11-26-2010

Lancaster Central School District and Lancaster Teachers Association

Howard Foster

Lancaster Central School District and Lancaster Teachers Association

Abstract
In the matter of the fact-finding between the Lancaster Central School District, employer, and the Lancaster Central Teachers Association, union. PERB case no. M2009-093. Before: Howard Foster, fact finder.

Keywords
New York State, PERB, fact finding

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In the Matter of Fact-Finding

between

Lancaster Central School District

and

Lancaster Central Teachers Association

Findings

and

Recommendations

(PERB Case No. M2009-093)

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Having determined that an impasse exists in the negotiations between the Lancaster Central School District and the Lancaster Central Teachers Association, the New York State Public Employment Relations Board appointed the undersigned to serve as Fact-Finder in the matter, for the purposes of inquiring into the causes and circumstances of the dispute and offering recommendations for its resolution. A hearing was held on October 26, 2010, at Lancaster High School in Lancaster, New York. Upon the Fact-Finder's receipt of additional information from the parties, the record was closed.

APPEARANCES

For the District:

David Hoover, Director, Erie BOCES Labor Relations Service
Edward J. Myszka, Superintendent
Alan Getter, Assistant Superintendent for Finance
Richard A. Hitzges, Interim Assistant Superintendent for Finance
Michael J. Vallely, Assistant Superintendent for Curriculum
Marie MacKay, President, Board of Education
Kenneth E. Graber, Trustee, Board of Education
Joseph Maciejewski, Vice President, Board of Education
Lawrence Mancuso, Law Clerk, Erie County BOCES

For the Union:

Paul D. Weiss, Attorney
Thomas Fowler, Attorney

Eric Przykuta, President
Robin Zahm, Chief Negotiator
Mary Ann Arber, Recorder
William Faulhaber, Negotiating Team
Michelle A. Miller, Negotiating Team
Karen D. Gembar, Negotiating Team
Michael Shaw, Negotiating Team

BACKGROUND

The most recent collective bargaining agreement (CBA) between the parties expired on August 31, 2009. Negotiations for a successor agreement were initiated in March 2009, and after seven negotiating sessions the District declared impasse. Dennis Campagna, Esq., was appointed by the Public Employment Relations Board to mediate the impasse, but after three mediation sessions the parties remained deadlocked. The parties resumed bilateral bargaining in late 2009 and early 2010 but were unable to reach agreement. The District petitioned for a fact finder on March 22, 2010, and I was appointed to serve in that capacity on April 7, 2010.

I met with the parties on May 5, 2010, to review the status of the impasse and to discuss ground rules for fact-finding. We agreed that the parties would prepare position statements on the outstanding issues and send them to each other and to me in advance of the fact-finding hearing, ultimately scheduled for October 26, 2010. At the hearing on that date, the parties were given further opportunity to provide facts and arguments in response to those tendered by the other side in their position statements. In addition, I posed some questions and asked for certain pieces of information that had not been provided by either party.

Over the course of their negotiations, the parties resolved many of the proposals that they had tendered at the outset. Four issues remain for consideration in fact-finding: (1) open-house obligation; (2) health insurance contributions; (3) payment for graduate hours and other development activity; and (4) salary. The parties have been discussing a four-year agreement, covering the period 2009-2013.

The Lancaster Central School District operates one high school, one middle school, four primary-grade schools, and one intermediate-grade school. In the 2009-2010 school year, the teachers' bargaining unit included about 501 persons. That number was reduced to about 475 in 2010-2011 through retirements and layoffs.

The District's academic programs are highly rated academically in the Western New York region. Its budget for the 2010-2011 school year is about $85.8 million, and its student body numbers about 6,100.

I will use the following format to discuss each of the four issues still unresolved in these negotiations: any necessary background and treatment of the subject in the current contract; proposals for change and the arguments for and against the proposed changes; my analysis and findings; and my recommendation for resolution.

Open Houses at the William Street School

Section 5.1.4 of the CBA provides as follows:

> As part of their professional responsibilities, teachers may be asked to attend a reasonable number of evening meetings related to the instructional program which cannot effectively be held during or immediately after regular instructional hours. Scheduling of such meetings should be in cooperation with the faculty and upon sufficient advance notice. Such meetings may include Graduation, Open House and other instructionally related activities that cannot be handled during the school day. On the day of Open House, elementary students will be dismissed as early as possible (but not to exceed one half-day) as will still permit the day to be counted for state aid. Early dismissal will be subject to express approval being obtained by the District from the Commissioner of Education.

