

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD**

In the Matter of Fact-Finding	(Fact-Finding Report
	(And
Between	(Recommendations
	(
Frazier School District	(Case No: Act 88-21-13-W
	((Non-Professional)
	(
And	(Date of Hearing: August 3, 2021
	(
	(Date of Report: August 13, 2021
Chauffeurs, Teamsters and	(
Helpers, Local #491	(

**Louis A DeNome, Arbitrator
Fact-Finder**

For the District: Samuel J. Davis, Esq. Solicitor
Davis & Davis
107 East Main Street
Uniontown, Pa 15401

For the Union: Robert A. Eberle, Esq.
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P.O. Box 44290
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BACKGROUND

By letter dated July 20, 2021, the Pennsylvania Labor Relations Board (PLRB) pursuant to Act 88 of 1992 (Act88) and the Public Employer Relations Act 9 (PERA), appointed the undersigned as Fact-Finder in the impasse between the Frazier School District (hereinafter referred to as the "District") and the Chauffeurs, Teamsters and Helpers, Local Union # 491 (hereinafter referred to as the "Union"). The Union represents a bargaining unit of seventeen positions, fifteen of which are currently filed that are employed within the District located in Fayette County.

The parties to this fact Finding-Finding have an ongoing bargaining relationship and are parties to a collective bargaining agreement (hereinafter referred to as the "Agreement"). The parties were signatories to a collective bargaining agreement with a term from July 1, 2015 through June 30, 2020, the parties agreed to a new one-year agreement with a term from July 1, 2020 through June 30, 2021. On December 22, 2020, the Union filed notice to the Pennsylvania Labor and Industry and the District of its intention to commence negotiations for a new collective agreement. The parties met several times both with their respective negotiating representative and with a Mediator from the Pennsylvania Bureau of Mediation, but were unable to reach an agreement on the issue set forth in this report and recommendation. As a result, a Request for Fact-Finding was initiated by the Union.

In accordance with the Board's Order the parties filed written statements of the issues in dispute with the Fact-Finder involving the following issues:

1. Wages / Addition of Contracting out Language

On August 3, 2021, a formal fact-finding hearing was held in accordance with the Pennsylvania Labor Relations Act before the undersigned at the Frazier School District, Perryopolis Pa. During the hearing the both parties were afforded a full opportunity to present testimony, examine and cross examine witnesses and introduce oral explanations and documentary evidence in support of their respective positions.

To arrive at the following recommendations, this Fact-Finder relied upon, among other standards, the following criteria:

- The reliable and credible testimony provided, the evidence presented at the Fact-Finding hearing.
- The expired collective bargaining agreement and testimony surrounding the bargaining history.
- Comparisons of unresolved issues relative to the employees in the bargaining unit and how the issues of contracting out and wages align itself with other districts and public employees covered by a collective bargaining agreement, giving consideration to factors peculiar to the area and classifications involved.
- The interest and welfare of the taxpayers and the ability of the District to finance and administer the issues proposed.
- The understanding that the two issues have been reviewed for its relative merits, specifically the Districts wage contingency proposal for contracting out language, with consideration given to whether or not it Appropriately fits into the CBA that was created by the parties over a long standing period of time.

ISSUES IN DISPUTE AND RECOMMENDATIONS

WAGE ISSUE

UNION POSITION AND ARGUMENTS

The Union has proposed a fifty cent increase for each classification in each year of the proposed five year contract. The union argues that the fifty cent (\$.50) per hour increase for each employee is a fair increase, especially in view of the fact that the bargaining unit employees contribute a significant amount toward their health insurance, while other district employees and personnel pay far less or nothing at all. The Union argues that with the increased contributions for medical benefits coupled with the accepted lower wage increases in the past six years supports their position for a \$.50 increase for the life of this new collective bargaining agreement.

