

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD

IN THE MATTER OF THE FACT FINDING BETWEEN

Upper Dublin School District :
and : CASE # ACT 88-14-15-E
Upper Dublin Education :
Association PSEA/NEA :

FACT FINDING REPORT AND RECOMMENDATION

APPOINTMENT: May 20, 2014

REPORT DATE: June 30, 2014

FACT FINDER: Timothy J Brown, Esquire

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Introduction

On May 20, 2014, the Pennsylvania Labor Relations Board (PLRB), pursuant to Act 88 of 1992 (Act 88) and the Public Employer Relations Act (PERA), appointed the undersigned as Fact Finder in the impasse between the Upper Dublin School District (the District) and Upper Dublin Education Association PSEA/NEA (the Association).

Bargaining and Fact Finding History

The Association represents a unit of full-time professional employees employed by the District. The District and Association are party to a Collective Bargaining Agreement effective by its terms from July 1, 2010 until June 30, 2014. (Referred to herein as the Agreement) The parties met for purposes of negotiating a successor agreement on approximately four occasions beginning in January 2014. On two of those occasions the parties were joined by a state mediator. The parties reached tentative agreements on a few issues and were unable to reach agreement on the several remaining outstanding issues. The District thereafter initiated the instant Fact Finding.

Following notice of his appointment the Fact Finder and parties communicated with one another on a number of occasions in efforts to resolve hearing-related matters, including May 29 and June 6, 2014 telephonic conferences relating to subpoena issues and a June 11, 2014 telephonic prehearing conference. On June 20, 2014 a formal fact finding hearing was held before the undersigned in Fort Washington, Pennsylvania, at which time the parties were given the opportunity to present the Fact Finder testimony, documentary evidence and oral argument relating to their outstanding issues.

This Report contains "recommendations" for resolution of all outstanding issues and constitutes the settlement proposal upon which the parties are now required to act, as directed by statute and PLRB regulations. Pursuant to statutory authority, this Report will be released to the public if not accepted. A vote to accept the Report does not constitute agreement with, or endorsement of, the rationales contained herein, but rather, represents only an agreement to resolve the issues by adopting the recommendations contained herein.

The parties are directed to review the Report and within ten days of its issuance, notify the PLRB of their decision to accept or reject the recommendations.

Introduction and Issues

Based upon representations made by the parties to the Fact Finder, the following issues are unresolved between the parties:

1. Duration of Agreement
2. Wages
3. Health Benefits Health care Insurance
 - a. Retired Teachers Health care Insurance
 - b. Dental insurance
 - c. Prescription Plan
 - d. Vision insurance
 - e. Part-time Employees' Insurance Benefits
4. Employee Evaluation (Act 82 of 2012)
5. Instructional and Professional Development Council (IPD)
6. Teacher-Administrator Liaison – Building Liaison
7. Leaving the Building
8. Hall Duty, Cafeteria Duty, Bus Duty
9. Professional Development and Educational Improvement (Horizontal and vertical movement of the salary schedule/Tuition reimbursement)
10. Co-Curricular Activities and Compensation
11. Memorandum of Understanding
12. Seniority Language
13. Suspensions Furloughs and Demotions
14. Responsibility of the Board
15. Teaching Duties – Professional Responsibilities
16. Teaching Load
17. Faculty Meetings
18. Teaching In-service Courses – Grammar Correction
19. Duplicate Facilities
20. Curriculum Leaders
21. Nurses
22. Homebound Instruction
23. Induction Program – Mentor Teacher Rate
24. Special Education Responsibilities
25. Training
26. Professional Qualifications and Assignments
27. Transfers
28. Accumulative Sick Leave Days
29. Temporary Leaves of Absence – Personal – Religious
30. Unpaid Leave of Absence – Good Cause
31. Section 125 Flexible Benefits
32. Personal Freedom and Citizenship
33. Grievance Procedure
34. Arbitration
35. Summer School
36. Salary-Graduate Credits
37. Negotiation of a Successor Agreement
38. Lay-off and Demotion
39. Working Days

General observations

By most measures the Upper Dublin School District can fairly be considered a successful district. The parties and citizens of the District have a good thing going and all involved should be recognized in their various efforts to educate the children of the school district. Although it is wise to be prudent and try to anticipate challenges in the future, such an outlook should be balanced with a recognition that the manner and means by which the District has operated in recent years are – at least in part - causes of the success of the endeavor. Within such a context, I am of the view that far-reaching changes in how the District determines compensation for its

teachers or broad changes in the language of the bargaining agreement – such as proposed by the District here - should be subject to only the most careful deliberation and closest scrutiny.

