

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding Between

Rochester City School District,
Public Employer,

REPORT
AND
RECOMMENDATIONS
PERB Case: M2019-192

-and-

Rochester Teachers Association,
Employee Organization.

BEFORE: Timothy S. Taylor, Esq., Impartial Fact Finder

APPEARANCES:

For the Rochester City School District

Steven G. Carling, Esq., General Counsel
Dr. Christopher Miller, Chief of Human Capital
Charlene Pierce, Chief Financial Officer

For the Rochester Teachers Association

Geraci Law Offices
By: Michael F. Geraci, Esq.
Adam Urbanski – RTA President
John Pavone – RTA First Vice President
Martha Keating – RTA Labor Relations Consultant
Peter Applebee – NYSUT Manager of Higher Education, Education
Finance, and Federal Programs

PRELIMINARY STATEMENT

This Fact-Finding proceeding is between the Rochester City School District (“District”) and the Rochester Teachers Association (“RTA” or “Union”). The most recent Collective Bargaining Agreement (“CBA”) between the parties was in effect until June 30, 2020. On

February 11, 2021, the District declared an Impasse and requested that the Public Employment Relations Board (“PERB”) appoint a Fact Finder. In February 2021, pursuant to Civil Service Law §209 and §205.5(k), William Conley, Esq., PERB's Director of Conciliation, granted this request and directed the undersigned to issue findings and recommendations for how the dispute should be resolved. Hearings were held via Zoom on May 5, 2021, and May 13, 2021. The parties were accorded a full and fair hearing, including the opportunity to present evidence and exhibits, examine witnesses, and make oral and written arguments supporting their respective positions.

The parties submitted pre-hearing statements before the May 5, 2021, and May 13, 2021, fact-finding hearing dates. The positions taken by both parties on the outstanding issues are specified in the exhibits and written arguments of the parties, which are incorporated by reference in this Report. Their positions will be summarized in this Report. The record was closed on or about May 21, 2021, upon the Fact Finder's receipt of the parties' written arguments and supplemental materials.

BACKGROUND

The District is in the City of Rochester in Monroe County, New York. 58% percent of the population is African American, 28% is Hispanic or Latinx, 10% is White, and 4% is Asian or Native Hawaiian or Pacific Islander. 91% percent of the students enrolled are economically disadvantaged. 86% percent of the student enrollment receives free and reduced price lunch. English language learners comprise 13% of the student population. There are a reported 75 languages spoken in the home, with Spanish being the majority with 15.9%, followed by Nepali with 1.7%. Over the past six years, the District's enrollment has declined 16.4% from a student

enrollment of 32,945 in 2010-11 to its present level of approximately 27,522. Students with disabilities comprise 20% of the student population.

The RTA is the duly recognized exclusive bargaining representative for all classroom teachers, contract substitute teachers, attendance teachers, librarians, guidance counselors, speech and hearing teachers, school psychologists, school social workers, library and media specialists, audiologists, school instructors, home hospital teachers, Rochester Preschool-Parent Program teachers, parent group leaders, and peer consultants. The District is a duly recognized public employer under the Civil Service Law. The District and Union are parties to a CBA that was originally in effect from July 1, 2015, through June 30, 2018. The parties agreed to a rollover extension of the CBA from July 1, 2018, through June 30, 2019.

The parties negotiated for changes to the expired contract on June 27, 2019. The RTA and the District met on July 10, August 20, and August 23, 2019. Proposals and counterproposals were exchanged. Since September 2019, there have been discussions between the parties about negotiations for changes to the CBA. No formal proposals were exchanged. The last meeting between the parties took place on January 15, 2020. On June 11, 2020, the parties agreed to a retroactive rate increase of 3.31% for the 2019-2020 school year.

The parties were scheduled to meet in September 2020, but the District learned of a financial crisis raised by a \$50 million dollar shortfall in the 2019-2020 budget. The shortfall resulted in massive cuts, mid-year reductions to over 100 teachers and other staff. The teachers advanced one step in the salary step schedule on July 1, 2020. The average salary increase was approximately 2.1 to 2.3%.

The parties have discussed an extension through June 30, 2022, with limited changes, including salary increases for 2020-2021 and 2021-2022 and possible changes to health

insurance. As of April 23, 2021, the parties have reached no further agreements regarding any changes to the CBA.

