STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OFF FACT FINDING BETWEEN

WEST BABYLON UNION FREE SCHOOL DISTRICT

-And **PERB Case No. M2017-044**

CIVIL SERVICE EMPLOYEES ASSOCIATION (Non-Teaching Unit)

-Before **Thomas J. Linden**

REPRESENTATIVES

A. For the School District
Christopher Venator, Ingerman Smith L.L.P.
Yiendhy Farrelly, Superintendent
Michele Psarakis, Executive Director for Finance and Operations
Shawn Hanley, Assistant Superintendent for Human Resources
Lucy Campasano, Board of Education President
John Evola, Board of Education Trustee

B. For the Union
Gretchen Penn, CSEA Labor Relations Specialist
Donna Delerme, Bargaining Unit President
Mary Payan, Food Service Representative
Terry Powers, Bargaining Unit Vice-President and Custodial Representative

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 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. The undersigned believes it is the fact finder's responsibility to help the parties pay a visit to the other side's perspective, even though they might not fully agree with it.

DISTRICT AND BARGAINING UNIT PROFILE

The West Babylon Union Free School District (hereinafter, the "District") is a suburban public school district educating over 3,700 K-12 students. The District is comprised of seven school buildings, including a high school, a junior high school and five elementary schools. In addition, there is one transportation building. The District currently employs approximately 888 full and part-time employees. The District is one of the fifty-six component districts of Western Suffolk BOCES,

The bargaining unit is comprised of non-supervisory clerical, food service, custodial and transportation employees. According to the joint Declaration of Impasse, there are currently 215 employees in the bargaining unit. At the fact finding hearing, the parties indicated there were both salaried and hourly positions with most of the hourly employees being in the food service and transportation sectors.

BARGAINING HISTORY

The District and the Civil Service Employee's Association (hereinafter, the "Union" or the "CSEA") are parties to a collective bargaining agreement (hereinafter, the "CBA" or "Agreement") covering the period July 1, 2014 to June 30, 2017, 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 five negotiation sessions from February 7, 2017 to June 6, 2017. After these negotiations failed to generate a new agreement, the Union and District filed a joint Declaration of Impasse with the Public Employment Relations Board (hereinafter, "PERB") on June 9, 2017. Shortly thereafter, PERB appointed Ms. Karen Kenney as mediator. Despite three mediation sessions, no agreement was reached, and subsequently, the undersigned was appointed as fact finder by letter of January 17, 2018. A fact finding hearing was held at the District Office on February 28, 2018 at which time both parties presented their case and submitted briefs. The record was then closed.

THE ISSUES

- Compensation, Including Longevity
- Health Insurance Contribution Rates

COMPESATION, LONGEVITY AND HEALTH INSURANCE CONTRIBUTION RATE

<u>District Position on Compensation, Longevity and Health Insurance Contribution Rate</u>

As is almost always the case, at least in this fact finder's experience over the last six years, the issues of compensation and health insurance contribution rates are the unresolved issues. No surprise then that these issues take center stage in West Babylon. Because these items are so enmeshed, the fact finder thought it prudent to essentially make them one topic.

It is easy to see that in a labor intensive environment such as a school district, economics is the key point of demarcation between the parties. The District firmly believes that amidst today's climate, there are many things that contribute to its inability and/or unwillingness to pay for increases as initially proposed by the Union. Many districts balk even at the payment of Triborough Amendment amounts.

The District pointed out, both at the hearing and in its brief, that the most important factor in its reluctance to offer the Union what it initially proposed is the mandated tax levy cap instituted in 2011, which took effect on January 1, 2012. School Districts are unanimous in their belief that a perfect storm, of negotiated step increases, the crushing burden of NYSTRS and NYSERS pension contributions, as well as the ever escalating health plan premium costs, result in expenditure increases which are in excess of allowable increases in the District's annual tax appropriated revenues. The District notes that there are certain exclusions to the tax cap that are applicable, the largest being pension contributions, which can "cause the tax cap to exceed two (2%) percent." In other words, the tax cap levy has been difficult to maintain due to the confluence of factors listed above.