Testimony presented from representatives of the current bargaining unit stewards clearly indicated that the bargaining unit jobs are tough jobs during the pandemic. The District expected these employees to do more work with less people that the ever did before, and that became more pronounced in the past year-and-a-half. In addition, the employees in the cafeteria face tasks that are made harder because equipment has not been repaired or replaced. The Union further argues that the custodial and maintenance employees' duties have increased during the pandemic, while the District has not replaced employees who have left and has assigned all those duties to the existing bargaining unit employees.

The Union further argues that the wage proposals of the parties are actually closer than initially thought from the statements of issue.

Union Proposal						
	Current: 2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
Maintenance	\$ 22.10	\$ 22.60	\$ 23.10	\$ 23.60	\$ 24.10	\$ 24.60
Custodians	\$ 20.35	\$ 20.85	\$ 21.35	\$ 21.85	\$ 22.35	\$ 22.85
Part-Time Custodians	\$ 14.50	\$ 15.00	\$ 15.50	\$ 16.00	\$ 16.50	\$ 17.00
Head Cook	\$ 19.65	\$ 20.15	\$ 20.65	\$ 21.15	\$ 21.65	\$ 22.15
Cafeteria Worker	\$ 19.15	\$ 19.65	\$ 20.15	\$ 20.65	\$ 21.15	\$ 21.65
Part-Time Cafeteria Worker	\$ 14.50	\$ 15.00	\$ 15.50	\$ 16.00	\$ 16.50	\$ 17.00

The District’s proposal for each year of the Agreement is outlined in the following table:

District Proposal						
	Current: 2020-2021	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026
Maintenance	\$ 22.10	\$ 22.64	\$ 23.20	\$ 23.76	\$ 24.19	\$ 24.63
Custodians	\$ 20.35	\$ 20.85	\$ 21.36	\$ 21.88	\$ 22.28	\$ 22.68
Part-Time Custodians	\$ 14.50	\$ 14.86	\$ 15.22	\$ 15.59	\$ 15.87	\$ 16.16
Head Cook	\$ 19.65	\$ 20.13	\$ 20.62	\$ 21.13	\$ 21.52	\$ 21.92
Cafeteria Worker	\$ 19.15	\$ 19.62	\$ 20.10	\$ 20.59	\$ 20.96	\$ 21.34
Part-Time Cafeteria Worker	\$ 14.50	\$ 14.86	\$ 15.22	\$ 15.59	\$ 15.87	\$ 16.16

Over the five-year term of the Agreement, the difference in the parties’ proposals can be stated in the following table:

	Difference in Proposals
Maintenance	\$ (0.03)
Custodians	\$ 0.17
Part-Time Custodians	\$ 0.84
Head Cook	\$ 0.23
Cafeteria Worker	\$ 0.31
Part-Time Cafeteria Worker	\$ 0.84

The major stumbling block for the Union to reach an agreement is the District’s proposal to whittle away the bargaining unit through attrition and subcontracting. The District linked its wage proposal to its subcontracting out proposal. The Union has rejected the subcontracting proposal for several reasons, but it is fairly clear that the District does have the funds to pay for its wage proposal during the five-year term. Any substantial savings from the subcontracting proposal would most likely not be felt during the term of the CBA, especially in the early years.

This means that the District can afford the wages that it proposed for the term of the Agreement, and it is not relying on the subcontracting unit work proposal in order to do so.

After presenting testimony from two bargaining unit employees, the Union is confident that the Arbitrator will see that the District is undervaluing their services and they are deserving of every cent the Union has proposed.

The Union raised the argued that the cafeteria employees at Connellsville Area School District make significantly higher wages for performing the exact same work as the bargaining unit cafeteria employees here. The Union also represents the Connellsville Area School District cafeteria employees.

