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East Islip Union Free School District and East Islip Teachers Association

Thomas J. Linden

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East Islip Union Free School District and East Islip Teachers Association

Keywords

New York State, PERB, fact finding

Comments

In the matter of the fact-finding between the East Islip Union Free School District, employer, and the East Islip Teachers Association, union. PERB case no. M2013-013. Before: Thomas J. Linden, fact finder.

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT FINDING BETWEEN
EAST ISLIP UNION FREE SCHOOL DISTRICT**

-And

PERB Case No. M2013-013

EAST ISLIP TEACHERS' ASSOCIATION

-Before

Thomas J. Linden

REPRESENTATIVES

A. For the School District

John H. Gross, Esq., Ingerman Smith LLP
Rachel L. Lorig, Esq., Ingerman Smith LLP
Philip Montuori, President, Board of Education
Christopher Zachry, Esq., Vice President, Board of Education
Steven Behan, Trustee, Board of Education
John Dolan, Superintendent of Schools
Stephen D. Harrison, Assistant Superintendent of Schools for Business

B. For the Union

John Clahane, NYSUT
Jessica Leiken, NYSUT
Thomas Barry, President, EITA
Chris Moloney, Vice President, EITA
Shelley Stapleton, Vice President, EITA
Emil Stewart
Jodie Macher

PRELIMINARY STATEMENT

Fact finding is an extension of the collective bargaining process and comes about only after the parties, for whatever reason, have been unsuccessful in the negotiation and mediation process. Fact finding is part of the statutorily mandated process of alternate dispute resolution found in the Taylor Law. The sole reason for the existence of any of these extensions of the process is to bring the parties to an agreement. It is the fact finder's responsibility to help the parties pay a visit to the other side's perspective, even if they do not fully agree with it. It is obvious that the parties to the agreement in question had ambitious goals; it is now time to take stock of what can reasonably be attained in bargaining.

BACKGROUND

East Islip Union Free School District (hereinafter, "District") is in Suffolk County, New York, and within its six buildings, educates 3800 students. This year the District employed 361 full-time equivalent teachers.

BARGAINING HISTORY

The East Islip Union Free School District and the East Islip Teachers Association (hereinafter, "EITA" or "Union") are parties to a collective bargaining agreement (hereinafter, the "CBA" or "Agreement") covering the period July 1, 2010 to June 30, 2013, which, notwithstanding its expiration, remains in full force and effect pursuant to Section 209-a(1)(e) of the Taylor Law. In an effort to negotiate a successor agreement, the parties participated in what can only be described as an arduous and grinding process.

Formal negotiations commenced on March 12, 2013, with three additional sessions during March and April 2013. These negotiations were unsuccessful, prompting the parties to jointly file a Declaration of Impasse, pursuant to Civil Service Law, Section 209, on April 18, 2013. On April 25, 2013, the Public Employment Relations Board (hereinafter, "PERB") appointed Jay M. Siegel as mediator. Despite the mediator's best efforts during two mediation sessions, the parties were unable to reach a successor agreement.

On October 2, 2013, the District filed a request with PERB requesting fact finding in this matter. On November 25, 2013, PERB appointed Thomas Linden as fact finder who then conducted a session with the parties on March 20, 2014 and attempted to mediate the dispute. This attempt did bare some fruit in that the parties returned to the bargaining table and held four more negotiation meetings between April 28, 2014 and November 18, 2014. These negotiations, however, were also unsuccessful and in an attempt to avoid fact finding and achieve settlement, the parties jointly requested the services of mediator Howard Edelman, Esq.

The parties met with Mr. Edelman on February 10, 2015 and March 30, 2015. These meetings also failed to produce an agreement and Mr. Linden was asked on October 2, 2015 to re-open fact finding proceedings.

A formal hearing was held on December 2, 2015 at the District Office. In the fact finder's opinion, both parties made highly impressive oral presentations at this hearing submitting data, narratives, exhibits and briefs. At the conclusion of the hearing the District asked if it could submit a rebuttal addressing the budget analysis submitted by the Union at the hearing. This request was granted by the fact finder and this rebuttal, in

letter form, was received by the fact finder on December 17, 2015 and the record was closed.