Of additional significance is the fact that the District has experienced stagnant state aid over the past ten years. The District notes that state aid received during the 2008/2009 school year constituted 35% of its overall budget. Compared with the 31% of the current budget, this amount does not keep up with corresponding increases in budget expenses. With the only other real source of revenue being taxes, which are subject to a cap, there is a hard limit to the amount of money that can be generated or received.

The District describes in its brief, and touched on during the hearing, the various salary proposals and counter proposals which moved across the table, both during negotiations and mediation. The District believes, based on a letter from the Union to the mediator and the District, that the Union is amenable to, and has “essentially agreed to,” the 1.6% pay raise as presented in an email of November 30, 2017. The sticking points, as noted in this letter, are the Union’s rejection of the health insurance premium contribution rate increase of 2%, and the proposed $200 increase to the contractual longevity increases. No mention is made in this letter of retroactivity for the first year’s increase. The District maintains that its offers are prospective; namely, any increase in the 2017/2018 school year would be effective from the time of the execution of a memorandum of agreement between the parties. The District states that it “has made it clear in these negotiations that it will not make any retroactive salary increases. The Board has been adamant in its bargaining with all units in the district over the last several years that it will not provide for retroactive salary increases.” The unit increment average in the first year of the proposed agreement is .95%.

With respect to longevity, the District has proposed an increase to the two longevity milestones in the CBA which are listed as $950, at 15 years, and $1,000, at 20 years. It is instructive to note that longevities for ten month and hourly employees are prorated. The District had offered a $200 increase to $1150 for 15 year employees, and a $200 increase to $1200 for 20 year employees. The District believes these proposed increases are more than reasonable particularly in light of the salary increases offered.

In conclusion, the District asserts its belief that the parties are not that far apart. There is agreement on a four year CBA duration and disagreement on retroactivity and health insurance contribution rates. It seems to the fact finder that agreement has been reached on the 1.6% pay raise for the last three years of the prospective CBA, but not on retroactivity for the first year.

Union Position on Compensation, Longevity and Health Insurance Contribution Rate

The health insurance provided in the District is the New York State Health Insurance Plan (NYSHIP). With respect to health insurance contribution rates, the bargaining unit has a three tiered system which ties contribution rate to date of hire. Employees hired before 2005 pay eleven (11%), those hired between 2011 and 2013, pay fifteen (15%), and those hired after 2013, pay 20%. The members of the last tier (20%) are not at issue here. There is no difference in percentage rates between individual and family coverage.

The Union contends that it has always had its sights set on achieving a wage increase that was not tied to, or diminished by, an increase in health insurance contribution rates. The Union at one point proposed that any salary increase be tied to the Consumer Price Index that would have minimum and maximum parameters of 1% and 2%. The proposed language would provide that:

> "Effective July 1, 2017, the 2016-17 salary schedule shall be increased by the State-issued tax levy limit based upon the Consumer price Index for all Urban consumers (CPI-U) for a twelve (12) month period ending December 31, 2016, with a minimum 1% and a maximum of 2% (e.g., 1.26%)." (Language would reflect the same for the life of the CBA).

In essence, the Union would forego the 1.6% salary increase and the longevity increase offered by the District, in exchange for this language, coupled with no increase in the contribution rates for health insurance. The Union also proposed, in its "final offer" to the District, to accept a 1% increase to the two tiers in question, rejecting the 2% increase for the tier currently paying 11%. The Union notes that its new longevity proposal that would increase longevity payments by $250 each year would be done to mitigate the effect of the 1% increase in health insurance contribution.

The Union contends that its members could not sustain the increases in health insurance contribution as proposed by the District. It also believes that its members deserve a just and fair wage increase, arguing that the District has sufficient reserves in the event the revenue flow from taxes and state aid is insufficient to support their proposals. The Union further contends it is still trying to make up the step freeze that took place in the 2013/2014 school year. The Union's main thread of intention is to "keep pace with the cost of living and not lose (Taylor Law) protected step value to insurance premium payments."