RELEVANT CONTRACTUAL PROVISIONS

Section 46.3a of the CBA provides:

Salary Increments and Benchmarking

a. Salary Benchmarking Formula

(1) In order for the District to remain reasonably competitive with the top one-third of school districts in the Monroe County region with respect to teachers' salaries at designated career junctures (e.g., entry level, 5 years experience, 10 years experience, etc.), the parties agree that the most recent average annual increase of salaries across those top districts shall provide the basis for design of a formula intended to inform bargaining for specific increases in salaries for unit members.

(2) To implement this provision, the parties shall first determine the most recent average annual salary increase across the top districts by utilizing current data and an agreed-upon methodology, and shall then apply the result in an agreed-upon manner to achieve reasonably competitive salaries for unit members, particularly at the designated career junctures. Consideration may be given to what other significant changes were achieved during the negotiations for these benchmarking salaries.

(3) Through the development and application of this salary benchmarking formula, the parties' express intent to reach agreement on salary increases based on this formula for successive years beyond the 2014-15 schoolyear.

(4) Either party may submit a demand for bargaining on salary matters, separate from and instead of using the formula to be developed as a result of this provision. Such a demand shall be submitted to the other party within ten (10) days of the adoption of the NYS budget, but in no event later than August 15, 2015. The same timeline shall be observed each year thereafter.

(5) If the parties have not reached agreement on the formula, its application or distribution, or have not reached a successor Agreement, by August 31, 2015, all unit members shall

advance on the salary step listing as set forth in Section 46.3b. of this Agreement. The parties will continue to utilize the collective bargaining process as defined in Article 14 of the Civil Service Law until an Agreement is reached. The salary advancement defined in Section 46.3b. is not intended to be in lieu of a settlement, but only the salary continuation under Triborough while negotiations continue.

(6) The parties agree that salary Agreements reached subsequent to procedures in subdivision 4 and/or 5 above being employed shall be retroactive to July 1st of the year such measures were employed.

(7) Pursuant to the tentative agreement reached on August 8, 2013, the parties have determined that the salary benchmarking formula for school year 2013-14 is 3.2%. Increases shall be applied to 2012-13 (Appendix A) retroactive to July 1, 2013. The salary increase for the 2014-15 school year shall be informed by the benchmarking formula contain in Section 46.3a of the DBA. The District and the RTA will use best efforts to determine the 2014-15 salary schedule before the end of the 2013-14 school year.

(8) Salary schedules are set forth in Appendix A.

(9) A Joint RTA/RCS D Salary Committee, co-chaired by the Superintendent and the Association President, shall be formed to examine the viability of factoring into the salary schedule comparability with other professions with educational requirements and responsibility comparable to those required of teachers.

b. Advancement

Salary advancement pursuant to subdivision (5) of the Salary Benchmarking Formula shall be effective as follows: for unit members, such advancement shall be to the next higher salary set (see Appendix A), and shall become effective July 1, 2015 and each July 1st of any successive year thereafter. Unit members on step 35 shall advance to step 99.

The District's salary placement guidelines shall be congruent with the new salary schedule.

ISSUES

The primary issue is salaries for 2020-2021 and 2021-2022. The District seeks changes to the health insurance and increases to coaching stipends.

UNION POSITION & PROPOSALS

The Union asserts the District failed to bargain in good faith. The excuses of budget crisis, poor economic position, and changes in leadership, do not absolve the District of its duty to bargain in good faith. The Union submits that a clean extension of the CBA for a two (2) year period is the most appropriate and reasonable way for the parties to proceed at this juncture given the timing and current state of negotiations. If the parties cannot agree to a full two (2) year extension, then the Union would suggest a one (1) year extension of the CBA.

