

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

**PALMERTON AREA EDUCATION
ASSOCIATION**

and

PALMERTON AREA SCHOOL DISTRICT

**AAA Case #01-17-0001-6684
(Act 88 Non-Binding
Interest Arbitration)**

*Hearing Date: 6/28/17
Decision Date: 9/7/17*

Arbitration Panel

Matthew Gruenloh
PENNSYLVANIA STATE EDUCATION ASSOCIATION
Association- Appointed Arbitrator

David F. Conn, Esq.
SWEET STEVENS KATZ & WILLIAMS
District-Appointed Arbitrator

Walt De Treux, Esq.
Neutral Arbitrator and Panel Chair

Presenters

FOR THE ASSOCIATION:

Molly Mirabito
PA STATE EDUCATION ASSOCIATION

FOR THE DISTRICT:

John G. Audi, Esq.
SWEET STEVENS KATZ

Introduction and Procedural History

The Palmerton Area School District serves the Palmerton and Bowmanstown Boroughs and Lower Towamensing and Towamensing Townships. It employs approximately 130 teaching staff, represented by the Palmerton Area Education Association. The School District and the Association are parties to a collective bargaining agreement that expired on June 30, 2016. The parties have met in more than 15 negotiation sessions without reaching agreement on a successor contract. After a strike by the Association, the parties agreed to enter into the present non-binding interest arbitration.

An Arbitration Panel was duly established, and the parties authorized the Panel to award the last best final offer (LBFO) of either party on a whole package basis, i.e., the Panel accepts either the Association's LBFO in its entirety or the District's LBFO in its entirety. On June 28, 2017, a hearing was held at the School District offices in Palmerton, Pennsylvania, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The Panel has reviewed the parties' evidence and arguments. After Executive Sessions of the Panel, this Award follows. In reaching its decision, the Panel considered the criteria set forth in Act 88, including the public interest, the interest and welfare of the Association, the financial capability of the School District, the results of negotiations between the parties prior to submission of LBFOs, changes in the cost-of-living, the existing terms and conditions of employment of the Association members and those of similar groups, and other documentation that the Panel deemed relevant. The decision is supported by a majority of the Arbitration Panel.

Issue

Should the Panel adopt the Last Best Final Offer of the Palmerton Area Education Association or the Palmerton Area School District?

Analysis and Decision

The parties' negotiation history and the construction of their LBFOs have placed this contract dispute in an unusual context. The Panel is tasked with selecting an LBFO when it is evident to all members of the Panel that the parties, after the submission of the LBFOs, are better positioned to continue negotiations rather than rely on this Award.

During negotiations, the School District proposed the elimination of the salary schedule and advocated for its replacement with an increased starting salary and general, across-the-board wage increases. The Association, which had proposed increases within the existing salary matrix, was adamantly opposed to its elimination and refused to budge from its initial wage proposal unless and until the District agreed to continuation of the salary schedule. The District refused to do so based on its concern with a large jump step in the salary schedule and its effect on salary increases. In its LBFO, the School District accepted the salary schedule framework and proposed reasonable step and wage increases (although it denied any retroactive increases for the first year of the successor agreement). The District's LBFO caused consternation, to put it mildly, for the Association negotiating team. At the very least, the District's LBFO could have served as a trigger for further negotiations in which both parties were operating from the same framework, i.e., the salary schedule. But the Association was in no mood to negotiate as the non-binding interest arbitration procedure had been set in motion

and the hearing was only days away. The Association expressed concern that a delay in the interest arbitration proceedings would cause an even longer delay in an eventual negotiated settlement.

As a result, the Panel has to pick one of the parties' LBFOs even though the parties are now better positioned to continue negotiations. As is often the case in interest arbitration, the Panel finds some merit and some weaknesses in each party's LBFO. The parties have authorized us to select one package or the other; we are not empowered to decide on an issue by issue basis. Accordingly, we cannot select only those items from each party that we think is most consistent with Act 88 criteria. We have to reconcile the good with the bad.

The District's LBFO likely brought the parties closer in position than they had been at the bargaining table. Now that both parties are focused on a salary schedule framework, negotiations can be directed at arriving at a responsible and appropriate financial package based on that schedule. If it is not obvious already, the Panel is strongly suggesting that after the issuance of this Award, the parties promptly return to the bargaining table to negotiate a successor agreement. Neither side should use this Award as a public relations tool to tout its LBFO as the final answer to the contract dispute. The Panel holds no expectation that the party whose LBFO is not selected will accept the Award's outcome. But we do expect that the parties will use the District's LBFO as a jumpstart to continue negotiations. In fact, the Panel is somewhat stepping outside its jurisdiction to suggest that, regardless of this Award, the Association should consider initiating further negotiations with a counteroffer to the District's LBFO salary schedule proposal. That ends the Panel's effort to preach to the parties, an effort

we hope is taken in good faith by the parties and offered only for the mutually-shared purpose of finding an amicable settlement of the parties' contract dispute.

