

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Labor Relations Board

**In the Matter of the Employees of
Marple Newtown School District
Case No. ACT 88-13-48-E**

REPORT AND RECOMMENDATIONS

Diana S. Mulligan, Fact Finder

Hearing: December 4, 2013

For the Association: Ruthann Waldie, PSEA Uniserv Representative

For the School District: Ellis Katz, Esq.

BACKGROUND

Pursuant to ACT 88 of 1992 and the Pennsylvania Labor Relations Act, Act 195 of 1970, notice was received by the Pennsylvania Labor Relations Board (PLRB) from the Bureau of Mediation that no agreement had been reached between the Marple Newtown School District (SD) and the Marple Newtown Educational Support Professional Association (Association). By letter dated November 19, 2013, the PLRB appointed the undersigned to act as Fact Finder with the authority set forth above. Subsequent to such notice, the parties were duly notified and a hearing was held on December 4, 2013 in Newtown Square, Pennsylvania at which time all parties in interest were afforded a full opportunity to present testimony and introduce documentary evidence.

The following are the issues in dispute presented for the Fact Finder's consideration:

MUTUAL ISSUES

1. Term of Agreement
2. Salary
3. Salary Retroactivity
4. Medical Benefits
5. Prescription (RX) Benefits

ASSOCIATION ONLY ISSUES

1. Association Days

SD ONLY ISSUES

1. Calculation of Special Education Assistants on Revised Minimum Rate

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

A vote to accept the Report does not necessarily constitute endorsement of the Recommendations but, rather, represents only an agreement to resolve the disputed issues. Pursuant to statutory authority, the Report will be

released to the public after the consideration period if rejected by either party.

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

Issue #1: Term of Agreement

Position of the Parties

The Association proposes that the Agreement begin on July 1, 2012 and end on June 30, 2016; the SD wants the Agreement to end on June 30, 2015.

Discussion

The SD's rationale for a 3 year CBA centers largely on the uncertain financial climate, the restrictions placed on its taxing power by the Act 1 Index and the need for flexibility in financial planning especially in light of the Patient Affordability Health Care Act and future pension liabilities. The Association argues that the financial climate is not expected to change dramatically in the next few years, posing little risk for a 4 year contract.

No one can possibly reliably predict what the economy will do next month, much less a few years out. However, taking the SD's argument to its logical conclusion, it should have the ability to alter salaries, medical premium share and other economic items to conform to periodic economic fluctuations. In the end, both parties have to plan on what they can expect to earn and what they can expect to spend even though these plans do not materialize exactly as expected. School districts (or anyone else's) budgeted expenses/income v. actual expenditures/income rarely, if ever, are exactly the same at the end of the fiscal year. Although the SD challenged some of the numbers in the Association's analysis of the SD's financial position (most especially the permanent transfer of funds to certain accounts), the SD generally spent less and realized more income than that for which it budgeted. I agree with the Association when it proposes a longer term because the parties have been bargaining since January, 2011, have had 2 Mediators, and different SD representatives at the table. Even if the Fact Finding results in a settlement, the parties will be back at the bargaining table in a year with a 3 year CBA. The efforts of the administration and the employees should be focused on their jobs, not on protracted bargaining.

Recommendation

By its terms, the Agreement should commence on July 1, 2012 and end on June 30, 2016.

Issue #2: Salary

Position of the Parties

Both parties agreed to a freeze in 2012-2013. Beginning in 2013, the SD is offering a 2.10% increase based on the employee's actual salary. The Association proposes a 2.8% salary increase based on the highest salary rate per classification in 2011-2012. This dollar amount increase would remain the same for every year of the CBA.

Discussion

I have found, in my very lengthy experience as a Fact Finder, that when negotiations are protracted and extend beyond the expiration date of the prior CBA, both parties feel they have given (or given up) everything they can

and are unwilling to compromise further. However, unless the proposals are so egregious (e.g., the Association wants a 15% salary increase and the SD wants to cut pay by 15%) no Fact Finder will recommend the proposals of one side in their entirety. This is the situation in the instant case. Both parties are so convinced of the righteousness of their positions, they seem unwilling to entertain any further compromises.

