

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD

In the Matter of Impasse Between the

EAST STROUDSBURG AREA SCHOOL DISTRICT,

"Public Employer,"

-and-

**EAST STROUDSBURG AREA EDUCATIONAL
SUPPORT PROFESSIONALS ASSOCIATION,**

"Association."

**REPORT
AND
RECOMMENDATIONS**

Case No. ACT 88-12-4-E

Before
Robert C. Gifford, Esq.
Fact Finder

Appearances:

For the Employer:

John G. Audi, Esq.
Sweet Stevens Katz & Williams

For the Association:

Matthew Gruenloh, UniServ Representative
Pennsylvania State Education Association

Pursuant to Act 88 of 1992 ["Act 88"] and the Public Employe Relations Act ["PERA"], I was appointed by the Pennsylvania Labor Relations Board ["PLRB" or "Board"] on March 20, 2012, as the Fact Finder in the impasse between the East Stroudsburg Area School District [the "Employer" or "District"] and the East Stroudsburg Area Educational Support Professionals Association [the "Association"], a unit comprised of approximately 599 educational support professional employees located within Intermediate Unit 20 ["I.U. 20"].

The parties' Agreement expired June 30, 2011. The parties commenced negotiations for a successor agreement. They met on their own and then with the assistance of a mediator. A number of the issues in dispute remained unresolved, and the District initiated its request for fact finding. On April 16, 2012, a hearing was held at the District's Offices in East Stroudsburg, Pennsylvania at which time the parties were afforded the opportunity to present testimony, examine and cross-examine witnesses, introduce documentary evidence, and argue orally in support of their respective positions on the unresolved issues.

ISSUES

The following issues have been presented for Fact Finding:¹

1. Article II – Definitions
2. Article III – Recognition
3. Article V – Grievance Procedure
4. Article VI – Leaving the Building
5. Article VII – Time Clocks
6. Article IX – Holidays
7. Article X – Vacations
8. Article XI – Personal Leave
9. Article XII – Sick Leave
10. Article XIII – Attendance Incentive
11. Article XVIX – Work Related Injuries
12. Article XX – Association Rights
13. Article XXII – Payroll Deductions
14. Article XXIV – Tuition Reimbursement
15. Article XXV – Probationary Period
16. Article XXVI – Life Insurance
17. Article XXVIII – Disability Insurance
18. Article XXX – Seniority, Layoff and Recall
19. Article XXXI – Healthcare Benefits
20. Article XXXVI – Duration of Agreement
21. Appendix A – Job Classifications
22. Schedule A – Salaries
23. Appendix B – Grievance Report Form

¹ There are sub-issues within some of the general issues listed above.

DISCUSSION

The parties are familiar with the outstanding issues. This Recommendation will focus mainly on the areas in which I recommend changes. Therefore, to the extent an issue is not specifically addressed or incorporated by reference herein I recommend the status quo.

Tentative Agreements

Throughout the bargaining prior to the initiation of the fact-finding proceedings, the parties executed tentative agreements to several issues.

Recommendation – The tentative agreements shall be made part of the final package. They shall be incorporated by reference herein.

Term of Agreement (Article XXXVI)

The term of the parties' most recent agreement expired on June 30, 2011. The parties are amenable to a three (3) year term.

Recommendation – I recommend a term of three (3) years – July 1, 2011 through June 30, 2014.

Salaries (Schedule A)

The Current Provision

The hourly wage rates for bargaining unit members are set forth in Schedule A.

The Association's Proposal

The Association seeks an increase to the hourly wage rate for each bargaining unit member of \$3.00 for each year of the Agreement. The Association points out that many of the bargaining unit members receive an hourly wage rate that is at or below the self-sufficiency standards. The Association indicates that it would have lowered its proposal had negotiations continued with the District.

