11-17-2016

Mattituck-Cutchogue Union Free School District and Mattituck-Cutchogue Teachers Association

Thomas J. Linden

Mattituck-Cutchogue Union Free School District and Mattituck-Cutchogue Teachers Association

Abstract
In the matter of the fact-finding between the Mattituck-Cutchogue Union Free School District, employer, and the Mattituck-Cutchogue Teachers Association, union. PERB case no. M2015-135. Before: Thomas J. Linden, fact finder.

Keywords
New York State, PERB, fact finding

STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF FACT FINDING BETWEEN

MATTITUCK-CUTCHOGUE UNION FREE SCHOOL DISTRICT

-And **PERB Case No M2015-135**

MATTITUCK-CUTCHOGUE TEACHERS ASSOCIATION

-Before **Thomas J. Linden**

REPRESENTATIVES

A. For the School District

Christopher Venator, Esq. Ingerman Smith LLP
Ann Smith, District Superintendent
Michael Engelhardt, Business Official
Laura Jens-Smith, Board of Education President
Doug Cooper, BOE Member
Charles Anderson, BOE Member

B. For the Union

Sean Callahan, NYSUT
Donna Finnigan, President, MCTA
Cathy Clark, MCTA
John Roslak, MCTA
Tom Farrell, MCTA
Frank Massa, MCTA

PRELIMINARY STATEMENT

The Taylor Law provides for fact finding as part of the statutorily mandated process of alternate dispute resolution. It is, by its nature, an extension of the collective bargaining process and comes into play only after the parties, for whatever reason, have been unsuccessful in the negotiation and mediation process. 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 be reasonably attained in bargaining.

DISTRICT AND BARGAINING UNIT PROFILE

The Mattituck-Cutchogue Union Free School District (hereinafter, "District") is a small suburban public school district located in the Town of Southold, Suffolk County, New York. The District is located on the north fork of Long Island and has three buildings, including a junior-senior high school, one elementary school, and an administration building. The District is a component district of Eastern Suffolk BOCES. There are approximately 240 full and part time employees and 1197 students. According to the District's brief, there are 132 teachers represented by the Mattituck-Cutchogue Teachers Association (hereinafter, "Union"). The District includes a nationally ranked high school for academic success, having been ranked by *US. News and World Report* 95th in New York State and 5th in Suffolk County (Union brief, p.3). The budgeted expenditures for the 2014-15 fiscal year were approximately $39.6 million.

BACKGROUND

The District and the Union are parties to a collective bargaining agreement (hereinafter, the "CBA" or "Agreement") covering the period between July 1, 2005 and June 30, 2014, 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 eleven bargaining sessions between May 1, 2014 and April 2, 2015. After these negotiations failed to generate a new agreement, the District filed a declaration of Impasse with the Public Employment Relations Board (hereinafter, "PERB") which was received on September 17, 2015. On September 28, 2015, PERB appointed Ms. Karen Kenney as mediator' Despite her efforts, no agreement was reached and subsequently, by letter dated July 1, 2016, the District requested PERB to appoint a fact finder and on July 27, 2016, the undersigned was appointed.

A fact finding/mediation session was held on September 28, 2016 and a number of items were discussed with no agreement reached. It was agreed that briefs would be submitted to the fact finder by November 9, 2016. Upon receipt of the briefs on that date, the file was closed. There were no rebuttal or supplemental briefs.

THE ISSUES

- Salary
- Health Insurance Contribution

SALARY

District Position on Salary

The District first points to the mandated tax levy cap instituted in 2011, which took effect on January 1, 2012, two and a half years prior to the expiration date of the current 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 can be "pierced" or overridden, is by a super majority vote of 60 % or more, of District residents.

The District further points out that the allowable tax cap number for the 2016/2017 school year is .46%, and that the projected tax cap for the 2017/2018 school year will also be less than 1%. The District states "that potential has a significant impact on the District's ability to provide employees with contractual increases, inclusive of contractual increment, that exceed the tax cap." The District believes it has consistently maintained throughout the negotiating process, that it has a "legitimate, compelling need to propose salary increases that are mindful of the constraints imposed by the tax cap."

