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Chappaqua Central School District and CSEA, Local 1000 AFSCME, AFL-CIO, Chappaqua School Unit No. 9226

Abstract
In the matter of the fact-finding between the Chappaqua Central School District, employer, and the Civil Service Employees Association, Local 1000, AFSCME, AFL-CIO, Chappaqua School Unit No. 9226, union. PERB case no. M2009-128. Before: Louis J. Patack, Esq., fact finder.

Keywords
New York State, PERB, fact finding

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding between

CIVIL SERVICE EMPLOYEES ASSOCIATION,
LOCAL 1000, AFSCME, AFL-CIO, CHAPPAQUA
SCHOOL UNIT NO. 9226,

UNION,

-and-

FACT FINDER'S
REPORT

CHAPPAQUA CENTRAL SCHOOL DISTRICT,

EMPLOYER.

PERB Case No.: M2009-128

BEFORE: Louis J. Patack, Esq.
Fact Finder

APPEARANCES:

For Civil Service Employees Association
Fred Smit
Labor Relations Specialist

For Chappaqua Central School District
Shaw, Perelson, May & Lambert, LLP
David S. Shaw, Esq. and Lisa S. Rusk, Esq., of counsel

BACKGROUND

The Civil Service Employees Association, Chappaqua School Unit No. 9226 ("Union" or "CSEA") represents a bargaining unit consisting of approximately 55 custodial and maintenance employees of the Chappaqua Central School District ("Employer" or "District"). The parties' collective bargaining agreement expired on June 30, 2009. When they were unable to negotiate a successor agreement, impasse was

declared and the parties entered into mediation. When mediation failed to produce a new agreement, the impasse proceeded to fact-finding, and the Public Employment Relations Board, in accordance with the provisions of Section 209 of the New York Civil Service Law, appointed the undersigned as the fact finder.

A hearing was scheduled for August 27, 2010, at the District's administrative offices. Rather than having a formal hearing, a further attempt was made to settle the dispute. When an agreement still could not be reached, the parties agreed on the issues to be presented to the fact finder, and a date was set for the submission of briefs.

I have carefully considered the briefs and the enclosed exhibits, and make the recommendations contained herein in an effort to resolve the impasse.

The parties have submitted four issues. They include salary and wages, health insurance premium contributions, daily work schedule, and notice of vacation. During negotiations, including impasse, the parties modified their proposals. Those set forth below are what are contained in the briefs.

SALARY AND WAGES

PROPOSALS

CSEA currently seeks a two-year agreement, with salary increases of 2.5%, exclusive of increment, and with the increases to be paid retroactive to July 1, 2009, the starting date of the new agreement.

The District proposes that there be no increase for the 2009 school year, but that eligible employees continue to receive their step increments. Starting July 1, 2010, the District proposes a 1% increase, exclusive of steps. The District also suggests that a new agreement should be for three years, and proposes that there be no salary increase or step

movement for the 2011-12 school year. Rather, it proposes that unit members receive a one-time payment equal to 2.75% of their 2010-11 salary.

CSEA POSITION

CSEA first makes the point that Chappaqua has a salary schedule with far more steps (20) than are found in most other Westchester County districts. It argues that the District saves thousands of dollars because it takes unit employees so long to move to the top of the schedule, and that, of the 55 unit employees, a majority are still moving through the schedule.

CSEA's primary argument, however, is that the District has the ability to pay the requested increases, and that they are not only in line with those being paid in other area districts, but are lower than those recently negotiated by the District and The Chappaqua Office Staff Association/NYSUT ("Office Staff Association") for the District's clerical employees and teacher aides.

It is not necessary to address the ability-to-pay argument, since the District concedes that this is not an issue here.

The districts referred to by CSEA as comparables, and the negotiated increases, are as follows. All are exclusive of steps.

Ossining

2010-11	2.5%
2011-12	2.5%

Hendrick Hudson

2009-10	2.6%
2010-11	2.5%
2011-12	2.5%

Bedford

2008-09	2%
2009-10	2%
2010-11	2%
2011-12	2%

Katonah-Lewisboro[1]

2009-10	2.5%
2011-12	2%

CSEA argues that the settlement that best supports its position is the one entered into between the District and the Office Staff Association. That agreement provides for 3.45% increases, exclusive of steps, for the three-year period from July 1, 2008 through June 30, 2011.

Finally, CSEA contends that the U.S. Department of Labor's New York Consumer Price Index has risen between 1.9% and 2.1% since July 1, 2009, and that the forecast is for the CPI to remain below 3% for the next few years.

