

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT-FINDING BETWEEN
MONTAUK UNION FREE SCHOOL DISTRICT**

-And

MONTAUK TEACHERS ASSOCIATION

**PERB Case No M2011-211
Before: Thomas Linden
Fact Finder**

REPRESENTATIVES

a. For the District:

William Cullen, Esq.

b. For the Association

Tricia Allen, LRS, NYSUT

BACKGROUND

The Montauk Union Free School District (hereinafter, "District") and the Montauk Teachers' Association (hereinafter, "Association") are parties to a Collective Bargaining Agreement (hereinafter, "CBA" or "agreement") dated July 1, 2007 through June 30, 2011. Bargaining for a successor agreement commenced on January 13, 2011 and seven additional sessions were held through July 11, 2011. An additional session was held between the representative of the District, Mr. William Cullen, and the Association representative, Ms. Tricia Allen, on September 19, 2011. Because nine days of bargaining proved unfruitful, the Association made a Declaration of Impasse to the

Public Employment Relations Board (hereinafter, “PERB”) on September 28, 2011 and requested the appointment of a mediator in accordance with Section 209 of Civil Service Law (Article 14, Section 201, commonly known as the Taylor Law).

Accordingly, PERB assigned mediator Karen Kenny to the case who met with the parties twice. The parties also met without the mediator on two occasions. Despite the fine efforts of mediator Kenny, the parties were still unable to reach agreement. By letter of October 4, 2012, the District requested that PERB appoint a fact finder.

Thereafter, the undersigned was appointed, via correspondence, as fact finder on October 26, 2012. It was decided during phone conversations between the parties and the Fact Finder that in lieu of a fact finding hearing, the parties would submit written briefs supporting their respective positions with data and arguments. Written briefs were received by the undersigned on February 25, 2013 and rebuttal briefs were received March 25, 2013. At this point the record was closed.

DISTRICT PROFILE

The District is a rural public school district located in Suffolk County at the easternmost end of the south fork of Long Island. The District borders on the west with East Hampton Union Free School District. The District has approximately two hundred and eighty (280) Pre-K-8th grade students. In addition, approximately one hundred and fifty (150) students attend East Hampton High School pursuant to a tuition contract the District has with the East Hampton UFSD.

The teacher unit is affiliated with the New York State United Teachers (“NYSUT”). Currently, there are 44 full time teachers in the bargaining unit. There are 22 other District employees. All employees work in one building.

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, sometimes kicking and screaming, to an agreement. Often, in the short term, the parties to the process lose sight of the long term perspective, the big picture. It is the fact finder’s responsibility to help the parties overcome this shortsightedness and to pay a visit to the other side’s perspective, even if they don’t fully agree with it. It is obvious that the parties to this agreement had ambitious goals; it is now time to take stock of what can reasonably be attained in bargaining.

As stated by fact finder John Trela, in PERB M2009-278, p. 12:

“Parties at the fact-finding stage of the impasse procedure have often staked out intractable positions. Nevertheless, sooner or later the parties begin to view their respective positions a bit differently, and when they do, there is a foundation upon which agreement can be reached. . . .the role of a fact finder is to provide an objective view of the causes of a dispute and recommend a course of action that will lead to agreement”

THE ISSUES

- Compensation/Salary
- Health Insurance Contribution Levels
- Longevity
- Sick Leave Bank
- Domestic Partner Coverage, Accrued Sick Leave at Retirement and Sabbatical Leave Provisions

Compensation/Salary

District Proposal on Compensation/Salary

With respect to all economic issues, the District points to many things which it believes contribute to its inability to pay for current or future increases. The most important factor is the limiting force presented by the mandated 2% tax levy cap instituted in 2011, which took effect on 1-1-12. Also, the confluence of salary step increases, education credit column advancement, the increasing burden of NYSTRS pension contributions as well as ever escalating health plan premium costs, result in a “perfect storm of costs overruns well in excess of allowable increases in the District’s annual tax appropriated revenues....” (District brief, P. 6). The District contends that because of this the Association should accede to a reduction in the current salary step and education course credit columns compensation.