The parties' LBFOs are lengthy and detailed. Reproduction of the LBFOs in their entirety is unnecessary, but it is important to summarize the highlights of each party's proposal. It must be noted that the existing salary schedule includes an approximately \$12,000 "jump step" between Step 15 and 16, significantly increasing a teacher's salary when s/he reaches Step 16. Both parties have attempted to eliminate that jump step by shortening the steps and spreading the large salary increase over several steps.

School District's LBFO

Term – 4 years (July 1, 2016 through June 30, 2020)

Reduction In Force (RIF) – The collective bargaining agreement provides furlough protection greater than that provided in the School Code. The District seeks to amend the language to provide that furloughs should be implemented according to the provisions of the School Code.

Salary – Adjustments to the salary schedules as follows:

- 2016-17 – no increase
- 2017-18 – 3.67% increase (2.67% step increase + 1% wage increase)
- 2018-19 – 3.12% increase (1.88% step increase + 1.25% wage increase)
- 2019-20 – 2.92% increase (1.68% step increase + 1.25% wage increase)

Total increase of 9.71% over 4 years (2.42% per year)

Health Insurance – Beginning 2017-18, employees will have two health insurance options:

Option 1: PPO with deductibles of \$350 single/\$700 family

Premium Shares:

| | 2016-17 | 2017-18 | 2018-19/2019-20 |
|-----------|-------------|-------------|-----------------|
| Single | \$50/pay | \$70/pay | \$90/pay |
| Ee/Spouse | \$62.50/pay | \$82.50/pay | \$102.50/pay |
| Family | \$72.50/pay | \$92.50/pay | \$112.50/pay |

Option 2: High Deductible Plan -- \$2000/\$4000 In Network
\$4000/\$8000 Out of Network

No Premium Share

Prescription Co-Pays:

\$5 Generic/\$35 Formulary/\$70 Non-formulary

Medical Visit Co-Pays:

\$15 Doctor/\$30 Specialist/\$40 Urgent Care/\$100 ER

Extra-Curricular Contract – Increase stipends for coaching and advisor positions as follows:

| | |
|---------|-----------|
| 2016-17 | no change |
| 2017-18 | 0.50% |
| 2018-19 | 0.75% |
| 2019-20 | 1.00% |

Association's LBFO

Term – 4 years (July 1, 2016 through June 30, 2020)

Reduction In Force (RIF) – Language requiring that time spent on furlough be included in seniority calculation, and acceptance or denial of a substitute teaching position while on furlough would not affect recall rights.

Salary – Adjustments to the salary schedules providing the following:

| | |
|---------|---------------------------------|
| 2016-17 | 3.06% (step and wage increases) |
| 2017-18 | 3.68% (step and wage increases) |
| 2018-19 | 3.99% (step and wage increases) |
| 2019-20 | 5.63% (step and wage increases) |

Total increase of 16.35% over 4 years (4.09%/year)

Health Insurance – Blue Cross/Blue Shield PPO or substantially equivalent coverage with deductibles of \$200/\$400 In Network and \$800/\$1600 Out of Network

Premium Share:

| | 2016-17/2017-18 | 2018-19/2019-20 |
|---------|-----------------|-----------------|
| Single | \$30.50/pay | \$34.50/pay |
| 2-Party | \$42.50/pay | \$47.50/pay |
| Family | \$52.00/pay | \$58.00/pay |

Prescription Co-Pays:

\$15 Generic/\$25 Formulary/\$45 Non-formulary

Medical Visit Co-Pays:

\$15 Doctor/\$25 Specialist/\$30 Urgent Care/\$100 ER

Extra-Curricular Contract – Increase stipends for coaching and advisor positions as follows:

| | |
|---------|----|
| 2016-17 | 1% |
| 2017-18 | 1% |
| 2018-19 | 1% |
| 2019-20 | 1% |

The parties’ respective salary proposals highlight the unfinished business of negotiations, no doubt due to the District’s insistence on the elimination of the salary schedule until its LBFO and the Association’s refusal to move off its initial salary proposal. Both parties recognize that the bargaining unit salaries fall near the average of comparative school districts

within and contiguous to Carbon County. One would expect wage increases to skew close to the average wage increases in those districts. The average salary increase among school districts within Carbon County is 3.22%. The average salary increase among Carbon County districts and contiguous school districts is 3.36%. The Association's proposal averages 4.1% per year, and the District's proposal averages 2.4% per year – almost equidistant from the averages of the comparative school districts. Had the Association received the District's LBFO as a proposal during negotiations, it is likely that further bargaining would have brought those figures closer to the 3.22% and 3.36% average increases of the comparators. The Panel is faced with a District offer that is lower than the likely and anticipated range of settlement and an Association offer higher than the likely and anticipated range of settlement.

