

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA LABOR RELATIONS BOARD**

In the Matter of the Impasse Between :  
Twin Valley Educational Support Personnel :  
Association, PSEA/NEA :  
and : Case No. Act 88-18-16-E  
Twin Valley School District :

**Report and Recommendation**

**Appearances**

For the Association:

Barry S. DeWitt, II  
Pennsylvania State Education Association

For the District:

John M. Stott, Esquire  
Brumbach, Mancuso and Fegley, P.C.

**Background**

This case involves an impasse in negotiations for a successor collective bargaining agreement between the Twin Valley Educational Support Personnel, PSEA/NEA (Association or ESPA) and the Twin Valley School (District or Employer) for the District's non-professional employees.

The parties are working under the terms of an expired two year agreement that ran from July 1, 2016 to June 30, 2018. The parties have exchanged proposals and used the services of a mediator from the Pennsylvania Bureau of Mediation. The parties have reached tentative agreements on several items in dispute. Any agreements that are not specifically addressed in this Report are recommended to be included, as agreed upon, in the new Agreement.

On October 30, 2018, the Association filed a request for fact-finding with the Pennsylvania Labor Relations Board (PLRB). On November 20, 2018, the PLRB granted the request and ordered fact-finding before the undersigned pursuant to Act 88 of 1992 (Act 88) and the Public Employee Relations Act (PERA). The fact-finding hearing was on December 18, 2018 at the District's Administrative Offices. At that time, the parties were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence in support of their positions. The parties presented extensive documentary evidence, reports and testimony.

The District enrolls approximately 3,300 students from two counties. From Berks County, students come from New Morgan Borough, Caernarvon Township and Robeson Township. From

Chester County, students come from Honey Brook and Elverson Boroughs and Honey Brook and West Nantmeal Townships.

The District has one high school, one middle school and three elementary schools (Twin Valley Elementary Center, Honey Brook Elementary Center and Robeson Elementary Center). The District's Administrative Offices are on the same campus as the high school and middle school.

Because the District is located in two counties, one could draw from Chester County districts as well as Berks County districts when looking for comparables. Another approach to comparables is the Association's advocacy to look at "contiguous districts," which uses comparables from three Berks County districts (Daniel Boone, Exeter Township and Governor Mifflin); two Lancaster County districts (Eastern Lancaster County and Pequa Valley) and three Chester County districts (Coatesville Area, Downingtown Area and Owen J. Roberts). However, for the most part, I have used Berks County districts. The Twin Valley School District is one of 17 school districts in Berks County. There is also a Berks County Intermediate Unit and a Berks County Career and Technical Center.

The District employs 154 employees in this bargaining unit. Of these 73 are full-time and 81 are part-time.

The bargaining unit is divided into 4 tiers for the purposes of wages:

Tier 1: Employees hired before 7/1/94	11 employees
Tier 2: Employees hired 7/1/94 to 7/1/11	67 employees
Tier 3: Employees hired 7/1/11 to 6/30/18	60 employees
Tier 4: Employees hired after 7/1/18 -	16 employees

As of October 4, 2018, 154 employees work in the following classifications at wage rates that were set on July 1, 2016:

<u>Position</u>	<u>Wage for Employees hired Hired after 7/1/18</u>	<u>No. of Employees In All 4 Tiers</u>
Support Aide	\$10.96	72
Direct Support Aide		
ISS	14.02	vacant
Technology	15.09	2
Braille Transcriptionist	13.38	1
Courier	13.38	2
Custodian		
Head	17.96	4
Ass't. Head	16.87	1
Custodian	15.55	11
PT	12.86	10
Facilities	17.43	1

Food Service		
Food Service	11.45	3
Cashier	10.94	8
Production	11.45	9
Worker	10.71	4
Maintenance	18.21	4
Secretary	15.20	22

The District's sound and prudent financial management has resulted in the District consistently having a good financial operating position. It has ended each of the last four years with a surplus. The District ended the 2017-2018 school year with a \$8,837,642 surplus. The District's budgeted balance for 2018-2019 was \$8,231,975. That left \$605,667 as a fund balance that was carried over into the 2018-2019 budget available for use.

The District cautions this fact-finder not to be misled by the fund balance because it has other commitments besides employees' wages to consider. The District's 2018-2019 budget is \$62,783,909. The proposed fund balance is \$9,388,469, of which \$3,210,000 is designated for PSERS, Capital Improvements, Technology and Health Insurance. The undesignated fund balance is \$6,100,000. The District noted that much of the surplus was the result of bond refinancing, an occurrence that cannot necessarily be repeated every year to the same positive outcome.

Nevertheless, the District argues that its proposals, especially for wages, are fair and reasonable when all of the economic factors are considered. The District has provided for a total budgeted increase in the 2018-19 budget for this unit of 2.0 %.

The Association points out that the District is conservative in its budgeting practices. On the income side the District has been underestimating revenues. For two of the past five years, actual revenues have exceeded budgeted revenues. The average over the past five years has been \$1,576,836 per year.

On the spending side of the ledger, the District has tended to overestimate expenditures. For three of the past five years, actual expenditures have been less than budgeted expenditures. The average over the past five years has been \$185,105 per year.

As a result of underestimating revenue and overstating expenditures, the District has ended each year with more than it projected on its budget. This difference has ranged from \$1,046,266 to \$2,757,198, with an average of \$1,761,941 per year.

The bulk of the District's revenue is from local tax sources, 73% of the total revenue. The District raises 57% of its total revenue from the real estate property tax. The Association's measure of the District's "tax effort" is "moderate" compared to other Berks County districts. Over five years from 2012-2013 to 2016-2017 local tax revenue increased an average of 4.8% a year. The market value of taxable real estate increased from \$1.976.5 million to \$2,032.7 million at an average annual rate of 0.7 percent. As a result, local tax effort, measured by equalized mills on market value, has increased from

16.1 mills on market value in 2012-2013 to 20.9 mills on market value in 2016-2017. This means that an average taxpayer paid \$48 more in 2016-2017 on each \$10,000 worth of property than in 2012-2013.

Over the past five years, the District has raised \$195.42 million in local taxes. This total amount is \$31.02 million less than the District would have raised had it levied taxes at the average Berks County rate and \$14.33 million more than it would have raised at the average state rate.

