

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

**MILLVILLE AREA EDUCATION
ASSOCIATION**

and

**MILLVILLE AREA SCHOOL
DISTRICT**

**AAA Case #01-14-0001-7027
(Act 88 Mandatory Non-Binding
Interest Arbitration)**

*Hearing Date: 2/20/15
Record Closed: 3/6/15
Decision Date: 3/26/15*

Arbitration Panel

John Holland, Esq.
PA STATE EDUCATION ASSOCIATION
Association-appointed Arbitrator

John G. Audi, Esq.
SWEET STEVENS KATZ & WILLIAMS
District-appointed Arbitrator

Walt De Treux, Esq.
Neutral Arbitrator and Panel Chair

Presenters

FOR THE ASSOCIATION:

Mark McDade
PA STATE EDUCATION ASSOCIATION

FOR THE SCHOOL DISTRICT:

Benjamin Pratt, Esq.
CGA LAW FIRM

Introduction and Procedural History

The Millville Area Education Association and the Millville Area School District are parties to a collective bargaining agreement dated September 1, 2009 through August 31, 2012. Since February 2012, the parties have been negotiating a successor collective bargaining agreement, but they have not been able to reach agreement. The employees have been working in status quo for the last 2-1/2 years. The bargaining unit engaged in a strike in August 2014, triggering mandatory non-binding arbitration pursuant to Act 88 (Act of July 9, 1992, P.L. 408, No. 88).

An Arbitration Panel was duly established, and the parties authorized the Panel to award the last best final offer of either party on an issue-by-issue basis. On February 20, 2015, a hearing was held at the School District offices in Millville, Pennsylvania, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. At the conclusion of the hearing, the record was held open to receive revised documentary evidence from the District. The revised evidence was received on March 6, 2015, and the hearing was declared closed. The Panel has reviewed the parties' evidence and arguments; and after Executive Sessions of the Panel, this Award follows. In reaching its decision, the Panel considered the criteria set forth in Act 88, including the public interest, the interest and welfare of the employee organization, the financial capability of the school entity, the results of negotiations between the parties prior to submission of last best contract offers, changes in the cost-of-living, the existing terms and conditions of employments of the employee organization members and those of similar groups, and other documentation that the Panel deemed relevant. The decision on each issue is supported by a majority of the Arbitration Panel.

Analysis and Decision

Term of Agreement

Association Position: The Association proposes a six-year agreement, effective September 1, 2012 through August 31, 2018.

District Position: The School District proposes a five-year agreement, effective September 1, 2012 through August 31, 2017.

Analysis: The parties have been negotiating for almost three years. A short-term (2-3 year) contract would only result in the initiation of another round of bargaining. Recognizing that fact, both parties have proposed a long-term agreement. As in most negotiations, health insurance is one of the primary issues in dispute. The Patient Protection and Affordable Care Act imposes an excise tax or penalty (often referred to as a “Cadillac Tax”), beginning in 2018, for health insurance plans whose premium costs exceed a certain threshold amount. It is likely that the parties will have to address health insurance changes if the District faces the Cadillac Tax. It is preferable that such changes be discussed in the context of negotiation of a successor agreement rather than in stand-alone negotiations. So that the parties can address any issues arising from health insurance changes, including the Cadillac Tax, a 5-year agreement is appropriate.

Decision: The agreement shall be effective from September 1, 2012 through August 31, 2017.

Recognition (Article I)

District Proposal: The District proposes to change the term “half-time” to “part-time” in Section 1.03(a)(1) and to modify the language in Section 1.03(b) to provide prorated salary and benefits according to the amount of time an employee works during a school day.

Association Proposal: The Association has not offered a counterproposal, and it opposes the District’s proposal.

Analysis: The District seeks the change in terminology because “there are times professional employees work less than 50% of the workday.” However, the District concedes that this situation “is not utilized often.” There is insufficient evidence of the need for any change in language, and no evidence of the impact of any such change on any affected employees. Accordingly, the District’s proposal is denied.

Decision: No change.

Credit Union Deduction (Article III)

District Proposal: The District proposes the deletion of this section in its entirety.

Association Proposal: The Association has not offered a counterproposal, and it opposes the District’s proposal.

Analysis: The District seeks deletion of this Article because it does not want “the responsibility...to provide banking options for the employees.” The District has historically deducted and remitted employee money to the credit union. It has offered no persuasive evidence that it cannot continue to do so or that it poses any administrative hardship to make the deduction.

Decision: No change.