DISTRICT POSITION

The District argues that the economy remains in very difficult shape, with unemployment still high, and the State facing multi-billion dollar deficits for the current and next fiscal year. It notes that, because the asset value of the teacher and non-instructional pension funds has decreased so dramatically, the District is being required to make ever increasing contributions to the two funds.

[1] The figures here are from a fact-finding report; and the CSEA brief does not indicate whether the parties reached an agreement based on the report.

The District makes an argument that even though its budget passed this year, given the state of the economy there is the real possibility it could fail in the next few years, making it increasingly difficult for the District to afford raises for its employees.

The District also points to the CPI, which it claims dropped 0.6% for the year prior to June, 2009, when the parties' agreement expired.

The District claims that, for comparability purposes, it is appropriate to look at recent non-instructional settlements, since these have been reached during what, according to the District, has been the height of the recession.

It points to Valhalla, Hendrick Hudson, Ossining and Dobbs Ferry. It claims that the range of increases in those districts, inclusive of steps, was in the range of 2% to 2.5%. It also notes that the cost of the increment in Valhalla is only 0.5%.

The District emphasizes that the salaries it pays employees in this bargaining unit are much higher than what any other Westchester County district pays employees in the same positions. It contends that without any raises at all the salaries here would continue to remain the highest in the County.

Finally, the District notes that it is not making an inability-to-pay argument. Rather, it contends that, based upon the economy, including the CPI, the trend in non-instructional settlements, and the fact that unit employees already are so highly compensated in comparison to their counterparts elsewhere in the County, it is simply not reasonable that they should receive increases other than those the District has proposed.

DISCUSSION AND RECOMMENDATION

Before addressing the salary proposals, it should be noted that the recommendation will be for a two-year agreement. At the fact-finding meeting, although the District expressed its preference for a three-year deal, there were never serious discussions about a third year.

As to the proposals, the increases CSEA seeks, not taking into account the value of steps, appear to be in line with settlements elsewhere in the County, and are obviously lower than those negotiated for the clerical and teacher aide unit.

What the CSEA brief does not contain, however, is the cost of the steps in the districts to which it refers. Even when districts bargain for salary increases that are exclusive of steps, that does not mean that step movement does not represent an increase in salary for employees moving through the salary schedule. CSEA has not taken issue with the District's representation that the cost of step movement is 2.38% of payroll, hardly an insignificant number.

CSEA makes the point that because there are 20 steps in the Chappaqua salary schedule, it takes longer than in other districts for employees to reach the top step. The fact that there are fewer steps in those districts, however, can also mean that at any one time there are fewer employees receiving step increases, and, therefore, that the cost of the steps might be less than what it is in Chappaqua.

More important, however, it does appear to be the case, as the District claims, that its custodial and maintenance employees are paid higher than their counterparts in any of the districts used as comparables by either party.

CSEA argues that the agreement that best supports its position is the one entered into by the District and The Office Staff Association.

The fact finder agrees that 3.45% raises there are high, regardless of the cost of the increment, a figure not provided, and he cannot speculate as to the factors that went into that settlement. What he does know, however, is that (1) the economy is recovering at a slower pace than many anticipated, (2) unit employees are very well paid in comparison to their counterparts in other districts, and (3) there is a significant cost associated with providing the increments for the unit. The Office Staff Association settlement, therefore, does not persuade me that the increases CSEA seeks can be justified.

The District, however, has not convinced me to adopt its salary proposal. There is merit to its position that the fact that it has the ability to pay the requested increases does not mean that it is prudent to do so in light of the State's fiscal problems. That said, the District should pay increases that, while taking into account the significant cost of the increments here, and the fact that unit employees might be the highest paid in the area, are more reflective of increases that have been negotiated in the other districts referred to by the parties, and by the District with the Office Staff Association, than those it has suggested.

The fact finder believes that a reasonable settlement here would be one that provides increases of 1% in 2009-10 and 1.5% in 2010-11, exclusive of steps (meaning that eligible employees continue to move through the salary schedule), and that the increases be paid retroactive to July 1, 2009.

HEALTH INSURANCE PREMIUM CONTRIBUTIONS

PROPOSALS

The District proposes to increase the contribution from 8% to 9% effective January 1, 2010, and 10% effective July 1, 2010. It also requests a recommendation that employees hired after April 10, 2010, be required to contribute 20%.

CSEA will agree to an increase to 9% effective July 1, 2010, but only if the salary recommendation is close to its proposal. The union rejects the 20% contribution for new hires.

