiated to base benefits on date of hire rather than equality of the job or within the bargaining unit. I am reluctant, without more, to dismantle such a negotiated structure based solely on the Associations desire to achieve equality when both the Association and the District agreed that these provisions would be structured to specifically not be based on equality.

ARTICLE X: INSURANCE BENEFITS

Association Position:

The Association proposes that Article X, Section A and the MOU at Appendix A be amended so that all twelve-month employees, ten-month secretaries, and seven-hour cleaners (10 months) who were hired after July 1, 1990, into the applicable classification shall be eligible for individual medical insurance benefits. The Association has proposed specific language that incorporates this proposal and simplifies and clarifies Article X, Section A and eliminates the need for the Memorandum of Understanding at Appendix A.

Article X of the current CBA and Appendix A set forth the medical, vision and dental benefits. The language is confusing. Basically when it comes to hospitalization, there are three tiers. The top tier contains employees hired on or before July 1, 1990, who are eligible for family medical benefits at a premium share of \$25 per month. The middle tier is for those hired between July 1, 1990 and June 30, 2005, who are eligible for individual medical insurance benefits at a premium share of \$25 per month. The lower tier is for those hired after June 30, 2005, who are eligible for individual medical insurance benefits at a premium share of 50% per month. If that employee elects family coverage, the employee is required to pay all premium costs above the 50% of his or her individual coverage.

The Association notes that when the lower tier provision was negotiated, it was only to apply to employees hired after June 30, 2005, but according to the language of the MOU attached to the Agreement, it applied to "any employee working five (5) hours or more." This language swept in employees who were not anticipated to be included in the more expensive coverage. The Association points out that due to the District's membership in the Western Pennsylvania Schools Health Care Consortium ("WPSHCC") additional costs for implementing this proposal would not be substantial as the WPSHCC has done a very good job of controlling the costs of medical insurance for its members. Further, this proposal will currently apply to only seven individuals.

With respect to dental and vision insurance of Article X, Sections D and E, the Association proposes that all twelve-month employees, ten-month secretaries, and seven hour cleaners (10 months), regardless of when they were hired, shall be eligible for family dental insurance coverage with full premium paid for by the District.

The Association points out that there are currently two tiers with respect to vision and dental insurance. Those employees hired into the appropriate classification on or before June 30, 2005, would be eligible for family dental coverage and family vision coverage with the full premium paid by the District. Those so hired after June 30, 2005, would be eligible for individual coverage at 50% of premium with family coverage available but at a higher cost.

The Association argues that the goal of these proposals are to create equity in the bargaining unit based on the job the individual performs, not based on the individual's date of hire. It is the Association's position that employees working the same job should have the same benefits, regardless of when they were hired.

District Position:

The District proposes the deletion of current Article X, Section A, Subsections 1, 4 and 5. The District proposes that in Article X, Section A, Subsection 2 would be modified to change the monthly contribution from \$25 to \$30 per month and from \$12.50 to \$15 per pay period. The District also proposes the deletion of the reference to the PPO-POS plan Article X, Section A, Subsection 2 and 3 in which is no longer in effect. The District also requests that the paragraph 4 of the

Memorandum of Understanding dated November 2, 2009 be changed to provide that any employee under the Agreement earning more than a teacher shall pay \$55 per month rather than \$50 per month.

With respect to the vision and dental insurance proposals, the District maintains that the status quo should be maintained.

Recommendations:

I am persuaded that the language of the Article X, Section A and the Memorandum of Understanding attached as Appendix A are confusing to some degree and that this language had the effect of sweeping into the lower tier employees who were not anticipated to be included in the more expensive coverage. The Association has persuasively argued, and the District has not seriously disputed, that the Association did not intend to give up the individual medical insurance premium coverage for eligible employees hired after July 1, 1990 in the 2005 negotiations.

I am also persuaded that the Districts proposed increases in the premium share should be adopted.