The District points to the last CBA wherein teachers were granted extensive salary increases of “between 25% and 60% in merely four years.” The District argues that this has resulted in the teachers being highly compensated and that this warrants either the “outright elimination of the salary schedule” or a reduction in step increment

and education credit column amounts. The District also notes that it has provided more than competitive salary increases comparable to other Districts on Long Island. The District also maintains that Montauk teachers are compensated well above the average for New York State

The District contends that no salary increases should be granted for the 2011-2012 and 2012-2013 fiscal years beyond the current salary step advancement. The District has also offered no salary increases for the fiscal years 2013-2014 and 2014-2015. This would be coupled with a limit of \$1,500 on step increases for the fiscal years 2013-2014 and 2014-15 (down from the current \$2,678). Increments were paid under Triborough for the first two years of the expired agreement. The District is, in effect, offering a reduction of the status quo with respect to every form of salary and step increase.

The lynchpin of the District's position is very simply the 2% tax levy cap which was instituted in 2011. The District believes that the current level of step increments and education column increments coupled with increases in health insurance premiums and NYSTRS contributions form a confluence of factors which do not auger well for sustainability. The District contends that these factors will push beyond the 2% cap to perhaps 3% and beyond. It simply will not be able to pay for this, and if the increase in the budget reaches 3% or above they will be hard pressed to get approval from the 60% super majority needed to override the 2% limit. The District believes that there are now, "severe restrictions placed upon the School District with respect to its ability to obtain revenues through annual tax appropriations."

Association Proposal on Compensation/Salary

While the Association agrees that the dollar amount between steps in the salary schedule is approximately \$2,868, it argues that the expired step increments should not be reduced. The CBA salary schedule reflects step increment percentage increases ranging from 2.1 to 5.3. The amount depends, of course, on where the teacher is on the salary schedule. The Association argues that, with the exception of Greenport, no other surrounding eastern Suffolk County school district (there are eleven) has an agreement reducing the dollar amount or percentage between steps. The Association also submitted documentation which they believe supports their belief that increments in the Montauk CBA are comparable to surrounding districts.

The association also believes it significant that 29.5% of the unit (13 of 44) is not receiving step increments for 2012-2013. Those members “off step” or on “hold steps” will increase in 2013-14 to fifteen and in 2014-15 to 16 members. The Association contends that those members not receiving these step increments are providing a significant savings to the District. In addition, the Association argues that because of the higher credit requirements for advancement through the schedule, it takes Association members longer to reach the top step. The majority of eastern Suffolk County districts, they contend, reach the maximum salary after sixty or seventy five credits. It takes association members and additional fifteen to thirty credits reach the maximum salary on the schedule.

The Association points out that it is well aware of the cost of incremental movement and other harsh realities facing school districts and in New York State. It also believes that prior to the last CBA; Association members were paid below the median salary when compared to surrounding districts. The last CBA is the first agreement providing Association members equitable compensation with surrounding school districts and, in a nutshell, “the Association is seeking to maintain this salary status, only recently acquired by its members.”

The Association is seeking a cost of living increase in the third year of the CBA, 2013-14 of 1%, and in the fourth year, 2014-15 an increase of 1.5 %. The Association has proposed to increase employee health premium contributions an additional 2% for both individual and family for 2013-14 and a 3% increase in 2014-15. The net effect of this would be that in 2013-2014 the breakdown of payment for yearly health insurance premiums would be 93% District/ 7% Association. In 2014-2015 the breakdown would be and 92% District / 8% Association.

In summary, the Association believes that in order keep comparability with nearby districts, the salary schedule should be kept intact and that in the last two years of the agreement a cost of living increase of 1 % and 1.5 % be given to all employees.