Wages and Salaries (Article V)

Association Proposal: The Association proposes on-scale raises inclusive of step according to the following schedule¹:

2012-13 3.95% of payroll
 2013-14 3.80% of payroll
 2014-15 3.74% of payroll
 2015-16 3.49% of payroll
 2016-17 3.14% of payroll

Employees will be placed on the salary schedule commensurate with the respective employee’s earned post baccalaureate credits.

District Proposal: The District proposes the following changes to the salary schedule:
 2012-13 Complete wage freeze

¹ Consistent with its proposal for a six-year agreement, the Association proposed a salary increase for the year 2017-18. In light of the Panel’s decision to award a five-year agreement, the Association’s salary proposal for 2017-18 is moot.

2013-14 \$500 bonus

2014-15 \$1600 added to each step, adjusting the salary schedule to make steps even at \$1400 increments between steps

2015-16 employees stay on step with \$1650 increases; \$1400 increase to the first step

2016-17 employees stay on step with \$1700 increases; \$1000 increase to the first step

Any full time employee who earns a master's degree in English, social studies, or a STEM content area shall receive an annual stipend of \$1000 in addition to their yearly salary.²

Analysis: In the Association's view, its salary proposal, inclusive of column or step movement, rewards its employees as they become more skilled in the teaching profession. The Association contends that a step freeze reduces an employee's career earnings and ignores the value of his/her experience.

The District asserts that it structured its proposal consistent with settlements in comparable school districts. It attempted to reduce costs by not granting retroactivity and controlling the compounding effect of annual wage increases. It also offers an incentive to employees to obtain a Master's Degree in English, Social Studies, Mathematics, and Science.

The difference in cost between the parties' proposals is significant. The District's financial expert estimated that the Association proposal cost \$870,000 more over the term of the contract than the District's proposal.

Wages and salary cannot be viewed separately from health insurance. The Association proposed health insurance provisions that would reduce the employee contribution from its current level. The District proposed a change to a high deductible plan with a significant increase in the employee premium contribution. The Association's wage and health insurance proposals would represent a substantial compensation increase for employees. The District's wage proposals would be substantially reduced by the increase in health insurance premiums paid by employees. To be fair and fiscally responsible, this Panel cannot award either party both its wage and health insurance proposals.

In conjunction with its Decision on health insurance, the Panel accepts the Association's wage and salary proposal.

Decision: Bargaining unit employees shall receive wage and salary increases, inclusive of step movement, consistent with the Association's proposal.

Preparation Time (Article VIII, Section 8.07)

Association Proposal: The Association proposes one self-directed planning period per day.

District Proposal: The District offers no counterproposal, and it opposes the Association's proposal.

Analysis: The current contract grants employees "the equivalent of five (5) self-directed planning periods per week." The Association has not offer any persuasive evidence to support a change in the existing contract language.

Decision: No change.

Leaves of Absence (Article IX)

(a) Bereavement Leave (Section 9.01)

Association Proposal: The Association proposes an increase in bereavement leave from 4 days to 5 days for immediate family members and from 1 day to 2 days for near relatives.

District Proposal: The District offers no counterproposal, and it opposes the Association's proposal.

Analysis: Five days paid leave for death in the immediate family allows a family member a full calendar week in which to handle funeral arrangements and otherwise cope with the loss of a loved one. The current allowance of 4 days unnecessarily interrupts that week and would likely result in an employee using an unpaid day off from work. It is appropriate to allow the full 5 days for issues related to death in the immediate family.

² At hearing, the District clarified that the \$1000 annual stipend would be added as part of the yearly salary.

Decision: The Association’s proposal to increase bereavement leave to 5 days for immediate family and 2 days for near relatives is accepted.

(b) Personal Leave (Section 9.02)

Association Proposal: The Association proposes an increase in personal days for employees with less than five years of service from two to three days annually.

District Proposal: The District offers no counterproposal, and it opposes the Association’s proposal.

Analysis: Employees receive two personal leave days per year and an additional day after five years of service. The Association has requested that all employees receive three days. It has offered no compelling evidence to support a change in the current provision.

Decision: No change.

(c) Emergency Leave (Section 9.03)

Association Proposal: The Association proposes an extension of emergency leave for the illness, treatment or care of a spouse or parent for up to 10 days per year and an unlimited amount of days for the care of one’s child.

District Proposal: The District offers no counterproposal, and it opposes the Association’s proposal.

