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Dryden Central School District and Dryden Faculty Association

Michael G. Whelan

Dryden Central School District and Dryden Faculty Association

Abstract
In the matter of the fact-finding between the Dryden Central School District, employer, and the Dryden Faculty Association, union. PERB case no. M2010-206. Before: Michael G. Whelan, fact finder.

Keywords
New York State, PERB, fact finding

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

DRYDEN CENTRAL SCHOOL DISTRICT,

Public Employer,

and — Case No. M2010-206

DRYDEN FACULTY ASSOCIATION,

Employee Organization.

FACT-FINDING REPORT AND RECOMMENDATIONS

Fact Finder Michael G. Whelan

February 29, 2012

APPEARANCES

For the Public Employer:

Matthew R. Fletcher
Assistant Superintendent for Personnel Relations
Cayuga-Onondaga BOCES
1879 W. Genesee Street Road
Auburn, NY 13021

For the Employee Organization:

Joseph W. Beasley
Labor Relations Specialist
NYSUT
Southern Tier: Vestal Regional Office
305 Vestal Parkway West
Vestal, NY 13850

Procedural History

The Dryden Faculty Association, affiliated with NYSUT, AFT, NEA and AFL-CIO ("Association"), and the Dryden Central School District ("District") are currently at impasse over the terms of their expired collective bargaining agreement ("Agreement"), which covered the period of July 1, 2006, to June 30, 2010.

The parties entered into bargaining for a successor agreement on January 28, 2010. They met on twelve other occasions throughout 2010, but were unable to reach agreement on all open issues. On November 12, 2010, after the parties filed a Declaration of Impasse, the New York State Public Employment Relations Board (PERB) appointed a mediator. The mediator conducted two mediation sessions in early 2011, but the parties were not able to successfully resolve their differences.

On June 29, 2011, the Association filed requested the appointment of a fact finder. On July 18, 2011, PERB's Director of Conciliation appointed the undersigned Fact Finder to conduct a hearing into the causes and circumstances of the dispute and to make findings of fact and recommendations to resolve the dispute.

The parties met with the Fact Finder in a preliminary conference in an effort to identify and narrow the issues for hearing on September 20, 2011, and at that meeting the parties agreed to hold the fact-finding hearing on November 15, 2011. Thereafter, the parties stipulated to a continuance, and the hearing was rescheduled for January 26, 2012. A hearing on the merits was held in the Town of Dryden on January 26, 2012, during which the parties presented evidence and written summations of their respective positions. The Fact Finder left the hearing open until February 3, 2012, for the purpose of allowing the Association the opportunity to supplement the record with another exhibit proffered at the hearing and marked as Association Attachment U. The Association did not supplement the record, and the hearing was deemed closed. This report is submitted pursuant to Section 209.3(c) of the Public Employees' Fair Employment Act.

Issues and Positions of the Parties

At the preliminary conference the parties identified the following ten issues in dispute: (1) wages and salary; (2) health insurance; (3) academic chairpersons – merging of departments; (4) professional opportunities – teaching assistant compensation; (5) co-curricular stipends; (6) mentor program; (7) faculty career severance program; (8) duration of contract; (9) retroactivity; and (10) negotiation snapshot. Prior to the hearing on the merits, the Association withdrew issue ten, the negotiation snapshot issue, leaving the remaining nine issues for fact-finding.

1. Wages and Salary

a. District's Position

The District proposed salary increases of 1.8% in the first year of the agreement (FY2010-11) and 1.8% plus .2% in the second year of the agreement (FY2011-12). If there were to be a third year included in a package (FY2012-13), the District proposed a salary increase 1.8% plus .2% for that year. The District computes its proposal as being a total offer of 1.8% in year one, 2.0% in year two, and 2.0% in year three. The District also submits that salary increases and health insurance are coupled financial issues and need to be considered together.

b. Association's Position

The Association is seeking a 1.8% step increase plus 2% in the first year (FY2010-11); a 1.8% step increase plus 2% in the second year (FY2011-12); and a

1.8% step increase plus 2% in the third year (FY2012-13). The Association is calling for a total increase of 3.8% in year one, 3.8% in year two, and 3.8% in year three.

2. Health Insurance (Prescription Co-Pay)

a. District Position

The District has proposed increasing the prescription co-pay from $5.00 per prescription for generic drugs and $10.00 per prescription for brand name drugs to $10.00 per prescription for generic drugs and $20.00 per prescription for brand name drugs.

b. Association Position

The Association has proposed that there should be no change to the co-pay amounts in the Agreement.