The Act 1 index for real estate tax increases for 2018-19 is 2.9%. However, the District did not raise taxes for 2018-19. It did raise taxes in three of the last four years, on an average of 3.5% each year. The millage rate has gone from 23.88 in 2013 to 27.55 in 2018 for Berks County property owners, and from 25.46 in 2013 to 29.42 in 2018 for Chester County property owners. Between the two counties, the average value of 1 mil is about \$1,444,031.

During my analysis of the many issues in this impasse, I have tried to consider four overarching factors. The first factor is the fairness of the employees' compensation and fringe benefits in relation to others in the District and to other comparable districts. The second factor is the financial ability of the employer to provide such compensation and benefits. The third factor is the District's obligation to continue to operate a thorough and efficient educational program that meets state requirements. The fourth factor is the need for the new CBA to stay within the legal boundaries established by the Public Employee Relations Act (PERA or Act 195), Act 88, Act 1 and other state laws.

Taking those factors into account in this case, some of the recommendations in this Report are suggested compromises on their proposals. The parties should evaluate these recommendations as parts of a comprehensive package that, if adopted, will allow them to manage the enterprise and to carry out the District's mission without being distracted by the difficult challenges of collective bargaining.

It may be that individual items that are not recommended for this CBA would be recommended at another time or in another context. The parties should not interpret this Report to mean that individual items, standing alone, lack merit. However, if they were made part of this Report, they would likely impede reaching a successful overall comprehensive collective bargaining agreement.

The largest financial issues in these negotiations that are still within the parties' control are wages and medical insurance.

The wage issue is complicated because there are four tiers of wages, depending on the starting date of employment. This makes it almost impossible to produce similar percentage wage increases if straight dollar wage increases are recommended. However, if percentage increases are recommended, that will not rectify a problem that exists with the lower paid classifications. For example, the largest group of employees are the support aides and they are also the lowest paid support aides in Berks County. A percentage increase for them would not be overly helpful to them. However, a dollar amount increase for these employees will, as a matter of mathematics, give them a higher percentage wage increase than higher paid employees.

The wage issue is also complicated by the recent history of wage freezes for this unit. The employees in this unit did not receive wage increases for four of the last seven years. This presents a challenging case for relief because it is hard to make up for lost wages.

Finally, the wage issue is complicated by the costs of medical insurance premiums, which the District forecasts will dramatically increase next year. The employees currently contribute to the cost of premiums. However, if their premium share contribution is significantly increased then any wage increases will be negated. The parties need to seriously address the cost of medical insurance. I recommend that they jointly investigate and report on the pros and cons of joining the Berks County Health Trust.

### Issues

The Association identified 17 issues in dispute. The District identified 35 issues in dispute. Some of the parties' issues have multiple parts. Some of the issues are issues for both parties. I have identified the corresponding article and section of the collective bargaining agreement.

### Association Issues In Dispute

#### **1. Association Days, Article IV, A.**

The current CBA allows the Association president and/or one designee to be released from work duties without loss of pay benefits or time to attend "a disciplinary meeting with Administration that will result in a written warning or termination." The Association proposes two changes. The first would allow the Association to have more than one designee to attend the meeting. The second would expand the eligible meetings to "any meeting with Administration " so as to cover contract negotiations, unfair practice hearings and grievance arbitrations, all of which require the employees to rely on their own time

The District opposes the proposal, arguing that the language has been in the agreement for some time and is consistent with the law.

#### Recommendation

The parties should include the second part of the proposal. The District should release the president and/or one designee to attend any meeting with Administration, including negotiations, unfair practice hearings and grievance arbitrations.

#### **2. No Reduction in Work Year, Article IX, A. Reduction in Force and Recall, Article IX, B.**

The parties have approached these two provisions simultaneously, even though they deal with separate issues. They do so because of their origin in the tougher economic times of 2016.

These two provisions became part of the current CBA as a trade-off for wage freezes for the two years of that agreement. The Association argues that the first section (Article IX, A.) should remain and also expanded to cover the employees who were hired after July 1, 2016, up to July 1, 2018, because

those employees hired in those two years will never get the money back from lost wage increases during a pay freeze. The Association makes the same argument for the second section (Article IX, B.).

The District, however, argues that this is language should be eliminated in the new CBA because it was unique to the economic situation at the time that CBA was negotiated. It was a bargained for trade off of no pay raises for just two years. The District argues that it is unfair to give up its managerial right to establish hours and reduce the work fore

The pay freezes were actually in two different CBAs: the five year CBA from 7/1/11 to 6/30/16 and the two year CBA from 7/1/16 to 6/30/18. These pay freezes occurred in four of the last seven years: 2011-12, 2012-13, 2016-17 and 2017-18. This is a serious point of contention.

The parties come at the issue of these sections of the CBA from two distinctly different perspectives. The Association sees it a benefit that should keep going as long as those employees who had their pay frozen are still working. The benefit should organically phase out over time as those employees who did not get pay raises in those four years retire. The District sees it as a benefit that should be limited to the time of the frozen pay.

Having listened to, studied and considered the parties' proposals, they have not convinced me to change anything in these two provisions. The District's argument to eliminate the language in the new agreement is not persuasive, for the reasons the Association argues. The Association's argument to extend it those employees who were hired after July 1, 2016 is not persuasive because the Agreement obviously reflects an understanding that those employees who were hired after 2016 would not be covered. Therefore, the Association's proposal to change the date affecting both sections to "2018" will not be included in the new CBA.

Recommendation for Article IX, A.

The new CBA should not include the proposed new date of 2018.

Recommendation for Article IX, B.

The new CBA should not include the proposed new date of 2018.

**3. Minimum Custodian Staffing**

The Association proposes adding new language in which the District agrees to maintain a minimum level of full-time custodians in each school building as follows: High School, minimum of seven (7) full-time custodians; Middle School, a minimum of five (5) full-time custodians and Elementary Schools, minimum of two (2) full-time custodians per building. Also, the Association proposes that each district building will be staffed with a Head Custodian.

The Association has advanced this issue "in order to maintain set standards in each school building." The Association argues that multiple custodial and maintenance employees have resigned because of a hostile and overly aggressive work environment due to standards that are, at times, impossible to meet. While this may cause the need to hire additional employees, there is a long run benefit to the District due to less turnover and less time spent on retraining new staff.