DISTRICT POSITION

The District points to the fact that the cost of both the family and individual plans it provides has increased by over 16% in the past few years. It also notes that non-instructional contracts in numerous Westchester districts now require contributions of at least 10%, and that some of those contracts require new employees to pay even more.

CSEA POSITION

CSEA argues that a 1% increase is consistent with the contribution increase found in the districts it uses as comparables. It notes that in Ossining there is a 1% increase in each of the two years of the agreement, but that the increase from 10% to 11% does not take effect until June 30, 2012, the last day of the agreement. In Hendrick Hudson there is an annual increase of ½% over the three-year term of the agreement, ending with an 11.5% contribution for the 2011-12 school year. The agreement between the District and the Office Staff Association provides for annual contribution increases of 1.25%, with the rate reaching 9% effective July 1, 2010.

CSEA does not believe the unit employees here should be required to contribute more than their colleagues in the Office Staff Association unit.

DISCUSSION AND RECOMMENDATION

The District's teachers currently contribute 10% toward health insurance premiums, and the District's goal is to bring both CSEA and the Office Staff Association, in the next round of bargaining for that unit, to this rate.

Given that the Office Staff Association received considerably higher salary increases than those being recommended here, and that the agreements for both units expire at the same time, it seems appropriate to keep the units at the same contribution rate until the end of the 2010-11 school year.

Accordingly, the recommendation is that, effective July 1, 2010, the employee health insurance premium contribution be increased from 8% to 9%.

With the District pointing to only two districts in which new hires are required to make significantly higher contributions than current employees, the District proposal for employees hired after April 10, 2010 to contribute 20% is not recommended.

DAILY WORK SCHEDULE

At the fact-finding meeting the parties devoted considerable effort toward reaching an accommodation on the District's proposal. At the time that discussions on an overall agreement ended, the following language had either been accepted, or was under serious consideration, by CSEA:

> Article 8: DAILY WORK SCHEDULE
>
> The regular daily work schedule shall consist of eight consecutive hours per day, forty hours per week, Monday through Friday, exclusive of one-

half hour for lunch. However, a Tuesday through Saturday shift has been established at the high school. The employees on this shift shall receive a stipend equal to the night shift stipend for working the weekend.

The District shall have the right to alter shifts; however, no employee with four (4) or more years of service in the unit may be moved involuntarily from a permanent shift assignment. The exception to this would be in a situation of staff reduction, in which case transfers shall be on the basis of least seniority. Shifts as described in the parenthetical clause below may be adjusted by one hour on the starting and ending times as determined by the Director of Buildings and Grounds and shall not be considered a shift alteration. (Note: for Unit Members hired on or before January 1, 2006, there shall be 3 permanent shifts for all Unit Members comprised of: Custodial shifts of 7 a.m. – 3:30 p.m. and 3:00 p.m. – 11:30 p.m., as well as Grounds/Maintenance from 6:30 a.m. – 3:00 p.m. For employees hired in the Unit after January 1, 2006, there shall be three Custodial shifts: 7:00 a.m. – 3:30 p.m., 9:30 a.m. – 6:00 p.m. and 3:00 p.m. -11:30 p.m. with the Grounds/Maintenance shifts to be: 6:30 a.m. – 3:00 p.m. and 9:30 a.m. – 6:00 p.m. In the event of layoffs, Unit Members hired on or before January 1, 2006 may be assigned to the shifts immediately described above on the basis of the inverse order of seniority.)

The fact finder recommends that this provision be included in the new agreement.

NOTICE OF VACATION

PROPOSALS

The District proposes that employees be required to submit vacation requests prior to April 1 of each year. CSEA urges the fact finder to reject the proposal.

PARTIES' POSITIONS

The District argues that adequate planning for absences requires advance notice of vacations, and that other area districts require such notice.

CSEA points out that the agreement already provides that an employee who wants to take vacation during the two weeks prior to Labor Day must obtain prior approval and

provide three weeks' notice, and that the District already exercises sufficient control over vacation scheduling to maintain adequate coverage.

DISCUSSION AND RECOMMENDATION

Although the agreement does provide, with the Labor Day exception, that employees may take vacation anytime during the year, there is also the condition that "the time sought does not interfere with the proper operation of the school."

The District has not demonstrated that the current vacation language has negatively affected its ability to properly operate its facilities, and, therefore, the District's proposal is not recommended.

In conclusion, the fact finder hopes that the above recommendations and discussion of the issues assist the parties in concluding their negotiations, and reaching an agreement.

Dated: November 22, 2010
Bonita Springs, Florida

Louis J. Patack