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Barker Central School District and Barker Central School Support Staff

Abstract
In the matter of the fact-finding between the Barker Central School District, employer, and the Barker Central School Support Staff, union. PERB case no. M2009-035.

Keywords
New York State, PERB, fact finding

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NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding between, THE BARKER CENTRAL SCHOOL DISTRICT, Employer, -and- THE BARKER CENTRAL SCHOOL SUPPORT STAFF, Union.	REPORT AND RECOMMENDATION PERB CASE NO. M2009-035

Before: MICHAEL S. LEWANDOWSKI, Independent Fact Finder

Appearances:

For the DISTRICT: David W. Lippitt, Esq.
Of Counsel

For the UNION: Elizabeth Vignaux
Labor Relations Specialist

The Barker Central School District ("District") and the Barker Central School Support Staff ("Union" "Association"), a union that represents the District's 21 typists and teacher aides, engaged in collective negotiations for a successor agreement to the collective bargaining agreement that expired on June 30, 2008. The negotiations efforts of the parties were unsuccessful and thus resulted in an impasse. After failing to reach agreement, the parties petitioned the New York State Public Employment Relations Board ("PERB") to appoint a mediator to assist them in the resolution of their dispute. Mediation efforts failed. I was then designated Fact Finder.

In accordance with the preceding designation, the parties agreed to meet on July 16, 2010 to set in place a process to go through the instant fact-finding. At the aforementioned meeting, a date was set for data to be exchanged and presented to me for consideration. As part of the agreed-to process, the parties provided written narratives and data in support of their respective positions as to how the dispute should be resolved in negotiations. The writings were received on August 21, 2010.

This report and recommendation addresses those issues identified by the parties as the outstanding issues needing to be resolved in order for the parties to come to a settlement of this dispute. The parties have reached agreement on the major issues. What I attempt here is to analyze the data and provide information that may lead to a resolution of this dispute.

ISSUES

The following constitutes my findings and recommendations on the issues addressed.

I note first, that the parties have narrowed the issues to health insurance compensation and the retroactivity of increases in compensation.

HEALTH INSURANCE CONTRIBUTION TOWARDS PREMIUM:

At the present time, all members on this bargaining unit who elect to do so receive coverage under the District's health insurance plan without making any contributions. The District proposes that all bargaining unit members pay 10% of the premiums of the health and dental insurance plans they participate in. The Union initially proposed that the bargaining unit members continue coverage in these plans without any contribution towards premium. During the course of the negotiations and the mediation, the Union proposed several options that would include an employee contribution towards insurance coverage but not at the level of contribution proposed by the District.

The District, like many other school districts across the State, is experiencing a dramatic increase in premiums for health insurance. For example, within the last two years, the District has seen health insurance premiums increase by 8.31% for the 2007-2008 school year and an additional increase of 11% for the 2009-2010 school year. To make matters worse, these increases are part of a continuing trend that has produced a 106% increase in premiums since 2003. The District, like most other school districts in the State, is seeking a way to contain the rapidly growing increases in premium. It is important to note, that the

cost of a family plan in the 2007-2008 school year was $11,146.80. This figure represents 47.4% of the average wage paid to members of this bargaining unit in that year. The 2009-2010 family-plan premium increased to $13,401.72, or 52.5% of the extrapolated wage for members of this bargaining unit. There is no doubt that the data presented shows skyrocketing health insurance costs at a time when the overall cost of living has remained relatively stagnant. This also comes as school districts brace for cuts in State aid. There is thus no doubt that the District is justified in asking its employees to share in those cost increases both from a financial standpoint and from the standpoint that employees who must share part of the burden of these staggering costs will most likely be inclined to participate in providing solutions for cost containment.

The data before me shows teacher aides with five years of service working for the District are paid $10.52 per hour under the collective bargaining agreement that expired on June 30, 2008. Should the parties ultimately agree to the terms they have tentatively negotiated, these teacher aides would see their rate of pay increase on average by 4.25% for school year 2008-2009 and by 4.07% in the 2009-2010 school year that has already passed. Those tentatively negotiated increases would raise the hourly rate on average for a five-year teacher aide to $11.42. The chart that follows shows how the average hourly wage of a District teacher aide stacks up against individuals in similar titles in other school districts.

TEACHER AIDE HOURLY WAGES AT 5 YEARS SERVICE

2009-2010 SCHOOL YEAR

Albion	$9.16
Lewiston-Porter	$12.19
Lockport	$10.41
Lyndonville	$8.96
Medina	$10.43
Newfane	$11.68
Niagara Falls	$13.29
Niagara Wheatfield	$14.29
North Tonawanda	$11.90
Starpoint	$14.15
Wilson	$14.31
Average	**$11.88**

While it is true that the District's teacher aide hourly wages would fall somewhat lower than the average hour wage shown in the above data that presents information about school districts gleaned from the data provided to me by the District, what is also true is that the above data includes school districts that are significantly larger than Barker and located in urban settings; Niagara Falls being an example of this. When compared to smaller, rural school districts, the data shows the teacher aides here are compensated at the same or above rate of pay.

