

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA LABOR RELATIONS BOARD**

In the Matter of Impasse Between the

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**MILLVILLE AREA SCHOOL DISTRICT,**  
"Public Employer,"

-and-

**MILLVILLE AREA EDUCATION ASSOCIATION,**  
"Association."

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**REPORT  
AND  
RECOMMENDATIONS**

Case No. ACT 88-15-25-E

**Before  
Robert C. Gifford, Esq.  
Fact Finder**

**Appearances:**

**For the Employer:**

Benjamin Pratt, Esq.  
CGA Law Firm

**For the Association:**

Mark McDade, UniServ Representative  
Pennsylvania State Education Association

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 Millville Area School District [the "Employer" or "District"] and the Millville Area Education Association [the "Association"], a unit comprised of over 60 professional employees.<sup>1</sup> The parties commenced negotiations for a successor agreement in February 2012. They have met on their own and also with the assistance of several mediators. The Association went out on strike in August 2014. Mandatory non-binding arbitration pursuant to Act 88 followed. Both parties rejected the arbitration panel's Award that was issued on March 26, 2015, a copy of which is attached hereto. Another strike commenced thereafter, but Association members returned to work pursuant to a Court order. The parties have since been engaged in Court-ordered bargaining. The District requested fact finding prior to issuance of the Court's order to bargain.

On August 13, 2015, a hearing was held in Millville, Pennsylvania at which time the parties were afforded the opportunity to present testimony, examine and cross-examine witnesses, introduce documentary evidence, and argue orally in support of their respective positions on the remaining, unresolved issues.

**ISSUES**

Based upon the statement of issues the parties submitted to the fact-finder at the hearing, the following issues are at impasse, some of which may have sub-issues: recognition, credit union deduction, wages and salaries (including placement on guide), preparation time, leaves of absence (bereavement leave, personal leave, emergency leave, sick leave), full-time substitutes, insurance benefits (plan design, deductibles, premium share, Cadillac plan, spousal rule), retirement compensation, credit reimbursement, furlough and demotion, fair share, and sick leave bank. Although each issue may be discussed separately or with similar issues as a package, the impact of the issues in their entirety was given careful consideration.

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<sup>1</sup> For the purposes of salary calculations, the Association used a complement of 66 professional employees as they existed on the salary guide in 2011-2012. The District used a complement of 63 professional employees as they existed on the salary guide for 2014-2015.

## DISCUSSION AND RECOMMENDATIONS

There is a long history to the parties' impasse. I have carefully considered all of the evidence the parties presented at the hearing, including their supporting rationale for each issue. My analysis includes a thorough review of the non-binding Award issued by the tri-partite panel on March 26, 2015. As noted below, I have adopted the analysis and decision of the majority of the tri-partite panel on several issues. The recommendations below are amply supported by the record evidence, and they will provide a level of stability through the 2017-2018 school year. Further, when taken together, the recommendations represent a reasonable compromise to the parties' competing interests.

The parties are familiar with the outstanding issues. ***To the extent an issue is not specifically addressed or incorporated by reference herein I recommend the status quo.***

Each party presented an analysis of the District's finances and ability to pay. The evidence shows that the District is facing the same issues that are being encountered by many other school districts around the Commonwealth – flat or reduced state subsidies, increased pension and health insurance costs, and the limitations of the Act 1 Index. Besides those issues, the District indicates that (1) its “student population has dropped from over 900 to less than 700 in the past 23 years”; (2) its “assessed millage rate has historically exceeded all (5) other districts in Columbia County until the 14/15 tax year”; and (3) “the tax burden is greater on the Millville resident due to a predominantly residential and agricultural tax base compared to other districts, some of which have a greater commercial and industrial presence”. The District supports its position with a budget share analysis. The Association emphasizes that “in each of the last five years for which both budgeted and audited financial data are available” that the District realized a surplus in each year. Over the five (5) year period, “the District ended its fiscal year more than \$900,000 better than its budgets anticipated”. The ending general fund balance as a percent of total expenditures was 26.0% in 2009, 30.0% in 2010, 20.3% in 2011, 39.5% in 2012, 49.1% in 2013, 51.2% in 2014, and 38.4% in 2015 (2015 is budgeted data only). Further, the only time that the District increased the millage rate to the Act 1 Index between 2009 and 2014 was in 2012 – 2.3% increase compared to 6.0% index for 2009, 0.0% increase compared to 5.6% index for 2010, 0.0% increase compared to 4.0% index for 2011, 1.9% increase compared to 1.9% index for 2012, 2.2% increase compared to 2.3% index for 2013, 0.0% increase compared to 2.3% index for 2014. The budget for 2015 anticipates a 0.0% increase compared to 2.8% index for 2015.