The Union insists that the negotiated Salary Benchmarking provision of the CBA remain in place during the extension period. Because of that agreed upon language, the District must apply the salary benchmarking formula despite its other obligations. The chart below shows other settlements in Monroe County related to salary increases, and the average of the top 13 highest settlements, both of which are pertinent to the benchmarking analysis:

Local	2020-21	2021-22
BOCES - Monroe 1	3.30	3.40
BOCES- Monroe 2	3.1%	

Brighton Teachers Assoc.	2.50	2.70
Brockport	3.10	3.10
Churchville Chili	3.20	2.90
East Irondequoit Teachers	3.25	3.25
East Rochester Teachers Association	0.00	3.00
Fairport	3.14	3.10

	3.30	3.40
Gates-Chili		
Greece	2.90	
Hilton	3.20	3.20
Honeoye Falls-Lima	3.25 + adjustments	
Penfield Educators Assoc.	3.25	
Pittsford	3.30	3.40
RTA		
Rush-Henrietta	2.40	
School for the Deaf		
Spencerport	2.90	
Webster	3.00	3.00
West Irondequoit	3.10	
Wheatland-Chili	3.25	3.25

The RTA contends the District is in a solid financial position to pay for the salary demands. The Union submits that: (1) the District's budget woes result from its own bad conduct, and (2) analysis of the District's budget and other pertinent financial information paints a much different picture. The State Monitor Financial Plan published in December 2020 details the current financial health and practices of the District as part of its findings.

As shown in the State Monitor's Report, if the District is experiencing any past and/or ongoing financial difficulty, those issues result directly from the District's own breaches of fiduciary duty regarding financial management, compounded by improper accounting practices.

This includes including line items in its deficit which are not approved expenses. In addition, the District improperly includes funds “advanced” from the City in its accounting, a practice condemned by some of the District’s own representatives as an improper and misleading accounting tactic.

The Union's analysis of the District's budget reveals an \$87M surplus in the upcoming fiscal year. The 2021-2022 State Aid Projections confirm that the District is solvent and supported by significant financial aid. The District received nearly \$450M in Foundation Aid in 2020-2021 and is projected to receive nearly \$490M in Foundation Aid in 2021-2022.

Beyond the State aid funds the District’s financial position is further stabilized by its receipt of \$287M in Federal Stimulus funds, with future stimulus funds expected. At the time of the proposal exchange in September 2019 the parties had tentatively agreed to a salary benchmarking formula of 3.5% referring to CBA Section 45(3)(a)(6). The District’s present proposal includes an average salary benchmarking figure of just 2.3%. The District relies largely on its perceived poor financial situation for its recent cuts and the significant decrease of the salary benchmarking formula. The RTA asserts based on the District’s present financial circumstances, there is no justification for any District proposal to cut the benchmarking salary formula. Neither is there any justification for general proposed cuts to educators, schools, or programs. Instead, the District should be investing in schools and educators.

The RTA supports no changes to healthcare costs. The District has recently asserted that it will seek concessions from the Union in cuts to healthcare benefits and increases in medical co-pays. Any attempt by the District to justify such cuts based on alleged budget constraints and rising healthcare costs is unavailing and should be rejected. A further review of budget and general fund shows that the District has created the purported increased costs by its own

conduct.

For example, the District's Chief Financial Officer increased District healthcare costs by 11%, while the County's healthcare costs overall increased by only 4%. The District should strive to achieve and lock in more appropriate healthcare cost rates rather than improperly seeking to pass the costs related to its own mismanagement upon the Union.

On compensation for Assistant Coaches / Program Assistant Pay, the Union is seeking inclusion of the following language in the successor contract to follow the recent Memorandum of Agreement between the parties about this subject:

Each team with more than 18 athletes (as designated as academically eligible to participate by the Athletic Director) may have one Assistant Coach paid at the following rates (except to the extent already identified above):

Varsity- \$2,000
JV - \$1,500
Modified/Freshman - \$1,000

DISTRICT'S POSITION & PROPOSAL

The District stresses the primary issue is the salary increase for 2020-2021 and 2021-2022. To help offset the increasing cost in employee salaries and benefits in a District with declining enrollment, the District seeks changes to healthcare. The District wants concessions from the Union, including eliminating the Health Rewards Program, increases in co-pays, and retiree contributions to premiums.

