

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD

IN THE MATTER OF THE EMPLOYEES OF MIDWESTERN INTERMEDIATE UNIT IV Case No.: 88-22-9-W

HEARING: January 18, 2023

FACT FINDER: Thomas J. Dempsey, Jr., Esq.

For the Intermediate Unit: William Halle

For the Association: Patrick J. Andrekovich

FACT-FINDER'S REPORT AND RECOMMENDATIONS

Issued January 30, 2023

BACKGROUND AND DISCUSSION

Pursuant to Act 88 of 1992 and the Public Employee Relations Act, 195 of 1970, by letter dated December 20, 2022, the PLRB appointed the undersigned to act as the Fact Finder and to issue a Report in the matter of the Midwestern Intermediate Unit IV EA, PSEA/NEA ("Association") and the Midwestern Intermediate Unit IV ("MIU IV").

The parties to this fact finding have had an ongoing bargaining relationship. The most recent Collective Bargaining agreement between the parties, a five (5) year agreement, expired on June 30, 2022. The parties began bargaining in January 2022 to negotiate a successor agreement. The bargaining unit employees have continued to work under the terms and conditions of the expired Collective Bargaining Agreement.

After several bargaining sessions, which generated positive results on a variety of issues, they parties were unable to reach an Agreement, impasse was declared, and the parties proceeded to fact finding based on a request by the Association on November 16, 2022. The request was granted and fact finding was ordered by the Pennsylvania Labor Relations Board on December 13, 2022.

MIU IV serves 27 school districts and three Vocational-Technical Schools located in Butler, Lawrence, and Mercer Counties.

MIU IV District employs approximately 131 Association members.

The Association bargaining unit represents approximately those 131 professionals, all of whom provide specialized, highly skilled services to students whose needs are best served by supplementing the day to day education and support provided by teachers, administrators, and paraprofessionals of the respective school districts.

A fact-finding Hearing was conducted on January 18, 2022, at which time both parties were afforded a full opportunity to present testimony, examine and cross-examine witnesses and introduce evidence in support of their respective positions. In addition, additional documentary evidence was provided to the Fact Finder immediately following the fact-finding hearing at his request.

This Fact Finder would like to convey his appreciation to both parties and their representatives and witnesses not only for the courtesy and cooperation exhibited to the Fact Finder, but to each other as well. It is clear to the Fact Finder that the relationship among the parties and their representatives embodies respectful recognition and appreciation of each other's positions and, as importantly, the need to work cooperatively in providing exemplary service to the students they serve.

The Hearing was conducted in accordance with the Pennsylvania Labor Relations Act.

To arrive at the following recommendations, this Fact Finder relied on, among other things, the following criteria:

The testimony given and the evidence presented at and subsequent to the hearing.

The former collective bargaining agreement and proposed revisions to the forthcoming agreement.

Comparisons of the unresolved issues relative to the employees in this bargaining unit with those issues related to other MIU IV employees and bargaining units, other school districts, and other public and private employees doing comparable work, considering factors peculiar to the area and classifications involved, also known as internal and external parity.

The interest and welfare of the students, government funding sources, and the ability of MIU IV to finance and administer the issues proposed.

Any and all items and/or proposals not previously agreed to or specifically addressed within this Report are considered to be withdrawn.

Any and all items and/or proposals agreed to, and any tentative agreements made prior to the date of this Report that are not specifically addressed in this Report are recommended to be incorporated into the new Agreement.

ISSUES

The Association and MIU IV have identified four (4) issues of tentative agreement, as set forth in full at Association Exhibit Book, Tab 3, as follows¹:

Tentative Agreement 1 – Article III, Section 1 - Term of Agreement.

The term of any new agreement shall begin on July 1, 2022 and end on June 20, 2027.

Tentative Agreement 2 – Article XI, Section 10 - Employee Induction Plan

¹ The actual language of the tentative agreement is incorporated into the concise description here.

Add Section C related to additional pay for mentors for clinical fellowships.

Tentative Agreement 3 – Article XI, Section 16 – Access Services
Amend to cap reimbursement at \$100.00 per year.