The parties also presented comparisons of the salary and benefits packages received by professional units in other school districts. In sum, the evidence shows that bargaining unit members receive competitive benefits when reviewed in their totality, but their salaries are at the lower end of the spectrum.

### **Tentative Agreements**

All of the parties' tentative agreements shall be incorporated into this report by reference herein.<sup>2</sup>

### **Term of Agreement**

The parties have been working under the terms and conditions of their contract that expired on August 31, 2012. The Association seeks a term of six (6) years. Although the District proposed a term of five (5) years during the mandatory non-binding proceeding, the District is now amenable to a term of six (6) years.

### **Recommendation**

I recommend a six (6) year agreement effective from September 1, 2012 through August 31, 2018.

### **Wages and Salaries**

#### **The Current Provision**

The salary schedule for base year 2011-2012 was as follows:

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<sup>2</sup> On August 28, 2015, the parties notified me that they reached a tentative agreement on the issue of credit reimbursement (“tuition reimbursement”) during their court-ordered bargaining.

STEP	B	M	M+15	M+30	M+45
1	\$ 36,390	\$ 37,194	\$ 37,596	\$ 37,997	\$ 38,399
2	\$ 36,981	\$ 37,785	\$ 38,187	\$ 38,588	\$ 38,990
3	\$ 37,572	\$ 38,376	\$ 38,777	\$ 39,179	\$ 39,581
4	\$ 38,163	\$ 38,967	\$ 39,368	\$ 39,770	\$ 40,172
5	\$ 39,711	\$ 40,515	\$ 40,917	\$ 41,319	\$ 41,720
6	\$ 41,259	\$ 42,063	\$ 42,465	\$ 42,867	\$ 43,269
7	\$ 42,808	\$ 43,611	\$ 44,013	\$ 44,415	\$ 44,817
8	\$ 44,356	\$ 45,160	\$ 45,561	\$ 45,963	\$ 46,365
9	\$ 45,904	\$ 46,708	\$ 47,110	\$ 47,512	\$ 47,913
10	\$ 47,452	\$ 48,256	\$ 48,658	\$ 49,060	\$ 49,462
11	\$ 49,001	\$ 49,804	\$ 50,206	\$ 50,608	\$ 51,010
12	\$ 50,549	\$ 51,353	\$ 51,755	\$ 52,156	\$ 52,558
13	\$ 52,097	\$ 52,901	\$ 53,303	\$ 53,705	\$ 54,106
14	\$ 53,646	\$ 54,449	\$ 54,851	\$ 55,253	\$ 55,655
15	\$ 55,194	\$ 55,997	\$ 56,399	\$ 56,801	\$ 57,203
16	\$ 56,742	\$ 57,546	\$ 57,948	\$ 58,349	\$ 58,751
17	\$ 58,290	\$ 59,094	\$ 59,496	\$ 59,898	\$ 60,300

Step 1, Column 1 ["B"] is the starting rate - \$36,390. Step 17, Column 2 ["M"] is the career rate - \$59,094.

### The Association's Proposal

The Association proposes the following on-scale raises inclusive of step:

- 2012-2013: 3.95% of payroll (base year 2011-2012).
- 2013-2014: 3.80% of payroll.
- 2014-2015: 3.74% of payroll.
- 2015-2016: 3.49% of payroll.
- 2016-2017: 3.14% of payroll.
- 2017-2018: 3.03% of payroll.

