

**STATE OF NEW YORK
Public Employment Relations Board**

Case No. M2010-213

January 6, 2012

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In the Matter of

CROTON-HARMON UFSD,

and

**CIVIL SERVICE EMPLOYEES ASSN. LOCAL 860
(Croton-Harmon UFSD Clerical Unit)**

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**FINDINGS OF FACT
and
RECOMMENDATIONS
FOR RESOLUTION**

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Fact Finder

APPEARANCES

For Croton-Harmon UFSD

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INTRODUCTION

This is the Fact Finder's report in the matter of the impasse between the Croton-Harmon Union Free School District ("District") and the Civil Service Employees Association Local 860, Croton-Harmon Clerical Unit ("CSEA" or "Union"), which are seeking to negotiate renewal terms and conditions of employment for a collective bargaining agreement ("CBA") that expired on June 30, 2010 and continued in effect. The report provides findings of fact and recommendations for resolution of the parties' impasse.

Croton-Harmon Clerical Unit presently consists of 16 employees in a number of school clerical and office support titles. The District has a separate CSEA unit for custodial and maintenance positions.

The parties entered into negotiations for a successor agreement in April 2010 and exchanged contract demands. The parties met for further negotiation sessions on five occasions, the last being November 8, 2010, exchanging proposals that were either resolved or withdrawn by the parties. Unable to reach mutual agreement on a final, complete package, the Union filed a Declaration of Impasse on November 10, 2010. A mediator was appointed, but the parties were unable to resolve their differences. Following the conclusion of mediation, the New York State Public Employment Relations Board ("PERB") appointed the undersigned as Fact Finder on July 18, 2011.

A fact-finding hearing was held on September 13, 2011 in the District Administration Building. The parties submitted two volumes of factual material and data, explained their positions, questioned each other, and the Fact Finder sought clarification of certain issues. Following the hearing, the parties requested the opportunity to file closing briefs and, after extensions, briefs were filed on November 9th and 11th. All material submitted has been carefully examined and these findings and recommendations follow.

BACKGROUND

Some opening comments about the negotiating relationship and history of the parties are helpful to understanding their positions. We are discussing the renewal of a CBA that expired 1-1/2 years ago. Despite at least five negotiating sessions and a mediation effort, the parties were not able to come to agreement. During the hearing, it became apparent that the overriding concerns of the District were the impact of the new tax cap legislation, the pay freezes and increased employee health insurance contribution share in the renegotiated State-CSEA labor contract and no retroactivity for any adjustments. Following the close of the hearing, the District and CSEA Custodial Unit settled their contract and it was forwarded by both parties to the Fact Finder as part of the closing briefs. It provides a guideline for a recent, freely negotiated settlement by a non-teaching unit within the District.

The Parties submitted the following six items for the fact-finding process:

ITEM

Term of Agreement

Wage Increase

Employee Health Insurance Contribution & Declination
Payment

Unused Sick Time Buy-Back Value

Unused Sick Time Applied to RSSL §41-j

Summer Work Hours

The inability to find agreement on these six (6) outstanding issues is straining the bargaining relationship and is shown in the inability, over the past 1-1/2 years, to negotiate a successor agreement. Each party must show some flexibility and realism or the contract is unlikely to be settled within the context of an acceptable package. The

solution may be for both parties to identify, in the context of comparability, what is equitable for unit members, the District and its taxpayers.

COMPARABILITY

The fact-finding process depends heavily on comparing the equities in each party's argument with the terms and conditions of employment contained in bargaining agreements within the school district and in similar units in comparable districts in the general geographic area. Neither party challenged the data sets submitted by the opposing party, as they related to comparability.

Lacking a recent in-district agreement with a comparable bargaining unit at the time of the hearing, the parties were in general agreement that the BOCES Northern Westchester-Putnam (NW/P) data base contained a reasonable set of comparables. The labor pool is clearly drawn from NW/P, since the area is home to 13 of 16 bargaining unit members. The District's general fund spending is at the average of the NW/P group, while state aid as a percentage of revenue (9.53%) is somewhat on the low side, indicating a combination of wealth, lack of demographic or "need" enhancements and an average wealth ratio about 57% higher than the statewide ratio, although at the NW/P average. The result is that 81% of the 2010-11 district budget is paid from property taxes, about four percentage points higher than in 2008-09.