The District argues that it is unfair to the District to maintain a set number of employees that it may not utilize in a productive manner. It is contrary to the District's managerial rights in PERA and the District cannot agree to it.

Recommendation

The new CBA should not include this provision.

**4. Combined Positions, Article XI, B.**

The current CBA states, "Employees may be hired for more than one position, provided, however, that their regularly scheduled combined positions hours are less than 1500 hours per school year."

The Association proposes this new language: "Employees may be hired for more than one position. The combined number of hours for all positions shall determine the employee's full-time or part-time status. Any employee who works 1000 or more compensable hours in a school year shall be considered a regular full-time employee."

The Association contends that this proposal will benefit those bargaining unit members who work two part-time positions for the District for a total number of hours that falls below the 1500 hours to make them eligible for fringe benefits such as health insurance. For example, there are cafeteria staff who also work custodial jobs as needed. The CBA currently precludes said employees from working more than 1,500 hour per year.

The Association argues that this will also benefit the employer because often these additional hours worked are often at the employer's request. It would also help the employer by having experienced staff on hand to do the fill-in work. The Association contends that this language change would cause the employer no additional financial cost.

The District opposes this because it does not want to increase the number of employees who must be covered by fringe benefits that now go only to full-time employees.

Recommendation

The new CBA should not include this provision.

**5. Work Day/ Work Week, Article XI, M.**

The Association proposes an increase from one week to two weeks notice that the employer must give for notifying the employees of temporary unilateral changes in the workday or work week schedule.

The Association argues that this is a minor language change that will help employees who have been given non-voluntary shift changes adequate time to make alternative arrangements for such things as child care or caring for ailing spouses. It does not eliminate the "emergency" contingency that

the District would continue to be able to utilize. The District opposes this, arguing that one week notice is adequate time for employees to adjust their personal affairs.

Recommendation

The new CBA should not include this provision.

**6. Subcontracting, Article XI, P.**

The current language states "Subcontracting that replaces a classification is subject to School Code and Pennsylvania State Law." The Association proposes this language: "There will be no subcontracting of any bargaining unit positions." It argues that this provision gives the employees peace of mind that their jobs are secure and is also consistent with the District's prior statements that it has no interest in subcontracting and is pleased with the work done in-house. The District has proposed a notification procedure that attempts to meet the requirements of a recent amendment to the School Code. Having reviewed the two proposals, the current language in the agreement adequately meets each side's interests and concerns.

Recommendation

The new CBA should not include this provision.

**7. Paid Holidays, Article XII, C. 2.**

The Association proposes making all part-time employees eligible for thirteen (13) paid holidays. The current CBA only gives part-time custodians hired prior to July 1, 1994, these paid holidays. The Association contends that adding paid holidays to the compensation structure of part-time bargaining unit members would improve their low hourly rate. The part-time employees make up over half the bargaining unit. Their pay, for the most part, is well below the full-time employees. Five Berks County school entities provide some paid holidays.

The District argues against this benefit, arguing that it would cost the District \$9,630 for each holiday or \$110,000 for all the holidays. It points out that 14 Berks County entities do not provide paid holidays for part-time employees.

There is merit to the proposal to provide paid holidays for the part-time employees. Such a benefit would improve the lot of these lower paid employees. It would also make the position more attractive to recruit and retain the support aides, which is an admitted issue for the District. But due to the cost and the need to have money for wage increases, at this time it would be prudent to include only three paid holidays in the CBA.

Recommendation

The new CBA should provide for three (3) paid holidays for part-time employees.

**8. Vacation, Article XII, D.**



The Association proposal seeks to improve the vacations for full-time employees (12 month employees) in two ways. First, it decreases the time it takes to gain vacation time. Second, it increases vacation time by one (1) week for each of the respective tiers which are dictated by years of service with the District. In the first year, the benefit would go from 1 to 2 weeks; in years 2 to 5 it would go from 2 to 3 weeks; in years 6 to 10 years, it would go from 3 to 4 weeks and for employees with more than 10 years, it would go from 4 to 5 weeks. The Association admits that this would be costly but argues that lessening the time to get vacation time would bring them closer to the District's administrators.

The District opposes this because the cost. Also, the District points out that the proposal would give long time employees five more vacation days than any other Berks County school district.

#### Recommendation

The new CBA should not include this provision.

#### **9. Legal Leave, Article XIII, D.**

The Association proposes deleting the last clause of the current "legal leave" provision in the CBA, which states, "unless the Employee or Employee's representative brings an action against the Twin Valley School District." The Association contends that this would allow its members to attend unfair practice charges or grievance arbitration hearings. The members must use their own personal time or unpaid time, as they had to do with a recent unfair practice hearing in Harrisburg before the PLRB.

The District argues that it does not want to have to pay for an employee who files a civil complaint against the District. The District also has to cover the work that is not being done while the Association president is attending to Association business.

The Association's proposal has some merit, especially in light of my recommendation for Association leave above. The Association's proposal will allow the Association to be an equal partner with the District in labor management relations. It may also remedy the problem the District cited with the Association taking grievances directly to arbitration. Allowing the Association president and/or a designee to attend the pre-arbitration meetings in the grievance procedure may result in more fruitful and productive meetings and more pre-arbitration settlements.

#### Recommendation

The new CBA should add the following, "The District should release the president and/or one designee to attend any meeting with Administration, including negotiations, unfair practice hearings and grievance arbitration hearings."

#### **10. Sick Leave, Article XIII, G.**

The Association proposes several changes to the sick leave language in the CBA and also addresses the District's proposals on sick leave.

First, the Association proposes that part-time employees receive sick leave. These employees work alongside full-time employees and are subject to similar transmission of colds and flu viruses as the full-time employees yet they receive no sick leave. The District opposes this because of the cost.

Second, the Association proposes elimination from the CBA of the employer's right to "require the Employee to have doctors note if in the opinion of the Director there appears to be a pattern of sick leave and /or abuse of sick leave. Abuse of sick leave may include continued use of sick days before or after a holiday." The requirement is onerous since the employer could impose this on an employee who is home for just one day recovering from the flu or a cold. This requirement is an onerous cost burden for a doctor's visit for part-time employees who have no health insurance with the District. For its part, the District argues that it has reason for this to remain the CBA.

