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Thomas J. Linden

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Cold Spring Harbor Central School District and Cold Spring Harbor Teachers Association

Abstract

In the matter of the fact-finding between Cold Spring Harbor Central School District, employer, and the Cold Spring Harbor Teachers Association, union. PERB case no. M2012-330. 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
COLD SPRING HARBOR CENTRAL SCHOOL DISTRICT**

-And

PERB Case No M2012-330

COLD SPRING HARBOR TEACHERS ASSOCIATION

REPRESENTATIVES

A. For the Employer

Warren Richmond, Esq.
William Bernhard, Assistant Superintendent for Business

B. For the Union

Tammy Mays, NYSUT, Labor Relations Specialist
Matt Chartan, President CSHTA
Brian Schiffmacher, Chief Negotiator
William Arleff
James Hardy
Victoria Terenzi

PRELIMINARY STATEMENT

Fact finding is a part of the statutorily mandated process of alternate dispute resolution found in the Taylor Law. It is, by its nature, 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. The sole reason for the existence of any of these extensions of the process is to bring the parties to an agreement. Often, in the short term, the parties to the process lose sight of the long term perspective, the big picture. It is the fact finder's responsibility to help the parties overcome this shortsightedness and to pay a visit to the other side's perspective, even if they don't fully agree with it. It is obvious that the parties to this agreement had ambitious goals: it is now time to take stock of what can reasonably be attained in bargaining.

BACKGROUND

The Cold Spring Harbor Central School District (hereinafter, "District") and the Cold Spring Harbor Teachers Association (hereinafter, "Union") are parties to a collective bargaining agreement (hereinafter, the "CBA" or "Agreement") covering the period July 1, 2006 to June 30, 2012, which, notwithstanding its expiration, remains in full force and effect pursuant to Section 209-a(1)(e) of the Taylor Law. Negotiations for the previous agreement were supplemented by mediation and fact finding. A fact finding report was issued by Rosemary Townley, Esq., Ph.D., on November 11, 2007. In an effort to negotiate a successor agreement, the parties participated in eight negotiation

sessions beginning on August 8, 2012 and ending on January 3, 2013. After these negotiations failed to generate a new agreement, the Union filed a Declaration of Impasse with the Public Employment Relations Board (hereinafter, "PERB") on February 11, 2013. Shortly thereafter, PERB appointed Ms. Karen Kenney as mediator and Ms. Kenney held two mediation sessions. Despite these efforts, no agreement was reached and subsequently, by letter of July 17, 2014, the Union requested the case move to fact finding and on September 29, 2014, the undersigned was appointed. By email dated November 16, 2014, the fact finder requested that the parties appear at a hearing on December 18, 2014 and that the number of items in dispute, submitted in the declaration of impasse by the Union, be reduced from twelve to six or fewer. The fact finding hearing was held on the appointed date, and both sides presented arguments and a written brief at the hearing. In addition to its brief, the District submitted a deposition affidavit of Mr. William Bernhard, the Assistant Superintendent for Business for the District. Both sides conducted themselves at the hearing in a highly professional and competent manner. At the end of the hearing the record was closed. There were no rebuttal or supplemental briefs.

DISTRICT AND BARGAINING UNIT PROFILE

The Cold Spring Harbor Central School District is a suburban public school district educating over eighteen hundred k-12 students. The District is comprised of four school buildings, including one primary school, two elementary schools and one secondary school housing grades 7-12. Currently the bargaining unit contains 173.2 full-

time equivalent teaching positions. The District is a component district of Western Suffolk BOCES, along with seventeen other school districts.

THE ISSUES

- Salary, Longevity
- Health Insurance Contribution Rates
- Dental Insurance
- Extra Pay
- Duty Assignments
- Use of Prep and Lunch Period

SALARY

District Position on Salary, Longevity

In a labor intensive climate such as a school district, it is easy to see that during bargaining, economics is the key point of demarcation between the parties. 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 Amendment 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, six months prior to the expiration of the Cold Spring Harbor CBA in question. Also, the confluence, or perfect storm, of negotiated step increases, the crushing burden of NYSTRS and NYSERS pension contributions,

(excluded from the tax levy cap), as well as ever escalating health plan premium costs, result in expenditure increases which are in excess of allowable increases in the District's annual tax appropriated revenues. The District notes in its brief that while the Cold Spring Harbor community is "undeniably affluent," the "District's ability to spend, like that of all school districts and municipalities in New York State , has been severely constrained by the Property Tax Cap." In addition, the District argues that its teachers are the highest paid in Suffolk County, averaging \$121,647 per year (Bernhard deposition, p.1).