Tentative Agreement 4 – Article XI, Section 5 - New Language regarding Floating Substitute Teacher
Creates new position of floating substitute teacher with provisions for qualifications, hiring discretion, pay, and benefits, and seniority.

The Association and MIU IV have identified four (4) issues remaining in dispute at the end of the Fact-Finding Hearing.

Outstanding Issues:

- Issue No. 1. Article XI, Wages and Salaries/Retroactivity
- Issue No. 2. Article XII, Section 13, Voluntary Early Retirement Incentive
- Issue No. 3: Article XII, Section 1. E. New Language – Sick Day Incentive
- Issue No. 4. Article XII, Section 12 New Language – Remote Work

Fact-Finder’s General Discussion

Since the positions of MIU IV and the Association are very close on most outstanding issues the amount of discussion or narrative normally written may be somewhat abbreviated. However, this Fact Finder can assure the Association and MIU IV that each and every issue, all supportive data, all financials, and any comparisons with like issues in similarly situated settings were read, considered, and given the full and appropriate time necessary to formulate the following recommendations.

This fact-finding, the hearing process and the recommendations that follow all come during difficult times for MIU IV as a whole and the Association members.

Intermediate units and school districts in Pennsylvania have faced extremely challenging times over the last three years. The economic climate in Pennsylvania following the peak of the COVID pandemic, uncertainty in state and federal funding on both a standard and emergency relief framework, escalating healthcare costs, and increases in PSERS contributions and other costs have all led to substantial burdens on intermediate units, school districts, and all of their employees. The concerns over future wages, benefits, possible layoffs, demotions, contracting out, cutting of programs, relocation of employees, employee attrition, and consolidation and closing of schools are issues that intermediate units, school districts, their respective boards, and their various unions and associations have been and will continue to face.

The ongoing consequences of the COVID pandemic has left the economic climate of national and local educational systems in a state of uncertainty. Although it does appear the social, health, and fiscal state of affairs may be improving, there is still uncertainty in each of those areas, as well as uncertainty regarding how long it will take to gain independence from the current reliance on emergency government funding and simple belt-tightening.

Due to the COVID-19 pandemic MIU IV, like other public sector employers, had to brace for the economic impact that would and did occur. While MIU IV funding remained stable from its regular sources – payments from school districts through federal and state grants, etc., MIU IV has had to rely on COVID relief funding. While MIU IV’s fund balance has risen over the past five years, they face the impending loss of COVID relief revenues which end in 2025. Therefore, all parties must prepare for an unstable financial future.

While most of the historic funding sources have not gone away, MIU IV and the Association’s employees must share the burden and find a solution that will protect the vitally necessary specialty programs and services provided by the Association from compromise or loss.

It is clear that neither MIU IV nor the Association are overreaching. Each party measures their needs against the current challenging circumstances, and requests changes to their agreement that will preserve vital functions without risking immediate or long-term financial calamity.

When forming the recommendations below, the Fact Finder looked at criteria such as internal and external comparable settings and MIU IV’s ability to fund the recommendations without over-burdening funding sources, while taking into consideration the interest and welfare of the public and the students served.

The recommendations that follow, which are fair, reasonable, and financially responsible, are designed to help MIU IV maintain fiscal responsibility while still being as fair as possible to the needs of Association employees.

RECOMMENDATIONS

No. 1: Article XI: Wages and Salaries/Retroactivity.

The Association and MIU IV have agreed on a five (5) year Agreement commencing July 1, 2022 and running through June 30, 2027 with a base year payroll (Based on March 1, 2022) of \$9,332,188.

The Association proposes an annual increase of 3.5% in each year of the agreement, retroactive to July 1, 2022.

MIU IV proposes an annual average increase of 2.75%

The Association argues that its proposal is based on increases in employee pay for local school districts within MIU IV, attritional savings resulting from transfers of Association employees to local school districts, anticipated retirements, lack of replacement hiring, and payroll increases for Act 193 and support professionals that are higher than MIU IV’s proposed increase.

MIU IV agrees with the base year payroll date and value, but also sought to revise the base year payroll to a lower figure to reflect changes in employment due to new hires and retirement.

Discussion:

Both MIU IV’s and the Association’s arguments offer legitimate concerns and justification.