The District has proposed changes to this provision that would apply specifically to the William Street School (grades 4-6). A single open house has historically been held for all grades on a particular night. The purpose of the proposal was to allow separate open houses for each of the three grades at the school. Following exchanges between the parties on this proposal, the District seeks the following language to be added to the contract:

> The principal of the William Street School may schedule up to three open houses. Teachers assigned to William Street School shall not be required to attend more than one open house per school year. In order to allow teachers time for open house preparation, William Street School students will be dismissed as early as possible on a single school day (but not to exceed one half-day) on or before the earliest scheduled open house date as will still permit the day to be counted for state aid. Early dismissal will be subject to express approval being obtained by the District from the Commissioner of Education. Teachers who choose to attend more than one open house (when the teacher's attendance is approved by the building principal) will be paid based on the Schedule D hourly rate.

Discussion and Recommendation. This language is materially the same as that contained in a comprehensive counterproposal from the Union on a range of issues. The Union's position on open houses in fact-finding was for no change in the contract. The District's proposed language, however, obviously reflects what was at one time a meeting of the minds on this topic, and while I recognize that proposals are often made in packages, with pluses and minuses for each side, it is difficult to see in this issue what sacrifice the proposed change entails for any teacher. Accordingly, I recommend that the above language be incorporated in Section 5.1.4 of the CBA. Further, since timing has made the issue moot for the current school year (as far as new contract language is concerned), I recommend that the new language be made effective with the 2011-2012 school year.

Health Insurance

The current agreement calls for teachers to pay 8 percent of the premium cost of their health insurance. The District proposes to increase the teacher's contribution to 13 percent, effective with the current school year. The Union proposes no change in the contribution level.

The District acknowledges that its 2009 move to self-funding of its health coverage resulted in significant cost avoidance in the face of 20 percent to 40 percent increases in the cost of its previous insurance, while replicating the coverage provided by its prior insurance plan. Nevertheless, notes the District, its costs for health coverage have continued to grow, by 31 percent in 2009-2010 and nearly 10 percent in 2010-2011. Moreover, there are a number of districts in Erie County whose employees contribute more than 8 percent, and in the surrounding community employees routinely pay much more than 8 percent. Health insurance contributions faced by taxpayers as employees should inform any recommendation on what is reasonable to expect Lancaster teachers to pay. The District's proposal would raise the teacher's contribution for family coverage by $683, which should be measured against an average increase in salary of $2,036 that teachers have already received on the MA schedule.

The Union notes that, without any *quid pro quo*, it consented to the District's 2009 request to revise the CBA to allow for the self-funding of health insurance. It is therefore unfair for the District to seek contribution increases that are greater than any pay increases offered. The savings realized by the District from the change should be returned to the Union's members so that teacher contributions can be maintained at their current levels.

Discussion and Recommendation. There is no doubt that health insurance has come to constitute a very significant component of the pay package for employees generally and teachers in particular. It is equally clear that, broadly speaking, financial pressures on employers generally have resulted in a substantial cost-shifting to employees, although public employees have been shielded more than others from that shifting. For our purposes, however, the relevant benchmark is coverage for teachers in the Western New York area, as that metric reflects the market in which this bargaining unit operates. Put another way, if the question is how much teachers in Lancaster should pay for their health insurance, it is proper to ask in turn why Lancaster teachers should pay more – or indeed less – than other teachers in the area, whose payments have been deemed "appropriate" through collective bargaining in multiple venues.

The District's position statement includes comparative data on health insurance coverage in Erie County (Ex. 8). These data indicate that, at 8 percent, Lancaster teachers are at the high end of the range in terms of their contributions. However, the premium for insurance in Lancaster is also on the high side, so that, as measured by cost to the District for a family plan, Lancaster is actually paying more than the median district.

These data, along with the weighty impact of premium increases that show little sign of abating, persuade me that a modest increase in the teacher's contribution to health-insurance coverage is reasonable. It is at the least directionally correct, as the market is clearly moving in the direction of expecting employees to shoulder a greater share of this ever-more-burdensome cost to employers.

I recommend, accordingly, that the teacher's share of the health-insurance premium be gradually moved up over the term of the Agreement, as follows: to 9 percent effective January 1, 2011; to 10 percent effective January 1, 2012; and to 11 percent effective January 1, 2013.

Compensation for Professional Development

The current agreement provides for a payment of $45 for each credit-hour of graduate study or in-service training. The Union proposes to increase this payment to $65 per credit-hour. The District proposes no change in the payment for these credits. The total cost of these payments in 2009-2010 was $292,000.

The Union notes that payment for professional development in the District has not changed since 2000, even though the cost of living has risen significantly. At the current rate, teachers are not compensated adequately or reasonably for efforts that bring educational expansion, specialization, and certification to their work. The Union points to the Clarence School District as an example of a similar district that compensates professional development at $56 per hour. The current substandard rate in Lancaster frustrates the efforts of teachers who wish to engage in this development but cannot afford the coursework. By supporting these efforts at professional advancement, the District would ensure quality and currency in the classroom.

