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Orleans/Niagara BOCES (O/N BOCES) and BOCES Teachers Association (BOCESTA)

Miriam W. Winokur

Orleans/Niagara BOCES (O/N BOCES) and BOCES Teachers Association (BOCESTA)

Abstract
In the Matter of Fact-Finding analysis between Orleans/Niagara BOCES (O/N BOCES) and BOCES Teachers Association (BOCESTA). PERB Case No. M2006-251. Fact Finder: Miriam W. Winokur, PhD.

Keywords
New York State, PERB, fact finding

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-Finding

between

ORLEANS/NIAGARA BOCES (O/N BOCES)

and

BOCES TEACHERS ASSOCIATION (BOCESTA)

ANALYSIS

AND

RECOMMENDATIONS

PERB Case No. M2006-251

FACT FINDER: Miriam W. Winokur. PhD

APPEARANCES:

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PROCEDURE

Prior to filing for impasse in December 2006, the parties met on eight occasions to negotiate a successor to their Collective Bargaining Agreement (CBA), which expired on June 30, 2006. Mediation with a New York State Public Employment Relations Board (PERB) appointed mediator was unsuccessful and the parties requested Fact-Finding. On June 11, 2007, having determined that an impasse existed in negotiations between Orleans/Niagara BOCES (BOCES or District) and the Orleans/Niagara BOCES Teachers Association (BOCESTA or Association) PERB appointed the undersigned as Fact Finder to conduct an inquiry into the circumstances contributing to the impasse and to offer recommendations for its resolution. The hearing took place on June 1, 2008, at the BOCES District Offices, Sanborn, New York. The parties submitted post-hearing briefs dated July 18, 2008, and rebuttal briefs dated August 15, 2008, and the record was closed after receipt of all briefs by the undersigned Fact Finder.

BACKGROUND

The BOCES provides direct educational services to the following public school districts in the form of alternative education programs, career and technical education, and special education: Albion, Lyndonville and Medina in Orleans County; and Barker, Lewiston Porter, Lockport, Newfane, Niagara Falls, Niagara-Wheatfield, North Tonawanda, Royalton-Hartland, Starpoint and Wilson in Niagara County. The component districts share in BOCES' administrative and other costs, which are assessed on a proportional basis according to the amount of use each component district requires. When they commenced negotiations in January 2006, the Association's bargaining unit included approximately 255.55 full-time (FTE) employees with a total payroll of $16,273,972.

Following is a statement of the parties' respective proposals and positions, followed by discussion and recommendations for a resolution of the differences which contributed to the impasse. All issues that had been tentatively agreed to during the negotiations prior to my designation as Fact Finder, are to be incorporated into the successor Agreement that is ultimately agreed to by the parties. The Parties have presented the following unresolved issues for recommendations: BOCESTA's proposals for Dental Insurance, Extra Service Pay, Retirement Incentive, Involuntary Reassignment, Leave Time, and Salary; and BOCES' proposals for Sick Leave,

Extended Sick Leave, Step Movement/Salaries, Extended School Year, Head Teacher, and Health Insurance.

DURATION

During their negotiations the parties' proposals have been based on a three year successor agreement, effective 7/1/06 through 6/30/09; nevertheless, because of the time that has elapsed since the expiration of the previous agreement, it is clear that after receipt of these Recommendations, and assuming they reach an agreement, they will have to return to the bargaining table shortly to negotiate another successor. It is my opinion that it would be to their advantage if they agreed to extend duration of the contract, and while I am reluctant to recommend anything beyond the intention of the parties, I urge them to consider extending the contract period; therefore, the following recommendations have been made anticipating a duration of three years unless they agree to extend the contract period.

DENTAL INSURANCE [New Section]

PROPOSALS

The BOCESTA is proposing that BOCES implement a Delta Dental Preferred Option Plan for all employees (Brief, Appendix 2).

POSITIONS

BOCESTA asserts that dental insurance is an essential component of an overall health policy; that comprehensive health care, including dental coverage, produces healthier employees, reduces absenteeism, and has an positive impact on overall health insurance utilization and resulting health care costs, a concept recognized by a majority of the component school districts that provide dental insurance (i.e., Albion, Medina, Barker, Lockport, Niagara Wheatfield, Niagara, Starpoint, and Wilson). BOCESTA estimates that assuming that all the bargaining unit employees enrolled in the proposed dental plan, the total cost to the District would be approximately $14,000 per month; that "while not an insignificant amount", the benefits that would accrue to the District would offset the cost (Brief, pp. 19-20); also, that BOCES has not responded to the proposed dental plan, other than to say it would be considered "in the context of the overall economic proposals"; and that the Association has proposed a "time-tested value plan that provides substantial benefits to members at a very reasonable cost" (Reply Brief, p. 13).

BOCES opposes adding dental coverage, claiming that the proposal would add a

substantial cost when the District needs cost savings in health coverage; also that BOCESTA's supporting documentation assumes the employer would pay 50% of the premium, but the proposal states that BOCES would pay the full premium; that the supporting documentation is outdated; and that under Section 8.22 of the Collective Bargaining Agreement, the BOCES currently contributes $350 per unit member per year to a medical reimbursement plan under Internal Revenue Code Section 105(h), funds that can be used for reimbursement of dental expenses on a tax-free basis.

DISCUSSION AND RECOMMENDATION

The data reporting dental plan coverage indicates that a number of component districts presently provide some form of dental insurance, but there is no specific information which would enable me to arrive at a decision concerning whether to recommend that the plan be added. Each district's plan includes different provisions, and so a determination cannot be made regarding the extent to which the addition of the proposed dental plan would impact on fiscal condition of BOCES. The Association has estimated that the cost of its proposal would be approximately $14,000 per month, which it acknowledges is "not an insignificant amount" (Brief, p. 20).

Notwithstanding the Association's assertion that "BOCES has never argued that it cannot afford to maintain the current level of benefit or implement the BOCESTA proposals" (Brief, p. 3), it is well settled that the cost of health coverage has become an overriding concern to both employers and workers. The comparability data does not support adding an additional cost component to the coverage presently provided by the District; therefore, if the parties negotiate a three year CBA:

I RECOMMEND that the Association's proposed Dental Plan be dropped or, as noted by the Association, since a number of component districts currently provide some form of dental insurance for their teachers, <u>if and when</u> the Parties agree to extend the duration of the Agreement for one or more years post 2008-2009, and my recommendation for wage increases is accepted by the parties, **I RECOMMEND** that the addition of a Dental Plan be agreed to by the BOCES.

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<u>EXTRA SERVICE PAY</u> [New Section]

PROPOSALS

BOCESTA proposes to add new contract language specifying that:

> <u>"It is understood that if BOCES appoints someone other than a BOCESTA member as Lead Advisor,</u>

BOCESTA members shall not be expected to perform such function."