3. Academic Chairpersons – Merging of Departments

a. District Position

The District has proposed that departments with fewer than three teachers be merged or combined to eliminate very small departments and situations where an individual in a department of one or two receives a stipend for being department chair. It also submits that the Association had tentatively agreed to this proposal.

b. Association Position

The Association has proposed that there be no change to the current department structure. It agrees that a tentative agreement had been reached that would permit these mergers in return for an increase in tuition reimbursement rates to teaching assistants, but it withdrew from this tentative agreement after the District eliminated most teaching assistant positions and proposed eliminating the three remaining positions.

4. Professional Opportunities – Teacher Assistant Compensation

a. District Position

The District seeks to maintain the status quo on teacher assistant compensation. Teacher assistants earn five-eighths (5/8) of a starting teacher's salary. As such, the District asserts that teacher assistants are eligible for five-eighths of the amount that a teacher receives for in-service pay.

b. Association Position

The Association asks that the District's position on this issue not be recommended because the tuition reimbursement benefit it thought it had obtained for teacher assistants in exchange for agreeing to merge small departments was erased by the loss of teacher assistants.

5. Co-Curricular Stipends

a. District Position

The District has proposed removing the link between the base-salary schedule and the points used to calculate compensation for co-curricular and athletic compensation. The current system provides for automatic increases in co-curricular and athletic positions for every year in which there is an increase in the base salary. While the District does not necessarily assert that there should be no raises given to co-curricular advisors or athletic coaches, it does believe that these raises should be negotiated separately from the base salary increase, as part of a total negotiation package.

b. Association Position

The Association has proposed that there be no change to the current system of linking the points to base salary for athletic and co-curricular compensation. It has also proposed increases to co-curricular stipends, and a language change applicable to coaches and advisors.

6. Mentor Program

a. District Position

The District has proposed that the Mentor Program be removed from the collective bargaining agreement. It asserts that the program must be revised on a yearly basis and, as such, out-of-date versions of the Program are included in the collective bargaining agreement. The District contends that it is required to implement the current version of the Program, but is violating the collective bargaining agreement by doing so, as many staff members have pointed out.

b. Association Position

The Association has proposed keeping the Mentor Program in the Agreement. However, the Association has expressed a willingness to remove the actual Program language from the Agreement if the Program is incorporated by reference in the Agreement and it has the right to approve any changes to the Program.

7. Faculty Career Severance Program

a. Association Position

The Association has introduced a proposal to amend the Faculty Career Service Program to provide an option to those simply eligible to receive NYSTRS benefits (as opposed to the current Program where eligibility hinges on unreduced eligibility) and another option for those who are not eligible for any NYSTRS benefit to convert unused sick days for a maximum payout of $5,000. It claims that these options would remedy age-discrimination exposure in the current language, restore eligibility requirements to reflect the original intent of the parties, and provide incentives aimed at encouraging higher-paid bargaining unit members not meeting the current participation requirements to consider retirement.

b. District Position

The District proposes maintaining the status quo on the Faculty Career Service Program or removing it from the Agreement. The District made no assertion as to whether the language in the current Agreement is discriminatory, and asserts that it is not convinced that the Association's proposal would not also pose risk for potential discrimination claims. The District also asserts that the Association's proposal leads to significant increased costs to the District.

8. Duration of the Agreement

a. District Position

The District favors a two-year agreement that would provide for a stable and productive relationship between the parties. The District would also consider a longer agreement of perhaps three years in duration because the first year of the successor agreement is already behind the parties.

b. Association Position

The Association seeks an agreement at least three years in duration.

9. Retroactivity

a. District Position

The District is not necessarily opposed to retroactivity; however, the agreement to make the negotiated settlement retroactive would depend on the total package agreed to between the parties. Additionally, the District asserts that the Association would have to agree to the District's proposed increases in prescription co-payments in order to consider any amount of retroactivity.

b. Association Position

The Association has proposed that salary increases be paid retroactively to the beginning of FY2010-11.

Findings of Fact

1. The Dryden Central School District is quite large in geographic area, covering nearly 100 square miles of rural countryside. It has four schools. Freeville (100 students) and Cassavant (100 students) are small K-3 schools. The Dryden Elementary School is in the Village of Dryden (620 students) and the Dryden Junior-Senior High School is just outside the Village of Dryden with nearly 900 students. Each school has its own campus setting (District Brief, p. 10).

2. Over 35 percent of the District's student population is eligible for free lunch, and another 10 percent is eligible for reduced-priced lunch. The District's combined wealth ratio is .556. The state average wealth ration is 1.0 (District Brief, pp. 21-23).

3. Under the Agreement, unit employees receive a step increase each year, costing the District approximately 1.8% of salary per year. These step increases are

part of the status quo and continue in effect even after the expiration of the Agreement. As such, they already have been awarded for FY2010-11 and FY2011-12 (Association Brief, p. 8).

