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4-4-2011

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Hewlett-Woodmere Union Free School District and Hewlett-Woodmere AMAS Unit, United Public Service Employees Union

Abstract
In the matter of the fact-finding between the Hewlett-Woodmere Union Free School District, employer, and the United Public Service Employees Union, AMAS Unit, union. PERB case no. M2009-293. Before: Howard C. Edelman, Esq., fact finder.

Keywords
New York State, PERB, fact finding

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Fact-Finding	**:**	
- Between -	**:**	**Case No. M2009-293**
HEWLETT-WOODMERE UNION FREE SCHOOL DISTRICT	**:**	**FINDINGS AND RECOMMENDATIONS**
"District"	**:**	
- and -	**:**	
UNITED PUBLIC SERVICE EMPLOYEES UNION AMAS UNIT	**:**	
"Union"	**:**	

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APPEARANCES

For the District
Neil Block, Esq., Counsel
Peter Weber, Assistant Superintendent for Business
Kathleen Anderson, Assistant Superintendent for Instruction

For the Union
Kevin Boyle, Jr., President, UPSEU
Patricia DeFelice, Labor Representative, UPSEU
Joe Whitney, Security Officer
Diane McCloat, Teacher Aide
Ellen Marco, Teacher Aide
Josephine Panzarella, Teacher Aide

BEFORE: HOWARD C. EDELMAN, ESQ., FACT FINDER

BACKGROUND

The parties are signatories to a collective bargaining agreement which expired on June 30, 2009. Negotiations for a successor agreement proved unsuccessful. So were mediation efforts. Consequently, I was appointed Fact Finder to help resolve the dispute. A hearing was held before me on November 15, 2010. Thereafter the parties submitted position statements with accompanying data, as well as response statements. When I received them I closed the record. These findings and recommendations follow.

POSITIONS OF THE PARTIES[1]

Union

The Union proposes a four year agreement with annual increases of 3.5 per cent plus a $.25 hourly adjustment for the Teacher Aide position. It maintains that these increases are justified because, while other District bargaining units have received lesser improvements, its wages are low compared with those groups.

[1] To expedite my determination, I have summarized the parties' positions.

In addition, the Union points to the following settlements in support of its position:

	2009-10	2010-11
Baldwin Aides	3.00 per cent	3.00 per cent
Oceanside Aides	3.5 per cent	3.5 per cent
Rockville Ctr Aides	3.0 per cent	3.0 per cent

Also, it notes, the AMAS unit pays more for health insurance than other District units. Consequently, it asks me to adopt the proposal as presented.

Furthermore, the Union maintains, Teacher Aides receive extraordinarily low wages when compared with their counterparts elsewhere. Thus, it urges, they require an additional $.25 hourly increase beyond the percentages noted above.

The Union acknowledges that its clerical unit agreed to a provision changing from five to ten years the service new employees must perform to be eligible for health insurance into retirement. However, it sees no need for a similar modification in this unit.

The Union asks that the emergency call back payment for security personnel be increased to three hours. It points out that those called into work on such a basis have their personal lives interrupted and may have to travel long distances to report for duty.

Thus, it insists, this proposal is fair and should be adopted.

A seniority proposal is necessary, the Union contends, to prevent the District from arbitrarily laying off more senior and higher paid employees instead of less senior and lower paid workers. It asks that those with three years of service be afforded layoff and recall rights in the event of a reduction in force. Those rights should continue for four years, it maintains.

The Union acknowledges that a more senior employee who is retained might be given different duties if transferred into a position held by a junior employee who was laid off. Consequently, it would require the retained employee to demonstrate he/she can perform the duties of a new position.

The Union maintains that sick leave allotted its members is low when compared to other bargaining units. Thus, it asks that the allowance for those with five years' service be given one more sick day and those with ten years' service be given two more sick days. It also asks for the inclusion of a donated sick leave program whereby members in need may utilize donated days from others.

Longevity payments are low in the District, the Union submits. Consequently, it asks that each level be increased by $300 effective July 1, 2009 and $100 on each July 1 thereafter.

The Union points out that all other District bargaining units have binding arbitration. Thus, it asks that the current contract language, which refers to both binding and advisory arbitration, be amended to reflect binding arbitration as the final stage of the grievance procedure.