This Fact Finder must balance a fair wage increase for Association members with recognizing MIU IV’s obligation to maintain fiscal stability over the term of the proposed new contract.

In the absence of compelling proof of an inability to pay, the Association’s request for an increase above that offered by MIU IV is reasonable.

The compensation presently received by the Association members, as demonstrated by the evidence in the parties exhibits shows that the compensation received is competitive with that of others similarly, including employees across the school districts served by the MIU IV.

The annual percentage increase proposed by the Association is, when considered over the length of the proposed contract, too high when considering the uncertainty of future COVID relief funding and the affect that anticipated loss may have state and local funding. The full value of the increase sought is not supported by the evidence submitted in the record, nor when applying the criteria listed above.

The salary proposal submitted by MIU IV, on the other hand, is unreasonably low in light of its current fund balance, the steadiness of his fiscal position over the last contract term, and in consideration of the realistic projection of attritional and retirement savings offered by the Association.

Recommendation:

Based on MIU IV’s finances, the current status of its fund account, its consequent ability to fund the recommendations that follow, the scheduled eventual loss of emergency COVID funding, the value and scarcity of capable candidates to fill the ranks of retiring or transferring professionals represented by the Association, the reasonable expectation of attritional savings, the evidence presented supports a reasonable compromise on this issue in the form of the agreed to five (5) year agreement which shall include the following annual percentage increases, retroactive to July 1, 2022.

| 2022 – 2023 | 2023 – 2024 | 2024 – 2025 | 2025 – 2026 | 2026 – 2027 |
|-------------|-------------|-------------|-------------|-------------|
| 3.5% | 3.5% | 3.5% | 3% | 3% |

No 2: Article XII, Section 12 – Voluntary Early Retirement Incentive (“VERI”)

Discussion:

Notable in this aspect of the negotiations is that the prior contract specifically provided for the automatic sunset of the existing VERI at the conclusion of that contract. In current negotiations, the Association sought to reintroduce a proposal that would provide \$5,000 of additional health insurance for five (5) years for any retiring Association member. During negotiations, MIU IV had cooperatively discussed alternatives to that proposal but, when negotiations broke down, withdrew any such offer.

While the Association provided some evidence to support the value of a VERI, it did not rise to the level of proof required to convince the Fact Finder that it was a necessary component of a new collective bargaining agreement.

Recommendation:

The proposal for a voluntary early retirement incentive program is not recommended.²

No 3: Article XII, Section 1. E. – New Language proposed regarding Sick Day Incentive

Discussion:

MIU IV recommended the addition of this language to the new agreement to create an incentive to reduce sick day use so as to avoid the additional cost of substitute staff. MIU IV's exhibit (Tab F) also indicates that the Association refused the suggestion.

On the other hand, Association Exhibit Tab 7 reflects the same proposal as that offered by MIU IV.

Recommendation:

The proposal set forth at Exhibit Tab F by MIU IV and Exhibit Tab 7 by the Association shall be added to the new agreement, *i.e.*,

Sick Day Incentive: Employees shall receive an incentive for not utilizing sick-days in accordance with the following schedule:

Use 0 – 3 days \$500 HSA Contribution

Use 4-5 days \$250 HAS Contribution

No 4: Article XII, Section 10³ - Remote Work (new language)

Discussion:

The Association proposes that employees who can complete their jobs remotely at home will be permitted to do so when possible.

MIU IV opposes the Association's proposal as an improper infringement of its inherent managerial prerogative.

The Association offered no evidence that suggested that MIU IV administration's current method of reviewing and permitting remote work, when appropriate, is ineffective, or detrimental to the Association's employees' rights under past and anticipated procedures. In addition, the proposed language would impermissibly infringe on MIU IV's inherent managerial prerogative.

² As the parties have come very close in negotiations on this topic, particularly the value of a VERI to retain capable employees and support the retirement of higher paid employees on acceptable terms, both of which outcomes are beneficial to all, the parties are encouraged to continue discussions.

³ Incorrectly identified as Article XII, Section 13 in item 5 of MIU IV's list of issue in dispute. Article XII of the current contract only has 9 section. The proposed new language on Remote Work would be added as Section 10.