POSITIONS

BOCESTA notes that the parties have nominally agreed to establish a stipend in the amount of $750 per year for individuals appointed as "Lead Advisor" for the BOCES Skills USA program; but that the parties have been unable to agree on language concerning non-bargaining unit members who may be appointed to the position(s). BOCESTA indicates it has asked BOCES to identify the duties of the Lead Advisor or find another way to specify the responsibilities of the position; that only through the identification and isolation of these functions can boundaries be established to ensure that those who are paid to perform the duties do so and also that those who are not paid to perform the duties are not required to do so. The Association claims that the CBA establishes the wages, hours and terms and conditions of employment for its members and cannot legally mandate those items for employees outside the bargaining unit; that if the District doesn't want to pay administrators to act as Lead Advisors, that commitment does not affect BOCESTA's concern that individuals who are not appointed as Lead Advisors are assured they are not required to perform Lead Advisor duties.

The BOCES contends that the language proposed by the Association would give rise to disputes regarding interpretation; that "many teachers contribute time and effort, performing an array of functions, pertaining to Skills USA and the Association's proposed language would intrude upon management rights to assign work and risk creation of ambiguity and argument over what constitutes the duties of a Skills USA Lead Advisor." (Brief, p. 35). In response to the Association's contention that Skills USA events are held outside the school day, the District indicates that while there are occasions when that is true, such events often occur during the school day. The District disputes the Association's claim that Lead Advisor responsibilities are distinguishable from those performed by Skills USA advisors; that the Association does not specify or clearly delineate how the responsibilities differ, so the BOCES is correct in its argument that Skills USA advisors and Lead Advisors perform responsibilities that are similar and overlapping, and that Lead Advisors would presumably perform such duties more extensively or more frequently.

Regarding scheduling functions, the District contends that Skills USA advisors

and Lead Advisors are or may be called upon to perform some scheduling responsibilities (Reply Brief, pp. 1-2) but the language proposed by the Association would prohibit the assignment to a Skills USA advisor of the same "function" that is performed by a Lead Advisor; therefore, it is inappropriate, since both perform similar and overlapping "functions – notwithstanding that the Lead Advisors could perform such "functions" more extensively or frequently.

DISCUSSION AND RECOMMENDATION

It became apparent, from statements made by the Association at the Fact-Finding Hearing, that BOCESTA is concerned that members of the bargaining unit would be required to perform the duties of Lead Advisor, but would not be paid to do so. During the Hearing, I suggested to the parties that they attempt to find language that would alleviate the BOCES concern that BOCESTA's proposed language would intrude upon management rights to assign work and risk creation of ambiguity and argument over what constitutes the duties of a Skills USA Lead Advisor. The language the Association suggested by e-mail did not alleviate the District's concern. BOCES has informed the Association of its willingness to insert an express provision stating that a person employed by the BOCES as an administrator would not be eligible to receive a Lead Advisor stipend (Brief, p. 35). BOCES' proposal to satisfy the concern of the Association is reasonable. If the District failed to fulfill its obligation under the terms of the Agreement, BOCESTA can file a grievance, therefore:

I RECOMMEND that (1) as agreed, the parties establish a stipend in the amount of $750 per year for individuals appointed as "Lead Advisor" for the BOCES Skills USA; and (2) that an express provision shall be added to the Collective Bargaining Agreement specifying that a person employed by the District as an administrator shall not be eligible to receive a Lead Advisor stipend.

RETIREMENT INCENTIVE [New Section]

PROPOSALS

BOCESTA proposes to add a new section to the Agreement which provides that:

> " an employee with ten years of service who is within the first three years of eligibility to retire without penalty under the New York State Teachers Retirement System, and who provides BOCES with notice by January 1, will receive an incentive payment equal to his/her final year salary as a non-elective employer deferral to an IRS Section 403b account."

POSITIONS

BOCESTA asserts that more than half of the bargaining unit is at the highest paid step of the salary schedule; that by providing an incentive that is offset by the savings in salary, BOCES can prospectively lower its personnel cost; that while BOCESTA members have the possibility of health insurance benefits and payment for accrued sick leave available at the time of retirement, these factors have not induced retirement at the same level that an incentive would; that retirement incentives provide timely compensation to employees in a way that is fiscally prudent for employers, and not to consider the possibility is not reasonable.

The Association claims that to reduce payroll costs, BOCES can create an incentive for employees to retire at an earlier date than they might otherwise and by so doing, would realize salary savings in each of the next nineteen years; that the full "cost" of the incentive is offset by the salary savings achieved by replacing a top step employee with one on Step 1; that since the District controls the salary paid to new employees, it can maximize its savings. The Association projects that at current salary rates, the savings to the District would be a total of $384,900 in yearly increments; and that its proposal provides a win-win opportunity for both employer and employees (Brief, p. 27). The Association claims that currently BOCES employees with twenty five years of service will receive seven years of BOCES-paid health insurance following retirement and, in addition, can convert unused sick leave days to cash or a medical fund, but it argues that these have proven to be insufficient motivation to encourage employees to retire.

The Association also claims that there are limits to an employee's use of sick leave in order to maximize the benefit; that Medina, Barker, Newfane, Lewiston Porter, Niagara Wheatfield, and Wilson have some form of sick leave conversion plus retirement incentive, that Albion, Lockport, Niagara Falls, Royalton Hartland and Starpoint have only sick leave conversion, while North Tonawanda has none (Brief, pp. 27-28). The Association maintains that given the benefits that accrue to individual employees and to the District, a retirement incentive is a valuable and fiscally responsible concept that should be implemented.

BOCES contends that its teachers already receive generous retirement benefits; that retiring members of the bargaining unit continue to receive "both" up to seven years of paid health insurance in retirement and a conversion of unused accrued sick leave days above 190. In response to the Association's assertion that the first 190 days

are not eligible for conversion (Brief, p. 27), BOCES contends that Section 8.15 of the CBA provides an eligible retiring teacher with up to seven years of coverage, with BOCES premium contributions; that Section 8.16 provides that employees may receive payment for unused accumulated sick leave day; and that under a December 2005 MOA between the parties, payments are contributed to a retiree's tax-sheltered annuity. Finally, the BOCES argues that the Association's proposal would impose a substantial and unwarranted cost and asks that the proposal not be recommended.

DISCUSSION AND RECOMMENDATION

The BOCES opposes granting a retirement incentive at this time, maintaining that the incentive proposed by the Association could result in large-scale losses of experienced teachers, which would necessitate difficult and costly recruitment and replacement offers. Although BOCESTA has claimed that its proposed benefit is completely justified, the data it supplies does not include detailed information regarding what retirement incentives component districts currently have, only that some of the districts have "some form" of sick leave conversion plus retirement incentive, while others have "some form" of sick leave conversion and no retirement incentive (Brief, pp. 27-28).