The School District's Response

The District proposes an increase to the hourly wage rate for each bargaining unit member of \$0.25 for each year of the Agreement. The District supports its position with such factors as: (1) a loss of over \$1.138 million in the assessed real estate values in the District from November 2010 (\$645,126,020) to November 2011 (\$643,743,640); (2) the tax collection rate dropped to 88.2% in 2011-2012; (3) the District's millage rate is the highest in Monroe County; (4) the District is underfunded by the State when compared to school districts with similar MV/PI ratios; (5) the number of students receiving free/reduced lunch increased from 46.5876% in 2010-2011 to 49.9008% in 2011-2012; (6) unemployment and poverty levels in the area continue to increase; (7) the projected enrollment for 2012-2013 is expect to decline to that of 2001-2002; (8) notwithstanding that enrollment levels for 2002-2003 and 2011-2012 are similar, the District has 256 more employees in 2011-2012 than it did in 2002-2003; (9) healthcare costs continue to escalate; (10) although the PSERS rate has been downwardly adjusted the annual contribution rate remains to be substantial; (11) the District incurred a large debt burden based on projected student enrollment from the State that did not actually occur; and (12) the board approved a number of personnel cuts and programming changes on April 10, 2012 and expect to use up to \$4.5 million of its fund balance for its 2012-2013 budget.

Recommendation – I have carefully reviewed the evidence. The District has demonstrated a need for cost containment over the life of the successor agreement. I recommend a modest hourly wage rate increase of \$0.35 each year of the successor agreement. The increases will be offset by the modifications I recommend for health care. The proposed increases take into consideration the current economic conditions and the District's budgetary structure. The increases are retroactive to July 1, 2011.

Healthcare Benefits (Article XXXI)

The Current Provision

The District currently provides bargaining unit members with the Blue Care Traditional Plan or the Blue Care Preferred Provider Organization Plan. Bargaining unit members contribute \$10 per pay period towards the cost of healthcare premiums.

The School District's Proposal

The District seeks to eliminate the Traditional Plan and to move all bargaining unit members to one of two PPO plans outlined in its proposal. In addition, the District proposes to increase the per pay contribution for all bargaining unit members. The District's proposal is based upon its need to reduce costs but, at the same time, a desire to provide quality healthcare to bargaining unit members.

The Association's Response

The Association opposes the District's proposal. It seeks the status quo on the following basis:

The District proposal of eliminating the Traditional coverage while at the same time increasing the premium share up to 500% and splitting the PPO into a two tier system is totally unacceptable to the Association.

The District's administration gets choice of traditional healthcare or PPO with no premium share, the Association will not agree to such inequity in healthcare offering. Additionally, the PPO that district teachers are offered is not two tiered; there is no "lower tier." While the premium share that the teachers pay is not effectually 0% of wages, like the administration's, the actual percentage of wages they pay towards health care is significantly lower than the proposed premium share the District is proposing this Association pay.

The Association has been reluctant to officially move from its status quo position on health care because the district has not been able to provide cost projections for their health care proposal. The Association realizes that status quo on healthcare and premium share is not likely to be in the successor collective bargaining agreement. However, faced with a District negotiations team who can not provide a cost savings goal which can be used to reach possible agreement, the Association has never been given the opportunity to discuss possible plan design change / premium share increases that would be acceptable to its membership and meet the cost goals of the District. The District has only stated that their proposed health care would be "cheaper." In response, the Association believes that increasing the current premium share from \$10 per pay to \$12 per pay would also be "cheaper" for the district. However, the Devil is in the Details of the amount of "cheaper."

The Association would like to point out the specific wording that the District is using in its proposal regarding premium share amounts. Along with the "per pay amount," the District is listing a total "annual contribution." The reasoning for this is an arbitration case related to the current "per pay" language. There are ten (10) month employees who do not receive pay checks during the summer months. Therefore, the arbitrator ruled that their premium share could not be adjusted (to \$12 per pay) to make up for the months when they do not get paid. In this Association's opinion, the inclusion of an annual amount is not just an editorial change. Such a language change is not beyond the scope of negotiation, but changing it would only be agreed to in a quid pro quo exchange would financially benefit the District.

