

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

In the Matter of Impasse Between the:

BENTON AREA SCHOOL DISTRICT

“Public Employer”

And

BENTON AREA EDUCATION ASSOCIATION, PSEA/NEA

REPORT AND
RECOMMENDATIONS

Case No. Act 88-15-27-E

Before
Walter Glogowski
Fact-Finder

Appearances:

For the Employer:

Ellis Katz, Esq. Sweet Stevens Katz & Williams

For the Association:

Virginia Cowley, Uniserv Representative PSEA/NEA

Pursuant to Act 88 of 1992 (Act 88) and the Public Employee Relations Act (PERA), I was appointed by the Pennsylvania Labor Relations Board (“PLRB” or “Board”) on July 21, 2015 as the Fact Finder in the impasse between the Benton Area School District (the “Employer”) and the Benton Area Education Association (the “Association”), a unit comprised of approximately sixty-five (65) professional employees located within the Central Susquehanna Intermediate Unit 16 (“CSIU-16”). The parties began negotiations for a successor agreement in January 2013. The parties met on their own and then with the assistance of a mediator. A large number of issues in dispute remain unresolved and are appropriately before the Fact Finder. Therefore, the Association requested Fact Finding.

On August 7, 2015 an executive session was held at the Carbon-Lehigh Intermediate Unit #21 with district and union representatives pertaining to the unresolved issues and possible settlement. At that time the formal hearing scheduled for August 20, 2015 was cancelled due to the candid and productive discussion held between the advocates in my presence. Both have identified the most salient issues facing the district and the association. Through their straight-forward and forthright observations I was able to ascertain what I felt was necessary to bring the protracted negotiations to a close. Separate sessions were held on August 18, 2015 with the representative of the District and the PSEA Uniserv representative at their respective offices or by way of e-mail and phone calls.

The Fact Finder commends both parties for their professional and courteous presentations. The positions of the parties were clearly articulated and the documentation presented was informative. Pursuant to statutory authority, this report will be released to the public if not accepted. A vote to accept the report does not constitute agreement with or endorsement of the rationales, but rather represents only an agreement to resolve the issues by adopting the recommendations.

Background Information

The parties have been bargaining over a successor agreement for the past thirty-two months. Since the inception of bargaining, the district has contended that they have financial concerns and that any agreement would have to contain substantial salary/cost savings as well as major concessions on health care. The District contends that the only way they could afford salary increases would be through the savings generated through health care concessions. As a result of the informal executive session and numerous conversations held with both parties I, in order to expedite the fact-finding/negotiations process, have taken the liberty of not making recommendations on a large number of issues.

The Association's and Board's issues adding, amending and/or deleting sections of the collective bargaining agreement are to remain status quo unless they are listed and discussed as a part of my recommendations in this report.

This report contains recommendations for the unresolved issues which constitutes the settlement proposal upon which the parties are now required to act, as directed by Statue and the PLRB regulations. Without comment, the issues already agreed upon by the parties and undisputed positions of the Collective Bargaining Agreement (CBA or Agreement) shall be incorporated without change as a part of this report.

ISSUES AND RECOMMENDATION

1. Article IV-Grievance Procedure: Section 4.03

The District is proposing to remove the following from the CBA:

Grievant shall have the option of having a representative of the Association ~~or counsel~~ present at all steps of the grievance procedure. The District shall have the option of having a confidential employee ~~or counsel~~ present at all steps of the grievance procedure.

The Association is proposing the following additions and deletions to the grievance procedure:

Section 4.03 Grievant shall have the option of having a representative of the Association or counsel present at all steps of the grievance procedure. The District shall have the option of having a confidential employee or counsel present at all steps of the grievance procedure.

Informal

Step An employee with an alleged grievance shall meet and discuss with his/her immediate supervisor with the objective of resolving the matter informally. In the event that informal discussions with the supervisor do not resolve the grievance or if no meeting takes place after a reasonable effort, then the employee will proceed to **Formal Step I** of the Grievance Procedure.