The District maintains the RTA's position, that a straight calculation of the average of the highest one-third of settled salary increases in Monroe County is the salary increase for the RTA in a particular year, ignores two important clauses in Section 46:

- The most recent average annual increase of salaries across those top districts shall provide the basis for design of a formula intended to inform bargaining
- Consideration may be given to what other significant changes were achieved during the negotiations for these benchmarking salaries

The first clause has existed in the CBA for many years, but the second was added to the most recently negotiated CBA. Both of these clauses establish that a straight mathematical calculation is not the basis for setting the salary increases in a year. Instead, the parties are to consider the average of the top one-third salary increases along with how those salary increases were reached in bargaining and then negotiate a reasonable salary increase for the RTA based upon consideration of other factors. Other factors that might reasonably inform the parties when bargaining salary increases could be:

- What concessions the RTA or the District is offering
- Changes in economic conditions for the District
- Comparisons with other Big 5 school districts
- Comparisons with other unions in the District
- Forecasted student enrollment and charter schools (both of which effect revenue)

The District offers very generous health and dental insurance plans at relatively low cost to the employees. The District insists health insurance concessions are necessary to offset the cost of the proposed contractual changes to salary and benefits. To help offset increasing costs in employee salaries and benefits in a District with declining student enrollment, the District has asked the RTA to consider concessions in health insurance. The RTA's concessions could include eliminating the Healthy Rewards Program, increases in co-pays for members, and retiree contributions to premiums.

Other Changes

The District and RTA are negotiating only about items 1 and 2, above. However, if negotiations broadens, the District will seek additional changes to the CBA, as stated in the District's prior proposals, including:

- Increase in the number of mandatory common planning times for teachers from 1 per week to 2 per week
- A commitment that teachers will stay to help students get on the bus at the end of the day
- More District control over the professional development courses a teacher may take to be eligible for an incentive
- After-school faculty meetings at no additional cost to the District

DISCUSSION ON SALARY

The Fact Finder must begin by directly addressing the District's financial condition and whether it can absorb the salary increases proposed by the Union. The evidence establishes that the District's financial woes have lessened significantly since 2019-2020. The Fact Finder determines that the District's financial situation mandates salary increases under the benchmarking requirements set forth in the contract.

The evidence establishes the District's financial condition has improved significantly since the discovery in 2019-2020 of an approximately \$50 million dollar deficit. The large deficit led to a mid-year reduction in staff and the excessing of nearly 100 teachers. There has been a significant increase in state aid in 2019-2020 and 2020-2021. While the level of contribution from the City has remained flat, the District expects enhanced revenue contributions because of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and other covid relief

measures.

The District is in the financial position to absorb salary increases of 0% for 2020-2021 and 4.4% for 2021-2022. The 0% for 2020-21 is due to the exceedingly cumbersome task of calculating retroactive payments. The District strongly prefers not to issue retro payments and instead carries the percentage increases forward to 2021-2022. The salary increases for 2020-2021 would be in line with the 2.1-2.3 % Triborough Step increases plus an additional increase of 1.10%, which would have been 3.2 to 3.4 % in 2020-2021. With no retro, carrying the percentage increase forward to 2021-2022 and adding the percentage to the calculated benchmark of 3.3- 3.4 results in an increase of 4.4% in 2021-2022. This increase shall be effective on July 1, 2021.

Financial Fact Finding

Fund Balance

Based on the District's Audited Financial Statement, the total fund balance in Rochester was \$82.2 million at the end of the 2019-20 school year (10.5 % of the 2020-21 budget). The total fund balance is projected to be \$91.2 million, 10.9 % of the 2021-22 budget of the 2020-21 school year. \$12.7 million of this \$ 91.2 million total fund balance is restricted for activities.

School Aid

Significant positive financial-related events have occurred over the past six months. Rochester's total formula State Aid for 2021-22 will increase by \$83 million (13.5%). Foundation Aid is the most significant component of this aid increase (\$39.8 million). Based on the data set produced by the State Education Department that accompanied the 2021-22 Enacted State Budget. The \$83 million increase in 2021-22 is funded in the State Budget.

Foundation Aid

State Law includes a three-year phase in the Foundation Aid. State Education Department data reflects Foundation Aid in Rochester will increase by \$80.5 million by 2023-2024. These increases are based on state law, and the District can rely on a reasonable estimation of reverse expenditures.