The District does not agree with giving teachers an additional monetary incentive to retire and in view of BOCESTA's acknowledgement that the benefit is "lucrative" (Brief, p. 26), and that at least half of the component districts do not have any retirement incentive, there is no compelling reason to support its proposal, therefore:

I RECOMMEND that the proposal be withdrawn**.**

INVOLUNTARY REASSIGNMENT [New Section]

PROPOSALS

BOCESTA proposes to add the following language to the Agreement:

> Where a class is abolished and the incumbent must be reassigned, he or she shall be given the choice of any vacant position within his or her tenure area for which he or she is qualified. Such choice shall be made available before the vacant position is posted.

POSITIONS

BOCESTA explains that its programs are based on the needs of the components and that the component districts assess the need for BOCES services each year; that

as needs change each district may expand or reduce its use of BOCES programs; that if there are insufficient requests for a particular program or service, then BOCES will abolish it, resulting in the displacement of staff; that if no layoff is caused by said program changes, then staff members can be shifted from one assignment to another. BOCESTA wants to address the uncertainty by allowing a displaced teacher to choose from vacant positions for which the teacher is qualified (e.g. a teacher with decades of teaching at the pre-school level), and who is assigned to work with emotionally handicapped students at the high school level when the pre-school program is abolished; that in such situations, BOCES' discretion has been employed in a manner that serves to the detriment of Association members; that an employee should be afforded the right to select among vacant positions; that doing so does nothing to diminish the authority of management, which still has the right to ensure that a qualified certified individual occupies the position. The Association maintains that its proposal merely seeks to "inject some measure of humanity into the displacement process." (Brief, p. 12).

The Association recognizes the District's need for control over placement of teachers displaced through program closures (Brief, p.15); that the Association is aware of that need and is willing to consider safeguards concerning employee qualifications and abilities; that nothing in its proposal would place an unqualified person in a position, but would ensure that displaced teachers are comfortable in their new position while ensuring that vacancies are filled with qualified personnel.

BOCES maintains that the Association's proposal does not just call for consultation with an employee regarding potentially available assignments, but would grant the employee the choice of any vacant position; that the proposal calls for contract language which would intrude upon traditional management rights to direct and assign the workforce. The District notes that consultation regularly occurs with teachers before assignments are changed and further, that Section 3.03 of the collective bargaining agreement contains provisions that allow a teacher to seek a change of assignment, with the final decision resting with the BOCES. The District strongly disagrees with BOCESTA's characterization of the BOCES' work assignment decisions and practices, contending that it has made assignments in a manner to best serve the educational program; that the Association's proposal would give a unit member who is subject to reassignment the choice of any vacant position with his or her tenure area for which they were "qualified", but the possession of a certificate

legally qualifying a unit member to fill an assignment does not alone mean that having the individual fill that particular assignment would best serve the educational program.

DISCUSSION AND RECOMMENDATION

BOCES cites a number of considerations which must often be undertaken in the course of making assignment decisions (Brief, pp. 36-38). The District argues persuasively that it is responsible for both evaluating personnel and supervising the educational program and is in the best position to make work assignment decisions (Reply Brief, p. 2), and the Association acknowledges the District's need to have control over the placement of teachers who are displaced through program closures. I agree with the District's position, therefore:

I RECOMMEND that this proposal be withdrawn.

LEAVE TIME [Section 5.01]

PROPOSALS

BOCESTA proposes to eliminate the existing distinctions between sick leave and personal leave, and to convert all accrued and prospective leave time to "leave" days.

POSITIONS

BOCESTA notes that teachers earn nineteen sick days each year under the current contract, all of which can be used for absence caused by personal illness: up to ten days each year can be used for illness in the immediate family; that two days can be used to attend to personal business; and that unused leave accumulates from year to year and can be converted to cash or health insurance benefits when an employee retires. BOCESTA wants to apply a concept more typically found in the private sector to the accumulation and use of employee leave time, whereby the number of days that could be used would not change, the only change being a shift from employer monitored leave to a system in which employees are treated as professionals and given control over their leave (Brief, p. 13). The Association argues that the existing limitations do nothing to control the use of leave time; instead creating an administrative bureaucracy geared toward monitoring leave time and "catching" employees in inappropriate use. BOCESTA contends its proposal would allow BOCES to eliminate this administrative cost and employees would have the existing incentive for prudent use of leave time.

BOCESTA asserts that information provided by BOCES shows that more than

30% of the bargaining unit had already accumulated sick time in excess of the maximum, which demonstrates that employees are using sick time responsibly in order to convert the benefit at retirement. BOCESTA notes that the incentive and the consequential conservation of leave time remains unchanged under its proposal and that private companies use this model with great success; and also, that the concept has been applied in school districts as well, such as the Newfane Central School District where the change was made from a sick leave/family leave/personal leave construct to one embracing "leave" time and said change has been successful, with no substantive change in the number of days used. BOCESTA maintains that by implementing its proposal, that success can be replicated in the BOCES; and since the District did not indicate why the concept of "leave time" is inferior to the existing provision, BOCESTA reasserts its position that its proposal is in the best interest of both parties (Reply Brief, p. 15).

BOCES references its proposal to revise Section 5.01 to reduce the number of sick leave accruals from the current 19 to 16 days (Reply Brief, pp. 27-29) and requests that the Association's proposal not be recommended.

DISCUSSION AND RECOMMENDATION

BOCESTA claims that the only proposed change is from an employer monitored leave to a system in which employees are treated as professionals and given control over their leave (Brief, p. 13), and that the concept is usually found in the private sector. It is well settled that there are substantial differences between working conditions in the private and public sectors, and there is no substantial evidence that bargaining unit employees have not been treated as professionals or that a majority of the BOCES component districts presently employ such a concept. There is no persuasive evidence that employees require an incentive for more prudent use of leave time since according to BOCES more than 30% of the bargaining unit had already accumulated sick time in excess of the maximum, demonstrating that employees are using sick time responsibly in order to convert the benefit at retirement, therefore:

I RECOMMEND that the Association's proposal be withdrawn.

SICK LEAVE [Section 5.01]

PROPOSALS

BOCES proposes to reduce the present annual sick leave from nineteen (19) to sixteen (16) days, and also that an employee using sick leave days must provide a

doctor's note whenever requested by BOCES upon suspicion of sick leave abuse or any occasion on which three or more days of sick leave are used consecutively, and employees can be required to submit to a BOCES physician's examination before being paid for sick leave for a personal illness.