Recommendation – As stated above, the District has demonstrated a need for cost containment. Employees hired on or after April 30, 2012 will only be eligible for the First Priority Life Insurance Company/Blue Care PPO Plan. Effective either June 30, 2013, or during the open enrollment period in 2013, whichever is earlier, the Traditional Plan shall be

eliminated and all employees shall move to the First Priority Life Insurance Company/Blue Care PPO Plan. Employees shall contribute the following amounts towards healthcare: 2011-2012 – no change; 2012-2013 – \$30 per pay period or 5% of premium, whichever is less; 2013-2014 – \$40 per pay period or 10% of premium, whichever is less.

Definitions (Article II)

The Current Provision

For the purposes of this Agreement, regular part-time employees shall be defined as employees regularly scheduled to work the equivalent of less than five (5) hours per day, five (5) days per week on a regularly scheduled basis, or the equivalent of less than twenty-five (25) hours per week. Temporary employees, temporary part-time employees and substitutes shall not be included in the bargaining unit.

Temporary and temporary part-time employees are understood to be those employees who are working in a foreknown specifically temporary position. Substitutes are understood to be those employees filling in for an absent bargaining unit member.

The School District's Proposal

The District proposes to modify the current language as follows:

For the purposes of this Agreement, *all regular part-time employees newly hired subsequent to the ratification of this Agreement shall be defined as employees regularly scheduled to work the equivalent of less than seven (7) hours per day, five (5) days per week on a regularly scheduled basis, or the equivalent of less than thirty-five (35) hours per week, exclusive of newly hired bus drivers (see Appendix A, Item A "Bus Drivers", Paragraph 2).* Existing regular part-time employees shall be defined as employees regularly scheduled to work the equivalent of less than five (5) hours per day, five (5) days per week on a regularly scheduled basis, or the equivalent of less than twenty-five (25) hours per week. Temporary employees, temporary part-time employees and substitutes shall not be included in the bargaining unit.

Temporary and temporary part-time employees are understood to be those employees who are working in a foreknown specifically temporary

position. Substitutes are understood to be those employees filling in for an absent bargaining unit member.

The District supports its proposal as follows:

This is an economic proposal that will save the District hundreds of thousands of dollars by changing the convoluted bus run system and converting it to a pay for work system. The current system builds unworked hours into the pay system by deeming certain runs at higher hours than they actually run. This new system sets a rate of pay significantly closer to the hours actually worked. This system would be transitioned in with new hires under the new agreement. Current employees will be grandfathered in the old system. All of the economic justifications for this change are addressed in the District's Book on the finances of the District.

The Association's Response

The Association opposes the District's proposal on the following basis:

This District proposal would severely limit the number of bargaining unit members who would qualify for healthcare insurance. If these new requirements were to be placed on the current bargaining unit members, an unacceptable large proportion would lose their health care benefits. This limit on qualifying for health care for new hires would eventually lead to the erosion of health care coverage for bargaining unit members.

Recommendation - Based upon the modest increases to the hourly wage rates and the changes in healthcare recommended above, I recommend the status quo for this provision.

Tuition Reimbursement (Article XXIV)

The Current Provision

- A. The Board agrees to reimburse full-time bargaining unit employees covered by this Agreement for tuition only for college courses, registration fees for staff development, vocational/professional trainings, conferences, and workshops under the following conditions:
1. The training, conference, workshop or college course must be related to the bargaining unit employee's job description and assignment.

2. The training, conference, workshop or college course must be pre-approved (prior to registration) by the Superintendent or his/her designee, and shall be submitted on the form designated for that purpose.
3. The request for college course tuition reimbursement must be accompanied by an official transcript showing successful completion of the college course and a receipt for tuition payment. ("Successful" shall be defined as maintaining at least a "B" average, with any "C" grade being balanced by an "A" grade in order to qualify for reimbursement.)
4. The reimbursement for registration fees for staff development, vocational/professional trainings, conferences and workshops shall be the actual cost of such fees documented by a receipt.
5. The reimbursement rate for tuition payment for successfully completed college courses (not to exceed nine (9) credits per fiscal year) shall be 100% of the tuition paid, or reimbursement amount specified in the agreement with the East Stroudsburg Education Association, whichever is less.
6. The Superintendent or designee shall have the right to limit the number of college credits attempted, conferences, workshops or vocational trainings attended by any one (1) individual in a given fiscal year.
7. Any bargaining unit employee, with between zero (0) and less than five (5) years of experience in the East Stroudsburg Area School District, who resigns from the District within four (4) years after receiving tuition reimbursement, shall return part or all of the reimbursement received according to the following schedule:

<u>Reimbursement received during the prior number of months:</u>	<u>Percentage of Reimbursement owed back to the District</u>
12	100%
24	100%
36	100%
48	50%

All reimbursement owed must be returned to the District within six (6) months of the effective resignation date.

