

State of New York  
Public Employment Relations Board

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In the Matter of Fact Finding Between

Bemus Point Central School District  
(District)

- and -

Bemus Point Faculty Association  
(Association)

PERB CASE NO. M2014-142

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Before: Donna R. Beal  
Fact Finder

For the District

Jeffrey F. Swiatek  
Hodgson Russ LLP

For the Association

John M. Lichtenthal  
NYSUT Labor Relations Specialist

**BACKGROUND**

The Bemus Point School District is a rural district within the Chautauqua County, New York, and has an Elementary School which houses grades Pre-K through 5 and a Junior/Senior High School housing grades 6 through 12. Total enrollment for 2014-2015 was 714 students and comparing all Central School Districts in the county, Bemus Point District ranks eighth in size of the 16 Central Districts in the County. Chautauqua County is the most

Western county in New York State with 18 separate school districts (according to the District's information), two being City School Districts with much larger student enrollments.

The collective bargaining agreement expired June 30, 2014 and represents approximately 74 members. Formal negotiations began with the exchange of proposals dated May 28, 2014. The Association presented 16 proposals and the District proposed 10.

Several sessions were conducted, however the parties were not able to reach final agreement and the Association declared impasse on August 25, 2014. A mediator was appointed but seeing that mediation efforts would be unfruitful, terminated the third meeting. The parties continued negotiations without finalizing an agreement and the District then requested a Fact Finder in January 2016. In March 2016, this Fact Finder was appointed.

A hearing was scheduled and a hearing was held on May 16, 2016. The parties did not request the Fact Finder's presence during those discussions but the representatives of both parties met periodically with the Fact Finder to report their progress. At the time it was understood that there were 3 major issues; salaries, health care benefits and retirement health care benefits.

At the close of that meeting, it was determined that the parties would file a Fact-Finding Brief. The Fact Finder gave the parties flexibility for a date to file since the Fact Finder had not personally met with the parties. Due to vacations, etc., the date of July 20<sup>th</sup> was established with rebuttals due August 12.

The parties submitted a wealth of documentation to support its positions on the issues including economic demographics, district expenditures on education, district finances, student population and future projections of student enrollment, academic performance, ability to pay, property taxes, the district's budget, salary schedule comparisons, benefit comparisons, median household incomes in Chautauqua County, county population, and State Aid received.

## **ISSUE #1 – SALARIES**

### **ASSOCIATION POSITION**

At the last formal salary discussion between the parties, the Union proposed a three (3) year agreement with 4.25% increase to the base salaries during each year of the contract, retroactive.

The Union has provided comparisons of 15 non-city school districts within the County and states that Bemus Point's finances are comparable to those of the communities in the comparison cohort looking at the District's student population and academic performance. Several of its comparisons were with Chautauqua Lake and Southwestern School Districts but state that complexities exist with those two (2) due to the higher-priced properties that exist in those districts since those surround Chautauqua Lake.

Exhibits were provided of Buffalo Business First publication that shows Bemus Point School District ranking first in Chautauqua County and 11<sup>th</sup> in the greater Western New York Region in academic reputation. It adds that for the past ten (10) years, Bemus Point has consistently ranked 11<sup>th</sup> or higher in their publication. They cite that this is one of the factors that support their position of a 4.25% increase in base salary.

They additionally argue that the District has the ability to pay. They provided information indicating the property value per student as compared to the other school districts and generally have the lowest property tax rates for 2014-15. Further, Bemus Point District's budget carries a general fund balance at the highest allowed pursuant to the New York State Real Property Tax Law. In reviewing the budget for 2014-2015, they contend that the District has budgeted a 13% increase in expenditures related to the teaching salary budget codes, and with their proposal of 4.25%, it would be 8.5% under its own budget.

In their brief, the Association points out that Bemus Point's median salary lies relatively in the middle of the group they compared. When comparing

steps on a salary schedule and when comparing this to other districts, Bemus Point looks favorable. But in actuality, their schedule does not correspond to actual years of experience for in former negotiations, the District was able to negotiate a freeze on step, thus the majority of its members will be earning much less than that of their contemporaries. It argues that the best comparison is looking at years of experience.