POSITIONS

BOCES claims, pursuant to the exhibits it has submitted (Ex. 4-7), that its proposal is fair and reasonable and would still provide for generous allotments when compared to teachers in area school districts and other BOCES employees. BOCES notes that at the Hearing, the Association referenced the correspondence from the District to unit members concerning absenteeism as evidence the District does not need the proposed contractual authority to require medical documentation or examination to substantiate the need eligibility for sick leave. BOCES points out that the correspondence was merely "requests" for documentation, were labeled as such, and generally reminded individuals of the importance of regular attendance and dependability and did not require any form of response. BOCES also notes that the Association had argued that under Education Law Section 913, the District already has the authorization to require an employee to submit to medical examination, however, the District maintains that the statute does not obviate the need for the language contained in its proposal, since the BOCES is interested in reducing absenteeism and having the contractual authority to verify eligibility for claimed leave, which justifies its proposals (Brief, pp. 27-28).

BOCES contends that the instant proposals are in line with contractual provisions applicable to other BOCES employees and other area teachers in that OT and PT and therapist assistants who were recently added to the BOCESTA bargaining unit, and have terms and conditions that are identical to those proposed by the BOCES (Ex 6). Responding to BOCESTA's claim that there is no evidence that sick leave days "are abused, overused, inappropriately used, or otherwise unnecessary", the BOCES claims that it is clear that some members of the bargaining unit have exhibited heavy absenteeism, as contained in the data regarding the unit members' use of sick leave over a period of year as documented in the copies of eleven letters from the BOCES to members of the bargaining unit written in March, April, and May 2006. The District asserts that the data contradicts the Association's argument and supports the BOCES' proposal (Reply Brief, p. 3).

BOCESTA is opposed to the BOCES proposed changes to Section 5.01, having

proposed the elimination of the existing distinctions between sick leave and personal leave, and that all accrued and prospective leave time be converted to "leave" days, in its proposal for "LEAVE TIME"; that the BOCES offers no rationale supporting even cursory consideration of the diminution of benefits; that sick leave benefits within the component districts shows the average number of earned sick leave and personal leave days is 17.38 (Brief, p. 15); that pursuant to utilization information for the bargaining unit, in the last year of the current contract, a total of 1050 days were used, and nine employees had long-term illnesses that resulted in the use of days well in excess of the 19 accumulated that year; that among remaining employees, earned days was well below 13%, and BOCES has not produced evidence that the days are abused, overused, inappropriately used or otherwise unnecessary; that BOCES' proposal would have the effect of a lifetime reduction in earnings, since a reduction of three days per year over a twenty five year career would result in the loss of seventy-five days under the conversion formula and without a concomitant increase in salary to offset the reduction, the proposal represents a serious diminution of benefit for BOCESTA members.

The Association also contends that the proposal would require an individual using a leave day for personal illness to provide a doctors note and could send any employee using sick leave for personal illness to a doctor of its choosing, to undergo a physical exam; that under the proposal, it is the completion of the exam, not confirmation of illness that triggers payment (Brief, pp. 14-17). The Association maintains that when the District is concerned about an individual's health, well-being, or ability to perform their job, Education Law Section 913 provides the BOCES with the authority to compel the employee to see a physician, and given that authority, there is no reason to add this language to the contract (Brief, p. 17). **DISCUSSION AND RECOMMENDATION**

BOCESTA makes a persuasive argument in opposing the District's proposal. The BOCES has not shown, through documented evidence, that there has been abuse by members of the bargaining unit to justify the change, therefore:

I RECOMMEND that the proposal be withdrawn.

EXTENDED SICK LEAVE [Section 5.02]

PROPOSALS

BOCES proposes that the first sentence of Section 5.02 be revised as follows:

> Upon application to the District Superintendent and action of the Board of Education (BOE), additional sick leave not to exceed fifty percent (50%) of the number of days of accumulated sick leave credited at the end of the previous school year will be granted by the BOE provided that the teacher submits documentation of the need of absence.

POSITIONS

THE BOCES claims that Section 5.01 provides for ample leave accruals, as shown by comparative data (Sick Leave Ex. 1, 2) even with the revisions it is proposing; that the benefit under Section 5.02 is unusual (although some other O/N BOCES bargaining units have extended sick leave benefits, three do not and in the case of the CSEA clerical and custodial units, the benefit has been reduced in recent negotiations (Sick Leave Ex. 2) and among other factors noted, members of those units receive lesser sick leave accruals while employed on a twelve-month basis than Association members receive while employed on a ten-month basis (Sick Leave Ex. 5).

BOCESTA contends there is no justification for this proposal; that in the 2003-2004 school year, only three employees used the benefit for a total of 141.5 days, in 2004-2005 five employees used a total of 106 days, and it appears that in 2005-2006, no employee used the benefit; that in component districts, teachers generally have access to sick leave banks; that in Medina Central School District, tenured teachers have unlimited paid sick leave and there is no sick leave bank; that as shown by the data submitted among the remaining districts none link available sick bank days to the number of days the employee had accumulated at the start of the illness (Brief, p. 19); that the existing system works well for both its members and the District, and there is no reason to change it; that an employee who suffers a serious health condition and exhausts his or her sick leave accruals is entitled to additional sick leave; that the calculation of addition leave is based on the number of days that the employee had accumulated at the start of the school year; that this is a unique benefit among districts in the area; that many districts provide extended sick benefits through a sick leave bank or leave donations from other employees; that the BOCES system is predicated on the employee's prudent use of their sick leave; that BOCES proposes to cut the benefit to 50% of the days the employee had earned at the end of the prior school year and this not only slashes the number of available days by half, it excludes the nineteen days earned at the start of the school year.

DISCUSSION AND RECOMMENDATION

The fact that the benefit for the clerical and custodial units has been reduced in

recent negotiations is not a sound basis upon which to seek a change that will result in a substantial impact on the bargaining unit members. Valid comparisons cannot be made between the job duties of professional staff and white collar and custodial employees. BOCES' has not established that the employee's use of their sick leave has been excessive thereby requiring the contract language the District proposes. Change in contract terms should only be made with convincing evidence that such change is necessary, therefore:

I RECOMMEND that BOCES withdraws this proposal.

EXTENDED SCHOOL YEAR [Section 8.09]

PROPOSALS

The BOCES proposes to make the following changes to Section 8.09:

> A teacher employed during the months of July and August to provide teaching services as an extension of his/her teaching assignment for the regular teaching year will be paid one-tenth (1/10th) of his/her regular salary for each (full) month of work or one two-hundredth (1/200th) of his or her regular salary for each extra day, provided that the teacher's regular (ten-month) annual salary does not exceed forty thousand dollars ($40,000.00). A teacher with a regular (ten-month) annual salary in excess of forty thousand dollars ($40,000.00), who is employed during the months of July and August to provide teaching services as an extension of his/her teaching assignment for the regular teaching year, will be paid one-tenth (l/lOth) of forty thousand dollars ($40,000.00) for each(full) month of work or one two-hundredth (l/200th) of forty thousand dollars ($40,000.00) for each extra day. Regarding other services such as scheduling, intakes, working in a classroom or on a modular house, and/or grant writing, compensation shall be determined by the BOCES.

