

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding between

DOVER UNION FREE SCHOOL DISTRICT,

-and-

FACT FINDER'S
REPORT

DOVER-WINGDALE TEACHERS' ASSOCIATION,

PERB Case No.: M2013-186

BEFORE: Louis J. Patack, Esq.
Fact Finder

APPEARANCES:

For Dover Union Free School District

David S. Shaw, Esq.
Shaw, Perelson, May & Lambert, LLP

For Dover-Wingdale Teachers' Association

K. Lynn Evans
Labor Relations Specialist
New York State United Teachers

BACKGROUND

The Dover Union Free School District ("District") is located in Dutchess County, and consists of two elementary schools, and a middle/high school. The Dover-Wingdale Teachers' Association ("Association") represents approximately 120 teachers and other professional staff employed by the District.

The parties' most recent collective bargaining agreement, covering three years, expired on June 30, 2013. The parties entered into negotiations for a successor contract in May, 2013. When they were unable to settle, they proceeded to mediation. When mediation did not succeed in producing an agreement, the parties jointly requested PERB to appoint a fact finder. The

undersigned was appointed as the fact finder, and a hearing was scheduled for June 25, 2014, at the District offices. The fact finder made another attempt to mediate, but when that failed, a briefing schedule was established. Both briefs and replies have been submitted.

The fact finder has reviewed the briefs and attachments, and makes this his report.

ISSUES PRESENTED AT FACT-FINDING

There are four issues addressed here. They are salary schedule and longevity increases, health insurance plan and premium contributions, increase to the welfare benefit trust, and evening meetings.

PARTIES' ECONOMIC POSITIONS

The Association presents data and arguments supporting its position that the District can well afford to fund its monetary proposals. The District, as might be expected, offers the same in support of its position that it can ill afford the Association's proposals. The parties also claim that salaries and benefits paid teachers in other Dutchess County districts support their positions. The positions are summarized below.

ASSOCIATION

In May, 2014, following mediation, the District sought voter approval for a budget exceeding the statutory tax cap. Exceeding the cap requires a 60%, or supermajority, vote. That budget was defeated, and the District then offered a budget within the allowable tax levy, and that passed.

The Association takes issue with the District's claim that it is now in a weaker financial position than it would have been had the first budget passed.

The Association points out that the District stayed below the tax cap with its budgets for the 2012-2013 and 2013-14 school years. It argues that if the District had proposed budgets in those years that had maximized the cap, it would have had no reason to attempt to exceed the cap in this year's vote. The Association claims that the District did not require the additional \$240,000 that would have been realized had the first budget vote been successful because it has, or had, \$1 million dollars in unrestricted reserves. The Association contends that the only reason the District sought the supermajority budget, which it should have known would be defeated, was to use the defeat, and passage of a smaller budget, as a negotiating tactic to reduce its financial offer to the teachers.

The Association maintains that the second budget, the one that passed, still produced enough revenue, when taken together with State Aid, to fund its proposals.

Another argument the Association makes in connection with the budget is that although the second budget reduced the amount targeted for instructional salaries, both budgets contained the same 12.23% and 7.41% increases for the Superintendent and Assistant Superintendent for Business Affairs respectively.

The Association claims that the District consistently over budgets, and did so with employee benefits by an average of 11.8% over the three-year period 2010-11 through 2012-13.

Another Association argument is that, as of April, 2014, the District anticipated having a surplus of about \$1 million, which could be spent in the current school year.

The Association points out that there have been some recent teacher retirements, and that the District has filled the vacancies with first-year teachers, resulting in considerable cost savings.

For the 2014-15 school year, the Association notes that there were two retirements at the end of the 2013-14 school year, and that assuming both of the vacancies are filled with new teachers, the District will have netted a savings of almost \$114,000. According to the Association the budget that passed appears to have reduced the teacher salary item by only about \$87,000. The Association reasons, therefore, that the savings realized by the retirements more than offset that loss of revenue.