Considering the success of the District and the circumstances in which the parties now find themselves, I am of the view that now is not the time for the parties to embark upon a journey of significant change. After full consideration of the arguments and careful study of the extensive submissions on the issues by the parties, I am not of the view that the full package proposed by the District including significant changes in language in the Agreement and fundamental changes in the paradigm by which the employees are compensated would be prudent at this time. Nor am I persuaded that during the term of a new agreement the District will have the funds to (a) meet the demands of paying for employee benefits and (b) also continue its pattern of granting steady salary increases. At best, the submissions of the parties reflect that the District may be able to do one or the other...and as a practical matter, the District really has little choice but to choose to fund the benefit side of things.

Consequently, my recommendation is substantially one of holding the course, of preserving and protecting what the parties have rather than exposing either party to undue risk. In settling upon this recommendation of essentially embracing a modified status quo, I have given consideration to the total circumstances in which the Association and District find themselves, including such factors as: (a) the notable efforts by the District in recent years to raise compensation of the District's teachers to general parity with that of other similarly situated, high performing school districts – efforts that were courageously undertaken during a period of general economic challenge; (b) the absolute certainty of future increases in the costs of the bargaining unit's two most significant and most valued benefits – medical care and retirement – and my assessment that the Bargaining unit desires that the District adequately fund both benefits; (c) the recent, emotionally gut-wrenching decisions by the District relating to furloughs and the uncertainty and sense of insecurity engendered by such within the bargaining unit – factors that recommend against significant increases in District spending; (d) the upcoming change in the District's Superintendent; (e) the potential impact of assessment appeals on the tax revenue of the District and (f) the lack of stability in the general economy.

Based upon these underlying considerations and my assessment of the individual issues yet unsettled by the parties, I respectfully offer the following recommendations.

Duration of Agreement

The District proposes a two-year agreement. The Union proposes a three-year agreement.

Recommendation

Because much of the bargaining that has taken place to date between the parties has been within the context of a two-year agreement, considering the general unsettled nature of the economic environment and the fact that the District will have a new superintendent, I recommend a two-year agreement.

Wages

The Association proposes the following salary increases:

- July 1, 2014 – June 30, 2015 - .5% raise on scale
- July 1, 2015 – June 30, 2016 – 1.0% raise on scale
- July 1, 2016 – June 30, 2017 – 2.0% raise on scale

The District proposes that no horizontal or vertical movement for the term of the Contracted will be permitted, unless there are sufficient dollars generated by the following formula:

The District and the Association have entered into this Collective Bargaining Agreement with an understanding of the economic and academic challenges facing education and a desire to reach an agreement that reflects that understanding. This Agreement demonstrates a unique perspective, in that it accounts for various aspects of employment costs and shows a methodology to establish increases in monetary compensation and benefits from year to year that are limited to the base level Pennsylvania Department of Education Act 1 index for the District. While the District and the Association have diligently worked to anticipate all contingencies, any unresolved issues would be decided through the meet and discuss provisions in this Agreement. The following definitions, descriptions, and procedures establish a model for this Collective Bargaining Agreement and successor Agreements:

The core principle behind this model is that there are components, that when added together, represent the amount to be spent for funding this Collective Bargaining Agreement. These components are:

- (i) Salaries Component,
- (ii) Health Benefits Component,
- (iii) PSERS component,
- (iv) Tuition Reimbursement component.

These components are variable, in that a change in one will affect the others, because the total of all components must not exceed the amount available after increasing the previous year's amount by the base level Act 1 index. For example, if healthcare costs and tuition reimbursement costs increase, the other components must decrease to maintain the same total amount. Conversely, if healthcare costs decrease, additional money can be distributed to the other components. Therefore, each fiscal year, choices will be made to determine which pathway to take.