4. Each one percent increase in base salary for unit members costs the District approximately $90,000 per year (District Brief, p. 20). The additional amounts in salary increases sought by the Association (2% in the first year, and 1.8% in the second and third years) if paid retroactively would cost the District about $180,000 in the first year, $162,000 in the third year, and $162,000 in the third year. Compounded, these increases would cost the District $180,000 in the first year, $342,000 in the second year, and $504,000 in the third year.

5. Local school districts vary widely in co-pay amounts in their prescription drug plans. For example, Ithaca has the same co-pay as in the District's current plan, Newfield has a three-tier plan with features that are both favorable and unfavorable to the District's current plan (three tier – $0 generic, $10 preferred, $25 non-preferred), and Groton has a less favorable plan (three-tier – $5, $15, $30) (Association Attachment AA).

6. The Governor's proposed budget for 2012-13 provides an aid increase to Dryden of $351,320.00 over the 2011-12 state aid amounts. This difference is equal to a 2.24 percent increase in state aid. In 2011-12, the District received $767,603.00 in Education Jobs Fund money, which it will not receive this year. As such, even with the Governor's proposed aid increase to Dryden of $351,320.00, in 2012-13 Dryden Central School District will be functioning with $416,283.00 less than in 2011-12, due to the loss in Education Jobs Fund money (District Brief, pp. 26-27).

7. Over the last several years, the total tax levy has increased, while the rate of taxation per $1,000 of assessed property valuation has fluctuated.

Tax Levy and Tax Rate Comparison

Fiscal Year	Total Tax Levy	Percent Increase	School Tax Rate on $1000 Value True Rate
2002-03	$9,244,199		$22.30
2003-04	$9,847,804	6.53%	$21.82
2004-05	$10,817,651	9.85%	$22.12
2005-06	$11,788,534	8.97%	$22.74
2006-07	$12,927,158	9.66%	$24.19
2007-08	$13,426,502	3.86%	$24.50
2008-09	$13,505,589	0.59%	$20.43
2009-10	$13,720,301	1.59%	$20.27
2010-11	$14,511,714	5.77%	$20.98
2011-12	$15,309,858	5.50%	$22.19

(District Brief, p. 24).

8. In the last several years, District residents have voted to support the District budget.

Dryden Central School District - Budget Voting Results		
Voting Years	Votes For Budget Proposal	Votes Against Budget Proposal
2006-2007	708	676
2007-2008	670	364
2008-2009	708	339
2009-2010	713	385
2010-2011	772	410
2011-2012	584	356

(Association Brief, p. 7).

9. The District began FY2008-09 with an unrestricted fund balance of $1,552,234, which grew to $3,454,534 by the end of FY2010-11. During that period of time, the District reduced staff in light of decreasing student enrollment (Association Attachment J, Table 1C).

10. Among school districts in Tompkins County in FY2009-10, District teachers earn less than average, except at the 75th percentile. Specifically, District teachers are less than \$200 below average at the 5th percentile, about \$1,200 below average at the 25th percentile, almost \$1,800 hundred below average at the 50th percentile, about \$1,800 above average at the 75th percentile, and about \$400 below average at the 95th percentile (District Exhibit 13).

11. Among fulltime classroom teachers in 23 comparable school districts in Broome County, Tioga County and Tompkins County at the 5th, 25th, 50th, 75th and 95th percentiles for FY2009-10, 14 out of 19 districts pay their teachers more than District teachers at the 5th percentile; 16 out of 20 districts pay their teachers more than District teachers at the 25th percentile; 9 out of 22 districts pay their teachers more than District teachers at the 50th percentile; 9 out of 20 districts pay their teachers more than District teachers at the 75th percentile; and 15 out of 19 districts pay their teachers more than District teachers at the 95th percentile (District Exhibit 13).

12. Among 22 comparable school districts in Tompkins, Tioga, Broome, Schuyler, Onondaga, Cayuga, Cortland, Madison and Seneca counties in FY2010-11, 19 out of 21 districts pay their teachers more than District teachers at the 5th percentile; 20 out of 21 districts pay their teachers more than District teachers at the 25th percentile; 18 out of 21 districts pay their teachers more than District teachers at the 50th percentile; 15 out of 21 districts pay their teachers more than District teachers at the 75th percentile; and 19 out of 21 districts pay their teachers more than District teachers at the 95th percentile (Association Brief, p.12)

13. When median teacher salaries are compared to 50 districts above Dryden and 50 below along several variables, District teacher salaries ranked in the bottom 83rd percentile based on enrollment; the bottom 58th percentile based on property value per pupil; the bottom 76th percentile based on income per pupil; the bottom 73rd percentile based on income per student; the bottom 71st percentile based on tax rate; and the bottom 63rd percentile based on spending per pupil (Association Attachment X).