A significant difference is present in the parties' health insurance proposals. The Association had proposed a plan as part of a health insurance trust. The District rejected the prospect of joining the trust, but it generally matched the plan design of the Association-proposed plan. The District added a proposed high deductible plan that eliminates any premium share for employees. The District's PPO proposal includes significantly higher premium shares than the Association's proposal, which provides for only modest increases in premium share. Again, a resolution on premium share amounts likely lies in between the District and Association proposals.

The Panel is truly faced with a situation in which both options feel incomplete and less like LBFOs than proposals desperately seeking counterproposals. The Association LBFO includes salary increases and minimal premium shares that put it beyond the range of comparators and the reasonable range of settlement. The District LBFO offers an insurance option without

premium share that may be beneficial to certain bargaining unit members, but its PPO premium shares and its lower-than-average salary increases diminish its attractiveness. The District LBFO appears to do a better job of spreading the \$12,000 jump step through the matrix, while the Association LBFO appears to have bunched the jump step into a 4-year period.

One deficiency in the District LBFO is its insistence on no retroactivity for contract year 2016-17. While its insistence on no retroactivity is a legitimate and expected proposal and strategy during the negotiations, it weakens the District's LBFO at this point in the impasse proceedings. The District's proposed salary increases for the final 3 years of the contract average 3.24% per year, right in line with the average for the comparator districts. The inclusion of retroactivity in the District's LBFO may have brought its LBFO in line with the comparators and would likely have signaled beyond doubt that the District had moved past the prior difficult negotiations and was seeking common ground. It would have further reinforced this Panel's view that the Association should restart negotiations with a counteroffer to the District's LBFO. In the view of a majority of the Panel, the absence of retroactivity causes the District LBFO to fall slightly behind the Association LBFO when considering the Act 88 criteria.

For this reason alone, and with one last word of encouragement for further bargaining to bridge the parties' surmountable divide, a majority of the Panel finds that the Association's LBFO, by the slimmest of margins, adheres more closely to the Act 88 criteria.

Award

The Panel adopts the Last Best Final Offer submitted by the Palmerton Area Education Association.

Walt De Treux

WALT De TREUX
Neutral Arbitrator and Panel Chair

David F. Conn

David F. Conn, Esq.
District-Appointed Arbitrator

concur dissent

Matthew Gruenloh

Matthew Gruenloh
Association-Appointed Arbitrator

concur dissent

AMERICAN ARBITRATION ASSOCIATION

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**PALMERTON AREA EDUCATION
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CONCURRING OPINION

The Last Best Final Offers (LBFO) provided by both the District and the Association were thoroughly analyzed by the Arbitration Panel. After discussion and debate among the Panel members, the decision to choose the Association's LBFO was made. This decision was not arrived at easily, but it was a decision with which I concur.

Beyond my concurrence with the final award, I also agree with the Analysis and Decision. In the situation where this Award is not ratified by both Parties, the fact the District's LBFO included a salary schedule for the first time should not be disregarded just because this Panel narrowly rejected the full package which included it. While including/not including a salary schedule in a successor collective bargaining agreement is not the only difference the Parties would have to overcome, they should take advantage of this breakthrough regardless of how it came to be.

Date: 9/7/17

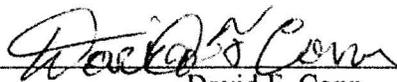


Matthew Gruenloh, UniServ Representative
Pennsylvania State Education Association

On health care, it was the Association which initially introduced the idea of a high deductible health plan. The Association, however, retreated from that suggestion when the District would not agree to the specific plan administrator the Association wanted. Again, I can find no merit in the Association's reasoning. The consortium which the Association wanted would have effectively provided the Association with veto power over any subsequent plan changes or disputes. The District was right to seek a different consortium. More generally, similar high deductible plans have been introduced in an increasing number of teacher contracts. Moving towards these plans makes sense for both Parties. On this issue too, the District's proposal was more in line with current contracts.

For these reasons, I dissent. However, I do agree with the Majority on one major point: after this Award, the ball is fully in the Association's court to return to negotiations with a new proposal.

Date: 9/7/17



David F. Conn
District Appointed Arbitrator