It is recommended that Article X, Section A be modified as follows (and the MOU attached as Appendix A to the CBA modified accordingly):

A. *HOSPITALIZATION*

1. *12-month employees, 10-month secretaries, and 7-hour cleaners (10 months):*

- a. *Employees hired on or before July 1, 1990, into the applicable classification shall be eligible for family medical insurance benefits. The employee shall pay a premium share of \$30 per month; provided, however, that employees who have an annual base salary that is greater than the starting salary for teachers, as provided in the collective bargaining agreement between the District and the West Middlesex Education Association, shall pay a premium share of \$55 per month. The remainder of the premium shall be paid by the District.*
- b. *Employees hired after July 1, 1990 into the applicable classification shall be eligible for individual medical insurance benefits. The employee shall pay a premium share of \$30 per month; provided, however, that employees who have an annual salary that is greater than the starting salary for teachers, as provided in the collective bargaining agreement between the District and the West Middlesex Education Association, shall pay a premium share of \$55 per month. The remainder of the premium shall be paid by the District. The employee may select coverage for his/her spouse and/or family but is responsible for the difference between the applicable premium and the portion of the individual premium paid by the District.*
- c. *All 12-month employees, 10-month secretaries, and 7-hour cleaners (10 months) are eligible for a \$1000 bonus to be paid to any employees who choose to have their family name totally removed from the medical insurance plan or, in the case of married couples both employed by District, a \$600 bonus will be paid if one employee removes his/her name. Payment of the bonus shall be made semi-annually (January 30th, June 30th). The employee has the right to the immediate return of coverage upon written notification. (Said bonus shall be pro-rated, if necessary.)*

2. *For all 5-hour cleaners (10 months), floaters (10 months), and aides, the District shall pay 50% of the individual premium for medical insurance benefits, and the employee shall pay 50% of the individual premium for medical insurance benefits. The employee may select coverage for his/her spouse and/or family but is responsible for the difference between the applicable premium and the 50% of the individual premium paid by the District.*

3. *Medical insurance will be provided under the Western Pennsylvania Schools Health Care Consortium ("WPSHCC") Contemporary (PPO) Plan. During the term of this Agreement, should the WPSHCC dissolve, should the WPSHCC become unable to provide the medical insurance benefits under a PPO plan, or should the District leave the WPSHCC, the District will meet and discuss with the Association at least thirty (30) days prior to switching carriers except in the event of exigent circumstances that require lesser*

notification to ensure employees are not left without medical insurance coverage. The level of benefits will remain the same or as similar as possible to the current level of benefits. The intent of switching carriers would be to find a more cost effective carrier with the same or similar levels of the benefits.

4. *Coverage and benefit levels under this provision shall be subject to the operating guidelines and procedures of the insurance provider.*
5. *All premium contributions made by employees under this Article shall be made via payroll deduction. Employees agreed to complete any necessary paperwork to effectuate medical insurance coverage and payroll deduction for premium contributions. Payroll deduction shall be made twice per month, with half of the applicable premium contribution being deducted in each paycheck.*
6. *Employees working less than four (4) hours per day will be entitled to retirement and unemployment compensation.*

It is recommended that the Association's proposals regarding vision and medical benefits not be adopted. The Association has not proposed support outside of the desire for equality of benefits across the unit and information concerning dental and vision benefits from other districts that do not have tiered benefits. Without more, the Association's vision and dental proposals are not adequately supported.

ARTICLE XI: MERIT PAY FOR FINAL YEARS OF SERVICE/SEVERANCE

Association Position:

The Association proposes amending Article XI, Section B to increase the payment for unused sick days from \$15 for all days to \$20 per day for days 1-99, \$25 per day for days 100-199, and \$30 per day for all days over 199.

The Association asserts that the current payment of \$15 per day lags well behind the payment for unused sick days in other comparable districts. It will have the effect of rewarding employees with considerable service to the District who have sacrificed and not used sick days. Currently, there is little incentive for employees not to use sick days, which reduces productivity and causes disruption within the District. With a larger payment for unused sick days, employees will be less inclined to use sick days when they are active employees and more inclined to save them for payment upon retirement or resignation.