Finally, the Union asks that the Collective Bargaining Agreement reflect the existing entitlement of its members to extra assignments. This proposal merely codifies existing practice and should be adopted, in its view.

In sum, the Union concludes that its proposals are reasonable and fair. It asks me to recommend them as presented.

District

The District submits that no salary or other compensation adjustment is warranted. It asserts its revenue stream has declined substantially as a result of reductions in Federal stimulus funding, other Federal support, investment income and State aid.

Also, the District observes, employee benefits, specifically retirement and health insurance contributions, have risen dramatically. In addition, it notes, the State Senate has passed a two per cent tax cap.

Finally, on the issue of employee compensation, the District notes that bargaining unit members receive annual increments from 3.1 per cent to 17.2 per cent. In light of these factors, the District contends no general wage increase, longevity improvement or teacher aide adjustment is warranted. Thus, it asks me to reject all the Union's compensation proposals.

As to the issue of layoff and recall, the District asks that the date of June 1 to notify employees of the loss of position be changed to August 1. The current date, the District urges, is unrealistic for the following reasons:

1) In the event of a defeated budget, a revote will take place after June 1 and the District will not be able to estimate how many layoffs would be necessary as of June 1.
2) Often IEP's are created in the summer and teacher aide/assistant allocation is often

dependent upon how many students' IEP's require assistance.

As to layoff and recall, the District resists any attempt to add contract language regarding this issue. It points out that Teaching Assistants already enjoy this protection via statute. A number of other Collective Bargaining Agreements do not extend seniority rights to Teacher Aides, the District observes.

Moreover, the District insists, the Union's proposal is unnecessary. It maintains that since 2007-08 most layoffs were of less senior employees. In many instances, aides let go in June were rehired the following September, the District maintains.

In addition, the District contends that many of its Aides function as one-on-one aides for Special Education students. Staffing decisions, then, must take into account the unique relationship between aide and student and must not be encumbered by language limiting its need to act in the best interests of each child, the District urges. Consequently, it asks me to reject the Union's proposal regarding layoff and recall.

As to retiree health insurance, the District asks for the same service requirement, ten years, as was accepted by the clerical and administrative units. A similar provision is justified here, in the District's view.

The District seeks a twenty day time limit for the filing of grievances. It also asks that the definition of a grievance be limited to a claimed violation of the Collective Bargaining Agreement. Finally, on this issue, the District is willing to agree to binding arbitration as the final stage in the grievance procedure but only if its other proposals relating to grievances are adopted.

The District asks that extra assignment rates be set at $38.25 per hour when offered to bargaining unit members if teachers refuse them. Such a rate is fair, it argues, since members of this unit make less, often far less, than this amount.

The District rejects the Union's proposals concerning sick leave and donated days. It maintains that other Districts' sick leave allowances are comparable to the allotment that exists here. Also, the District argues, the donated sick days proposal is unnecessary since it has granted requests for extended

sick leave in the past and it provides short term disability benefits to all bargaining unit members.

Finally, the District rejects the Union's proposal that emergency call back pay be increased to three hours. In light of the current fiscal situation, an adjustment of the minimum pay is not warranted, in the District's view.

In sum, the District asserts that its proposals or its rejection of the Union's demands reflects the economic realities of the day. Accordingly, it asks that its claims be adopted in their totality.

FINDINGS AND RECOMMENDATIONS

Duration of Agreement

Longer term agreements promote labor relations stability. However, I recognize the volatility of the current economic condition of the County, State and nation. In light of this factor, I must agree with the District's assertion that a three year Agreement is justified, even though it would expire a little more than a year from now. Accordingly, the District's proposal regarding the length of the successor Agreement is recommended.

Wages

The heart of any labor contract is the wage package. It affects the employees most directly and it has the greatest impact upon the District of all terms and conditions of employment.

The Union proposed annual increases of 3.5 per cent for members of this unit. It noted that raises of this magnitude were negotiated for 2009-10 and 2010-11 in a number of other Nassau County districts (e.g., Levittown, et al). However, as the District correctly observed, 3.5 per cent raises were awarded in 2007 or, in some cases, even earlier when the economy was much better than it is now.

More recent settlements fall well below the 3.5 per cent raise sought by the Union. Indeed, in Hewlett, the Secretarial and Administrative units have settled for increases averaging 2 per cent for the two retroactive years involved in this dispute.