While the issue of housing foreclosures bears attention, it cannot be determined that the number of foreclosures in process was significantly greater than those in the past decade. Similarly, district housing values seem to have readily recovered, posting a year-to-year price increase of 2½%. This does not mean that tax burdens for home owners are not of concern, but simply that the district remains an attractive one for home purchases.

Of special note, however, is that following the September hearing and prior to return of the closing briefs in November, the District concluded an agreement, now ratified, with the CSEA Custodial Unit #9159. This freely-negotiated agreement covers many of the

same issues raised in this fact-finding and, more than BOCES NW/P districts, provides a clear set of comparables for use in this matter. In fact, the District footnoted its closing brief to highlight comparability issues between its proposals and the Custodial Unit settlement. The District has not pleaded inability to pay.

After review, the proper pool for comparability is determined to be: (1) the comparable in-District CSEA bargaining unit whose labor contract was freely negotiated and represents the willing intent of the parties and (2) where in-district contracts do not cover the issues raised by the parties, those school districts that share common economic and demographic traits within BOCES NW/P and, especially, those of similar population size.

ISSUES AND POSITIONS OF PARTIES

Some fifty-two (52) exhibits supported the issues that the parties presented for resolution. Some were valuable and others less so. The Fact Finder hopes that the parties consider each recommendation on its merits, as well as the totality of the package. This is an opportunity to look forward and consider the merits and equities of a proposed resolution, which is in their mutual interest.

Term of Agreement

The collective bargaining agreement (CBA) expired on June 30, 2010. The parties have been in negotiation for 1½ years. The District seeks a renewal CBA for a four-year period expiring June 30, 2014. While the Union has proposed a renewal term of three years, it notes in its brief that it is not opposed to a four-year renewal term.

Recommendation – Term of Agreement: The renewal agreement should be for the four year period from July 1, 2010 through June 30, 2014.

Rationale: After 1-½ years of negotiations, there is a need for stabilizing the relationship between the parties for a comfortable period of time. Since there is no objection to a four-year CBA, the same is recommended.

Wage Increase

The Union demand and the District offer for a wage increase are for a four-year CBA, as follows:

	<u>Union</u>	<u>District</u>
Effective July 1, 2010	+ 1.5%	No Change
Effective July 1, 2011	+ 2.0%	+ 1.0%*
Effective July 1, 2012	+ 2.5%	+ 1.25%
Effective July 1, 2013	+ 2.5%	+ 1.5%
 CUMULATIVE VALUE	 + 8.77%	 + 5.07%

District further proposes no retroactive pay to the first year of the CBA.

The Union justifies its proposal by pointing to two neighboring districts: Hendrick Hudson and Ossining. These districts negotiated and settled two-year and three-year contracts providing annual wage increases of 2.5% to 2.6% during the same time frame as negotiations were underway in the District. Supporting its argument, the Union notes a NY CPI-U increase of 4.1% since the clerical contract expired and an undesignated fund balance of \$4.7 million it claims is higher than State guidelines allow. It should be noted that 13 of the 16 unit members are already at the top step of their pay grades, so no additional step increments will be received by them. Each 1% increase in base wages is estimated to cost \$8,350 for 2010-2011.

The District does not claim inability to pay, but argues that unit members already have one of the better salary and benefits packages in the NW/P districts and in the previous three-year contract (2007-2010) received wage increases of 3 ¼%, 3 ½% and 3 ½%. It notes that District tax burdens are high and taxpayers are losing homes, the State-imposed property tax cap has changed the dynamics of budget-making and approval and CSEA has re-negotiated its State CBA to provide for no general wage adjustment for 2011-12, 2012-13 and 2013-14.