District Position:

The District asserts that the Association's proposal will cost the District \$20,000 to \$30,000 for the life of the CBA. The District proposes, as an alternative, that the provisions of Article XI, Section A be amended so that the payment for the final years of service before leaving employment for unused sick days be converted to a flat rate: 10-14 years - \$1,500; 15-19 years - \$2, 750; 20-over - \$4,500.

Recommendation:

It is recommended that both the Association's and the District's proposals concerning Article XI not be adopted. There was no evidence presented as to an need to adjust these measures due to its not achieving their purpose or because of abuse of these measures. During these economic times, monies available for this CBA are more appropriately allocated to wage increases.

ARTICLE XII: COMPENSATION

Association Position:

The Association's has proposed average 3.5% increase in each of the Association's five year Agreement. The Association also requests that the increases be made fully retroactive. The Association notes that the former agreement averaged yearly 3% increases.

Over the last five years the District has raised the reserve to \$5M. The General Fund balance is at a very healthy 18 % to 19 % over the last five years. In each of the last five years the District has underestimated the actual amount of revenues it would receive, which averaged \$515,148 over budget the last five years. Also in the last five years the District has overstated its actual expenditures in budgets by an annual amount of \$457,937. The District's expenses have slightly exceeded revenues for the past five years because the District has transferred monies to its Capital Reserve Fund to increase the same from \$820,802 in 2005-2006 to \$5,430,965 in 2009-2010.

The Association asserts that its proposal is such a small percentage when one takes into account the District's overall expenditures that it is undeniably affordable. This unit only accounted for 5.39% of the District's actual expenses in 2009-2010. The difference between the District and Association's proposals is \$200,000 over four entire years. This is very small.

The Association produced evidence as to: the low placement of the unit's wages for its classifications when compared to the "Self Sufficiency Standard" for Mercer and Lawrence Counties and the pension contribution rates provided by the Commonwealth.

The Association points out that during the course of bargaining, the District settled contracts with both its Act 93 group and its superintendent. It produced a newspaper article from June 30, 2010 that asserted that the average raise for the Act 93 group was 6.2%. A high school principal was given a 16.55% raise and others ranged from 3.66% to 12%. The Superintendent received a 3.5% increase for the first year of his new contract in 2011-2012. This is the same amount proposed by the Association.

District Position:

The District increased its compensation proposal at the Fact Finding hearing to propose that it would offer increases in wages for a four Agreement as follows:

2010-2011 2.5%
2011-2012 2%
2012-2013 2%
2013-2014 1.5%

The District asserts that this era of uncertainty facing School District does not make prior compensation proposal which included a wage freeze an aberration as to where things stand currently and it is a realistic assessment of the future. The District points out, for example, that in Penn Hills School District there was a freeze in the first two years of the Collective Bargaining Agreement and provided raises of 1%, 2% and 3% in the last three years and referred to it as a larger trend. The District has asserted that it has moved substantially since the beginning of the negotiations. The position of the District is that this CBA should come in at a total economic impact of under 3%.

The District refers to general chart provided by the Pennsylvania School Board Association as of July, 2008, showing Hourly Rate Mean Minimum and Maximum compensation rates for non-professionals (bus drivers, aides, food service, secretaries, maintenance, custodians) taken statewide. The District asserts that this proves that the District is compensating the District employees at the upper end of the middle statewide. The District asserts that this, along with a comparison with other Districts in the area, shows that the Association members are well compensated.

The District cautions on comparisons as to how employees fare relative to other Districts in the area as the taxpayers of the District are not necessarily comparable to the comparison District cited by the Districts.

The District asserts that the District's secretaries wages (the Association used 2009 numbers) are very comparable to Commodore Perry (where the Association used 2010 numbers) and Grove City. The District secretary's pay is significantly higher than Reynolds. The District also points out that the Commodore Perry District are 2010 figures compared with the Association's portrayal of the District's 2009 figures.