Step 1: Person or persons, initiating the alleged grievance shall present the grievance, in writing on the form provided by the employer at the Informal Step, to the First Level Supervisor (middle/high school principal or elementary principal) within ~~ten (10)~~ **twenty (20)** days after the action or occurrence about which the grievant complains. If the person desires to file a grievance pertaining to the above action or any administrative decision, resolution or other official act taken by the Superintendent or Board which may ~~immediately or in the future~~ affect the grievant, the grievance must be filed within ~~ten (10)~~ **twenty (20)** days after the grievant has notice of the decision, resolution, **act or implementation. regardless of the proposed effective date of implementation of the decision, resolution or action.** The first level supervisor shall reply to the grievance in writing within ~~five (5)~~ **ten (10)** days after formal presentation of the grievance.

Step 2: If the response of the first level supervisor in **Step 1** does not resolve the grievance to the satisfaction of the affected parties or if no response is received within the time specified, the grievant(s) may present the grievance to the Superintendent in writing within ~~five (5)~~ **ten (10)** days of the date of the rejection of the grievance at **Step 1**. The Superintendent shall schedule a meeting within ~~five (5)~~ **ten (10)** days of receipt of the grievance. The meeting shall be within thirty-five (35) days of receipt of the grievance. Within ~~five (5)~~ **ten (10)** days following the meeting, the Superintendent shall render his/her decision in writing.

Step 3: If the action in **Step 2** above does not resolve the grievance to the satisfaction of the grievant or if no response is received within the time specified, the grievant may within ~~five (5)~~ **ten (10)** days appeal the grievance to the Secretary of the Board. The Board through the Superintendent shall set a time to consider the alleged grievance and shall render a written decision within thirty (30) days of the receipt of the appeal and communicate its decision through the Superintendent's office to the parties concerned.

Step 4: If the action or inaction in **Step 3** above fails to resolve the grievance to the satisfaction of the grievant, the aggrieved party may request that the Association refer the grievance to binding arbitration within thirty (30) days. The Association will notify the Superintendent that the grievance shall be referred to binding arbitration as provided in Section 903 of Act 195.

If the Board of Arbitration rules that the grievance fails to meet the criteria of Section 903 of the Act, the decision of the Board in **Step 3** will be final.

Final Decision by Arbitration on those issues is subject to arbitration as defined in Section 903 of the Act. Both parties are bound to the decision except where enabling legislative action is required, in which case it is binding only if such legislation is enacted as provided in Section 901 of the Act.

Discussion:

It has been my personal experience that the union representative, not an attorney, is the best person to represent the grievant in all stages of the grievance process. In addition I have found that on numerous occasions that the time lines for processing a grievance are not long enough, based on the individual(s) circumstance, to move the grievance through each level.

Recommendation:

I am recommending that the Board's proposal to eliminate the words "**or council**" and the Association's increasing the length of time to file and move the grievance through the various steps is accepted. Revise the current language to reflect the changes.

2. Article XIV Employee Evaluations, Section 14.01 General Criteria

Section 14.01 General Criteria:

~~1. **Open Evaluation:** All monitoring or observations of the work performance of a professional or temporary professional employee shall be conducted openly.~~

~~2. **Evaluation Method and Forms:** Evaluations will be performed using PDE forms 426, 427 or 428.~~

~~3. **Copies of Evaluation:** Evaluation shall be submitted to respective teacher 48 hours before submission of the evaluation to the Central Office. The teacher has the right to comment on his/her evaluation and submit in writing his/her comment of the evaluation and shall have the further right to be heard by the Superintendent before said evaluation becomes part of the Central Office records.~~

~~**Section 14.04 Employee Evaluation:** A bargaining unit member who is rated unsatisfactory on the PDE forms 426, 427 or 428 at the end of the teacher work year in accordance with the following guidelines, shall be held on the same step of the salary schedule for the school year succeeding receipt of the unsatisfactory rating.~~

~~**A.** No observation shall occur before day ten (10) or after day one hundred seventy (170) of the school year.~~

~~**B.** Within three (3) teacher work days, after receiving any written report of performance deficiencies or an unsatisfactory observation, the professional employee will be provided with the following interventions:~~

~~1. A detailed listing of all deficient areas as derived from the PDE forms 426, 427 or 428.~~

~~2. A listing of performance expectations for each deficiency stated in observable and verifiable terms.~~

