

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Labor Relations Board

**In the Matter of the Employees of
Palmerton Area school District
Case No. ACT 88-13-55-E**

REPORT AND RECOMMENDATIONS

Diana S. Mulligan, Fact Finder

Hearing: February 12, 2014

For the School District: John Audi, Esq.

For the Association: Charlie Shaffer, PSEA Uniserv Representative

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 by the Palmerton Area School District (SD or PASD) and the Palmerton Area Education Association (Association). By letter dated January 21, 2014, 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 February 12, 2014 in Palmerton, PA at which time all parties in interest were afforded a full opportunity to present testimony and introduce documentary evidence.

Although the SD listed "Term of Agreement" as one of its issues in dispute, the Association did not offer an alternative proposal. Therefore, this issue is no longer in dispute. The term of the Agreement will be for 4 years beginning on July 1, 2012 and ending on June 30, 2016. The following remain as issues in dispute for consideration by the Fact Finder:

1. Salary
 - a. Amount
 - b. Retroactivity
 - c. Payroll Options
 - d. Step Movement
 - e. Matrix
2. Medical Insurance
 - a. Change in Premium Share
 - b. Change from 3 to 5 Tiers
 - c. Change in Deductible
 - d. Change in Co-Pay for Doctor's Visits and Prescriptions
 - e. Add 2% COBRA Administrative Fee for Retirees
 - f. No Association Approval for Change in Plans
 - g. Health Insurance Buy-Out
 - h. Married Couples Language
 - i. Dental Insurance
 - j. Vision Insurance
 - k. PPACA Language
 - l. Flexible Spending
3. Co-Curricular/Extra-Curricular Advisors
4. Training and Training Advisor
5. Reduction in Force (RIF)
6. Waivers
7. General
 - a. Number of Days in School Year
 - b. Length of School Day; Planning/Prep Time

- c. Number of In-Service Days and Length
- d. Attendance at Professional Activities outside the Work Day/Compensation
- e. Athletic Trainer Reports to Superintendent
- f. Dues Deduction (PAC)
- g. Advance Notice of Meetings/*Weingarten*
- h. Association Rights (Communicate with Members/Greet New Teachers)
- i. Change/Notification of Assignment
- j. Notification of Return to Work following Unpaid Leave
- k. Electronic Distribution of Contract
- l. Child Rearing Leave
- m. Professional Service
- 8. Leave Days
 - a. Bereavement
 - b. Personal
 - c. Sick
 - d. Elimination of 40 Extra Sick Days
- 9. Tuition Reimbursement
- 10. Travel
- 11. Meet and Discuss
- 12. Grievance Procedure
- 13. Faculty Meetings/Association Business
- 14. Retirement
 - a. Severance Benefit
 - b. Notification
 - c. Premium Payment

On February 5, 2014, the Fact Finder e-mailed both parties advising them that it would be impossible to address such a large number of issues at the Fact Finding hearing. She suggested that, in addition to the usual detailed explanation of finances, they concentrate on salary, medical, work day/work year and extra-curriculars. This was not to suggest that other issues were minor (such as retirement benefits) but that they largely involved finances and required little by way of explanation. Recommendations on the remaining issues would be made from the parties' submission for Fact Finding and the information found in their hearing binders. At the hearing, the Fact Finder asked the parties if they had settled any issues since they submitted them for Fact Finding. They replied in the negative. This Report will contain Recommendations for the unresolved issues which the parties identified as still being in dispute. The parties are now required to act on these Recommendations as directed by statute and PLRB regulations. Without any comment, the issues already agreed upon by the parties and undisputed portions of the Collective Bargaining Agreement (CBA or Agreement) shall be incorporated without change into this Report.

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 10 calendar days of its issuance, notify the PLRB and each other if they accept or reject the Report. Confidentiality of the Report must be maintained during the consideration period.

Issue #1: Salary

Sub-Issues #a., b., and d.: Amount, Retroactivity and Step Movement

Position of the Parties

Both parties have agreed to a freeze in 2012-13. For 2013-14, the SD is proposing a total increase of 2.63% (Prospective only); for 2014-15, 2.68% total increase added to the matrix and, for 2015-16, 2.37% total increase added to the matrix. The total increase over the last 3 years of the CBA would be 7.68%. The Association presented 2 proposals in its hearing binder, one titled, "...1.5% 1.5% 1% ON SCALE – with attrition." This proposal uses 2011-12 as the base year. The second proposal has the same title, but is based on the 2013-14 matrix.

Discussion

Both parties presented the usual arguments about what the SD can and cannot afford. The Association stated that, in the past 5 years, actual revenues have exceeded budgeted revenues by almost a million dollars per year and that, for 3 of the past 5 years, actual expenditures have been less than budgeted expenditures by about a half million dollars per year. The Association calculated that the SD had about \$300,000 in unanticipated revenue for 2012-13, the average taxpayer now pays \$49 less in taxes than in 2007-07 and that the SD budgeted a 6.1% increase in salary expenditures in 2013-14. In addition, the bargaining unit salary as a percentage of total expenditures declined 9% from 2008-09 to the present. The Association also compared starting and career rates with other districts in IU #21 and presented an analysis of average salary increases with increment in IU #21, Carbon County and contiguous school districts. The Association's numbers show that the Palmerton teachers are falling behind while the SD's comparison chart shows Palmerton's salaries falling within the range of other school districts in the area.

According to the SD, it has the right to spend its resources to enhance the educational and economic well-being of the District. The SD stated it could not continue spending for salaries as it did in the past or it would go bankrupt and/or have to furlough teachers. Additionally, health care, and the PSERS retirement contributions are increasing at an alarming rate.