THE ISSUES

The parties have submitted at the hearing and in their briefs, the issues they believe remain outstanding. While the Union, at the hearing and in its brief, contends that “compensation is the only issue the EITA has on the table,” the fact finder cannot ignore the other issues that the District noted as unresolved in Mr. Gross’s letter to the fact finder of October 24, 2014. The only issue listed in that letter that will be excluded in this report is the “Retirement Incentive,” number four on the list. I believe this issue was not brought to the fact finding proceedings in a timely manner and will, therefore, be excluded from discussion. The issues that will be discussed in this report are as follows:

- Duration of the CBA
- Salary
- Health Insurance Contribution Rate
- Welfare Trust Fund Contribution by the District
- Release Time Contribution for the EITA President
- Ancillary Compensation
- Class Size

DURATION OF THE CBA

District and Union Positions on Duration of the CBA

The current CBA commenced on July 1, 2010 and expired on June 30, 2013. We are now almost two and one half years past the expiration date and at the fact finding juncture of the dispute resolution process. The District has consistently proffered an agreement that would expire on June 30, 2017 while the Union has leaned toward a longer agreement expiring on June 30, 2019, a difference of two years. Due to Triborough, all increments due have been paid on September 1 of 2013 , 2014 and 2015. There has been no payment of any “across the board increases.”

Fact Finder Discussion/Recommendation on Duration of the CBA

One of the responsibilities of a fact finder is to look at the overall picture, including recent bargaining history. The current protracted dispute has gone on despite various in depth excursions and iterations of bargaining, mediation by PERB and by a private mediator. There was also an unsuccessful mediation attempt by the fact finder leading us finally to the recommendations contained herein. It is the fact finder’s belief that having an agreement that will expire in 2017 will leave the parties little breathing room to heal their relationship and develop some “history” under a new CBA. Working together under an expired agreement is awkward at best, and sometimes the relationship is focused on the protraction of the process and not on cooperation. With additional duration, the parties will avoid being engaged in what might seem like perpetual bargaining. It is with these factors in mind that I recommend a six year agreement with an expiration date of

6/30/2019. A six year agreement seems to be an appropriate solution for both sides that would allow a two year cooling off period at the beginning of the new CBA.

SALARY

District Position on Salary

The District states that it “finds itself mired in an economic climate of uncertainty arising from limited municipal recovery from one of the deepest recessions in United States history.” The District believes, amidst today’s climate, there are many things which contribute to its inability and/or unwillingness to pay for increases proposed by the Union. Many districts balk even at the payment of Triborough amounts. One of the most important factors in this climate is the mandated tax levy cap instituted in 2011, which took effect on January 1, 2012, a year and a half prior to the expiration of the previous East Islip CBA. This tax cap establishes a limit on the annual growth of property taxes levied by local governments and school districts to two percent or the rate of inflation, whichever is less. The only way this tax cap could be “pierced” or overridden, is by a super majority vote of 60% or more. The District attempted to do this in 2012 and was unsuccessful. Their reluctance to attempt this again is understandable. The District states in its brief (p.3) that the tax cap produces a “continuous financial burden that fundamentally alters its ability to continue to deliver its educational program as it has in the past.” In addition, it argues that, “each year is accentuated by the impact of yet to be replaced revenue lost since the ‘Great Recession’.” It contends that the confluence of rising costs due to the inflationary nature of the salary schedule and the increase in health insurance premium amounts, provides additional stressors to the already high cost of

doing business. The District notes that even though recently reduced TRS and ERS contributions have mitigated expenses, these contributions are still at excessively high rates, and there is no guarantee the rates will diminish next year.

With respect to its finances and its ability to fund teacher salaries that comprise 60% of the very labor intensive budget, the District maintains that in addition to adherence to a statutory hard tax levy cap under the existing salary structure, it is also under pressure from other financial obligations including rising health insurance premiums. The District points out in its brief through numerous charts and comparisons that employees in the bargaining unit are well compensated at all steps in the salary schedule and, with few exceptions, compare favorably to, if not better than, other Suffolk County school districts.

