

PUBLIC EMPLOYMENT RELATIONS BOARD
FACT FINDING IN IMPASSE BARGAINING

IN THE MATTER OF FACT FINDING BETWEEN

WEST IRONDEQUOIT TEACHERS ASSOCIATION

**FACT FINDING
REPORT**

- AND -

WEST IRONDEQUOIT CENTRAL SCHOOL DISTRICT

**CASE NUMBER:
M2013-095**

Re: Fact Finding of Outstanding Issues Regarding Accretion

BEFORE: Stephen P. LaLonde, Impartial Fact Finder

APPEARANCES:

For the Union: Nanette J. Rodgers, Labor Relations Specialist, NYSUT
Scott Steinberg, President, WITA
Martin Adams III, Negotiator, WITA
Howard Dutton, Negotiator, WITA

For the District: Tim Terranova, Asst. Superintendent of Finance & Personnel,
WICSD
James Brennan, Director of Finance, WICSD

B A C K G R O U N D

The West Irondequoit Teachers Association (“Union”) and the West Irondequoit Central School District met in negotiations for the purpose of determining the accretion of three (3) job titles into the teacher bargaining unit under the current Collective Bargaining Agreement (“CBA/Contract”) running from July 1, 2012 – June 30, 2015. This negotiation was the result of a placement petition brought by the Union to the Public Employment Relations Board (“PERB”) seeking to add three (3) job titles (Computer Application Specialist, Audio Visual Attendant and Athletic Trainer) to the unit represented by the Union through their Collective Bargaining Agreement. On November 29, 2012, Jean Doerr, Administrative Law Judge at PERB, granted the Union’s petition to add the job titles to the unit.

Subsequent to the approval of the placement petition, the Parties met in negotiation sessions over the accretion of these positions and their terms and conditions. These involve three (3) individuals who hold the title of Computer Application Specialist, one (1) individual who holds the title of Audio Visual Attendant and one (1) individual who holds the title of Athletic Trainer (“Position/Positions”). The Parties met in three negotiation sessions (April 23, May 15 and May 30, 2013). The negotiation sessions proved unsuccessful and the Parties jointly declared impasse. Following impasse, the Parties met in two mediation sessions (September 18 & 19, 2013) with PERB Mediator, David Watkins. The Parties were able to resolve two of the outstanding issues but were unable to resolve numerous issues that remained.

By letter to PERB dated November 7, 2013, the Union requested Fact Finding. On December 6, 2013, PERB appointed the undersigned as Fact Finder. A pre-hearing conference call was held with the Parties on February 12, 2014 to review Fact Finding procedures and establish a hearing date. A Fact Finding hearing was held on February 26, 2014 at which time both Parties were present and had full opportunity to present evidence and argument in support of their respective positions on the outstanding issues. It was determined at the hearing that the Parties would submit post-hearing briefs which were received by the Fact Finder on April 17, 2014 at which time the record was closed.

OUTSTANDING ISSUES

The Parties brought the following issues to Fact Finding regarding the accretion of the above referenced position to the teacher bargaining unit:

Article VII	Section G	Full-Time to Part-Time Benefits
Article VIII	Section A	Medical Insurance
Article VIII	Section B	105 Plan
Article VIII	Section C	Medical Insurance – Active Paraprofessionals
Article VIII	Section E	Medical Insurance – Retired Unit Members
Article XI	Section A3	Paraprofessional Longevity
Article XI	Section B3	Paraprofessional Professional Courses
Article XI	Section G	Paraprofessional Vacations

Article XI	Section J	Paraprofessional Termination
Article XI	Section K	Paraprofessional Layoff and Recall
Article XII	Section G	Teacher Tuition Reimbursement
Article XII	Section J	Teacher Service Increment Plan

DISCUSSION

Each of the issues identified above will be presented with the respective positions of the Parties noted. In turn, the Fact Finder's discussion and Recommendations will follow.

First however, there are two general overarching issues argued by the Parties which impact their respective positions on many of the outstanding issues. One of these debated general issues is the economic/financial backdrop to any decision to resolve the outstanding issues. The second is the issue of whether the existing terms and conditions of the three positions (pre-accretion to the teacher bargaining unit) will be maintained in the transition or whether the current CBA terms and conditions for the positions will be applied.