In its presentation of issues for Fact Finding, the Association states that its proposal is less (7.64%) than the SD's. It arrives at this figure by using the matrix from 2013-14 and using only the "on scale" amounts. On scale calculations do not take into account any additional costs incurred because of step movement. (For those not schooled in how steps with their attendant incremental costs work, the on scale percent is the amount everyone gets. If a teacher has not yet reached his/her career rate, (s)he receives an additional amount. For example, in 2009-10, the teacher at step 4 in the "M" column earned \$45,851. If that teacher received only a 2% raise in 2010-11, (s)he would earn \$46,768 (a difference of \$917). However, since that teacher also moves to step 5 in 2010-11, (s)he earns \$47,472. The \$704 difference is the incremental cost for a total raise of \$1,621. Therefore, when we add the incremental cost to the Association's on scale proposal, the 4 year increase according to the SD would now be 11.11%.) The step movement, therefore, is a raise, it is not automatic and it costs money.

Recommendation

1. 2012-13 – freeze.
2. 2013-2014 – retroactivity to July 1, 2013 plus .5% plus step.
3. 2014-15 - .65% plus step.
4. 2015-16 – 1% plus step.

The attached salary charts which were prepared by the PSEA Technical Department at my direction, should result in about a 9.26% increase over the life of the contract, including step increment.

Sub Issue #c.: Payroll Options

This issue, complete with the SD's rationale in its hearing binder, as to why its proposed payroll options should be in the new CBA, leads me to believe that, despite almost 2 years of bargaining, the parties are not communicating with each other. I formed this conclusion because, in its hearing binder, the Association lists this as a tentative Agreement (TA). This is not the only such "issue" I found in the parties' presentations and proposals for Fact Finding.

Recommendation

None. It has already been agreed upon.

Sub-Issue #e.: Matrix

Position of the Parties

The SD wants to use 2011-12 as the base year for calculating costs. The Association feels that the actual placement of employees on the salary scale as of 2013-14 is the appropriate matrix to use. (Both have a total of 122.80 employees.)

Discussion

Customarily, the matrix used in calculating the cost of a new CBA is the last year of the expired contract. Since some

employees (who are in a higher salary bracket) might have retired and been replaced by lower-earning employees, the SD recognizes attritional savings. The Association takes the salary of the new entry and subtracts it from the retiree to get the attritional amount. It does not take into account any additional costs for retirement buy outs, the likelihood that newer employees probably will be on the family medical plan rather than single or husband and wife, etc. According to the SD, the Association feels that these attritional savings should automatically be available for salary increases; the SD feels it has the managerial prerogative to spend any such savings for other purposes. Although there are the same number of employees no matter which matrix is used, they are on different salary steps which makes a considerable difference in costs. In the Association's calculations, (using its proposal) and 2011-12 as the base year, in 2013-14, the average dollar increase is \$2,649 (4.51%); in 2014-15, the average dollar increase is \$2,527 (4.12%) and in 2015-16, the average dollar increase is \$2,190 (3.43%). Using 2013-14 as the base year, those numbers become -\$123(-0.21%), \$2,611 (4.46%) and \$2,262 (3.70%). The SD asserts that it cannot accurately calculate costs if a "floating" matrix is used. The Fact Finder also advised the parties, prior to the hearing, that if they could not agree on a matrix, the traditional base year (2011-12) would be used and the Association could make its attritional savings arguments on that matrix.

Recommendation

Use 2011-12 as the base year for the matrix.

Issue #2: Medical Insurance

Sub-Issue #a.: Change in Premium Share

Recommendation

None. Change in premium share was presented to the Fact Finder as one of the SD's issues in dispute and is in the SD's hearing binder. According to the Association, this issue was TA'd. The Association had already accepted the SD's proposal.

Sub-Issue #b.: Change from 3 to 5 Tiers

Discussion

This proposal makes no sense whatsoever since Tier #1 is still for single coverage, Tier #2 (formerly including the employee and spouse/parents and child) is now Tier #2 and 3 (which splits the 2 groups but keeps the same premium). The same thing happens with the former Tier #3 (now #4 and 5). In other words, there are 5 tiers but only 3 rates. Although listed by the SD both as an item in dispute in its open issues sent to the Fact Finder and in its hearing binder, according to the Association, it has already been TA'd (5 tiers).

Recommendation

None. There is already a TA on this issue.

Sub-Issue #c.: Change in Deductible

Position of the Parties

Beginning with 2012-13 and continuing through the term of the CBA, the Association proposes a deductible of \$300 for In-Network Providers and \$600 for Out-of-Network, capped at 2 people. The Association further proposes that the SD reimburse employees \$200/\$400 per person, capped at 2 people. Beginning in 2012-13, the SD proposed deductibles of \$100/200/200/300 In-Network and \$400/800/800/1,200 Out-of-Network, with a cap per family with no reimbursement. Both parties agree that changes will not be effective for 45 days after the contract has been approved and signed by both parties.

Discussion

According to the Association, while deductibles are not mentioned in the expired CBA, the "plan and practice" is currently \$100/year for singles and \$200/year for family. The Association presented comparable deductibles assessed by other Carbon County school districts. They range from \$75/150 in Panther Valley to \$250/750 in Weatherly. No dates are provided for these contracts. In support of its proposal, the Association alleges that insurance carriers provide substantial cost savings which exceed the amount which would be reimbursed to employees. According to the SD, the current trend is for employers

to offer high deductible plans. PASD is only modifying the current PPO. Since 2012-13 is history, recommendations will be made beginning with 2013-14.

Recommendation (for all years of the CBA)

1. \$200/200/200, double the amount for a family cap In-Network.
2. \$600/600/800, double the amount for a family cap Out-of-Network.

Sub-Issue #d. (1): Doctor Co-Pays

Position of the Parties

For the 2013-14 and 2014-15 school years, the SD proposes medical co-pays of \$20 (GP), \$25 (Specialist), \$30 (Urgent Care) and \$75 (ER); in 2015-16 The Association proposes co-pays of \$10/20/30/50 in 2013-14; \$10/25/35/75 in 2014-15 and \$10/25/35/100 in 2015-16.