The District argues that the burden on taxpayers is substantial and presents data that shows that its ability to raise money through taxes is limited. The District points to several measures of school district and resident wealth, all of which indicate that the “East Islip district and resident wealth – components of the District’s ‘ability to pay’ – are average to below average. Notwithstanding this level of wealth, the District is asked to provide CBA wages and benefit levels well above average.” (p. 3) The District offers numerous charts to buttress its assertions concerning local fiscal capability including: Total Wealth Pupil Units, Combined Wealth Ratio, Local Revenue Effort Rate, Pupil Wealth Ratio and Alternate Pupil Ratio. At the same time that its comparative real property wealth has fallen, there has been no appreciable increase in District assessed valuation for the past several years. Total assessed valuation was essentially flat, creeping

up from \$350,571,149 in school year 2007-08, to only \$352,919,815 in school year 2015-16.

The District also points out that sources of revenue, namely, the tax levy, State Aid and Federal Aid, have all stayed about the same over the past four school years. Nevertheless, the District points out, it continues to face substantial increases in operating costs, prospectively driven higher if step increment is granted in the 2016-17 school year or if prospective or retroactive pay raises are granted.

With respect to the 2016-17 school year, the District believes that “the tax cap picture will be utterly devastating.” (brief, p.23) The District points out that because the tax cap is connected to the Consumer Price Index, it may very well be that school districts will be confronted with a 0% allowable growth factor. It quotes the New York Educational Conference Board which stated in its report, Comprehensive State Action Needed to Support Schools that, “schools may be facing an average tax cap close to zero percent next year due to the calculation required by the state’s tax cap law.”

Prior to this dire prediction, the District had proposed a 1.25% increase for 2015/16. Because this proposal was made prior to the automatic payment of increments on September 1, 2015, this offer is no longer tenable since the District was forced to pay the equivalent of a 2.5% wage increase in the form of step increment. (Fact finders note: a majority, but not all members, of the bargaining unit received increments. (Some members were at top step.) Having been “forced” to pay an increment it proposed to freeze in 2015, the District believes it has no other option than to propose in fact finding the following four year agreement:

July 1, 2013 0% + Increment

July 1, 2014 0% + Increment
July 1, 2015 0% + Increment
July 1, 2016 0% + No Increment

The District believes that barring any significant cost saving concessions by the Union, it cannot agree to either a longer or richer offer.

Union Position on Salary

The Union believes East Islip to be a relatively prosperous community and that parents and taxpayers of the District are proud of their schools. Only 7.3% of students in East Islip are enrolled in non-public schools compared with an average of 12.5% statewide. It points out that between 2000 and 2012, the total gross income of East Islip residents increased by 29.8%, and over that same period of time, East Islip total property value increased by an incredible 83.3%. As a result, the amount the District collects in property taxes is at a record high \$70.43 million. The Union further points out that this amount is 62% higher than the amount they collected in the 2004/05 fiscal year. This amounts to a “windfall” because there are fewer teachers now than there have been in recent memory. The Union concludes that because the East Islip tax rate per \$1000 of property value is in the top 8% statewide, East Islip residents understand the value of maintaining an exemplary school district.

Property taxes are not the only source of District revenue, and the Union argues that State Aid is trending upward and is now 10% more than it was ten years ago, predicting that this will continue. In addition, data available from the State Education Department suggests that the District’s current projection of State Aid may be underestimated by

\$380,000 (East Islip Budget Analysis, page 9, exhibit 4). The Union further contends that for the past three year period, the District has under-spent its budget, and this has created an operating surplus of between 3-4% at the end of each year.

The Union contends that it has been extremely responsive to the Districts proposals, making substantial concessions where possible. The EITA started with thirty-one bargaining proposals in 2013 and is essentially down to one remaining item. The EITA understands the implications of the tax cap legislation and believes it has responded admirably to this restriction. Furthermore, the EITA contends that it has put forth proposals starting with May 8, 2013, that come in less than continuing under Triborough and that its salary proposals are relatively less than comparable settlements of the last fourteen Suffolk County school district agreements.

