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Clifford B. Donn

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Hannibal Central School District and Hannibal Faculty Association

Abstract

In the matter of the fact-finding between the Hannibal Central School District, employer, and the Hannibal Faculty Association, union. PERB case no. M2012-372. Before: Clifford B. Donn, fact finder.

Keywords

New York State, PERB, fact finding

FACT FINDING REPORT

Hannibal Central School District
and
Hannibal Faculty Association
New York State
Public Employment Relations Board
Case M2012-372

Appearances:

DISTRICT: Randy J. Ray
Director of Personnel Relations
Cayuga-Onondaga BOCES

ASSOCIATION: Timothy A. Fay
Labor Relations Specialist
New York State United Teachers

FACT FINDER: Clifford B. Donn

This dispute is between the Hannibal Central School District (the District) and the Hannibal Faculty Association. The Association represents some 120 professional personnel employed by the District.

The parties met informally during the Spring of 2012 and formally on a number of occasions beginning in November 2012, as they attempted to negotiate a successor collective bargaining agreement to the one that expired June 30, 2011. There had been a one-year extension of the agreement until June 30, 2012, during which the employees received no raises, not even step raises. After two meetings with a mediator from the Public Employment Relations Board, the Association requested that PERB appoint a fact finder and the undersigned was assigned to the case on October 29, 2013.

The fact finder met with the parties on December 18, 2013, in an attempt to mediate the dispute. The District negotiating team was led by Randy J. Ray (Cayuga-Onondaga BOCES) and the Association bargaining team was led by Timothy A. Fay (NYSUT). However, at the December 18, meeting, the District negotiating team indicated that it was not willing to participate in attempting mediation with the fact finder and desired to move directly to fact finding. Accordingly, the rest of the session was devoted to giving the fact finder some background on the dispute and determining the parameters of the fact finding report. While a number of issues remain in dispute, the parties agreed to file fact finding briefs on only three of those issues, health insurance, the teacher work day, and pay. It was agreed that no formal hearing would be held, that the fact finding report would be based on briefs from the parties and that the parties' briefs would be due on January 31, 2014. The briefs were received and the case was closed at that time.

ADDITIONAL BACKGROUND

There are several aspects of the Hannibal Central School District that need to be noted in order that for the bargaining issues to be understood clearly.

The first is that this is a "focus district." This means that its students fall into the lowest 5% of districts in the state in terms of certain test scores,

specifically at the middle school and high school levels. Hannibal is one of only a tiny handful of non-urban districts in the state in this category.

The second is that Hannibal, based on a “combined wealth ratio” calculation, is also among the poorest school districts in New York. Specifically the District claims it is the tenth poorest district in the state on this basis. It also cites data indicating that Hannibal is the poorest district in the Oswego BOCES and that the District residents have the lowest average income in the Oswego BOCES.[District brief pp.9-14]

The third is that the majority of the District’s annual expenditures are provided by state aid. In fact, state aid provides over 70% of the District’s operating expenditures.[Association brief p.6]

The fourth issue that must be mentioned is that the meeting that the undersigned had with the parties on December 18, 2013, revealed an abnormally high level of mistrust between the sides. Each expressed substantial frustration with the approach of the other side to the negotiations and this level of mistrust is clearly itself an obstacle to the resolution of the bargaining impasse. This is particularly unfortunate because the evidence produced by the parties has indicated to the fact finder that in the relatively recent past, these parties had a high level of trust and were able to work through difficult economic and health insurance problems in ways that involved considerable trust and a willingness to sacrifice for the benefit of the community and its children.

ISSUE – Health Insurance

POSITIONS OF THE PARTIES

The District has proposed that the Association members increase the percentage of the health insurance premium that they pay from 10% to 12%. The District has also asked the Association members to accept a change from a prescription plan in which they pay \$5 for generic prescriptions and \$10 for brand name drugs, to a three-tier system of \$10/\$20/\$35.

The Association has proposed no change in the current health

insurance arrangements. It would like to retain the 10% contribution members make to the health insurance premium and the two-tier pharmaceutical plan. The Association is particularly adamant that no retroactive increase in health insurance premiums be contemplated.