Turning to comparability, the Association points out that among Dutchess County districts Dover teachers lag far behind the median in the bachelor and bachelor plus 30 categories. They come closest to the median with the masters' degree step 15 category, but still are behind. It is with the masters' degree maximum salary, however, that the biggest disparity exists. According to the Association, Dover teachers are at the bottom in this category, earning between \$8,224 and \$9,060 less than the median.

The Association points out that salary increases in recent Dutchess settlements, excluding increment, have averaged 1%. It also notes that the expired three-year contract provided only .5% increases in each year, far below the County average of 2.26%, 1.28% and 1.04% for the same time period.

DISTRICT

The District first goes through a detailed explanation of the tax cap, and its implications for Dover. Under the formula the District was required to apply, its maximum tax levy was 1.51% for the 2014-15 school year. It failed in its effort to obtain the supermajority necessary to pass the 2.85% tax increase it presented to the voters. The increase for the second budget was 1.50%, and while it passed, as mentioned above, it resulted in \$240,000 less in new revenues than would have been realized had the first budget passed.

The District argues that even though we are several years removed from the 2007-08 recession, New York State still faces severe economic challenges, and points to a particularly high unemployment rate in Dutchess County.

The District also points to the high employer contribution rates it has been required to make to both the Teachers' Retirement System and State and Local Retirement System over the past few years as a result of the stock market losses suffered by their pension funds. The TRS rate for 2014-15 is 17.53% of payroll.

A related point made by the District is that during the current school year 70% of the budget goes toward salaries, pensions and related employee benefits. It argues that the remaining 30% must be preserved for every other District expense, including supplies, equipment, and building maintenance.

The District argues that in order to understand the resources it has available to pay the Association's financial proposals, it is necessary to examine its fund balances. The point it makes here is that fund balances are stagnant, unless the funds are replenished through unanticipated new revenues or budget surpluses, and that it would be irresponsible to take money from funds to pay salary increases, which then become recurring costs.

According to the District it is now close to having totally depleted its fund balances. It claims that it has greatly reduced its unassigned and restricted fund balances due to operating deficits. It has assigned about \$1 million of the unassigned balance from the 2013-14 budget to offset the tax levy amount to remain within the tax cap limit. It claims that there is only \$38,000 remaining in what it refers to as the "restricted reserve fund balance of the general fund and debt service fund."

The District discusses the other funds it maintains, and gives reasons these are not available to pay salary increases. Some of them will be used to offset the tax levy.

Another problem, according to the District, is loss of State Aid suffered as a result of the Gap Elimination Adjustment. The District says that total budgeted State Aid for the five-year period concluding with the current school year has increased by an average of only 1.06% a year.

In summarizing what it considers its precarious financial situation the District writes that by under spending the current budget it will have at least \$1 million of unassigned fund balance available to apply against the tax levy in order that the District might stay within next year's tax cap.

In terms of comparables, the District compares itself to the County's non-city districts, like Dover, and excludes the city districts of Poughkeepsie and Beacon.

The District notes that it ranks lowest among the 11 non-city districts in terms of combined wealth ratio. It also points out that its true value tax rate for 2013-14 was the fourth highest in the County, while its median income was third lowest. Taking into consideration tax rate and income, the District claims that its taxpayers have the highest comparative tax burden in the County.

In comparing the Association's proposals with recent settlements in the County's non-city districts, all of which the District maintains are wealthier than Dover, it claims that those settlements are significantly lower than the Association's proposals.

REPLY BRIEFS

The parties' reply briefs, as might be expected, take issue with some of the factual claims and arguments found in the other side's initial submission. Some of the responses, limited to ability to pay and salary comparables, are summarized here.

The Association claims that although it is correct that the passed budget yielded \$240,000 less than the one that was defeated, it still produced a \$541,254 increase over the prior year's budget.

The Association argues that the District, in its brief, does not accurately portray the Association's longevity proposal because the District sets forth the cumulative amounts teachers receive, rather than the actual step figures.

