

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Impasse

Between

Hornell City School District

And

Hornell Educators Association

Case No. M2009-245

Before: Ronald E. Kowalski, Ph.D.
Fact Finder

FACT FINDER REPORT AND RECOMMENDATIONS

Upon notification of a continuing impasse between Hornell City School District (hereinafter "District") and the Hornell Educator's Association (hereinafter "Association") the New York State Public Employment Relations Board appointed the Undersigned to serve as a Fact Finder. The responsibility of the Fact Finder is to inquire into the causes and circumstances of the dispute and make recommendations to the parties for its settlement.

The parties held a number of negotiation sessions prior to the declaration of impasse. Mediation sessions were held in an effort to resolve the remaining issues. While some progress was made during mediation in narrowing the differences between the parties and limiting the issues, it failed to produce a final settlement acceptable to both parties. Fact-finding thus became necessary and arguments and data were submitted to the Fact Finder as agreed by the parties. Both parties put forth a vigorous and detailed defense of their respective positions.

The issues brought before the Fact Finder were Wages, Health Insurance, Dental Insurance, Teacher Work Day and Work Load, and Termination Pay. The parties have exchanged proposals on two- and three-year Agreements. While the District prefers a two-year Agreement, the parties are already well into the second year of a new Agreement and the Fact Finder would thus recommend a three-year Agreement which would allow both the District and the Association time to assess the

effectiveness of any new provisions prior to returning to bargaining. The Fact Finder will thus make his recommendations based on a three-year Agreement that would expire June 30, 2012.

SALARY

Salary has been one of the major concerns of both parties in this dispute. The Association has argued that the current salaries of its members lag significantly behind those of comparable Districts in the region, especially after five years of experience. Hornell teachers are the lowest paid teachers in Steuben County at the nine through fifteen year experience level, ranking last among eleven Districts. The Union contends its proposal of 13.5% salary increase over a three-year Agreement would only begin to close the gap between Hornell teachers and their colleagues in the area, especially given recent settlements for comparable Districts for 2009-2010 have still been in or about 4%.

The District argues its offer of 3% per year for a two-year Agreement is reasonable given the financial difficulties facing the District and the taxpayers of the City of Hornell. Hornell teacher salary concerns have exceeded the cost of living for most recent years. The District's proposed increase of 3% would continue to maintain their current

purchasing power exceeding the 1.8% increase in the consumer price index in 2009-2010. Given the fact that the residents of the Hornell City School District are already relatively highly taxed, and the current high unemployment rate, salary increases in excess of those proposed by the District would be an undue burden on the taxpayers. The District also contends that current salary settlements have been declining in the area and no longer are in the 4% range sought by the Association. Finally the District believes a settlement of 3% must be accompanied by the changes it seeks in teacher scheduling.

The Fact Finder has carefully reviewed the extensive data submitted by both the District and the Association on the question of what constitutes an appropriate salary increase. The data clearly indicates that Hornell teachers do lag behind other teachers in the region especially from the five years of experience mark through the middle range of experience up to 26 years and beyond. The data also indicates that while salary increases for many comparable Districts in the area were in the 4% range in 2009-2010, the trend is for subsequent increases to be declining closer to 3%. Given these facts, the Fact Finder believes some equity adjustments are necessary to begin to close the gap above five-year experience, but that they can only be modest given the current fiscal and economic conditions in the area.

Recommendation

The Fact Finder would recommend the following salary and equity adjustments for the duration of the new three-year Agreement. A salary increase of 3.00% for 2009-2010 plus a \$600 equity adjustment for teachers with ten to thirty years' experience as of the 2009-2010 school year to be added to base salary. A 3.00% salary increase for the 2010-2011 school year plus a \$500 equity adjustment for teachers with five to ten years' experience as of the 2010-2011 school year. A 3.00% salary increase for all teachers in the 2011-2012 school year.

WORKING CONDITIONS

The District has proposed changes in current provisions of Article 5 *Working Conditions*. The District seeks to delete much of the language in Sections 5.1, 5.2, 5.4, 5.5 and 5.11 governing secondary teacher assignment, work day and teaching load and eliminating preparation time and replace it with language that would provide that the 438 minutes of paid work time be assigned by providing a duty-free 30 minute lunch and a preparation period equal to a full teaching period. The rest of the day could thus be assigned to instruction or other assignments by the District. The District argues the current provisions are far too restrictive and grant more preparation time than most other

districts and limit flexibility to provide for new instructional approaches necessary to provide a quality educational experience for its students.

The Association contends the current provisions are reasonable and do provide for a good educational experience for the District's students. The Association does not believe there have been any educational arguments put forth by the District to support the changes it has proposed in the work day or work load of secondary teachers. The proposal would just give the District total control of what was teacher self-directed time, which is currently being used by teachers to provide for a good student educational experience.

The Association does seek a change in the current provisions governing elementary preparation time. The Association has proposed allowing teachers at the primary levels (PreK-2) 250 minutes a week of preparation time in addition to the 45 minutes currently existing for time before students arrive and after they leave. At the elementary level (Grades 3-6) allow at least 80 minutes of time during the work day for preparation including the time before and after student arrival. These proposed changes would only place in the new agreement what has been in place for over 11 years in the schedule structure for elementary teachers. The District is opposed to the new language as it cannot guarantee the time currently in place if financial conditions dictate a cut back in "specials" which allow for the current preparation time.