The District asserts that prescription charges are the largest cause of increases in health insurance premiums. It argues that the three-tier prescription plan would increase the incentive of employees to use generic drugs. It notes that in the BOCES only Hannibal and one other district don't have three-tier drug plans.[District brief p.29] The District has provided data on the percentage of health insurance premiums employees pay in each of the districts in the Oswego BOCES.[District brief table 12] It also notes that other groups of employees in the District have accepted higher premium payments than the teachers and it would be inequitable to allow this situation to continue.[District brief p.31]

The Association has provided a history of recent health insurance arrangements in the District. It asserts that the Association agreed to open an earlier collective bargaining agreement for the sole purpose of helping the District reduce its health care costs. As of March 1, 2011, the parties moved to a less costly and less generous plan as part of a consortium (the District had previously provided a stand-alone policy) which is the current arrangement. The Association asserts that those changes "...saved the District hundreds of thousands of dollars in premiums." [Association brief p.8, attachment 4]

Thus, the Association believes its members have "sacrificed enough" in recent health insurance concessions. It believes these concessions have contributed significantly to what it sees as the District's "current outstanding financial position." It also notes that a change to a three-tier drug plan will shift costs toward those who are sickest among employees and retirees.[Association brief p.9] An analysis done by the Association based on current prescription patterns among members suggests that they would have paid an additional \$65,000 for their prescriptions for the period analyzed had the three-tier plan been in place.[Association brief pp.9-10] It also notes that under the three-tier plan, a Prescription Benefit Manager over whom the parties have no control would be able to move drugs from tier to tier. Finally, with regard to prescription plans, the Association rejects

the District's assertion that three-tier plans are now the norm. It notes that more than half of the twenty-six districts in the Cooperative Health Insurance Fund of Central New York (the consortium in which the District participates) continue to offer a two-tier drug plan.[Association brief p.10]

DISCUSSION

The data provided by the parties indicates that the 10% of premium costs that are currently paid by the employees is right within the norm for the districts in the Oswego BOCES. Given the health insurance concessions made by the Association just a few years ago, it is not appropriate to change the employee contribution to the health insurance premium.

With regard to the drug plan, the question is whether to retain the two tiers or move to three tiers. The Association is correct that a three-tier plan imposes significantly more cost on the sickest members of the bargaining unit and that many districts still retain two-tier plans. On the other hand, there is a clear growing trend toward three-tier plans which do save districts (and some of the employees) considerable sums. The parties' briefs do not discuss the possibility of retaining the two tiers and adjusting the co-pays as a possible compromise that might assist the District with less cost to the Association members (e.g. \$5 and \$20). Accordingly, the undersigned is unsure whether such a compromise is possible under the consortium or what its financial implications might be.

Whether moving to a three-tier drug plan or modifying the existing two-tier plan is appropriate depends on the overall package agreed upon with regard to salary and teacher work day.

ISSUE – Teacher Work Day

POSITIONS OF THE PARTIES

At an earlier stage of the negotiations the District proposed adding thirty minutes to the faculty work day and the student school day. During the course of negotiations, the District modified its offer so as to eliminate one of two teacher preparation periods each day rather than add to the

actual length of the day. The goal is to increase teacher-student contact time in order to improve student outcomes (particularly test scores) but to do so without lengthening the school day. In supporting this proposal, the District has asserted that it is unusual for teachers to have two preparation periods.

The District has not proposed adding a sixth class to the teachers teaching load. It proposes instead to use the additional time for "academic intervention." It argues that giving up the second preparation period for academic intervention would not result in additional preparation time since teachers would be working with the same students who are in their regular classes going over the same course work and material.[District brief p.28]

While the District asserts that the Association has been unwilling to enter into serious discussions about increases in instructional time, the Association itself asserts that, "...the parties have been able to agree in principle that it will help matters if teachers can spend more time with students. Of course there are disagreements over just how to add that time." In this context, the Association acknowledges that Hannibal teachers enjoy the shortest work day in Oswego County.[Association brief p.11] Essentially, the Association position is that it is willing to see the teacher work day increase in return for proportional pay increases.