Discussion

Most Carbon County districts do not have a co-pay for urgent care. The co-pays range from \$5/5/5 in Weatherly to \$20/20/50 in Panther Valley. The Association provided no contract dates for these comparables. General Practitioner visits currently exceed more than \$100. Keeping the co-pays at \$10 for 3 years is too low. According to the SD, the medical benefit is worth between \$10,000 and \$15,000 per year. In its estimation, the SD is asking only for a minimum payment for all medical benefits since most private employers charge 25% of the premium. According to the SD, the real benefit it is extending to the Association is its proposal to keep co-pays at defined dollar amounts rather than assessing a percentage of the premium as most employers are now doing.

Recommendation

Beginning in the 2013-14 school year (45 days after the Agreement is signed by both parties), the medical co-pays should be: \$15/15/15 (GP); \$25/25/25 (Specialist); \$30/30/30 (Urgent Care) and \$50/75/100 (ER). These amounts apply to all years of this Agreement.

Sub-Issue #d. (2): Prescription (RX) Co-Pays

Position of the Parties

Beginning with the 2013-14 school year, the SD proposes an RX co-pay of \$15 (generic), \$25 (formulary) and \$40 (non-formulary). In 2014-16, these amounts would increase to \$20/30/50. From 2013-16, the Association proposes \$10/25/40. Both parties agree that a maintenance supply of mail order drugs should be double the 30 day amount.

Discussion

According to the Association, keeping generics at \$10 will encourage their use. One thing neither of the parties mentioned is that certain generics cost \$10 for a 3 month supply at some major chain stores. This is a cost savings measure both parties should look into.

Recommendation

1. 2013-14: \$10/15/15
2. 2014-15: \$25/25/25
3. 2015-15: \$40/45/45.

If a generic drug can be obtained at a lower rate, the employee should be able to pay that rate.

Sub-Issue #e.: COBRA Administrative Fee for Retirees

Recommendation

None. Although listed by the SD in its hearing binder and open issues for Fact Finding, this issue is already TA'd.

Sub-Issue #f.: Association Approval for Change in Plans

Position of the Parties

The Association wants to keep the status quo. The SD proposes to delete "...subject to the Association's approval." when providing medical plans.

Discussion

Currently, the SD cannot change the medical plans offered to employees without the Association's approval and must offer the current or "comparable" plans. Buying medical insurance is like buying a mattress – none are identical. However, the word, "comparable" is somewhat weak. Changing this term to stronger language will allow more flexibility to the SD and offer more protection to the Association.

Recommendation

Delete the necessity for approval by the Association but, change "comparable" to "substantially equivalent."

Sub-Issue #g.: Health Insurance Buy-Out

Recommendation

None. Although listed by the SD as an issue in dispute for Fact Finding and in its hearing binder, the SD offered \$3,250 in 2013-14 and \$4,000 in 2014-16, and the Association accepted the proposal.

Sub-Issue #h.: Married Couples Language

Position of the Parties

The SD proposed to eliminate "single" when both teachers are employed by the SD. The Association had no comment on this proposal.

Recommendation

Delete the word, "single."

Sub-Issue #i.: Dental Insurance

None. According to the Association, this issue is TA'd (\$1,750 cap) although the SD lists it as being in dispute.

Sub-Issue #j.: Vision Insurance

Discussion

The SD lists this as an open issue for Fact Finding but it is not in its hearing binder. The Association, in its hearing binder, states that the SD proposed the elimination of "satisfactory to PAEA," to which it objects and proposes to keep the current language. There is only one problem here – there is no current language. The Association states that the "current condition" is that the SD makes a qualifying Section 125 plan available to the Association which is fully paid for by the employee. Then in its rationale, the Association states that the SD never provided a vision plan - employer or employee funded.

Recommendation

Maintain the status quo, whatever it is.

Sub-Issue #k.: PPACA Language

Position of the Parties

Anticipating a potential significant increase in health care costs when the Patient Protection And Affordable Health Care Act (aka "Obamacare") imposes an excise tax on "Cadillac" plans on January 1, 2018, the SD provided a lengthy proposal addressing this issue. The Association rejects this proposal in its entirety.

Discussion

Although the excise tax and certain other provisions of the PPACA will not take effect until 2018, the SD argues that it must plan ahead and projects that it will already be in the excise tax situation by 2016. The Association does not want to currently bargain terms for a successor Agreement. According to the SD, the Educational Support Unit recognizes that the SD prefers to use its funds for education, not to pay excess taxes, and has accepted this proposal. The SD stated that it is not looking to impose the excise tax on all of its employees if it comes into fruition which is why it included language in its proposal which allows for Meet and Discuss (although the SD also reserves the right to unilaterally make the final decision). The SD later stated that those employees who select the "Cadillac" plan would be liable for the entire amount of the excise tax.

Recommendation

Do not include this provision in the CBA.

Sub-Issue #1: Flexible Spending Account

Discussion

The SD lists this issue as an item for Fact Finding although it does not appear in its hearing binder. According to the Association, the SD wants the employee to pay a \$2/month administration fee.

Recommendation

Maintain the status quo.

Issue #3: Co-Curricular/Extra-Curricular Advisors

Position of the Parties

The SD wants to eliminate all coaching duties and pay from the CBA. The SD proposes to keep most of the other extra-curricular positions and freeze the stipend for these positions at the 2011-12 level for the entire term of the Agreement. The Association wants to retain all current positions with a 1% increase in pay in each year of the CBA and change notice of resignation from 90 to 60 days.