The District argues in its position statement simply that the proposed increase is not affordable, given the financial pressures that the District faces. These will be detailed below in the section on salary.

Discussion and Recommendation. At my request, the District and the Union provided data on graduate-hour stipends in other districts. With a couple of notable exceptions, the parties' numbers are consistent. The Union's data are limited to neighboring districts, and they show that Lancaster is in the middle of the range. The District's data show all districts in Erie County, and they actually portray Lancaster as well inside the lowest quartile.

There is thus a case to be made for increasing the graduate-hour stipend simply to better reflect the level considered to be "proper" by school districts and teacher organizations across the region. In the scheme of things, this would not be a major cost to the District; a 10 percent increase, for example, would incur a cost of less than $30,000. At the same time, the Union's argument for higher stipends as an incentive for professional development, which is reasonable in the abstract, cannot apply to development activities that have already taken place. If the idea is to encourage people to build their human capital, that is done by rewarding future behavior, not past behavior.

Based on these considerations, I recommend that the graduate-hour stipend for previously earned credits be increased to $48, effective with the 2009-2010 school year. I further recommend that credits earned after January 1, 2011, be compensated at $60, which would put the stipend for future credits at slightly above the median for the County.

Salary

Over the course of their negotiations, the parties exchanged several proposals on salary. At the outset, in early 2009, they agreed on a scattergram indicating the placement of teachers on the salary schedule, and they agreed on the cost of increments alone. These ranged from about 3.3 percent to about 3.5 percent per year over the term of the new contract under discussion. The Union's initial proposal in March 2009 was for increases of 4.0 percent per year (plus increments). By December 2009, it had reduced its demand to about 1.5 percent per year above the increments. In January 2010, the District offered a "comprehensive settlement proposal" that included increases of about 1.0 percent above increments. When elements of this proposal were not accepted by the Union, the District withdrew the package and offered a streamlined alternative, with salary increases limited to increments plus $200 for teachers at the top of the schedule.

Union Position. The Union asserts that its first salary proposal was designed to bring Lancaster salaries more in line with those of area districts. Successive proposals reduced the salary increases in an effort to reach agreement. Ultimately, the positions of the two sides were only $600,000 apart over the term of the contract. The District's final offer, after withdrawing its package, was largely the same as the one it tendered at the beginning of negotiations – essentially increments only. All this despite the District's public applause and commendation for the efforts of its teachers. Despite its vocal support of the teachers' accomplishments, the District refuses to acknowledge its ability to pay and to negotiate a fair and reasonable salary structure. Surrounding districts pay their teachers significantly more than Lancaster does, even though Lancaster's student-contact time, work day, and days under contract are comparatively high. Further, Lancaster has one of the largest negative disparities between relative compensation and relative educational outcomes. Over a career in education, Lancaster teachers are "in the basement." Even with automatic increases in the salary schedule, the teachers have not kept pace with the cost of living.

The Union contends that the District has more than adequate funds available to fairly and reasonably compensate its teachers. It has generated more than $40 million in surplus monies since 2000-2001. Spending has increased by 30 percent over the past five years, but teacher salaries have not gone up commensurately. The District has consistently underestimated revenues and overestimated obligations, as shown by State audits. It has added administrative positions and legal expenditures. Importantly, it has enjoyed a windfall from retirements and staff reductions, although it has refused to provide an accounting of this cost avoidance. These savings should be used to negotiate a fair and reasonable compensation package for the teachers. Further, the District could have realized additional savings by adopting a state-sponsored retirement incentive, which it chose not to do.

District Position. The District notes that the Union's salary proposal calls for total increases of about 4.9 percent per year, with increments, and the proposed increase in the payment for graduate hours would add about 0.5 percent, for an annual increase of more than 5 percent.

The District acknowledges that the salaries of Lancaster teachers are in the bottom quarter of the County. This is not the goal of the District, as evidenced by the terms of the expired contract, which provided for increases in excess of the Erie County average. And although the District's teachers are paid less than their counterparts, most of them have continued to move on the salary schedule, which has provided increases averaging 3.6 percent per year in the two years since the expiration of the contract. These step increases have outpaced inflation. Thus despite their low relative ranking, Lancaster teachers have enjoyed real gains in income.

The District also argues that while teachers have seen significant pay increases during the expired contract and after, that has not been the experience of the District's taxpayers. The personal income of New Yorkers generally is in decline, and job growth remains weak. These broad data are often reflected in the personal situation of District residents, which often includes housing foreclosures. Such circumstances do not support salary increases of more than 5 percent a year.

