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South Country Central School District and Bellport Teachers Association

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South Country Central School District and Bellport Teachers Association

Abstract

In the matter of the fact-finding between the South Country Central School District, employer, and the Bellport Teachers Association, union. PERB case no. M2008-262. Before: Robert T. Simmelkjaer, Esq., fact finder.

Keywords

New York State, PERB, fact finding

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT-FINDING)
)
 between)
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 SOUTH COUNTRY CENTRAL SCHOOL DISTRICT)
)
 and)
)
 BELLPORT TEACHERS ASSOCIATION)
 Case No. M2008-262)

REPORT
AND
RECOMMENDATIONS

Before: Prof. Robert T. Simmelkjaer, Esq.
Fact Finder

APPEARANCES

FOR THE DISTRICT

Gregory J. Guercio, Esq., Guercio & Guercio, LLP
Victor Correa, President, Board of Education

FOR THE ASSOCIATION

Lynda L. Larson, Labor Relations Specialist, NYSUT
Spencer Stickley, President, BTA

A. BACKGROUND

Whereas the New York State Public Employment Relations Board ("PERB") has determined that an impasse exists between the Public Employer, the South Country Central School District (hereinafter "the District") and the Employee Organization, the Bellport Teachers' Association (hereinafter "the Association" or "the BTA"), the undersigned was appointed as Fact Finder on April 23, 2010 by the Director of Conciliation pursuant to Sections 209 and 205.5(k) of the New York Civil Service Law.

Said appointment directed the undersigned to "...inquire into the causes and circumstances of the dispute and after hearing shall immediately transmit his findings of fact and recommendations for resolution of the dispute to the chief executive officer of the government involved, and to the employee organization involved and shall within five (5) days of such transmission make public such findings and recommendations."

On January 9, 2009, impasse was decided by the Association. By notice dated January 29, 2009, PERB appointed a mediator to preside over the dispute. Three mediation sessions were held between April and July 2009. The parties resumed negotiations on November 10, 2009. A final mediation session was held on February 9, 2010. By letter dated April 8, 2010, the District requested the appointment of a Fact Finder.

A Fact-Finding hearing was held on February 10, 2011. At the hearing, the parties were given ample opportunity to present their respective positions, including the submission of documentary and testimonial evidence. Following the hearing, the parties were given until March 4, 2011 to submit post-hearing/rebuttal briefs to the Fact Finder. The evidence so submitted as well as the arguments of the parties has been fully considered in the preparation of the Fact Finder's Report and Recommendations.

The District is comprised of six (6) schools located within the Town of Brookhaven, including the Village of Bellport, the hamlets of Brookhaven and North Bellport, as well as portions of the hamlets of East Patchogue, Medford, Shirley and Yaphank. There are two (2)

elementary schools grades K-3, one (1) elementary school grades PK-3, one (1) intermediate school grades 4-5, one (1) middle school grades 6-8, and one (1) high school grades 9-12. For the 2010-11 school year, there are 2,363 secondary school students, and 2,063 elementary students enrolled in the District's schools.

The District employs approximately four hundred twelve (412) teachers who are members of the BTA. The District serves four thousand, four hundred and twenty six (4,426) students.

B. BARGAINING HISTORY

On or about January 30, 2007, the District and the Association commenced formal negotiations for a successor agreement. An initial bargaining session was held on February 28, 2007 and respective proposals were exchanged on July 15, 2007. The Association sought, inter alia, a five (5) year agreement.

The parties continued to bargain after the exchange of proposals, however, due to the number of issues to be addressed, the District proposed a one year extension in August 2007.

The parties entered into a Memorandum of Agreement extending the existing contract from September 1, 2007 through August 31, 2008 as follows:

1. Page 61 – Effective Dates and Duration: Revise paragraph “1” to reflect new dates, to reflect contract extension, from September 1, 2007 through August 31, 2008.
2. Page 33 – Article XXII – Salary: Add new paragraph “C(10)” to reflect contract year, “2007-08”, and the following:
 - “10. For the contract year 2007-08
 - a. Salary increase: 3% [(CPI (or Min 2% and Max 4%) and an additional 0.5%)].
 - b. All other monetary allowances and stipends in the contract will be increased by the same percentage in 10a above.”

The negotiations for a successor agreement reconvened on February 14, 2008, at which time the parties agreed that their prior proposals would remain in effect. The parties participated in six bargaining sessions from March to August 2008. At a session on September

29, 2008, the District formally rejected the Association's proposed five-year extension of the existing contract. Subsequent negotiating sessions from September 2008 through January 2009 and from April to July 2009, conducted with the assistance of PERB Mediator, Philip Maier, were of no avail.

C. ISSUES

(1) Wages – The last salary proposal submitted by the District prior to the Fact-Finding hearing was as follows:

- Year 1 – 0% plus increment
- Year 2 – 1.5% plus increment
- Year 3 – 2.0% plus increment
- Year 4 – 2.0% plus increment

At the Fact-Finding hearing, the District's salary proposal was as follows:

- Year 1 – 0%
- Year 2 – 0%
- Year 3 – 0%
- Year 3 – 0% with step increment frozen

The District notes that automatic yearly step raises were paid for years 1 through 3 as required by law, namely, the Triborough amendment.

The Association's salary proposal during the Fact-Finding hearing was that it had accepted the District's proposal submitted prior to Fact-Finding provided that "no other changes would be made to the collective bargaining agreement." The Association is also amenable "to a fifth (5th) year at a three (3%) percent increase and no further changes to the agreement."

Additional Issues before the Fact Finder

- 2) Health Insurance
- 3) Teacher Evaluation (Annual Professional Performance Review)
- 4) Professional Development
- 5) Extra Help
- 6) Dental and Optical Coverage
- 7) Class Size
- 8) Retirement incentive
- 9) Accrued Sick Leave Gap
- 10) In-Service Credit/Credit for Post-Employment Education

ISSUE #1: Salaries

The Association is proposing a five (5) year agreement because the parties' previous contracts, excluding the one-year extension for the 2007-2008 school year, have been for lengths of five years or more. The Association has proposed a five (5) year agreement, averaging 1.75% and culminating with a 3.0% increase plus increment in 2012-13 as follows:

Year	District	Association
2008-09	0% plus increment	0% plus increment
2009-10	1.5% plus increment	1.5% plus increment
2010-11	2% plus increment	2% plus increment
2011-12	2% plus increment	2% plus increment
2012-13		3% plus increment
Average	1.38%	1.75%

Given the fact that the parties began negotiations over three years ago for a successor agreement and nearly three (3) years (2008-09, 2009-10, 2010-11) have elapsed following the one year extension (2007-08), the Association notes that under the District's four-year proposal the parties would be back at the negotiating table in less than one year.

Ability to Pay

The Association responded to the District's ability to pay its wage demands in its post-hearing brief. It rejected the District's "doom and gloom" outlook of the financial status of the District as "not totally accurate." In the Association's view, "the District has the ability to pay but chooses not to." The Association has utilized a four step salary analysis as follows:

1. Examine the current and past levels of the fund balance.
2. Determine the District's historical degree of accuracy in planning expenditures and projecting revenues.
3. Conduct an in-depth review of the finances for the most recently completed school year.
4. Provide year-end projections for the current fiscal year.