Discussion

The SD feels that coaches, who are not acting in a professional capacity in accordance with Act 195 when they are coaching, have no place in a professional contract. The SD also states, in its hearing binder, that it has incurred legal fees with coaching employment issues. The SD would retain the extra-curricular advisor positions (except Safety Patrol and Computer Coach) because they are an extension of the classroom educational process. (Note: There are also some "housekeeping" issues – electronic copy of job description, etc. - which do not materially affect the outcome of the primary issue and will not be part of the Recommendation.)

Coaching positions appear in most school district contracts and the salary for these positions is negotiated along with other provisions of the labor agreements. Problems have arisen when a coach invokes the grievance procedure because his position is in the professional contract. The grievance procedure in the instant CBA contains standard language which states, inter alia, that grievances "...which arise out of application or interpretation of [the contract] shall be resolved in accordance with the grievance procedure." Problems with grievance filings over coaching positions can easily be remedied by adding language to the CBA which excludes these positions from coverage.

The SD would still include most other extra-curricular positions because they are part of the educational process. The School Code would allow most, if not all, of these positions to be eliminated since their subject matter is not part of the core curriculum. Some school districts already have (or are seriously considering) eliminated music, art, etc. from the curriculum

as a cost saving measure. If they did, this would wipe out most extra-curricular activities. Especially in small towns, many people think that sports are more important (especially in the high school) and integral to education than, say, the drama club or the jazz band.

Recommendation

1. Keep coaching positions in the CBA but, include language exempting them from the grievance procedure.
2. Same increase in pay as for the teachers except there should be no retroactivity.
3. Do not include the fixed dollar amount in Section B. (Department Heads and Elementary Chairperson).
4. Include SD language under “Resignations” and “Job Description.”

Issue #4: Training and Training Advisor

Recommendation

None. The SD lists this as an issue in dispute both in its submission for Fact Finding and hearing binder. The Association accepted the SD's proposal and lists it as a TA.

Issue #5: Reduction in force (RIF)

Position of the Parties

The Association, inter alia, wants seniority to accrue during approved leaves of absence (LOA) and during furloughs, include newly certified employees in a recall and allow recalled teachers to delay their return if they are enrolled in a college program. The SD's proposal (which is not the same as the Association's assessment in its hearing binder of the SD's position) contains fairly standard language about notice, employees hired on the same day for seniority purposes, etc. The SD also proposes that seniority rights can be exercised only after tenure is granted.

Discussion

It is difficult to make a Recommendation on this issue since the Association, in its submission for Fact Finding states that, “Most of the reduction in force language has been revised to the satisfaction of both parties.” Yet, in their hearing binders, the language is quite different. It does appear, however, that much of the parties' dispute centers on the application of seniority. According to the Association, the “current condition” is that seniority rights accrue from the first day of employment. The SD does not want to allow seniority rights to be exercised until the teacher is tenured. The expired CBA states that untenured employees will be furloughed first and, only then, will tenured teachers be furloughed in inverse order of seniority.

The Association also wants to retain paragraph 2 of the expired CBA which gives advance notice of a RIF to employees with 10+ years of service so they can potentially obtain alternate certification and bump into another position. According to the Association, this right has been exercised only twice in the past 19 years. The SD refers to this as an “antiquated and abandoned checkerboarding system” and argues that it is counter-intuitive to getting the best educator for the position.

Recommendation

1. Seniority should accrue from date of tenure.
2. Continue to give advance notice to 10+ year employees so they can obtain alternate certification.
3. Incorporate the TA'd issues into the new CBA.

Issue #6. Waivers

Recommendation

None. Listed as an issue in dispute in the SD's submission for Fact Finding. Association agreed with the SD's proposal and listed it as having been TA'd.

Issue #7: General

Sub-Issue #a.: Number of Days in School Year

Position of the Parties

Both agree on 180 pupil days. The SD also proposes that first year full time employees work an additional 4 days for training purposes. The current practice is 2 days. The SD has provided no compelling reason why 2 additional days are required.

Recommendation

Keep the 2 day requirement for new teachers.

Sub-Issue #b.: Length of School Day/Planning-Prep Time

Position of the Parties

The SD proposes that teachers arrive 15 minutes prior to the arrival of the students and stay 20 minutes after they leave. The Association wants a specified 7 hour, 20 minute work day. Both agree on a 30 minute duty free lunch which may be taken off premises. Within that school day, the Association has proposed specified planning periods, depending on grade level, to be scheduled after the start of the student day and prior to student dismissal. It also wants to add the provision that, if no substitutes are available, the teacher would not have to give up more than 50% of his/her planning period. While the SD agrees that teachers should receive a planning period, it feels it is within its right to assign and direct employees as necessary and assist in directed planning.

Discussion

According to the Association, the PASD is one of the few districts with no specified hours of work. The current practice is a 7 hour 10 minute work day. The Association argues that tying the teacher day to that of the students carries the potential for abuse if the SD decides to extend the student day. There is no indication that the SD contemplates such an extension but, if it does materialize, the Association feels it would allow no time for classroom preparation and collaboration with colleagues except after work hours. The SD sees its proposal as a safety measure and also states that the entire focus of the Association's proposals is based on less classroom time.

The SD offered no times the school day for students in different buildings begins and ends or provided a scenario where children are left unattended because no teacher was present to supervise them. I agree with the Association that most school districts have a specified work day (as does any other workplace). If this an area of real concern, the parties could put language into the CBA which would allow for exceptions in case of emergency.

The Association proposed the retention of no less than 50% of a teacher's prep time if (s)he has to cover for an absent teacher because it alleges that the SD does not retain an adequate substitute pool which results in the SD frequently usurping the prep period. The Association never mentioned why there is not an adequate sub pool. Its argument would have some merit if it could show that 100 qualified teachers from the area wanted to be in the pool but the SD limited the number to 20. Absent such a showing, it is possible, if the Association's proposal is adopted, that, once a teacher used 50% of his/her prep time to cover, that teacher would be free to leave the room. I do not understand the SD's position on assisting in "directed planning." I would appear that the SD is suggesting it can tell the teachers how to utilize their planning time. It has been my experience that the teachers – and not the administration – know best how to plan their teaching.