8. Any bargaining unit employee, with between five (5) and ten (10) years of experience in the East Stroudsburg Area School District, who resigns from the District within three (3) years after receiving tuition reimbursement, shall return part or all of the reimbursement received according to the following schedule:

<u>Reimbursement received during the prior number of months:</u>	<u>Percentage of Reimbursement owed back to the District</u>
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All reimbursement owed must be returned to the District within six (6) months of the effective resignation date.

9. Any bargaining unit employee, with more than ten (10) years of experience in the East Stroudsburg Area School District, who resigns from the District within two (2) years after receiving tuition reimbursement, shall return part or all of the reimbursement received according to the following schedule:

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12	100%
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All reimbursement owed must be returned to the District within six (6) months of the effective resignation date.

10. Any bargaining unit employee, who is eligible for retirement according to PSERS, will not be required to reimburse the District for college credits taken no matter when the college credits were taken.

The Association's Proposal

- A. The Board agrees to reimburse full-time bargaining unit employees covered by this Agreement for tuition only for college courses, registration fees for staff development, vocational/professional trainings, conferences, and workshops under the following conditions:
 1. The *content of the training, conference, workshop or college course* must be related to the bargaining unit employee's job description assignment *or relevant education field*.
 2. The training, conference, workshop or college course must be pre-approved (prior to registration) by the Superintendent or his/her designee, and shall be submitted on the form designated for that purpose.
 3. The request for college course tuition reimbursement must be accompanied by ~~an official~~ *transcript or other documentation from institution granting credits*, showing successful completion of the college course and a receipt for tuition payment. ("Successful" shall be defined as maintaining at least a "B" average, with any "C" grade being balanced by an "A" grade in order to qualify for reimbursement.)

4. The reimbursement for registration fees for staff development, vocational/professional trainings, conferences and workshops shall be the actual cost of such fees documented by a receipt.
5. The reimbursement rate for tuition payment for successfully completed college courses (not to exceed nine (9) credits per fiscal year) shall be 100% of the tuition paid, or reimbursement amount specified in the agreement with the East Stroudsburg Education Association, whichever is less.
6. *Tuition reimbursement for completed coursework shall be made within thirty (30) calendar days after the second regular monthly Board of Education meeting subsequent to the complete submission to the Personnel Office of documentation defined in Item #3 above.*
7. The Superintendent or designee shall have the right to limit the number of college credits attempted, conferences, workshops or vocational trainings attended by any one (1) individual in a given fiscal year.
8. Any bargaining unit employee, with between zero (0) and less than five (5) years of experience in the East Stroudsburg Area School District, who resigns from the District within four (4) years after receiving tuition reimbursement, shall return part or all of the reimbursement received according to the following schedule:

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All reimbursement owed must be returned to the District within six (6) months of the effective resignation date.

11. Any bargaining unit employee, who is eligible for retirement according to PSERS, will not be required to reimburse the District for college credits taken no matter when the college credits were taken.

The School District's Proposal

- A. The Board agrees to reimburse full-time bargaining unit employees covered by this Agreement for tuition only for college courses, registration fees for staff development, vocational/professional trainings, conferences, and workshops under the following conditions:
1. The training, conference, workshop or college course must be related to the bargaining unit employee's job description assignment.
 2. The training, conference, workshop or college course must be pre-approved (prior to registration) by the Superintendent or his/her designee, and shall be submitted on the form designated for that purpose. *The Superintendent's decision is not subject to the grievance procedure.*
 3. The request for college course tuition reimbursement must be accompanied by a transcript or other documentation from the institution granting credits approved by the Superintendent, showing successful completion of the college course and a receipt for tuition payment. ("Successful" shall be defined as maintaining at least a "B" average, with any "C" grade being balanced by an "A" grade in order to qualify for reimbursement.)
 4. The reimbursement for registration fees for staff development, vocational/professional trainings, conferences and workshops shall be the actual cost of such fees documented by a receipt.