The District maintains that the way custodial and maintenance are defined varies from District to District. Commodore Perry contracts out the custodian and maintenance functions. The Association is using 2009 - 2010 figures for the District and 2010 - 2011 figures for the other Districts. Reynolds and Hermitage compared with the District, shows that the

District building custodial employees are paid very well, in comparison to Reynolds almost 30% more. District maintenance are paid slightly lower than Reynolds and significantly higher than Hermitage.

For the District cleaning people the District points out that its examples use 2009 - 2010 figures for the District and 2010 - 2011 figures for the other Districts. Commodore Perry contracts out. The Seven and eight hour 12 months and 10 month people, \$11.48 per hour is significantly higher than Reynolds and Hermitage. Aides in the District are paid significantly higher for certified Aides.

The District produced a chart of projected salaries and expenses through the 2013-2014 school year. The District maintains that this chart shows as a bottom line is more than 3/4 of \$1M paid by 2013-2014 for the secretaries, aides and maintenance. The chart also shows the additional impact for each 1% salary increase taking into account 5% increases in health, dental, vision, etc. It shows that by the end of the 2013-2014 school year, a 1% increase would increase costs by over \$50,000, 2% by over \$87,000 and 3% by over \$124,000 additional costs.

Health care experience with the health care consortium has been good but it can't rely on that as over the course of experience. If the District had to drop out of the consortium, or if the consortium disbanded, the District would have to pay \$1.8 M. There is also the question of assessments such as the \$250,000 the District had to pay 8 years ago to the consortium to keep benefits afloat. The fund has developed a stop loss account and has used \$1M from the stop loss to keep the most recent increase at 3%.

The Association's key comparable is the raises recently given to the various administrators. It does not take into account some important details. While the Association members are not underpaid, however, the District has significantly underpaid its administrators. This has resulted in a turn over of administrators, especially in the high school. Even though the administrators were given raises comparable to other districts, they were still underpaid. To try to stop this loss of administrative talent, the District addressed this wage disparity. The High School Principal received a 16.55% raise. The head of special education received a 12.15% increase. The Assistant Principal received a 8% increase. The head of transportation got a 10% raise. The head of technology received a 8.5% raise and left because another district offered him \$10,000 more. Several other administrators were given raises of 2.8% to 3%. The District maintains that this has put the District on a better footing to retain administrators.

The Superintendent received a 2.4% increase. However, he gave up an additional 4.4% to apply the savings to apply it to the administrator's salary increases.

The District also has a renovation plan in play. The amount of money required is in the area of \$8M for planned renovations to keep up with modern educational requirements. Older buildings are not ADA compliant.

Money was transferred from the General Fund to the Capital Reserve Fund and the debt service account to pay interest on the bonds, on about a 50% and 50% basis.

The District has over \$18M in debt service and have over \$1.8 M in retiree health care in the future. The transfer to pay interest was to attempt to reduce the large debt service and subsidize the capital renovations.

There is a significant amount of money in the General Fund which is earmarked for expected increases in the PSERS contributions.

The Association presentation shows that the District was in the middle range of those compared. The District argues that this does not take into account that more state and federal grants are available to other districts due to their more prosperous nature and demographic factors.

The District argues that the self sufficiency chart does not take into account that in households today husbands and wives are working one and possibly two jobs. The economy is such that many of the types of jobs covered by the Agreement will not alone sustain a family. The comparables cited by the Association are a false comparison and are irrelevant. This county has lagged behind the statewide and national unemployment figures and currently has one of the two or three highest unemployment rates in the state. These valuable employees are not facing a wage freeze and the District is willing to work with them but can not ignore the state of the economic climate.

The District maintains that there is significant uncertainty with regard to what the federal and state governments are going to do with respect to retirement reimbursement for PSERS and what the basis education funding would be. For example, the District is uncertain as what will happen to the \$261,000 Accountability Block Grant. The District asserts that Access supplies some of the funds that support the increase in Aides and that number next year in question. The District maintains that the Educational Assistance Program Grant of \$80,000 will not continue. The Districts will lose between \$300,000 to \$500,000 in reimbursements per year until financial situation improves. There is also the possibility of a reduction in force due to the economy and student enrollment.