Third, the Association proposes an increase from 5 days a year to 10 days a year in the number of days for sick leave to care for and immediate family member during sickness. The District opposes this and argues that the Family and Medical Leave Act (FMLA) is available for such situations.

Fourth, the Association proposes moving to a "progressive discipline" system for abuse of sick leave, a change from the current CBA which allows "immediate dismissal" for "absence without proper notification to the District or any abuse of sick time."

Fifth, the Association proposes a modification of the increments in which sick leave can be taken, from one-half (1/2) day to one-quarter-day (1/4) day.

Sixth, the Association proposes that the District compensate the bargaining unit members upon their retirement or resignation for any and all accumulated unused sick leave time at a rate of \$75 a day. Some of the long-term employees have accumulated many days of sick leave over decades of service, and they will not see that when they leave service. The District's teachers, meanwhile, have this benefit. The District opposes this because there are employees who have had to use accumulated sick leave due to a major illness.

#### Recommendation

The new CBA should include the following four changes: Extend sick leave to part-time employees at three (3) days per year. Move from "immediate dismissal" to "progressive discipline" for employees who are accused of "absence without proper notification to the District or any abuse of sick time." Modify the increments in which sick leave can be taken, from one-half (1/2) day to one-quarter (1/4) day. Compensate bargaining unit members at their retirement or resignation for unused sick leave at the same rate as the teachers. The remainder of the CBA section on sick leave should not be changed.

#### **11. Life Insurance, Article XI, B, 4.**

The Association proposes extending life insurance coverage to the part-time employees and increasing the amount from the current \$18,000 to \$50,000. The District acknowledges that life insurance is a relatively small expense to the District. The current amount, \$18,000, has not increased in a long time. The District points out surrounding districts provide for a variety of levels of coverage from \$15,000 to \$75,000. Some provide insurance that is an amount equal to 1.0 or 1.5 times salary.

Because the current amount is the second lowest in Berks County, my recommendation is to increase the amount to full-time employees to \$35,000.

Recommendation

The new CBA should increase the amount of life insurance to \$35,000 for full-time employees.

**12. Banquets, Appendix A - Wages (1)**

The Association proposes increasing the hourly rate of pay for banquet duty from \$14.20 an hour to \$18.00 an hour. The Association argues that because the District is using the banquet pay rate for overtime situations, i.e. for overnight or weekend hours, when these employees would otherwise qualify for a time and a half pay rate, the rate should accordingly increase. Furthermore, the District sometimes uses banquets to generate revenue for the District, so the banquets tend not to be a net expense to the District.

The District's response is that the amount is higher than what food service earn in their regular work. Also, it is voluntary work and therefore is not the traditional situation where overtime is applied. The District could assign food service workers to do banquet work if no volunteers apply, but it has not had to do so.

In fairness to the employees who are doing this work, the wage rate should increase in the amount set forth below.

Recommendation

The new CBA should increase by \$0.55 cents an hour each year of the CBA.

**13. Shift Differential, Appendix A – Wages (3)**

The Association proposes increasing the hourly rate for full-time custodians working the second shift during the academic year from \$0.35 to \$1.00 an hour and to \$1.50 an hour for 11:00 p.m. to 1:59 a.m. The reason for the proposal is the shift differential has not been increased for years. The Association also proposes that, "No regularly scheduled work hours shall occur between 2:00 a.m. and 6:00 a.m. , unless for weather or other emergency situations." The District is opposed to this proposal because it has no need to provide an incentive for employees to work these shifts. Therefore, a raise is not necessary.

Recommendation

The new CBA should increase the shift differential to \$0.50 an hour for the second shift.

**14. Special Education Training Hours, Appendix A – Wages (5)**

The Association proposes providing paid annual training to "teacher's aides" that it now provides to Special Education Aides. In addition, the Association proposes the addition of this language: "At the discretion of the employee, any required training hours may be completed independently." The

District offers the mandated 20 hours of training at the summer, at one specific time, when the teacher aides are not normally at the District and thus, are not able to attend if they have vacation or other plans. This proposal would allow the aides to schedule the training on their own. This is like tuition reimbursement in the teachers' CBA. Also, adding this to the CBA would help the aides remain on the District's payroll and reduce turnover and stabilize the workforce.

The District opposes this because not all of the support aides are "certified" aides who require such training as the special education aides. Also, there are plenty of opportunities for the teacher's aides to obtain the training necessary to do their jobs.

Recommendation

The new CBA should include this provision.

**15. Term of Agreement, Article II.**

The Association proposes a five year term. The District initially proposed a one year term, but then proposed two year term. The Association argues that a longer term helps promote stable labor relations. Also, the Association argues that the parties just ended a two year agreement. It argues that since the parties are halfway through the first year of a successor agreement, if the two year term is the duration of the new agreement, then they will be again begin bargaining in a relatively short time, giving the parties little time to breathe and putting the parties in a cycle of something akin to non-stop bargaining. Also, the other bargaining agreement with the teachers is a four year term that expires on June 30, 2020. Finally, the Association points to five other ESP units in Berks County with these terms and expiration dates: Berks County Career and Technical Center (5 years, 6/30/20); Exeter (4 Years, 6/30/20); Hamburg (5 years, 6/30/20); Muhlenberg (5 years, 6/30/23) and Reading (3 years, 6/30/21) .

Recommendation

The new CBA should be a three year term, from July 1, 2018 to June 30, 2021.

**16. Definition, Regular Full-Time Employee Article VIII, B.  
Definition, Part-Time Employee Hours Definition, Article VIII, C.**

The Association wants to change the definition of a full-time employee from an employee who works 1,500 or more hours a year to 1,000 or more hours a year. This would give many of the 81 part-time employees the benefits that their full-time colleagues receive, particularly medical insurance. The District opposes this because of its significant costs, just for medical insurance, so much that it would make it impossible to provide wage rate increases.

Recommendation

The new CBA should not include these proposals.