~~3. Assignment of a mentor from the professional staff who demonstrates proficiency in the noted area(s). The mentor will be selected by the appropriate Administrative member(s) and the Teachers' Committee. In the event that the parties do not agree on the choice of mentor, the administrator(s) will make the final determination.~~

~~4. Suggested resources for professional development / self improvement provided by the Teachers' Committee and Administrator(s) in order to achieve the performance expectations in #2 above.~~

~~**C.** At least thirty (30) teacher work days following the receipt of items specified in Part B (above), will be provided for remediation of the problem set forth in the unsatisfactory observation written report.~~

~~D. At the end of the thirty (30) teacher work day period, the bargaining unit member shall be observed again. If this observation written report indicates an area(s) that need(s) additional remediation, the process will continue.~~

~~E. If the evaluation process demonstrates continued unacceptable performance contributing to an unsatisfactory PDE 426, 427 or 428 rating at the conclusion of the school work year, the bargaining unit member shall be held at the same step of the salary schedule for the subsequent school work year until rated satisfactory on the PDE 426, 427 or 428 (as detailed in Part F).~~

~~F. The aforementioned bargaining unit member will be observed and evaluated again within a period sufficient to allow completion of the time line prior to the end of the first semester (Section 14.04, C and D). If the bargaining unit member received a satisfactory PDE 426, 427 or 428 rating at the end of the first semester of the subsequent school year, the Building Principal will make his/her recommendation whether the employee shall receive the appropriate step placement and salary increase pro-rated from the end of the first semester. The Building Principal will make his/her recommendation in writing to the Superintendent for Board determination.~~

The Association does not agree with the proposed deletion of the entire section dealing with employee evaluations.

Discussion:

Evaluations are required by the Pennsylvania Department of Education and are evolving on an annual basis. In fact the current evaluation process is very labor intensive for both the teacher and the building administrator who is required to not only evaluate the teacher's performance but also that of the students and the buildings performance on testing.

Recommendation:

I am recommending that the following sections of the evaluation language be deleted for the above reasoning: Section 14.01 and Section 14.04 with the exception of the following language to be retained in Section 14.04: "**A. No observation shall occur before day ten (10) or after day one hundred seventy (170) of the school year**". In addition, maintain the current language found in Sections 14.02 and 14.03.

3. Article XX Insurance Protection

The Board is proposing to change insurance coverage as follows:

~~Section 20.01~~ **18.01 Health Care Insurance:** Subject to employee premium sharing, the Board shall pay full Individual and Family Health Care Insurance Coverage secured from Central Susquehanna Region School Employees' Health and Welfare Trust (TRUST) for the life of this contract. ~~Effective April 1, 2007, the~~ Board shall solely provide coverage under the **PPO 500 Plan** Trust Preferred Provider Option (PPO). At sole discretion of the Board, it may alternate Trust coverage options from time to time with Association approval. The Association recognizes that the terms of this plan is determined by the TRUST, and may alter slightly over the term of this agreement.

The District shall contribute up to \$1,500 per year (\$500 if for single employee, \$1,000 if for employee and one additional family member – a maximum of \$500 per individual, and \$1,500 if for employee and more than one additional family member – a maximum of \$500 per individual in a Health Reimbursement Arrangement account for each bargaining unit member who is provided a medical insurance plan to offset medical expenses actually incurred during the year. Any funds unspent at the end of the year reverts to the District.

Wellness Incentive Program. Effective upon ratification there shall be implemented a Wellness Incentive program which gives bargaining unit members an opportunity to earn up to \$200 per year and an opportunity, in addition, to win cash prizes by participating in certain sponsored programs. Except as set forth herein the components of the Program shall be set exclusively by the District.

~~The~~ Each professional employee and retiree, no matter when he/she retired, receiving health care insurance will pay ~~no more than~~ 18% of the premium cost.

Waiver: Any employee may elect to waive his/her right to health care insurance and, upon notification to the District by October 1st, will receive a monetary incentive of \$1,500.00 in lieu of such coverage. (This option may be chosen because an employee is protected with health care insurance by a spouse **except if both work for the District, in which case, the waiver is not available.**)

Said employee will have the opportunity to re-enroll in the health care insurance plan immediately upon notification to the District when the alternative coverage is no longer available (due to health, disability or unemployment of spouse).