While they point out that their starting salary for beginning teachers ranks at the top when comparing salary schedules, their district ranks 24<sup>th</sup> out of 25 for employees with 21 to 25 years of service. Again, comparing schedules, they contend that the majority of its employees fall in the last half of the salary schedule and will earn over \$10,679 less than their contemporaries in other County districts. They further point out that 9 of the employees are “off step”. These employees were at their particular step at the time their step was “frozen” via negotiations. Thus, their years of service do not correspond to the schedule. The schedule has been “frozen” at least five (5) times, according to the Association.

In the Association’s rebuttal, they contend that the most critical analysis is the District’s actual financial condition, pointing out that the total preK-12 enrollment for the years in question in student population is only 6 students less than in 2014. They state that many of the points brought out in the District’s brief to this Fact Finder are not factual, i.e., the rising property tax rates, contributions required by the retirement system and the statement by the District that the District is in “significant fiscal stress”.

The position of the Association is that a 4.5% with emphasis on the latter part of the schedule for distribution is what is required to begin to bring those employees up to the cohort groups among similarly-situated school districts in Chautauqua County.

## **DISTRICT POSITION**

The District has proposed a two (2) year agreement. It acknowledges that this proposal would extend only through June of 2016 and that they would be back at the negotiation table immediately but a settlement would bring the parties up-to-date and the District would be willing to discuss terms for folding an additional year into that contract settlement, extending to June 2017.

They propose a 3% salary increase (inclusive of increment) for 2014-2015 and 2.75% (inclusive of increment) for 2015-2016. They additionally propose that in determining the distribution of the salary amounts, large increments currently on steps 19 through 21 should be evenly distributed in order to “balance salary increases among staff members” and “maintain a competitive starting salary”.

In addition, the District’s proposed a 2% in extracurricular payments for both 2014-2015 and 2015-2016 and 2% for athletic stipends for both years of the contract as well as an off-step payment of \$225 for 2015-2016. Their entire salary proposal however is contingent upon the Association’s agreement to the District’s Health Insurance proposal

The District strongly feels that their offer is fair to the members of the Association as well as to the District’s taxpayers and argues that the members (in the District’s comparison) are already well compensated. It argues that the median individual teacher salary is substantially higher than the District’s median combined household income and provided exhibits indicating same.

The District states that they are willing to commit substantial new monies for teacher salaries but also face economic and demographic pressures in the near future. Among these pressures is the area’s population loss which all school districts are facing. They contend that Bemus Point taxpayers fund a greater portion of the operations of the District as compared to other surrounding districts and that a large portion of its taxpayers are not year-around residents.

Further, it argues that the District continues to face reduced funding from the State of New York, thus again; the taxpayers have to shoulder more of the cost of operation.

They contend that there is no need to make significant changes to maintain the District's relative position in relation to its neighbors. In information provided, it contends that their proposal of 3% is well above the average increase of 2.63% for Chautauqua County districts for the year 2014-2015 and their 2.75% for 2015-2016 is right at the average of 2.73% in the County.

The District's brief has pointed out that what they have offered to the teacher's unit exceeds the total settlement amounts of another NYSUT unit within the District which was 2.8% for each year.

In the District rebuttal, they indicate that the Association weighs heavily on a tie between the academic reputation and what should be the teacher's salaries. Although they do not wish to discredit the quality of teaching, they feel these results correlate closely with the socio-economic standing within the District.

The material submitted to this Fact Finder by the District provided many arguments addressing the reasons used by the Association to justify their demands for the salary increase. These included population loss as well as student declining enrollment, reduction of state aid, increased costs of employee benefits, property tax rates, and the District's fund balance.

According to the District, it prepares its annual budget on a spending plan and not on actual revenue and expenditure number and that the projected budget surplus only represents an "expectation". It also argues that the fund balance has actually been reduced over the past couple of years. In explanation, the rebuttal explained the procedure used whereby the Superintendent appropriates \$400,000 of fund balance annually to serve as an "emergency fund" to be used for unexpected expenses.

This amount is placed in the teacher salary lines in order for the Superintendent to maintain control over those funds. Further, the figure budgeted for federal-grant monies are included in that budgeted line item. This practice, according to the District, allows the \$400,000 to be used to retain teaching positions should they not receive the grant monies.