Economic/Financial Backdrop

The Union and the District presented differing views of the economic/financial situation of the school district. The Union presented budget/financial analysis done in February 2014 by the NYSUT Research and Education Services department based on the budget/financial reports filed by the District with the State Education Department (such as the ST-3 and SBM-1). The Union reviewed the District's budget over the past three (3) years and that analysis found that the District under-spent its budgets by a total of \$12.6+ million during that time. Also, the analysis revealed that the District's revenues exceeded their revenue projections by a total of \$4.1+ million during the three year period. Further, the District ended each of their last three years with an operating surplus. In the 2012-2013 school year, the operating surplus realized by the District was \$8.0+ million or twelve percent (12%) of the total budget for the District. During the same school year, the District's expenditures were \$4.9+ million under budget (7.4% less). Further analysis of expenditures for employee benefits showed that the District was under-budget

by \$1.3+ million. In addition, the Union states that 2014-2015 State Education Department State Aid Projections show that the District will receive \$17.5+ million in State Aid which is a \$1.8+ million (11.72%) increase in State Aid over the previous year. The Union reiterates the fact that this impasse only involves the accretion of 3 positions (5 individuals) into the bargaining unit. The overall financial impact in the accretion of these positions is insignificant. There is no reason the District cannot absorb and afford bringing in these positions at levels commensurate with existing rates of compensation and benefits.

The District argues that its economic/financial situation is tight. While the District is included in the Monroe 1 BOCES, it has a lower property wealth and taxing ability compared to Monroe 1 BOCES districts such as Pittsford, Honeoye Falls Lima, Brighton, Penfield and Fairport. The financial situation of West Irondequoit is more comparable to districts included within the Monroe 2-Orleans BOCES with districts located primarily on the west side of the city of Rochester. This can be illustrated by looking at the Combined Wealth Ratio (“CWR”) of West Irondequoit compared with other districts in Monroe 1 BOCES. That comparison reveals that the District ranks 9th out of the 10 districts in Monroe 1 BOCES. The District further avers that they have a low tax cap that governs the amount of a tax levy increase that is allowable and thus seriously restricts the amount of local revenue that the District can generate without the need to obtain a 60% majority budget vote in order to exceed the tax cap limit. The District states that the Office of the State Comptroller has provided information indicating that the District’s current tax cap levy is only 1.28%. The District notes that their current budget (2013-2014) is a reduction from the previous year’s budget because the District cannot afford to spend at the same level as they did in the previous year. Also, the District’s past reliance on savings to be used to balance the budget has significantly declined and cannot be relied on to fill this need in the future. The District notes that they have had to engage in reductions in non-payroll budget category expenses in order to meet anticipated budget shortfalls. Budget forecasting reveals that the District does not have additional monies to spend and needs to reduce costs. The District asserts that they have lost over \$12 million in gap elimination aid since the 2008-2009 school year. Most recently, the State withdrew \$2.5 million in gap elimination aid from the 2013-2014 budget. Additionally, the District argues that the Union’s salaries and benefits comprise about 80% of total salary and benefits in the District or about 58% of the total budget. Salary, benefits,

pension cost and health insurance costs have all continued to increase at alarming rates and the Union must be involved in addressing this unsustainable financial burden. One step is that new positions in the bargaining unit should not have the same financial benefits that all other unit members currently enjoy. Further, these benefits are disproportional to those available to the District's taxpayers and constitute an unsustainable expense contributing to the District's future estimated deficits.

Which Terms and Conditions Should Apply?

The Union contends that it represents 425 members who hold a variety of positions and job classifications and that all these unit members receive the same level of benefits regardless of their position or job title. The Union argues that with the three (3) newly accreted positions, the District is attempting to reduce medical benefits for the individuals holding these new positions by denying them 105 plan monies, requiring new hires to pay a higher percentage of health insurance premiums and denying them the same level of retiree benefits. In effect, the District is seeking to establish a "tiered" system for the newly accreted positions and new hires. The Union states that throughout bargaining it has had, and continues to have, no interest in "tiering" benefits. The Union avers that PERB ALJs have long held that non-economic provisions of a CBA should apply to newly accreted positions/titles in a bargaining unit. In addition, the overwhelming percentage of New York State public employers view just cause provisions as a non-economic benefit which is applicable to titles added to a bargaining unit. PERB also views non-economic benefits as accruing to accreted titles of a bargaining unit. New titles should be incorporated within the bargaining unit with the same level of benefits as existing members of the unit.