The sum of these components will equal the Compensation Pool. The Compensation Pool reflects the total value of employment for the Bargaining Unit. The Compensation Pool will be used as the value by which the base level Act 1 index for the school year in question is applied to determine the next year's Compensation Pool. It is agreed that for 2014–2015 school year, the Compensation Pool is defined as the size of the Compensation Pool for 2013–2014 school year (\$28,457,573.00) X the percentage increase in the base level Act 1 index for 2014–2015 (2.1%). For purposes of the calculations set forth in this Agreement, the base level Act I index shall be assumed to be not lower than 1% and not higher than 3%, notwithstanding the calculations provided by the Pennsylvania Department of Education. Commencing July 1, 2014, any unrealized or unused amount from each Component that is realized after June 30 of the year preceding the year in question, will be considered carryover and will be applied to the next year's Compensation Pool. The determination of each Component will be accomplished through the process underlined under each category below.

Salaries Component – The Salaries Component is defined to be the total payroll costs for the year in question, for all Bargaining Unit Members within the Bargaining Unit as of the November 30th prior to the school year in question. For employees on an absence leave of any kind, it will include the full salary of the Bargaining Unit Member as if the Bargaining Unit Member is not on leave and not include the replacement Bargaining Unit Member. The Salaries Component shall be adjusted by the following factors: the Salary Schedule, the impact of Wait Days, and the number of Retirements and Resignations.

Salary Schedule – Effective July 1, 2014, the salary schedule shall be as set forth in Schedule A. Placement and advancement on the schedule shall be in accordance with existing policy and practice and in accordance with the modified provisions in the Collective Bargaining Agreement.

For the 2014–2015 school year, the salary schedule will be composed of two parts: one being the salary schedule and the second being the salary adjustment table. The salary adjustment table will show the maximum amount that can be added to each step for the 2014–2015 school year. The amount actually added will range from 0% to 100% of the amount listed and is directly affected by the amount of wait days, number of retirements, and the base level Act 1 index. The decision for how much of the amount in the salary adjustment table is added to each step will be determined no later than the June 30th prior to the start of the school year in question.

Wait Days – Each year, Bargaining Unit Members will be paid according to their previous year's step placement for a to be determined number of days (“wait days”) of the school year. Thereafter and until the end of the school year, Bargaining Unit Members will be paid according to their current year step. The number of wait days before vertical salary advancement takes place will be determined no later than the June 30th prior to the start of the school year in question. This number of wait days will be determined based on costs/savings of healthcare (Healthcare Component), tuition reimbursement savings (Tuition Reimbursement Component), salaries (Salaries Component), and PSERS (PSERS Component).

For Bargaining Unit Members who work less than a normal school year, that is, begin employment with the District during the school year, take an unpaid leave for a portion of the year, or take a full or partial sabbatical during the school year; their salary will be paid in accordance with existing policy and practice except the equivalent for year salary (EFYS) will be calculated as:

$$\text{EFYS} = (\text{wait days}/190) \text{ times (previous year step salary)} + (\text{non-wait days}/190) \text{ times (current year step salary)}$$

For Bargaining Unit Members new to the District, their salary during the wait day period will be calculated as if they worked for the District the previous year.

In the event that the wait days are 63 days or more, the 190–day reset school year will be reduced by one (1) day. Should the wait days be 126 days or more, the 190–day reset school year will be reduced by two (2) days. The reduced workdays will be days selected by the District Administration.

Retirements and Resignations–The Salaries Component for the year in question will reflect the amount of saving from the number of retirements known to the District as of June 30th from the maximum step of the salary schedule assuming a Bargaining Unit Member at maximum pay at Master’s +30 column retires and is replaced by an initial bachelors step 1 Bargaining Unit Member (\$48,836). For the 2014–2015 school year, the known retirements as of June 30, 2014, will be utilized. Savings from retirements where the retirement notices are received by the Human Resources Office after June 30th will be reflected as a carryover for the following year.

Savings from changes in tuition reimbursement – The District and the Association agree that in order to achieve the Compensation Pool limit for the 2014–2015 school year, additional savings are necessary beyond that achieved in the Salaries Component. Therefore, the District and Association agree to the modifications on tuition reimbursement set forth in the Collective Bargaining Agreement. The total annual combined savings from changes to the tuition reimbursement and healthcare will be utilized in adjusting the Salaries Component

PSERS Component – the PSERS Component is defined to be the total net cost of funding the District’s net obligation to the Public School Employees Retirement System for the year in question. The amount will be based on the Bargaining Unit Members identified in the Salaries Component, as determined on November 30th immediately preceding the school year in question.

