

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Fact-Finding between

West Hempstead Union Free School District,
Public Employer,

**REPORT AND
RECOMMENDATIONS
PERB CASE M2009-352**

-and-

West Hempstead Education Association,
Employee Organization,

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BEFORE: Jay M. Siegel, Esq., Impartial Fact Finder

APPEARANCES: For the West Hempstead Union Free School District
Guercio & Guercio, LLP
By: Gregory J. Guercio, Esq.

For the West Hempstead Education Association
New York State United Teachers
By: Mary Meyers, Labor Relations Specialist

BACKGROUND

This Fact-Finding proceeding is between the West Hempstead Union Free School (District) and the West Hempstead Education Association (Union). The District is located in the Town of Hempstead in Nassau County, New York. The District has an enrollment of approximately 2,200 students spread out over one high school, one middle school and three elementary schools. The Union represents approximately 200 teachers.

The Collective Bargaining Agreement (CBA) at issue covered the period of July 1, 2005 to June 30, 2008. The parties then entered into a Memorandum of Agreement (MOA) that covered the period of July 1, 2008 to June 30, 2009. The MOA provided a salary increase of 3.125% plus step increment, with no other changes.

In the fall of 2009, the parties started negotiating a successor CBA to the one that expired on June 30, 2009. The parties conducted approximately five negotiating sessions between September 2009 and March 2010. On March 5, 2010, the District declared impasse and requested that the Public Employment Relations Board (PERB) appoint a mediator.

After one mediation session failed to produce an agreement, the parties requested the appointment of the undersigned as Fact Finder. In November 2010, Richard Curreri, PERB's Director of Conciliation, granted this request and directed the undersigned to issue findings and recommendations for how the dispute should be resolved.

A hearing was held at the offices of the District on February 7, 2011. The parties were accorded a full and fair hearing, including the opportunity to present evidence, present exhibits, examine witnesses and make oral and written arguments in support of their respective positions.

The positions taken by both parties on the outstanding issues are quite adequately specified in the exhibits and written arguments of the parties, all of which are incorporated by reference in this Report. Their positions will be summarized for purposes of this Report. The record was closed on or about February 7, 2011, upon the Fact Finder's receipt of the parties' written arguments.

At the February 7, 2011 hearing, the parties both agreed that the outstanding issues in this dispute are salary, professional development and appeal procedures for Annual Professional Performance Review (APPR).

SALARY

Position of the Union

The Union stresses that the salaries of its teachers rank well below those of other teachers in Nassau County. It states that at the beginning of the negotiations, it attempted to remedy this issue by proposing salary increases that placed its members at the median position for teachers in Nassau County. The Union notes that as the economy faltered, it responded by downwardly adjusting its economic proposal and by reducing its economic demands to one issue, namely, salary.

The Union maintains that its salary proposal is extremely reasonable. It now proposes salary increases of 1% plus step increment for 2009-10, 1% plus increment for 2010-11, 1.5% plus increment with increment delayed until 2/1/12 for 2011-12, and 1.5% plus increment with increment delayed until 2/1/13 for 2012-13.

The Union asserts that the District clearly has the financial ability to pay for the fair and equitable salary increase it has proposed. The Union asserts that its analysis of the District's budget does not reveal a District in crisis to the point where it cannot afford any salary increase. The Union notes that its financial expert, Peter Applebee, a manager for the New York State United Teachers in Educational Finance, testified about his analysis of the District's budget and its ability to pay for the Union's proposal. The Union stresses that Mr. Applebee's testimony and report shows that the District had approximately \$2.35 million in unreserved fund balance at the end of the 2009-2010 fiscal year.

The Union argues that the District's unreserved fund balance represents approximately 4.5% of the District's annual operating budget. It insists that this must be

considered a healthy fund balance as New York State law mandates that the maximum unreserved fund balance a school district may carry is 4% of a current school year budget.

The Union contends that its financial analysis must be given credence because Mr. Applebee is a highly credible expert in municipal finance. He worked at the New York State Division of Budget for many years, concentrating in kindergarten through twelfth grade education. Mr. Applebee's credibility was enhanced by his concession that the District has done a fantastic job of predicting expenses and revenues. According to the Union, Mr. Applebee found that, over the last three years, the District has underspent its budgets by a net total of \$18,267. During the same three year time period, it notes that the District's revenues exceeded its projections by a total of \$629,078. He testified that this kind of budget forecasting was excellent and better than he usually sees.