The SD argues that the Association bargained away salary step increase several years ago and, with its proposal it trying to reinstate them “through the back door.” The Association argues that, given the diversity in pay, it is only trying to achieve an equitable pay increase. For example, the starting pay in 2011-2012 for Building Assistants was \$6,355. The highest pay actually earned by a Building Assistant was \$10,737. The starting pay for the Payroll/Pupil Service Clerk was \$24,535. The highest pay actually earned by the Payroll Clerk was \$41,140. With the SD’s proposal, the Building Assistant would get a raise of \$225; the Payroll Clerk would get a raise of \$1,029. Even within the same classification, using the Special Education Assistants (SEA) as an example, the difference between the highest and lowest salary is almost double. If we add a flat 2.1% raise to \$13,700 (the lowest a SEA can earn under the SD’s proposal - 38 of the 72 SEAs are at that rate), that employee would earn \$13,988 in 2013-14, \$14,281 in 2014-15 and \$14,581 in 2015-16 or \$881 over 3 years. There is one SEA who currently earns \$27,101 Adding 2.1% to that salary, gives her \$27,670, \$28,251 and \$28,844 over the contract term or \$1,743 over 3 years. As the years go by, the difference becomes even more pronounced. Using a straight percentage increase with the large dichotomy between the lowest and highest paid employee results in the “rich” getting richer and the poor getting poorer.

Exhibit A is, in itself, a combination of the prior salary scales and a straight percentage increase. For example, the Office Assistants, and Accounting Clerks/Principals Secretary have a fairly steady increase (about 2.5-3%) as one would expect of a straight percentage raise. On the other hand, the Special Education, Classroom and Building Assistants have increases exactly like those found in teacher salary scales (about 2.6-3% until the next to last step at which point there is a very large jump step of 9.67, 8.86 and 11.13%, respectively). When an employer has a group of employees paid on a lower base, it is more usual to state an hourly wage than an annual salary. The Association’s hearing exhibit reflects this. Of the ten comparable school districts in the area, only one shows an annual salary. The others (except for the 2 districts which state only a percentage raise) list an hourly rate. The SD is adamant that straight percentage increases are the only way to reward longer term employees until the newer hires can prove their worth to the SD The SD thinks the Association’s proposal is regressive and is not logical. On the contrary, if salary for the SD’s ESP unit was stated as a hourly rate, as is the custom, everyone within a classification would be given the same hourly rate with the longer term employees possibly rewarded with a longevity bonus to recognize their lengthier service.

The SD’s rationale for limiting raises to 2.1% is that, in 2013-14, even this amount exceeds the 1.7% Act 1 Index and is in line with the 2.1% Index for 2014-15. The SD has agreed to pay a 2.5% increase for the Custodians and Bus Drivers and stated that the Act 93 support groups’ current contract “...has 2.5% increases available.” Although the raises for the other employee categories is higher than what the SD is willing to give the Support Professional Association, the SD stated, in its hearing presentation, that these others group have also accepted larger cost sharing and less lucrative health care plans than “currently found under the MNESPA contract.” If the SD is referring to the current 10/20/70 plan, it is likely correct, but the SD, for the successor agreement, is proposing a 20/30/70 plan which is not quite so “lucrative” inasmuch as it calls for higher out-of-pocket fees for doctor’s visits, hospitalization, etc.

The raises (at 2.5%) for the Association range from \$268 to \$1,029, with the highest rate going to the Payroll Clerk who, in 2011-12, earned \$41,140 which is about 6.5 times what is earned by the Building Assistant. The Teachers received a 2.59% increase excluding column movements. Since the Teachers are paid more than other employees, their 2.59% raise is generally more than \$2,000, with some (depending on their place on the scale) getting more than the 2.59%. There is a difference between the educational and job requirements between Teachers and support groups, and even within the support groups themselves and they are paid accordingly.