The District contends that "of additional significance is the fact that the District has experienced stagnant state aid over the past ten (10) years." The District points out that during the 2007/2008 school year, state aid constituted 7.83% of the District's budget and that nine years later, during the 2016/2017 school year, projected state aid will likely constitute 6.3% of the budget. Those numbers, the District argues, "clearly demonstrate that revenues from state aid are not keeping up with corresponding increases to the budget."

With the foregoing in mind, the District made the following financial proposal to the Union at the fact finding/mediation session on September 28, 2016:

2014/2015	increment only
2015/2016	increment only
2016/2017	increment only

2017/2018	½ increment plus .5%
2018/2019	½ increment plus .5%
2019/2020	increment, plus $1,000 cash for frozen members
2020/2021	increment, plus .25%

This proposal was rejected by the Union, which then made a proposal of its own which was, in turn, rejected by the District. The District submits that the last proposal of the Union, as communicated to the mediator, is not reasonable in light of the cost of increment and the limitations imposed by the tax cap. It believes that the confluence of rising costs due to the inflationary nature of the salary schedule and the increases in health insurance premium amounts, provide additional stressors to the already high cost of doing business.

Union Position on Salary

The Union believes that throughout the process it has offered many different proposals, all of which fell on deaf ears and, without any financial justification, the District has insisted on the Union taking a pay cut or reduction from its current financial position in order to reach a settlement. The Union further contends that the District has never demonstrated financial difficulty in paying current salaries and, in fact, their financial position is very strong as evidenced by the budget analysis done by NYSUT and the Independent Audit Report of the New York State Comptroller dated January 2014.

The Union believes NYSUT's budget analysis is extremely compelling in that the District has historically overestimated its expenditures by an annual average of $1,310,342 or 3.4% of the budget and underestimated its revenues on average by .7% each year for the past three years. This has resulted in an annual average operating surplus each year of $1,547,626 or 3.9% of the budget.

With respect to the comptroller's independent audit, the Union believes the report makes it abundantly clear that the District is in such sound financial shape that it used $450,000 of available fund balance to pay, in advance, a portion of the District's installment purchase debt for an energy performance contract. Additionally, the Union points out, the District gained $1,561,455 by refinancing its serial bonds. The Union also argues that the District, as noted in the comptroller's report, has been stockpiling excessive reserves that were not expended. The Union believes all of this proves beyond a doubt, the District can afford fair and reasonable raises.

The Union contends that there are at least seven Suffolk County districts that have recently negotiated contracts providing more in the way of salary increases than those offered in the District's proposal. None of these, except one, contain provisions which cut increments in half or eliminate them. Shelter Island is the only District that decelerates increments by delaying them over the last four years of the agreement. Montauk, Patchogue-Medford, North Babylon, Smithtown, Southampton and Miller Place all provide small percentage salary increases on top of step movement increases. The Union argues that these and many other districts have negotiated fair contracts that take into account the full financial position of their districts and "not just alleging that the annual TAX CAP is the only factor to consider."

In what the Union describes as a final attempt to resolve "this long and damaging dispute," it recently offered on October 26, 2016, a proposal to permit step movement to continue with percentage increases to be made only to the steps that are frozen under the old scale at the rate of 1% each year. As can be seen in Union Exhibits 11, and 12, the annual increases would be limited to $357,000 in 2015/2016, $348,568 in 2016/2017, $328,101 in 2017/2018 and $326,881 in 2018/2019. The Union doesn't mention it in its brief, but this brings retroactivity into the picture.

Fact Finder Discussion of Salary

In the years following the great recession of 2008, all forms of government have gone through an unprecedented financial downturn that has also affected every citizen. In addition to this, and perhaps because of it, there has been a top down revision and reassessment of property 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 reign in salaries, decelerate step increases, and reduce health insurance coverage and/or increase contribution rates. This has lead to a diminishment in the ability of school boards to raise expenditures on a year by year basis and has produced tremendous pressure at the bargaining table. The fact that this tax cap legislation has recently been renewed guarantees that this pressure will continue until at least 2019.

That being said, the undersigned turns to the question of salary. The parties in this case did a thorough and professional job in their presentations at the hearing and in their briefs. The fact finder has gone through all the data presented and has reviewed notes taken at the hearing and has come to the conclusion that he 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.