1. Fund Balance

In defining the fund balance as the repository of surplus funds that have been accumulated over time from budgeted funds which were not spent and revenues in excess of the District's projections, the Association notes that the fund balance is divided into reserved and unreserved funds. Funds set aside for specific and authorized purposes (e.g., Tax Certiorari claims) are included in the reserved portion.

The unreserved portion of the fund balance is typically used (i.e., appropriated) during the process of determining the tax levy needed to fund the annual operating budget. Unreserved funds not used during this process are held for the next fiscal year, but can be used by the district during the year within certain limits established by law and regulation.

Focusing on the District's reserved accounts – Worker's Compensation, Retirement Contributions, Property Loss and Reserve for Employee Benefits & Accrued Liability, the Association calculates that "the total value of these reserves at the end of the 2009-10 school year was \$6,848,688"—an amount accumulated over the 2008-09 and 2009-10 school years.

With respect to the unreserved portion of the fund balance, the Association calculates that the District began the 2007-08 school year with an unreserved balance of \$1,333,256 and by the end of the 2009-10 school year, the unreserved balance totaled \$9,144,142. As a percentage of the District's annual operating budget, the unreserved fund balance was 1.1% by the end of the 2008-09 school year, however, by the end of the 2009-10 school year it represented 8.6% of the annual operating budget. "Pursuant to State statute, the maximum a school district may carry in an unreserved fund balance is 4.0% of the current school year budget."

Comparing actual expenditures with budgeted expenditures over a three-year period from 2007-08 to 2009-10, the Association calculates, "the District under-spent its budgets by a net total of \$13,346,670."

In contrast, actual revenues received exceeded the revenues projected in two of the three years, specifically 8.6% or \$7,580,128 in 2007-08 and 6.5% or \$6,586,844 in 2008-09, for a total excess revenue over projections of \$12,057,008.

Combining the unspent budget amounts of \$13,346,670 with the additional revenues of \$12,057,008, the Association identifies a net operating surplus of \$25,403,678. "Of this surplus, \$9,797,013 was used to cover the cost of district operations and \$947,091 was used to cover accounting adjustments. The \$14,651,574 balance was transferred to the fund balance (\$6,848,688 to reserved, \$7,810, 886 to unreserved).

2. Planning for Expenditures and Revenues

The Association reiterated that District expenditures have been less in every budgeted year over the three year period (2007-08, 2008-09, 2009-10) in the Association's analysis, ranging from 3.0% to 5.2%, and averaging 4.4%, for a under budget total of \$13,346,670.

Similarly, projected revenues, largely property taxes and state aid, were greater than projected by the District in two of the three years, ranging from a 1.8% under-projection to an 8.6% over-projection, and averaging 4.1% over-projection for the three year period.

3. 2009-10 School Year

In planning for the 2009-10 school year, the District established an expenditure budget of \$106,102,995, projected revenues of \$106,102,996 and planned to have one dollar (\$1.00) of projected revenues in excess of the planned budget. The actual 2009-10 revenue from all sources was \$104,193,032. This was \$1,909,964 or 1.8% less than the District projected. It is noteworthy that property tax revenue was \$201,000 less than the budgeted amount, and state aid was \$2,821,928 less than projected.

The actual 2009-10 expenditure level, adjusted for encumbrances, was \$100,977,951. This was \$5,125,044 or (4.8%) less than the budgeted expenditure level of \$106,102,995. The Association then reviewed individual budgetary accounts to ascertain where expenditures were underestimated or overestimated.

The unreserved fund balance of \$9,144,142 for 2009-10 comprised a \$3,215,080 annual operating surplus, a transfer of \$92,059 to reserve accounts, with a net increase to the unreserved fund balance of \$3,123,022, from the July 1, 2009 fund balance of \$6,021,120.

4. 2010-11 School Year

For the 2010-11 school year, the District established an expenditure budget of \$109,624,261 and projected revenues of \$104,396,261. The difference between these amounts was covered by using \$5,228,000 from the unreserved fund balance. The Association continued its analysis as follows:

Assuming the final tax levy was set at the planned level and the district 2010-11 estimates for both revenues and expenditures are accurate, a balance of \$3,916,142, or 4.0% of the current year budget, would remain available in the unreserved fund balance.

The \$109,624,261 expenditure budget for 2010-11 represents an increase of \$3,521,266, or 3.3%, over the 2009-10 budget, and \$8,646,310, or 8.6%, over the actual expenditure level for 2009-10.

Within the instructional categories, the Association calculates that the District has budgeted a 6.1% increase in the salary codes. Within the non-instructional categories, the District has budgeted a 6.5% increase in the non-teacher salary codes.

5. Summary

The Association's review of the 2010-11 expenditure budget and its projection based on historical patterns indicates that "actual district expenditures can be expected to be about \$3,525,000 less than budgeted."

It further estimates that the District's projection of state aid may be overestimated by \$1,620,000 and other revenues underestimated by \$1,145,000 for a net overestimation of revenues of \$475,000.

It projects that the District will end the 2010-11 school year with an annual operating surplus of \$3,050,000 and "assuming that no transfers are made to reserve accounts, there

should be a balance of about \$6,966,000 in the unreserved account by June 30, 2011.” This unreserved fund balance would constitute 6.4% of the current year’s budget.

Comparability

The Association’s wage proposal encompasses a five (5) year increase as noted above averaging 1.7% per year. According to the Association, “[t]his yearly increase represents a far less increase when compared to other settlements throughout Suffolk County. No other local in Suffolk County received a 0% increase in the 2008-09 school year.” The Association maintains that “the majority of the districts throughout the County settled at three percent (3%) or higher for the 2009-10 school year. For the 2010-11 and 2011-12 school year, more than half of the districts have settled for better than a two percent (2%) increase.”

The Association contends that its acceptance of the District’s pre-fact-finding wage proposal, provided no other changes were made to the CBA, was “more than reasonable.” In order to consider any additional concessions, “the wage proposal would need to be greatly enhanced” and “comparable to the settlements reached by geographically proximate districts” as follows:

District	2008-09	2009-10	2010-11	2011-12	2012-13	Average
Center Moriches	3.5%	3.25%	3.5%	4.0%	3.5%	3.55%
Longwood	3.3%	2.7%	3.2%	3.5%	3.5%	3.24%
Middle Country	4.0%	1.5%	1.5%			2.33%
Patchogue-Medford	2.0%	3.0%	2.0%	1.5%	1.5%	2.0%
William Floyd	3.5%	3.5%	2.5%			3.17%
Average	3.26%	2.79%	2.54%	3.0%	2.83%	

With respect to the District’s reliance on Actual Valuation Per Total Wealth Pupil Units (“TWPU”), the Association notes that the District’s ranking of nine (9) places below the median for Suffolk County at \$590,754.00 is higher than the comparables deemed appropriate by the Association as follows:

District	Actual Valuation Per TWPU	Rank
South Country	\$590,754.00	41
Center Moriches	\$554,254.00	48
Longwood	\$520,577.00	51
Patchogue-Medford	\$513,440.00	52
Middle Country	\$494,000.00	55
William Floyd	\$339,273.00	62

Similarly, in terms of the burden on taxpayers to support school expenditures – an indicator of the District’s relative ability to generate tax revenue from its property tax base – “South Country ranks better at 43rd than any of the surrounding districts.”