There are multiple tiers set up in the negotiations five years ago. The District maintains that the parties agreed to a five year merging step placement chart. The District maintains that the parties agreed that when a person came in from the outside with experience, the person was given credit for that experience and not forced to start at the beginning step of the placement chart.

Recommendation:

With respect to the specifics of uncertainty, the District offered argument from counsel and statements of the Superintendent. There is no question that there is long term uncertainty as to the national and local economy and the possibility of outside funding that is now or was previously available. The signs for the future go both ways. For example tomorrow, the Governor will release the details of his proposed state budget for the budget year July 1, 2011, through June 30, 2012, to the Legislature - the consensus appears to be that there will be cuts in basic funding to districts but we have no idea how deep those cuts will be. On the other hand, reports appear to support an improving national economy and an unemployment rate trending downward.

Further, in spite of the state of the economy for the last two years, from the Association's proof which was not disputed by the District, there is also no question that the District is in a good financial position no doubt due to sound financial planning.

Significantly, the District improved its compensation proposal at the fact finding hearing, going from increases of 0%, 1.0%, 1.5% and 1.5% each year of a four year Agreement to 2.5%, 2.0%, 2.0% and 1.5% for a four year Agreement in what the District termed a "front loaded" proposal. This shows a significant reduction in the monetary value of the differences in the new District proposal when compared to the Association's proposal.

It is also undisputed that the last round of bargaining that led to the 2005 - 2010 CBA, which was before the current economic downturn, provided that increases averaging 3% per year.

It should be noted that the District's chart showing state wide averages for classifications was published in June, 2008, is of questionable relevance as the information is two years old and compares statewide information. In fact, it is more helpful to the Association's position because the District employees wages are comparable statewide wages two years ago and there have been increases since then.

At the hearing the District and the Association agreed that the recommendation of the Fact Finder should recommend only a percentage increase for each year of the Agreement which the Fact Finder recommends. The parties represented that if the Fact Finder's Report is accepted by both parties, the parties would determine how the percentage increases would be allocated per year.

Given the above, it appears that the appropriate wage increases would be in between the proposals of the parties and should lean more toward the Association' proposal.

It is recommended that the following wage increases be provided in the Agreement:

2010-2011 - 2.75%

2011-2012 - 3.0%

2012-2013 - 3.0%

2013-2014 - 3.0%

It is recommended that the wage increases be fully retroactive.

ARTICLE XIV: PERMANENT JOB VACANCY

District Position:

The District proposes replace language in Article XIV, Subsection B to allow the District total discretion in selecting/compensating secretarial/clerical positions in the event of a vacancy assignment and that these positions would not be subject to the seniority or bidding provisions under the CBA. The District maintains that there are specific position in which filing that positions has necessary qualifications such as ability and confidentiality that should trump seniority as the determinative for awarding the position.

The District also proposes that Article XIV, Section C be modified to change all references from twenty (20) days to forty-five (45) days for the person in the new position to demonstrate his/her ability to perform the job. The District argues that times have changed and that 20 days is not enough time to properly evaluate whether a person fits in such a position. The District cited one instance in 1995 concerning the need for this change.

Association Position:

The Association argues that the status quo be maintained. The Agreement now provides for seniority for those within the classification, and then the department. It is the same work and it is appropriate for the senior person in classification and then department bidding the job to be awarded the job. Should the senior person bidding the job be from outside the classification and department, the current provisions currently require that the bidder be qualified and capable of performing the work. The District has the ability to bump people back within twenty calendar days, but the District has never done so.

The Association also contends that the twenty work day (20) period within which to return an employee to his/her former position if he/she does not work out in the new position. The Association knows of no problems with this in the past and has never exercised that right within the current 20 work day period. The Association asserts that the current 20 day evaluation period with the right of the District to determine qualifications of candidates who are outside the classification and department is more than enough protection for the District in this provision.