Fact Finder Discussion / Recommendations on Salary / Compensation

These are extremely challenging times for school districts and municipalities. The County, State and Federal governments have gone through an unprecedented financial downturn that has also affected every citizen. The fact finder does not have to catalogue all the components of the great recession; we know them all too well. On top of this, the New York State Legislature approved the so called property tax cap legislation which mandates that property tax levy increases be no more than 2%. In school districts this 2% can only be pierced after a 60% super majority vote of district residents.

The District's proposals reflect the ongoing economic downturn and pattern of economic realities and trends, both in the District and throughout Long Island and the rest of the country. There is no question that the stagnation in the overall economy triggered in 2008 continues to have a significant impact on the District and resident taxpayers. However, it seems from available real time data that, in general, things are starting to slowly turn around. Among other things, it appears housing markets nationally and in Montauk (Association Exhibit 17, rebuttal brief) have started to make a slow comeback. Unemployment on Long Island is still at 7.1 %, down from previous years, and there is talk of interest rate increases from the Federal Reserve and increased job creation in both the private and public sector. In addition, the State Legislation report compiled by Michael Ebert shows increases in state aid (not including building aid) will rise in 2013-14 by 5.7% with Montauk increasing by 9.97.

That being said, the undersigned turns to address Compensation/Salary. My hope is that the recommendation in this section of the report will be an important factor in

bringing the parties to an agreement. I have read all the data presented to me, both in the original briefs and in the subsequent rebuttal briefs in addition to studying data from other sources, and I have come to the conclusion that I must make a recommendation that recognizes economic realities and at the same time does not penalize the District for its obvious showing of fiscal responsibility. However, even in this brief exposition of the arguments and data of the parties indicates that using relatively similar sources of data, the parties were able by selection and interpretation to come to very different conclusions concerning a proper economic package. Also, the documents presented to the fact finder in this case, to no one's surprise, reflect a significant difference on the question of ability to pay. A school district's ability to pay has always encompassed factors that are very fluid in nature, moving targets so to speak.

Both parties agree that a significant increase in salary was enjoyed by the Association by virtue of the increases, incremental and percentage, given during the four years of the prior agreement. There were compelling reasons why the District agreed to this and I gathered from the arguments of both sides that salaries are now more comparable to districts to the near west. I do detect a bit of negotiator's remorse on the part of the District. However, it now appears that the playing field is somewhat more level.

I believe, therefore, that the totality of circumstances does not support an extraordinary award of a reduction of increments. I am recommending a ½ % cost of living increase to be added to the salary schedule on 7/1/1013 and delaying the salary increment normally due on 7/1/2013 to 2/1/2014. I am also recommending a 1 % cost of living increase to be added to the salary schedule on 7/1/2014 and delaying the increment

payment due on 7/1/2014 until 2/1/2015. This will perhaps allow the parties to weather the storm of ever increasing health insurance premiums and rising NYSTRS contribution increases at least until June 30, 2015. The last issue of NYSTRS contribution increases is currently being addressed by the State Legislature which is, at the very least, cognizant of the problematic nature of increased contributions. Whether or not the Governor's attempt to limit the increases by this "smoothing over" provision aimed at the spreading out of exploding increases succeeds, remains to be seen.

The fact finder would also like to note that the law which established the 2% tax cap does take into account that some expenses are currently outside a district's control, namely the state-mandated employer contribution rates for teacher pensions. The law allows for exemption or exclusion of increases in contributions to the NYSTRS that exceed 2%. According to a document published by the Capital Region BOCES Communication Services titled "Understanding New York's Property Tax Levy Cap," reports that:

"Far from being "loopholes," these exemptions seem to indicate an acknowledgement among lawmakers that schools have no ability to simply limit cost increases in these areas to the rate of inflation. As a result, a district's final tax levy (after the levies for these exemptions are added in) could be greater than its published "tax levy limit" and yet still be considered, under the law, within that limit."