The Association further notes that given the Association’s wage proposal, averaging 1.75% increase per year, as compared to surrounding district settlements averaging 2.54-3.26% over the same period of time, the Association’s proposal is reasonable.

The Association argues that despite the housing market collapse of 2007 and recession of 2008, “the District bargained a 3% raise for this unit for the 2007-2008 school year...” Moreover, “the District’s offer for a 4 year agreement with a wage increase of 0%, 2%, 2% and 2% remained on the table throughout 2009 without the District ever pointing to the events of 2007 and 2008 [as] hampering their ability to pay. Furthermore, the District’s wage proposal of 0%, 1.5%, 2% and 2% remained on the table throughout the remaining bargaining sessions.”

The Association has identified the District’s receipt of PILOT funds, scheduled to receive \$4,061,620 for 2011-12 and again in 2012-13, as an additional source of revenue to pay a reasonable wage increase.

Finally, the Association maintains that the District’s “shortfall” of \$126,000 in 2009-10 is not due to “unexpected revenue shortfalls,” but “rather the District’s encouragement of July 2010 retirees to rescind their letters of intent to retire in order to retire within the window designated under Part ‘A’ benefits offered by the NYSTRS. This unnecessary cost to the District amounts to \$295,281.00.”

District POSITIONAbility to Pay

At the outset, the District maintains that it is “operating in an economic climate of limited recovery from one of the deepest recessions in history and looming tax caps threatening to fundamentally alter its educational program and that of every Long Island school district.” In short, “the District has no ability to pay for the presently misaligned salary structure under the BTA Collective Bargaining Agreement.”

In determining the District’s ability to pay, it contends that an analysis of several measures is necessary, namely:

1. Actual Valuation Per Total Wealth Pupil Units (“TWPU”);
2. Combined Wealth Ratio (“CWR”);
3. State aid;
4. Uncertainty in the Present Economic Climate; and
5. The District’s Inability to Pay.

In terms of Actual Valuation Per Total Wealth Pupil Units (“TWPU”), the measure of the property wealth of a school district per pupil, the District provides data as of 2005 indicating that South County’s TWPU of \$590,754 ranks nine places below the median for Suffolk County at 41, with the median TWPU \$725,784 at rank 32.

The District refers to a 2009 research report generated for the Fiscal Policy Institute, by Trudi Renwick, measuring the relative burden of school expenditures using the tax increase on a \$450,000 home necessary to pay for an increase in expenditures of \$250 per student. On this measure, South County at \$163.02 ranked 43 out of the 65 school districts reported.

The District next considered its Combined Wealth Ratio (“CWR”) relative to other Suffolk County districts. CWR, a measure of a school district’s ability to raise local revenue based on a combination of per pupil property wealth relative to the State average and per pupil income

wealth relative to the state average, is a significant indicator of a district's ability to pay. "The District falls in the bottom third of Suffolk County, ranking 45th out of 64 school districts."

Conversely, the tax burden on the District is lessened by the state aid it receives, ranking 5th in the County in the amount of state aid received per pupil at \$6,095.69 in 2008-09.

The District has attributed its inability to pay, in part, to the 2007 Housing Market Collapse marked by a sharp decrease in national housing prices and the 2008 recession wherein the Dow Jones Industrial Average lost 2,399.47 or 22.11% of its value in eight days and by March 6, 2009 lost a total of 4,204 points or approximately 39% of its value.

As the federal government sought to buttress the economy through the Troubled Asset Relief Program ("TARP") and the American Recovery and Reinvestment Act ("ARRA"), New York State public schools received increased funding via ARRA through Title I and IDEA formulas and \$2.5 billion in Federal stabilization aid. In 2010-11, school districts received \$700 million in aid from the stabilization fund reducing a potential \$2.1 billion cut to \$1.4 billion. The District notes that Federal stimulus funding will expire at the end of the current school year. "Though the Federal Education Jobs Act, which was passed during the summer of 2010, added \$607 million for the State's public schools, it is anticipated that most districts will use this money to offset the loss of Federal stimulus dollars during the 2011-12 school year."

In the 2009-10 fiscal year, New York State used the Federal aid to maintain its 2009 level of funding in 2010, with the State legislature substantially reducing the State's contribution, offsetting the reduction with Federal aid. "Significantly, New York State used its available Federal aid funding to backfill the very deep holes created by its taxation and borrowing practices," however, "as the one-time injection of federal money runs out, the State and local districts will be faced with the huge financial obstacle of replacing these billions of dollars."*

* Governor Cuomo had proposed a 2% property tax cap on local levies or the inflation rate, whichever is less, effective July 1, 2012, however, this proposal did not materialize.

Governor Cuomo also proposed a one-year salary freeze on the majority of public employees whose contracts are up as of April 1, 2011 as part of an "Emergency Financial Plan."

During the 2010-11 school year, school districts around the State experienced a \$1.4 billion cut in State aid followed by a mid-year cut of \$130 million.

District Budgeting

In the Spring 2008, the District's Board of Education proposed a budget of \$102 million for the 2008-09 school year, which was 6.5% greater than the 2007-08 budget. The District received an increase in State aid of \$7.9 million.

The District's proposed budget for 2009-10 was increased to \$106 million, with an appropriation of \$1.97 million out of the \$6.7 million fund balance.

For the fiscal year 2010-11, the District's proposed budget was \$109 million, with \$5.2 million appropriated from the reserve budget to offset increased costs, including a tax levy increase of 2.66%. "However, due to unexpected revenue shortfalls in 2009-10, the District's reserved fund balance is now \$3.716 million dollars, approximately \$126 thousand less than anticipated. The District has systematically applied its reserved funds to cover its increased costs to avoid having to pass significant costs on to the South Country taxpayers."

The District contends that for the 2011-12 budget it cannot replicate the 2010-11 budget of \$109 million because it does not have the reserve funds and anticipates a reduction of state aid of \$4,283,627 based on the 2011-12 Executive Budget Proposal, SED Summary for South Country. "South Country is among the handful of school districts whose proposed state aid cut exceeds its unrestricted reserves."

The District further anticipates a 2011-12 budget crisis due to the decreasing revenue (property tax, other payments in lieu of taxes) and the loss of ARRA funds.

The reductions are exacerbated by increased costs of State retirement contributions (TRS/ERS).

In addition, health insurance costs are expected to increase by 15.2% in 2011-12. Also, the cost of lane change differentials is expected to increase. They cost the District \$458,329 in 2009-10 and have cost \$243,033 thus far in 2010-11. "The District cannot afford the automatic salary (or step) increases in the present BTA contract much less 'new money' for salary increases over the length of a five year contract."

The District estimates that it is facing a budget gap in 2011-12 "due to lost revenue and increased cost" of \$14,143.712.