Health Benefits Component – The Health Benefits Component will be calculated based upon the annual costs of funding the health benefit program by the District, less teacher reimbursements to premium share. The expected cost savings of the spousal waiver for 2014–2015 will be factored into the overall amount of dollars for the Salaries Component.

According to the District, its proposal is necessary as a result of decisions the District has made in the past and expected financial challenges facing the District in the future. In the past, the District has been an exception to many school districts and continued to tax above the base Act 1 rate and fund its programs, pay its teachers and staff reasonable amounts and fund capital improvements resulting in quality education and high performance of the District’s students. During this process, the District continues, it allowed its fund balance to shrink to a level where it is now rated by Standard and Poor’s as AA- with a negative outlook. In the future, because of its almost fully built out land area and significant number of tax assessments by the county that are being appealed, the District is facing a reality of potentially flat or reduced levels of tax revenue. Added to these concerns are the well known and ever continuing schedule of large annual increases in PSERS contributions that will be required of the District and the ongoing escalating costs of health care benefits. Under such circumstances, the District asserts, it has to take a global view of the cost of the compensation package it provides bargaining unit members and keep that increased costs within the level afforded by the increases in taxes allowed by the Act 1 index. In its view, the District maintains, its compensation package give due consideration to all of the components of compensation while being fair to bargaining unit members and the public citizens who must pay the bill.

According to the Association, its proposed yearly increases are minimal and amount to an objective reflection of the recognition by bargaining unit members of the economic realities facing the District and taxpayers and the desire of teachers to collaborate with the District to create an environment best suited to the education of the students of the District. According to the Association, the District is conservative in its budgeting and has ended various years with budget surpluses and there are no good reasons to believe that such will not continue to occur in the future. Here, the Association asserts, the increases sought by the Association are similar to raises provided in other comparable area school districts. In the Association’s view, the District can afford to grant the very reasonable wage increases proposed.

Recommendations

As stated in my introduction, it is fairly obvious that the citizens, students, administrators, teachers and other employees of the District have been doing something right, and should institute changes of a fundamental character only after careful due consideration. As I see it, the District’s proposal to formulize the compensation of bargaining unit members would amount to just such a fundamental change; a change that I do not recommend under the present circumstances. Although the formula proposed by the District may work to provide predictability, I am not at all sure that such will be the case. Additionally, the proposal’s strict dependence upon the Act 1 index determinations by state regulators appears to remove a significant amount of managerial discretion from the District and its Board and directs an undue amount of financial risk onto the bargaining unit. Finally, I am just not convinced that the statewide wage and other data used by the state to come up with the base Act 1 index number is a fair measure, or definition, of what citizens in high performing school district such as Upper Dublin, are willing to pay for the teachers of their children.

Based upon the exhaustive data presented by both parties on financial issues, I believe the District has exercised good faith in recognizing whenever possible the valuable contribution of its employees to the mission of the District. I do believe however, that presently the District is not in the position to offer wage increases in either the form of percentage increases or in the form of step or column movement, and that the District's limited resources will be better spent on supporting its efforts to continue a relatively high level of employee health care coverage and contributions to the employees' pension fund. That said, I do think it is important that the District offer bargaining unit members some form of increased dollar compensation to reflect a recognition of their important and ongoing contribution to the mission of the District. Consequently I recommend the following language relating to salaries:

Salaries and Horizontal Movement – No horizontal or vertical movement during 2014-2015 and 2015-2016 school years. Full time bargaining unit members shall receive a non-reoccurring bonus of Seven Hundred and Fifty Dollars (\$750.00), less legally required withholdings, that will not be included in the Bargaining unit member's base salary for the purpose of future increases. Such non-reoccurring bonus will be paid in a lump sum on the last regular pay of the 2015-2016 school year. Part-time Bargaining unit members non-reoccurring bonuses shall be prorated.

Healthcare

The parties have agreed that bargaining unit employees will no longer be eligible to participate in the Keystone East PC125 plans and that they must migrate to their preferred health insurance plans offered through the Bucks and Montgomery County Schools Health Care Consortium. The Consortium offers three such plans: a 10/20/70 plan, a 20/30/70 plan and a POS 15 plan.