Report and Recommendations for Settlement

Both parties in these negotiations had ambitious goals and opened numerous articles. They are also represented by talented and experienced professionals, and it is apparent from the parties' well-crafted briefs and oral presentations that they feel strongly about the disputed issues. But now, over two years since the commencement of bargaining over a successor agreement, the time has come for the parties to take stock of what can reasonably be gained in bargaining and the costs of continuing to prolong this dispute.

Parties at the fact-finding stage of the impasse procedure have often staked out intractable positions. Nevertheless, sooner or later the parties begin to view their respective positions a bit differently, and when they do, there is a foundation upon which agreement can be reached. The process of beginning to view bargaining positions differently is more likely to come from re-evaluating the importance of maintaining productive relationships rather than learning new information. The parties to this dispute no doubt learned very little new information, if any, from each other at the hearing. They have heard it all before – but the role of a fact finder is to provide an objective view of the causes of a dispute and recommend a course of action that will lead to agreement.

One thing that can be said about these negotiations is that both sides cannot get all they want. The only way to get this relationship back on track and get a new agreement is to make some reasonable compromises. This need to compromise does not mean that important principles need to be abandoned, but solutions that are fair and reasonable should be adopted. The Fact-Finder's recommendations below attempt to find fair and reasonable solutions to the issues presented, taking into consideration the evidence presented and statutory guidance from the Taylor Law.

The Taylor Law does not require fact finders to take into account specific factors when making recommendations. However, the statutory criteria employed in compulsory interest arbitration provide useful guidance. Those factors, which will be considered where relevant here, include:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

1. <u>Wages and Salary</u>

There was general agreement between the parties that salary was the most significant issue in dispute and that if the parties could reach agreement on this issue, there was a strong likelihood they would reach agreement on the other issues. That stated, the parties remain relatively far apart in their proposals and offer starkly different views and rationales for their respective positions. The Association is seeking step increases of 1.8% and additional 2% increases to the base for each of three years covered by a successor agreement. The District has offered the 1.8% step in the first year, and the 1.8% step and an additional .2% increase to the base in the second year and possibly the third year.

There are a number of statutory factors that apply to this issue, the most significant involving the employer's financial ability to pay; salary comparisons with employees in similar positions and other employees generally in comparable communities; and the interests and welfare of the public.

a. <u>Ability to Pay</u>

All the above-mentioned factors are significant to the salary issue, but an employer's financial ability to pay is critical because salary increases must be adequately funded. The District has two principal inability-to-pay arguments. First, it contends that even with a projected increase in State aid for next year, it will receive less government aid due to the loss of federal money. Specifically, the District submits that even with State aid projected to increase to the District by $351,320 for next year, it will be functioning with $416,283 less than in 2011-12, because next year it will lose $767,603 in Education Jobs Fund money it received this year.

Second, the District submits that a combination of State aid cuts in prior years, the newly enacted property tax cap, rising health care costs, and rising retirement benefit costs will make it more difficult to operate school districts. The District contends that under these circumstances, many districts have and will have to continue to rely on their reserves to make it though these difficult economic times. As these factors apply to the District itself, it put in evidence a long-range plan, completed in January 2010, showing that as soon as 2015, it could be facing bankruptcy, assuming a 4 percent levy with gap elimination adjustment and 2 percent increases on salaries.

The Association contends that the District's unrestricted fund balance over the last three years establish that the District has the ability to pay the wage increases the Association seeks. Budget analysis conducted by the Association show that the District began FY2008-09 with an unrestricted fund balance of $1,552,234, which grew to $3,454,534 by the end of FY2010-11. The Association also notes that there has been a reduction in staffing in light of decreasing enrollment and that it expects the District will end this year with a significant operating surplus. Further, the Association notes that it expects a significant operating surplus this year even though step increases, amounting to 1.8% of the 3.8% total sought by the Association, were paid in FY20010-11 and are again being paid this year.

Although the near collapse of the housing market nationwide did not hit this area as hard as many others, the resulting calamity in the financial markets sent shock waves throughout our economy that may take years to overcome. Therefore, it is understandable that the District would approach financial decisions cautiously. That stated, it is clear that the District has some ability to pay salary increases to unit members. It is already paying step increases amounting to about 1.8%. The District has also proposed increases of .2% for the second year of a new agreement, and possibly another .2% for the third year. So the issue becomes whether the District has the ability to pay the additional amounts sought by the Association – 2% in the first year, and 1.8% in the second and third years. Inasmuch as a 1% salary increase costs the District about $90,000 per year, these additional amounts over what the District has already offered, assuming that they would be paid retroactively, would cost the District about $180,000 in the first year, $162,000 in the third year, and $162,000 in the third year. Of course, these amounts would compound, so, for example, the cost to the District for the amounts the Association seeks over what the District has offered would be about $180,000 in the first year, $342,000 in the second year, and $504,000 in the third year.