It seems that both sides have been inching closer to a settlement of late as evidenced by the Union's proposal of October 26th. Because I am not aware of a counterproposal, it would be rash of me to assume anything in that regard. Perhaps a counter proposal was made of which the fact finder is not aware. The parties, it seems, are quite close to an agreement, and possibly this report's recommendation will push them across the finish line.

While the Union has not agreed to any disentitlement to increments, it has shown that it is willing to accept and maintain a responsible position that recognizes the financial constraints faced by the District. The District believes that by just paying increments, with no percentage across the board salary increases, it will spend all revenue raised, up to the salary cap. It is also significant, from the Union side, that for the first three years after the expiration date of the agreement, all members except those frozen on step or at top step received increments only. Were the Union to accept the District's salary proposal with the attendant proposed increase in health insurance premium contribution amounts, it would indeed be accepting a pay decrease. It is also fair to note that currently, all unit members frozen between or at top step, are participating in what could be characterized as a "soft freeze."

In its brief, the District points to increments, as components of salary, as the largest impediment to providing anything like the salary increases sought by the Union. The cost of increments over the past three years, and the projection for the next four years, as reported by the District, are as follows:

2014/2015	2.69%

2015/2016	2.59%
2016/2017	2.53%
2017/2018	2.12%
2018/2019	2.17%
2019/2020	2.01%
2020/2021	1.76%

This chart shows a marked deceleration of the average increment percentages of 37% over seven years. This aligns closely with the fact finder's salary recommendation which keeps full increments throughout the seven years with percentage increases for frozen step members in the last four years and across the board increases for non frozen or non top step members during the last three years of the agreement. The fact finder finds it interesting that the District's last offer was less than what would be provided under Triborough. Therefore, what would be the incentive for the union to take less than they would receive if they didn't settle?

Addressing the ability to pay issue, it seems clear that the District's financial situation is quite adequate to fund the last proposal of the Union. With that in mind it is the fact finder's recommendation that the District accept the Union's last proposal with two additions. The reason for these additions will be discussed during the health insurance (rate of contribution) phase of this report. The recommendation on salary is as follows:

2014/2015	Increment Only

2015/2016	Increment Only
2016/2017	Increment Only
2017/2018	Increment Plus 1% Top/Frozen Step
2018/2019	Increment Plus 1% Top/Frozen Step Plus .5% All others
2019/2020	Increment Plus 1% Top/Frozen Step Plus .5% All others
2020/2021	Increment Plus 1% Top/Frozen Step Plus .5% All others

District and Union Positions on Health Insurance Contribution Rate

Presently, all unit members, those with individual and family coverage, pay 15% toward the cost of health insurance premiums with the District paying the lion's share of 85%. The District has proposed that employees increase their contribution rate by 5% over the life of the agreement, going from 15% to 20%. The Union has never made a proposal in this area.

Fact Finder Discussion of Health Insurance Contribution Rate

A review 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 that 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.

With this in mind it is the fact finder’s recommendation that unit members increase their contribution rate to 18%, decreasing the District’s contribution rate to 82%. This would be accomplished over the last three years of the agreement by increasing the employee contribution rate by one per cent each year starting with the 2018/2019 year. Because salary and health insurance are inextricably linked, this increase would be concurrent with the .5% salary increase recommended for each of the last three years of the agreement.

FACT FINDER'S RECOMMENDATION SUMMARY

Salary and Health Insurance Rate of Contribution

- **2014/2015** **Increment Only**
- **2015/2016** **Increment Only**
- **2016/2017** **Increment Only**
- **2017/2018** **Increment Plus 1% Top/Frozen Step**
- **2018/2019** **Increment Plus 1% Top/Frozen Step**

  .5% Across the board for all others

  1% Increase in Health Insurance Contribution
- **2019/2020** **Increment Plus 1% Top/Frozen Step**

  .5% Across the board for all others

  1% Increase in Health Insurance Contribution
- **2020/2021** **Increment Plus 1% Top/Frozen Step**

  .5% Across the board for all others

  1% Increase in Health Insurance Contribution

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. I know that an agreement will be reached and hope that this report helps to reach that end.

Respectfully submitted.

Thomas J. Linden
Fact Finder
Bellport, New York
November 17, 2016