The Fact Finder is aware of the importance of this issue to both parties in the dispute. The District is seeking greater flexibility and the Association believes there is a need to have specific educational and instructional plans in place requiring such flexibility prior to limiting teacher preparation time which is now being used to prepare for current instructional requirements. There is currently an additional twenty (20) minute period at the end of the school day that the Fact Finder believes could be utilized for such activities as team planning or even teacher training as well as supplemental instruction for students in need of additional help. The Fact Finder would recommend that the principal be given direction over the assignment of this time for such activities or other meetings to supplement the instructional process including teacher training. The Fact Finder further is of the opinion a committee should be established made up of Association-selected faculty from the high schools, and administrators, including the high school principal and others to be selected by the Superintendent, to examine the future instructional needs at the secondary level and scheduling, with a deadline to bring further new scheduling ideas that might address instructional plans for the future. The matter of elementary preparation time the Fact Finder would leave to further negotiations.

Recommendation

The Fact Finder would recommend that the final period of the day, approximately 20 minutes in duration, be available at the discretion of the high school principal for meetings, in-service education and team meetings as well as other necessary activities to support instruction. The Fact Finder would also recommend a committee be formed made up of Association members selected by the Association, the high school principal and other administrative staff selected by the Superintendent, which would examine future instructional plans and develop scheduling that would address such plans. The Committee would have a deadline to report on its findings. The Fact Finder would leave the question of elementary preparation time to the parties to be resolved in further negotiations.

HEALTH AND DENTAL INSURANCE

The District has proposed changes in the provisions of Article 29 *Health Insurance*. The changes sought are to have the plan name be called the Steuben Plan instead of the Steuben Area Employers Benefit Plan and have it deemed to be the equivalent of the prior plan. In addition the District seeks to change the dental plan to the Guardian plan called Guardian Value. The District also seeks to delete language in

Section 29.1(i)(1) that provides for arbitration for changes, as a change has taken place without the need for such arbitration. The District further seeks to alter Section 29.1 to provide that any future changes in plans must provide that the plan is substantially similar but not identical with respect to benefits. Language providing benefits must be identical or the District assumes responsibility for any loss in a single benefit is not realistic given the complex nature of health plans.

The District would also propose a change in provisions governing part-time employees which sets out a \$2,000 a year threshold after which benefits are available. The District would continue to provide benefits for part-time employees but for employees who work 20 or more hours a week. Finally, the District believes the current Agreement provides for a double payment for unused sick leave that is overly generous given it applies to both a retirement incentive lump sum payment as well as can be applied to credit for paying for health care in retirement. The District would propose eliminating the portion that provides for \$25 per day to be added to the current \$18,000 retirement incentive in Article 26.1.

The Association is opposed to the changes proposed by the District. A change in the health plan name as well as recognition that benefits are similar would lead to the loss of two riders that are now being provided as a result of the agreement by the parties to move to the

new plan. These riders allow for dependent care to age 25 and physicals for staff under the age of 50. These riders which provide Association members with important benefits cost the District some \$42,000 but are necessary to maintain the level of benefits that existed under the prior GHI Plan.

The Association also opposes the District's proposal to eliminate the \$25 per day payment for unused sick leave as part of the Retirement incentive in Article 36. The Association does not believe the provisions for a credit toward the payment of health insurance in retirement as provided in Article 29 is the same as receiving \$25 for unused days in the Retirement incentive in Article 36. It is not double dipping as only those who meet the specific eligibility requirements to receive the incentive which is for a very limited window of time can collect monies under this provision for unused sick leave. Article 29 allows for a credit, not payment of monies toward health insurance, and is available to all the Association members.

The Fact Finder has reviewed the arguments and evidence submitted by the parties on the issue of Health and Dental Insurance and believes the District's proposal of incorporating the Steuben Plan as the health plan and having it deemed the equivalent plan. The expenditure of \$42,000 for the two riders, one of which will be incorporated into the new plan as a matter of national health reform law

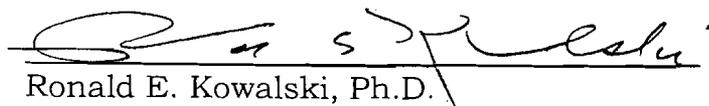
would be better spent on maintaining the current premium contribution rates. The incorporation of the Guardian Value Dental Plan would also benefit both parties.

The Fact Finder further is of the opinion the parties can find a way to utilize the existing grievance procedure to resolve any differences that arise out of the provisions for health insurance and do not need a separate procedure. The Fact Finder believes the parties can resolve the remaining issues including retirement incentive in subsequent negotiations.

Recommendation

The Fact Finder recommends that the Steuben Plan shall be incorporated as the health plan and be deemed to be the equivalent plan. The parties should also adopt the Guardian Value Dental Plan as the dental plan within the Collective Bargaining Agreement. The Fact Finder would further recommend that the parties utilize the existing grievance procedure as the mechanism to resolve any differences that arise over the provisions for health insurance.

January 20, 2011
Date


Ronald E. Kowalski, Ph.D.