SUMMARY OF THE POSITIONS OF THE PARTIES

After a review of the briefs, testimony and data submitted, the fact finder believes the respective position of the parties with respect to the economic package is as follows:

District:

July 1, 2017	Increment Paid. Retroactive pay increase of 1.6% from date of MOA signing. No change in HI contribution rates.
July 1, 2018	Increment plus, 1.6% salary increase Increase in employee HI contribution rate, from 11% to 12% Increase in employee HI contribution rate, from 15% to 16%

Increase to both longevity payments of $200 (pro-rated for 10 month and hourly wage earners)

July 1, 2019 Increment plus, 1.6% salary increase

Increase in employee HI contribution from 12% to 13%

July 1, 2020 Increment plus 1.6% salary increase

Union: July 1, 2017 to June 30, 2021

Pay increases tied to the CPI within a range of 1% to 2% with no increases to HI contribution and a $30 increase to longevity payments.

-or-

1.6% salary increase each year, retroactive to July 1, 2017 with only a 1% contribution rate increase to the two tiers in question. In addition, longevity payments will be increased by $250.

The parties have agreed on a four year CBA extending from July 1, 2017 to June 30, 2021.

Fact Finder Discussion and Recommendation on Compensation, Longevity and Health Insurance Contribution

The heart of any labor agreement is the economic package. It affects the employees most directly and also has the greatest impact on the District. The summaries of the wage and health insurance rate packages listed above are fairly close in value but far apart in principle. Both parties have dug in, with the District unwilling to compromise on the retroactivity component and the Union unwilling to completely embrace the District's health insurance rate proposal.

The reality is that health insurance premium acceleration is unabated and has never shown any signs of deceleration. Predictions are impossible, and the average yearly increase of approximately 8% to premium cost, is significant. Another reality that is in play is the fact that cost shifting is no longer a thing of the past. Without being too prescriptive, even police bargaining units are beginning to engage in cost sharing with respect to contribution rates. We see in West Babylon a new tier for new hires which is significantly higher in contribution rate than for more senior employees. The three tiered system in effect for this unit is not unusual and it was at some point during previous contract negotiations that the parties agreed to make new hires pay significantly more for health insurance with the knowledge that eventually, all employees would be paying the higher amount. As employees cycled through the system, all would eventually end up paying 20% for health insurance contribution rate. This was put into effect years ago and will eventually bear fruit for the District. The Union on the other hand has through this measure, protected the more senior and shifted the cost forward to the less senior.

The fact finder makes the recommendation that there be a modest pay increase of 1.6% in each of the four years of the CBA with retroactive payments for the first year to be paid from the date of the signing of the MOA. This is a modest percentage increase, but it will provide enough compensation for unit members to pay for the recommended increases to premium contribution rates which the more senior employees will face. It will also provide money in pocket above and beyond that needed to cover the health insurance rate increases. On July 1, 2019, the rate of 11% will increase to 12% in the third year of the agreements for those members on the first tier.

Members paying 15% will start paying 16% as of July 1, 2019. As can be seen in the summary at the end of this report, the increases in health contribution will start in the third year of the new agreement, not in the second.

With respect to longevity, the recommendation is to increase the amount of both levels by $300. This will take effect on July 1, 2018. This increase should mitigate some of the pain associated with increases to health insurance contribution rate, as well as the lack of retroactivity in the first year of the agreement.

FACT FINDER'S RECOMMENDATION SUMMARY

- July 1, 2017 — 1.6% Pay Increase, Retroactive from time of MOA signing.
- July 1, 2018 — 1.6% Pay Increase + Any Increment Earned

  $950 Longevity Increases to $1,250 ($300 increase)

  $1,000 Longevity Increases to $1,300 ($300 increase)
- July 1, 2019 — 1.6% Pay Increase + Any Increment Earned

  Health Insurance Contribution Rate Increases From 11% to 12%

  Health Insurance Contribution Rate Increases From 15% to 16%
- July 1, 2020 — 1.6% Pay Increase

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Respectfully submitted

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Thomas J. Linden
PERB Fact Finder

Bellport, New York
March7, 2018