**17. Wages**

This is one area where the parties are far apart, both in their approach to the issue and to the financial impact on the employees and the District's budget. The Association has proposed a five year agreement with \$1.00 an hour increase for all classifications in each of five years regardless of the tier. This would mean, for example, the wages of a support aide in Tiers 3 and 4 would go from \$10.96 an hour to \$15.96 an hour by the end of the proposed five years. The Association argues that its proposal will begin to bring these employees closer to earning a "living wage", i.e. the hourly rate that an individual must earn to support their family, if they are the sole provider and are working full-time (2080 hours per year) as determined by individual expenses such as food, child care, medical, housing, transportation, taxes and miscellaneous. The Association's proposed wage increases are a way of making up the lost wage increases during four years of pay freezes

The District's wage proposal is quite different. It proposes a two year agreement. In the first year, it proposes various dollar increases for different positions. The proposed increases are also different within job classifications depending on the tier. The increases appear designed to lessen the pay differences between the tiers.

Here are some of the District's proposed increases: 44 support aides hired after 7/1/11 would receive a \$2.29/hr. increase but 25 support aides hired from 7/1/94 to 7/1/11 would receive a \$0.20/hr. increase. In the food service category 11 food service employees hired between 7/1/11 and 6/30/18 would receive increases of \$1.06, \$0.55 and \$1.29 in order to have all of them make \$12.00 /hr in 2018-19. For secretaries, the 18 hired between 7/1/94 and 7/1/11 would receive \$0.86/hr. increases while 3 secretaries hired between 7/1/11 and 6/30/18 would receive \$1.30/hr. increases. Maintenance employees hired between 7/1/94 and 7/1/11 would receive a \$1.00/hr. increase but maintenance employees hired after 7/1/11 would receive \$1.79/hr.

In the second year, the District proposes that all employees receive a \$0.20/hr. increase to their 2018-19 hourly rate.

The recommendation is that the new CBA provide the same dollar amount raises for all positions. This will require the Association to compromise in its proposed dollar amount. The new CBA increases should look something like the wage increases in Exeter Township School District, but a bit higher to help the low paid support aides in Tiers 3 and 4, which will help meet the District's goal for this position. The Exeter Township School District's contract with its ESPA unit provides increases over a four year agreement from 7/1/16 to 6/30/20 of \$0.55/hr each year.

#### Recommendation

The wage rate for each position in the bargaining unit will be increased by the following dollar amounts:

2018-19	\$ 0.65/hr
2019-20	0.65/hr
2020-21	0.65/hr

The wage increases will be retroactive to July 1, 2018.

## District's Issues in Dispute

### **1. Term of Agreement, Article II**

The District proposes that the new CBA term be two years, July 1, 2018 to June 30, 2020. The District argues that it is concerned that rising premium costs for medical insurance make it imprudent to be committed to a long term collective bargaining agreement. It points out that premiums increased by \$33,362, which is 6%, for 2018-19 and they are projected to increase by 23.5% for 2019-20. The District also points out that the Budget Act 1 Index for maximum allowed tax increases is set annually and this is another constraint on the District making long term financial commitments such as negotiated salary increases.

The District's concern with the unpredictability of health insurance premiums is understandable. As for the Budget Act 1 concern, although that figure is set annually, for the last few years the percentage has not deviated a great deal. As noted above, the Association's argument is well taken that a CBA of a short duration places the parties in a situation of always bargaining. Accordingly, the District's proposal will not be adopted.

#### Recommendation

The term of the CBA should be three years.

### **2. Management Rights Clause (New)**

The District proposes that the CBA include this language:

"Management retains the right to exercise sole discretion in matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of service, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel."

The District argues that this is merely a statement of the management rights that are set forth in Act 195. There is not such a provision in the CBA. Adding this would not cost the Association anything.

The Association argues against including this language because the District may then want to add all of PERA's sections. The Association also argues that including this provision would be a counterintuitive "reward" to the District after it was found to have committed an unfair labor practice relating to the custodial staff.

In another context, at another time, the District's it may be innocuous for a fact-finder to include this proposal. Indeed, I can state that such a clause exists in many other CBAs. Of course, those

clauses may have been the result of a bargain. My concern with recommending it at the time of the issuance of this Report is that it may have the effect of inhibiting a settlement of other issues in dispute.

Recommendation

The new CBA should not include this as a new article.

**3. Just Cause, Article IV, B.**

The District proposes deleting “just cause” for cases where the employee is “disciplined in writing, reprimanded in writing.” The District points out that there are surrounding Districts with CBAs with their support staffs that only have just cause language for disciplinary suspensions and/or terminations.” The present language allows for too many grievances.

The Association opposed the deletion of just cause for these categories of discipline, arguing that it is a fundamental protection for employees that it cannot bargain away.

Recommendation

The new CBA should not change this section.

**4. Personnel File, Article IV, C.**

The District proposes adding language that requires an employee who wishes to place a written rebuttal to derogatory to the employee “within ten (10) days of receipt.” The District argues that presently there is no time period in which to submit a written rebuttal. The District simply wants to set a reasonable time period to submit a rebuttal. Furthermore, the employees will continue to have the ability to have items removed that are over one (1) year old.

The Association opposes the added language. It argues that it is more than likely that there will be circumstances where the employee will not be able to make the written rebuttal within ten (10) days of receipt. The bargaining unit should not bargain away the status quo without a showing of why this is necessary for the operation of the personnel office. As for the employee’s ability to remove items that are over one (1) year old, that is not such a clear right since the language in the CBA states “the employer shall have the final discretion in removing items from the file.”

Recommendation

The new CBA should not include the proposed added language.

**5. Required Meeting or Hearings, Article IV, D.**

The District proposes adding the following language to this section:

“The Employer will grant the Employee adequate unpaid personal time to meet with the Association Representative and/or legal counsel prior to any such meetings. Employees facing discipline that may lead to termination may use District facilities for meetings but must request preapproval for

their use, in writing. Nothing in this section grants an Employee the right to representation at a meeting that is not investigating in nature.” (Emphasis in the proposal.)

The District wants to add this language to clarify that time off the job to meet with Union personnel should be unpaid. The Employer also wants all persons or entities that are using school facilities to follow the policy of the school to apply in writing. The Employer also wants Association members to understand that representation by the Association does not apply to meetings that are not disciplinary in nature.

The Association points out that the addition of “unpaid” to the language is new. Also, the Association is concerned that employees will not always know what “discipline matter may lead to termination.”