The Association proposes the following schedule for monthly contributions:

July 1, 2014 – June 30, 2015

10/20/17 - 11.5%
20/30/70 - 11.0%
POS 15 - 10.5%

July 1, 2015 – June 30, 2016

10/20/17 - 11.5%
20/30/70 - 11.0%
POS 15 - 10.5%

July 1, 2016 – June 30, 2017

10/20/17 - 11.5%
20/30/70 - 11.0%
POS 15 - 10.5%

In the view of the Association, this contribution schedule incentivizes employees to participate in the POS 15 plan; the plan that is the least costly to the District while allowing employees who wish to participate in a richer plan to do so by bearing an increased – but reasonable – share of the cost. As for the District's proposals relating to prescription coverage; coverage for spouses with other available insurance; prescription coverage: potential excise taxes or penalties under the ACA; dental insurance; vision insurance; insurance coverage for part-time employees and insurance coverage for retirees, the Association rejects any new language proposed by the District and proposes that existing language in the Agreement continue. On the issues of domestic partner insurance, the Association proposes that Domestic Partner coverage should be at the same level as other employees and that no surcharge would apply.

The District proposes the following contribution levels:

2014-2015

Core Health Plan – Keystone POS 15S at 15% premium share; buy up to other plans.
Elimination of PC215 deductible reimbursement
Prescription – 10/25/50 with \$200 per script deductible for specialty drugs.
Percentage contribution of premium share of prescription, dental, and other benefits.

2015-2016

Core Health Plan – Keystone POS 15S at 16% premium share; buy up to other plans.
\$75 per month spousal surcharge,
Tobacco surcharge of \$75 per month; waived if Bargaining Unit Member participates in a smoking cessation program,
Prescription – 10/25/50 with \$200 per script deductible for specialty drugs.
Percentage contribution of premium share of prescription, dental, and other benefits.

The District also made a number of other health coverage-related proposals, including:

- Prohibiting spouses of bargaining unit members who are employed fulltime and have access to health benefit coverage from another employer from participating in any District plan on a primary basis;
- For coverage of same sex partners the District would apply the same spousal prohibition as detailed above and would require that the employee and spouse be married pursuant to a recent federal court decision;
- Language providing that effective January 1, 2017 the parties will jointly request information from the Bux-Mont Consortium relating to whether its plans will be subject to any excise or “Cadillac tax” under the ACA and that in the event such tax is applicable to consortium plans the parties will withdraw from the consortium, meet and bargain for a period of up to eight months to agree upon a plan for employees that will not be subject to the tax/penalty, and in the event they do not come to an agreement submit the matter to binding arbitration granting an arbitrator authority to select a plan that will not be subject to the excise tax/penalty from the exchange.
- Permit retired teachers to participate in the District’s plans, paying the cost of the group rate to the District as previously provided, but allowing such participation only until Medicare eligibility is reached.
- Change the current \$10 per month contribution to the Dental Plan to a 15% premium copay effective July 1, 2014 and a 16% copay effective July 1, 2016 for the Dental plan offered by the Consortium.
- Increase the current prescription plan monthly premium from 11.5% to 15% effective July 1, 2014 and 16% effective July 1, 2016.
- Limit the Board’s contribution to the current vision plan to \$12.50 per month and in the event the Consortium adopts a preferred vision plan, bargaining unit employees will be required to pay a premium share of 15% beginning July 1, 2014 and 16% July 1, 2016.
- Currently employees who work a minimum ½-time schedule are eligible to receive medical benefits on a pro-rata basis. The District proposes to limit part time eligibility to employees who work a minimum of six hours per day five days per week.

The District supports its proposals for the reasons expressed above relating to overriding financial considerations, and its desire to anticipate issues (such as the Cadillac tax/penalty) in time to avoid their potential additional costs. Additionally, many of the District’s proposals in one form or another are included in area school district bargaining agreements, and the Associations proposal would result in additional costs of \$6,327,014 over the term of the contract.

Recommendations

I recommend that healthcare/insurance related language continue in the Agreement as is unless modified by the following recommended language:

- a. The District and the Association have agreed and are parties to a Memorandum of Understanding authorizing the District to participate in the Bucks and Montgomery County Schools Healthcare Consortium (the “Consortium”) for purposes of providing medical, prescription, dental, and vision benefits.
- b. The parties agree that the District’s participation in the Consortium is limited to the preferred plans offered by the Consortium. The insurance vendor and preferred plans are determined by the Board of Trustees of the Consortium and are subject to change by action taken by the Consortium’s Board of Trustees.
- c. At the time the instant Collective Bargaining Agreement is ratified, the Consortium’s insurance vendor is Independence Blue Cross and the preferred plans available to the employees of the District covered by this Agreement and subject to the premium co-share as set forth herein are as follows:
 - i. IBC PC10/20/70.