### **RECOMMENDATION**

While the teaching staff should be commended regarding the results of the academic standards of the students at Bemus Point Central, this Fact Finder does not feel that it should be the basis for a higher salary settlement. Many factors must be considered. Among them would be the definite population loss in the entire county and the continual loss of New York State funding of education as well as the maximum tax ability a district has.

Additionally, there is no salary schedule known by this Fact Finder that totally supports the years of service of the individual to the steps of a schedule. There is a minimum (beginning salary) and a maximum (top salary) to any schedule. What is usually added are amounts for certain degrees as well as longevity. Through the years of negotiations, many districts then add more steps to a schedule and thus, an individual that was on the top step in the former schedule moves again to an added step.

Further, this Fact Finder is well aware that those eligible for step movement have already received that amount and what we are really looking at is the additional money placed on each step. According to material submitted by the District, that increment amounted to a 2.3% for the 2014-2015 school year and 1.96% for 2015-2016. It further stated that the increment for the 2016-2017 school year will be 1.94%. This was not debated in the Association's rebuttal. That being the actual cost, it would mean the District's offer of 3% for 2014-2015 and 2.75% for 2015-2016 is an additional 0.7% for the first year and 0.79% for their second year. I clearly understand the Association's position regarding the senior staff on the schedule.

In regard to the District's creation of their annual budget, it seems most unusual that the line item for teachers' salaries be used for the reason provided by the District. Monies are usually placed in other categories in the budget rather than that line item.

When reviewing the data provided, it was noted by this Fact Finder that the Bemus Point district has in the past, received higher or equal salary increases through negotiations to other county districts that they compare with.

While both parties provided substantial arguments for their position, it is this Fact Finder's recommendation that an amount of money equaling a total of 3.25% be expended for the first year (2014-2015) and that the parties work together to distribute the monies equitable among the staff, addressing the more senior staff at the top of the schedule. One of the ways this could be distributed is to agree to place a certain amount of money on each of the steps. This recommended 3.25% is inclusive of the increment for that year.

For the second year of the contract, this Fact Finder recommends 2.75% inclusive of the increment.

It is further recommended that the District's proposal for extracurricular payments and for athletic stipends be accepted.

It is this Fact Finder's strong recommendation that the parties agree to a three (3) year contract. The parties have been in long negotiations and having a year of calm would be most beneficial. It is recommended that a 2.5% plus increment be given.



## **ISSUE #2 – HEALTH INSURANCE**

### **ASSOCIATION POSITION**

Currently Bemus Point has 85% employer contribution rate for single coverage and 80% for family. The Association states out of fifteen (15) county school districts, ten (10) of them have an 85% employer contribution or higher and have 85% contribution for both single and family plans. Further, in their comparisons, five (5) have deductibles and of those, two (2) have deductibles greater than \$100/\$200 for single and family plans. Bemus has a deductible of \$100/\$200 for single and family plans.

It argues that again student performance should be looked at and the teacher's health insurance should favorable address that.

In their rebuttal, they argue that comparing teachers' health benefits to that of the private sector is inappropriate and any comparisons should only be made with similarly-situated school districts.

They contend that Bemus Point generally ranks in the bottom third when compared with school districts and should not be changed.

### **DISTRICT POSITION**

The District proposes (1) that it be permitted to change carriers or method of funding health insurance as long as the benefits remain substantially equivalent to the current plan. (2) Major Medical be increased from \$100/\$200 to \$200/\$400. (3) Prescription co-pays be increased from \$7/\$15/\$35 to \$10/\$20. (4) Eliminate language providing that the District will pay 100% of the premiums for coverage in circumstances where two (2) Association members are married.

Pointed out by the District in its brief was that insurance premiums have

risen dramatically over the past years and stated that in a study performed by the School Business Officials, increase in health insurance costs for 2016-2017 school year “will swamp the available additional revenues under the state tax levy cap”. The study also indicated that measures taken to reduce the increasing costs have not been successful.

Depending on the option made by the employee, the District stated that the cost of family coverage ranges from \$20,808 to \$17,910 and the cost of single coverage ranges from \$7,958 to \$5,808. Further, the District has seen an increase of over \$460,000 annually during the past 4 years.