The Union recognizes that the District has been utilizing its unreserved fund balance as a revenue to cover the difference between expenditures and revenues over the past few years. The 2009-10 budget is illustrative. The District established an expenditure budget of \$52,406,630 with projected revenues of \$51,277,660. Thus, it planned on using approximately \$1.12 million of unreserved fund balance to cover the difference between revenues and expenses.

However, the Union insists that even though the District built its 2009-10 budget intending to use over \$1 million in fund balance, the fact remains that its fund balance remained healthy at the end of the 2009-10 school year. It maintains that the District's June 30, 2010 unreserved fund balance of \$2.335 million is a healthy fund balance. It notes that the District started the 2009-10 school year with a fund balance of

approximately \$2.5 million. Thus, its overall fund balance stayed nearly the same when all of the revenues and expenses for that year were finalized.

The Union concedes that the District planned on using more than \$1 million of fund balance again in the 2010-11 budget. However, its financial expert predicts a fund balance of more than \$2 million at the end of the 2010-11 school year. Since this is approximately 3.9% of the District's annual budget, the Union insists that the District will have the ability to pay for its proposal.

The Union asserts that its salary proposal should be recommended because it will not require the District to spend down its entire fund balance. It argues that its proposal is sensitive to the District's economic concerns. It avers that its proposal shows that it understands that the parties are negotiating in the midst of a difficult economy. It maintains that it is being sensitive to the economic concerns of the District and the community it serves.

At the same time, the Union stresses that the comparative salary data cannot be ignored. According to the Union, its teachers have nearly the lowest salaries of Nassau County teachers at virtually every level of the salary schedule. For example, its teachers are the 36th highest paid out of the 38 districts in Nassau County with data on file for pay at Step 5 of the Master's degree salary schedule for 2008-09. Its teachers rank 35th of 38 at Step 10 and 36th of 38 at the maximum pay levels.

The Union contends that its low salary ranking mandates the recommendation of its proposal in order to prevent teachers' salaries from being completely uncompetitive vis-à-vis their comparables in Nassau County. The Union notes that even if its proposal is adopted, its teachers will still lose ground when compared to other teachers in Nassau

County. This is so because all of the settlements covering teachers in Nassau County provide for salary increases that are well in excess of the amount proposed by the Union. The Union observes that there are more than a dozen settlements that provide wage increases in excess of 3% per year covering many of the years of this proposal. It also notes that there are not any settlements with as modest an increase as has been proposed by the Union.

The Union insists that its proposal shows that it has great respect for the economic challenges facing the District. It argues that the fiscal prudence it has shown by issuing its proposal demonstrates that it has a keen understanding of the District's economics. That keen understanding allows the Union to confidently assert that the District has the ability to pay for the Union's proposal. Since the District has the ability to pay for the proposal and the proposal will at least allow its teachers to stay somewhat competitive, the Union urges the Fact Finder to adopt its salary proposal.

Position of the District

The District proposes a four year agreement providing no salary increase in 2009-10 and 2010-11, except for the step increment that has already been provided in accordance with law. It then proposes an absolute wage freeze in 2011-12 and 2012-13, i.e., no salary increase and no step advancement in both years.

The District contends that a confluence of local, state and national economic events make its proposal an absolute necessity. It maintains that the District is in the midst of a severe financial crisis. According to the District, it cannot afford the Union's proposal without decimating its educational program and raising taxes to a level that the community cannot afford and has previously rejected.

The District argues that this negotiation is occurring during a limited recovery from one of the deepest recessions in history. It argues that the overall economic malaise, coupled with looming tax caps and substantial increases on mandated items such as retirement benefits and health insurance, make it abundantly clear that the District has no ability to pay for the salaries proposed by the Union.

The District notes that the District is not a wealthy community. It falls at the median of Nassau County districts, ranking 25th out of 56 districts. Unfortunately, the District does not receive State aid that comports with its ability to pay. It received \$1,779.37 per pupil in State aid, which ranks 33rd out of 56 Nassau County districts.