Recommendation

1. Specify a 7 hour, 20 minute work day in the CBA. If there is a safety concern, the parties can include language in the CBA which would cover emergencies. This language should not include a provision for extra compensation if the day is extended due to such emergency.
2. Retain the current practice whereby each teacher receives whatever prep time is in his/her schedule.
3. Do not include the provision that teachers would be required to give up no more than 50% of their prep time when they have to cover a classroom in the absence of a sub.

Sub-Issue #c.: Number of In-Service Days and Length

Position of the Parties

The SD wants to include Act 80 days with the in-service days and specify that these days be 7½ hours in length. The Association does not want to include Act 80 days and limit the time of these days to 5 hours (6 hours in the final year of the Agreement).

Discussion

The Association argues that Act 80 days count, hour for hour, as student instructional time, which is 5-5½ hours. To schedule a longer day is contrary to current practice and in excess of the legal requirement. The SD shares in-service days with other districts and the programs may run longer than 5 hours. If the Association's proposal for a 5 hour day becomes part of the new Agreement, the SD would not be able to participate in these joint sessions. The Association seeks relevant, meaningful, topical, etc. programs. Content of in-service days is the prerogative of the SD and the teachers have the responsibility to attend. At almost every Fact Finding hearing, I find that the teachers complain about the length, content and relevance of in-service days. I would invite them to attend an employer-mandated meeting in private industry. Except for the eager new hire, most employees admit the meeting was so boring they could hardly keep their eyes open. Nevertheless, employees do not decide what the content of a meeting should be or when it should end. Within the confines of the contract, these are matters for the employer. Since the CBA should define the workday as 7 hours, 20 minutes, this should be the maximum time for an in-service/Act 80 day. If these days are joint efforts with other districts, they should obviously end when the program has concluded. I hope relations between the parties have not soured so much that the PASD would insist the teachers stay in a room for 7 hours, 20 minutes when the instructor has left after completing a 6 hour session.

Recommendation

1. Include Act 80 days with in-service days.
2. The day should be 7 hours, 20 minutes or when the program has concluded, whichever is less.
3. The content of in-service days should be decided by the SD although there should be no language in the CBA so stating.

Sub-Issue #d.: Attendance at Professional Activities outside the Work Day/Compensation

Position of the Parties

The SD proposes 9 specific after school activities teachers must attend without additional compensation. The Association proposes that, in exchange for participating in "Meet the Teacher" nights and parent conferences, staff members should be able to leave after the last bus departs school property the day before Thanksgiving and winter break.

Discussion

According to the Association, the only current uncompensated time for after school activities is one faculty meeting per month and IEP meetings with parents which cannot be scheduled during the normal work day. Since there is currently no contractual language covering compensation for attendance at these various activities, teachers were traditionally dismissed with the students on the day before Thanksgiving and winter break. The Association wants these practices memorialized in the CBA so succeeding administrations would be aware of them (I doubt that future teachers would let them forget.) and suggests that the SD's proposal is regressive by expanding activities for which teachers donate time without recognition. According to the SD, teachers are professional employees and their salary already covers their professional duties which include the occasional evening meeting. The SD lists these activities as being uncompensable in its proposal and adds open house and emergencies (both transportation and others) to the list of current after school responsibilities. According to the Association, there has never been an open house or a transportation emergency.

I do not know at what point a past practice about teachers' after school duties became such a point of contention, but the proposals of both sides illustrates that the relationship between the parties has gone down hill in the past few years and is progressively getting worse. They simply do not trust each other to carry on a practice which seems to have worked well in the past. I would hope that, while there may have not been any prior transportation emergencies (Evidently it did not snow too much in Palmerton this winter when the forecasters predicted only a dusting.), no teacher (or administrator, for that

matter) would either walk out at the end of the day or expect extra compensation for making sure the students were all safely on the buses. If they do, then more restrictive language would be necessary in the next CBA.

Sub-Issue #e.: Athletic Trainer Reports to Superintendent

Discussion

I, frankly do not know what to make of this issue. The SD lists it as an issue in dispute for Fact Finding but it is not in the SD's hearing binder. The Association, in its hearing binder, lists it as having been TA'd. Since the SD wants all athletic positions removed from the CBA one wonders why the Athletic Trainer is mentioned in the Agreement. I can only assume the parties know what they are doing with this position and they have their reasons why there is a TA on this issue. "Athletic Trainer" is also currently listed separately on the salary scales and I have included that position on the scales for the successor Agreement.

Recommendation

None. The parties have a TA on this issue.

Sub-Issue #f.: Dues Deduction (PAC)

Position of the Parties

The Association wants the SD to deduct employee donations to a Political Action Committee (PAC) from the employees' salaries. The SD rejects this proposal.

Discussion

Currently, there is language in the CBA which specifically forbids deductions from salaries to a PAC. Since the SD already deducts education association dues charitable contributions and investment vehicles, the Association sees no reason why a PAC contribution shouldn't also be deducted. The SD states it does not want to be a personal accountant for PSEA which should be the entity to take on that cost and responsibility.

Recommendation

Maintain the status quo

Sub-Issue #g.: Advance Notice of Meetings (*Weingarten*)

Discussion

This is strictly an Association issue. Weatherly and Panther Valley have language addressing union representation when an investigatory meeting could result in discipline and Jim Thorpe and Leighton do not. The Association thinks such language should be included in the CBA because it perceives that the SD intentionally failed to notify employees of the purpose of such meetings or changed the subject of a meeting already in progress to an investigatory one which could have led to discipline. If the SD is engaging in such activities, it could be violating the law and does so at its own peril resulting in considerable expense if a grievance is filed. The SD has a Solicitor who surely would advise against this behavior.