5. The reimbursement rate for tuition payment for successfully completed college courses (not to exceed nine (9) credits per fiscal year) shall be 100% of the tuition paid, or reimbursement amount specified in the agreement with the East Stroudsburg Education Association, whichever is less.
6. *Tuition reimbursement for completed coursework shall be made within thirty (30) calendar days after the second regular monthly Board of Education meeting subsequent to the complete submission to the Personnel Office of documentation defined in Item #3 above.*
7. The Superintendent or designee shall have the right to limit the number of college credits attempted, conferences, workshops or vocational trainings attended by any one (1) individual in a given fiscal year.
8. Any bargaining unit employee, with between zero (0) and less than five (5) years of experience in the East Stroudsburg Area School District, who resigns from the District within four (4) years after receiving tuition reimbursement, shall return part or all of the reimbursement received according to the following schedule:

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~~All reimbursement owed must be returned to the District within six (6) months of the effective resignation date.~~

Prior to their effective resignation date, a promissory note with a payment plan will be signed by the employee. The first payment will be within fifteen (15) days of the effective resignation date and full payment will be within six (6) months of the effective resignation date. At the request of the employee, payments may be deducted from payroll checks subsequent to a schedule agreeable to the District and the employee.

9. Any bargaining unit employee, with between five (5) and ten (10) years of experience in the East Stroudsburg Area School District, who resigns from the District within three (3) years after receiving tuition reimbursement, shall return part or all of the reimbursement received according to the following schedule:

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10. Any bargaining unit employee, with more than ten (10) years of experience in the East Stroudsburg Area School District, who resigns from the District within two (2) years after receiving tuition reimbursement, shall return part or all of the reimbursement received according to the following schedule:

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11. Any bargaining unit employee, who is eligible for retirement according to PSERS and retires from the District, will not be required to reimburse the District for college credits taken no matter when the college credits were taken.

Recommendation – I recommend a compromise between the parties' proposed changes:

- A. The Board agrees to reimburse full-time bargaining unit employees covered by this Agreement for tuition only for college courses, registration fees for staff development, vocational/professional trainings, conferences, and workshops under the following conditions:

1. The *content of the training, conference, workshop or college course* must be related to the bargaining unit employee's job description assignment or relevant education field.
2. The training, conference, workshop or college course must be pre-approved (prior to registration) by the Superintendent or his/her designee, and shall be submitted on the form designated for that purpose. *The Superintendent's decision to deny his/her approval shall not be arbitrary or capricious.*
3. The request for college course tuition reimbursement must be accompanied by *a transcript or other documentation from the institution granting credits approved by the Superintendent*, showing successful completion of the college course and a receipt for tuition payment. ("Successful" shall be defined as maintaining at least a "B" average, with any "C" grade being balanced by an "A" grade in order to qualify for reimbursement.)
4. The reimbursement for registration fees for staff development, vocational/professional trainings, conferences and workshops shall be the actual cost of such fees documented by a receipt.
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7. The Superintendent or designee shall have the right to limit the number of college credits attempted, conferences, workshops or vocational trainings attended by any one (1) individual in a given fiscal year.
8. Any bargaining unit employee, with between zero (0) and less than five (5) years of experience in the East Stroudsburg Area School District, who resigns from the District within four (4) years after receiving tuition reimbursement, shall return part or all of the reimbursement received according to the following schedule:

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11. Any bargaining unit employee, who is eligible for retirement according to PSERS and retires from the District, will not be required to reimburse the District for college credits taken no matter when the college credits were taken.

Other Recommended Changes -

Vacations (Article X, Section F) – Amend July 1 to July 15th in Section F.

Personal Leave (Article XI, Section C) – Modify Section C to read as follows:

Employees may carry over up to two (2) personal leave days for a total of five (5).