The District argues that a combination of a collapse in the District's housing market, coupled with a decrease in per capita income of its residents, makes this a particularly difficult time for its residents. The value of homes in the Town of Hempstead dropped nearly 10% between 2007 and 2009. Income dropped during this time as well. The housing reductions adversely affect tax rates in that they require the District to charge every resident more in order to receive the same amount of revenue. Equally compelling is the fact that the District residents cannot afford to absorb these increases. The District notes that the 2009 per capita income for residents in the Town of Hempstead was \$35,000.

The District notes that the national and State economy has been in a tailspin over the past few years. The District observes that major investment firms have collapsed, massive financial bailouts have been required to support some of the nation's largest businesses and the unemployment rate has skyrocketed. In the District's view, while the private sector contracted, public sector pension and health insurance costs continued to

escalate. The increased costs, in combination with decreased revenues from income taxes, sales taxes and user fees, have caused the state budget to be in disarray. New York State faces a \$10 billion budget deficit in 2011. Newly-elected Governor Cuomo's initial budget calls for an 11% cut in State aid for Long Island schools. This is occurring after last year's \$1.4 billion reduction in State aid to districts across the State.

In the District's view, Governor Cuomo's proposed property tax cap on local tax levies of 2% or the inflation rate, whichever is lower, makes budgeting even more precarious. It asserts that with annual step increases for teachers costing approximately 2%, the automatic step increases alone would cause the District's budget to rise above 2%.

The District argues that the combination of negative economic factors have led others in the public sector to call for wage freezes and that the same approach should be implemented in the District. It notes that President Obama, Governor Cuomo and Nassau County Executive Mangano have all proposed and/or instituted pay freezes for government workers.

The District avers that a wage freeze is even more important for the District because its revenues no longer match up with its expenses. This problem is severe because as the costs of health insurance, pension and step increment continue to rise, its revenue from property taxes, sales tax and State aid continue to fall.

The District notes that from 2007 to 2010, health insurance has increased by more than 29%. Teacher salary costs have increased nearly two percent a year to fund the costs of step increment even without an actual salary increase being provided to the salary

schedule. In addition, the District's pension costs increased by more than \$855,000 in 2010-11, putting the District in a great financial hole.

To make matters worse, the District has lost approximately \$1.5 million in revenue over the past three years due to the Island Park Union Free School District's decision to change West Hempstead High School from being the sole receiver of its secondary students. Now secondary students in Island Park may choose between West Hempstead and Island Park. According to the District, it has seen a 27% reduction in this revenue stream over the past three years and the reductions may very well continue into the future.

The District stresses that it was extremely challenging for the District to balance its 2009-10 budget due to the loss in tuition aid and a reduction in \$1.2 million in State aid. This required the District to transfer \$1 million from its unreserved fund balance to balance the budget. It implemented a 0% budget to budget increase and this still resulted in a 3.99% property tax increase.

In the District's estimation, things got even worse in 2010-11. That year its initial budget increased by \$2.4 million, mostly to fund mandated expenses. At the same time, its revenue from State aid, tuition, etc., dropped by more than \$700,000. This led the District to propose a budget increase of 3.64%, which increased taxes by 9.4%. After this budget was overwhelmingly defeated, the District cut \$1.35 million from its budget. In order to achieve these reductions, the District cut 38 staff members. This budget was approved by the voters.

The District insists that its 2011-12 budget will be even more challenging. In addition to the continued reductions in tuition and State aid, the District anticipates losing

nearly \$500,000 in federal stimulus aid. While this is occurring, the District anticipates an increase of nearly \$500,000 in pension costs in 2011-12, a nearly \$900,000 increase in health insurance costs and more than \$400,000 in increases to fund step increment and lane movement for teachers earning additional graduate credits. The District estimates that these costs alone would require taxes to go up by more than 6% before any salary increases are taken into account. The District insists that this is the reason it simply cannot afford to pay the cost of step increment, much less “new money” for salary increases.

The structural deficits in the District’s current budget, coupled with the decreasing revenue, make it abundantly clear that the only foreseeable outcome is staff reductions and/or program cuts. The District asserts that the only way that staff reductions and program cuts have a chance to be moderated is if its proposal is recommended by the Fact Finder and agreed to by the Union. It maintains that if the District was required to fund the Union’s proposal, it would have to cut approximately 24 teaching positions, more than 10% of staff. In the District’s view, this is untenable. The District contends that when these facts are considered along with the state of the overall economy, it is clear that the District’s proposal is fair, warranted and appropriate.