The Association initially proposed an increase of 3.5% based on the start rate in each classification and later modified the proposal to 2.8% on the highest rate per classification which resulted in raises ranging from \$301 for the Building Assistant to \$1,152 for the Payroll Clerk. However, the Association's proposal was inconsistent in 2 areas: (1) One of the 12 month secretaries was earning \$4,983 more than the maximum salary stated on Exhibit A but the raises proposed on the Association were based on the maximum pay of \$35,764 on Exhibit A (which was actually earned by one of the secretaries). The Secretary who earned \$40,747 has since retired so her exclusion from the Association's proposed increases is a moot point. The maximum pay on Exhibit A for the SEAs, is listed as \$23,326 (\$653 raise) but the Association's proposal calculated the raise on the salary of the one SEA (\$27,101) whose pay is higher than that listed on Exhibit A which resulted in a raise of \$759. The SD also pointed to the fact that not everyone was at the maximum rate and questioned why the Association's calculations were based on what is effectively a phantom salary. I agree with the SD and think any raises should be calculated on pay actually earned OR, since the parties are going to continue using exhibit A as their salary and rate scales, the maximum pay listed on that Exhibit, by classification. It is to be noted that the Association's proposal is based on the 2011-12 salary on Exhibit A and the dollar amount resulting from the percentage increase does not roll into the base for each succeeding year. In other words, using the highest paid Office Assistant (\$13,145, who is in the seventh column – out of 15 columns - across the scale in Exhibit A) and multiplying her pay by 2.5%, the raise is \$329 for 2013-14, \$329 for 2014-15 and \$329 for 2015-16.

Recommendation

Increase salaries by 2.5% each year using 2011-12 as the base year. The calculation is to be made on either the highest salary shown on exhibit A in each classification or the amount actually paid to the employee with the highest salary in the classification, whichever is lower. The increase remains the same in each year of the last 3 years of the CBA and is not rolled into the base. Using this formula, the raises should be:

Payroll Clerk - \$1,029
Pupil Services Clerk - \$613
Accounting Clerks/Principal's Secretary - \$863
12 Month Secretary - \$894
10.5 Month Secretary (Prorated) - \$778
9.5 Month Secretary - \$680
Special Ed. Assistants - \$583
Office Assistants - \$329
Technical Assistants - \$446
Classroom Assistants - \$276
Building Assistants - \$268

Issue #3: Salary Retroactivity

Position of the Parties

The Association proposes that salary increases be retroactive to July 1, 2013; the SD proposes that increases be retroactive to the first pay of the 2013-14 school year.

Discussion

Since not all members of the bargaining unit work a full 12 months, not everyone has the same pay period. Therefore, it is only logical that retroactivity begin with the first pay of the school year.

Recommendation

Salary retroactivity should begin with the first pay period of the school year.

Issue #4: Revised Minimum Rate for Special Education Assistants

Position of the Parties

The SD proposes to increase the minimum rate for SEAs to \$13,700 (currently \$13,640) and to have the prerogative to hire at or above the minimum rate. The Association has no position on this issue.

Discussion

Currently, the SD can hire at any rate on the salary scale provided that a current bargaining unit employee with the same experience as the new hire is not earning a lower salary. With its current proposal, the SD states only that it can hire at or above the minimum rate without any reference to salaries stated in Exhibit A. In its rationale for rejecting the Association's salary proposal, the SD argues that morale will decline if the employee with the higher rate of pay gets a proportionately lower percentage than the less experienced employee. On the contrary, a real morale decline will result when an employee who has been with the SD for 10 years learns that a new hire with 7 years' experience with another employer is earning more than she is.

Recommendation

Raise the New hire rate for SEAs to \$13,700 and adjust the salary for those who are currently earning less accordingly. Otherwise, maintain the status quo. (Note: Since the recommended raises are based on the highest rate actually paid or the highest rate by classification shown on Exhibit A, whichever is lower, the amount of the raises will not change.)

Issue #5: Medical Benefits

Position of the Parties

Both parties propose no change in 2012-13 which is a moot point since that year has come and gone. For 2013-14, both agree to change the medical plan from 10/20/70 to 20/30/70 but the Association wants the employee premium share to decrease from the current 5% to 0%, increase to 2.5% for 2014-15 and increase to 5% for 2015-16. The SD wants the current 5% premium share to continue through 2014-15 and has no proposal for 2015-16.