Recommendations:

It is recommended that the District's requested modifications to Article XIV, Section B not be adopted, as the proposal has not been adequately supported.

It is recommended that the District's proposal to modify Article XIV, Section C be adopted, and the language of Article XIV, Section C be amended as follows:

A successful bidder for a permanent job vacancy, which constitutes a promotion, will have forty-five (45) work days to demonstrate his/her ability to perform the job. If the employer determines, during the forty-five (45) workday period, that he/she lacks the ability to perform the job, the employer will return the employee to his/her former job at the conclusion of the forty-five (45) workdays. (the posting of his/her form job shall be retracted and any employee who bid on his/her formal job shall be notified.) If the employee believes that the employer's determination is unjust, he/she may present such matter as a grievance. In the event it should be decided that such determination was unjust, the employer shall reinstate such employee to the job and make him/her whole for any monetary loss he/she suffered.

ARTICLE XXI: TERM OF AGREEMENT

Association Position:

The Association argues that the CBA should be for five years, July 1, 2010 - June 30, 2015. The Association believes that this will provide a period of tranquility, certainty and stability.

District Position:

The District argues that the CBA should be for four years, July 1, 2010 - June 30, 2014, given these uncertain times.

Recommendation:

This issue does not appear to be hotly disputed. Almost a year has already passed without an Agreement and this will effectively become less than a three year agreement. The Fact Finder takes into consideration that many Districts have five year agreements and that the prior CBA for the Association was a five year agreement. Nevertheless, it appears from some of the latest school district settlements that the current economic times has or is affecting the trends in contract terms. There are a number of significant unknown factors, including the potential of decreasing State Aid and PSERS increases. Given the uncertain economic climate it appears appropriate to shorten the recommended term of the new agreement to four years to allow the parties the flexibility to address those matters.

It is recommended that the new CBA have a four year term extending from July 1, 2010 through June 30, 2014 as follows:

TERM OF AGREEMENT

This Agreement shall be in effect for the period beginning July 1, 2010, through June 30, 2014.

*2010-2011
2011-2012
2012-2013
2013-2014*

NEW LANGUAGE: TRAINING:

Association Position:

The Association proposes that the a provision is included in the Agreement which requires the District to provide educational and training opportunities required for employees to maintain their jobs. The real impetus in the change in Chapter 14 regulations with respect to aides who must complete twenty (20) hours of continuing education each year. The District has offered a sufficient number of opportunities but the Association wishes the certainty of a contract provision in light of the District beginning to restrict the availability of training videos.

District Position:

The District argues that there is a cost to this item of approximately \$500 to \$1,000. The District is not trying to make it difficult with the requirement that videos be viewed on site as there must be some mechanism for verification that the training has actually been undertaken.

Recommendation:

It is recommended that the following language be included in the Agreement:

All trainings, courses, conferences and seminars required by the Board or by laws and/or regulations for the employee to perform or maintain his/her job shall be provided by the District.

NEW LANGUAGE: INCORPORATION OF MEMORANDUM OF UNDERSTANDINGS

District Position:

The District proposes that as a point of clarification and efficiency, the specific incorporation into the text of the CBA all relevant MOUs. The District also proposes that when this is done, language in the Agreement referring to MOUs would not be necessary and should be deleted. The District has represented that there are nine (9) MOUs that should be so incorporated.

Association Position:

The Association does not contest the mechanics of incorporation of appropriate MOUs in the Agreement but could not agree to that being done for nine MOUs as it had not verified that many MOUs.

Recommendation:

There was some confusion generated at the Fact Finding hearing related to numerous MOUs and how they related to the language of the Agreement.

It is recommended that the MOUs or provisions thereof which remain applicable be incorporated in the text of the Agreement. In that process any references to the incorporated MOUs in the CBA would be deleted as unnecessary

TENTATIVE AGREEMENTS

The parties have entered into Tentative Agreements concerning several issues discussed during negotiations.