DISCUSSION ON SALARY

The Fact Finder must begin by directly addressing the District’s financial condition and whether it can absorb the salary increases proposed by the Union. The evidence establishes that the District’s financial woes are significant. Over the past three years, its State aid revenue and the revenue it receives for tuition from the Island Park School District have declined by more than \$1.5 million. While its revenues have been

reduced, it has had to fund several hundred thousand dollars of annual increases for pension, health insurance and step increment costs. The District's financial numbers have simply not been matching up. It has been forced to spend significantly more than it has been taking in as revenue in each of the past three years. This has required the District to utilize fund balance to balance its annual budgets and be able to handle some of the deficits that it has been contending with. At this point, the fund balance cushion of nearly \$5 million that the District once had has been reduced to approximately \$2 million.

When these structural problems with the District's revenues and expenses are considered along with the state and national economic picture, it becomes clear that the District does not have the ability to pay for the Union's salary proposal. The fact remains that further State aid cuts are looming while pension and health insurance costs continue to escalate.

From an economic standpoint, the District's 2011-12 budget data is very worrisome. It shows that its revenue from State aid and other sources is likely to be reduced by \$1 million in 2011-12. In addition, more than \$1 million of new money will need to be raised by the District just to fund the increased pension and health insurance costs. While there is at least some chance that the District's revenue forecasts will be brighter than it anticipates, it is very likely that its health insurance and pension costs will rise by more than \$1 million no matter what. These facts mandate a much more moderate salary increase than is being proposed by the Union.

There is no doubt that the Union's proposal shows sensitivity to the economic challenges facing the District and its taxpayers. Its salary proposal is more modest than any recent settlement in Nassau County according to the information submitted to the

Fact Finder. However, the Fact Finder determines that the Union's proposal cannot be recommended. The compounding effect of the retroactive payments, coupled with the future costs of its salary proposal and step increment, cannot be sustained by the District without severe disruptions to its staffing and program.

Although the Union proposed a modest salary increase of 1% for 2009-10 and 1% in 2010-11 followed by an increase of 1.5% in 2011-12, its proposal would have significant financial ramifications on the District's 2011-12 budget because of the compounding effect of providing retroactivity. The District would need at least \$750,000 just to fund the salary increases proposed through 2011-12, i.e., the first three years of the CBA.

The Union has also been very reasonable in proposing that increment be frozen for the first half of 2011-12 and the first half of 2012-13. However, even though this aspect of the Union's proposal is reasonable, the fact remains that the cost to fund one-half of a year of increment would be nearly \$200,000 in 2011-12. Thus, if the Union's proposal was recommended by the Fact Finder, the District would need more than \$900,000 of additional money just to fund the first three years of the settlement.¹ (i.e., at least \$750,000 for the salary increases described above for 2009-10, 2010-11 and 2011-12, plus \$185,000 to pay for the one-half year cost of step increment). An additional \$100,000 would have to be added by the District to fund differential costs as well, i.e.,

¹ The Fact Finder is aware that the District has already expended funds for the cost of increment in 2009-10 and 2010-11. This is not part of this analysis because the Fact Finder is looking at the District's current funding predicament and whether it has the ability to fund whatever has not been funded to date.

increases for post-employment continuing education that are also automatic in the salary schedule².

The Fact Finder is convinced that the evidence demonstrates that the District's budget cannot absorb a cost of \$1 million at this time. The evidence establishes that the District has been forced to make significant cuts over the past two years. It has been quite adept at predicting revenues and expenses and has been operating very close to all of its forecasts. This historical perspective convinces the Fact Finder that the District simply does not have the ability to pay for the Union's proposal. For all of the reasons above, the Fact Finder recommends that no additional monies be provided for 2009-10 and 2010-11. In other words, teachers shall only receive step increment for both of those years.