Another error the Association claims the District makes is in claiming that, in its Dutchess County salary comparisons, Northeast teachers took 0% and a step freeze in one year, when in fact there was step advancement, and money added to longevity.

Finally, the Association notes that the District's accounting firm has lowered the figure for the general fund unassigned fund balance from approximately \$1 million to \$812,274. The Association points this out as what it considers another example of either the District's incompetence or misleading behavior during these negotiations.

The District notes in its reply that the Association brief does not accurately set forth the Wappingers settlement, because the Association does not mention that the agreement there contained health insurance savings.

Addressing the Association's claim that Dover teachers received only .5% increases in each of the three years of the expired contract, the District points out that the Association fails to mention that teachers who were on the top step of the salary schedule, but not eligible for longevity payments, received payments in each year of the contract.

The District takes issue with the strongly critical manner in which the Association describes its budgeting practices, especially those leading up to passage of the most recent budget. The District takes particular offense with the Association's claim that the District

manipulated the budget process, including submission to the voters of the budget requiring the supermajority, merely as a negotiating tactic. The District argues that the defeated budget would have provided monies that could have gone toward teacher salary increases, as well as replenishing its unassigned fund balance to what is generally considered the appropriate level.

Addressing the Association's claim that the District's accounting firm lowered the general fund unassigned fund balance by almost \$200,000, and that this is evidence of the District being incompetent or less than honest, the District notes that this revision was made by its external auditor.

As to the raises provided the Superintendent and Assistant Superintendent for Business Affairs, the District is critical of the Association for failing to note that both changed health insurance plans and increased their premium contributions by 15%.

Finally, countering the Association's claim that the District has realized savings through teacher retirements, the District argues that these savings might be needed for legitimate educational purposes other than funding the salary increases the Association seeks in these negotiations.

RECOMMENDATIONS

SALARY SCHEDULE AND LONGEVITY INCREASES - PROPOSALS

The Association's proposal is the same as it was at the final mediation session, held on March 1, 2014. It is seeking, for each of the three years of the new agreement, \$750 to be added to each step of the salary schedule, the increases to take effect on February 1 of the school year, and \$1,000 to be added to each of the three longevity steps, these increases to take effect on September 1 of the school year.

The District has modified its offer from the last mediation session. There it was offering \$750 to be added to each step, without retroactivity. For 2013-14 the increase would take effect upon ratification. For 2014-15 the increase would take effect on July 1, 2014, or upon ratification, if that occurred later. For 2015-16 the increase would take effect on July 1, 2015.

The longevity offer at the March 1 mediation session was as follows:

2013-14	\$500 at L18, L22, and L26, effective September 1.
2014-15	\$500 at L22 and L26, effective September 1.
2015-16	\$1,000 at L26, effective September 1.

The District's current offer is as follows:

Salary schedule:

2013-14	\$500 effective on ratification, with no retroactivity.
2014-15	\$750 effective on ratification, with no retroactivity.
2015-16	\$750 effective September 1, 2015, or upon ratification, whichever occurs later.

Longevities:

2013-14	\$400 at L18, L22 and L26, effective upon ratification, with no retroactivity.
2014-15	\$400 at L22 and L26, effective upon ratification, with no retroactivity.
2015-16	\$400 at L26, effective September 1, 2015, or upon ratification, whichever occurs later.

SALARY SCHEDULE AND LONGEVITY INCREASES – DISCUSSION

It is not necessary to resolve the differences each party has with how the other has presented or interpreted the data concerning both the District's finances, including the budgeting process, and settlements reached in other Dutchess County districts. As is usually the case in

these types of proceedings, the parties tend to emphasize the facts and figures they believe support their positions, and are quick to point out when they see omissions they believe the other side has made, and which might dilute that side's arguments.

Some comments, however, are in order. The first is that it is hard to believe, as the Association claims, that the District submitted a budget exceeding its tax cap limit, and requiring a supermajority, for the purpose of gaining an upper hand in this bargaining. The Association offers no evidence to support this allegation, and it seems more likely that the District was simply trying to raise as much revenue as possible to fund its programs, including the salary and longevity increases the teachers are seeking.

