

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT-FINDING BETWEEN
LINDENHURST UNION FREE SCHOOL DISTRICT**

-And

**PERB Case No M2012-215
Before: Thomas Linden**

TEACHERS ASSOCIATION OF LINDENHURST

REPRESENTATIVES

a. For the Employer

Gregory J. Guercio, Esq.
Richard J. Guercio, Esq.
Anthony J. Fasano, Esq.
Reesa F. Miles, Esq.
Daniel Giordano, District Superintendent
Jackie Scio, Assistant Superintendent
Rose Seiter, District Clerk

b. For the Union

Sean Callahan, Labor Relations Specialist, NYSUT
John Mansfield, President, Teachers Association of Lindenhurst
Stanley Rosengarden, former President, Teachers Association of Lindenhurst

PRELIMINARY STATEMENT

Fact finding is part of the statutorily mandated process of alternate dispute resolution found in the Taylor Law. It is, by its nature, an extension of the collective bargaining process and comes about only after the parties, for whatever reason, have been unsuccessful in the negotiation and mediation process. The sole reason for the existence of any of these extensions of the process is to bring the parties to an agreement. Often, in the short term, the parties to the process lose sight of the long term perspective, the big picture. It is the fact finder's responsibility to help the parties overcome this shortsightedness and to pay a visit to the other side's perspective, even if they don't fully agree with it. It is obvious that the parties to this agreement had ambitious goals: it is now time to take stock of what can reasonably be attained in bargaining.

BACKGROUND

The Lindenhurst Union Free School District (hereinafter, "District") and the Teachers Association of Lindenhurst (hereinafter, "TAL" or "Union") are parties to a collective bargaining agreement (hereinafter, the "CBA" or "Agreement") covering the period July 1, 2006 to June 30, 2011, which, notwithstanding its expiration, remains in full force and effect pursuant to Section 209-a(1)(e) of the Taylor Law. In an effort to negotiate a successor agreement, the parties participated in three bargaining sessions held between February 2011 to June 2012. After these negotiations failed to generate a new agreement, the District filed a Declaration of Impasse with the Public Employment Relations Board (hereinafter, "PERB") on October 1, 2012. Shortly thereafter, PERB

staff mediator Karen Kenney was appointed to assist the parties. Two mediation sessions, as well as a conference call, were held on February 11, 2013, January 28, 2014, and February 28 2013, respectively. Despite these efforts, no agreement was reached and accordingly, by letter of February 25, 2014 to PERB, the District requested the appointment of a fact finder.

Thereafter, the undersigned was appointed as fact finder, via correspondence dated March 28, 2014. A fact finding hearing was scheduled for June 26, 2014 at which time, prior to commencement, the TAL made a new proposal. As a result, the fact finding hearing was adjourned and rescheduled for July 23, 2014. A hearing was held on that date and both parties made presentations and submitted data, arguments and written briefs.

DISTRICT AND BARGAINING UNIT PROFILE

Lindenhurst UFSD is located in western Suffolk County, New York. There are eight schools within the District including six elementary schools, a middle school and a high school. The District reports in its brief that for the 2013-14 school year, there are 6297 students enrolled in District schools. This represents a reduction from the enrollment of 2011-12 when the total was 6573. According to the State Education Department report submitted by the TAL, there were 512 teachers in the District during the 2011-12 school year, down from 559 during the 2009-10 school year.

Included in the bargaining unit are all full-time teaching personnel of the District, Teachers, Guidance Counselors, School Psychologists, School Social Workers and Speech Pathologists.

THE ISSUES

- Salary
- Health Insurance Contribution
- Notice of Retirement for Unused Sick Leave Pay
- Health Insurance Declination
- Additional Union Proposals (see TAL proposal, June 26, 2014)

Salary

District Position on Salary and Longevity

With respect to all economic issues, the District points to many things which it believes contribute to its inability to pay for current or future increases, either in the form of across-the-board increases or step/column increases. One of the leading factors is the limiting force presented by the mandated tax levy cap instituted in 2011, which took effect on 1-1-12 at 2% and is now at 1.46% for the District (District brief, p. 20).

Also, the confluence of salary step increases, education credit column advancement, the increasing burden of NYSTRS and NYSERS pension contributions (increasing at 10 % per year average, p. 25) as well as ever escalating health plan premium costs, result in a “perfect storm” of increasing costs. Added to this is a decrease in state and federal aid that “forces the District to increase the amount it requires from its

local revenue source.” Accordingly, the taxpayers in Lindenhurst are continuously asked to make up the difference.

These factors, the District argues, form a confluence of negativity which does not auger well for sustainability. The District contended at the July 23rd hearing that step increases alone, under *Triborough*, will bring the District close to bankruptcy. The District submitted in both its power point presentation at the hearing, and in its brief, copious arguments to buttress its contention that it simply does not have the ability to pay and that the burden on taxpayers is already extreme. These arguments include examinations of “Combined Wealth Ratio,” “Local Revenue Effort Rate,” “Pupil Wealth Ratio” and “Alternate Pupil Wealth Ratio.” The District points out that Lindenhurst is near the bottom of all of these indexes showing that Lindenhurst’s ability to generate funds locally is “not what it once was, requiring a realization that the District cannot maintain its salary step schedule” and that the residents of the school district are on the margins when it comes to ability to support upcoming budgets. The District argues that all of these factors point to a misalignment between the salary schedule in the CBA and the District and taxpayers’ ability to pay.