Last year, argues the Union, the district had the ability under the tax cap legislation to increase its budget by 2.03% but elected to adopt a budget with an increase of only .96%, leaving on the table over two million dollars. The Union contends that “not only could this money have been used to settle the current agreement and maintain programs,” it would also have had the beneficial effect of being used in the budget calculations going forward. The Union’s budget analysis shows that the District will end the 2015-16 school year with an operating surplus of \$4,880,000 and an unrestricted fund balance of \$4,195,000.

The EITA points out that it has signaled its willingness to take a full or partial step freeze. Because two thirds of the unit members receive step increases, this would save the District 2.5% of total teacher payroll of 2.5% or \$1,005,174. Because the teachers never make this step up, the payroll is reduced by this amount for each year going forward. In

addition, this presents a real financial cost to EITA members, both on a yearly basis going forward and on lifetime earnings. This would be felt by new teachers who would have lifetime earnings decreased by \$60,000 for a one year freeze and double that for two.

The Union contends it is not asking for major corrections and has offered major concessions in an effort to reach an agreement that is fair and equitable. The Union has consistently averred that it has only one item left on the table, namely, salary. The last position or final offer, as it were, of the Union is as follows:

July 1, 2013	Increment + 0% Salary Increase
July 1, 2014	Increment + 0% Salary Increase
July 1, 2015	Increment + 0% Salary Increase
July 1, 2016	No Increment + 1% Salary Increase to Base
July 1, 2017	½ Increment + 1.25 Salary Increase to Base
July 1, 2018	½ Increment + 1 % Salary Increase to Base

(The July 1, 2015 position above is different from the Union’s position as listed in its “History of Negotiations” because the increment has already been paid.)

Fact Finder Discussion of Salary

In the past seven years, all forms of government have gone through an unprecedented financial downturn that has also affected every citizen. There is no need to catalogue all the components of the “great recession.” In addition to this, and perhaps because of this, there has been a top down revision and reassessment of taxes that was initiated by a change in philosophy of the Governor’s Office and the Legislature, to wit,

the hard statutory tax cap legislation. This has placed a tremendous burden on both school districts and union members within those districts to decelerate salaries, step increments (where applicable), and health insurance coverage or contribution rates. An existing reality is that there has been a diminishment in the ability of school boards to raise expenditures on a year by year basis. This fact, in and of itself, has produced tremendous pressure at the bargaining table. The fact that this tax cap legislation has recently been renewed for another four years, guarantees that this pressure will continue until at least 2019.

The District's proposals reflect the ongoing economic downturn and pattern of economic realities and trends, both in the District and throughout Long Island and the rest of the country. There is no question that the stagnation in the overall economy triggered in 2008, continues to have a significant impact on the District, resident taxpayers and bargaining unit members. However, it seems from available real time data, that economic markers have been showing that we are making a deep comeback. The State Labor Department reports that Long Island unemployment rate is now around 5%, down from 7.1% in December of 2012. Consumer confidence is up. In addition and very dramatically, the stock market has made a remarkable recovery, experiencing only a modest down turn in calendar year 2015.

That being said, the undersigned turns to address the issue of salary. My hope is that the recommendation in this section of the report will be an important factor in bringing the parties to an agreement. I have read all the data presented to me, both in the briefs and from my notes taken at our two meetings, and I have come to the conclusion that I must make a recommendation that recognizes economic realities and at the same

time does not penalize the District for its obvious showing of fiscal responsibility. However, even this brief exposition of the arguments indicates that using relatively similar sources of data, the parties were able by selection and interpretation to come to very different conclusions concerning a proper economic package.

The sheer volume of data and presentations submitted by both parties was impressive and does not allow for a detailed summary of the submissions. The various comparables, ratios, budget analysis, etc., would be very telling and helpful were the fact finder to ignore the progress made by the parties, on their own, during bargaining. This progress at one point in the proceedings brought them to a place that was a mere .25% apart over a four year period. It was, however, the duration of the CBA that was the tipping point (and the difference of two years), that proved to be a major problem. In short, the parties made significant progress, falling short of the finish line by mere inches.