In addition, even lower settlements are common now. Indeed, in light of projected reduction in State aid, it is quite likely that some settlements may contain a wage freeze for a year.

In light of these factors, I recommend the following increases:

Effective July 1, 2009 – one per cent.

Effective January 1, 2010 – one per cent.

Effective July 1, 2010 – one per cent.

Effective January 1, 2011 – one per cent.

Effective August 1, 2011 – two per cent.

These are minimal raises. They are lower than increases in the Consumer Price Index. They reflect the current difficult economic conditions Long Island, New York State and the nation face.

In addition, these increases are substantially less than raises granted the clerical unit. They were 2.0 per cent, 2.0 per cent and 3.5 per cent for the same period as in the instant dispute. The clerical raises were negotiated in difficult times, as well. Thus, I conclude, the increases recommended above, which are about two per cent lower than the clerical raises, are reasonable and should be adopted.

Also, while I recommend the increases noted above, I am not recommending any adjustments in longevity stipends or other compensation provisions. While some improvements in these areas are justifiable when other Districts are compared to Hewlett-Woodmere, they are not warranted in light of the general economic conditions the District faces, including

mandated health and pension benefit increases and additional increment costs. Accordingly, and for these reasons, I recommend the annual wage adjustments listed above.

Layoffs and Recall

This issue pits competing interests against each other. The Union has a right to seek an orderly system of layoff and recall, one which is free of arbitrary decisions based upon factors unrelated to an employee's job performance or suitability for the positions at issue. On the other hand, the District has an equally viable interest in seeing to it that educational opportunities and environment for students, particularly those in need of extra help, is maintained.

I note the District's insistence that it has provided only statutory protection for members of other bargaining units who are in danger of losing their jobs. However, I find, some protection for members of this bargaining unit is warranted. There have been layoffs among personnel, particularly those in the teacher aide category. In some cases, far junior people were retained over more senior ones. While these decisions may well have had a valid

educational basis, the Union members slated for layoff and possibly, recall, need some assurance against potentially arbitrary decisions.

Also, incorporating some layoff/recall protection into the Collective Bargaining Agreement would not be unique to Hewlett-Woodmere. For example, Bethpage has a “street seniority” provision wherein the last person hired is the first person let go within the appropriate job classification. East Meadow requires layoff by seniority subject to “administrative prerogative based upon availability.” Levittown affords more discretion to the district by requiring layoffs in inverse order of seniority “…provided that in the opinion of the Superintendent of Schools the senior employee has skills for the performance of the remaining jobs equal to those of the junior employee.” Other Districts have similar language. Union Exhibit 8.

I recognize the inclusion of such a provision represents unchartered waters for the District. However, I am confident it will be able to implement layoffs and recalls, if necessary, in a manner which is consistent with my recommendation and which, at the same time, is also consistent with the educational

needs of the students. Nonetheless, to allay District fears that its rights may be infringed upon, I also recommend that claimed violations of this provision, while grievable, shall not be subject to Arbitration.

For these reasons, I recommend that the Agreement incorporate the following language:

> The decision to layoff and/or recall an employee shall be grievable. However, it shall not be arbitrable.
> In the event the District decides to layoff members of the bargaining unit, it shall do so within the relevant job classification. In deciding who to layoff the District shall consider the employee's qualifications for the position(s) at issue, the employee's disciplinary record, any other factors relevant to the layoff and the employee's seniority.
>
> In the event a vacancy occurs, the same factors shall be considered. Employees who are laid off shall remain on a recall list for two years after they have been laid off. This provision shall apply only to employees who have seven or more years of service with the District.

Also, on the issue of layoff/recall, the Employer proposed that the notification for layoffs be moved from June 1 to August 1. I agree with this proposal. If a budget is defeated, the second vote must, by law, take place in June. In addition, the need for one-on-one aides is based on the students requiring such services. Who they are is often not known until some

time in the summer. Finally, on this issue, the current June 1 date encourages the District to expand the list of possible layoffs beyond the number that is likely to occur. To forestall anxiety, a more accurate estimate is required, which cannot be made until August 1, for the reasons set forth above. As such, I recommend the adoption of this proposal.

Health Insurance

The secretarial unit agreed to the modification sought by the District. Also, it is reasonable to require employees to work for ten years in the District in order to be eligible for District contribution to health insurance upon retirement. This proposal is, therefore, recommended.