During the fact-finding process, the District and its CSEA Custodial Unit settled a new four-year CBA. This freely-negotiated agreement provides the best wage increase comparable for what is acceptable to a non-teaching group and the District and creates a template for what is reasonable and acceptable. This CBA calls for the following:

CSEA CUSTODIAL UNIT WAGE AGREEMENT

<u>Time Period</u>	<u>Adjustment</u>
For 2010-2011	No change in salary schedule from 2009-2010
Effective June 30, 2011	2009-2010 salary schedule increased by 1.5%
Effective July 1, 2011	2010-2011 salary schedule increased by 1.5%*
Effective July 1, 2012	2011-2012 salary schedule increased by 1.5%
Effective July 1, 2013	2012-2013 salary schedule increased by 1.5%

*Effectively, 2011-2012 salary rates are 3% greater than the 2009-2010 schedule. There is no retroactivity to 2010-2011.

Recommendation - Wages: It is recommended that the following wage adjustment be applied to the CSEA Clerical Unit.

<u>Time Period</u>	<u>Adjustment</u>
For 2010-2011	No change in salary schedule from 2009-2010
Effective June 30, 2011	2009-2010 salary schedule increased by 1.5%
Effective July 1, 2011	2010-2011 salary schedule increased by 1.5%
Effective July 1, 2012	2011-2012 salary schedule increased by 1.5%
Effective July 1, 2013	2012-2013 salary schedule increased by 1.5%

Rationale: The contracts for other bargaining units in NW/P were negotiated at different periods of time and are constructed based on various assumptions and internal relationships. The primary comparable is the recently ratified contract between the District and the CSEA Custodial Unit, a blue collar, non-teaching unit within the District. This wage proposal is better than originally offered by the District and, although there is no wage increase for the first year and no retroactivity, the second-year salary schedule is 3% greater than the final year of the previous contract (also the first year of this contract). This base wage increase has a cumulative value of 6.13% and an average annual value over the four year contract life of 1.53%.

For the thirteen (13) unit members at Step 7, having an average base salary of \$55,587 and no increments, the average base salary will increase to \$58,998 by July 1, 2013 – a wage increase of \$3,411. During the four-year contract period, these unit members will receive cumulative gross earnings increases of \$7,630, as shown below:

CUMULATIVE GROSS PAY INCREASES (STEP 7)

<u>Contract Year</u>	<u>2009-10 Wage</u>	<u>Adjusted Wage</u>	<u>Increased Pay</u>
2010-2011	\$ 55,587	N/C	-0-
2011-2012	55,587	57,267	\$ 1,680
2012-2013	55,587	58,126	2,539
2013-2014	55,587	58,998	3,411
CUMULATIVE GROSS EARNINGS INCREASES			\$ 7,630

These wage adjustments also send a signal to District taxpayers and voters at budget adoption time that both the District and Union recognize the changed financial and economic realities in the State and County and are prepared to work together.

Employee Health Insurance Contribution & Declination Payment

The existing CBA provides that employees contribute a fixed dollar amount toward the cost of their health insurance benefit and pay a small percentage of the total District cost, as shown:

EMPLOYEE SHARE OF HEALTH INSURANCE COSTS

<u>Plan Type *</u>	<u>Plan Cost</u>	<u>Employee Share</u>	<u>Employee %</u>
SINGLE (1)	\$ 7,300	\$450	6.2%
FAMILY (10)	18,084	650	3.6%

* 5 employees decline health insurance

The Union has agreed to go off a fixed dollar contribution and move to a 5% of premium contribution rate for both plans for the remainder of the 2011-12 school year and 2012-13. It proposes also that (1) employees hired after ratification contribute at the rate of 10% of premium and (2) those declining a plan receive a buy-back benefit similar to that contained in the CSEA Custodial CBA, §20.6); i.e. an annual payment of 50% of the District cost for individual coverage. The Union notes that the contribution rate increases

proposed by the District are higher than those recently occurring in the neighboring Ossining and Hendrick Hudson districts, which increased by 1% and 1½%. However, the Union notes that Ossining employees contribute 11% of premium, while Hendrick Hudson employees contribute 9½%.