Based on the evidence presented, it is apparent that the unrestricted fund balance has grown over the last three years and the long-range projections made by the District two years ago appear to have been overly pessimistic. Taking into consideration the overall tendencies of the District to be cautious about its finances and the Association to take an optimistic of what is likely to happen; the Fact Finder is persuaded that there is money available to pay some of the increases sought by the Association over what the District has offered. However, other factors discussed below should also be considered.

b. Salary Comparisons

Salary comparisons with employees in similar positions and other employees generally in comparable communities is another such factor, and one of particular importance to the Association. From the Association's perspective, the District deviated from a mutually accepted approach used in prior years to try to keep salaries for District teachers in the "middle of the pack" among their counterparts in the Tompkins Seneca Tioga BOCES ("TST BOCES"). The District contends that District teacher salaries compare favorably with other local and regional districts, and offers several other reasons why it cannot support the Association's requested increases. The parties presented several comparisons in support of their respective positions.

The District relies on a Cayuga-Onondaga BOCES teacher salary survey, which compares the salaries paid to teachers in the TST BOCES schools at intervals of every five years up to twenty-five years. The District notes that the 2009-2010 survey reveals that although Dryden's entry-level salaries are slightly below the overall average listed for TST BOCES component schools, the District quickly catches up to and surpasses the average by the time a teacher reaches ten years in the District with a master's degree. The District further notes that by the time a teacher in Dryden Central School District reaches twenty-five years in the District with a master's degree, only George Jr. Republic teachers and TST BOCES teachers are earning more.

The District also relies on so-called "BEDS" data, which lines up all teachers in a district with the teacher earning the least at the first percentile and the teacher who earns the most at the hundredth percentile. According to the District, this data show that as far as compared to all Tompkins County school districts, the District is above the average in the 50th and 75th percentiles, is less than $400 below the average in the 95th percentile, and is less than $200 below the average in the 5th percentile. According to the District, this information supports the conclusion that District teachers are paid competitively and compare at the average or favorably in terms of salary.

In support of its proposal, the Association referred to comparison data reported to the New York State Education Department. The Association explained that the districts included in the comparison were chosen for one of the following characteristics: (1)

proximity to the Dryden Central School District; (2) similarity of size; (3) membership in the same athletic conference; or (4) participation in the same BOCES. Based on these data, the Association concluded that, with a few minor exceptions, District teachers earn significantly less than their colleagues when along each salary percentile.

The Association also put a “50/50” comparison in evidence, which compare 2009-2010 median salaries in the fifty districts immediately above and the fifty districts immediately below Dryden in (1) enrollment; (2) property value per pupil; (3) income per pupil; (4) income per return; (5) estimated full value tax rate; and (6) estimated total general fund expenditures per pupil. Based on these data, the Association concluded that the median salary for District teachers ranks in the bottom half in all six factors measured

It is often difficult to draw conclusions based on salary comparisons. In this matter, the Association seeks to be in the “middle of the pack,” but there is no apparent agreement between the parties on which other districts are comparable. There are also issues associated with differences in how salaries from individual districts are calculated in these comparisons (e.g., percentile ranking, median salaries, and step placement) and treatment of districts that are operating without a current labor agreement. Keeping these issues in mind, the Fact Finder has carefully considered the comparative evidence presented by the parties.

District Exhibits 11 and 12 are not particularly instructive because of the small number of comparators and incomplete data. District Exhibit 11, a teacher wage survey of selected districts within Tompkins, Seneca and Tioga counties for FY2010-11, only has data from four districts. District Exhibit 12, a teacher wage survey of selected districts within Tompkins, Seneca and Tioga counties for FY2009-10 only has data from seven districts and does not include 30-year figures.

District Exhibit 13, the “BEDS Summary,” provides enough data to draw informed conclusions. Employer Exhibit 13 is attributed to the New York State Education Department and lists salaries for fulltime classroom teachers for FY2009-10 in 23 districts in Broome County, Tioga County and Tompkins County at the 5th, 25th, 50th, 75th and 95th percentiles. According to District Exhibit 13, 14 out of 19 districts pay their teachers more than District teachers at the 5th percentile; 16 out of 20 districts pay their teachers more than District teachers at the 25th percentile; 9 out of 22 districts pay their teachers more than District teachers at the 50th percentile; 9 out of 20 districts pay their teachers more than District teachers at the 75th percentile; and 15 out of 19 districts pay their teachers more than District teachers at the 95th percentile.