Hence, the District proposes the following financial package:

Salary-

- a. Year 1 (2011-12) - 0% plus increment
- b. Year 2 (2012-13) - 0% plus increment
- c. Year 3 (2013-14) - 0% plus increment
- d. Year 4 (2014-15) - true freeze (no salary increase, no increment, no lanes)
- e. Year 5 (2015-16) - 1% no step (including no longevity)
- f. Year 6 (2016-17) - 1% no step (including no longevity)

The District analyzes what it calls actual budget reports of 2010-2011 through 2013-2014 and contends that this analysis “indicates that the District will likely experience a budget deficit under the Union’s proposal. The property tax cap simply does not allow the District to add the spike in teacher salary increases that the Union is proposing.” The expenditures in this analysis are based on a methodology which projects expenditures on the basis of a three-year average growth rate. These projections include a massive 23.26% increase in Teachers Retirement System (“TRS”) employer contributions, as well as a 21.8% increase in Employee Retirement System (“ERS”) employer contribution during this three year period. Health Insurance premiums are estimated to increase at an annual rate of 2.36%. On the flip side, the District predicts that revenue from various sources other than taxes will be rather static.

District teachers have an average salary of \$98,039 and this compares favorably with teachers in the Western Suffolk BOCES region, placing them fifth out of twelve in the reporting school districts. This coupled with the fact that 55% of teachers in the District appear in the MA+75/DR region of the scattergram creates an imbalance that is not sustainable. The District claims that the Union’s proposal, if adopted, will lead to significant layoffs and/or budget cuts (District brief, pg. 87).

The District also notes in its brief, that eighteen other school district settlements that show a number of 0% pay raises and/or no step movement. In fact, and this is the fact finder’s note, all but three of these Districts incorporate some kind of “soft” or “hard” freeze in at least one of the years reported.

Summarizing, the District notes that “Lindenhurst can provide only very modest increases to teacher salaries going forward.” Additionally, the “simple reality is that this

District's average cost per teacher is already among the highest in the county," and that "a true budget catastrophe is on the immediate horizon if any increases are recommended that even approach that which is being demanded by TAL."

Union Position on Salary

The Unions position is very simply that the District does have the ability to pay for the Union's financial package. In the exhibits submitted to the fact finder, the Union contends that the District has a habit of under reporting revenue and over estimating expenditures and that in previous years budget projections were basically flawed.

Because the Union did not submit an actual brief enumerating or explaining their contentions and arguments in favor of their position, it is difficult to make an evaluation and recommendation. The record before the undersigned shows that most of the exhibits were not relevant to this proceeding or were out of date. Simply put, there was no narrative other than an abbreviated one verbalized at the hearing. That being said, the Union's July 26, 2014 proposal was as follows:

- 2011-2012 Increment only
- 2012-2013 Increment only
- 2013-2014 Increment only
- 2014-2015 Increment only paid on Feb 1 or the equivalent of to the date of the second half of the year
- 2015-2016 1.5% with increment delayed to February 1st, and 1.5% increase to all extra salaries and stipends

2016-2017 1.5% with increment delayed to February 1st, and 1.5% increase to all extra salaries and stipends

Step increases to return on June 30, 2017, effective for September 1, 2017 and thereafter.

Fact Finder Discussion on Salary

These are extremely challenging times for school districts and municipalities. County, State and Federal governments have gone through an unprecedented financial downturn that has also affected every citizen. The fact finder does not have to catalogue all the components of the great recession; we know them all too well. On top of this, the New York State Legislature approved property tax cap legislation which mandates that property tax levy increases be no more than 2%. In Lindenhurst this year, the cap will be even lower at 1.46%.

The District's financial proposal reflects the ongoing economic downturn and pattern of economic realities and trends, in the District and throughout Long Island and the rest of the country. There is no question that the stagnation in the overall economy triggered in 2008 continues to have a significant impact on the District and on resident taxpayers. However, it seems, from available real time data, that in general, things are starting to slowly turn around. Among other things, it appears housing markets nationally and on Long Island are starting to make a slow comeback. The State Labor Department reports that Long Island unemployment rate tumbled to 5.1% at the end of last year, down from 7.1% in December 2012. (In addition, the Governor's Division of the Budget, state aid to schools has trended upward since 2011-12.) It is important to

note, however, that even though we are making progress, the levels of State Aid have not increased to those in 2008-09 prior to the beginning of the recession.