The next issue becomes what to do about the last two years of the proposed agreement. The Fact Finder determines that the District can afford salary increases if step increment and differential movement is frozen over the next two years. The Fact Finder reaches this conclusion because step increment and differential increases cost more than 2.5% per year in salary, a significant amount of money to fund in a difficult economy. Although the Fact Finder finds that the evidence establishes that the District's financial condition allows it to provide some monies to teachers, the Fact Finder determines that the District cannot afford the cost of increment, differential increases, plus salary increases in the last two years.

Since the District genuinely has limited resources and teachers have received step increment and differential movement over the first two years of the agreement, the Fact Finder determines that the parties should freeze step movement and differential

² Evidence submitted by the District establishes that the District spent approximately \$108,000 to fund differential increases in the 2009-10 school year.

movement for years Three and Four. In lieu of step and differential movement, salary increases should be provided for those years. This will allow West Hempstead teachers to remain somewhat competitive vis-à-vis their comparables in Nassau County. This is imperative given the fact that the District's teachers already rank at the bottom in Nassau County. If this recommendation is adopted, the District's teachers will still lose competitive ground to their comparables because all of the settlements previously reached provide for greater salary increases over the relevant four years that is being recommended by the Fact Finder. Nonetheless, although teachers may lose some ground to their comparables, the Fact Finder's recommendation allows them to remain within striking distance of their comparables.

The Fact Finder recommends an increase of 1.5% effective September 1, 2011 and an additional 1% effective February 1, 2012. This recommendation will cost the District approximately 2% in 2011-12. Similarly, for the 2012-13 school year the Fact Finder recommends a salary increase of 1% effective September 1, 2012 and an additional 1.5% effective February 1, 2013. The phasing in of the salary increases will have a less detrimental effect on the District's budget. The Fact Finder is convinced that this is the best way for the District to utilize its limited resources.

The Fact Finder recognizes that this settlement is more modest than has been reached with a teachers' unit in Nassau County in quite some time. The Fact Finder determines that the District's financial situation mandates greater moderation than has been seen in the past. Accordingly, I make the following:

RECOMMENDATION

- Salary schedules will not be increased in 2009-10 and 2010-11. Salary schedules will be increased by 1.5%, effective September 1, 2011; an additional 1.0%, effective February 1, 2012; an additional 1.0%, effective September 1, 2012; and an additional 1.50%, effective February 1, 2013.
- Step increment and differential movement will be frozen effective July 1, 2011 through June 30, 2013. Step increment and differential movement will recommence effective July 1, 2013.

NEW ANNUAL PROFESSIONAL PERFORMANCE REVIEW LEGISLATION

Position of the Union

Effective July 1, 2010, the New York State Legislature enacted Section 3012-c of the Education Law. This new section mandates a new timeline regarding the evaluation of teachers. It also requires that any collective bargaining agreement entered into after July 1, 2010 must comply with and be consistent with the provisions of Section 3012-c.

This dispute mostly concerns Section 3012-c (5) of the Education Law. That provision requires that an appeals procedure be established through negotiations that would permit teachers and principals to “challenge the substance of the annual professional review.”

The Union objects to the District’s demand that the parties resolve this issue at this time. In the Union’s view, there is a lack of clarity about many aspects of this legislation. This is demonstrated by the fact that the Commissioner of Education is currently working on regulations to address this new legislation. The Union asserts that

there is a task force currently working on this with the Commissioner of Education. Thus, in the Union's view, it is premature to reach any definitive language regarding the APPR process.

The Union stresses that the new regulations will, for the first time, require that teachers' evaluations be based on the performance of their students. It also has an expedited disciplinary process for teachers alleged to be incompetent. For these reasons, the Union argues that it is not fair and prudent for it to make any final commitments regarding APPR. Any final resolution of this issue should occur after the Commissioner's regulations are issued and the parties have a clearer understanding of the new legislation. The Union urges the Fact Finder to recommend that the parties negotiate the APPR process at a later date when the necessary Commissioner Regulations and the advisory task force has completed its work.

Position of the District

The District argues that Education law Section 3012-c mandates that all collective bargaining agreements entered into after July 1, 2010 must include a negotiated procedure for teachers to challenge the annual review. The District objects to the Union's refusal to negotiate the procedure as it maintains that the law obligates the Union to do so.

The District proposes an evaluation procedure that does not provide for arbitration and allows appeals that end at the level of the Superintendent of Schools. It maintains that allowing arbitration of evaluations would be too costly and unnecessary.