It is significant that the Union has agreed to a partial disentanglement to increments due. The District believes that by just paying increments, with no “across the board” increases, it will spend all revenue raised up to the tax cap levy. On the other hand, it is also significant that, for the first three years after the expiration of the agreement, one third of the Union members received no pay increase because they were at the top of the schedule. This, I believe, could be characterized as a *de facto* “soft freeze.”

Because of the foregoing and the previous recommendation for a CBA expiring on June 30, 2019, I am making the following recommendation:

July 1, 2013	Increment Only
July 1, 2014	Increment Only
July 1, 2015	Increment Only

July 1, 2016	Hard Freeze (No Increment or Salary Increase)
July 1, 2017	½ Increment + 1.5 % Salary Increase
July 1, 2018	½ Increment + 2 % Salary Increase

HEALTH INSURANCE CONTRIBUTION RATE

District and Union Position on Health Insurance Contribution Rate

Currently, all unit members pay 17% toward the cost of health insurance premiums. The lion’s share of the cost, 83%, is paid by the District. The District has proposed that employees increase their contribution rate to 20% over the life of the proposed four year CBA. The Union has proposed to increase members’ contributions by ½ percent in each of the last two years of their proposed six year agreement.

Fact Finder Discussion of Health Insurance Contribution Rate

Even a cursory examination of health care costs going back many years shows us that costs have never trended downward. In addition, health care costs and premium costs have increased dramatically in the recent past. These increases have exceeded previous projections and actuarial assumptions, and employee contribution rates have been slowly trending upward. Contribution rates have increased across all public sector bargaining units including police units, the last bastion of fully paid programs, who were previously immune to such increases. Tremendous pressure on employers has resulted in a

substantial **cost shifting** to employees who are now participating more and more in the form of incremental percentage increases in contribution rates.

It is with this in mind that I recommend employee contribution rates increase over the life of the six year CBA to 19%. Because salary and health insurance are inextricably linked, this increase will coincide with the 1% salary increase of the last years of the six year CBA. The contribution will increase by ½ % on July 1, 2016, by ½ % on July 1, 2017 and by 1% on July 1, 2018, bringing the contribution for employees to 19% and reducing the District contribution from 83% to 81%. No recommendation is made with respect to any aspect of retiree health insurance contribution rate.

Fact Finder Discussion of Welfare Trust Fund Contribution by the District, Release Time Contribution for the EITA President, Ancillary Compensation and Class Size.

During negotiations and as noted in their brief, the Union has agreed to a Welfare Trust Fund freeze, an increased contribution from the EITA for presidential release time salary at \$1,500 per year, to a maximum of \$4,500 additional contribution, and a freeze in ancillary pay.

Class size issues are referred back to the parties for further negotiation.

FACT FINDER'S RECOMMENDATION SUMMARY

Duration of the CBA

- From July 1, 2013 to June 30, 2019

Salary

- July 1, 2013 Increment Only
- July 1, 2014 Increment Only
- July 1, 2015 Increment Only
- July 1, 2016 Hard Freeze (No Increment or Salary Increase)
- July 1, 2017 ½ Increment + 1.5 % Salary Increase
- July 1, 2018 ½ Increment + 2 % Salary Increase

Health Insurance Contribution Rate

- Employee contribution rate to increase to 19% over the life of the six year CBA

Welfare Trust Fund Contribution: recommend freeze as proposed by the Union.

President's Pay: recommend Union proposal of \$1,500 to \$4,500 increase.

Ancillary Pay: recommend freeze as proposed by the Union.

Class Size: referred back to the parties for further negotiation.

CONCLUSION

The parties have worked long and hard to reach an agreement. I hope this report helps lead to a long awaited and well deserved settlement. I believe my recommendations are close to the numbers that each party was prepared to accept, albeit with different duration expectations. I know that an agreement will be reached and hope that this blueprint helps to that end.

Respectfully submitted

Thomas J. Linden
Fact Finder
Bellport, New York
January 5, 2016