- ii. IBC PC20/30/70.
- iii. IBC Keystone POS 15s.

d. The parties recognize and agree that the individual benefits, benefit limits, and benefit copays set forth in the preferred plans may be changed by the Trustees of the Consortium during the course of this Agreement. Should the District determine to withdraw from the Consortium, the District shall maintain medical, prescription, vision, and dental coverage equivalent to that provided by the Consortium at the time of the District's withdrawal.

e. Effective as soon as possible following ratification of the Collective Bargaining Agreement, the following provisions will be in effect:

i. Employee Contributions.

(1) Each employee enrolled in one of the preferred health care plans of the Consortium will make a monthly contribution of 12% of premiums for the preferred healthcare plans and the prescription plan during the 2014-2015 plan year. During the 2015-2016 plan year and each plan year thereafter employees will make monthly contributions of 14% of premiums for the IBC Keystone POS 15s preferred healthcare plan and 15% of premiums for the IBC PC10/20/70 and IBC PC20/30/70 preferred healthcare plans, and 15% for the prescription plan.

ii. Duplicate Coverage.

(1) In the event that employees are or become married to each other, the District shall not be obligated to pay insurance premiums which would provide duplicate coverage for either spouse or for dependents. Nor will the District provide the opportunity for the spouse to claim the Medical Waiver.

iii. Same-Sex Domestic Partners.

(1) The District shall cover same-sex domestic partners for all insurances described in this Article, subject to the requirements of the insurance providers and further subject to the same spousal participation rules for non-same-sex partners. In order for the same-sex domestic partners to receive benefits pursuant to this Agreement, such same-sex domestic partners must be married in order to have an entitlement to benefits pursuant to this Article.

iv. Excise Tax.

(1) Effective January 1, 2017, the District and the Association agree to jointly request that the Consortium provide the District and the Association with projected information as to whether or not any of the health benefit plans offered by the Consortium would be projected to incur or actually incur an excise tax, tax, or penalty, as the result of the implementation of the Patient Protection and Affordable Care Act (ACA) on the Consortium. This process will be repeated every January thereafter.

(2) In the event that it is determined and/or projected as of January 2017 or any subsequent January that any of the health benefit plans offered by the Consortium will have or actually incurs excise taxes, taxes, or penalties will or are imposed on the Consortium or on the health benefit plan as the result of the health benefit plans exceeding the thresholds provided in the ACA, the Association and the District shall take actions to withdraw from the Consortium as soon as practicable thereafter if the Consortium fails to provide additional health benefit plan offerings that would be below the threshold limitations for such an excise tax, tax, or penalty imposed upon the Consortium/Trust or health benefit plan pursuant to the ACA, prior to July 1, 2018, and each anniversary year thereafter. In the event that any new health benefit plans are offered, the parties shall agree on a premium share for such health benefit plans as aforesaid. If, on the other hand, the Consortium fails to provide or approve such other less costly health benefit plans that are projected to cost less than any expected excise tax, tax, or penalty, then in that event, the District and the Association will simultaneously start the process to withdraw from the Consortium, but prior to doing so, the parties will meet on a monthly basis from January 2017 to August 2017 at which time the parties will meet and attempt to bargain either increased premium shares to cover the expected costs imposed on the Consortium/Trust or the health benefit plan as the result of the imposition of excise taxes, taxes, or penalties pursuant to the ACA, in which case the parties would not withdraw from the Consortium/Trust or, in the alternative, the parties will attempt to bargain alternative health benefit plans that will be less costly than the health benefit plans that would cause an excise tax, tax, or penalty under the ACA during the 2018 calendar year and other calendar years thereafter following a withdrawal from the Consortium.