If, at any time, the premium for any medical plan will exceed the threshold amount as stated in the Patient Protection and Affordable Care Act (PPACA), as amended, so as to subject such a plan to the excise tax ("Cadillac Tax"), the parties agree that said plan will either be modified or eliminated by mutual agreement or in the absence of mutual agreement to modify or eliminate said plan all employees who are enrolled in that said plan shall pay the entire amount of the tax or fee imposed upon the District relative to the total premium so as to pay the difference, in addition to the agreement upon employee contribution as stated in the contract.

~~During the term of this agreement should there be modifications to the Patient Protection and Affordable Care Act, as amended, or any federal law successor or similar state legislation, interpretative regulations thereto, or should there be any court ruling impacting such laws or regulations which cause a significant increase in health care costs to the District than the costs contemplated as of the date of ratification, as solely determined by the District, the following process shall be followed: (My emphasis added)~~

- (a) The District shall notify the Association that it has decided that a significant increase in health care costs has developed due to one of the reasons noted above and what it intends to do to eliminate those increases.
- (b) The Association will have up to thirty (30) calendar days from the date of such notice to meet and discuss concerning the matter.

In the absence of mutual agreement on how the matter will be addressed, the District's decision on what it intends to do to eliminate those increases will be able to be implemented by the District without objection from the Association.

The Association does not have any strong objections to the change in "Insurance Coverage" as long as the Board accepts the proposed salary schedule increases. However they are concerned about the language in the section pertaining to the Patient Protection and Affordable Care Act (PPACA), and feel that it should be revised as they have proposed which states:

"In the event the Affordable Care Act or other state or federal legislation would result in a tax upon the health insurance plan provided to the Association Members, the District and the Association agree to immediately declare the Health Insurance provision of this Agreement open for negotiation. In the event the District and the Association cannot reach an agreement within ninety (90) days that would result in a health care plan that has no tax implications, the District and the Association agree to submit to arbitration as permitted by the terms and conditions of this agreement so as to ensure that the health care plan has no tax implications".

Recommendation:

I am recommending that the Board's proposed changes to the Insurance coverage be approved **without** their language dealing with the "Affordable Care Act" which I have deleted and recommend that it be replaced with what the Association is proposing as listed above. This recommendation is offered subject to the Board's agreeing to the recommended salary proposals/scales that are attached. All insurance changes are prospective and are to be implemented subsequent to the ratification of fact-finder's recommendations.

4. Schedule B Salary Schedules Step Movement

The Association is proposing the following increases retroactive to the beginning of the 2013-2014 contract year as follows:

Schedule B: Wages

2013-2014: 3.5%

2014-2015: 3.5%

2015-2016: 3.5%

2016-2017: 3.5%

The Board is proposing the following salary schedule changes/increases:

2012-2013 – Base Year (expired 2012-2013 salary scale)

2013-2014 - See schedule above (no step movement).

2014-2015 - 1% increase including any applicable step movement. Schedule to be developed by mutual agreement.

2015-2016 - 1% increase including any applicable step movement. Schedule to be developed by mutual agreement.

2016-2017 - 1% increase including any applicable step movement. Schedule to be developed by mutual agreement.

Recommendation:

The Benton School District is a rural community that does not have a large tax base and argues that it cannot afford large salary increases that are retroactive. The Association on the other hand argues that their salaries are lower than those of the surrounding district and feel that they need to have their salaries increased to be competitive. Due to the inordinate amount of time that has transpired since bargaining began, I am recommending the following retroactive scale increases to be retroactive to the beginning of the 2013-2014 school year:

2013-2014 horizontal/vertical step movement with those bargaining unit members at max step receiving five hundred dollars (\$500) of scale.

2014-2015 horizontal/vertical step movement with those bargaining unit members at max step receiving one thousand dollars (\$1,000) of scale.

2015-2016 2.5% scale increase including increment.

2016-2017 2.99% scale increase including increment.

See the attached salary schedules as recommended above.