The District calls attention to a number of State-aid and tax-base concerns that it faces. In 2009-2010, the District experienced a $2 million mid-year reduction in State aid. For 2010-2011, the District abolished 43 positions and closed a school. It agreed to a retirement incentive and adopted one of the state incentives. These steps limited the budget increase to 1.3 percent, dramatically lower than previous ones. The District estimated a State-aid reduction of $2.2 million, and although the reductions were ultimately restored by the State, a new reduction process has already started. More midyear cuts are expected, and it is clear that school districts can no longer rely on ever-increasing State aid. Further, the federal "stimulus funds" will run out at the end of the current year. Meanwhile, retirement costs are increasing. And despite limiting the growth of the budget, the District has had to use its fund balance and to increase the tax levy to fund the 2010-2011 budget.

The only place left to look for additional revenue is the local tax base, but that avenue may soon be closed. The major-party gubernatorial candidates have both called for a property tax cap. If a cap blocks a tax increase, the impact of District operations and programs will be severe. Thus implementing any pay increase beyond what the District has proposed will imperil its fiscal health.

Discussion and Recommendation. There can be no quarrel with the District's argument that school districts in New York are facing an uncertain and threatening fiscal future. And that the District has budgeted prudently and thus generated reserves that could be used to cushion fiscal shocks is to its credit and should not be held against it in collective bargaining. At the same time, however, the "fact" in this case that is most striking to the Fact Finder is the standing of Lancaster teachers' salaries relative to their peers.

The gap is more dramatic in the Union's presentation, which is limited to neighboring districts. Across the salary schedule, Lancaster teachers generally earn some 5 to 10 percent less than their neighbors, virtually across the board. Significantly, however, the picture is not all that different in the District's presentation, which includes comparisons with all districts in Erie County. There, Lancaster is consistently at or below the bottom quartile, and Lancaster salaries at almost every step are 5 to 10 percent below the median for the County. The District allows that it wishes this were not so, and points to efforts to close the gap in the last contract. It is true that the last settlement was more generous than most in the County, but the fact remains that even *after* this "catch-up" Lancaster lags the pack.

The economic conditions of the community that are cited by the District are real enough, but they are much the same as those faced by other districts. So are the State aid and tax-base concerns noted by the District. These are legitimate concerns that may well argue against a major thrust to bring Lancaster more in line with its neighbors with respect to teacher salaries, but they do not as persuasively argue for the necessity of reversing the gains made in the last contract. Moreover, I note the data provided by the District on full-value tax rates. However much District taxpayers feel burdened, the fact appears to be that they are less burdened than districts that are paying their teachers more. Districts that can show a large tax effort may justify lower salaries by arguing that they are paying what they can, and it is unreasonable to ask them to pay more. But that is not an argument available to a district that is taxing its residents at a rate significantly less than others in the region (about $2 per thousand relative to the median district in this case).

Finally, let me discuss the District's argument with respect to the cost of increments along with the Union's argument about "breakage." Here I limit the notion of breakage to turnover savings, not savings from reductions in force. As the District persuasively argued, it is no more appropriate to give over savings from reductions than it would be to "charge" the Union with the extra expense of additions. Turnover, however, is a different story.

It is true that the salary schedule in Lancaster, along with the demographics of its teachers, produces an increment cost that is unusually high. It is also true that money paid out in the form of increments represents as much a cost to the District as money paid out through increases in the salary schedule. But if increments are to be counted as part of the salary settlement, as they should, it is also appropriate to consider savings that accrue to turnover. In other words, just as the cost of filling a position goes up when the incumbent receives an increment, so does the cost of filling the position go *down* when the incumbent is replaced by someone with a lower salary. If it is appropriate to count additional cost if nothing is done to the salary schedule (increments), it is equally appropriate to count *savings* that also occur when nothing is done to the salary schedule (turnover). To be sure, savings from turnover happen over time and are unpredictable, but in a bargaining unit of 475 it is a certainty that there will be some such savings over a four-year contract. Thus what the District characterizes as a cost of nearly 14 percent over four years is not really that, although we cannot yet say for sure what the real cost will be.

In general terms, the District is arguing for a salary settlement in the neighborhood of 3.5 percent per year, while the Union is arguing for about 5 percent a year. The salary settlements in the County for 2009-2010 and beyond, according to data provided by the District, are generally in the vicinity of 4 percent per year. The considerations expressed above lead me to the conclusion that there should be an increase in the salary schedule of 1.25 percent in the last three years of the contract, over and above increments, and an increase of 0.75 percent for 2009-2010 to account for the fact that the health insurance contributions recommended above would be phased in later. Should the parties decide that there should be an extra payment to teachers not on the salary schedule, the intent here is that such payments would come out of the 1.25 (or 0.75) percent.

I wish the parties well in consummating these protracted negotiations.

May 12, 2010
(dated)

[signature]
(signature)