Recommendation

Do not include *Weingarten* language in the CBA.

Sub-Issue #h.: Association Rights (Communicate with Members/Greet New Teachers)

Discussion

This was listed as an item in dispute in the Association's submission for Fact Finding but never included in its hearing binder. The Association states, without elaborating, that this is a current practice. The SD does respond to this proposal by implying that this Association communication is done through the SD's servers and wants to retain accountability and

restriction on their use.

Recommendation

Do not include the Association's proposal in the CBA.

Sub-Issue #i.: Change/Notification of Assignment

Position of the Parties

The Association wants an employee who has been reassigned to be given 7 days' written notice after the SD becomes aware of the necessity for such reassignment. The SD agrees with this proposal. The Association also wants the reassigned teacher to be paid for up to 10 hours of preparation time at the contractual hourly rate. The SD rejects this proposal.

Discussion

The Association, in its rationale seeks reimbursement since, in some instances, teachers have been given as little as 48 hours' notice. Since the SD has agreed to a 7 day notice, there is no longer the need for reimbursement.

Recommendation

Do not include the Association's proposal for payment if a teacher is reassigned. Include the 7 day notification and the addition of "subject/courses."

Sub-Issue #j.: Notification of Return to Work after Unpaid Leave

Position of the Parties

The SD (in addition to notification being made to the Director of Human Resources rather than the Superintendent, which is a "housekeeping" item) wants to include language in this section which would restrict an employee's return to work following such leave to the start of a marking period and/or semester.

Discussion

The SD's rationale for this proposal is that it promotes continuity in the classroom. This is sound reasoning in my opinion.

Recommendation

Adopt this proposal

Sub-Issue #k.: Electronic Distribution of Contract

Discussion

According to the Association, most districts provide a hard copy of the contract to the staff and this proposal will save the SD money. There is currently no language in the CBA addressing this issue. According to this proposal in the Association's hearing binder, the SD rejected this proposal. I cannot believe that both the SD and Association have stooped so low as to even consider or comment on this as an issue in dispute for Fact Finding. Have they nothing better to discuss after almost 2 years of bargaining?

Recommendation

Whichever party typed up the document will continue to do so. If it was the SD, the Association will provide its members' e-mail addresses in a form that the SD has only to press "send."

Sub-Issue #1.: Child Rearing Leave

Discussion

This issue is connected to the SD's proposal that anyone on unpaid leave should return only at the start of a marking period and/or semester. The Association argues that this delay is a hardship to the teacher who may lose a step movement and PSERS service credit. Yet, the Association has no comment on the SD's proposal to reduce the current maternity leave from 3 semesters to 2 where the employee, presumably, would lose even more PSERS credit and delay step movement even further. The SD also proposes to connect this leave with the Family Medical Leave Act (FMLA). The Association wants to insert language which states that the parties will comply with the FMLA, that if both spouses are employed by the SD, they are individually entitled to all FMLA rights and that FMLA year begins on July 1st and ends on June 30th of each year.

Recommendation

1. Reduce unpaid leave from 3 to 2 semesters.
2. Appropriate language should be inserted into the CBA to ensure that the SD is complying with the FMLA on this issue.

Sub-Issue #m.: Professional Services

Position of the Parties/Discussion

The SD wants to keep the current \$28/hour for the entire term of the CBA for economic reasons. The Association wants the amount to increase to \$29, \$30 and \$31/hour. The Association, states that this is a little used benefit and the amount currently paid is comparable to that paid in other Carbon County districts. (These amounts range from \$20 to \$40/hour.)

Recommendation

Increase the amount to \$29/hour in 2013-15 and \$30/hour in 2015-16. No retroactivity.

Issue #8: Leave Days

Sub-Issue #a.: Bereavement

Position of the Parties/Discussion

The expired CBA mentions a 5 day leave for an employee's spouse, child or parent with leave for other relatives to be taken according to the School Code. The SD seeks to clarify the number of days by providing a chart listing specific people for whom 1 or 3 days may be taken. The Association wants 3 days for a son or daughter-in-law, not the one day as proposed by the SD. The SD stated that it already provides more bereavement leave than does the School Code.

Recommendation

Adopt the SD's proposal.

Sub-Issue #b.: Personal

Position of the Parties

Both agree that personal leave will not be granted for in-service and Act 80 days. The SD proposes a ban on personal leave during the first 2 and last week of school, 5 days before and after a marking period or semester and to extend a SD vacation and/or holiday. The SD wants to further limit personal leave days by allowing a maximum accumulation of no more than 5, after which they will be converted to sick days, and allowing a maximum of 3 personal days to be used consecutively with 30 days' advance notice. The SD would further restrict this benefit by allowing only 10% of the staff per building to use a personal day and that 1 of 3 personal days may be taken as an emergency day without prior approval. The Association proposes notification of intent to use 1 or 2 personal leave days 3 days in advance.

Discussion

The Expired CBA allows for personal leave days to accumulate without limit (although only 5 may be used in any given year), already mandates a 30 day advance notice for the used of 3 consecutive days, limits their use to the 10% of staff throughout the SD (not per building) and allows conversion to sick days at the request of the teacher. I agree with at least some of the SD's proposed restrictions. Teachers do have a generous summer and winter break and can make family plans accordingly. Since only 5 personal leave days may be used per year, I would expect the teacher to convert them to sick days at some point in time anyway. The Association argues that the SD provided no evidence of teacher abuse of personal days or that their use had an adverse impact on students. The Association feels that the 10% limit is enough restriction.