SUBCONTRACTING ISSUE

The District proposed the following language:

For cafeteria personnel, the District retains the right to have any new hires, established during the term of this agreement, to be made employees of a Food Service Management Company, as opposed to District employees. This would NOT affect any current employee covered under this agreement, only those hired to replace any existing employee who leaves during the term of the Agreement. Also, the District reserves the right to replace any custodial/maintenance employee who leaves employment with the District during the term of this Agreement with employees provided by an outside maintenance management company if the District contracts with such a company.

The Union's position is that the District's proposal must be rejected, and the parties must retain the current language of Article II, Section I, which prohibits assigning or contracting bargaining unit work to persons not employed in the bargaining unit.

The Union has a fundamental interest in protecting bargaining unit work and avoiding the erosion (and eventual elimination) of the bargaining unit. The District's proposal would create an intolerable conflict between unit employees and contracted personnel, and that conflict can be expected to make the Union's representational responsibilities more difficult. The District's presentation of this proposal paints the picture that current unit employees will not be harmed or affected by the proposal. The Union argues that this proposal would directly undermine the substantive rights of the bargaining unit employees who remain after the attrition process commences.

The Union argues that, the District's proposal is an elimination of bargaining unit positions and replacement with contractors that would interfere with, and potentially eliminate, bargaining

unit employees' rights under certain provisions of the CBA. The Union refers to Exhibit B, Article II Union Security, Section I of the parties most recent contract in support of their position that at no time has the District been granted the right or have the right to contract out bargaining unit work.

SECTION I: FOR THE PURPOSE OF PRESERVING WORK AND JOB OPPORTUNITIES THE EMPLOYEES COVERED BY THIS AGREEMENT, THE EMPLOYER AGREES THAT NO WORK OR SERVICES PRESENTLY PERFORMED BY THE CUSTODIANS, MAINTENANCE MEN AND WOMEN, CAFETERIA MANAGERS, AND CAFETERIA HELPERS SHALL BE ASSIGNED, CONTRACTED, TRANSFERRED, LEASED OR CONVEYED IN WHICH, WHOLE, OR IN PART, TO ANY OTHER PERSONS OR NON-BARGAINING UNIT EMPLOYEES.

First, the Districts' proposal would ensure that people cannot progress through the positions as the bargaining members currently can under the CBA. If a position is vacated now, employees can progress into that position by seniority. Under the language proposed by the District, that right may no longer exist, since the position would be contracted out.

The proposal would also interfere with contractual bidding for shifts. Each time a bargaining unit member was replaced with a contractor, the District would be able to place a contracted person into the open shift. Based on the District's characterization of the proposal, the District expects the more senior members of the bargaining unit to retire and for those positions to be the first positions replaced by contractors. One obvious problem with this process, of course, is that the more senior bargaining unit members hold the most coveted shifts and positions – and the remaining bargaining unit employees would be forever deprived of the best and most coveted shifts and positions under this proposal.

Lastly, the scheduling of paid time off, including both vacations and holidays would become severely hampered under this proposal. Under the expired CBA, these scheduling matters followed a process based on seniority, with limits on the number of unit employees who can be off work at any time. The District's proposal will interfere with this process, and the interference will become progressively more pronounced as more and more positions are turned over to contracted persons. The Fact-Finder must reject the District's proposal and keep the existing language in Article III.

The Union has proposed reasonable wages, and the Union intends to provide for continued protection of bargaining unit jobs and contractual rights. The District's subcontracting proposal has no place in the parties' labor agreement.

The Union respectfully requests the Fact-Finder to recommend inclusion of the Union's proposals and rejection of the District's contracting-out proposal for the parties' new five-year CBA.

District Position and Arguments
Wages/Contracting Out

The District has framed the issue as whether the Frazier School District has the right to make any newly hired cafeteria worker and /or custodial /maintenance worker an employee of an outside contracted management company . The District argues that in fact they can and are permitted to do so pursuant to Section 504 of the Public School Code which states in part, “the board of school directors in any school district shall have the power to establish, equip, maintain, and operate cafeterias, or to contract for any services necessary for the operations of a food service program...” Therefore, the District has the right to contract out cafeteria services to a management company. The District currently has an existing contract with a Food Management Company and therefore has the right to make any newly hired cafeteria worker an employee of that company.