This would help explain why, according to NYS Comptroller Thomas DiNapoli's yearly report, increase in school district budget increases averaged over 3% last year.

With respect to the advancement on the salary schedule through educational column movement, the Association's proposal that three of fifteen credits be required to

be at the university level for advancement, is hereby recommended. No other changes to this part of the salary schedule are recommended.

Health Insurance Contribution Levels

District Proposal on Health Insurance Contribution Level

The District contends that the increased annual cost of Health Insurance premiums for the East End Health Plan will measurably add to its fiscal plight noting that in the past three years premium costs for teachers' participation in the plan increased by 8.97 % in 2011-12, by 7.78% in 2012-13 and will increase an additional 9.91% in the 2013-14 fiscal year as evidenced by a February 2, 2013 memorandum from the East End Plan to all participating districts. (District exhibit # 12).

In addition to these disturbing numbers, a comparison of other school districts on the south fork of Long Island reveals that, in most instances, teachers contribute more than 5% of health plan premium costs. The chart on page 19 of the District's brief shows teacher contribution levels for the nine districts on the south fork to all be at least 12% with two exceptions, Wainscott with a 0% contribution for teachers, and Amagansett with 8 % (effective 7/1/13).

The District also requests that the fact finder recommend an increase in the retiree level of contribution from 5% for individual coverage to 20% . The District is not asking for an increase in retiree dependent coverage contribution rate which now stands at 50%. The District argues that their retired teachers should "bear a greater share of health plan premium costs in that their current level of premium contributions is drastically less than

most State and local government retired employees contribute towards their health plan costs.”

Association Proposal on Health Insurance Contribution Rate

The Association understands full well that it must share in the responsibility to pay for medical coverage. It submits that, historically, health insurance contributions in eastern Suffolk County school districts have been lower than western Suffolk County districts. The reason for this is salaries in eastern Suffolk County districts are lower than salaries in western Suffolk County districts. The Association further points out that in almost all of the eastern Suffolk County district agreements, where health contributions have increased, there are corresponding salary increases. This is not the case in Montauk as the District is only proposing reduction of increments, no salary increase and “continuously escalating” contributions towards health insurance premiums. The Association believes it has proposed reasonable increases in employee contributions for the last two years of the agreement of 2% in 2013-14 and 3% in 2014-15.

Fact Finder Discussion/Recommendation on Health Insurance Contribution Rate

There is no question that health care costs have increased dramatically in the recent past. The vexing conclusion we must reach if we examine health care costs going back many years is that, in fact, they have never trended downward. In recent years, increases have far exceeded previous projections and actuarial assumptions and employee contribution rates have been trending upward. Looking at surrounding districts to the

west does provide us with clear guidance. These districts do provide teacher contribution rates in all but two districts, of at least 12%. Because of health care cost escalation and other factors constraining the District's finances, I recommend that in the last two years of the prospective agreement, teachers begin in 2013-14 to contribute 8% of the premium and in 2014-15 to contribute 12%. I believe this is a better solution than the District's proposal to reduce or eliminate the salary schedule or to institute layoffs. While I realize that this alone will not alleviate all the Districts financial problems, I believe these measures to be a step in the right direction. We are, of course, not assured of absolute predictability

With respect to retiree contribution rates, I am recommending that all retiree contribution rates remain the same throughout the term of the new agreement in accordance with Article XI, B of the CBA. The individual rate would stay at 5% and the dependent rate would stay at 50% of the difference between individual and family coverage premiums. With respect to dental insurance, the record before the undersigned is not persuasive to cause any change in contribution rates for either current employees or retirees.