Among the districts listed in District Exhibit 13 from Tompkins County, District teachers earn less than average, except at the 75th percentile. Specifically, District teachers are less than \$200 below average at the 5th percentile, about \$1,200 below average at the 25th percentile, almost \$1,800 hundred below average at the 50th percentile, about \$1,800 above average at the 75th percentile, and about \$400 below average at the 95th percentile.

The Table on page 12 of the Association’s brief, which contains salary information for FY2010-11 attributed to the New York State Education Department, also provides enough data to draw informed conclusions. The districts included on this Table were chosen by the Association based on criteria noted above. It includes ten of the same districts as in District Exhibit 13, and twelve other districts. According to this

Table, 19 out of 21 districts pay their teachers more than District teachers at the 5th percentile; 20 out of 21 districts pay their teachers more than District teachers at the 25th percentile; 18 out of 21 districts pay their teachers more than District teachers at the 50th percentile; 15 out of 21 districts pay their teachers more than District teachers at the 75th percentile; and 19 out of 21 districts pay their teachers more than District teachers at the 95th percentile.

Finally, Association Attachment X, the 50/50 Comparison, also provides useful comparisons of District teacher salaries to similar districts throughout the State. It compares the District's median teacher salary to 50 districts above Dryden and 50 below along several criteria. The comparison concluded that District teacher salaries ranked in the bottom 83rd percentile based on enrollment; the bottom 58th percentile based on property value per pupil; the bottom 76th percentile based on income per pupil; the bottom 73rd percentile based on income per student; the bottom 71st percentile based on tax rate; and the bottom 63rd percentile based on spending per pupil. This means that median District teacher salaries ranked in the lower half of the comparator districts based on all the identified criteria.

It is possible to make some general conclusions regarding how District salaries compare with comparable districts from this data. First, within Tompkins County in FY2009-10, District salaries were higher than the average of other districts at the 75th percentile. Otherwise they were below average, slightly at the top and bottom percentiles, and more significantly in the lower to mid-level percentiles. Second, when the population of comparable districts is expanded to include Tompkins, Tioga and Broome counties in FY2009-10, District salaries were also higher than the average of other districts at the 75th percentile. Otherwise they were below average, by a small amount ($119) at the 50th percentile, but over $2,400 at the 5th, 25th and 95th percentiles. Third, when the population of comparable districts is expanded to include selected districts in Tompkins, Tioga, Broome, Schuyler, Onondaga, Cayuga, Cortland, Madison and Seneca counties in FY2010-11, District teachers ranked significantly below the median at every percentile. Finally, when the population of comparable districts includes 100 other districts around the state in FY2009-10, median District salaries ranked slightly below the middle percentile based on property value per pupil and spending per pupil, and significantly below the middle percentile when compared with other districts of similar enrollment, income per pupil, income per return and tax rate. In summary, when the comparators are limited to Tompkins County, District salaries lag, except at the 75th percentile, and as the circle of reasonable comparators is enlarged in the manner presented at the hearing, District salaries compare increasingly unfavorably.

c. Interests and Welfare of the Public

The interests and welfare of the public should also be considered in this analysis, and the District based much of its presentation and its brief on issues related to this factor. The thrust of the District's argument is that in a weak economy with high unemployment and low inflation, where State aid is declining and a tax cap was recently enacted, the Association's salary demands are too much for less-wealthy District taxpayers and out-of-sync with increases in comparable districts.

The Association has a different view: essentially that the tax levy is less per mil than it was in FY2006-07, that District taxpayers have resoundingly supported the

District budget over time, and that the recently enacted limits on tax increases is not a hard cap that ties the District's hands.

There is substantial evidence of community support for funding District schools and it is in the parties' interests that that support continues. The issues raised by the District are certainly relevant to keep in mind to maintain that support, especially in the current economic climate, and justify the exercise of fiscal restraint by the District on new or increased spending. For these reasons, this factor weighs in favor of the District not providing all the increases sought by the Association.

Recommendation on Wages and Salary

Based on the above analysis, the Fact-Finder concludes that the growth in the District's unrestricted fund balance over the last three years shows (1) that the District has the financial ability to provide increases larger than it has offered, and (2) that despite the parties' previous efforts to position District salaries at the average of comparable districts, they presently lag behind that position. The Fact-Finder further concludes that current economic conditions as they affect the District and its taxpayers are legitimate reasons to be cautious when arriving at salary increases. These conclusions call for salary increases higher than those proposed by the District, but lower than those sought by the Association.