Sick Days and Sick Leave

Currently employees are entitled to six sick days per year. The Union correctly noted that this amount is the lowest of any bargaining unit in the District. However, I find, no adjustment is warranted. In these difficult economic times, improvements of this type should be added to salary raises. Consequently, it is not recommended.

I also do not recommend the Union's proposal regarding donated days. No other District Collective

Bargaining Agreement contains such a provision and, on a case by case basis, the District has granted extended leaves of absence to those in need. Thus, there is no basis upon which to award this proposal, I find.

Grievance Procedure

It is reasonable to require that grievances be filed within a specified time period. In my view, thirty days, excluding the summer vacation of July 1 to September 1 is reasonable. It is so recommended.

In addition, I agree with the District that most Collective Bargaining Agreements permit only claimed violations to proceed to Arbitration. Consequently, I recommend that the definition of a grievance be modified as follows:

> Any claimed violation, misinterpretation or inequitable application of the express terms of the Agreement.

Finally, with respect to the grievance procedure, there is no doubt that it is the intent of the parties that the final stages of the process end in binding arbitration. The language of the Agreement is to be modified to reflect this view, I recommend.

Minimum Call Back Pay

The two hour minimum for security personnel was established only a few years ago. There is no evidence of probative value to support an increase. It is not recommended.

Extra Assignments

The District sought a $38.25 payment for these assignments as well as a memorialization of the practice which first offers such assignments to teachers and then to members of this bargaining unit if not enough teachers volunteer. In my view, there should be a distinction between assignments. Where bargaining unit members engage in translation services they should be paid the teacher rate. However, chaperoning is a far less sophisticated activity. Consequently, I find, $30 per hour is a reasonable stipend for this activity. I also recommend the incorporation of language that these assignments should be offered to bargaining unit members to the extent that teachers have not volunteered for them.

One final comment is appropriate. Only if the parties accept these recommendations in total will this long standing dispute be resolved. Otherwise negotiations will drag on for an extended period of

time. Such a result benefits neither side. Consequently, I strongly urge the parties to adopt these recommendations as presented.

RECOMMENDATIONS

1. **Duration of Agreement**

The Agreement shall commence on July 1, 2009 and end on June 30, 2012.

2. **Wages**

Wages shall be increased as follows:

Effective July 1, 2009 – one per cent.

Effective January 1, 2010 – one per cent.

Effective July 1, 2010 – one per cent.

Effective January 1, 2011 – one per cent.

Effective August 1, 2011 – two per cent.

3. **Layoff and Recall**

A new provision shall be incorporated into the Agreement as follows:

In the event the District decides to lay off members of the bargaining unit, it shall do so within the relevant job classification. In deciding who to lay off, the District shall consider the employee's qualification for the position(s) at issue; the employee's disciplinary record; any other factors relevant to the layoff; and the employee's seniority.

In the event a vacancy occurs the same factors shall be considered. Employees who are laid off shall remain on a recall list for two years after they have been laid off.

Claimed violations of this provision shall be grievable, but not arbitrable.

This provision shall apply to employees with at least seven years of service in the District.

The date for notification of layoffs shall be changed from June 1 to August 1.

3. **Health Insurance**

Employees shall have ten years of service in the District in order to be eligible for District contributions to their health insurance premiums in retirement.

5. Grievance Procedures

a) The grievance procedures shall be modified to require the submission of a grievance within thirty school days, excluding the period from July 1 – September 1.

b) The definition of a grievance shall be modified as follows:

Any claimed violation, misinterpretation or inequitable application of the express terms of the Agreement

c) The grievance procedure shall be modified to indicate that the last step is binding arbitration.

6. Extra Assignments

Translation assignments shall be paid the teacher rate. Chaperoning assignments shall be paid at $30 per hour. These assignments shall be offered to employees to the extent that

insufficient numbers of teachers have volunteered for them.

7. All other proposals of the parties, whether or not addressed herein, are rejected.

DATED: April 4, 2011

HOWARD C. EDELMAN, ESQ.,
FACTFINDER

STATE OF NEW YORK)
) s.:
COUNTY OF NASSAU)

I, Howard C. Edelman, Esq., do hereby affirm upon my oath as Factfinder that I am the individual described in and who executed this instrument, which is my Award.

DATED: April 4, 2011

HOWARD, C. EDELMAN, ESQ.,
FACTFINDER