The District, citing premiums that are “increasing at an alarming rate”, notes that the CSEA Clerical Unit “pays less than all other district employees... despite the fact that it is the only bargaining unit with salaries over the median.” It notes the higher contribution rates in the NW/P data base, including Lakeland, which goes as high as 20%. The District proposes the following employee contribution rates as percentage of applicable premiums: 2010-2011, No Change; 2011-12, 6%; 2012-13, 8%; 2013-2014, 10%. However, the District’s recent settlement with the CSEA Custodial Unit provided for contribution rates that are somewhat lower than they have asked from this bargaining unit, to wit:

CSEA CUSTODIAL UNIT HEALTH INSURANCE CONTRIBUTION

<u>Effective Date</u>	<u>Employee Share</u>
July 1, 2011	6%
July 1, 2012	7½ %
July 1, 2013	9%

Recommendation – Health Insurance Contribution Rate: Effective July 1, 2011, all who are member on the date of ratification shall contribute 6% of their applicable premium for health insurance coverage; effective July 1, 2012, this percentage will increase to 7½% effective July 1, 2012, this percentage will increase to 9%. These deductions should be taken through a §125 Plan. Members hired after the date of ratification shall contribute 10% of applicable premium.

Rationale: It is clear from the evidence that most districts in the NW/P BOCES data set have health insurance contributions based upon percentage shares, not fixed dollar amounts. Equally so, there is strong movement to increase the employee share of premium and, in fact, this has been the case with the teaching unit and, now, in the recently ratified CSEA Custodial CBA. While many NW/P non-teaching units contribute a higher percentage than the District seeks from this unit, I find the best comparable is

that in the new CSEA Custodial CBA and the same is recommended. The Union has proposed that new members contribute at the rate of 10%.

This recommendation will impose a cost on members that increases over time as health insurance premiums increase. This, of course, will be offset by the general base wage adjustment. Assuming that premiums increase at 10%/year, a not unreasonable assumption, the cost to those electing the Family Plan will increase by \$1,319/year, from the present fixed share of \$650/year to \$1,969, effective July 2013. The average unit member at top step, earning \$58,998 in base pay, will, then, contribute about 3.3% of pay, less with longevity included.

EMPLOYEE COST OF FAMILY PLAN (EST.)

<u>Effective Date</u>	<u>Employee Share</u>	<u>Family Plan (E)*</u>	<u>Annual Cost</u>
Effective July 2011	6%	\$18,084	\$ 1,085
Effective July 2012	7½ %	19,892	1,492
Effective July 2013	9%	21,881	1,969

Assumes a 10%/yearly premium increase

Recommendation – Declination Buy-Back: Effective July 1, 2012, all members who provide proof of suitable alternative health insurance coverage, may waive District coverage and receive 25% of the cost of the Individual premium. This shall be done in the same manner as for the CSEA Custodial Unit CBA in effect at this time.

Rationale: This recommendation seeks to enhance the possibility that the District may incur cost savings by encouraging qualified clerical employees to waive health insurance coverage. Using this incentive next year, if just one additional employee with a Family Plan waived coverage, the District could save \$17,885 [19,892 - (25% x 8,030*)] and the employee could receive a \$2,000 benefit. With both CSEA in-District unit members paying higher health insurance contributions, this recommendation begins to equalize the declination benefit, as well. Five unit members presently decline insurance.

Unused Sick Leave Buy-Back Value and Application to RSSL §41-J

Unit members are allowed to accumulate up to 260 days of sick leave. The first 100 days

* Calculated by progressing premium costs by 10% over 2011 estimate.

can be applied to RSSL §41-j retirement credit. At retirement, sick leave is cashed out for between 101 and 246 days, or the 145 days beyond the first 100 accumulated days, at the rate of \$60/day. This has a maximum cash value of \$8,700. The District seeks to change this provision of the CBA.

The District proposes that the first 165 days of accumulated sick leave be applied to RSSL §41-j retirement credit. Cash buy-out would be allowed for those accumulated unused sick days beyond 165 and up to 260, or 94 days, at the rate of \$75/day. This would have a maximum cash value of \$7,050. The Union rejects any reduction in the amount of eligible buy-back days; it withdraws its proposal to increase the daily buy-back amount from \$60/day to \$75/day.