SUMMARY

Any other matters not previously agreed upon or specifically addressed herein are recommended to be withdrawn. Any agreements mutually made prior to the commencement of Fact-Finding that are not specifically addressed in this Report are to be included, as agreed upon, in this agreement.

I believe the recommendations above represent a reasonable, acceptable compromise to the outstanding issues, and I urge the parties to take serious, thoughtful consideration to my recommendations. I direct the parties' attention to my cover letter which outlines their responsibilities to notify the PLRB of their acceptance or rejection of these Recommendations.

Date: August 24, 2015
Shavertown, PA

Walter Glogowski

Benton Area EA Salary Schedule 2012-2013 BASE YEAR						
To Top	Steps	B	B+15	M/Meq	M+15	M+30
15	1	\$39,739	\$40,589	\$41,439	\$42,164	\$42,889
14	2	\$40,264	\$41,114	\$41,964	\$42,689	\$43,414
13	3	\$40,789	\$41,639	\$42,489	\$43,214	\$43,939
12	4	\$42,014	\$42,864	\$43,714	\$44,439	\$45,164
11	5	\$43,239	\$44,089	\$44,939	\$45,664	\$46,389
10	6	\$44,464	\$45,314	\$46,164	\$46,889	\$47,614
9	7	\$45,689	\$46,539	\$47,389	\$48,114	\$48,839
8	8	\$46,914	\$47,764	\$48,614	\$49,339	\$50,064
7	9	\$48,139	\$48,989	\$49,839	\$50,564	\$51,289
6	10	\$49,364	\$50,214	\$51,064	\$51,789	\$52,514
5	11	\$50,589	\$51,439	\$52,289	\$53,014	\$53,739
4	12	\$51,814	\$52,664	\$53,514	\$54,239	\$54,964
3	13	\$53,039	\$53,889	\$54,739	\$55,464	\$56,189
2	14	\$54,264	\$55,114	\$55,964	\$56,689	\$57,414
1	15	\$55,489	\$56,339	\$57,189	\$57,914	\$58,639
Top	16	\$56,724	\$57,574	\$58,424	\$59,149	\$59,874

Benton Area EA Salary Schedule 2013-2014 STEP + \$500 OFF SCHEDULE FOR TOP STEP						
To Top	Steps	B	B+15	M/Meq	M+15	M+30
15	1	\$39,739	\$40,589	\$41,439	\$42,164	\$42,889
14	2	\$40,264	\$41,114	\$41,964	\$42,689	\$43,414
13	3	\$40,789	\$41,639	\$42,489	\$43,214	\$43,939
12	4	\$42,014	\$42,864	\$43,714	\$44,439	\$45,164
11	5	\$43,239	\$44,089	\$44,939	\$45,664	\$46,389
10	6	\$44,464	\$45,314	\$46,164	\$46,889	\$47,614
9	7	\$45,689	\$46,539	\$47,389	\$48,114	\$48,839
8	8	\$46,914	\$47,764	\$48,614	\$49,339	\$50,064
7	9	\$48,139	\$48,989	\$49,839	\$50,564	\$51,289
6	10	\$49,364	\$50,214	\$51,064	\$51,789	\$52,514
5	11	\$50,589	\$51,439	\$52,289	\$53,014	\$53,739
4	12	\$51,814	\$52,664	\$53,514	\$54,239	\$54,964
3	13	\$53,039	\$53,889	\$54,739	\$55,464	\$56,189
2	14	\$54,264	\$55,114	\$55,964	\$56,689	\$57,414
1	15	\$55,489	\$56,339	\$57,189	\$57,914	\$58,639
Top	16	\$56,724	\$57,574	\$58,424	\$59,149	\$59,874
		\$56,724	\$57,574	\$58,424	\$59,149	\$59,874