The District's position on salary increases is as follows:

2012-2013	0% + Step
2013-2014	0% + Step
2014-2015	0% + Step
2015-2016	0% (no step, hard freeze)
2016-2017	0.5% + Step movement February 1, 2017
2017-2018	0.55% + Step

With respect to longevity, the District believes the Union's proposal of a 10% increase is unjustified and proposes that "the longevity schedule, which is already rich, be frozen for the term of the agreement."

The District contends that "the ceiling on its ability to pay its employees is essentially a function of the Tax Cap." The District argues that the stress of the tax cap is exacerbated by the fact that "there is little commercial tax base in Cold Spring

Harbor” and the “financial impact of these stressors is borne almost entirely by the individual homeowners.”

District contributions to the NYSTRS, while excluded from being considered as part of the tax cap, have increased in the past five years by 218% even with the deconstruction of the system via additional tiers. The District notes that while their contribution will be “lower in 2015-2016,” this is not a significant reduction.

With respect to health insurance costs, the District points out that employer contributions for active employees’ health insurance have increased from \$2,743,648 in 2009-2010 to \$3,432,782 in 2013-2014, an increase of 24.8%. In addition, District contributions for retired teachers have also increased by 24.8% over the same five year period from \$1,662,059 to \$2,074,034. This is an increase of roughly 5% per year.

In speaking of recent teacher settlements, the District examined twenty four Long Island School District agreements and points out that six district settlements included at least one year of a “hard freeze,” i.e. 0% with no increment. The District goes on to note that in fourteen districts, settlement included at least one year of increment only. Seeking to bolster this argument, the District points to many other settlements that have minimal pay increases and that its overall proposal on salary is fair and reasonable.

The District goes on to list recent settlements with other bargaining units within the District including Nurses, Teacher Aides and Assistants, and Custodial and Clerical Units which all settled for pay increases of 2% or less per year. The District notes in its brief that three of the four units have no increments. These units also show

minimal pay increases and, according to the District, should be looked at for guidance.

In addition to all the foregoing, the District argues that teachers in Cold Spring Harbor are not only the highest paid teachers in Suffolk County, they are paid considerably more than even the next highest paying school District. The District avers that the difference between Cold Spring Harbor and all other districts is striking and that examinations of these salary schedules, reveals that teachers in this district, on average, and cell by cell across the schedules, are paid significantly more. In view of all this, the District contends it is difficult to construct a justification for any increase in the salaries of Cold Spring Harbor teachers.

Union Position on Salary and Longevity

The Union position on salary increases is as follows:

2012-2013	0%	+ Step
2013-2014	0%	+ Step
2014-2015	0%	+ Step
2015-2016	1.9%	+ Step
2016-2017	1.9%	+ Step
2017-2018	1.9%	+ Step

The Union contends that its salary proposal amounting to 5.7% over six years is “quite low, but realistic.” The Union is cognizant of the climate of economic

uncertainty facing the District and notes that, in developing its “fair and equitable” salary proposal, it took this into account. It also must be proffered that all financial data available to the Association and community at large, indicates the District enjoys a healthy financial condition and that it does indeed have the ability to pay the proposed salary increases listed above.

The Union points out that in its dealings with the public, the District spotlights its accomplishments and that, in 2014, it was able to increase its revenues by 4%. This, coupled with evidence from the NYSUT Research Department that expenditures in the last three years have been less than budgeted, augurs well for the Union’s position on salary. It would appear, based on revenue received and actual expenditures, irrespective of proclaimed economic factors, that the District continues to be economically sound.