Analysis: The contract currently provides emergency leave for emergency treatment or surgery for an immediate family member, the transfer of an immediate family member to or from the hospital, the birth or adoption of a child, and “an unanticipated, non-recurring event of an urgent nature...” It further provides that care for an ill child is counted against sick leave, not emergency leave. The current language offers adequate protection for an employee in the case of emergency situations involving immediate family members. The Association’s proposal addresses situations that, while serious, do not constitute an emergency. It would not be appropriate to include such a benefit in the emergency leave provisions of the contract.

Decision: No change.

(d) Personal Leave (Section 9.02); Emergency Leave (Section 9.03); Sick Leave (Section 9.08); Retirement Compensation (Article XI); Credit Reimbursement (Article XII)

District Proposal: The District has proposed deleting the phrase “excluding full-time substitutes” from Article IX, Sections 9.02 and 9.03, Article XI, Sections 11.01, 11.02, and 11.03, Article XII, Section 12.01, and deleting Section 9.08 from the contract.

Association Proposal: The Association offers no counterproposal, and it has not agreed to the District proposal.

Analysis: The District seeks the elimination of the full-time substitute language because it no longer employs full-time substitutes and has no intention to use full-time substitutes. Accordingly, there is no reason to continue to include full-time substitutes in the agreement.

Decision: The phrase “excluding full-time substitutes” shall be deleted from all provisions noted above and Article IX, Section 9.08 shall be deleted in its entirety.

(e) Personal Leave (Section 9.02)

District Proposal: The District proposes to pay unused personal days concurrent with sick leave pay into existing 403(b)(7) accounts.

Association Proposal: The Association offers no counterproposal, and it has not agreed to the District proposal.

Analysis: The contract currently requires unused personal days to be paid into the 403(b)(7) account. For ease of administration, the District is seeking to make the contribution concurrent with sick leave pay in one check. The change is for administrative purposes, and the employees suffer no diminution of benefits with the change.

Decision: The District’s proposal to add “concurrent” to Section 9.02 is accepted.

Insurance Benefits (Article X)

Association Proposal: The Association proposes that bargaining unit members remain in the existing health care plans; and beginning in the 2014-15 school year, pay a premium share as a percent of salary according to the following schedule:

Single	1% of salary
Parent/Child	1.25%
Parent/Children	1.5%
Husband/Wife	1.75%
Family	2%

District Proposal: The District proposes to pay, effective July 1, 2014, 77% of the health insurance premium for full-time employees and their eligible dependents for the current major medical, dental and vision insurance provided through CSRSEHWT. Beginning January 1, 2015, the District proposes to pay 80% of the premium for the HDHP \$2000/\$4000 plan. It further proposes to make contributions to an HSA in the following amounts: January 1, 2015 -- \$500 for employees with single coverage and \$1000 for employees in any of the other tiered plans; July 1, 2015 -- \$750/\$1500; July 1, 2016 -- \$1000/\$2000, with no deposit required after June 30, 2017. The District further proposes to pay a prorated share of the contribution for eligible part time employees. Further, the District proposes language requiring negotiations and binding arbitration in the event the District learns that its health insurance plan will be subject to the Affordable Care Act excise tax (the so-called “Cadillac Tax”). It also proposes spousal rule language requiring a spouse to enroll in at least individual coverage in a plan for which the spouse is eligible, making the spouse’s coverage primary, and allowing coordination of benefits between the spouse and employee’s plans.

Analysis: Health insurance coverage, like wages, is one of the primary points of dispute between the parties. As noted in the wage and salary section above, the Association’s proposal significantly reduces employee premium contributions. The District’s proposal significantly increases employee premium contributions and deductible costs. However, the District’s proposal would save the District a substantial amount of money compared to the current plan and its projected increases. The increase in employee contribution is partially offset by the establishment of the HSAs. The change in plans also lessens the possibility that the District will face an ACA excise tax in 2018. While any change in health insurance plans is difficult, it has become necessary to control costs. The increase in costs to employees is absorbed to an extent by the Panel’s award of the Association’s proposal on salaries. In the end, employees receive a total compensation package. A majority of the Panel believes it can strike a fair balance in total compensation, consistent with the statutory criteria, by awarding employees the Association’s proposal on wages and salary and the District’s proposal on health insurance.

Decision: The District’s proposal on health insurance, including the change in plans, the increased employee contributions, the HSA contributions, the Cadillac Tax language (as modified by the District), and the spousal rule language, is accepted.