Recommendation

Keep the current language except:

1. Add "Act 80" to the times personal days cannot be used.
2. Do not allow personal days to be used the first or last week of school and to extend a District vacation and/or holiday.

Sub-Issue #c.: Sick

Position of the Parties/Discussion

The Association proposes that the Board grant 10 sick days to each employee. (There is no specific number stated in the expired CBA.) The SD wants to tie the number to "existing or future changes in the law." Both agree that a maximum of 5 days per school year may be used for family illness/emergencies and will be charged against accrued sick leave. Everyone should plan in advance, but the SD, in several places in its proposals refers to a potential change in the law. These changes should be dealt with when they occur, or if a date certain is set for their implementation, at a reasonable time closer to that date.

Recommendation

Maintain the status quo on the number of sick days. No Recommendation is made on the 5 day emergency use since the parties agree.

Sub-Issue #d.: Elimination of 40 Extra Sick Days

Position of the Parties

The SD wants to reduce the number of days it will pay a sick employee who has exhausted his/her sick leave from the current 40 to 30 and add the proviso that the employee have the same illness to qualify for this benefit. The Association rejects this proposal and wants to maintain the status quo.

Discussion

The SD considers this benefit to be a costly and unprecedented SD paid "gift" since there are no reasons for or limitations attached to this benefit. The SD stated that it would like to eliminate this benefit entirely, but, in an effort to reach agreement, proposed a reduction from 40 to 30 days. The SD alleges it cannot budget for this benefit, but the Association thinks it was used only twice and, therefore, has no major impact on the ongoing budgetary process.

This benefit is intended for a serious illness and, according to the Association, is a necessary safety net, especially since there is no sick bank. The Association is correct in opposing the requirement that this benefit be used for the same health situation. It is entirely possible that an employee can be diagnosed with a serious cancer, then suffer a heart attack a few months later. The Association did propose alternatives (short term disability policy, income protection policy, sick leave bank) but these alternatives were rejected by the SD as either being too costly (the policies) or potentially exposing it to liability (the sick bank). At the hearing, the SD did not oppose an extra-contractual sick leave donation by employees. The sick bank liability issue can be eliminated by including language (similar to that in Panther Valley) which holds the SD harmless against any situation which may arise with the operation of the sick bank.

Recommendation

1. Reduce the current 40 days to 30.
2. Do not include the SD's language about use only for the same illness.
3. Although it is too late, given the length of negotiations for a successor Agreement, the parties may want to consider establishing a sick bank in the future provided the SD is indemnified from any liability attendant to its operation.

Issue #9: Tuition Reimbursement

Position of the Parties

The Association wants to be reimbursed within 30 days (currently 2 months) of the SD's receipt of its request for reimbursement and to continue the past practice of reimbursement/horizontal movement twice a year. The SD proposes that rejection of course work by the Superintendent be non-grievable, that the East Stroudsburg rate be waived, that the teacher is limited to 9 credits per year and that horizontal movement occur only at the beginning of a new school year.

Discussion

There are several "housekeeping" items (e.g., change "member" to "employee") for which a Recommendation is unnecessary. The SD identifies the 9 credit limit as a monetary and budgetary item and states further in its hearing binder that "many teachers take as many courses as possible, some of which require the least amount of effort in order to move across the columns and forever increase their pay." The proposed 9 credit/year limit should take care of that to the SD's satisfaction. The major sticking point seems to be the Superintendent's right to reject courses without recourse to arbitration. This is another example of lack of communication and speculating what might happen in the future. According to the Association, the "District has provided no examples of grievances filed based upon the rejection of any coursework..." This is very clever wording since it does not say there were no grievances. Furthermore, in Fact Finding, there is no burden of proof imposed on either party. The SD avers that the "Association's challenges cost more than the tuition reimbursement." If they don't know (or elect not to provide the information to the Fact Finder) how many grievances are filed on this issue, I certainly don't know either.

Recommendation

1. Keep the 2 month reimbursement period.
2. Limit credits to 9 per year after the employee has received the Instructional II or Permanent Teaching Certification.
3. Maintain the status quo on other issues.

Issue #10: Travel

Recommendation

None. The SD presented this as an open issue in its submission for Fact Finding, then it disappears. I can only assume the parties have settled this matter or it was a non-issue in the first place.

Issue #11: Meet and Discuss

Recommendation

None. This is another issue presented by the SD in its submission for Fact Finding and then disappears.

Issue #12: Grievance Procedure

Recommendation

None. The Association lists this issue as having been TA'd. The SD includes it as an issue in dispute both in its submission for Fact Finding and in its hearing binder. The Association, in its TA, agrees that the time limits for a response should be increased to 15 and 10 days from the current 10 and 5. The other allegedly TA'd item is the sentence, "Attorneys representing the Association and the District shall mutually agree on the selection of an Arbitrator." The SD objects, stating

in its hearing binder rationale, that each legal representative should have the right to select the arbitrators. This is easily remedied in the next sentence which provides for application to the Bureau of Mediation to provide a list from which the parties alternately strike arbitrator's names.

Issue #13: Faculty Meetings/Association Business

Position of the Parties

The Association proposes to limit faculty meetings to 10 each year, that these meetings be limited to 1 hour, shall begin promptly and have a specific pre-planned agenda communicated to staff members prior to the meeting. The Association wants no meetings to take place on a Friday, on days preceding holidays or when school is normally closed. The SD rejects this proposal. The Association also wants the right to use SD e-mail to disseminate Association information, the right to welcome new teachers at appropriate in-service activities and the use of a bulletin board in each faculty lounge. According to the Association, the SD proposed to increase paid days off for certain Association officials from 4 to 5.