Analysis of Parties' Salary Proposals

The District has juxtaposed its four year salary proposal of zero (0%) salary increases, ending with a freeze of increment in 2011-12, with the Association's five year proposal. It has utilized selected steps in the salary schedule (i.e., BA Step 1 2007-08, including Masters Degree lane change, MA Step 5), (MA 15, Step 10 in 2007-08 with lane movement to MA-30; MA 30 Step 16 in 2007-08 with lane movement to MA 60; MA 75 Step 10 in 2007-08). The District calculates that its proposal would "reflect raises of approximately 12% to 33% over the four year term" whereas under the BTA proposal the salary increases would range from 55.02% (BA Step 1) to 24.13% MA 75 Step 10. In the District's view, its proposal that would provide teachers at Step 10 or higher increases from 9.04% to 13.649%, including increment, is reasonable when compared to the BTA proposal. It considers the BTA proposal of a 3% increase in Year 5 "patently unreasonable," resulting in overall raises between 24% and 55%.

The fiscal problems of the District are exacerbated by longevity and differential increases. "In 2008-09 longevity increments alone cost the District almost \$210,000."

Comparability

"The District sits consistently in the top 15 of the teacher salary rankings for 36 Eastern Suffolk County Districts while sitting 26th out of the 34 districts in terms of property and income wealth per pupil."

In response to the BTA salary proposal, the District contends that “wage increases provided for in multi-year collective bargaining agreements executed prior to, or in the midst of, the downturn could not have predicted its severity or impact. Accordingly, comparing the percentage wage increases across school districts in any given year without considering the year the parties entered into the contract is misleading.”

As an alternative, the District argues that “comparison of the yearly wage increase, averaged over the term of each new contract, with the first year of each such contract” is a more accurate indicator of the current wage trend. From this analysis, the District has determined that salary increases in Suffolk County have been trending downwards since 2005 “and the speed of the reduction is accelerating. Projecting the trend line forward, it appears that it would cross the 0% threshold during the 2012-13 school year, the last year of the Union’s proposed contract.”

Given this data, the District considers “misleading” the BTA’s comparison of its proposed salary increases to the increases in Center Moriches, Longwood, Middle Country, Patchogue-Medford and William Floyd. “The first year of contracts for Center Moriches and Longwood was 2008; for Patchogue-Medford the first year was 2007. Therefore, those salary increases do not reflect the recession that began in earnest in the latter part of 2008.”

With respect to the William Floyd and Middle Country contracts commencing in 2010-11, the District maintains “those Districts have not historically paid their teachers beyond their means as has South Country.” Deemed illustrative of this discrepancy are comparisons between South Country and Middle Country on the MA Step 5, MA 30 Step 15 and MA 60 Step 15 levels, showing wage differences of \$5,989, \$8,105 and \$7,403 respectively and an average difference of \$5,783.75. Similarly, a comparison between South Country and William Floyd on these same three steps of their salary schedule indicates an average discrepancy of \$1,194.75.

The District reiterates its objective of realigning South Country teacher salaries in accordance with historical trends and for this purpose, “assumes a 1.5% yearly salary increase

over four years,” notwithstanding its proposed four (4) year freeze (0% increase) beginning with the 2008-2009 school year.

In its post-hearing brief, the District takes issue with the BTA's salary analysis, including its claim that the District's unreserved and undesignated fund balance in the amount of \$3,916,142 was not included in the District's analysis and chart @ pages 57-58 of its Fact-Finding brief. “However, the District did include that value in its calculations and stated in its assumptions that the unreserved undesignated fund balance would be used to offset the loss of State aid in 2011-12.”

The District disputes the BTA contention that it has substantial reserve funds available to pay for salary increases. It acknowledges that it maintains three reserve funds in the following amounts:

1) Workers Compensation Reserve	\$1,520,437
2) Property Loss Reserve	\$ 506,813
3) Employee Benefit Accrued Liability Reserve (“EBALR”)	\$4,213,263

These funds have been accumulated for specific statutorily authorized purposes and therefore are not considered “surplus funds.” Workers Compensation funds authorized by General Municipal Law §6-j are segregated from other funds, are used to pay for specific compensation and benefits and, therefore, not available for teacher salaries.

EBALR funds may be used to fund payment of accrued employee benefits due an employee upon termination of the employee's service and therefore may not be expended to pay teachers' salaries.

Finally, the District acknowledges that it is allowed to carry over unexpended operating funds from the prior year in an amount not to exceed 4% of the upcoming year's budget as a Fund Balance. (Real Property Tax Law §1318[1]).

DISCUSSION

I. Wages

It is undisputed that the District and the Association have attempted to negotiate a successor agreement amid daunting and deteriorating economic circumstances. Clearly, the 2007 Housing Market collapse and the 2008 recession have impacted Long Island School Districts and limited the District's ability to pay the Association's wage demands. The fact that both the District and the Association have proposed a zero (0%) percent salary increase for the 2008-2009 school year is evidence that they are cognizant of the District's financial situation.

On the one hand, the Association has proposed a five (5) year agreement averaging 1.75%, totaling 8.5% plus increment and culminating with a three (3%) percent plus increment increase in 2012-13. According to the Association, the District's unreserved fund balance of \$9,144,142 at the end of the 2009-10 school year, the District's pattern of generating an annual operating surplus by underestimating revenues and overestimating expenditures and its prior offer of a four (4) year agreement of 5.5% plus increment is persuasive evidence of the District's ability to pay.

With respect to comparability, the Association maintains that "no other local in Suffolk County received a 0% increase in the 2008-09 school year. The majority of districts throughout the county settled at three (3%) percent or higher for the 2009-10 school year. For the 2010-11 and 2011-12 school years, more than half of the districts have settled for better than a two (2%) percent increase." In support of its position, the Association focuses on the wage settlements from 2008-09 through 2012-13 in the surrounding districts of Center Moriches, Longwood, Middle Country, Patchogue-Medford and William Floyd. These districts have negotiated wage increases which range from an average of 2.0% in Patchogue-Medford to 3.55% in Center Moriches.

On the other hand, the District, with its offer of a four (4) year agreement of zero (0%) percent in each year, culminating with a "hard freeze" or step increment freeze in the 2011-12

school year, has maintained that an analysis of several measures provides persuasive evidence of its inability to pay a wage increase. According to the District, such financial measures as Actual Valuation Per Total Wealth Pupil Units ("TWPU"), Combined Wealth Ratio ("CWR"), and State aid are indicative of its decreasing ability to pay -- exacerbated by the current economic climate.

In support of its zero (0%) percent wage proposal, the District indicates that while it ranks nine places below the median with a TWPU of \$590,754, "the District sits consistently in the top 15 of the teacher salary rankings for the 36 Eastern Suffolk Districts. Moreover, in terms of CWR, South Country "falls in the bottom third of Suffolk County school districts, ranking 45th out of 64 school districts." The District further notes that the loss of Federal stimulus dollars during the 2011-2012 school year and ongoing reductions in state aid for a District that ranks 5th among Suffolk County Districts in the amount of state aid received per pupil will further restrict its ability to pay. The District also cites the potential impact Governor Cuomo's proposed property tax cap on local tax levies at 2% would have on its capacity to generate local revenue.