#### Recommendation

The new CBA should not include this new language.

### **6. Maintenance of Membership, Article VI**

The District proposes adding the following new language to this section:

“Each Employee who, on the effective date of this Agreement, is a member of the Association and each Employee who becomes a member after that date shall maintain his/her membership in the Association provided such Employee may resign from the Association during a period of fifteen (15) days prior to the expiration of this Agreement or during the status quo period. Employees will resign from the Association by submitting their resignation to the headquarters of PSEA and to the Employer’s business office. Such resignation shall contain a request to cease dues deductions.”

The District also proposes deleting fair share language which allowed dues to be deducted from bargaining unit employees who are not members of the Association. The recent United States Supreme Court case, Janus v. AFSCME, (June 27, 2018), made such fair share provisions illegal.

The Association has no objection to adding the new language and deleting the fair share language.

#### Recommendation

The new CBA should include the District’s proposal to add the new language and to delete the fair share language.

### **7. Membership Dues Deduction, Article VI**

The District proposes that in the 2018-19 school year, the District agrees to deduct Association dues from members’ pay in twenty (20) equal payments. However, for the 2019-20 school year, the Association shall be responsible to collect dues from its members. The District contends that this proposal will save the business office time and it will prevent exposure to liability. The Association opposes this addition, arguing that the time spent on this at the District’s business office is minor. Also, no other Berks County school districts require their employee organizations to collect their own dues.



Recommendation

The CBA should not adopt the District's proposal.

**8. Probationary Period, Article VII**

The District proposes extending the 30 days probationary period to 60 days, in order to have adequate time to evaluate new hires. It argues that 30 days is really 22 working days and is not enough time to see if the new employee is able to perform the job. The employer also wants any part-time employee who transfers to a full-time position within the same classification to serve a thirty (30) calendar day probationary period. It argues that this would normally affect custodians, who, as part-time employees, would not know the building system or alarm codes and they need the time to make sure that they can perform the full-time work.

The Association opposes these changes. The District has not demonstrated that the current 30 day probationary period is detrimental to the good operation of the District. As for adding a 30 day period to part-timers who are moving to full-time status, the District has had ample opportunity to review the work of a part-time employee before he or she moves to a full-time position.

Recommendation

The new CBA should not include these proposals.

**9. Regular Full Time Employee Definition, Article VIII, B.**

The District proposes changing the definition of full-time to 1560 hours or more from 1500 hours or more working in the same position. The District argues that this equates to a 30 hours week and is in accordance with the Affordable Health Care Act. The District contends that this proposal will not affect any existing employees because none work those hours. If the District discovers such an employee, it will grandfather them. The Association opposes this and has made its own proposal on the subject. (See Association issue 16 above)

Recommendation

The new CBA should make no change to this section.

**10. No Reduction in Work Year, Article IX, A.**

The District proposed deleting this language. The District proposes deleting this section and section B (below) for the same reason, that it was unique to the last agreement because of the wage freezes that the employees accepted in two prior agreements. This was a provision added to in the last CBA in exchange for the Association agreeing to a wage freeze. The District acknowledges that the ESPA unit had a wage freeze for four of the last seven years, but it points out that the teachers' unit and the Act 93 Administrators did as well. The District argues that the proposed wage increases in the new CBA make this provision unnecessary, because the premise for the bargain no longer exists. The purpose of the language was to ensure those employees who agreed to a wage freeze that they would remain employees during the term of the Agreement. The "no reduction in work year" language has been

removed from the teachers and administrators' agreements. The District needs to have returned to it this management right to lay off employees.

The Association opposes this, arguing that the text of the article does not support the District's interpretation because there is no sunset provision in the article. Furthermore, the Association points out that the employees who had no pay raises in those years of the CBA have forever lost that money and deserve to have the continued benefit of a "no reduction in work year" provision.

Recommendation

The new CBA should make no change to Article IX, A.

**11. Reduction in Force and Recall, Article IX, B.**

The District proposes deleting this article on the grounds that it was unique to the last two agreements because of the wage freezes that the employees accepted in those agreements. Since there will be no wage freezes going forward, that language is not necessary. Also, the District wants to reclaim its managerial right to reduce force when necessary. The District wants to move from a seniority based layoff system to one in which it has the discretion as to whom to layoff, with the ability to make decisions based on work production.

The Association opposes the change, but has also made its own proposal on the subject. As stated above, I have recommended making no change to Article IX B.

Recommendation

The new CBA should make no change to Article IX, B.

**12. Combined Positions, Article XI, B.**

The District proposes a definition of full-time employees to 1560 hours a year, an increase from 1500 hours per year in the current CBA, consistent with another proposal in the CBA. The District also proposes that permanent part-time Employees who substitute are responsible to track their hours so they do not exceed forty (40) hours per week which would require the employer to pay overtime. The Association opposes this because of the loss of benefits, particularly medical insurance, that would occur with this change.

Recommendation

The new CBA should make no change to Article XI, B.

**13. Seniority Layoff and Recall, Article IX, C.**

The District proposes elimination of a seniority based method of layoff and recall and move to one in which it has the discretion as to whom to layoff, with the ability to make decisions based on work production. It makes this proposal in conjunction with its proposal on Reduction in Force and Recall at

Article IX, B. The Association opposes the proposal, for the same reason it opposed changes to Article IX B.

Recommendation

The new CBA should not include this change.

**14. Disciplinary Action, Article XI, D.**

The District proposes replacing one verbal and one written warning with two (2) written warnings prior to discharge. The reason for the proposal is to make sure that both warnings are documented. When a verbal warning is given there may be no written documentation of the verbal which may lead to the parties arguing over whether a verbal warning was ever issued. The Association argues that the current progressive disciplinary system is working well and there is no reason to change it. Based on the parties' presentations, I am not persuaded that the current system has hindered management's supervision of the workforce.

Recommendation

The new CBA should make no change to Article XI, D.

**15. Overtime/Extra Hours, Article XIV, H, 2.**

In the 4<sup>th</sup> paragraph, the District proposes deleting "and all volunteers" from the section because at present, the District is not using volunteers. The Association's written reply stated that it has heard no rationale that explains the proposal but could agree to it if that is the practice. While that may be the practice, the word "volunteer" is also used elsewhere in this section. It would be best for this fact-finder not to recommend deleting this language until all the parties thoroughly address all places where the word "volunteer" appears.