POSITIONS

The BOCES asserts that it wants Extended School Year salaries to be adjusted so that the District will be able to provide cost-effective services; that other area BOCES have summer school wage scales that are not linked to teachers' annual salaries; that in addition to the Special Education Extended School Year summer school program, the BOCES operates a large academic Regional Summer School program; that the size of the teacher work force in the BOCES academic Regional Summer School program is more than double the size of the teacher work force employed in O/N BOCES Special Education Extended School Year summer school program (per Ex 4). The BOCES reports that in the 2008 school year, teachers are paid $30.37 per hour in the O/N BOCES academic summer program; that a 7-1/2 hour work day, which would correspond to the length of the work day for teachers in the Extended School Year special education summer school program, the hourly salary

translates to a per diem salary of 1/200 of $45,600. The BOCES notes that after an extended period of time in which it tried to obtain cost waivers to increase reimbursements for participating school districts, the BOCES received a significant increase in State aid in 2008, which it applied retroactively, but Summer, 2007 costs exceeded the new rate (Brief, pp. 24-26).

BOCESTA points out that BOCES wants to pay teachers performing services in the ESY program a lower hourly rate than it pays teachers in the academic summer school; that the academic summer school is offered for students who failed or performed poorly during the regular school year is a remediation program, not a continuation of services, but is substantially different from work required of teachers during the regular school year and BOCESTA asserts that BOCES' proposal will cut the salary of those individuals performing the duties for ESY, despite the fact the said duties are indistinguishable from the duties performed during the school year and that the District's attempt to obtain the professional services of teachers at reduced rates is neither fair or reasonable (Reply Brief, pp. 10-11).

DISCUSSION AND RECOMMENDATION

The BOCES claims that this proposal would enhance its ability to provide cost-effective services and increase consistency and comparability between the compensation structures in the Extended School Year summer school program and the academic Regional Summer School program. It is obvious that BOCES wants to reduce costs in the overall area of salaries so as to remain competitive, however, as noted by the Association (Brief, p. 30), in the absence of any demonstrated "need" to make the requested reduction and in consideration of the fact that the proposal has the potential to "diminish" the earnings of BOCESTA members, there is little persuasive evidence to support the BOCES' position.

I agree with the Association that since the employees are providing services that cannot be distinguished from their responsibilities during the regular school year, there is no reasonable justification to reduce their pay. The District did not disagree with BOCESTA that the ESY program is discernible from the regional summer schools operated by some component districts, thereby rendering comparison of salary rates inappropriate for recommending the BOCES proposal. Finally, as BOCESTA claims, Section 3101 of the New York State Education Law establishes that compensation for services beyond the ten month school year "shall be at least the monthly or daily rate" (Appendix 5).

BOCES requested that the Fact Finder either recommend its proposal or make a recommendation that would bring parity between salaries in the special education Extended School Year program and salaries in the academic Regional Summer School program; however, any substantial change in contract language which impacts on the terms and conditions of employment should be through direct negotiations and agreement of the parties, therefore:

I RECOMMEND that this proposal be withdrawn.

HEAD TEACHER [Section 8.10]

PROPOSALS

The BOCES proposes to increase the annual stipend amount from $900 to $1,800. BOCES also proposes to add the following language at the end of Section 8.10:

> If a new head teacher position is created, or if new candidates are sought to replace a current or former head teacher, then the position will be posted (in BOCES centers and on the BOCES Web site) for a minimum of ten days. The decision of the District Superintendent, regarding selection of a candidate for a head teacher position, shall be final.

POSITIONS

The BOCESTA has agreed to increase the pay rate of the Head Teacher. The Association indicates that the sole issue between the parties is related to whether and when BOCES must post an announcement of its intent to fill a Head Teacher position; that BOCES wants to post the position only when it creates a new position or on those occasions when it decides to replace the incumbent of such a position, but BOCESTA wants the position(s) to be posted each year, maintaining that the contract requires that vacant positions be posted; that Head Teachers are appointed annually and the positions are vacant until appointment; that there is no reason that the position(s) should not be posted annually; that no reason has been offered by the BOCES and none should be recommended; and that to allow the existing secrecy and contract violation to continue would be unreasonable and unfair (Reply Brief, pp.12-13).

The BOCES has expressed its willingness to include provisions that if a new Head Teacher position is created, or if new candidates are sought to replace a current or former head teacher, then the District would post the position (Negotiations History, Exhibit 11) and that in Exhibits 12 and 13, it clarified its willingness to provide notice of head teacher appointments to the Association President, provided that Board of

Education meeting minutes would constitute adequate notice.

DISCUSSION AND RECOMMENDATION

The instant dispute is related to when BOCES must post an announcement of its intent to fill a Head Teacher position. Head Teachers are appointed annually and the positions are vacant until an appointment is made by the District. The Association concedes that the Head Teacher position has been handled without regard to the restrictions of the contract and that both parties are responsible for the lapse. BOCES is willing to agree to BOCESTA's request to have the position posted annually, either when a new head teacher position is created or if new candidates are sought to replace a current or former head teacher. The Association does not agree that such notice of head teacher appointments should be provided to the Association President with the BOCES condition that Board of Education meeting minutes would constitute adequate notice. The BOCESTA's proposal that notice also be forwarded to the Association is a reasonable compromise, therefore:

I RECOMMEND that the BOCES proposal be accepted except that the language is changed from the condition that Board of Education minutes would constitute adequate notice to adding language that the notice will also be supplied to the Association.

HEALTH INSURANCE [Sections 8.12-8.13]

PROPOSALS

BOCES proposes to delete Paragraph (1) under Section 8.12; and to replace the second and third paragraphs with a paragraph stating that:

> Effective July 1, 2006, for full-time professional personnel and part-time personnel who work at least 75% of a regular full-time teacher's schedule, the BOCES' premium contributions shall be capped at 96% of the premium contribution in effect for enrollment in the applicable managed (point of service) plan. Any such unit member electing to enroll in the traditional indemnity plan shall pay the full incremental difference between the applicable premium for that plan and 96% of the premium contribution in effect for enrollment in the applicable managed care (point of service) plan. If the premium, payable for enrollment in the managed care (point of service) plan ever becomes greater than the premium payable for enrollment in the traditional indemnity plan, then the BOCES' premium contribution for full-time professional personnel and part-time personnel who work at least 76% of a regular full-time teacher's shall be capped at 96% of the premium contribution in effect for enrollment in the traditional indemnity plan – and enrollees in the managed care plan would be required to pay the full incremental difference. Enrollees who are employed at least .50 FTE but less than .75 FTE shall be eligible to receive premium contribution from the BOCES equal to one-half of the premium contributions that the BOCES would make on behalf of an employee who is employed at least

> .75 full-time equivalent (FTE) status. The foregoing premium contribution provisions for part-time employees shall, except as other expressly stated in this agreement, apply to all such part-time employees (with FTE as stated) in the bargaining unit, including but not limited to those employees who have been involuntarily reduced to part-time.