Retirement Compensation (Article XI)

Association Proposal: The Association proposes that an employee with at least thirty years of PSERS service receive \$950 per year of service at the time their employment terminates.

District Proposal: The District offers no counterproposal, and it opposes the Association’s proposal.

Analysis: The Association contends that teachers, like District superintendents, should receive a severance package upon termination of their employment. Retiring teachers receive pension benefits and an unused sick leave payout. A provision for additional severance payment is unusual, and in this case, prohibitively expensive.

Decision: The Association’s proposal is denied.

Credit Reimbursement (Article XII)

Association Proposal: The Association proposes that bargaining unit members receive tuition reimbursement up to nine (9) credits annually at the Bloomsburg University graduate credit rate and up to six (6) credits annually upon conferral of a Master’s Degree. The Association also proposes that an employee be responsible for reimbursing the District for the tuition credit benefit if s/he voluntarily leaves the District at the following rates: Year One – 100%; Year Two – 50%; Year 3 – 25%.

District Proposal: The District proposes to increase the tuition reimbursement at the rate of \$2800 per year, effective July 1, 2014. It further proposes a pay back schedule for employees leaving the District as follows: Year One – 100%; Year Two – 75%; Year Three – 50%. Finally, the District proposes to eliminate certain language in Section 12.03 regarding Workshop and Conference reimbursement to comply with existing Board policies.

Analysis: Both parties recognize the value of continuing education for the employees, and both parties' proposals grant increases over the current reimbursement of \$2500. The District's proposal would allow for approximately 7 credits annually as compared to the 9 credits requested by the Association. For cost reasons, a majority of the Panel favors a gradual increase in the tuition reimbursement benefit.

A majority of the Panel has some concerns with the payback provision, which does not expressly exclude from payback employees who may leave the District involuntarily, e.g., loss of employment. But the Panel notes that the District proposes no change in the current language ("if the employee leaves the District"), and it expects that the parties will continue to apply that language in a good faith manner.

Decision: Tuition reimbursement will increase to \$2800 per year effective July 1, 2014. The Panel further accepts the District's proposal on the payback schedule and the elimination of certain language in Section 12.03 regarding Workshops and Conferences.

Furlough and Demotion

Association Proposal: The Association proposes that furlough or demotion of employees be effectuated on the basis of seniority and certification.

District Proposal: The District offers no counterproposal, and it opposes the Association's proposal.

Analysis: The Association's proposal presumably would grant employees furlough and demotion rights beyond that required by the School Code. There was no compelling evidence offered to support this increased protection.

Decision: The Association's proposal is denied.

Fair Share

Association Proposal: The Association proposes language requiring each non-member in the bargaining unit to pay a fair share fee as provided by Act 84 of 1988, with an indemnification clause for the District.

District Proposal: The District offers no counterproposal, and it opposes the Association's proposal.

Analysis: A majority of the Panel strongly believes that fair share language is appropriate so that all beneficiaries of contract negotiation and contract administration pay for that representation. Contrary to some community letter writers' beliefs, fair share excludes payment for the union's political activities and only requires payment for its representational activities. Nonetheless, the vast majority of the bargaining unit are union members. As a result, in this District, there are few so-called "free riders." The potential controversy that may be generated by inclusion of this provision would outweigh the benefit of the fair share language.

Decision: The Association's proposal is denied.

Sick Leave Bank

On August 29, 2013, the parties tentatively agreed to modifications to the Memorandum of Understanding regarding Sick Leave Bank Rules and Regulations. The changes are included in this Decision and Award to memorialize the parties' agreement.

Award

Consistent with the Decision above, the collective bargaining agreement shall be modified to include the following:

- 1. Term of Agreement** -- The contract shall be effective from September 1, 2012 through August 31, 2017.

2. Wages and Salaries (Article V) – (a) Bargaining unit employees shall receive on-scale increases, inclusive of step, according to the following schedule:

2012-13	3.95% of payroll
2013-14	3.80% of payroll
2014-15	3.74% of payroll
2015-16	3.49% of payroll
2016-17	3.14% of payroll

(b) Effective upon mutual acceptance of this Award, employees will be placed on the salary schedule commensurate with the respective employee's earned post baccalaureate credits.

3. 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.