Discussion

The Association originally wanted to keep the 10/20/70 Plan but, in its submission for Fact Finding, agreed to accept the 20/30/70 Plan. The Association's rationale for paying a lesser percentage of premium share than it currently does is because, in its opinion, the 20/30/70 plan is not as good as the 10/20/70. The Plan documents, submitted by the Association in its hearing binder, show that this is the case, largely because of the increased co-pays for many medical services. This increase can be looked at in 2 ways: for example, (1) Raising a Primary Care visit from \$10 to \$20 is only \$10, a minor sum compared to the total premium cost or (2) The cost of the Primary Care visit is doubled from what it was in the prior Plan. The flip side of this is that, since the SD has joined a medical consortium, its "premium" rates will likely decline or remain relatively stable, thus decreasing

the employee premium share. (In a consortium, there are no actual premiums but each participant pays according to usage of benefits which may have the effect of lowering the amount payable to the consortium if usage is low.) The employees receiving the greatest benefit from this change will be those who are lucky enough not to have to visit a doctor with any frequency and who need few, if any, prescription drugs.

Where medical benefits are provided in the Association's comparison group, only one district (Chester Upland) has no premium share and the others range from 2-14% for ("C-F-O") Plans. These Plans have different numbers after the letters and no further statistics were provided, so it is difficult to ascertain the value of these Plans. There is also no contract expiration date provided and the numbers could change if the parties are in negotiations. Only one district (Wallingford Swarthmore) has a dollar amount premium share (\$225). It is not shown in the Association's hearing exhibit to what period that amount applies.

Recommendation

The employee premium share for medical benefits should remain at 5% for all years of the CBA for the 20/30/70 Plan.

Issue #6: Prescription (RX) Benefits

Position of the Parties

Both parties agree to maintain the status quo for 2012-13. For 2013-14, the SD proposes a 10/40 plan (same as the teachers) with no premium co-pay and a 2.5% co-pay in 2014-15. The SD has no proposal for 2015-16. The Association wants to keep the current 10/20/30 plan with a \$5.00 premium share for 22 pays in 2013-14, a \$9.00 premium share in 2014-15 and a \$10 premium share in 2015-16.

Discussion

There is no question that the flat dollar amount premium share is fast disappearing in labor contracts. It also places a disproportionate liability on those who have lesser coverage such as the single employee who, according to the SDS's hearing exhibit, will be paying almost triple the percentage rate paid by a family. As with the medical benefit, those who have fewer (or no) prescriptions will be better off financially than those who require multiple medications. The amount spent for drugs (or other medical services) may even come close to negating salary increases for employees with high usage. This should be somewhat offset by the recommended salary increases, especially for those at the lower end of the salary chart. There are also studies which show that, if the employee cost is low for non-preferred generics, brand name and non-preferred brand name drugs, employees will choose these drugs over the lower cost preferred generics. The parties may want to consider having a 0% share for preferred generics. This will obviously not work if most employees are already using the preferred generics. Since there was no information presented at the hearing on this issue, I am providing only an advisory opinion and have not included it in the Recommendation. The co-pays for 2012-13 are moot since that school year is history.

Recommendation

2013-14 – 0% premium share for a 10/40 Plan

2014-15 – 1% premium share for a 10/40 Plan

2015-16 – 1.5% premium share for a 10/40 Plan

Issue #7: Association Days

Position of the Parties

The Association wants to increase the number of days an Association member can use to attend workshops and other MNESPA/PSEA/NEA events from the current 5 to 6 with a carryover to 8.

Discussion

Since a summer conference can use up the current 5 days, the Association wants to add a day, with a 2 day carryover for situations which may occur during the year. Currently, Association members do not generally use the allotted 5 days for this purpose.

Recommendation

Maintain the status quo.

SIGNED _____ DATE
Diana S. Mulligan, Fact Finder

SIGNED _____ DATE
Ruthann Waldie, For the Association

ACCEPT REJECT

SIGNED _____ DATE
Ellis Katz, Esq., For the School District

ACCEPT REJECT