Other recent settlements, the Union contends, demonstrate that the proposal offered by the District is not appropriate. All districts in Suffolk County suffer under the same tax cap constraints yet “they still were able to provide salary increases to the teachers in their districts.” An analysis of five newly negotiated settlements in Suffolk County, reveals that “under no circumstances have the districts settled their collective bargaining disputes with amounts that are less than the cost of increments as provided by Triborough.” The Union argues further that in this District, where spending has been less than budgeted and with a healthy unrestricted reserve account, there is no reason to believe it cannot offer a better salary proposal.

With respect to longevity, the Union is asking for a 10% increase in each of the levels as listed in the CBA. The fact finder will discuss this in the next section of this report.

Fact Finder Discussion on Salary, Longevity

This District is to be commended for rising above, academically, almost all other districts in New York State. The Cold Spring Harbor CSD website states “our district has been repeatedly ranked in the top 1% academically in the United States.” As the Union pointed out, the US News and World Report high school rankings, indicates that this district is ranked 24th in New York State and 134th nationally. Looking further, however, shows us that if we eliminate “Magnet” schools from the list, Cold Spring Harbor High School would be ranked 17th in the state. This accomplishment is indeed laudable.

The District’s financial proposal goes deeper than simply a need to adhere to a tax levy cap. It reflects the ongoing economic downturn and pattern of economic realities and trends, in the District, 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 an impact on the District and on resident taxpayers. However, it seems, from available real time data, that in general, things are starting to slowly turn around. Unemployment is at a new low, household earnings have increased, job creation is trending upward, inflation is steady and the housing market is making a slow comeback.

The fact finder has considered the matter of economics carefully and finds limited evidence to support entirely, either the District, or Union proposal. That being said, it is the fact finder's hope that the recommendations 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 recollection and notes taken at the hearing, 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 either the District or the Union for their 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. Also, the documents presented to the fact finder in this case, to no one's surprise, reflect a significant difference on the question of ability to pay. A school district's ability to pay has always encompassed factors that are very fluid in nature, moving targets so to speak.

The fact finder would also like to note that the law which established the 2% tax cap does take into account that some expenses are currently outside a district's control, namely the state-mandated employer contribution rates for employee pensions. The law allows for exemption or exclusion of increases in contributions to the NYSTRS and NYSERS that exceed 2%. According to a document published by the Capital Region BOCES Communications Services titled "Understanding New York's Property Tax Levy Cap," states that:

Far from being "loopholes," these exemptions seem to indicate an acknowledgement among lawmakers that schools have no ability to simply limit cost increases in these areas to the rate of inflation. As a result, a district's final tax levy (after the levies for these exemptions are

added in) could be greater than its published “tax levy limit” and yet still be considered, under the law, within that limit.

This would help explain why, according to NYS Comptroller Thomas DiNapoli’s recent yearly report, increases in school district budgets average **over** 3%.

The fact finder believes that the totality of circumstances supports a modest pay increase in the last three years of the new agreement. The first three years have passed and all increments due have been paid under Triborough. No pay increase is recommended for these years.

The following is the recommendation on salary:

2012-2013	0%	+ Step
2013-2014	0%	+ Step
2014-2015	0%	+ Step
2015-2016	1.0%	+ Step
2016-2017	1.25%	+ Step
2017-2018	1.25%	+ Step

These modest increases would provide *percentage pay increases* through June 30, 2018 amounting to 3.5% in total.

With respect to increments for the teacher unit, the District stated in the Bernhard affidavit, that the value of the increment for the entire teacher’s unit in recent and prospective years, is as follows:

2012-2013	2.07%
2013-2014	1.87%

2014-2015	1.81%	
2015-2016	1.61%	(estimate)
2016-2017	1.43%	(estimate)
2017-2018	1.31%	(estimate) (<i>see Bernhard Affidavit</i>)

This chart indicates that increment costs have decelerated in the first three years of the CBA. The fact finder believes that by accepting the modest pay increases recommended, the teachers will be doing their part in containing costs. Conversely, while the District should not be penalized for its fiscal responsibility, the totality of circumstances does not support an extraordinary recommendation of no increase in any year. The fact finder does not believe the teachers will lose much ground, if any, to their comparables and will likely remain at or near the top when compared to other districts on Long Island.