Benton Area EA Salary Schedule 2014-2015 STEP + \$1000 OFF SCHEDULE FOR TOP STEP						
To Top	Steps	B	B+15	M/Meq	M+15	M+30
15	1	\$39,739	\$40,589	\$41,439	\$42,164	\$42,889
14	2	\$40,264	\$41,114	\$41,964	\$42,689	\$43,414
13	3	\$40,789	\$41,639	\$42,489	\$43,214	\$43,939
12	4	\$42,014	\$42,864	\$43,714	\$44,439	\$45,164
11	5	\$43,239	\$44,089	\$44,939	\$45,664	\$46,389
10	6	\$44,464	\$45,314	\$46,164	\$46,889	\$47,614
9	7	\$45,689	\$46,539	\$47,389	\$48,114	\$48,839
8	8	\$46,914	\$47,764	\$48,614	\$49,339	\$50,064
7	9	\$48,139	\$48,989	\$49,839	\$50,564	\$51,289
6	10	\$49,364	\$50,214	\$51,064	\$51,789	\$52,514
5	11	\$50,589	\$51,439	\$52,289	\$53,014	\$53,739
4	12	\$51,814	\$52,664	\$53,514	\$54,239	\$54,964
3	13	\$53,039	\$53,889	\$54,739	\$55,464	\$56,189
2	14	\$54,264	\$55,114	\$55,964	\$56,689	\$57,414
1	15	\$55,489	\$56,339	\$57,189	\$57,914	\$58,639
Top	16	\$56,724	\$57,574	\$58,424	\$59,149	\$59,874

Benton Area EA Salary Schedule 2015-2016 2.5%						
To Top	Steps	B	B+15	M/Meq	M+15	M+30
15	1	\$39,989	\$40,989	\$41,939	\$42,414	\$43,139
14	2	\$40,514	\$41,514	\$42,464	\$42,939	\$43,664
13	3	\$41,039	\$42,039	\$42,989	\$43,464	\$44,189
12	4	\$42,264	\$43,264	\$44,214	\$44,689	\$45,414
11	5	\$43,489	\$44,489	\$45,439	\$45,914	\$46,639
10	6	\$44,714	\$45,714	\$46,664	\$47,139	\$47,864
9	7	\$45,939	\$46,939	\$47,889	\$48,364	\$49,089
8	8	\$47,164	\$48,164	\$49,114	\$49,589	\$50,314
7	9	\$48,389	\$49,389	\$50,339	\$50,814	\$51,539
6	10	\$49,614	\$50,614	\$51,564	\$52,039	\$52,764
5	11	\$50,839	\$51,839	\$52,789	\$53,264	\$53,989
4	12	\$52,064	\$53,064	\$54,014	\$54,489	\$55,214
3	13	\$53,289	\$54,289	\$55,239	\$55,714	\$56,439
2	14	\$54,514	\$55,514	\$56,464	\$56,939	\$57,664
1	15	\$55,739	\$56,739	\$57,689	\$58,164	\$58,889
Top	16	\$56,974	\$57,974	\$58,924	\$59,399	\$60,124

**Benton Area EA
Salary Schedule
2016-2017 2.99%**

To Top	Steps	B	B+15	M/Meq	M+15	M+30
15	1	\$40,489	\$41,689	\$42,839	\$43,014	\$43,539
14	2	\$41,014	\$42,214	\$43,364	\$43,539	\$44,064
13	3	\$41,539	\$42,739	\$43,889	\$44,064	\$44,589
12	4	\$42,764	\$43,964	\$45,114	\$45,289	\$45,814
11	5	\$43,989	\$45,189	\$46,339	\$46,514	\$47,039
10	6	\$45,214	\$46,414	\$47,564	\$47,739	\$48,264
9	7	\$46,439	\$47,639	\$48,789	\$48,964	\$49,489
8	8	\$47,664	\$48,864	\$50,014	\$50,189	\$50,714
7	9	\$48,889	\$50,089	\$51,239	\$51,414	\$51,939
6	10	\$50,114	\$51,314	\$52,464	\$52,639	\$53,164
5	11	\$51,339	\$52,539	\$53,689	\$53,864	\$54,389
4	12	\$52,564	\$53,764	\$54,914	\$55,089	\$55,614
3	13	\$53,780	\$54,989	\$56,139	\$56,314	\$56,839
2	14	\$55,014	\$56,214	\$57,364	\$57,539	\$58,064
1	15	\$56,239	\$57,439	\$58,589	\$58,764	\$59,289
Top	16	\$57,474	\$58,674	\$59,824	\$59,999	\$60,524