That being said, the undersigned turns to address the issue of salary. My hope is that the recommendation in this section of the report will be an important factor in bringing the parties to an agreement. After reading all the data presented by the parties, both in the briefs and from notes taken at our meeting, the undersigned has come to the conclusion that a recommendation must be made that recognizes economic realities and at the same time does not penalize the District for its obvious showing of fiscal responsibility. However, even this brief exposition of the arguments indicates that using relatively similar sources of data, the parties were able, by selection and interpretation, to come to very different conclusions concerning a proper economic package. Also, the documents presented to the fact finder in this case, to no one's surprise, reflect a significant difference on the question of ability to pay. A school district's ability to pay has always encompassed factors that are very fluid in nature, moving targets so to speak.

The undersigned also notes that the law which established the 2% tax cap does take into account that some expenses are currently outside a district's control, including the state-mandated employer contribution rates for employee pensions. The law also allows for exemption or exclusion of increases in contributions to the NYSERS and NYSTRS that exceed 2%. According to a document published by the Capital Region BOCES Communication Services titled "Understanding New York's Property Tax Levy Cap", states that:

Far from being “loopholes,” these exemptions seem to indicate an acknowledgement among lawmakers that schools have no ability to simply limit cost increases in these areas to the rate of inflation. As a result, a district’s final tax levy (after the levies for these exemptions are added in) could be greater than it’s published ‘tax levy limit’ and yet still be considered, under the law, within that limit.

This would help explain why, according to NYS Comptroller Thomas DiNapoli’s yearly report, increases in school district budgets averaged over 3% two years ago.

The timing of the issuance of this report now has to be factored into my recommendations on salary as the parties are approaching the September date when the step increases are due (now under *Triborough*). Should either party choose to decelerate the process of agreement and ratification, increments will have to be paid. It is because of this, that I will now turn to the question of duration of the agreement. There really has never been a question of duration; both parties have seemingly agreed that the new CBA will reflect a term ending on June 30, 2017. In the interest of further stability between the parties, it is recommended, that the new agreement continue through June 30, 2018 so that the full impact of the recommendation will be realized.

This recommendation below is a conservative one, but one which I believe fits within the framework of settlement in neighboring districts and one which gives each of the parties some of what they were looking for.

I am recommending the following with respect to salary:

July 1, 2011 Increment only

July 1, 2012 Increment only
July 1, 2013 Increment only
July 1, 2014 Increment only
July 1, 2015 Hard freeze, no increment, no pay increase
July 1, 2016 No increment, 1% pay increase
July 1, 2017 All increments paid, 1% pay increase

District Position on Health Insurance Contribution

The District notes that currently teachers in the District are required to pay 15% of health insurance premiums for both individual and family plans. The District proposes to modify health insurance contributions by increasing the employee contribution by 1% in 2015 and a further 2% in 2016, bringing the total to 18% at the end of the CBA. Also, the District is proposing that new hires pay 20% of the premium. The District believes that this proposal is consistent with other school districts in the Western Suffolk BOCES region.

Union Position on Health Insurance Contribution

This was not addressed by the Union, either at the meeting or in any of their exhibits within their submission.

Fact Finder Discussion of Health Insurance Contributions

There is no question that health insurance costs have increased dramatically in the recent past. The vexing conclusion we must reach if we examine healthcare costs going back many years is that, in fact, they have never trended downward. In recent years, increases have far exceeded previous projections, and actuarial assumptions and employee contribution rates have been trending upward. There is also no question that with respect to employee contribution to health premium costs, dominoes have begun to fall. Recently, various police units, including the Suffolk County PBA Unit, have begun to participate in paying for their health coverage. On Long Island we are seeing increases in contribution rates as the tide is turning and we all come to grips with health costs spiraling upward.

The undersigned is therefore recommending unit members pay the following increases:

July 1, 2016	1% increase	total will be 16%
July 1, 2017	1% increase	total will be 17%

The District proposal for new hires to pay 20% of the premium of health insurance is recommended.

Fact Finder Discussion of All Other Issues

The undersigned has reviewed all arguments relevant to the other issues listed and has come to the conclusion that these issues are best deferred back to the parties for resolution.

FACT FINDER'S RECOMMENDATION RECAP

Duration of the CBA

- From July 1, 2011 until June 30, 2018

Salary

- July 1, 2011 Increment only
- July 1, 2012 Increment only
- July 1, 2013 Increment only
- July 1, 2014 Increment only
- July 1, 2015 Hard freeze, no increment, no pay increase
- July 1, 2016 No increment, 1% pay increase
- July 1, 2017 All increments paid, 1% pay increase

Health Insurance Contribution

- July 1, 2016 1% increase in employee contribution
- July 1, 2017 1% increase in employee contribution
- New hires will pay 20% toward health insurance premium

All Other Issues

All other issues are deferred back to the parties.

Concluding Statement

The fact finder hopes that this report provides a roadmap to settlement. It is also hoped that the recommendations set forth herein be adopted and embraced by both parties and that they form the basis for the new CBA. The parties may not see these recommendations as a perfect resolution to this impasse; however, they do represent a reasonable solution to resolving these negotiations. The parties are encouraged to adopt them as written and to do so as soon as practicable.

August 14, 2014

Bellport, New York

Thomas J. Linden, Fact Finder