After the hearing and before submission of closing briefs, the District and CSEA Custodial Unit included in their new CBA a provision that custodial bargaining unit members receive \$65/day for each unused accumulated sick day beyond 165 and up to and not to exceed day 248 at the time of retirement.

Recommendation – Unused Sick Leave Buy-Back Value and Application to RSSL

§41-J: Unit members shall be allowed to buy-back at retirement unused accumulated sick days beyond 165 and up to 260 at the rate of \$75/day. The first 165 days shall be used as retirement credits pursuant to RSSL §41-j.

Rationale: NW/P BOCES districts provide a wide range of comparables. The District-CSEA Custodial Unit agreement provides the best comparable – a recently ratified non-teaching contract within the same district. The recommendation is based on this settlement, as modified by the offer of the District to this unit. The larger retirement system credit will result in larger pension payments over time, as contrasted with the

possible cash buy-back reduction for employees who might have a maximum allowable accumulation.

Summer Work Hours

Unit members normally work a 35-hour week when schools are in session. The expired CBA provides that when schools are not in session during the summer, bargaining unit members go on a 30-hour week, working Monday – Thursday from 7:30 AM – 3:00 PM (6 ½ hours) and Friday from 7:30 AM – 11:30 PM* (4 hours).

*The contract allows an 8 AM – 12 PM option.

The District seeks to change the summer work schedule of unit members by adding 2 ½ hours to the work week and increasing the length of the Friday work schedule. It notes that there is no coverage after 12 PM on a summer Friday, seven of sixteen districts have longer summer hours and an absence on Friday counts as only a half-day absence, placing the District in “double jeopardy”. The District further notes that custodial unit workers are on a 40-hour work week with no reduced summer hours.

The Union seeks no change in the summer work schedule, noting that it was originally proposed by a member of the Board of Education, is an increase in work hours, has been in effect for many years and is a long established practice within the district.

Recommendation – Summer Work Hours: No change is recommended in the summer work schedule.

Rationale: The District has not made a case for summer work schedule change, nor indicated how such a change would benefit the operation of the schools. Summer tends to be a quieter period for school activity; not many teachers or children are in school buildings. It’s difficult to believe that a summer Friday afternoon would be busier and the District, other than arguing that custodial staff work 40 hours, has not shown what work improvement might take place during the 2½ hour work add-on period it seeks.

It may be true that the custodial unit works a 40-hour summer work week, but, there, comparability only goes so far. The more accurate set of comparables is those the District has used to argue most of its case: the BOCES NW/P data set. Using that data, it is clear that the Croton-Harmon Clerical Unit has quite comparable summer work hours to those in NW/P and is one of the 10 of 16 districts working a 30-hour summer schedule. For these reasons, no change is recommended and this should be deferred to future bargaining.

SUMMARY OF RECOMMENDATIONS
(Underlining indicates Recommended Changes)

The following summarize the Fact Finder recommendations for resolution of the impasse between the Croton-Harmon UFSD and CSEA Local 860, Croton-Harmon Clerical Unit.:

Recommendation – Term of Agreement: The renewal agreement should be for the four year period from July 1, 2010 through June 30, 2014.

Recommendation – Wages: It is recommended that the following wage adjustment be applied to this bargaining unit.

<u>Time Period</u>	<u>Adjustment</u>
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<u>Effective July 1, 2013</u>	<u>2012-2013 salary schedule increased by 1.5%</u>

Recommendation – Health Insurance Contribution Rate: Effective July 1, 2011, all members on the date of ratification shall contribute 6% of their applicable premium for health insurance coverage; effective July 1, 2012, this percentage will increase to 7½%; effective July 1, 2012, this percentage will increase to 9%. These deductions should be taken through a §125 Plan. Members hired after the date of ratification shall contribute 10% of applicable premium.

Recommendation – Declination Buy-Back: Effective July 1, 2012, all members who can provide proof of suitable alternative health insurance coverage, may waive District coverage and receive 25% of the cost of the Individual premium. This shall be done in the same manner and fashion as for the CSEA Custodial Unit CBA in effect at this time.