On the state of the economy, the District seems to overstate the case for how poor it is. While things could be better, the economy has certainly shown improvement since the years of the recession. It does appear to be the case, however, that the District is among the least wealthy among the non-city districts in the County. The Association has not claimed otherwise, but maintains that it has taken the District's finances into account in formulating its proposals. The Association's clearly stated goal, however, is to bring teacher salaries closer to the County median.

Given the economic picture, and while the Association can expect fair increases, it is not reasonable to expect that this three-year agreement will positively change the position of Dover teachers in relation to comparable County districts.

As to the District's finances, one fact not in dispute is that the District has \$240,000 less in revenue for the current school year than it would have had if the first budget had passed. But while some of its funds are depleted or unavailable for salaries, and there might be some uncertainty as to the amount of State Aid it will receive, and when it will arrive, there are

unassigned funds available for salary increases, and it is reasonable to believe that at some point the District will receive its State Aid.

The Association has expressed its frustration with the District's refusal to explain at the last mediation session how it calculated its salary and longevity offer to amount to a 1.5% increase, while the Association calculated the offer, exclusive of step movement and longevity acquisition, to be 1.17%. The District has answered in its brief that it did not respond at the mediation session because the Association was only interested in what the District's offer was in terms of new money, that is, exclusive of step and longevity acquisition, and that the costs of steps and longevity, and associated fringe benefits, constitute real costs, and must be taken into account when considering what the District is able to afford in terms of increases.

There is no need to address what appears to have been a serious impediment to the parties' efforts to resolve this impasse at mediation. It is sufficient to point out that the Association states in its brief that the three-year average of new money required to fund its salary and longevity proposals is 1.48%. While it is fair to use that figure in making comparisons to other County districts, because even the figures used by the District show increases agreed to in addition to steps, it simply cannot be ignored that there is a significant cost attached to step movement, longevity acquisition and fringe benefits. Just in terms of step increments and longevity acquisition the District has calculated the costs for the 2013-14 and 2014-15 school years to be 2.38% and 2.02% of unit payroll respectively. The Association has calculated these figures to be 2.40% and 2.25%.

But returning to comparing recent settlements in other districts, based on the chart attached as Appendix 2 to the Association's brief, the average new money settlements in other districts has been 1%.

The Association's proposal, at 1.48%, is obviously richer than settlements arrived at in other districts, and it must be assumed that this is because the Association is seeking to bring Dover teachers closer to the County median.

For all the arguing over the District's ability, or inability, to pay, the fact is that the parties' current proposals are not all that different, at least in terms of salary increases. The longevity increases are what seriously separate the parties, and it must be assumed that this is because the Association has identified its senior teachers as being most in need of catching up to the more experienced teachers in other districts.

Turning, then, to the recommendations, they are as follows for increases to the salary schedule:

- | | |
|---------|--|
| 2013-14 | \$600, retroactive to February 1, 2014. |
| 2014-15 | \$750, effective upon ratification, with no retroactivity. |
| 2015-16 | \$750, effective July 1, 2015, or upon ratification, whichever occurs later. |

Although the Association would not receive the \$750 it proposed for 2013-14, it would receive retroactivity to the date its suggested raise would have become effective. For 2014-15, it should be assumed that an agreement will be ratified before February, 2015, and, therefore, the Association should find the District's offer acceptable. For the final year, it also should be assumed that there will be a settlement prior to July, 2015.

With longevities, it is here that the Association's proposal brings it out of line with settlements in other County districts. As stated above, neither the economic climate nor the District's financial position justifies a settlement that would bring unit members, including those with the most seniority, closer to the County median.

The recommendation is as follows:

2013-14 \$500 at L18, L22 and L26, retroactive to February 1, 2014.

2014-15 \$500 at L22 and L26, effective September 1, 2014.

2015-16 \$750 at L26, effective September 1, 2015.

The Association expresses concern about its most senior teachers, and this formula increases their longevities for all three years.