Discussion

According to the Association, it made this proposal because faculty meetings are inconsistent throughout the SD, with some starting late, lasting well over an hour and having no agenda. The Association thinks having its proposed language in the CBA would show professional courtesy and respect for the professional staff. Once an item appears in a contract, that matter is subject to the grievance procedure. If, say, the meeting lasts 65 minutes, the Association's proposed language would allow a teacher to file a grievance or walk out (or just stay there and complain to his/her colleagues via social media later). Filing a grievance is costly and time consuming and walking out is not professional. I agree with the Association that there should be some consistency but the language it proposes is too restrictive. The solution is for the Superintendent to advise the principals (or whoever is conducting the meeting) that it is school policy to begin the meetings on time, know what will be discussed via an agenda and end them after a reasonable period of time. This is not only efficient but avoids crankiness among the faculty members and does extend the respect and professional courtesies they should have from the administration.

I found nothing in the SD's submission for Fact Finding or in its hearing binder offering an additional paid teacher workday for Association business. I have already discussed the Association using the SD's servers for Association business. If the SD does not already provide a bulletin board for each faculty lounge and the Association finds that it is a necessity, perhaps it can solicit donations from its members to buy them. In my opinion, this is not a matter which should be included in an employment contract. I'm not sure what type of welcome the Association contemplates for new teachers – lunch? a few words of greeting? The Association wants to already limit in-service days to 5 hours. This proposal would further cut into the time necessary to provide information to teachers at the in-service day. This is another proposal which should not be memorialized in a contract.

Recommendation

Maintain the status quo.

Issue #14: Retirement

Sub-Issue #a.: Severance Benefit

Position of the Parties

The Association wants to retain the current language which provides for a \$1,000 payment to the 15+ years of service retiree, provided certain notification of resignation dates are met. The SD proposes to delete this benefit.

Position of the Parties

The SD cites this proposal as an expense it cannot afford. The Association argues that this is a “thank you” gift and is the least expensive of all retirement severances. There are several other retirement benefits paid by the SD when the retiree leaves SD employment in addition to the defined retirement benefit paid by the SD through its very costly PSERS contributions.

Recommendation

Delete this benefit after the end of the 2014-15 contract year.

Sub-Issue #b.: Notification

Position of the Parties/Discussion

There is no notification requirement in the expired CBA. The SD wants language which would require notification by January 15th for budgetary reasons, allowing for waiver of that date “under certain circumstances” by the Superintendent or his/her designee. This falls into the same category as the Association's proposal for its requirements for staff meetings. Will the employee not be permitted to retire and held hostage for another year? (clearly illegal). Will (s)he not receive any retirement benefits? (which the SD wants to discontinue anyway). What if the teacher's spouse suffers a debilitating illness in March. One assumes the Superintendent would waive the notice requirement if such event occurs, but this is not a certainty.

Recommendation

Do not include this language in the new agreement.

Sub-Issue #c.: Premium Payment

Position of the Parties

The SD proposes to immediately eliminate surviving spouse benefits and replace them with COBRA. The SD also proposes to modify the current retiree medical insurance benefit and eliminate it entirely immediately prior to the termination of the CBA which ends on June 30, 2016. The SD wants to make the retiree responsible to pay the premium share with failure to do so resulting in termination of the coverage. The Association rejects these changes and proposes to increase the payout at retirement for unused sick days to \$75.

Discussion

Currently, a surviving spouse may purchase medical insurance at the SD's premium rate, subject to certain conditions which include eligibility for Medicare, carrier approval and modifications caused by rules and regulations related to Social Security and Medicare. The SD is concerned about being sued for language in this Section which may contradict or change the law. The conditions attached to the benefit in Section 7, stated in the first sentence of this paragraph, should protect the SD from these concerns. COBRA ends in 18 months and the SD did not show that a continuation of this benefit adversely affects its bottom line.

Currently, a retiree receives \$50 for unused sick days upon retirement or 1 to 3 years of medical coverage, depending on accumulated unused sick leave. Even if the retiree is paid \$75 a day, as proposed by the Association, almost everyone is going to choose the paid premium option since the 2013-14 single rate is \$7,696.92 and 200 unused sick days would result in a \$15,000 payout. If I read the current provision correctly, the retiree gets the same benefit as the active employee but pays no premium share (\$585 in 2013-14 for an active employee with single coverage). The retiree should not receive a better benefit than the active employee. (It should be pointed out that Medicare recipients pay a \$1,200 premium share.) Usually, with insurance policies, there is a grace period provided by the carrier, with notice that payment has not been received. The SD's proposal is very Draconian in that it cuts off the benefit if the premium share is not paid on the first of the month. People do get sick. The SD can make arrangements to avoid a loss of benefit if the premium share is late.

The SD wants to replace this benefit entirely at the end of the June 30, 2016 contract which would provide for a benefit of \$60/day for unused sick leave (maximum 200 days deposited into a 403(b) plan) and reduce the payment by 5% for each month the employee gives notice of retirement after January 15th. The Association objects to this proposal because the SD is essentially negotiating the successor contract, provides a penalty for late notice and is restricted to a cash buyout rather than a purchase of years of health insurance upon which retirees have relied to bridge the gap until they qualify for Medicare. The Association also suggests that this proposal may have costly unintended consequences for the SD since employees may remain active at a higher salary with possible higher insurance benefit claims.

Recommendation

- 1. Maintain the status quo for spousal benefits.
- 2. Keep the \$50/day for unused sick days.
- 3. The retiree should pay the same premium share as the active employees under the same conditions as stated in paragraph 2. in the "Discussion" section.
- 4. Do not include the language on the 403(b) plan. Negotiations have not concluded for this agreement. There is no need to negotiate the successor CBA at this time.

SIGNED _____ DATE _____
Diana S. Mulligan, Fact Finder

SIGNED _____ DATE _____
Charlie Shaffer, for the Association

ACCEPT REJECT

SIGNED _____ DATE _____
John Audi, Esq., for the School District

ACCEPT REJECT