(3) In the event that the District and the Association will fail during this eight (8) month period to either agree to increase premium share to cover the cost of such expected excise tax, tax, or penalty and remain in the Consortium or to agree upon less costly health benefit plan offerings and potentially increased premium share that are projected to be under the threshold limitations for the ACA excise tax, tax, or penalty provisions in the 2018 calendar year and each year thereafter, then in that event, the parties shall mandatorily pursue binding arbitration with a binding arbitrator provided in a list by the Bureau of Mediation as soon as practicable and once agreed upon between the parties, the binding arbitrator's sole authority shall be to determine those health benefit plan or plans that Bargaining Unit Members could elect during the current plan year or the next plan year in question that would be under the threshold limitations established by the ACA so that an excise tax, tax, or penalty will not be triggered. It is understood that the binding arbitrator can only recommend plans that are not less rich than the highest plan offered by the exchange that does not trigger the excise tax, tax, or penalty provisions under the ACA. The binding arbitration shall be done on an expedited basis with the binding arbitrator being required to issue his/her binding opinion within thirty (30) days after entering into the process. The binding arbitrator shall have authority to take whatever evidence is necessary in order to provide his/her recommendation. This process will be repeated on an annual basis so long as the threshold limitations of such health benefit plan offerings exceed the excise tax, tax, or penalty thresholds under the ACA that may be imposed on the Consortium or the District/District's health benefit plan, as the case may be, with the understanding that the plans that would ultimately be offered cannot be less rich than the highest plan offered by the exchange that does not trigger the excise tax.

Employee Evaluation (Act 82 of 2012)

The District proposes to eliminate most of the current language of the Agreement relating to Employee Evaluations and substitute language providing that "the current Pennsylvania Department of Education approved teacher evaluation system shall be used" and making certain limited modifications to existing language relating to "Copies of Evaluation," "Personnel File," "Notification of Complaints" and "Movement Through Increment Levels."

In support of its position the District asserts that Section 1123(m) of Act 82 of 2012 requires that the District apply the rating system promulgated by the Pennsylvania Department of Education.

The Association proposes that: "Discussion on new language regarding employee evaluation be referred to the Instructional and Professional Development Council (IPD).

The Association asserts that the IPD has been an effective asset to the District in the past being an instrument of collaborative problem solving that should be used to address the Act 82 evaluation process. The Association does not dispute that the District must comply with the law, but as many aspects of the evaluation system have already been developed and executed by the District there is no good reason to devalue all of the work that has already occurred or the potential of the IPD by substituting language that may contradict the collaborative work of the IPD. The IPD should be given the chance to work, the Association maintained.

Recommendation

As the District is required to comply with the law and as the parties have had success in jointly addressing issues through the IPD, I recommend that removal of current language as proposed by the District, and that the following language be included in the Agreement:

The District shall maintain a rating system consistent with Act 82 of 2012. The Association, through the Instructional and Professional Development (IPD) Council, will participate in the development of the rating system consistent with Act 82 of 2012 and further changes to that system. Implementation of the rating system will be in accordance with Act 82 of 2012.

Instructional and Professional Development Council (IPD)

The District proposes language limiting its applicability, certain teacher input and consensus building. The District also proposed adding a principal as a member of the Council.

The Association proposes that the language remain as is, with the addition of language providing that, among others, the President of the Association, "or appropriate designee" will be a member of the Council.

Recommendation

As discussed above, the parties have had some success with the IPD and I recommend that it stay substantially as it is. I recommend that District proposed language including a principal on the Council and that Association proposed language relating to a presidential designee be adopted.

Leaving the Building

The District proposes removing language that permits teachers to leave the building in case of emergencies or during their unassigned periods or released time and retaining the language that teachers may leave during their duty-free lunch period using a sign-out form and requiring that on all other occasions teachers may leave the building only with approval of the principal. The District maintains that thorough its proposal the District may better ensure that students are being properly supervised, maintain school safety and ensure that teachers are leaving school for purposes of actual school business.

The Association proposes retaining the existing language as the language requires teachers to sign out so that a record of their absence is kept. In addition, teachers are professionals and use the time away for gathering materials for classes and other school related business. This has not been an issue of concern in schools and is, the Association asserts, just an effort to diminish the professionalism of teachers.

Recommendation

I see no reason to change the existing language and recommend no changes to the relevant language of the Agreement.

Non Teaching Duties, Hall Duty, Cafeteria Duty and Bus Duty and Schedule B

The District proposes language to require elementary teachers to perform bus duty; remove the three-period limitation on hall duty for secondary teachers; remove language that elementary and secondary teachers may be assigned to supervise the cafeterias; and add language that teachers may be required to perform bus duty on a rotating basis without additional compensation. According to the District, teachers can perform the bus duty during their regular – already paid for by the District hours – and other changes would assure the orderly operation of the school. In its estimation, these changes could save the District approximately \$30,000 per year.