The Districts’ position is that the cafeteria has consistently been running in a deficit. Evidence presented through testimony of the Districts’ Business Manager and exhibits clearly establish that the deficit has averaged nearly \$100,000 over the past six (6) years despite attempts to both raise revenue generated by the food service and cost cutting changes

The District proposal of a wage increase is based on a percentage increase of 2.45% for the first three (3) years over all classifications, then; 1.85% over the final two (2) years over all classification contingent on the contracting out all future work currently performed by the classifications recognized in the collective bargaining agreement and represented by the Chauffeurs, Teamsters, and Helpers, local Union #491. The affected classifications are custodian, both full and part time, maintenance, head cook, and full and part time cafeteria personnel. The Districts’ proposal, will over time, reduce the cost of operating food service to the District, as the District would no longer be required to pay into PSERS and health care for any newly cafeteria personnel, which are the two highest cost expenses. It is the Districts position that any new personnel required to fill cafeteria positions in the future would be provided by the Food Service Management Company. At this time, the District does not have a contract with a Maintenance Management Company. However, they argue that it has the right to enter into such contract and to make any newly hired custodial/maintenance worker in the district an employee of that company.

The District has been forced to cover what they feel is an excessive increase in the employee state pension fund (35% of every salary paid into the state) and at the same time Food Service Revenues have remained relatively flat or in some years decreased. Federal Subsidies have only seen a slight increase the past two years but for the most part have been flat. This coupled

with a larger Cyber School funding contributes to operating the Food Service in a deficit. The District freely admits that this proposal is for future savings and may take up to 15 years before the full effect of the savings is realized. The District knows this proposal is not a quick fix but will get the District from under the State pension fund obligation and increasing medical insurance costs. In doing so, it will eliminate the deficit spending which the District has been covering by taking funds from the General Funds to supplement the food service, custodial and maintenance expenses.

The Districts' wage proposal is contingent on the Union accepting the contracting out language and the District assures the Union that no outside Contractor would come in above current employees. Current employees will still be afforded the opportunity to move up the progression to higher positions and the contracted employee would be hired in the bottom position. The current employees would not be impacted nor would their seniority standing and provisions be affected. The contracting out language submitted by the District was their initial proposal. However, the Union has refused to offer any counter language or discuss changes to the language to address their concerns regarding protection for the current employees. The District acknowledges they have a financial responsibility to the Tax payers and feel it is not in the best interest nor acceptable to the tax payers to continually increase taxes without the effort to reduce costs that this proposal provides. For these reasons and arguments, the District request the Fact Finder recommend the Union accept their contingency proposal as set forth in District Exhibit B.

DISTRICT WAGE PROPOSAL EXHIBIT B

A 2.45% PER YEAR HOURLY INCREASE FOR THE FIRST THREE (3) YEARS, THEN; 1.85% OVER THE FINAL TWO (2) YEARS

	<u>Current</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Custodian	\$20.35	\$20.85	\$21.36	\$21.88	\$22.28	\$22.68
4hr Custodian	\$14.50	\$14.64	\$15.22	\$15.29	\$15.87	\$16.16
Maintenance	\$22.10	\$22.64	\$23.20	\$23.76	\$24.19	\$24.63
Head Cook	\$19.40	\$19.88	\$20.36	\$20.86	\$21.24	\$21.62
F/T Cafeteria	\$19.15	\$19.62	\$20.10	\$20.59	\$20.96	\$21.34
4hr Cafeteria	\$14.50	\$14.86	\$15.22	\$15.59	\$15.87	\$16.16

In return, The District request language in the contract stating:

“For cafeteria personnel, the District retains the right to have any new hires, established during the term of this agreement, to be made employees of a Food Service Management Company, as opposed to District employees. This would NOT affect any current employees

covered under this agreement, only those hired to replace any existing employee who leaves during the term of the Agreement. Also, the District reserves the right to replace any custodial/maintenance employee who leaves employment with the District during the term of this agreement with employees provided by an outside maintenance management company if the District contracts with such a company.