The District asserts that the instructional time assigned to Association members is considerably below the average in comparable school districts. It claims that the elementary teachers have a work day that is nineteen minutes shorter than the Oswego BOCES average and for secondary teachers, eighteen minutes shorter.

The District also notes that when the state education department identifies a district as a focus district, it is indicating that the district and its students are "...in need of significant academic improvement." [District brief p.24] The District argues that not only are Hannibal's proficiency rates below the average, but that they have also been declining for the most part. [District brief p.25] It should be mentioned that the District attributes the poor academic results to a variety of social and economic factors and not to any deficiencies on the part of the teachers. It does argue that, "However, the Association (not the individual teachers) has been an impediment to

finding and implementing a solution to this problem.”[District brief p.26]
The District asserts that the Association has not been willing to enter into serious negotiations over what it calls the “contractual impediments” to improving student test results. “Specifically, the Association is loath to acknowledge that an increase in student contact and instructional time will have a direct and positive impact on student learning.”[District brief p.26]

The Association asserts that in the past it has been willing to increase the teacher work day in return for proportional pay increases. It is willing to do so now. It views the District’s proposal that middle and high school teachers give up their second preparation period in order to provide student remediation as an additional class. It is unwilling to give up the contractual limit of five classes and one study hall assignment per day. It asserts that teachers are available to provide remedial assistance to students during study halls and that teachers often provide such assistance on their own during lunch and planning periods.[Association brief p.11]

The Association also notes that the existing (expired) collective bargaining agreement contains provisions for academic intervention services. This provides for remedial help for students before and after school as well as during the school day and specifies stipends for teachers who agree to provide such help.[2008-11 collective bargaining agreement pp.20-21] However, the Association asserts that the District has been unwilling to avail itself of this existing arrangement. The Association views the District’s current proposal as asking for something in return for nothing. [Association brief pp.12-13]

DISCUSSION

It is certainly true that there will always be school districts whose student achievement is below the average, just in the nature of averages. It is also true, as both sides acknowledge in their briefs, that some districts such as Hannibal face economic and social obstacles that make it more difficult for their students to achieve academic success. No one in this dispute has laid any blame for this situation on the qualifications, dedication, or commitment of the teachers in the District.

Still, being designated a “focus” school district carries negative

consequences for the students and the District that no responsible school district would ignore. Both sides have acknowledged that some approach to increasing instruction time for students (at least for some students) can be an important part of improving this situation. The difficulties involve determining how best to accomplish this and how much, if anything, teachers will earn additionally for agreeing to participate in whatever system the parties adopt.

The appropriate levels of compensation for such additional effort are subject to some debate and will clearly depend to a considerable degree on the nature of the additional time and on when it occurs. However, it is not reasonable to expect teachers to provide substantial additional work time with no compensation. It is true that Hannibal teachers have a shorter than average work day than other BOCES districts (again the nature of averages means some will be below) but the difference is not nearly as great as the increase the District is requesting. On the other hand, the fact that test scores in the District are lower than in other BOCES districts may suggest that a longer than average instructional day is appropriate.

The Association has argued that the assignment of a remedial period to teachers is the equivalent of the assignment of a sixth class. This argument is not persuasive. A sixth class could involve an additional preparation. It would certainly involve additional grading and other related work. A remedial period would seem to involve considerably less work for the teacher than an additional class and it is therefore not reasonable to expect it to be compensated as an additional class would be.

A further issue in terms of how to compensate for additional work time is that the District has proposed that middle school and high school teachers work the additional time but not elementary school teachers. Although the issue is not discussed in the briefs, presumably not all middle school and high school teachers will be asked to provide such remediation. The test scores that resulted in Hannibal becoming a "focus" school were in certain subjects, not all. In addition, presumably such remediation would not normally involve teachers in specialty subjects such as art, music, physical education or technology.

It does not seem either equitable or appropriate to provide additional

pay across the board when increased effort will be required from some but not all. Accordingly there needs to be means to compensate those who volunteer (or are required) to provide extra effort but not others.

As noted above, the expired contract provides that teachers can volunteer to provide academic intervention services. The contract provides that in the 2010-11 year teachers in grades 9-12 who provide such services during the school day would not be assigned a study hall or other extra duty and would receive \$35.09 per block. If one assumed that a teacher would offer such services each of 180 school days, that teacher would earn an additional \$6316.20 (before taxes and net of any additional benefits) for a school year.