Having determined that however, the undersigned is recommending that as soon as practicable after the ratification of the new CBA the parties begin discussions concerning how to deal with the ever escalating cost of health insurance and retirement contribution. We see in the health insurance provisions of many agreements, tiered systems which provide relief against rising costs. We are also seeing groups instituting effective cost saving measures within a plan, such as increasing employee co-pay amounts. It is, of course, no secret that tiered systems are often anathema to unions, it

seems that embracing tiering may be a way out, albeit an unpopular one. Other options could also be looked at including the possibility of utilizing plans other than the East End Health Plan which may provide lower premiums without a reduction in benefits. Health insurance buyout provisions are another way of providing relief, one which I believe is a win-win. Early retirement incentives could be investigated as they might be added to the provisions of Article XVII of the CBA. Taking advantage of an Internal Revenue Code 125 “cafeteria plan” could prove to be a most effective way for Association members to cut costs of health insurance by paying pre-tax dollars for premium costs. Looking at these options doesn’t cost anything and working together to find win-win solutions might add to the healing process between the Association and the District.

Longevity

Discussion of Positions and Fact Finder Recommendation

There is no point at this time in this report to review in depth the arguments put forth by both sides in the matter of longevity. The District argues it cannot afford to pay, and the Association argues the members eligible are deserving of some sort of longevity since it has been three years since association members at the “top step” or “off step” have had any kind of salary step increase. The Fact Finder makes no recommendation on longevity at this time. For now, “top step” will remain as such.

Sick Leave Bank

Discussion of Positions and Fact Finder Recommendation

As stated in the District's reply brief, the Sick Leave Bank is, very simply, unnecessary.

The Association is seeking to continue the Sick Leave Bank for the duration of the new agreement and to remove any reference pertaining to the expiration of the sick bank provisions. Because the Sick Bank Committee is made up of both District and Association appointees, there is a system of checks and balances. The Association contends that the Sick Leave Bank has been utilized during the last three CBA's by members "in the greatest need".

The Fact Finder recommends reinstatement and continuation of the Sick Leave Bank. There were no instances of grievances reported concerning this article of the CBA, so it would seem to be working successfully. In the future this could ripen into an article to be discussed, but at this time there is no reason to have such a discussion.

Domestic Partner Coverage, Accrued Sick Leave at Retirement and Sabbatical Leave Provisions

Fact Finder Recommendation

The Fact Finder recommends no change in any of these provisions. These proposals are remanded to the parties for further negotiation.

Fact Finder's Recommendations Recap

Compensation /Salary

Effective:

- July 1, 2011 increment for all unit members eligible for increment
- July 1, 2012 increment for all unit members eligible for increment
- July 1, 2013 ½ % cost of living salary increase
- February 1, 2014 delayed increment for all unit members eligible for increment
- July 1, 2014, 1% cost of living salary increase
- February 1, 2015 delayed increment for all unit members eligible for increment
- The salary increases will be applied solely to the salary schedule

Health Insurance

- July 1, 2011 no change in premium contribution
- July 1, 2012 no change in premium contribution
- July 1, 2013 increase employee contribution from 5% to 8%
- July 1 2014 increase employee contribution from 8% to 12%
- No change for any retiree health insurance contribution for health or dental

Longevity

No change recommended by the Fact Finder.

Sick Leave Bank

No Change recommended by the Fact Finder. Sick Leave Bank to continue in the CBA.

Domestic Partner Coverage, Accrued Sick Leave at Retirement and Sabbatical Leave Provisions

No change recommended by the Fact Finder.

Concluding Statement

It is hoped by the Fact Finder that this report provides a roadmap to settlement. It is also hoped that the recommendations set forth herein be adopted and embraced by both parties and that they form the basis for the new collective bargaining agreement. The parties may not see these recommendations as a perfect resolution to this impasse. However, they do represent a reasonable solution to resolving these negotiations. The parties are encouraged to adopt them as written and as soon as practicable.

Thomas J. Linden, Fact Finder

April 10, 2013

State of New York)
County of Suffolk)

I, Thomas J. Linden, do hereby affirm my oath as a fact-finder that I am the individual described herein and who executed this instrument which is my recommendation.

Thomas J. Linden, Fact Finder