FACT- FINDERS RECOMMENDATION

Although all Pennsylvania public school districts face financial challenges some have fared better than others, the Frazier School District appears to be one of the more successful Districts undoubtedly due to prudent financial management, wise planning and economical practices. It is with this understanding that this Fact-Finder comprehends why at this point the District has structured their wage proposal around a cost saving feature to address potentially a future cost that may negatively impact the Districts' ability to meet. While the Food Service is operating in deficit the School District is capable of covering the deficit through the funds from the general Fund Account and controlling the deficit through cost cutting efforts. This is not an unusual method for a school district to cover expenses for such services as cafeteria, custodial or maintenance operations.

Impacting the food, custodial, and maintenance services are the usual demons: pension and health care. While the District has been successful in controlling health care increase through higher employee contributions and joining a consortium, the increases in the PSERS is one they can't avoid or shift. The District has evidenced deficit for the past six years is due primarily to the increased obligation to fund the PSERS which has grown from a low of 8% to 35% of employees' salaries. By contracting out all future work performed by the food, maintenance and custodial services, the District would no longer be required to contribute to the PSERS resulting in eventually a cost savings of \$113,189 or more annually. (Refer District exhibit 3)

What the District failed to evidence is the costs associated with purchasing the same services through an outside contracting company. The cost savings estimate have not been provided or they may be impossible to ascertain. When you look at the current cost for the Services contracted with Nutrition Inc. Management (District Exhibit 3), those costs have increased over 20% during the past six years. It is safe to say that while the Districts' proposal would eventually get them out from the obligation to fund the PSERS for their employees, any cost savings they claim would be off-set by the cost of the outside contractor. They would be entering into a contract with a for-profit outside provider.

Food services, custodial and maintenance services are required and essential services for the School District. They must be provided and will not go away. Through unrefuted testimony of the Union witnesses, working in both food and custodial services, they have saved the District money through taking on additional work during the pandemic, performed work on their own time, and assumed additional duties during periods when the District has not hired replacements. These efforts, along with making sure work gets done with equipment that has not been replaced, has helped the District financially and given the District greater flexibility with the work force than what the District would have with an outside contractor. There is nothing to lead this Fact-Finder to think or believe that this working relationship would not continue in the future to help reduce cost to the District.

A second and possibly the main reason for the Fact Finders' rejection of the Districts' proposal pertain to the Districts' position that they have the right to make any newly hired cafeteria, custodial and maintenance worker an employee of an outside contracted management company is flawed. In the absence of a collective bargaining agreement with the Union, on behalf of the employees of the District covered by the terms of the agreement, they may be correct. That is not the case here. The District has an obligation to negotiate in good faith with the goal to reach a new agreement with the Union. The collective bargaining agreement is between the Frazier School District and Local Union #491 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America. (Refer To Union Exhibit B Frazier School District CBA Article I Recognition and Article II Union Security Section I). The language in the parties' expired collective bargaining agreement prohibits the District from contracting out work performed by bargaining unit employees. This language has existed between the parties for a long standing. The Districts' takes the position that their contingency proposal is purely for financial reasons but in the end it results in the erosion of the current bargaining unit and elimination of full Union representation of future employees.

This Fact-Finder has not been persuaded by the evidence of record that such a monumental change in the party's relationship is justified or warranted at this time. The District freely admits they are not in "dire straits" financially or classified as a distressed School District. In fact, the Business manager testified in response to the Fact finders questions about the proposed wage increases that, the District would have no problem with the wage increases they have proposed.

Based on the foregoing the Fact Finder recommends rejecting the Districts' contingency proposal and further recommends the parties retain the expired contract language set forth in Article II, Section I, which prohibits assigning or contracting bargaining unit work to individuals not employed in the bargaining unit.