The District argues that because of the difficult economic backdrop, it is time to recognize that new positions/members should not come into the bargaining unit with the same level of enhanced benefits as those of existing unit members. The reality of economic constraints on the District and its taxpayers require measures to decrease spending, reduce reliance on the ever increasing tax burden to the community, recognize the decrease in fund balances and reserves, deal with the loss of State gap elimination funding, adjust to low tax cap restrictions and begin to

control expenditures going forward especially in the areas of health insurance and pension costs. The District must restructure benefits and lower the District's financial burden going forward. Differentiated ("tiered") benefits for the three accreted positions (5 individuals) is a small but important step in beginning the process of bringing fiscal responsibility and shared costs to major expense areas for the District.

The two general areas of disagreement mentioned above have application to all of the outstanding issues before the Fact Finder. As such, there will not be a point by point delineation of the arguments made by the Parties on each issue as it would be repetitive. However, all testimony, evidence and argument presented by the Parties have been thoroughly reviewed and considered.

The Parties did not include ALJ Doerr's accretion determination as part of the record in the Fact Finding proceeding leaving the Fact Finder with only the bare determination that the positions were to be included in the bargaining unit. There was no testimony or evidence presented that ALJ Doerr's determination spoke of any distinction or differentiation in the treatment of the accreted positions with those of existing unit members. The evidence before the Fact Finder on this matter reveals that the issue of the three positions to be added to the bargaining unit is to be viewed as a "simple" accretion. There is nothing on the record to indicate that the accreted positions are separate and distinct from other similarly situated positions currently found in the bargaining unit and governed by the CBA. From this "simple" accretion, the District seeks a significant change distinguishing the newly incorporated positions from those of existing unit members: asserting the establishment of tiering as their necessary and assumed future condition. Inserting tiering here in the negotiations over accreting three (3) positions involving five (5) individuals out of a total unit numbering 425 members, is to introduce a significant revision in compensation/benefits/terms and conditions in a mid-term negotiation over a precisely defined and limited issue of inclusion of these positions within the bargaining unit. Tiering is a major bargaining concept and is best placed in the overall unit contract negotiations and, as such, is best left for regular successor negotiations involving the whole CBA.

The District pointed out that one person in one of the accreted positions is currently paying 15% of the health insurance premiums while current unit members are contributing 10% toward these premiums. The District contends that the Union is seeking not simply to accrete this person's position into the bargaining unit but to also enhance that individual's benefits by having them only pay 10% of premiums as in the current CBA instead of the 15% they were hired at while outside the unit. Similarly, the District contends that current (pre-accretion) terms and conditions should transfer with these positions into the teacher bargaining unit and should remain at the reduced benefit terms and condition levels regardless of what the current unit members' terms and conditions are. It should be noted that if any of the accreted positions had reduced benefits before these positions were included in the bargaining unit, it was because these positions were outside the unit's contractual requirements and purview. As such, the District was free to address compensation/benefits unhindered by any requirements of a CBA. ALJ Doerr determined that these positions were of a right to be included in the teacher bargaining unit. There was no evidence presented by the Parties that ALJ Doerr's determination spoke to inclusion of these positions in the teacher bargaining unit with the terms and conditions of employment that they had while outside the bargaining unit nor would such a finding be contractually rational as members of a bargaining unit are fully entitled to the terms and conditions set forth in the CBA covering such titles/positions of employment. It is not unreasonable here to conclude that the three (3) accreted positions are entitled to the terms and conditions of the unit they are joining.

The District asserts that part time employees do not enjoy any layoff rights based on seniority because education law does not currently convey those rights to part time employees. Further, the District states that the Parties went to Arbitration over the issue of part time seniority rights for current paraprofessional unit members and Arbitrator Michael Lewandowski rendered an Arbitration Award (February 23, 2014) which stated, in pertinent part:

The District did not violate Articles VII and/or XI and any other articles that apply when it laid off part-time teaching assistants in the 2012-2013 school year without regard to seniority. (Lewandowski Award of February 23, 2014)

The District points out that this ruling also applies to the accreted positions of Computer Application Specialist and Audio Visual Assistant and, therefore, if the individuals filling these

positions are part-time, they should not have seniority rights tied to layoff but should be held to the current CBA language (as clarified by Arbitrator Lewandowski's Award) which does not convey any such rights. If one stays consistent with the philosophy that accreted positions enter the bargaining unit on equal footing with current unit members, then the Union seeking seniority rights for part time individuals in layoff situations is not consistent with the existing seniority interpretations of the CBA and the Lewandowski Award. The Union's position regarding enhancement of seniority rights in layoff situations cannot be recommended.