The District also proposes limiting appeals only to those teachers who have received a rating of developing or ineffective. In other words, if a teacher has an effective

rating, he or she would not be eligible to appeal. The District argues that this is prudent as permitting appeals of effective evaluations would “constitute a waste of valuable District resources.” In closing, the District proposes a procedure that was agreed to with a teacher union in another Long Island school district.

DISCUSSION ON APPR

The Fact Finder sees the merit of both parties’ positions. However, the Fact Finder determines that the Union is legitimately cautious about making a long term commitment to these issues due to the fact that the Commissioner of Education has not even issued regulations on this issue. The new legislation significantly changes numerous issues regarding annual professional performance reviews. It makes them “a significant factor for employment decisions, including but not limited to promotion, retention, tenure determination, termination...” (Education Law Section 3012-c). Equally important is the fact that many of the new procedures are to be developed “in accordance with the regulations of the commissioner” (Education Law Section 3012-c).

Since the Commissioner of Education has not issued regulations on this issue, the Union is being appropriately cautious about making a long term commitment considering that it does not know the full parameters of the APPR process. Accordingly, I make the following:

RECOMMENDATION:

Once the Commissioner of Education issues final regulations on the APPR process, the parties shall reopen negotiations on this issue.

STAFF DEVELOPMENT

Position of the Union

Teachers in the District are required to complete 18 hours of professional development each year without additional compensation. The Union proposes that teachers be required to complete up to 18 hours of professional development and that the teachers be given greater input into the course offerings. In the Union's view, there are many problems with the District's course offerings. The Union maintains that the quality of the District's courses can be markedly improved and that they could be more tailored to meet the real needs of teachers.

District Position

The District objects to any changes to professional development. It maintains that this issue was negotiated several years ago and that it serves a very important purpose. The District asserts that it would be a disservice to its teachers and students to make any modifications in staff development.

DISCUSSION ON STAFF DEVELOPMENT

The Fact Finder is not convinced that there is a need to make any changes to the CBA regarding this issue. If the Union is concerned about the quality of offerings and the fact that some of the courses do not meet its teachers' needs, it should raise the issue with the District administration for discussion and input. Accordingly, I make the following:

RECOMMENDATION

No changes shall be made to the CBA regarding staff development. If the Union is concerned about the quality of offerings and the fact that some of the courses do not

meet its teachers' needs, it may raise the issue with the District administration for discussion and input.

CONCLUSION

The changes that have been recommended are warranted based on the evidence presented and the arguments of the parties. This negotiations dispute is nearly two years old. This is not beneficial to either the teachers or the District. I strongly urge the parties to adopt the recommendations without any changes so they can move forward, reap some of the benefits of the recommended changes and enjoy two years of labor peace. Otherwise, this dispute is likely to continue well into the 2011-12 school year. This will not be helpful to the parties.

SUMMARY OF RECOMMENDATIONS

- **Salary** – Salary schedules will not be increased in 2009-10 and 2010-11. Salary schedules will be increased by 1.5%, effective September 1, 2011; an additional 1.0%, effective February 1, 2012; an additional 1.0%, effective September 1, 2012; and an additional 1.5%, effective February 1, 2013.
- Step increment movement and differential movement will be frozen effective July 1, 2011 through June 30, 2013. Step increment and differential movement will recommence effective July 1, 2013.
- **APPR Procedure** – Once the Commissioner of Education issues final regulations on the APPR process, the parties shall reopen negotiations on this issue.
- **Staff Development** - No changes shall be made to the CBA regarding staff development. If the Union is concerned about the quality of offerings and the fact that some of the courses do not meet its teachers need, this is an issue that it may raise with the District administration for discussion and input.

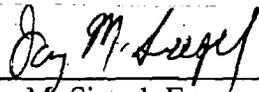
Dated: March 26, 2011
Cold Spring, New York

Jay M. Siegel, Esq.
Fact Finder

STATE OF NEW YORK)
COUNTY OF PUTNAM)

I, Jay M. Siegel, do hereby affirm that I am the individual described herein and who executed this Instrument which is my Report and Recommendation.

Dated: March 26, 2011



Jay M. Siegel, Esq.
Fact Finder