4. Insurance Benefits (Article X) – Section 10.01 shall be modified to provide the following:

(a) Beginning July 1, 2014, the District shall pay for each year of the agreement and prorated for any portion thereof, 77% of the premium for each full-time professional employee and the employee's eligible dependents for major medical, dental and vision insurance currently provided through the Central Susquehanna Region School Employees' Health and Wellness Trust (CSRSEHWT). The amount of this payment will be based on the premiums for the plans in which the employee and eligible dependents are enrolled. Beginning January 1, 2015, the District's share will be 80% of the premium for the HDHP \$2,000/\$4,000 plan. The District shall deposit in an HSA on January 1, 2015 \$500 for those employees enrolled in single coverage and \$1,000 for employees enrolled in any of the other tiered plans. On July 1, 2015, the District shall deposit \$750 for single coverage and \$1,500 for employees enrolled in other tiered plans. On July 1, 2016, the District shall deposit \$1,000 for employees enrolled in single coverage and \$2,000 for employees enrolled in the other tiered plans. The District's responsibility to deposit money in an employee's HSA shall expire June 30, 2017. The District shall pay a prorated share of that contribution for each eligible regular part-time employee in a percentage equal to their employment.

(b) New Section 10.10 (Affordable Care Act Excise Tax) – Should the District receive notice that the Health Insurance Premiums will, under the ACA, be subject to the ACA excise tax, the parties will immediately commence bargaining over how to reduce the premiums to avoid the excise tax. The parties pledge to make themselves available to meet at least once per week in this effort. If after sixty (60) days, agreement is not reached, the parties agree to submit the issue of how to reduce the premiums to a level that falls below the excise tax to binding arbitration pursuant to Act 195. An arbitrator, selected from the Pennsylvania Bureau of Mediation (who shall be notified by the 30th day of negotiations) will issue a decision forty (40) days from the 61st day after the notice of the excise tax.

(c) New Section 10.11 (Spousal Rule) – A spousal rule eligibility requirement shall be in effect for employees enrolled or enrolling in a medical (including prescription drug coverage), and/or dental, and/or vision insurance benefit plan of the District as follows:

- (1) If the spouse of an employee is employed and is eligible for Plan benefits or if self-employed and offers healthcare to employees, the spouse of the employee must be enrolled for at least individual coverage under his/her employer (or self-employed) plan(s), not the District Plan, for primary coverage regardless of whether a premium or other cost is charged to the spouse. The spouse may enroll or remain on the District Plan subject to coordination of benefits for spouses and dependents as otherwise defined in the Plan documents.

- (2) An employee must provide evidence in a form reasonably satisfactory to the District to determine spousal coverage. This may, within the discretion of the District, be determined through an affidavit prescribed by the District. The District reserves the right to further exercise reasonable independent verification means at any time to determine whether an employee's spouse has available Plan coverage at the spouse's place of employment.
- (3) An employee shall have an affirmative obligation to notify the District Business Office when his/her spouse becomes eligible for employer-provided benefits, whether or not a premium or other cost is charged to the spouse.
- (4) Failure to the spouse to enroll for at least individual coverage under his/her employer's or self-employed plan(s) will result in the spouse's loss of both primary coverage and secondary coverage under the District's Plan. If loss of coverage is in conflict with statutory law, minimum coverage as required under the law will be provided through the District Plan at the expense of the employee to the extent permitted under the law. The District shall also be entitled to recover from employee the excess cost for premiums or care incurred by the District from the time eligibility occurred at the spouse's place of employment.
- (5) Timing of implementation of spousal rule: New employees and enrollees – effective immediately; for existing enrollees the spousal rule shall be effective January 1, 2015.

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

6. Credit Reimbursement (Article XII) – Section 12.01 shall be modified to provide for a maximum reimbursement of \$2,800 per year effective July 1, 2014. The phrase “excluding full-time substitutes” shall be deleted from the first paragraph of Section 12.01. Section 12.01(6) shall be modified to provide for payback according to the following schedule: Year 1 – 100%; Year 2 – 75%; Year 3 – 50%. Section 12.03 shall be modified to exclude all the language in the paragraph after the word “Conferences.”

7. 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.”

CONCLUSION

All remaining terms and conditions of employment not expressly modified by this Award or previously agreed to by the parties in negotiations shall remain “as is” through August 31, 2017. All proposals of the parties not included in the Award are denied.

It is understood that the signature of the Arbitrators attest to the fact that the contractual changes represent the majority opinion and Award on each issue by the members of the Arbitration Panel.

WALT De TREUX
Neutral Arbitrator and Panel Chair
DATED: March 26, 2015

JOHN HOLLAND, ESQ.
Association-appointed Arbitrator

JOHN G. AUDI, ESQ.,
District-Appointed Arbitrator