The salary recommendation below is also linked to four other issues that are more fully discussed in other sections of this report. This recommendation calls for retroactive payment of increases beginning July 1, 2010, and a three-year agreement. Further, .6% of the third year increase is intended to offset recommendations below calling for an increase in co-pays for prescription drugs and a language change permitting merger of small departments, both of which bring financial savings to the District. The Fact-Finder acknowledges that these are not dollar-for-dollar offsets, but taken together they justify a larger increase in the third year.

The Fact-Finder recommends that the District provide the following increases to Association unit members:

Effective July 1, 2010 1.8% step increase plus .8%

Effective July 1, 2011 1.8% step increase plus .8%

Effective July 1, 2012 1.8% step increase plus 1.4%

2. Health Insurance (Prescription Co-Pay)

The District has proposed increasing the prescription co-pay from $5.00 per prescription for generic drugs and $10.00 per prescription for brand name drugs to $10.00 per prescription for generic drugs and $20.00 per prescription for brand name drugs. The Association has proposed that there be no change to the co-pay amounts in the Agreement.

The District argues that this is largely an economic issue and that it was looking to fund the salary increases it offered with savings achieved from this proposal. The Association generally agreed that this is an economic issue. As with salaries, the Association is concerned that it maintain parity with comparable districts, and it recognizes that any savings the District achieves through this proposal shifts financial risks to its members.

The District's current prescription plan and many of the other plans in Association Attachment AA present some financial risk to those using prescription medications, particularly for those who do not want to use generic medications. It is true that some of that exposure would increase under the District's proposal. Nevertheless, a review of Association Attachment AA, which presents excerpts from various local districts, shows that employees are often required to make co-payments, and they take different approaches to this issue. Some, such as Ithaca, have the same co-pay as in the District's current plan. Others, such as Newfield (three tier – $0 generic, $10 preferred, $25 non-preferred), have features that are favorable and unfavorable to the District's current plan. Others still, such as Groton, have less favorable plans (three tier – $5, $15, $30).

Recommendation on Health Insurance

Taking the above factors into consideration, the Fact-Finder recommends that the parties include the District proposal in the third year of a successor agreement (FY2011-12) and that some of the savings be put into wage increases for that year as reflected in the previous recommendation. This is consistent with the Association's desire to have savings directed in that manner, and the District's view that settlements exceeding the "going rate" be accompanied by a health care or other concession.

3 and 4. Academic Chairpersons – Merging of Departments and Professional Opportunities – Teacher Assistant Compensation

The District proposed merging small departments to save money on department chair stipends, and the Association proposed full tuition reimbursements for teacher assistants, apparently for in-service training. According to the Association, the parties reached a tentative agreement on these two unrelated articles on a *quid pro quo* basis. That is, the Association agreed to permit certain mergers in return for the District's agreement to compensate teacher assistants for tuition reimbursement at the same rate as teachers. The Association claims that after this tentative agreement was reached, the District decided to eliminate eight of eleven teacher assistants and has plans to eliminate the remaining three. Believing that the District eliminated the benefit from the bargain, the Association withdrew from the tentative agreement.

There appears to be no dispute that merging departments will save the District money. It also appears beyond dispute that eight teacher assistant positions were eliminated. The fate of the remaining three is uncertain.

Recommendation on Mergers and TA Compensation

Regardless of the precise nature of the parties' tentative agreement on these issues, the value of that agreement to the Association was at least partially undone because of the reduction of teacher assistant positions. This is another reason the Fact Finder has recommended an additional amount to salary in the third year of a successor agreement as a way to restore value to the Association's end of the bargain. Beyond that, to the extent that teacher assistants remain with the District, the Fact Finder recommends that they be paid tuition reimbursement in the same manner as teachers, and paid for in-service training at their normal rate of compensation, 5/8ths the teacher's rate. The Fact Finder also recommends that the District be permitted to merge departments and reduce the amount of money it pays in chairperson stipends. To this end, the parties should include in their successor agreement the language changes to Article XV – Academic Chairpersons, described on pages 22-23 of the Association's brief.

5. Co-Curricular Stipends

The District has proposed removing the link between the base salary schedule and points used to calculate compensation for co-curricular and athletic compensation.

The Association has proposed increases to stipends and a language change said to apply to coaches and advisors. There was scant information presented at the hearing or in the parties' briefs that would form the basis for findings of fact, analysis or recommendations on this issue.

Recommendation on Co-Curricular Stipends

Based on the information in the record, the Fact Finder recommends that the parties maintain the status quo on this issue in a successor agreement.

6. Mentor Program

The District has proposed that the Mentor Program be removed from the collective bargaining agreement out of concerns that it is often revised and because actions taken in conformance with revised versions of the Program violate express provisions of the Agreement. The Association has indicated a willingness to remove the actual language from the contract; however, it seeks to retain language in the Agreement incorporating the Mentor Program by reference and requiring that it approve any changes to the Program.