The contract provides that in the 2010-11 year teachers in grades 5-8 who provide such services during the school day would not be assigned a study hall or other extra duty and would receive half the rate of the 9-12 teachers. Accordingly, given the same assumptions, a teacher might earn \$3158.10 for a full year of such efforts.

The Association has asserted that the District has not availed itself of additional instructional time available through these provisions. There is nothing in the record in which the District disputes this claim, nor anything to indicate why it has not chosen to use this system. One can speculate that it finds the system too expensive but there is nothing in the record that addresses this issue one way or the other.

ISSUE - Pay

POSITIONS OF THE PARTIES

The Association has proposed that all salary items be increased by 3% (including coaching and other extra-curricular stipends) for each year of a four-year agreement. This raise would be retroactive to the 2012-13 school year.

The Association notes that its members agreed to a pay freeze for the 2011-12 school year. In agreeing to a contract extension without even step movements (to which the members would have been entitled without

any new contract or contract extension) the members made considerable personal sacrifice and did so to make a contribution in an environment of national economic downturn and cuts in the state education budget. However, the Association claims that while the District has recovered (with the assistance of the pay freeze) in "exceptional fashion" (it cites data on the District's fund balance over the last three years), it has refused to offer a pay increase even equivalent to the cost of living much less making the members whole for the sacrifice they made in 2011-12.[Association brief pp.2-3]

The Association has provided a budget analysis of the District's finances. It concludes that the District is in sound financial shape, has excellent reserves, and has imposed lower than maximum tax levies. Accordingly it believes that the District can well afford the 3% pay increases it is requesting.[Association brief pp.5-6, attachment 1] The Association also cites evidence that leads it to anticipate increases in state aid coming to the District. It also notes that the New York State Comptroller's office has not found the District to be under any fiscal stress.[Association brief pp.6-7]

The Association has collected information on average teacher raises in the Central New York region. It calculates the average increase from 2009-10 to 2015-16 as 2.66% per year.[Association brief p.4 and attachment 2]

The last pay proposal made by the District involved a 1.5% pay increase for the first year of the agreement (2012-13), 1.75% for the second year (2013-14), and 1.5% for the third year (2014-15). This offer is meant to apply only to base salaries, not to coaching or extracurricular stipends as is usually the case with such raises.

With regard to pay and to health insurance, the District asserts that the members of the Association have done quite well in recent negotiations. It compares pay settlements to the Consumer Price Index from 2008 to 2013, and finds that even though the Association members received no pay increase in 2011-12, over the four-year period their raises still exceeded the CPI.[District brief pp.15-16]

The District also cites the 2% tax cap as providing a severe limitation on the ability of the District to raise the pay of its employees. It asserts that a 2% retroactive pay increase for 2012-13 (with no increase in stipends) would more than exhaust the additional revenue that the District received from the 2% property tax increase in that year. It notes that this does not include raises for any other district employees.[District brief p.17]

The District further argues that Hannibal teachers are fairly paid compared to teachers in other districts in the BOCES. It also cites recent settlements for other teachers in the BOCES (almost half the Districts had no settlements) and also cites the District's own settlements with its other bargaining units.

DISCUSSION

It must be noted that the data used by the District to show that Hannibal teachers were paid at or near average levels of other BOCES teachers were for the 2011-12 school year, and thus ignored the most recent year when the teachers agreed to take no increase, not even the step raises to which they would have been entitled even without an agreement.[District brief p.19] However, even then the data cited by the District refer only to the 5th, 75th and 95th percentiles but for the 25th and 50th percentiles Hannibal is close to the bottom and well below the average. This is before a year of no raises at all.[District brief table 9]

The District settled with the CSEA unit for 1.75% for 2013-14, 1.95% for 2014-15, and 2% for 2015-16.[District brief p.22]

It should be noted that the Association's comparison of teacher pay increases across Central New York (Association brief, attachment 2), can be interpreted in a number of ways. The majority of districts have not established pay for 2015-16 and a significant number have not done so for 2014-15. The rates of increase the Association calculates for the first three years of its prospective agreement with the District (2012-13, 2013-14, 2014-15) are 2.01%, 2.28% and 2.34% respectively. These numbers are probably more relevant in terms of identifying the "going rate" of increase than the longer period which includes higher average raises in 2009-10 and 2010-11 and the much smaller non-representative sample in 2015-16.