Recommendation:

It is recommended that the following tentative agreements be incorporated into this report as if set forth herein and be made a part of the parties' CBA:

ARTICLE II: GRIEVANCE PROCEDURE

Add language clarifying that the decision to proceed to arbitration rests solely with the Association and not with any individual bargaining unit member.

ARTICLE VII: ILLNESS AND DISABILITY

Add language incorporating a previous Memorandum of Understanding relating to the calculating of sick days when an employee moves from a non-bargaining unit position into a bargaining unit position.

ARTICLE X: INSURANCE BENEFITS; SECTION A, RETIREMENT CLAUSE

Eliminate all references to age 65.

Eliminate the indemnity option described in Paragraph A.1.

ARTICLE X, INSURANCE BENEFITS; SECTION G(2), SICK LEAVE DONATION PLAN

At the Fact Finding Hearing, the parties agreed to dismantle the sick leave bank and replace it with a sick leave donation plan. The parties will meet to seek agreement on a method for distributing days currently in the sick leave bank. The new provision will read as follows:

Sick Leave Donation Plan

- a. *When a bargaining unit member is absent on account of catastrophic or long-term illness or disability, the District will, upon written request by the Association, transfer sick leave days from donating employees to the affected bargaining unit member.*
- b. *The Sick Leave Donation Plan is not available for family illness or for elective or cosmetic surgery.*
- c. *The following conditions will apply:*
 - i. *The employee requesting sick leave must have no more than three (3) days in his/her personal sick leave account.*
 - ii. *The Association President and Superintendent or designee will require an original doctor's certificate before sick leave days may be transferred.*
 - iii. *The Association President and the Superintendent or designee may require periodic doctor's certificates in any case when he/she has reason to suspect either a pattern of abuse or abuse of sick leave days.*

- iv. *In a situation such as this, the Association will be permitted to receive names of bargaining unit members who will voluntarily donate sick leave days to the individual employee. In the event that bargaining unit members are willing to donate more days than are necessary, a lottery-style drawing will select names of those who will participate.*
- v. *It is understood that participation in the Sick Leave Donation Plan is strictly voluntary. The Association will prepare and implement all necessary forms for the implementation of this Plan.*
- vi. *Bargaining unit members are eligible to receive no more than fifty (50) sick days per year through the Sick Leave Donation Plan.*
- vii. *If any legal action that is brought against the District as a result of any action or lack of action in which the District had no part or influence in the decision making pursuant to this section, the Association/PSEA/NEA agrees to provide for the defense of the District at the Association/PSEA/NEA's expense and through counsel selected by the Association/PSEA/NEA. The District agrees to give the Association immediate notice of any such legal action brought against it and agrees to cooperate fully with the Association/PSEA/NEA in defense of the case. If the District does not fully cooperate with the Association/PSEA/NEA, any obligation of the Association/PSEA/NEA to provide a defense under this section shall cease. The Association/PSEA/NEA agrees in any action so defended to indemnify and hold the District harmless for any monetary damages the District might be liable for as a consequence of its compliance with this section; except that it is expressly understood that this hold harmless provision will not apply to any legal action that may arise as a result of any misconduct by the District.*
- viii. *No employee may donate more than five (5) sick days per year.*

ARTICLE NOT REFERENCED

Add language that the bus garage mechanic will be supervised by the bus garage supervisor.

CONCLUSION

In conclusion, the parties are directed to review this Fact Finding report and within ten (10) days from the date of the issuance of this report to inform the Pennsylvania Labor Relations Board and each other if they accept or reject this report.

Confidentiality of this report shall be maintained during the ten (10) day consideration period and until officially released for publication by the Board in the event of a rejection.

The Fact- Finder submits the Findings and Recommendations as set forth herein.

This concludes the Report of the Fact Finder.

Respectfully submitted,

Pittsburgh, PA
March 7, 2011

Michael D. McDowell, Esq.
Fact Finder