### The School District's Proposal

The District proposes the following:

- 2012-2013: Wage freeze.
- 2013-2014: Wage freeze.
- 2014-2015: 3.74% total dollar (with a true up of the schedule to a maximum of 6.23%).
- 2015-2016: 3.49% total dollar.
- 2016-2017: 3.14% total dollar.

## **Recommendation**

The parties share a common goal of increasing the starting salary in order to attract and retain quality professional employees. I recommend increases that fit within recent trends, account for the District's financial condition, and take into consideration the recommended changes in medical insurance. The increases shall only apply to bargaining unit members employed by the District as of the date of this Report and shall be retroactive. The salary schedules are attached hereto and reflect the following:

2012-2013:	Wage freeze, no step movement;
2013-2014:	Step movement only;
2014-2015:	Increase to guide and step movement;
2015-2016:	Increase to guide and step movement;
2016-2017:	Increase to guide and step movement;
2017-2018:	Increase to guide and step movement.

The recommended guides are attached hereto. I have also included a chart for step advancement.

## **Insurance Benefits – Section 10.01**

### **The Current Provision**

#### **ARTICLE X INSURANCE BENEFITS**

##### **Section 10.01** Hospitalization/Medical Insurance

The Board agrees to pay the premium for each full-time professional employee and the employee's eligible dependents equivalent to the present benefits to the Central Susquehanna Region School Employees' Health and Welfare Trust (CSRSEHWT). The Board agrees to pay 50% of the premium for each eligible regular part-time professional employee (excluding full-time substitutes) who also agrees to pay 50% of the premium for the full term of the contract.

Bargaining unit members who choose to participate in one of the District's health insurance plans shall have amounts withheld from their pay to contribute toward the cost of the insurance. Effective September 1, 2009, the employee shall be required to pay 50% of the cost in excess of \$725 per month. Effective April 12, 2010, the employee shall be required to pay 50% of the cost in excess of \$775 per month. Effective September 1, 2010, the employee shall be required to pay 50% of the cost in excess of \$800 per month. Effective September 1, 2011, the employee shall be required to pay 50% of the cost in excess of \$825 per month.

If there are members of the bargaining unit who are married to other members of the bargaining unit, neither member shall be required to contribute toward the cost of health insurance.

Bargaining unit members who waive health insurance coverage are entitled to a cash payment of \$2,000 payable no later than the last paycheck in June. In order to execute his/her right under this option, the employee must fully execute the "Waiver of Health Insurance Benefit Form", (Appendix B). A bargaining unit member who had obtained other coverage and had waived coverage shall be entitled to reinstate his/her insurance coverage as provided for in Section 125 of the Internal Revenue Code and/or subject to

the insurance plan enrollment period. Once the insurance coverage is reinstated, the extra payment, which will be paid with the June paycheck, shall be pro-rated for the amount of time the employee did not have insurance. The district shall establish this provision in a manner consistent with and to meet all requirements of Section 125 of the Internal Revenue Code as amended.

The District shall maintain a Flexible Spending Account plan in a manner which is consistent with 26 United States Code § 125.

### **The School District's Proposal**

#### Section 10.01 Hospitalization/Medical Insurance

The District proposes to strike the first two paragraphs of this section and replace with the following:

Beginning 2015/2016 school year or as soon as possible after ratification, the District offers as a health care plan a \$2000/\$4000 HDHP through the Insurance Trust. The employer will establish an Health Savings Account for each employee. The District agrees to deposit into each eligible employees Account the follow:

15-16 - \$1,250/\$2,500  
16-17 - \$1000/\$2000  
17-18 - \$750/\$1500

Beginning with the 2015/2016 school year and each year thereafter, Employees shall pay a 20% premium share based on the tier rate established by the Trust.

The District provides the following rationale for its proposal:

The District is proposing to modify the way that they provide health insurance as well as the way cost-sharing is to be implemented in the collective bargaining agreement. The District is looking to switch from its current PPO Plan to a high deductible Plan. Currently the PPO Plans in the School District do not have a deductible. In moving to the high deductible Plan, the District is also looking to stabilize health care costs for employees. Under the current system, the current levels for cost-share are collectively 21% for the employees.