Both parties recognize the problem that occurs when changes to the Program made by the Core Committee during the duration of agreements lead to nominal contract violations. Such violations may raise questions about the viability of the Agreement and cause confusion. Both parties also seem amenable to removing the specific provisions of the Program from the Agreement. However, the Association desires to retain the contractual right to authorize changes to the Program recommended by the committee. This is a legitimate concern for the Association in preserving its role as the teachers' exclusive bargaining representative. Similarly, the

District should also preserve the right to review and approve of the work of the Core Committee.

Recommendation on Mentor Program

For the above-stated reasons, the Fact Finder recommends that the current language in Article XIII D. be deleted from a successor agreement, and that it be replaced with the following:

> "D. Mentor Program
>
> The Mentor Program was created as a cooperative venture between the Association and the District. The program is overseen by a Core Committee of teachers and administrators, and may be revised by this committee, subject to approval by the Association and the District.

7. Faculty Career Severance Program

The Association has proposed amending the language in the Faculty Career Severance Program on the grounds that it is discriminatory. The District counters that the Association's proposed language fix is also discriminatory and would significantly increase costs to the District. The Association counters that the Program saves money because as senior teachers retire, newly hired teachers receive lower pay.

This is an important issue to both parties, not only due to potential legal exposure, but also because of the cost issue. It is beyond the role of the Fact Finder to opine on potential legal exposure the parties may face under the current language or the Association's proposed language. To the extent that the District claims that the Association's proposal will increase costs and the Association claims that the Program saves the District money, neither party presented enough evidence upon which to make informed conclusions. To the extent that an expanded Program could increase costs to the District, the Fact-Finder concludes that it would not be fiscally prudent for the District to do so at this time.

Recommendation on Faculty Career Severance Program

The parties should maintain the status quo on the Faculty Career Severance Program in their successor agreement. The legal soundness and cost of revising the Faculty Career Severance Program are issues that deserve further study by the parties, and the Fact Finder recommends that they meet and discuss this issue after concluding a successor agreement.[1]

8. Duration of the Agreement

The District favors a two-year agreement that it asserts would provide for a stable and productive relationship between the parties, but it would also consider a three-year agreement, as the first year of a successor agreement has already passed. The Association seeks a three-year agreement.

Recommendation on Duration

If the parties entered into a two-year agreement expiring on June 30, 2012, only a few short months away, they would have to begin bargaining again almost immediately towards another successor agreement. A three-year agreement gives the parties some time away from the often-contentious bargaining process and permits them to focus on other productive concerns in a more cooperative atmosphere. For this reason, the Fact Finder recommends that the parties enter into a three-year agreement incorporating all the recommendations herein.

[1] In making this recommendation, the Fact Finder offers no opinion on whether the parties, individually or jointly, face any legal exposure due to the language in the Agreement or any proposed amendments.

9. Retroactivity

The District is not necessarily opposed to retroactivity, provided that it finds the total package acceptable and that there is some relief in that package on health-care costs. The Association has proposed that salary increases be retroactive to the beginning of FY2010-11.

It appears that both parties to this dispute sincerely believe that the positions they have taken in these negotiations are warranted. There is certainly evidence to support both views, but now is the time to find common ground. The people most affected by this long-running dispute are District teachers. If both parties are willing to put aside some of their differences and accept these recommendations, the best way to set the tone for productive future relations is to put the teachers in the position they would have been if the parties had reached agreement at the expiration of the Agreement, over one-and-one-half years ago.

Recommendation on Retroactivity

The Fact Finder makes the following recommendations regarding retroactivity. First, the recommended salary increases should be implemented retroactively to the dates indicated in the salary recommendation. Second, the changes to the health-insurance article on prescription co-payments should go into effect at the beginning of the third year of a successor agreement, on July 1, 2012. Third, all other provisions of the successor agreement should go into effect upon ratification of that agreement.

Conclusion

As noted above, the parties to these proceedings have exceptionally well-qualified and skilled representatives. Beneath the veneer of the very professional presentations, however, was a tone of mutual frustration. Despite this current frustration, no doubt stemming from troubling economic conditions, it appears that the parties do have a reservoir of goodwill. Goodwill between labor negotiators – the belief that your adversary understands and appreciates the issues you are facing and is open to reasonable solutions – is one of the most important factors in developing productive relationships. The recommendations above are reasonable solutions to the disputed issues. The parties are encouraged to view these recommendations in the spirit of mutual goodwill and to put an end to these prolonged negotiations by accepting them.

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Michael G. Whelan Date
Fact Finder