BOCES also proposes to delete everything after the first two sentences of the first paragraph of Section 8.13 and add a paragraph at the end of Section 813 stating that:

> The managed care (point of service) plan shall include a prescription co-payment of up to $10.00 (per in-network prescription) or $25.00 per out-of-network prescription with provision for mail order (up to 90 days) at double the foregoing prescription co-payments.

POSITIONS

THE BOCES contends that: (A) significant increases in health insurance costs necessitate increased cost-sharing by BOCESTA; that the District's proposal for a premium contribution cap equal to 96% of the premium cost in effect for the applicable POS plan is fair and reasonable; (B) that employers increasingly implement increased employee health insurance cost sharing and in recent negotiations, employee organizations recognize the need of employers to reduce health insurance costs; that a state-wide survey indicates that on average, teachers are contributing approximately 12% of the premium cost of family health coverage; that comparisons of health insurance benefits for teachers in the District indicate that the cost-sharing it is seeking is very reasonable (HI Ex. 8); that as evidenced by the enrollment data and trends, the data show heavy enrollment by District teachers in the POS plan (HI Ex. 9); and that under Section 8.22, BOCES contributes $350 per unit member per year to a medical reimbursement plan under IRS code Section (105h); (C) that cost-sharing has been implemented for other Orleans/Niagara BOCES bargaining units and employee Groups; (D) that the BOCES has informed the Association regarding the impact of time on the BOCES position, and the Fact Finder should consider the lack of timely health insurance cost savings when evaluating the subject of future health insurance cost savings; that the unrealized health insurance cost savings through June 2008, is estimated to total $954,874, which impacts the District's position with reference to both salary and health insurance (Salary Ex. 18); (E) that cost pressures necessitate health insurance cost savings; and (F) that the BOCES has made concessions in an effort to reach agreement by reducing the proposed employee premium contributions (Brief, p. 23).

In response to BOCESTA's arguments, BOCES maintains that the POS plan it offers provides an excellent package of health benefits, allowing either full coverage or low co-payment options for individuals who choose in-network benefits (Reply Brief, p. 8; HI Ex. 5); and that the requested premium contribution of 4% is well below typical premium co-payments borne by employees, accounting for less than 1% of the average salary for members of the bargaining unit (HI Ex. 8). The BOCES claims that services of out-of-network health care providers are covered after the employee has paid a deductible and co-insurance (HI Ex. 5) and that BOCESTA's assertion that an employee enrolled in family coverage under the TIP could expect to pay an additional $1000 per year as a result of the District's proposal, is not accurate. BOCES supplies comparative data for bargaining units in other WNY BOCES which it contends indicates that its proposal is fair and equitable in the context of area settlements, noting that the Albion contract settlement for 6/2008-6/2012 shows that enrollees in the TIP are required to contribute 20% of the premium and enrollees in the POS or the PPO must contribute 3% of the applicable premium during 2008-2009; 6% 2009-2010;7% 2020-2011 and 10% on and after 7/1/2011 (HI Ex. 8; Reply Brief, pp. 13-14).

BOCESTA contends that the BOCES' proposal would shift costs to employees; that if the District's premium contribution were capped at 96% of the POS plan, the resulting cost to employees enrolled in the TIP plan would result in increases: up to 968% (single) 846.03% (2 person) and 836.02% (family); that for employees enrolled in the POS plan, the District's proposal would increase the employees' health care dollar cost to: $509.02 (Family) $337.55 (2 Person) and $164.64 (Single); and that there are considerable differences between the two plans regarding prescription co-pays (Brief, pp. 22-23); that there is an advantage to BOCES when employees elect to participate in the POS plan rather than the TIP plan; that instead of establishing an incentive for employees to make that choice, as is done in the majority of component districts, BOCES is forcing employees into making the change.

The Association notes that unions in Wilson and Newfane established financial payments to employees who voluntarily moved from the TIP to the POS plan, said payments to offset the increased out-of-pocket costs associated with the POS plan and related prescription plan; that Lockport agreed to require new employees to take the POS plan for the first five years of employment after which, the employee may elect the plan of his/her choice; that no district in Niagara County that participates in the

consortium plan requires an employee premium payment to participate in the POS plan; and that employees in Niagara Wheatfield are contractually entitled to share in the savings realized by the move from TIP to POS plan and to receive 40% of the savings in a tax favored plan (Brief, p. 23).

According to the Association, in an attempt to compel employees to seriously consider their health insurance choices and make decisions based on actual needs, and in part recognizing the greater cost, in the parties last negotiated agreement, rather than the plan they had always taken, they agreed to initiate an employee fee for participating in the TIP; and many employees had elected to move to the lower cost POS plan which has no employee contribution, while others with a need for the better benefits find the benefits outweigh the existing cost; and that regardless of what plan they need, employees will have to pay exorbitant fees under the BOCES proposal, but rather than taking steps to address these concerns and make choices that do not compromise the health of workers, BOCES wants to shift costs to the employees.

BOCESTA asserts that BOCES' decision to limit its options to the O/N BOCES Consortium was an economic boon for many years, as the consortium plans realized smaller annual increases than "regular" health insurance plans throughout the region and now, instead of seeking solutions for spiraling costs, BOCES is proposing to place the costs on its employees; that that approach is neither fair nor reasonable and should not be supported and is not a concept that would be ratified by the BOCESTA membership; that BOCES is not seeking true sharing of costs, but to shift costs to employees; and that while some component districts have been successful at moving employees from the costly TIP to the less-expensive and less-benefit rich POS plan, such move was the product of a well-thought out and executed process by which employees received additional compensation as incentive to make the change.

DISCUSSION AND RECOMMENDATION

BOCES claims that the most significant aspect of this proposal is capping the premium contribution at 96% of the rate for the POS plan. It also proposes that employee prescription co-payments be increased from $5 (in-network)and $10 (out-of-network), to $10 (in-network) and $25 (out of network). In addition, for any unit member who elects to enroll or remain enrolled in the TIP plan, BOCES proposes to increase the out-of-pocket co-payment from $500 (single) and $1000 (family) to $1000 (single) and $2000 (family); and also to increase employee prescription co-payments from $3 (generic) $5 (preferred brand name) $8 (non-preferred brand name) to $15

(generic) $30 (preferred brand name) and $50 (non-preferred brand name). BOCESTA has indicated it would agree to increase Premium access for the TIP to $225 (single) $431 (2 person) and $644 (family).