By switching to this new high deductible Plan, and by being members of the Trust, employees will be moved to a tiered system instead of the composite rate that they are currently working under. The tiered system (see enclosed) will provide relief to employees in some cases so that they will not have to pay as much on their cost-share as they do on the composite rate at this time. It would only be fair to go to the tiered rates so as to allow those employees who might not be a family plan participant to see some relief from the composite rates.

The District is proposing to stabilize the cost-share. The cost-share is currently calculated based on costs above a certain level. The District is looking to modify that by doing with a straight percentage of costs. The District is proposing a 20% cost-share beginning at the time of the switch to a lower cost health care plan. By stabilizing the percentage, employees can have a better understanding of how much they are going to be responsible for in the future years as well as gives relief to those employees who may be on insurance plans less than family plans.

Additionally, to assist the employees with the deductible that the employer is proposing, the employer will establish a health savings account for the employee. The District is also agreeing to deposit monies into the health savings account which would diminish the deductible amounts on the employees. Employees will be able to deposit their own

monies into this account, tax free, therefore, providing them the opportunity to put more monies in there to alleviate any potential deductibles.

To be understood, that certain wellness coverages will not make the employee pay the deductible and should the employee not use up their entire health savings account, that account will be maintained and it will be the property of the employee.

Moving to this new benefit will also assist the employer in not being eligible for an excise tax under the Affordable Health Care Act and therefore enables them to provide the level of benefits the employees currently have with in some cases, less monies coming out of the employee's paycheck and pocketbook to pay for these insurance costs.

### **The Association's Proposal**

The Association opposes the District's proposals. The Association seeks to maintain the plans currently offered with the following modifications:

Bargaining unit members who choose to participate in one of the District's health insurance plans shall have amounts withheld from their pay to contribute toward the cost of the insurance. Effective September 1, 2012 the employee shall be required to pay 50% of the cost in excess of \$900 per month. Effective September 1, 2013, the employee shall be required to pay 50% of the cost in excess of \$950 per month. Effective September 1, 2014, the employee shall be required to pay one percent (1%) of his/her salary towards the cost of health insurance.

The Association presented a health care analysis in support of its position.

### **Recommendation**

I recommend the status quo for the remainder of the 2014-2015 school year and until the changes below can be implemented. I then recommend that the first two (2) paragraphs of Section 10.01 be stricken and replaced with the following:

Beginning the 2015-2016 school year (or as soon as is practicable), the District offers as a health care plan a \$2000/\$4000 HDHP through the Insurance Trust. The employer will establish a Health Savings Account for each employee. The District agrees to deposit into each eligible employee's Account the following:

15-16 - \$2,000/\$4,000

16-17 - \$1,750/\$3,500

17-18 - \$1,500/\$3,000

Employees shall pay a 15% premium share in the 2015/2016 school year based on the tier rate established by the Trust.

Employees shall pay a 10% premium share in the 2016/2017 school year based on the tier rate established by the Trust.

Employees shall pay a 5% premium share in the 2017/2018 school year based on the tier rate established by the Trust.

### **Insurance Benefits – Section 10.10 (New) Cadillac Plan**

#### **The School District's Proposal**

#### **ARTICLE X INSURANCE BENEFITS**

**Section 10.10 (New) Cadillac Plan**

If at any time, the Cadillac Plan excise tax/penalty/fee criteria for any District plan exceeds the threshold amount as stated in the federal Patient Protection and Affordable Care Act (or as stated in any applicable federal or state legislation enacted hereafter), the parties agree that said plan will be modified, if possible, to reduce the applicable criteria below the threshold amount to avoid any tax/penalty/fee. In the alternative, a different CS Trust plan option, as allowed by the District, shall be selected, the terms of which do not exceed thresholds which will precipitate such a tax/penalty/fee.

If such a plan is not modified or an alternative plan is not selected, and such tax/fee/penalty is imposed on the District, either directly or indirectly, employees who are enrolled in that plan shall pay the entire amount of the tax/penalty/fee in addition to the employee contribution or premium cost share as stated in the contract. The tax/penalty/fee obligation may be specifically or proportionally attributable to an employee's enrolled status.