The matter of termination rights for the accreted positions was also a debated issue in this proceeding. Outside of the bargaining unit these positions were restricted only to Section 75 Civil Service rights (where applicable) in matters of termination. The Union asserts that the accreted positions have the right to choose whether they will pursue Section 75 rights or grievance/arbitration rights as guaranteed under the CBA. The District avers that the current CBA language is ambiguous on this point and contends that the Union is seeking increased protections for these positions that infringes on the District's right to terminate an employee and provide the reasonable protections of Section 75. Further, the District argues that the broader trend in labor relations between districts and unions is to reduce a bargaining unit member's ability to pick from multiple protections under a contract. Additionally, the District states that inclusion of grievance and arbitration rights for the three accreted positions would most likely lead to increased legal costs that are not budgeted. The fact remains that while outside the teacher bargaining unit, these positions did not have the protections of the CBA and the District was free to set the terms and conditions for these positions, including limiting termination rights to only Section 75 proceedings. However, the determination that these three (3) positions rightfully belong in the teacher bargaining unit means that these positions are entitled to the protections afforded thereof. In this situation, the Union is not asking for increased protections, only that now that these positions are within the bargaining unit, that they receive the same level of unit benefits. Infringement of the District's right to terminate an employee with Section 75 rights only would be true if the positions remained outside the teacher bargaining unit and the Union sought to advocate for increased rights for them. However, these positions have been accreted into the teacher bargaining unit and it is not unreasonable that they should be extended the same rights as other unit members relative to termination matters.

RECOMMENDATIONS

Based on a review of the testimony, evidence, exhibits and arguments presented by the Parties on this issue and by the foregoing general and specific discussion, the following Recommendations are made in this matter of Fact Finding regarding the accreted positions of Computer Application Specialist, Audio Visual Attendant and Athletic Trainer:

ISSUE #1: ARTICLE VII, SECTION G - FULL-TIME TO PART-TIME BENEFITS

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #2: ARTICLE VIII, SECTION A - MEDICAL INSURANCE

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #3: ARTICLE VIII, SECTION B - 105 PLAN

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #4: ARTICLE VIII, SECTION C - MEDICAL INSURANCE – ACTIVE PARAPROFESSIONALS

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #5: ARTICLE VIII, SECTION E - MEDICAL INSURANCE – RETIRED UNIT MEMBERS

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #6: ARTICLE XI, SECTION A3 - PARAPROFESSIONAL LONGEVITY

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #7: ARTICLE XI, SECTIONS B3 – PARAPROFESSIONAL PROFESSIONAL COURSES

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #8: ARTICLE XI, SECTION G - PROFESSIONAL VACANCIES

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #9: ARTICLE XI, SECTION J - PARAPROFESSIONAL TERMINATION

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #10: ARTICLE XI, SECTION K - PARAPROFESSIONAL LAYOFF AND RECALL

Recommendation:

It is recommended that the applicable accreted positions come into the bargaining unit under the terms and conditions of the CBA as it applies to current unit members and if the positions are held by individuals in a part-time capacity, that no seniority rights be conveyed to them as it applies to layoff situations.

ISSUE #11: ARTICLE XII, SECTION G - TEACHER TUITION REIMBURSEMENT

Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

ISSUE #12: ARTICLE XII, SECTION J - TEACHER SERVICE INCREMENT PLAN

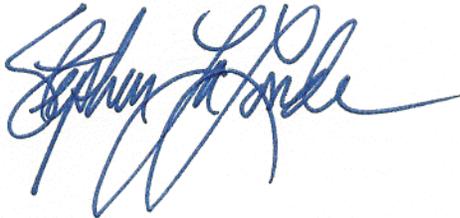
Recommendation:

It is recommended that the three accreted positions be granted the same applicable terms and conditions provided to current unit members under this provision of the CBA.

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A F F I R M A T I O N

I affirm on my oath that I am the individual described herein and that the foregoing is my Fact Finding Report with Recommendations in the above captioned matter.



Stephen P. LaLonde
Impartial Fact Finder

Dated: May 10, 2014