The BOCES' proposal to cap its contribution toward premium at a dollar amount equal to 96% of the cost of the Point of Service (POS) is not without merit, in view of the continuing escalating cost of Health Insurance, nevertheless, the data supplied herein confirms that the current contribution for teachers for the POS plan currently is 100% for many component districts: Holley, Lockport, Medina, and Niagara Wheatfield, contracts expired 6/30/08; Lyndonville and Newfane, contracts expire 6/30/09; Barker, and Wilson's contracts expire 6/30/10, and under Barker's contract, new employees are limited to participation in the POS plan. The data also indicates that the present prescription co-pays for the POS and PPO Plans are consistent in most component Districts. The sole exception is Albion, which has negotiated an agreement in which all new employees are limited to POS and PPO health plans, and the Employer contribution will increase over the life of the agreement, from: 97% (7/1/08), 94% (7/1/09), 93%, (7/1/10), and 90%, and also has a Rx Co-pay of 20% (7/1/11), (HI Ex. 8). All other component Districts will continue to contribute 100% toward the POS and PPO health plans through expiration of their respective agreements.

BOCES suggests that because the parties were not successful in reaching agreement for a successor contract, the additional premium costs it experienced be considered in my recommendations, however, it takes two parties to contribute to reaching an agreement and the District cannot place sole responsibility for not reaching agreement on the Association.

After careful consideration of the Parties' positions and data:

I RECOMMEND <u>either</u> that the District's proposal for Health Insurance for a three year agreement be withdrawn, <u>or as noted in my recommendation for Dental Insurance</u>, **I RECOMMEND** that the Parties agree to extending the duration of the instant Agreement for one or more years, and BOCESTA agrees to a percentage cap on the District's contribution to the POS plan, and to increasing co-pays and annual premium contributions to the TIP plan; and that, the parties negotiate the three-tier POS prescription co-payment configurations available for members of the Teachers' bargaining unit under the POS plan, as proposed by BOCES (Reply Brief, p. 10).

STEP MOVEMENT / SALARIES [Section 8.03 (2)]

BOCES proposes the following changes in the language of the above Article:

> …provided that the unit member was on active paid status for the equivalent of at least seventy-five (75%) of full-time equivalent service for the preceding school year. A unit member serving on active paid status for the equivalent of between fifty [percent (50%) and seventy-five (75%) of full-time equivalent service shall advance one step on the salary schedule after two consecutive school years of such service. Step movement for unit members falling below the service threshold in the preceding sentence shall be at the discretion of the BOCES,…and to eliminate the language which follows: "if not, the teacher shall move to the next higher step in the year when the teacher returns to BOCES' active payroll unless there has been a break in the teacher's continuous service with BOCES.". . .

POSITIONS

BOCES disagrees with the Association's recollection that the District had stated that paid leave would not count towards fulfillment of the threshold of "active paid status" in order to qualify for step movement; that BOCES has consistently intended that paid leave would count toward the required service threshold (email, Negotiations History, Ex. 11). To support the instant proposal, BOCES submits O/N BOCES Supervisory District comparative data reporting step movement for Barker, Lewiston-Porter, Newfane, North Tonawanda, Royalton-Hartland, Starpoint, and Wilson (Step Movement, Ex. 1).

BOCESTA contends that it has no evidence that a problem exists with the present conditions required for step movement, except for a case recently referenced by the BOCES; that the change proposed by the District would be overly burdensome; that teachers put in a year and movement on schedule is warranted. BOCESTA is opposed to the unfair limitation on salary progression that would result from BOCES' proposal, and argues that service performed on behalf of the District within a school year benefits the organization, and the employee should not suffer career-long earnings diminution because of an unpaid leave (Reply Brief, p. 12).

DISCUSSION AND RECOMMENDATION

Currently, the only limitations on step advancement occur for teachers who are not on the active payroll and experience a break in service, or who begin service with BOCES after May 1st. Section 8.03 provides that a teacher shall move up one step on the salary schedule "if the teacher continues on BOCES' active payroll". The change BOCES seeks would require the unit member to be on active paid status for the equivalent of at least 75% of the school year, and if on active paid status for the equivalent of between 50% and 75% for the preceding year, would advance one step on

the salary schedule after two consecutive school years of such service. In addition, step movement for unit members below that threshold would be at the "BOCES discretion".

Analysis of the comparative data submitted by BOCES (Step Movement Ex. 1) and BOCESTA reflects the following service required for step movement: Barker, 90 days; Lockport, five months; Newfane, 90 days; Niagara Wheatfield, one-half of school year; North Tonawanda, 93 days; Royalton Hartland, guaranteed step movement upon return from leave; and five months service required for Starpoint. There was no information for Albion, Lyndonville, Medina, Niagara Falls, and Wilson. The foregoing component districts do not show a uniform approach to step movement, nor do any of the districts reported have similar requirements to those proposed by O/N BOCES. The District did not supply a compelling reason for proposing the changes to current step movement on the Parties' salary schedule, therefore:

I RECOMMEND that this proposal be withdrawn.

SALARY [Section 8.02]

BOCESTA is proposing the following salary increases:

2006-2007: 5% inclusive of increment
2007-2008: 5% inclusive of increment
2008-2009: 5% inclusive of increment

BOCES proposes the following salary increases:

2006-2007: 2.4% inclusive of increment
2007-2008: 2.7% inclusive of increment
2008-2009: 2.7% inclusive of increment

The parties agree that the cost of increment is as follows:

2006 – 2007: 1.74%
2007 – 2008: 1.36%
2008 – 2009: 1.74%

POSITIONS

THE BOCESTA contends that in two prior rounds of negotiations, the Parties worked together to establish fair and reasonable salary rates which would allow BOCES to attract and retain qualified, dedicated staff; and that the salary increases BOCES currently proposes will negate that trend and return salary rates to the levels of the component locals. BOCESTA does not question that the salaries of its members have increased favorably in the last ten years as a result of a commitment by the

parties to break the trend of having the District's salaries at the lowest levels in the region, but having made substantial improvement in salary levels, the District now desires to maintain its position within the components and not have salaries decline when compared with peers within those components; that average negotiated increases within component districts for the anticipated period of their successor agreement have exceeded 4%, but that BOCES is proposing significantly lower increases, in combination with benefit cuts; that during the Fact Finding hearing, BOCES had cited the economic situation of the WNY Region and the need to remain competitive to encourage components to utilize BOCES services as the basis for offering lower than average salary increases, but the status of the component districts and their utilization of BOCES services shows the argument lacks merit.