The Association is opposed to the District’s proposed bus-duty language and proposes maintaining current language relating to hall duty and cafeteria duty. The Association also proposes a 2% annual increase in the maximum allowance for curriculum leaders, nurses, curriculum development, homebound instruction, induction program, special education responsibilities, training and summer school. The Association also proposes that a complete and accurate list of all relevant positions be included in Schedule B of the Agreement, including a list of activities covered by the point values referenced in the section.

Recommendation

I recommend the Association’s proposal relating to inclusion of updated and accurate data in Schedule B of the Agreement. As to the other proposals of the parties, I recommend no changes.

Seniority and Lay Off /Furlough Language

The Association proposes new language relating to “Seniority” and “Suspensions (Furloughs) and Demotions.”

The Association’s proposed language relating to Seniority provides:

Seniority for employees is defined as the length of continuous service with the employer since the employee’s most recent date of hire. Seniority will be interrupted by resignation, discharge, failure upon recall from layoff to report to work, retirement and failure to return from an approved absence.

For employees hired after June 30, 2014, seniority shall be determined at date of hire. When multiple individuals are hired on the same day or to be approved in the same board meeting, seniority shall be determined by the order on the board minutes. The order of the board minutes will be determined by the last four digits of the employee’s social security number. The social security number closest to 0000 shall be considered the most senior while the social security number closest to 9999 shall be considered least senior.

For employees hired prior to June 30, 2014, seniority shall be determined at date of hire. When multiple individuals were approved at the same board meeting, seniority shall be determined by the order on the board minutes with the last person listed as the least senior.

In regard to Suspensions (Furloughs) and Demotions, the Associations proposes language providing that:

“There shall be no furloughs or demotions for the length of this contract.”

The District opposes the Associations seniority language and furlough demotions language and seeks to eliminate School Code references to furlough, realignment and recall in the Agreement.

Recommendations

I recommend adoption of the Associations seniority language; clear definitions of such can be a benefit and can avoid disputes. However, I do not recommend the District’s proposal to eliminate references to the School Code or the Association’s proposal providing there will be no furloughs or demotions during the term of the Agreement. Such no furlough or lay-offs language, where it exists in bargaining agreements at all, generally comes associated with significant quid pro quo from employees; a commitment of reductions in pay and/or benefits that under the circumstances I am confident would not be amenable to bargaining unit members.

Other Matters

Other than the agreed upon List of Tentative Agreements by the parties, I recommend that all other rates and provisions now existing in the Agreement be frozen and remain as is (other than updated language required to comport the existing language to a two year agreement) and that as to all other proposed changes to the Agreement not the subject of recommendations for change herein, the applicable contract language remain as is.

Please note

that the cover letter to this Report and Recommendation summarizes the responsibilities of the parties to notify the PLRB of their acceptance or rejections of this Recommendation and should be given careful attention.



Dated: June 30, 2014

Timothy J Brown, Esquire
P.O. Box 332
Narberth, PA 19072

**ACT 88-13-19-E FACT FINDING REPORT APPENDIX A
SALARY SCHEDULES**

2014-2016 Salary Schedule					
Step	B	PC	M	M15	M30
1	\$48,836	\$50,500	\$52,823	\$55,911	\$59,004
2	\$50,436	\$52,100	\$54,423	\$58,111	\$61,304
3	\$52,036	\$53,700	\$56,023	\$60,311	\$63,604
4	\$53,636	\$55,300	\$58,223	\$62,511	\$65,904
5	\$55,236	\$57,300	\$60,523	\$65,111	\$68,204
6	\$56,836	\$59,300	\$62,823	\$67,711	\$70,904
7	\$58,636	\$61,500	\$65,123	\$70,411	\$73,604
8	\$60,436	\$63,700	\$67,523	\$73,111	\$76,504
9	\$59,222	\$66,200	\$69,923	\$75,811	\$79,704
10	\$61,022	\$68,700	\$72,423	\$79,111	\$83,104
11	\$62,822	\$68,171	\$75,423	\$82,511	\$86,704
12	\$66,466	\$71,671	\$79,523	\$87,211	\$91,404
13	\$70,440	\$75,671	\$84,523	\$92,211	\$96,804
14	\$76,623	\$82,371	\$91,023	\$98,711	\$104,204