WAGES

The Fact Finder rejects the Union proposal regarding wage increases for a five year contract and recommends the parties accept the following wage increases. The recommendation is based on the testimony from both parties and is an attempt to strike a compromise between what the District has proposed and the Union proposal. Granting fixed cents per hour across the board establishes a more equitable wage increase within all classification than a percent increase as proposed by the District. The wage increase will also insure competitive wages for retention of current employees and recruiting new hires. The following proposal falls short of the Union overall proposal and slightly higher than the District proposal.

<u>CLASSIFICATION</u>	<u>PROPOSED WAGE INCREASE</u>
Custodian:	\$0.50 increase in years 1, 2, 3/ \$0.40 increase in years 4, 5
Maintenance:	\$0.50 increase in years 1, 2, 3/ \$0.40 increase in years 4, 5
Head Cook:	\$0.50 increase in years 1, 2, 3/ \$0.40 increase in years 4, 5
F/T Cafeteria	\$0.50 increase in years 1, 2, 3/ \$0.40 increase in years 4, 5
4hr Cafeteria	\$0.50 increase in year 1/ \$0.40 increase in years 2, 3, 4 and 5
4hr Custodian	\$0.50 increase in year 1/ \$0.40 increase in years 2, 3, 4 and 5

(See attached Appendix A for hourly wage rate for each classification per year. Except for the part time classification wage increase, the wage increase for full time classifications reflects what the parties discussed at the hearing. Reference District Exhibit 2)

Comparison of Overall Wage Increases for each Proposal over Five years

<u>Classification</u>	<u>District</u>	<u>Union</u>	<u>Fact-Finder Recommendation</u>
Custodian	\$2.33	\$2.50	\$2.30
Maintenance	\$2.53	\$2.50	\$2.30
Head Cook	\$2.22	\$2.50	\$2.30
F/T Cafeteria	\$2.19	\$2.50	\$2.30
4hr Cafeteria/ 4hr Custodian	\$1.66	\$2.50	\$1.80

TENTATIVE AGREEMENTS

It has been brought to the Fact-Finder's attention that the parties have reached a tentative agreement on all other issues for a new collective bargaining agreement during their negotiation process. It is the Fact-Finders' recommendation that those tentative agreements be made part of the new collective bargaining agreement.

The foregoing is submitted in the sincere belief based on my consideration of the entire record, that the recommendations can form the basis for settlement. I urge the parties to carefully consider the recommendation in its entirety and trust it will assist in the resolution of the current impasse.

CONCLUSION

In conclusion, the parties are directed to review the Fact-Finder's report and within ten (10) calendar days from the date of the issuance of this report to inform the Pennsylvania Labor Relations Board and each other if they accept this report.

Confidentiality of the report should be maintained during the ten day-consideration period and until officially released for publication by the Board in the event of a rejection.

The Fact-Finder submits the Findings and Recommendations as set forth herein.

Submitted By;

Louis A. DeNome
Fact-Finder
410 S. Cascade
New Castle, Pa 16101
And
181 Tanglewood Dr.
Quarryville, Pa 17566

Issued: August 13, 2021

APPENDIX A

Classification	Current	Year 1	Year 2	Year 3	Year 4	Year 5
Custodian	\$20.35	\$20.85	\$21.35	\$21.85	\$22.25	\$22.65
Maintenance	\$22.10	\$22.60	\$23.10	\$23.60	\$24.00	\$24.40
Head Cook	\$19.65	\$20.15	\$20.65	\$21.15	\$21.55	\$21.95
Cafeteria Worker	\$19.15	\$19.65	\$20.15	\$20.65	\$21.05	\$21.45
Part-Time Cafeteria / Part-Time Custodian	\$14.50	\$15.00	\$15.30	\$15.60	\$15.90	\$16.20