HEALTH INSURANCE

The expired agreement provides one health insurance plan, the DEHIC Alternate PPO. Premium contributions for both individual and family coverage are 15%. The District proposes increasing the contributions to 17.5% in 2013-14, and 20% in 2015-16. The Association objects to any increase.

In their briefs, both parties say that they proposed introducing the DEHIC EPO 20 plan on a voluntary basis. Regardless of whose idea it was, the Association would have the District assume the entire cost of this less expensive plan. The District would maintain the 15% premium contribution for those choosing the new plan.

In support of its proposal the District notes that employees in its other bargaining units pay 20% for the Alternate PPO, and that it is line with premium contributions in other County districts. It also argues that raising the premium on the Alternate PPO, while maintaining the 15% contribution for the EPO 20 plan, will serve as an incentive for teachers to switch to the latter, and result in savings for both the District and unit members.

The Association argues that there should be no premium contribution for members electing the EPO 20 plan. It makes the point that even with no contribution the District would still realize substantial savings if even half the unit members switched to the less expensive plan.

The Association notes that in the two years EPO 20 has been offered, less than one percent of those receiving their insurance through DEHIC have enrolled. The Association believes that having no contribution would be a huge incentive for its members to switch to the plan.

As the District argues, it is speculation to assume how many, if any, would enroll. It does not seem fair, however, to raise the contribution rate for the Alternate PPO so sharply that it serves as a disincentive to stay with the plan that presumably offers the better coverage.

As to whether there should be any increase in the Alternate PPO contribution, a factor supporting an increase is the fact that other District units are already paying 20%. It is not correct, however, as the District argues, that this percentage is in the area of what teachers in other County districts pay. The District's own chart shows that the majority of the Districts are below 15%.

Given the schedule and longevity increases recommended here, and taking into account that teachers will also have their salaries increased by step movement and/or longevity acquisition, and the fact that other District employees are already at 20%, it is reasonable to have some increase in the Alternate PPO contribution. While the overall recommended settlement does not warrant the five percent increase the District seeks in just two years, a one percent increase in both 2014-15 and 2015-16 is reasonable.

As to the EPO 20 plan, the premium should be 15% for 2014-15 and 2015-16. Since both parties could realize savings if enough unit members enrolled in the voluntary plan, however, perhaps they could gauge employee interest in switching if the premium contribution were significantly lowered. If there was enough interest, and willingness to commit, it could

then be offered at that lower rate. The fact finder has no idea if this is a practicable idea – it is just an effort to be helpful.

WELFARE BENEFIT TRUST

The parties have agreed to an increase in the District’s contribution to \$1,400 for 2013-14, \$1,425 for 2014-15, and \$1,450 for 2015-16. The District insists, however, that its agreement has always been contingent on the Association accepting the District’s health insurance proposal.

Based on the rationale that the overall settlement being recommended supports the health insurance premium contribution increases suggested here, it also supports the welfare benefit trust increases, even without the Association having to agree to the District’s health insurance proposal.

EVENING MEETINGS

The District has proposed that unit members be required to attend up to three evening meetings a year. The Association has agreed to two, but only if they are limited to 90 minutes, and not end after 8 p.m.

The District notes that the practice has been for teachers to attend three evening meetings in the elementary, and two in the secondary, schools. The District claims that during the past school year there were some unit members who did not attend meetings or events as expected, and that making attendance a contractual requirement would ease tensions that were caused by the failure to attend.

The Association’s rationale for the time limitation is that teachers have to be at work early in the morning following a meeting or event, and then work a full day.

Since the Association does not take issue with what the practice has been, and, again, in light of the overall settlement suggested here, it is recommended that the District's proposal be adopted. Teachers do start work early, and put in long days, but it seems that they should still be able to attend two or three meetings a year, as the practice has been, without limiting the time they have to spend at the program or event.

In conclusion, the fact finder hopes that he has provided some useful guidance to the parties, and that they are able to quickly reach a settlement.

Dated: August 25, 2014
Loudonville, New York


LOUIS J. PATAK