It is important also to note that the wages paid to members of the bargaining unit, although average (as shown above) for the work they perform, are not the highest of wages paid in the District. The Union asserts, and in my opinion properly so, that while higher paid employees may be able to absorb a change in the benefit structure that would require a 10% of premium contribution towards health insurance, that 10% of premium contribution would represent a significant decrease in the wages members of the bargaining unit receive. The Union asserts that employees of this unit make on average less than $23,000.00 per annum. The District's submission shows the average salary as slightly above $23,000.00. Using the District's figures for the premium paid for a family plan at the family-plan rate in the 2009-2010 school year ($13,401.72), the District's proposal would require a member of this unit to contribute $1,341 towards health insurance. Again, while I recognize that the District's health care cost are soaring and it has a legitimate right to pursue cost sharing, I note that for members of this unit when using the $23,000.00 average earnings figure, a 10% contribution towards premium equals approximately a 5.8% drop in income.

The District notes this but points out that the parties have reached agreement on significant increases in salary for members of this unit (4.25% the first year; 4.07% the next year; 4.05% the next and 4.31% in the final year) therefore the increases in wages would more than offset the premium contribution proposed by the District. I note however, that even considering the generous

increases in compensation negotiated in this round of negotiations, members of this unit would see a significant reduction in compensation gains by accepting the 10% of contribution proposal. At the wage level that is in place for members of this unit, the cost is disproportionate as compared to other District employees such as teachers for example. Additionally, the decrease in gains would continue as premiums continue to significantly increase, as they most likely will. Higher paid employees would more easily handle the 10% of premium contribution; it would be a heavy burden for the lower paid members of this unit and would get worse with each premium increase.

The data provided by the parties also shows that while some employees in similar titles at other school districts pay nothing towards health insurance premiums (Lyndonville and Newfane), others do contribute. Those contributions range from a flat dollar amount ($225.00 towards a family plan for employee of the Lockport school district to 7% (to be increased to 10% in 2011) in the Albion school district. The net effect is that, considering the increase in cost of premium, the salary increases being offered to members of this unit, and considering the fact that employees in other districts do contribute towards premium, it does make sense to conclude a contribution towards premium is appropriate for members of this unit. While the District points out that some of the other employee groups in the District have already agreed to or had imposed a 10% contribution towards

premium, and the District intends to seek such a contribution when it negotiates with teachers, I find it is proper to temper the implementation of such a contribution for members of this unit considering, as noted above, their low average compensation when compared to other employees of the District such as teachers.

The information provided by the Union here also shows that the Union, recognizing what I note above, has indicated a willingness to make premium contributions and has made several proposals that include varying levels of contribution. My finding here is based on the data provided and leads to a recommendation that the parties agree to a contribution level consistent with the facts noted above. Specifically, I recommend that current employees of this unit contribute 5% towards the premium of health and dental insurances and that individuals hired into this unit after the execution of a new collective bargaining agreement contribute 10% towards such premiums. This way the District may move towards a 10% contribution rate with potential new hires (as the Union notes) having the opportunity to accept or reject a position with the District knowing what the insurance contribution rate is.

RETROACTIVITY OF SALARY INCREASES:

The District submits that the wage increases it tentatively agrees to in this round of negotiations were based upon the expectation that it would achieve some cost savings on health insurance through employee contributions towards health and dental insurance premiums. The District further asserts that members of this bargaining unit are fairly compensated when compared with their peers, and have received generous wage increases in prior years when compared with their peers. When one considers that the inflation rate was -1.4% for the year ending June 30, 2009, and only 1.1% for the year ending June 30, 2010, the tentatively agreed to average wage increases as referenced above are extremely generous. Given that the current negotiations are unlikely to produce a new bargaining agreement before the end of 2010, the members of this bargaining unit will have at least 2 ½ years of full health insurance coverage without contributing anything towards the premiums. The District therefore will have lost 2 ½ years of potential cost savings. Based on the circumstances the District submits that retroactivity is not justified.

The Union submits that the first time it became aware that the District would seek not to pay the negotiated salary increases retroactively was during the fact-finding process. The Union sees no reason for this and strongly opposes any attempt to limit the retroactivity of salary increases. The Union further argues that the District cannot lose cost savings when it never had them to begin with. The Union further argues that it would be patently

unfair for an employer to be permitted not to provide retroactive salary increases if that employer caused the delay in reaching an agreement in a timelier manner. The Union asserts that it cannot agree to any settlement of the dispute that does not include retroactive salary increases.

Considering all of the information contained above including the fact that I am here recommending that the members of the bargaining unit and future members of the bargaining unit contribute towards health insurance premiums, I recommend that the District pay the wage increases negotiated retroactively to the date on which the parties have tentatively agreed those increases should be paid. I also recommend that the 5% towards health insurance premiums that I recommend here also be retroactive for current employees commencing with the start of the 2009-2010 contract year, or, in other words, effective July 1, 2009. This could be accomplished by deducting an amount equal to the premium contribution from the retroactive salary increases as they are paid to members of this bargaining unit. In this manner, the employees in this bargaining unit would see retroactive salary increases and the District would see retroactive cost savings.

The above recommendations reflect my total recommendation as to how the parties should bring this dispute the closure.

DATE: October 3, 2010

Respectfully submitted,

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MICHAEL S. LEWANDOWSKI
FACT FINDER