The District provides the following rationale for its proposal:

The District is looking to include language in the collective bargaining agreement to put a safeguard in place should health care costs spiral upward therefore causing the District to be subject to the excise tax/penalty/fee that may be imposed upon them should they go above the limit as outlined under the Affordable Health Care Act. The District has been notified that should the insurance carrier be subject to the excise tax/penalty/fee under the Affordable Health Care Act, that the carrier would pass along those costs to the employer. These costs, based on usage and experience of the employee, need to be contained. Therefore, prior to being subject to such tax or fee, the District is looking to have the opportunity to modify or find an alternative plan so that they would not be subject to this potential tax or fee. However, to obtain such a modification or alteration, we would need to have the Association's agreement. To make sure that both parties are on even ground when they are negotiating, there needs to be some penalty should we not come up with a modification or alternation. The risk for the School District is obviously the tax and the fact the District is paying for a high costing health care plan. The District believes the employees should help in paying the cost of the tax. The tax would be evenly proportioned to those employees on that Plan and therefore, the distribution would not be solely paid by one individual. The District would look to maintain health insurance, however, they do need to have some responsibility on the employee should they be subject to such tax or penalty. There would need to be either a modification of the Plan or that the employees would pay for that tax or fee.

**The Association's Response**

The Association opposes the District's proposal.

**Recommendation**

I recommend the following in order to protect the parties from unnecessary taxes, penalties, and fees:

**Section 10.10 (New) Cadillac Plan**

If at any time, the Cadillac Plan excise tax/penalty/fee criteria for any District plan exceeds the threshold amount as stated in the federal Patient Protection and Affordable Care Act (or as stated in any applicable federal or state legislation enacted hereafter), the parties agree that said plan will be modified through mutual agreement, if possible, to reduce the applicable criteria below the threshold amount to avoid any tax/penalty/fee. In the alternative, a different CS Trust plan option shall be mutually selected by the District and the Association, the terms of which do not exceed thresholds which will precipitate such a tax/penalty/fee. In the event that the District and the Association are unable to mutually agree to changes to the existing plan and cannot mutually agree to a different CS Trust plan option the parties will submit their issue(s) to

expedited binding arbitration consisting of a tri-partite panel – one (1) neutral arbitrator, one (1) District-appointed arbitrator, and one (1) Association-appointed arbitrator. The Panel shall render an Award as soon as practicable.

### **Recommendations – Other Issues**

I adopt the arbitration panel's decisions as my recommendations for the following issues as outlined in pages 16 through 20 of the Panel's Award.

#### **Leaves of Absence (Article IX)**

**(a) Bereavement Leave (Section 9.01)** -- Section 9.01 shall be modified to provide up to five (5) days of paid leave for the death of immediate family members and two (2) days of paid leave for the death of a near relative.

**(b) Personal Leave (Section 9.02)** – The phrase “excluding full-time substitutes” shall be deleted from the first paragraph of Section 9.02. The third sentence of the last paragraph of Section 9.02 shall be amended to read, “This amount will be paid through a non-elective employer contribution to the employer authorized 403(b)(7) account concurrent with sick leave pay.”

**(c) Emergency Leave (Section 9.03)** – The phrase “excluding full-time substitutes” shall be deleted from the second paragraph of Section 9.03.

**(d) Sick Leave (Section 9.08)** – This section shall be deleted in its entirety.

**(e) Personal Leave (Section 9.02) [See p. 10 of Panel's Award]** - Modify Section 9.02 to pay unused personal days concurrent with sick leave pay into existing 403(b)(7) accounts.

**Retirement Compensation (Article XI)** – The phrase “excluding full-time substitutes” shall be deleted from Sections 11.01, 11.02, and 11.03.

**Sick Leave Bank Rules and Regulations** – The parties' memorandum of understanding on Sick Leave Bank Rules and Regulations shall be modified to provide for six members of the Board of Directors. The following language shall be added to Section F.5. of the MOU, “The Millville Area School District Board of Directors will have final approval of any days being provided and there will be no arbitrary and capricious denial of said request.”

#### **SUMMARY**

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

Dated: August 31, 2015  
State College, Pennsylvania

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Robert C. Gifford