An overarching rationale of the District's salary position has been the need to "realign the District's ever increasing costs with its inability to pay such increases... Quite simply, the District has no ability to pay for the presently misaligned salary structure under the BTA Collective Bargaining Agreement."

Considering the positions of the parties, the Fact Finder, while recognizing the significant financial challenges faced by the District, concludes that it has an ability to pay more than a 0% increase over four years. After acknowledging the parties' concurrence that a zero (0%) percent plus increment for the 2008-09 school year is reasonable, given the severity of the economic downturn during that time period, the remaining 2-3 years of an agreement is the pivotal issue.

In support of a modest salary increase for 2009-10, 2010-11, 2011-12, the Association has provided persuasive evidence that the District had accumulated an unreserved fund balance of \$9,144,142 at the end of the 2009-10 school year. This unreserved fund balance

constituted 8.6% of the annual operating budget whereas State statute allows a maximum of 4.0% of the current school year budget. It is noteworthy that the operating surplus was accumulated after the District paid the mandated step increments for three (3) years, including 2009-10.

There is no dispute that for the 2010-11 school year, the unreserved fund balance as of June 30, 2010 of \$9,144,142 was reduced by \$5,228,000 in order to close a gap between the expenditure budget of \$109,624,261 and projected revenues of \$104,396,261. Whereas the BTA has maintained that the \$3,916,142 balance in the unreserved fund balance or 4.0% of the current year budget is available for teachers' salaries, the District argues that this amount would be rolled over to offset the loss of State Aid in 2011-12.

In the Fact Finder's opinion, the District, given the reported losses of surrounding and comparable districts, prudently projected a 4 million dollar loss in State aid from 2010-11 to 2011-12 (\$46,965,497 to \$42,681,870). For example, in 2011-2012 Middle Country has lost 4.45% or approximately \$9,354,465 of state aid from its budget of \$207,877,471. Moreover, the William Floyd School District anticipates tax increases in excess of 6%. (Newsday, April 9, 2011). As a similarly situated low wealth, high tax school district in the town of Brookhaven, South Country has undoubtedly sustained substantial losses in state aid.

Assuming the District utilizes the unrestricted fund balance of \$3,916,142 to cover an anticipated loss in state aid in 2011-12 of approximately \$4 million or 4.0% of its \$109,624,261 budget, the District, given its historical pattern with respect to projecting revenues and expenditures should, despite the projected loss in state aid, generate an operating surplus of approximately \$3 million in 2010-11 - - an amount sufficient to fund a teacher salary increase.

The Fact Finder credits the District's analysis that the trend line for salary increases in Suffolk County has been declining so that a comparison of contracts negotiated more recently shows lesser increases than those negotiated in 2007 or 2008. Insofar as the District's zero percent proposal attempts to not only realign South Country teacher salaries with those in other

Suffolk County school districts and distinguish South Country from Middle Country and William Floyd – “Districts which have not historically paid their teachers beyond their means as has South Country” – the Fact Finder asserts that the wage recommendations made herein do not exacerbate these discrepancies but rather acknowledge the District’s current ability to pay and provide limited realignment.

In this regard, the Fact Finder is mindful of the District’s wage proposal of 5.5% plus increment over four years prior to Fact-Finding and the BTA’s willingness to accept this proposal provided no other changes were made to the CBA.

In addition, the Fact Finder notes that the District’s wage proposal, in part, was predicated on a 2% property tax cap proposed by Governor Cuomo and a statewide cut of 1.4 million in state aid for 2011-12. Inasmuch as the property tax cap was not enacted by the Legislature and Governor’s proposed reduction of eleven (11%) percent of Long Island’s operating aid was restored to 9.1%, the draconian projections, while still severe, did not materialize. The approximately 20% restoration of the proposed 11% cut in State aid to Long Island school districts for 2011-12 should reduce the proposed District cut in State aid of \$4,283,627 (10.71%) to approximately \$3,425,902 or 9% of State aid and 3.12%.

Finally, the Fact Finder acknowledges that it took several contracts for South Country to reach its current position vis-à-vis other wealthier Suffolk County school districts as well as those such as Middle Country and William Floyd -- low wealth, high tax districts that have made extra efforts to remain competitive with higher wealth districts; therefore, it will take several contracts to correct the misalignment identified by the District.

The Fact Finder maintains that the District, having under-spent its budget by \$13,346,670 from 2007-08 to 2009-10 and accumulated an unreserved fund balance of \$9,144,142 as of June 30, 2010, will probably generate an annual operating surplus of approximately \$3 million dollars as of June 30, 2011 and therefore should be able to pay the teachers a salary increase of 1.5% plus increment for both 2009-10 and 2010-11 as well as a

2.0% plus increment wage increase for 2011-12.* The parties and the Fact Finder agree that 0% plus increment is appropriate for 2008-09.

With respect to 2012-13, the Fact Finder agrees with the Association that a five (5) year contract is more practical, given the time frame, so that the parties are afforded a negotiating respite prior to commencing negotiations for a successor agreement. For the fifth year (2012 - 13), the Fact Finder recommends a wage increase of 2.5% plus increment.

The 2012-13 relies on a partial economic recovery, increased State aid as a percentage of its overall budget, and the District's continued prudent management of its finances. Over the five (5) year agreement, a total wage increase of seven and one-half (7.5%) percent, averaging 1.5% per year, seems reasonable.

II. HEALTH INSURANCE

District Position

The District "proposes that teachers immediately contribute 20% towards their health insurance premiums." Currently, BTA members pay 10% of their health insurance premiums. The BTA has proposed no increase in 2008-09 and 2009-10 followed by an increase to 12% in 2010-11, 14% in 2011-12, and 15% in 2012-13.

Despite the savings which have been obtained through the District's self-insurance through the Suffolk School Employees Health Plan ("SSEHP"), the steady increase in insurance premiums for SSEHP, for both individual and family coverage, by an average of ten (10%) percent per year, justifies the proposed increase to 20%.

The District has provided data which indicates that employee benefits, including health insurance, account for 17% of school district expenditures. After salaries, health insurance coverage to employees is the largest district personnel expense. The District maintains that "thirty-seven districts have bargained a higher employee contribution, with a majority of

* The Fact Finder acknowledges that the increment has been paid for 2008-09, 2009-10 and 2010-11.

contracts requiring a 15% employee contribution for families and individuals.” Moreover, “of the 16 school districts with a lower percentage contribution, only 2 have a lower reported CWR than South Country. Of the 37 districts with higher employee health care contributions, 24 of those, almost two-thirds, have a higher reported CWR than South Country.”

Association Position

The Association recalls that BTA members received 100% of their health insurance coverage as a benefit until September 1998. Effective September 1, 1998, all teachers contributed eight (8%) percent toward the premium for health insurance coverage. Effective September 1, 2000, all teacher contributions rose to ten (10%) percent. “Presently, approximately one-third (1/3) of the teachers in Suffolk County pay ten percent or less.”

Unlike negotiations where increases in health insurance contributions are accompanied by “significant contractual gains in other areas, this is not the case here.” In the BTA’s view, “the small raise offered by the District could mostly, if not entirely, be offset by health insurance contributions depending on the member’s position on the salary schedule, even if the contribution is paid through the 125-K plan.”