Rochester City School has seen a steady decline in student enrollment. The CFO attributed the decline in part to charter schools. Public school districts continue to get Foundation Aid on all students who attend charter schools, districts must pay charter schools a per pupil tuition. Besides regular state aid, districts also receive three-year charter school Transition Aid in those districts whose charter school costs exceed two percent of their budget to partially offset increases in charter school foundation aid payments.

Federal Funds

The field guidance from the United States Department of Education indicates that American Rescue Plan Act (“ARPA”) funds may be used for “other activities necessary to maintain operation of and continuity of and services, including continuing to employ existing or hiring new LEA and school staff”. It is clear from the United States Department of Education fact sheet that the federal government assumes that portions of ARPA federal funds can pay staff salaries.

Payment of funds to existing staff is an allowable use under Coronavirus Response and Relief Supplemental Appropriations Act (“CRRSA”). The budget portion of the SED CRRSA application includes lines for “professional salaries,” “support staff salaries,” and “employee benefits.”

School districts may use these federal funds to pay for approved activities going back to March 2020, and they can use these funds to supplant future planned expenditures. Even if the

District does not wish to use these new federal funds directly on salaries, the District can free up local resources by using these federal dollars to pay for budgeted activities scheduled to be paid from local funds.

The District is forecast to end the school year with a total fund balance of \$91.2 million, which is 10.9% of the District's budget. State aid is increasing by \$83 million (13.5%) for 2021-22 based on the Enacted State Budget. Further, significant state aid increases are scheduled for 2022-23 and 2023-24 as the state funds Foundation Aid. The District is eligible for over \$284 million in new federal funds expended over the next several school years. These federal funds can be used for a variety of activities, including staff salaries.

Accordingly, I make the following:

RECOMMENDATION

Salary schedules will not be increased in 2020-2021. Salary schedules for 2021-2022 will be increased by 4.4%, effective July 1, 2021. Step increments and differential movement will increase effective July 1, 2021.

HEALTHY REWARDS

Currently, Union members do not share health insurance premium costs. The District predicts the rising cost in healthcare coupled with additional retiree healthcare costs will cause structural deficits and resulting in major cuts to staffing and other areas. As a modest proposal, the District seeks concessions in the Healthy Rewards Program. The RTA expressed a willingness to meet with the District to do a comprehensive study in healthcare, determining where saving might be had.

RECOMMENDATION

I recommend modest adjustments to the Healthy Rewards Program. The maximum

reimbursement rate shall be \$250.00. It is currently \$500.00. I also recommend the parties form a joint committee to study healthcare cost savings.

COACHING STIPENDS

The District presented testimonial evidence that the District's coaches are severely undercompensated compared to coaches in surrounding school districts. The District seeks to pay coaches a competitive stipend. While the RTA did not make improvements to stipends a part of their proposal, the RTA recognizes a need to keep the coaching stipends competitive.

RECOMMENDATION

I recommend all coaching stipends shall be increased by \$500.00.

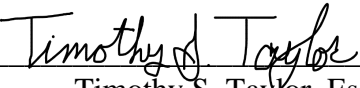
CONCLUSION

My recommendations are based on the evidence presented and the arguments of the parties. The parties have engaged in meaningful discussions during a highly volatile period 2020-2021. I strongly urge the parties to return to the bargaining table and adopt my recommendations without changes. By doing so, the parties will begin negotiations for a more comprehensive contract that could address other issues.

SUMMARY OF RECOMMENDATIONS

- Salary – Salary schedules will not be increased beyond the Triborough mandated increases in 2020-2021. Salary schedules will be increased by 4.4% in 2021-2022.
- Adjustments to the Healthy Rewards Program - The maximum reimbursement rate shall be \$250.00. It is currently \$500.00. The parties will form a joint committee to study healthcare cost savings.
- Coaching Stipends- All coaching stipends shall be increased by \$500.00.

Dated: June 18, 2021
Albany, New York

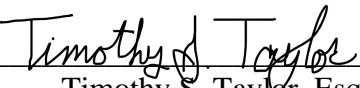


Timothy S. Taylor, Esq.
Fact Finder

STATE OF NEW YORK)
COUNTY OF ALBANY)

I, Timothy S. Taylor, do hereby affirm that I am the individual described herein and who executed this Instrument which is my Report and Recommendation.

Dated June 18, 2021



Timothy S. Taylor, Esq.
Fact Finder