Recommendation

The new CBA should not delete "and all volunteers."

**16. Custodians, Article XI, H, 4.**

The District proposes adding this language for custodians who are on call: "Custodians who are directed to check a building on weekends are expected to report any problems or potential problems to their immediate supervisor while on site checking the building." This is simply a repetition of what the head custodians' duties in the CBA. The Association does not oppose this.

Recommendation

The new CBA should include this language.

**17. School Emergencies/Inclement Weather, Article XI, J.**

The District proposes language for notice of schedule changes in the schedule due to emergencies or inclement weather, from the current “within 2 hours of the public notification of the change” to the proposed “prior to the public notification of the change.” This language change will give it flexibility of notice of schedule changes in the event of last minute decisions on closing or delaying school and not being able to give two (2) hours advance notice before notifying the public. The Association has not stated a position on this proposal.

Recommendation

The new CBA should include this language.

**18. Doctor’s Note, Article XI, J. Paragraphs 1 and 2**

The District proposes adding this to paragraphs 1 and 2: “Staff who use sick days on inclement weather or disaster days shall be required to submit a doctor’s note for that absence.” The District contends that this is a necessary addition to the CBA because too many staff are calling in sick on inclement weather or disaster days, which causes the District to have to call on other employees or outside contractors to perform the work. The Association responds that for employees without medical insurance, seeing a doctor to get a written note is an added expense. Also, the District did not show that any other CBAs have this provision.

Recommendation

The new CBA should not include this provision.

**19. Subcontracting, Article XI, P.**

The current language subcontracting language already in the CBA states, “Subcontracting that replaces a classification is subject to School Code and Pa. law.”

The District wants to add this language:

“Parties acknowledge that Employer has the ability to subcontract Association work in accordance with the guidelines set forth by the Pennsylvania Labor Relations Board through case law. The Parties agree to negotiate subcontracting for at least four (4) months before subcontracting is implemented.

“If the Association is able to meet the cost savings to the Employer by subcontracting the Employer will not subcontract.”

The District argues that this merely sets forth a procedure which the District will follow if it does seek to find a subcontractor. This gives the Association the measure of what it has to meet. The District points out that similar language exists in the support staff CBAs with Governor Mifflin School District and Brandywine School District

The Association's response to the proposal is that the current CBA establishes an adequate statement of the employer's obligations to the Association.

Recommendation

This new CBA should not include this provision.

**20. Paid Holidays, Vacations Article XII, B.**

The District proposes changing the definition of full-time employees who are eligible for a paid lunch break from 1500 hours to 1560 hours. This is to be consistent with its other proposals which involve full-time employees. The Association opposes this proposal for the same reasons it did in the other articles.

Recommendation

The new CBA should not include this definition.

**21. Leaves of Absence, Sick Leave, Article XIII, G.**

The District proposes adding this language to the provision for sick leave: "Staff must provide a doctor's note for sick leave exercised during snow days or emergency days" It makes this proposal for the same reason it made the proposal above at School Emergencies/Inclement Weather (Article XI, J.) The Association opposes it for the same reasons. The recommendation will be the same.

Recommendation

The new CBA should not include this language.

**22. Medical Insurance, Article XVI – Other Employee Benefits,  
B. 2. Medical Insurance**

The District proposes an increase in the employee share in the premium costs. Presently, it is 7% of premium, with a cap, resulting in an annual bill of \$1100 for a single and \$1300 for a family. The District proposes premium contributions in 2018-19 of 12% and in 2019-20 of 13% with no caps in each year.

The District points out that the monthly cost of medical insurance is \$972 (single) and \$1,945.39 (family). Given these costs, the District argues that the employees enjoy a remarkable benefit to which they should contribute more. They currently have a relatively low percentage of premium compared to other Berks County districts. Also, there are caps on their share of the premium. In 2018-19 the District had a \$33,362 increase in premium costs for this unit, but the employees' contribution to that cost is only \$2,238 based on 7% premium share. The District points out that in 2019-20 the cost of medical insurance will be increasing by 23.5%. The District produced evidence that in other Berks County districts, the premium share contributions range from 3.5% to 12.5%. None of the Districts have caps on the percentage.

The Association argues that the District would pay less for medical insurance and the employees would therefore pay less in premium share if it joined the Berks Health Trust, a consortium of Berks County school districts established for the purpose of purchasing medical insurance. The District is willing to look into joining the consortium but cautions that the Trust does not cover all the items covered in the current plan and that the deductibles are higher for the consortium members. Also, joining the Trust is not automatic; it requires a vote by the existing members.

Medical insurance is an area of major disagreement. My recommendation takes into account the fact that the current premium share is about the middle of what other bargaining units in Berks County pay. Another important factor to consider is the relatively low pay of the members of this bargaining unit members who would have their pay raises diminished in the new CBA if the premium share was increased. Also, the District has admitted that premiums will be dramatically increasing in the coming year, which would lead to an even heavier burden of the employees. It would be unfair to employees to put this burden on them while there may be a less costly medical insurance alternative. At this point, the parties have not presented a thorough statement of the pros and cons of joining the Berks County Trust. It would be worth the time and effort for the parties to seriously investigate that alternative.

#### Recommendation

The new CBA should not include the District's proposals for medical insurance. By July 1, 2019, the parties should produce a joint report on the issues relating to joining the Berks Health Trust. The report should include, but not be limited to, whether the scope of coverage by the Trust is the same, an explanation of where the coverage is different, the deductibles and co-pays and the costs to the District. The report should be shared with the District's Board of Directors and the Association's members.

#### **23. Other Benefits, Article XVI, C. 2. Keystone Credit Union**

The District proposes that the payroll deduction for the Keystone Credit Union only continue "for as long as Employer participates." The District does not want to continue to deduct money if it is no longer a member.

#### Recommendation

The new CBA should include this change.

#### **24. Other Benefits, Attendance Incentive, Article XVI, C. 1.**

The District proposes the elimination of an attendance incentive of one (1) day wages for five months of perfect attendance. Eliminating this benefit would save money for hourly rate increases, PSERS increases and fringe benefit increases. The Association opposes the proposal.