DISCUSSION

The Fact Finder is persuaded that the teachers in South Country should pay an increased percentage of their health insurance coverage. While an increase is warranted because of the 16 school districts with lower employee contributions to health insurance only two have a lower CWR than South Country and the fact that the teachers’ contribution has remained constant at ten (10%) percent despite cumulative increases of 82.1% since 2002, with a yearly average of 10.7%, he finds the District proposal of 20% excessive. The data indicates that South Country is providing health insurance coverage at a level at or beyond the level of its more affluent Eastern Suffolk school districts that benefit from a higher combined wealth ratio. Given a discernible trend toward increased contributions by teachers concentrated at 15%, the

Fact Finder recommends that South Country teachers increase their contribution to fifteen (15%) percent in two steps.

For the 2011-12 school year, teachers, effective September 1, 2011, shall contribute twelve (12%) percent towards their health insurance premiums. For the 2012-13 school year, effective September 1, 2011, teachers shall contribute fifteen (15%) percent towards their health insurance premiums.

III. TEACHER EVALUATION/ APPR APPEALS PROCEDURE

District Position

The District reviewed the history of the Annual Professional Performance Review (“APPR”) and the recent legislature changes thereafter. Section 100.2(0) of the Regulations of the Commissioner of Education was promulgated in 2000 and requires Boards of Education to review annually teacher performance based on eight or more regulatory criteria.

Effective July 1, 2010, the New York State Legislature enacted Section 3012-c of the Education Law codifying and expanding the existing annual professional performance review requirements of Section 100.2. Section 100.2 states that “[a]ll collective bargaining agreements applicable to classroom teachers or building principals entered into after July 1, 2010 shall be consistent with the requirements of this Section.” (Education Law § 3012-c[8]). Section 3012-c(8) further states that the law shall apply upon “the entry into a successor collective bargaining agreement.”

The new APPR statutory requirements encompass review of “all classroom teachers” and indicate that those reviews “shall also be a significant factor in teacher and principal development” all of which are to be negotiated at the local level. If a teacher is rated either “developing” or “ineffective,” a district is required to implement a Teacher Improvement Plan (“TIP”) that includes, at a minimum, identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed, and where

appropriate, differentiated activities to support a teacher's improvement in these areas.
(Education Law 3012-c[4]).

In addition, the new APPR statute requires the negotiation of an appeals procedure, permitting an evaluated teacher to "challenge the substance of the annual professional performance review, the school district's...adherence to the standards and methodologies required for such reviews pursuant to [3012-c], the adherence to the regulations of the Commissioner and compliance with any applicable locally negotiated procedures as well as the school district's...issuance and/or implementation of the terms of the teacher or principal improvement plan."

From the District's perspective, "the only workable procedure that would not result in prohibitive and unnecessary arbitration costs to the District is one that is limited to review by the Superintendent of Schools, without further appeal or grievance rights. This procedure would also ensure that substantive performance and methodology reviews are left in the hands of a professional educator."

The District further proposes that in order to avoid unwarranted or frivolous appeals, such appeals should be limited to those teachers who have received a rating of "developing" or "ineffective." Pursuant to this objective, the District proposes the following appeals procedure:

Notwithstanding any inconsistent provisions herein, the parties agree that as to the appeals procedure referred to in Education Law Section 3012(c), the following constitute compliance with the statute:

- a. Appeals shall be limited to those evaluations which have resulted in a rating of Ineffective or Developing.
- b. Within five school days of the receipt of an annual evaluation providing a rating as set forth in Subparagraph (a) above, a teacher may appeal the annual evaluation to the Superintendent of Schools or his/her designee. The appeal shall be in writing and shall articulate in detail the basis of the appeal. Appeals shall be limited to:
 1. the substance of the annual professional performance review;

2. the school district's adherence to the standards and methodologies required for such reviews pursuant to Section 3012(c) of the Education Law;
 3. the school district's adherence to the Regulations of the Commissioner and compliance with any applicable locally negotiated procedures;
 4. the school district's issuance and/or implementation of the terms of the teacher's improvement plan;
 5. any issue not raised in the written appeal shall be deemed waived.
- c. Within five school days of receipt of the appeal, the Superintendent of Schools or his/her designee shall render a written determination with respect thereto.
 - d. The determination of the Superintendent of Schools or his/her designee shall not be grievable, arbitrable, or reviewable in any other forum.
 - e. The time frames referred to herein may be extended by mutual agreement of the parties.

Association Position

The Association acknowledges that at its April 2010 meeting, the Board of Regents amended Section 100.2(c) of the Regulations of the Commissioner of Education "to ensure school districts and BOCES can implement changes to annual professional performance reviews (APPR) of all teachers providing instructional services before the 2011-2012 school year." Chapter 103 of the Law of 2010, including a new Section 3012-c of the Education Law, effective July 1, 2011, caps the use of student growth for teacher evaluation "based on the results of state tests at 20 percent and at 25 percent upon approval of a value-added model by the Board of Regents."

The evaluation of teachers providing instructional services by school districts/BOCES must be based on the following eight criteria prescribed in regulation:

1. Content knowledge
2. Pedagogical practices
3. Instructional delivery

4. Classroom management
5. Knowledge of student development
6. Use of assessment techniques/data
7. Effective collaborative relationships
8. Reflection of teaching practices

The regulations further require that each district submit a professional development plan under APPR identifying the procedures it will utilize to conduct annual teacher evaluations, the levels of proficiency and evidence required for satisfactory performance, and the development of a TIP for teachers evaluated as unsatisfactory. The TIP is developed by the district in consultation with the teachers.

The evaluation procedures used in the APPR are mandatory subjects of collective bargaining. Procedures for the use of student growth as a measurement criterion are to be determined via collective bargaining.

Each school district/BOCES will be required to rate all classroom teachers using one of four categories:

Highly Effective: teacher performing at a higher level than expected based on criteria

Effective: teacher performing at expected level based on criteria

Developing: teacher not performing at expected level based on criteria

Ineffective: teacher performance is unacceptable based on criteria

Each school district and BOCES will be required to establish an appeals procedure under which the evaluated teacher can challenge:

- The substance of a teacher's APPR;
- The failure of the district or BOCES to adhere to the standards and methodologies required for the APPR, including those specified in Commissioner's Regulations and any applicable locally negotiated procedures; and

- The failure to issue or implement a TIP.

Expedited 3020-a Hearing Process

“A teacher with two consecutive ineffective annual ratings, may, but would not be required to be charged with incompetence based on a sole charge of a “pattern of ineffective teaching” and be subjected to an expedited hearing. This does not preclude a district from filing disciplinary charges against a teacher in accordance with the procedures specified in Section 3020-a of the Education Law.

An evaluation which is the subject of an appeal may not be offered in evidence or placed in evidence in any 3020-a Education Law proceeding or any locally negotiated alternative disciplinary procedures, until the appeal process is concluded.

During an expedited 3020-a hearing, “the district must present evaluations and establish that the TIP was substantially developed and implemented and provide documentation of implementation when the teacher was first rated as “ineffective” and when the teacher was rated as “developing” if that rating preceded the first rating of ‘ineffective.’”