The Association submits the School District Profile for each component district to establish that none have tax rates that do not relate to property values and wealth ratios of its population (Appendix 1, Brief, pp. 34-35); that the component districts have successfully met their economic needs, including financial obligations to BOCES, with tax increases less than what would have been allowed under the unsuccessful tax cap; that Districts also can offset the cost of BOCES programs through state aid (Appendix 6); that BOCES has refunded money to each of the districts in excess of 1.5 million dollars in each of the last five years (Appendix 7); and that the proposed budgets in the component districts have been passed by voters on the first attempt (Brief, p. 35). BOCESTA claims that the current salary and benefit structure is not hindering BOCES' ability to offer competitive services to its component districts (Appendix 8); that its members face the same economic rigors of the general public; that increases in the cost of gasoline, electricity and essential food items all affect BOCESTA members (Appendix 9); that the CPI for June 2008 shows an increase of 5% over June 2007 (Appendix 10); and projections show that costs will continue to increase; and that it is not unreasonable to propose salary increases that will allow its members to remain competitive with their peers and to try to maintain their standard of living (Brief, p. 36).

<u>The BOCES</u> contends (A) that salaries paid to members of the bargaining unit are generous considering the economic climate; that the local component school districts serviced by O/N BOCES on average are significantly less wealthy than the NYS average; that both Orleans and Niagara Counties have experienced continuing population declines which further erode the local tax base (Salary, Ex. 2); that Niagara

County is one of the ten highest-taxed counties in the United States (Salary Ex. 6); that teachers' annual salaries are based on a ten-month school year period; that among fiscal challenges facing the District are increasing required retirement system contributions; that due to unfavorable rates of return in capital markets, school districts and BOCES have experienced dramatic increases in the employer contribution rates on behalf of enrollees in the NYS teachers' Retirement System (NYSTRS), including the teachers of the District (Salary Ex. 3); and that comparisons between CPI and salary increases received by the BOCES teachers' unit indicate that members of the Association have experienced a level of growth far in excess of the cost of living (Brief, p. 9).

BOCES asserts that (C) the salaries of its teachers compare favorably to salaries paid to teachers in the BOCES Supervisory District, assuming implementation of the BOCES salary proposal (Salary Ex. 13); that salaries are well above the median at most salary schedule steps and at or near the top at many of the steps; (D) that salaries compare favorably to those paid to teachers employed by other Area BOCES; (E) that the BOCES has communicated to the Association that its willingness to provide for salary increases is linked to the realization of health insurance savings; that with the passage of time since the expiration of the contract, it cannot recover health insurance cost savings, estimated to total $954,874 through June 2008, which impacts the District's position regarding salary and health insurance (Brief, p. 13).

BOCES responded to BOCESTA's arguments by claiming that school districts do not receive additional aid for contracting with BOCES for special education services; that refunds to component school districts are in part generated from additional student enrollments and additional purchases of services that occur during the course of a school year and when there are surplus revenues (in excess of operating costs) the BOCES' client school districts expect refunds which they can use to provide services to their students and their communities; and that legislation has been passed by the NYS Senate that would impose a real property tax cap that is supported by the Governor and would place a cap on the growth of school property taxes of 4%, or 120% of CPI, whichever is less; that the Association's tax levy chart (per Brief, pp. 34-35) indicates that the component school districts are striving to keep tax levies low, but that does not mean that districts are positioned to increase levies to pay higher tuitions to BOCES. (Reply Brief, pp. 15-16).

DISCUSSION AND RECOMMENDATION

BOCESTA expresses concern over impact of the current economic situation, submitting that the CPI for June 2008 shows an increase of 5% over June 2007 (Appendix 10); and that projections show that costs will continue to increase, so it is not unreasonable to propose salary increases that will allow its members to remain competitive with their peers and to maintain their standard of living (Brief, p. 36). On the other hand, BOCES is contending that cost pressures necessitate that BOCES' teacher's salaries not be higher than the mean or median of the BOCES' component school districts. The Fact Finder is aware that BOCES needs to remain competitive so as to encourage the component districts to avail themselves of the services it provides, but examination of the information supplied does not establish evidence of the District's inability to provide a reasonable wage increase for the members of the bargaining unit.

BOCES claims that salaries and fringe benefits account for more than 86% of the District's annual budget and to contain costs, salary increases must be limited and health insurance cost savings must be achieved (Ex. 29, Brief, p. 10); that its proposals concerning health insurance are an indispensable component of a settlement, and that its willingness to provide for salary increases is linked to and predicated on the realization of health insurance savings; and that the health insurance cost-sharing it seeks is necessary to allow for the salary increases District has proposed. The District has requested that in the course of making settlement recommendations that the Fact Finder consider the District's unrealized savings, especially with regard to the Association's request for retroactive salary increases, and in light of the BOCES' inability to realize Health Insurance cost savings on a retroactive basis; that the example set by the recent settlement with the administrators union should be observed and any retroactive increases that are recommended should be significantly adjusted in light of the unrealized health coverage savings. As previously noted, the Association was not the sole contributor to the fact that the parties were unable to reach an agreement, thus resulting in the additional health cost.

With regard to BOCES' submission of the example set by recent settlements with other District bargaining units (Salary, Ex. 7), in making recommendations, the Fact Finder calls attention to the fact that she is required to consider the comparability of the wages, hours and conditions of employment of the bargaining unit employees, when compared with the wages, hours, and conditions of employment of

other employees performing similar services and requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities as well as the financial ability of the employer to pay. The bargaining units referenced under point (B) are not appropriate for comparisons and have been given no weight.

Having considered the parties' positions and facts presented, and if the parties continue to negotiate a contract of three year's duration:

I RECOMMEND: retroactive to 7/1/06,a wage increase of 2.7% inclusive of increment; for 2007-2008, an increase of 3% inclusive of increment; and for 2008-2009, an increase of 3% inclusive of increment. As I noted in my recommendation for Dental Insurance, and Health Insurance, if the parties negotiate a contract of longer duration than three years, with the conditions I specified (i.e. with reference to a cap on premium, co-pays, etc.): **I RECOMMEND** a wage increase of 4.5% inclusive of increment, for each of the years post 2008-2009, agreed to by the Parties.

The foregoing recommendations were framed in a spirit of compromise, the essence of the collective bargaining process. I trust they will provide the parties with the basis for a resolution of the differences which resulted in the instant impasse. I commend the parties for the thoroughness of their presentations and the courtesy and cooperation they extended to me.

Respectfully submitted,

Miriam W. Winokur, Ph.D.
PERB Fact Finder

Dated: November 28, 2008
Hamburg, New York