Recommendation

The new CBA should keep the attendance incentive benefit

**25. Other Benefits, Retirement Bonus, Article XVI. C. 5.**

The District proposes the elimination of two retirement bonus plans that pay employees a lump sum at retirement of either \$75 per year of service (Plan A) or \$100 per year of service (Plan B). Eliminating this benefit would save money for hourly rate increases, PSERS increases and fringe benefit increases. The Association opposes the proposal.

Recommendation

The new CBA should keep the retirement bonus plans.

**26. Grievance Procedure, Article XVII**

The District proposes adding this clause to the grievance procedure: "Failure to observe the timelines and Step processes described below will result in dismissal of the grievance without further process and waiver of arbitration rights." The grievance procedure in the CBA has five (5) steps before arbitration. The District contends that the Association sometimes skips the steps and proceeds directly to arbitration. This approach means that the parties are not able to informally resolve steps before arbitration. The Association responds that this is a major and comprehensive modification to the grievance procedures.

It is unclear the extent to which the Association is skipping the pre-arbitration steps, so I am not sure that such a major change to the process is warranted. Furthermore, the recommendation that I made to allow the Association representative to attend pre-arbitration meetings (see Recommendation for Association Issue 1 above) may ameliorate the District's problems with the Association on this point.

Recommendation

The new CBA should not include this proposed language.

**27. Wages - Appendix A, 3. Shift Differential**

The District proposes that the shift differential of \$.035/ hr. be eliminated. There are only two shifts and the District has no problem filling the second shift. Therefore, there is no need to provide an incentive to employees to work this shift. The savings could be used to fund raises, PSERS and medical insurance. The Association points out that the shift differential has not been raised in some time and the District's proposal goes in the wrong direction.

Recommendation

The new CBA should not adopt the District's proposal, but should include the amount listed in the Recommendation for Association Issue 13 above.

**28. Wages - Appendix A, 6. Hourly Wage**

The District proposes the following wage increases for the two years of the CBA:

2018-19 - Various dollar amounts for different classifications in four tiers. The dollar amounts range from \$0.15 an hour (Tier 1 Secretary hired before 7-1-94) to \$2.29 an hour (Tiers 3 and 4 Support Aides hired since 7-1-11). The percentage amounts range from 0.75 % (Tier 1 custodians, hired before 7-1-94) to 20.89% (Tiers 3 and 4 support aides.) The result will be varying percentage increases for each position.

2019-20 - All employees receive \$0.20/hour increase to their 2018-19 hourly rate. The result will be varying percentage increases for each position.

The District is proposing the high wage increases, in dollar amounts and percentages, for the support aides in Tiers 3 and 4 are because they are the lowest paid support aides in Berks County. Also, the District is having a hard time filling the positions and then retaining the newly hired employees. Conversely, the custodians are the highest paid of the Berks County school districts.

The Association, as noted above, has proposed a different wage increase.

#### Recommendation

The new CBA should not include the District's proposal, but should include the recommendation in Association Issue 17 above.

### **29. Summer Work**

The District is proposing that it shall no longer continue past practice of allowing some employees to voluntarily switch shifts during the summer. It will be the employer's discretion.

#### Recommendation

Given that the District has an appeal pending in Commonwealth Court of the PLRB's Final Order finding the employer has committed an unfair labor practice in regard to this area, this report will not make a recommendation on this issue.

### **30. Article V – Section E**

The District proposes two changes to this section. The first is to replace "District" with the word "Employer" in this section and throughout the new CBA. The CBA now refers to both, so this would make it consistent. The Association does not object to the use of the word "Employer" throughout.

The second is to delete the requirement that Board agendas be "sent to the Association president as soon as they are available to the public and board members." The Association does not agree to that because the current Association president does not always have access to the internet.

#### Recommendation

The new CBA should use "Employer" in place of the word "District" in this section and throughout the CBA. . The new CBA should not include the District's other proposed change.



**31. Use of School Buildings/Bulletin Boards/Inter-School Mail , Article V, Section F.**

The District has proposed adding a sentence that requires the Association and its representatives to follow “Employer established facility use request protocols.” The Association understands that the District has a new online room reservation system, but it has many questions about how this new system works and how it may affect Association’s use of facilities for Association business. It also has many questions about the proposal’s impact on its use of facilities. In my opinion, this issue is something that the parties need to exchange more information about before the CBA is changed.

Recommendation

The new CBA should not include this proposal.

**32. Notification of Assignment, Article XI, G.**

The District proposals includes new language including that it “has sole discretion to change an employee’s assignment.” The Association objects to the new language. It seems that this is another issue that would benefit from an exchange of more information before the CBA is changed.

Recommendation

The new CBA should not include this proposal.

**33. Substituting, Food Service, Article XI, K. 1.**

The District proposes deleting the language in the current CBA on substitutes for food service. At the fact-finding hearing, the Association asked questions about the purpose of the original language and the purpose of the deletion. The parties began a discussion, but the issue is not clear to me. This is another issue that would benefit from an exchange of more information before the CBA is changed.

Recommendation

The new CBA should not include this proposal.

**34. Substituting, General, Article XI, K. 2.**

The District proposes a deleting “with the exception of food service workers” from this section about the general topic of the District’s right to determine substitutes. The Association had the same questions about this proposal as it did with Issue 33. For that reason, it is best for the parties to exchange more information before the CBA is changed.

Recommendation

The new CBA should not include this proposal.

**35. Work Day/Work Week, Article XI, M.**

The District proposes deleting “and the Employee will receive time and one-half pay of the hourly rate for Saturdays and/or Sundays.” The District has not explained why it is deleting time and one-half from a provision that gives it the right to make changes with seven (7) days notice. This issue would benefit from more discussion between the parties before the CBA is changed.

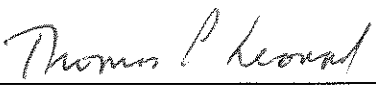
Recommendation

The new CBA should not include this proposal.

**All Other Matters**

Any other matters not specifically addressed herein are recommended to be withdrawn. As noted above, any agreements mutually made that are not specifically addressed in this Report are recommended to be included, as agreed upon, in the new Agreement.

December 31, 2018  
Harrisburg, Pennsylvania

  
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Thomas P. Leonard, Esquire  
Fact-Finder