The Association notes that “these several areas of the APPR will require changes to meet the new requirements. Several of these changes, including the appeal process, are to be determined through collective bargaining,” including the following:

- Procedures for the use of student growth
- Procedures for implementation of the rating categories and the elements comprising the composite effectiveness score
- The elements comprising the composite score, except for student growth measures on state assessments as prescribed by the commissioner or a comparable measure of student growth
- 20 percentage points based on locally selected multiple measures of student achievement that have been determined to be rigorous and comparable across classrooms

- The TIP process
- An appeal procedure under which the evaluated teacher can challenge

The Association maintains that “the District’s proposal to base an appeal on the content and substance of the annual evaluation is premature and limiting. The parties have not yet negotiated the content and substance of the annual evaluation as required. The Association is being asked to agree to an appeal process based on the ‘unknown.’” The Association further maintains that “under the new regulations, a teacher may appeal not only the substance of the APPR, but may appeal the adherence to the standards/methodologies required for such reviews, adherence to commissioner’s regulations, compliance with applicable locally negotiated procedures, and issuance and/or implementation of the terms of an improvement plan.”

According to the Association, “the District’s proposal does not provide for a fair and full appeal as provided under the new regulations. In fact, it not only limits what can be appealed, but by whom the appeal can be heard. This is not the intent of the new regulations, nor is it the intent of the Association to waive the right to a fair and full appeal for its members.”

Since most of the issues requiring negotiations under §3012-c will be impacted by the new regulations, as an alternative, the Association proposes that this matter be tabled until after the enabling regulations are issued. To this end, BTA proposes the following language:

The parties agree that they will conduct negotiations concerning APPR as soon as practicable after adoption of regulations of the Commissioner of Education required by Chapter 103 of the Laws of 2010, to the extent necessary to comply with said regulations.

DISCUSSION

The parties have acknowledged the enactment of Section 3012-c of the Education Law amending Section 100.2(0) of the Regulations of the Commissioner of Education. The legislation requires annual professional performance reviews of all classroom teachers and

building principals employed by school districts in accordance with the provisions of §3012-c conducted on or after July 1, 2011.

Clearly, those APPRs will be a significant factor for employment decisions, including but not limited to promotion, retention, tenure as well as teacher and principal development. Inasmuch as the APPRs are to result in a single composite teacher or principal effectiveness score, which “incorporate multiple measures of effectiveness included in the regulations of the commissioners, the elements comprising the composite effectiveness score shall be locally developed, consistent with the standards prescribed in the regulations of the commissioner, through negotiations conducted, pursuant to requirements of Article Fourteen of the Civil Service Law.” (Education Law Section 3012-c).

Since several components of APPR, including the appeal process, are to be developed through collective bargaining and adherence with the Commissioner’s Regulations, the Fact Finder maintains that it would be premature to base the teacher’s appeal of an adverse rating on the content and substance of the APPR when such elements as the standards/methodologies required for such reviews, including those specified in the Commissioner’s Regulations and any applicable locally negotiated procedures, have yet to be determined.

Given the fact that many elements of the APPR process, such as the incorporation of student growth measures, implementation of a Teacher Improvement Plan, and implementation of the rating categories – procedures to be determined through collective bargaining – are inextricably connected to the Commissioner’s Regulations, it seems reasonable to the Fact Finder to defer negotiations on the APPR appeal procedure until the adoption of the Commissioner’s Regulations. In the meantime, the parties’ joint APPR can continue to address other aspects of APPR that require collective bargaining.

Although the Fact Finder, on the one hand, acknowledges the District’s need for an expeditious evaluation process, with finality ensured by appeal exclusively to the

Superintendent, he is, on the other hand, cognizant of the Association's requirement that the appeals procedure be fair and adhere to due process. The parties' ability to balance these considerations should be enhanced once the subject matter underlying the appeal is clarified by issuance of the Commissioner's Regulations.

Therefore, it is Recommended that the parties reopen negotiations on this issue once the Commissioner issues his enabling regulations.

IV. PROFESSIONAL DEVELOPMENT

District Position

The District notes that "the current contract does not require any professional development for either tenured or probationary teachers." To correct this situation, the District proposes 10 hours of professional development for all teachers through a program to be developed by the Superintendent of Schools.

The District identifies a need for additional staff development hours, not only because of technological advancements and the challenge of updating teachers' knowledge and skills, but also from data provided on the District's Comprehensive Information Report Card (SED 2006-07) indicating that South Country students have a lower passing and achievement rate than the State average in almost every basic discipline.

In terms of comparability, eight Suffolk County Districts have more professional development and only two have less.

Association Position

The Association disputes the District's contention that the current contract does not require any professional development. "The current contract requires teachers new to the District receive thirty (30) hours of staff development per year. In addition, four (4) workshops are conducted and are attended by first, second and third year teachers." The teachers' work year includes two (2) Professional Development Days, as distinguished from Superintendent Conference Days. Also, "professional development is offered throughout the year as set forth

on the District's Professional Calendar and is attended by both non-tenured and tenured teachers." The Association provided several examples of this activity.

Finally, the BTA takes issue with the District's reliance on the District's Comprehensive Information Report Card for 2006-07, noting that the data for subsequent years indicates that "the teachers of the South Country C.S.D. are in fact attending and applying the professional development to obtain positive outcomes."

DISCUSSION

The Fact Finder is not persuaded that the Professional Development currently provided in the contract should be changed at this time. While an argument can always be made that additional staff development is beneficial, given the thirty (30) hours of staff development currently received by teachers each year, with additional workshops provided for developing teachers, the Fact Finder does not perceive a compelling need to mandate more staff development, particularly since the Report Card data cited by the District that identified performance deficiencies is not current.

V. EXTRA HELP

District Position

The District contends that the current extra help system requires revision. Although the current contract requires teachers to provide 30 minutes of extra help to students per week, either at the beginning or end of the day, as scheduled by the teachers, the District maintains that "the teachers have eviscerated the purpose of extra help by 'scheduling' their weekly thirty minutes in six minute intervals five times per week." To address this issue, the District proposes that extra help be provided in forty (40) minute continuous segments as scheduled by the building principal. In this way, the extra help will be provided in a manner consistent with the needs of the students and building as a whole.

Association Position

The Association responds that teachers at the secondary level provide thirty (30) minutes of extra help for their students once a week. “The thirty (30) minutes is delivered consecutively, either before or after the student day. The District’s claim that teachers are providing this thirty (30) minutes in six (6) minute intervals five (5) days a week is unfounded.”

The BTA rejects the District’s proposal that extra help be increased to a forty minute period as scheduled by the principal. “The District offers no evidence that the present thirty (30) minutes is not sufficient.” Alluding to the District’s Comprehensive Report Card (SED) for school years 2007-08, 2008-09 and 2009-10, which show improvements across the board, the Association argues that “to maintain this upward growth, teachers must continue to have the flexibility in scheduling extra help to address the academic needs of their students.”

DISCUSSION

Absent testimonial or documentary evidence from principals or teachers that the current method of scheduling extra help is ineffective, the Fact Finder discerns no basis for changing the language in the CBA to accommodate the District’s concerns.

Accordingly, the District’s proposal is not Recommended.