SUMMARY DISCUSSION

The normal practice of the undersigned fact finder has been to make a specific recommendation on each issue submitted to fact finding. This amounts to recommending a single package settlement. That normal approach seems inappropriate in this case. There are several reasons for this.

The first is that the District here seeks several things and cannot reasonably expect to achieve all. If it decides that additional instructional time is absolutely essential, then health insurance concessions and below going rate pay increases are unwarranted.

The second is that if the District decides that the savings that come with health insurance concessions (particularly drug plan concessions) are what it needs most, then it cannot reasonably expect the Association to agree to increases in work time as well.

The third reason is that no outsider, especially one who is not a specialist in secondary education, can reasonably determine exactly how additional instructional time for students should be structured. Those decisions can only be made effectively by education professionals. That means that the teachers and the administrators of the district are the only ones reasonably placed to determine what form any extra instructional time might take.

Accordingly, rather than suggesting a single settlement, the undersigned has opted to suggest alternative package settlements. It is hoped that these alternative packages will focus the parties' attention more clearly on what choices are available and what sacrifices each of those choices involves. Hopefully this approach will enable the parties to restart their negotiations with a greater openness to alternatives and a clearer focus on what can reasonably be achieved.

RECOMMENDATIONS

Option 1: This option involves no change in the work day of unit members.

2012-13: Pay increases of 1.75% inclusive of increment and applying to all extra curricular activities.

2013-14: Pay increases by 2.2% inclusive of increment and applying to all extracurricular stipends.

2014-15: Pay increases by 2.2% inclusive of increment and applying to all extracurricular stipends. The parties adopt a three-tier drug plan as proposed by the District effective this year.

2015-16: Pay increases by 2.2% inclusive of increment and applying to all extracurricular stipends.

Option 2: This option involves no change in the work day of unit members.

2012-13: Pay increases by 1.75% inclusive of increment and applying to all extracurricular stipends.

2013-14: Pay increases by 2% inclusive of increment and applying to all extracurricular stipends.

2014-15: Pay increases by 2% inclusive of increment and applying to all extracurricular stipends. The parties retain their two-tier drug plan but make the two tiers \$10 and \$20.

2015-16: Pay increases by 2% inclusive of increment and applying to all extracurricular stipends.

Option 3: This option involves no change in the health insurance system.

2012-13: Pay increases by 1.75% inclusive of increment and applying to all extracurricular stipends.

2013-14: Pay increases by 2% inclusive of increment and applying to all extracurricular stipends.

2014-15: Pay increases by 2% inclusive of increment and applying to all extracurricular stipends.

2015-16: Pay increases by 2% inclusive of increment and applying to all extracurricular stipends.

In addition, in time for the 2014-15 school year, the parties will

implement a system in which middle and high school students who desire or need academic intervention can receive it. Teachers who volunteer or are required to provide such academic intervention will do so during what would otherwise be their second preparation period.

The parties will negotiate a system in which teachers are requested to offer this additional time on a voluntary basis. However, if not enough teachers offer it or not enough suitable teachers offer it as determined by the District, the District may require teachers to provide these academic intervention services during their what would otherwise be their second preparation period.

Teachers who provide these particular academic intervention services in place of their second preparation time will be paid for such work at the following rates. For grades 9-12, teachers will be compensated at a rate of \$24 per block. Teachers in grade 5-8 will be compensated at a rate of \$14 per block.

CONCLUSIONS

It is clear that none of the recommendations made above will be entirely satisfactory to either party. However, it is unlikely that any practical settlement at this point would satisfy either party entirely. These recommendations provide the basis for a reasonable settlement which both parties should be able to abide and I urge both to consider them in the spirit of open-mindedness and accommodation.

Date March 9, 2014 Signed Clifford B. Donn

Clifford B. Donn
Fact Finder