Personal Leave (Article XI, Section F) – Modify Section F to read as follows:

Individuals absent from work, who are not on a board approved leave of absence, must use vacation or other types of applicable leave. If applicable leave is not available, they shall, during the period of absence, be charged for the cost of health premiums for the time absent. This charge is in addition to the loss of earnings for that period of time.

Personal Leave (Article XI, Section G) – Add new Section G to read as follows:

A day of personal leave for employees shall be equal to the number of daily hours normally worked. Employees shall be allowed to take personal leave in quarter hour increments.

Sick Leave (Article XII, Section A) – Modify the third paragraph in Section A to read as follows:

Administration may require a bargaining unit employee to furnish a doctor's excuse at the bargaining unit employee's expense, if the employee is absent three or more consecutive days or, in the opinion of the Administration, a pattern of sick leave abuse is indicated.

Sick Leave (Article XII, Section B) – Modify the third paragraph in Section B to read as follows:

Administration may require a bargaining unit employee to furnish a doctor's excuse at the bargaining unit employee's expense, if the employee is absent three or more consecutive days or, in the opinion of the Administration, a pattern of sick leave abuse is indicated.

Sick Leave (Article XII, New Section) – Add the following section to Article XII:

A day of sick leave for employees shall be equal to the number of daily hours normally worked. Employees shall be allowed to take sick leave in quarter hour increments.

Work Related Injuries (Article XVIX) – Two (2) changes. First, reduce the reporting period from two (2) working days to 24 hours. Second, add the following sentence to the end of Article XVIX:

A bargaining unit employee who has received more than 180 days of full worker's compensation disability with a physician's statement that the employee cannot perform their essential job functions, shall be discharged from his/her employment with the District. Consideration will be given to the employee's request for a transfer to an available position for which the employee is qualified and can perform the essential job functions.

Bus Drivers (Appendix A, Section A) – Amend the following paragraphs to read as follows:

8. Runs will be bid annually in August at bus driver orientation, including hours and location, for selection by drivers in order of seniority. Bid runs will be awarded on the basis of seniority; that is, the most senior driver bidding for the run shall be awarded the run, as long as the total bid hours for a driver's workday would not exceed eight (8) hours. During the bid process after the first round of bidding any run forfeited or left over will be put back on the table for a second round of bidding. Any run left over or forfeited at the end of the second round will be assigned for the rest of the year and bid again in August at bus driver orientation the next year.
11. (NEW) Any expiration of licensing may result in immediate suspension without pay. Further discipline may occur at the discretion of the District, up to and including termination for job abandonment.

Cafeteria Cooks and Workers (Appendix A, Section D) – New Paragraph:

Each cafeteria worker shall be required to wear District approved uniform attire. The District shall provide two (2) tops and one (1) apron. Cafeteria workers shall be responsible for the care and cleaning of the District issued uniforms. Each cafeteria worker shall be responsible for purchasing District approved slacks and footwear. All District issued uniforms shall be returned to the District, in good condition, at the time of separation from employment or reassignment into a different job classification.

Custodians (Appendix A, Section E) – New Paragraph:

10. If called into work, a custodian shall be paid a minimum of two (2) hours of the appropriate hourly wage.

Instructional Aides (Appendix A, Section G) – Modify Paragraph 5 to read as follows:

Instructional Aides shall be required to acquire the number of professional development hours that are subject to Chapter 14 regulations and that are directly related to their current job assignment every year (July 1st to June 30th) in order to maintain Highly Qualified status. The District shall provide the required number of hours and shall pay the employee's hourly wage if they must be taken outside regular work hours.

Media Technicians (Appendix A, Section J) – Change job title to "Information Technology".

Grievance Report Form (Appendix B) – Replace the current form with the Association's form presented during the fact-finding proceedings.

SUMMARY

I believe the recommendations above represent a reasonable, acceptable compromise to the outstanding issues given the current economic climate. I direct the parties' attention to my cover letter which outlines their responsibilities to notify the PLRB of their acceptance or rejection of this Recommendation.

Dated: April 30, 2012
State College, Pennsylvania

Robert C. Gifford