VI. DENTAL/OPTICALAssociation Position

The Association seeks to improve the dental coverage currently offered. “To make certain plan improvements, the annual single rate would increase by approximately \$74.50 per year and the family rate by approximately \$186.00 per year.”

The BTA further proposes that optical coverage be provided, noting that “approximately one-third (1/3) of all Suffolk school districts offer an optical benefit, including three (3) of the five (5) surrounding districts.”

District Position

The District notes that it currently pays 100% of the BTA members' individual and family dental insurance premiums, totaling \$39.63 for individuals and \$109.38 for families. This dental insurance benefit is projected to cost the District \$627,809 in 2010-11.

DISCUSSION

The Fact Finder concurs with the District in determining that the current dental plan is adequate. Given the fiscal realities facing the District and the Fact Finder's prior recommendation that the BTA contribution to health insurance be increased to 15%, it would be counterproductive to improve the District's dental plan at this juncture.

Moreover, adding an optical plan would not be cost effective.

Therefore, the Fact Finder Recommends that no change be made to the dental benefit.

The addition of an optical plan is Not Recommended.

VII. CLASS SIZEDISCUSSION

The BTA did not address this subject either during the Fact Finding hearing or in its post-hearing brief; therefore, the Fact Finder deems this issue moot.

VIII. RETIREMENT INCENTIVEDISCUSSION

The BTA assertion that the District has sought to eliminate the \$40,000 retirement incentive was not manifest in the District's presentation. Therefore, the current contract provision will remain in place and not require a Fact Finder's Recommendation.

IX. ACCRUED SICK LEAVE CAPDISCUSSION

Apparently, the District's expectation that the BTA would demand in Fact-Finding that the 210 day cap be lifted off the days of sick leave a teacher could accumulate for the purpose of increased compensation was "inaccurate." The Association had proposed the removal of the

cap to allow for a “safety-net” for teachers “who experienced prolonged illnesses or unfortunate incident (i.e., cancer, trauma).

The Fact Finder notes that Article VII provides as follows:

4. A teacher absent due to personal illness and/or non-compensable injury whose sick leave has been exhausted thereby may apply to the Sick Bank Governing Board for additional sick leave days from the sick bank and receive payment therefore from the District or the Governing Board’s Director for the waiting period between the exhaustion of the sick leave and the commencement of eligibility for long term disability.

To the extent the foregoing procedure does not address the catastrophic illness addressed by the BTA, the parties should further negotiate this issue.

Therefore, the Fact Finder remands this issue to the parties for further negotiation pursuant to the BTA’s clarified position.

X. IN-SERVICE CREDITS/ GRADUATE STUDY

Association Position

The Association disputes the District’s contention that it proposed teachers be permitted to use credit hours from graduate study towards one (1) lane change in a given year. “The Association is not looking to alter the existing contract language for horizontal movement on the salary schedule.”

The BTA seeks no change to the current contract language that allows a teacher to advance on the salary schedule upon the completion of fifteen (15) credits, seven (7) of which must be graduate courses and eight (8) of which can be in-service credits.

The BTA maintains that the parties have already negotiated specific guidelines for courses a teacher can take and apply for credit for a lane change. “The District offers no evidence that horizontal movement on the salary schedule is being abused.”

The BTA also contends that the District’s proposal for no “banking” could result in a financial loss to a teacher. “Since graduate courses are most often offered in three (3) credit blocks and movement on the salary schedule requires seven (7) graduate credits, a teacher

would need to take at least three (3) courses to obtain the necessary seven (7) credits, thereby ‘wasting’ two (2) credits.”

District Position

The District maintains that the current contract language and Union proposal allow teachers “to increase District costs by moving rapidly across the salary schedule.” To address this issue, the District proposes that “teachers be allowed to use such credits for the purpose of changing their lane every other year. The District also asks that there be no banking of credit hours.”

In the District’s view, “allowing employees to ‘bank’ credits undermines the purpose of differential lane change, which is to provide an economic incentive for teachers to participate in their own continuing education.” The District further proposes that an October 1st deadline be imposed to facilitate the non-banking rule “so that the District may receive the benefit of having teachers participate in ongoing graduate studies in exchange for the salary increases provided by lane differentials.”

DISCUSSION

The Fact Finder discerns no basis for changing the language in Article XXIV, Graduate Study Provisions. The parties have developed a procedure for advancement on the salary schedule following the completion of fifteen (15) hour blocks, seven of which must be graduate courses and eight of which can be in-service (e.g., SCOPE courses).

The Fact Finder deems problematic the District’s “no banking” proposal and restriction of lane movement to every other year because, as the BTA correctly notes, teachers would be acquiring graduate credits in three credit blocks that could not be fully utilized. Although the Fact Finder acknowledges the District’s need to effectuate savings whenever feasible, its graduate study/in-service proposal would unreasonably alter the expectations of teachers currently acquiring graduate credits and impose a financial loss without sufficient notice.

Given the other economic recommendations contained herein that are beneficial to the District, absent evidence of abuse, the Fact Finder is disinclined to Recommend any changes in the current contract language.

Accordingly, No Change is Recommended in Article XXIV.

Summary of Recommendations

1. Salary: Effective September 1, 2008, there shall be a zero (0%) percent salary adjustment plus step increment and differential movement for 2008-09. Effective September 1, 2009 and September 1, 2010, the salary schedules shall be retroactively increased by 1.5% plus step increment and differential movement. Effective September 1, 2011, the salary schedules shall be increased by 2.0% plus increment and differential movement. Effective September 1, 2012, the salary schedules shall be increased by 2.5% plus step increment and differential movement.
2. Health Insurance – Effective September 1, 2011, the teachers' contribution to their health insurance premiums shall increase to twelve (12%) percent. Effective September 1, 2012, the teachers' contribution to their health insurance premiums shall increase to fifteen (15%) percent.
3. Teacher Evaluation/APPR – Appeals Process – The parties shall reopen negotiations on this issue once the Commissioner of Education has issued the enabling regulations.
4. Dental/Optical Coverage - No change is Recommended
5. Professional Development – No Change is Recommended.
6. Extra Help – No Change is Recommended.
7. Accrued Sick Leave Cap – Issue is Remanded to the parties for further negotiation.
8. In-Service Credits/Graduate Study – No Change is Recommended.
9. Retirement Incentive – No Change is Recommended.
10. Class Size – No Change is Recommended

All of the material submitted to the Fact Finder has been carefully examined to reach the recommendations contained herein. The Fact Finder, in his analysis, has carefully evaluated the evidence according to the criteria set forth in Article 14 of the Civil Service Law. The Fact

Finder recognizes that the following recommendations do not give either party all that was requested. The objective of this report is to provide an equitable foundation that will enable the parties to make reasonable adjustments in their respective positions to facilitate a fair settlement of the issues.



Robert T. Simmelkjaer
Fact Finder

Dated: April 13, 2011
New York, NY

STATE OF NEW YORK }
COUNTY OF NEW YORK }

I, Robert T. Simmelkjaer, do hereby affirm that I am the individual described herein who executed this instrument which is my Report and Recommendations.



Robert T. Simmelkjaer

Dated: April 13, 2011