The District points out that its proposal does not increase the teacher’s share of the premium. Instead it is proposing modest increases in major medical costs and prescription co-pays. It contends that their proposal would reduce the cumulative amount by approximately \$20,000 if implemented for the entire 2016-2017 school year and directly benefit members by reducing the cumulative amount contributed by approximately \$5,000.

In order to be able to respond to the ever-changing health insurance marketplace, the District has proposed the ability to change carriers or the method of funding while ensuring substantially equivalent benefits.

In the rebuttal submitted by the District, it stated that the Association has acknowledged that the proposed increase in major medical deductible would not be a significant burden for employees.

### **RECOMMENDATION**

The District has not asked for an increase in the employee contribution, although that is what most private as well as the public sectors are dealing with.

The Association has used student achievement as a consideration for their position not to change their current benefits and again, this Fact Finder does not support that justification for a benefit.

The increasing costs associated with health care are uncontrollable and the expenditure for this benefit is of most concern for any District.

It is my recommendation to support the entire District's position on this issue for the current school year of 2016-2017.

### **ISSUE #3 – RETIREMENT HEALTH CARE BENEFITS**

#### **ASSOCIATION POSITION**

Currently, the contract provides 75% of a single plan towards the purchase of district-maintained health insurance for retirees for five (5) years or until age 65, whichever is longer.

It does not contain a years- of - service requirement or a part-time employment exclusion. Also, the District's proposal sets a limit on the amount the retiree would receive instead of a percentage of costs.

The set amount proposed by the District they contend would be a "mere fraction of the current benefit".

They offer their statistics showing the effect of inflation as well as the ever-increasing costs of health insurance as the greatest deterrent. Further, they feel that the flat dollar amount at the time of retirement proposed by the District is just that and the present benefit benefits the retiree annually during the retirement benefit period.

After comparing this benefit to others similar to Bemus Point, the Association indicates that only two (2) of the school districts in the county provide something similar to what they have but again, one (1) district offers 80% of a single plan or 60% of a 2-person plan and the other, 75% of a single plan for five (5) years or until 65. Others they have contended, offer additional benefits to retirees. Their conclusion was that many other districts in the county offer plans superior to theirs.

The Association's position is that the current plan remain and that it not be "eroded" and that the District has the "ability to pay" for this particular benefit.

### **DISTRICT POSITION**

The District has proposed that the current language found in Article XVI which provides a health insurance benefit upon retirement be moved to Article XX which now contains language regarding an unused sick leave payment upon retirement.

They have proposed a flat dollar amount of \$40,000 to the retiree at the time of retirement instead of paying 75% of a single plan until age 65 or for five (5) years, whichever is longer for the retiree benefit period. It feels that the \$40,000 amount provides a "substantial benefit" upon retirement and gives the District some flexibility to begin controlling the costs of providing insurance that could otherwise be used for "educational program needs". It is their contention that their offer equally represents the current offerings or even an expansion to the current benefit.

Their proposal adds that the employee be qualified under the New York State Teacher's Retirement System as full-time and be directly employed by the District for a minimum of 20 years.

In the District's rebuttal, it refutes the Association's contention that the \$40,000 offer only represents a "mere fraction" of the current value. There were in very few cases, where the employee would receive reduced value only by "a few thousand dollars".

It noted that the Association itself, by the materials it submitted to this Fact Finder, supports the position that more districts have greater employee responsibility for health insurance for the current as well as the retired employees.

## RECOMMENDATION

When an individual is considering the employment of a district, one consideration is, should they remain in that district and retire, what benefit would they receive.

This Fact Finder's recommendation is that the current benefit be continued and offered to full time as well as part time employees who qualify under the New York State Teachers' Retirement System who have a minimum of 20 years of service with the District.

I further recommend the movement of Article XVI to Article XX as proposed by the District.

## CONCLUSION

*It is the sincere hope that what this Fact Finder has recommended be considered. The parties have spent many hours in an attempt to reach settlement and with the beginning of the new school year, a settlement would be beneficial.*

Respectfully submitted,

Donna R. Beal  
Fact Finder

August 27, 2016