Recommendation:

The Association's proposal is not recommended.

Date

Thomas J. Dempsey, Jr., Esquire
Pa. Labor Relations Board Fact Finder

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Case No.: 88-22-9-W

HEARING: January 18, 2023

FACT FINDER: Thomas J. Dempsey, Jr., Esq.

For the Intermediate Unit: William Halle

For the Association: Patrick J. Andrekovich

**AMENDED
FACT-FINDER'S REPORT AND RECOMMENDATION**

Issued February 7, 2023, 2023

BACKGROUND AND DISCUSSION

This amended report is created for the purpose of addressing Association Issue 4 – Substitute Coverage - which was not fully addressed in the original report and recommendation. The terms of the original report and recommendation are incorporated herein, in full.

ISSUE (Relevant to this Amendment)

The Association and MIU IV have identified an issue of tentative agreement, as set forth in full at Association Exhibit Book, Tab 3, as follows¹:

Tentative Agreement 4 – Article XI, Section 5 - New Language regarding Floating Substitute Teacher
Creates new position of floating substitute teacher with provisions for qualifications, hiring discretion, pay and benefits, and seniority.

RECOMMENDATION

No. 4: New Language – Substitute Coverage

Discussion:

As this amended report is offered only to address any deficiency in the original report in regard to the described issue, it is based on the evidence provided at the fact finding hearing only.

¹ The actual language of the tentative agreement is incorporated into the concise description here.

The Association and MIU IV have a tentative agreement that provides for the creation of up to three (3) Floating Substitute Teacher positions each year, at the sole discretion of MIU IV.

The evidence presented at the fact finding hearing credibly established that there are clear challenges to acquiring and retaining staffing at all levels of the education system. This results in existing staff being required to perform service beyond their regularly defined scope of work. The practical consequence of staff shortages is particularly acute in the area of substitutes.

The Association believes that while the existence of the tentative agreement to create up to three (3) Floating Substitutes is beneficial, that addition alone is insufficient to address the problem. The Association seeks additional payment for the substitute services performed by existing staff to the extent a staff member is required to perform the substitute work and their own work, as well.

The Association's evidence submitted at the fact finding hearing was primarily anecdotal.

MIU IV counters that the allocation of substitutes and form and implementation of the Floating Substitute Teacher plan in the tentative agreement is a management right that it cannot and will not surrender. In addition, MIU IV credibly established that there has been a functioning float program in place for three years.

Other than the documentary evidence of the nature and consequences of staffing shortages provided at Tab 8, the Association provided no compelling evidence that would justify a request for compensation for those who have historically participated in the existing float system. Despite the lack of evidence on that point, it is clear from the Association's evidence as well as the evidence offered by MIU IV, that the float system that has been in place for years served as a framework for the tentative agreement, and that the existing system has served a considerably greater shared workload than could be covered by less than the three potential Float Substitutes identified in the tentative agreement.

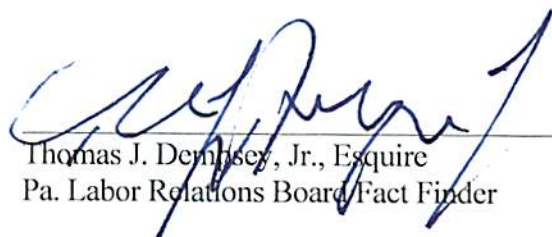
Recommendation:

To the extent the tentative agreement for creation of a Floating Substitution Teacher position set forth in Tab 3 of the Association's binder has been approved by both parties, and based on the evidence submitted by both parties, I find that there is sufficient evidence to require that the language of that tentative agreement regarding Floating Substitute Teacher (Association Tab 8) be modified, as follows:

1. The Employer shall create and fill three (3) Floating Substitute Teacher positions each year.
2. ~~Floating Substitute Teachers are hired each year at the sole discretion of Administration.~~
3. Renumber remaining paragraphs.

All other provisions of the tentative agreement regarding Floating Substitute Teacher shall be retained.

February 7, 2023
Date


Thomas J. Dempsey, Jr., Esquire
Pa. Labor Relations Board Fact Finder