The question of longevity is an interesting one. At the hearing the Union called this benefit a “patch” while the District referred to it as a “historical accident.” In its brief the District stays away from this subject and offers only the status quo. The Union explains in its brief, as it did at the hearing in its exposition of bargaining history, that this is a complicated subject. Without agreeing or disagreeing with previous Union motivation and possibly some negotiators remorse on the part of the District, it is not the fact finders wish to cause any progression or regression of any of the gains made previously with respect to longevity, regardless of distinctions in

definitions. Therefore, the fact finder recommends that longevity be remanded back to the parties for **further negotiation**.

By accepting these salary recommendations, teachers would be doing their part in slowing growth. Concurrently, the District, for its part, will have provided only a modest pay package and will enjoy a deceleration of increment costs as noted previously. The District will also enjoy an increase in teacher contribution rate for health insurance premiums as will be discussed in the next section of this report.

District Position on Health Insurance Contribution Rates

Currently, members of the bargaining unit contribute 16% toward the cost of health insurance and retired employees pay 15%. The percentage rate of contribution is the same for individual and family coverage. The District has proposed that the employee rate of contribution be increased to 18% as of June 1, 2016 and to 20% as of June 1, 2017. The District further proposes that retirees pay the same percentages starting June 1, 2014. In addition, the District offers that new hires pay 25%. When asked by the fact finder at the hearing whether any retirees had any irrevocable guarantee letters freezing their rate, the District answered in the affirmative. Consequently, retirees enjoying this benefit will not be discussed herein.

The District avers that the cost of health insurance has been an increasing financial burden with no relief in sight. In response thereto, the District has negotiated higher rates of contributions with each of its other bargaining units. The District notes that, except for Administrators, the teachers are the highest paid employees in the District and have the lowest rate of contribution. The District adds that because they

propose a tiered system of new contribution rates that increase gradually, this will lessen the burden for teachers.

Union Position on Health Insurance Contribution Rates

The Union states that it made no proposal in regard to the current health insurance plan and contends that at 16%, the rate is the same as or slightly above the average rate of contribution by similarly situated locals within Suffolk County.

Fact Finder Discussion on Health Insurance Contribution Rates

The vexing conclusion we must reach if we examine health care costs going back many years is that they have never trended downward. In fact, health care costs and premium costs have increased dramatically in the recent past. These increases have far exceeded previous projections and actuarial assumptions, and employee contribution rates have also been trending upward. Contribution rates have increased across all public sector bargaining units (including police units previously immune to such increases), and financial pressure on employers have resulted in a substantial cost shifting to employees who are now participating more and more in the form of incremental percentage increases.

It is with these background reality checks in mind, the fact finder recommends that on June 1, 2016 employee contribution rates will increase to 17% and on June 1, 2017 to 18%. No recommendation is made with respect to any aspect of retiree health insurance contribution rate.

District Position on Dental Insurance

Article 14.3, Dental Insurance, of the current CBA states:

Fully paid dental insurance shall be provided for employees and dependents with an annual limit of \$1,500 per individual for dental care and a lifetime limit of \$1,500 per individual for orthodontics.

This plan is a self insured plan and is administered by Brown & Brown Insurance, dba, Fitzharris & Company. The District stated at the hearing that because this is totally non-contributory, to double the coverage, as proposed by the Union, is simply not warranted. The District has never made an offer in this area.

Union Position on Dental Insurance

The Union proposes that the coverage extended under this benefit be increased to \$3,000 for individual coverage and \$3,000 for lifetime orthodontic coverage. The Union contends that this request is “made solely to assist in keeping up with the rising costs of dental services. The Association asserts the cost to increase this benefit is presumed to be minimal and therefore, there should not be a true prohibition against increasing the rates.”

Fact Finder Discussion on Dental Insurance

The fact finder agrees with the Union contention that this benefit should be increased since it is one that is enjoyed by almost all unit members and one that will have a fairly small impact on District finances. Since the amounts of coverage have not been increased since 2003, the fact finder recommends increasing the coverage to \$2,000 for individual and \$2,000 for orthodontics.

District and Union Position on Extra Pay

The District's position is that coaching and club stipends be frozen at the current levels: an increase is not warranted. The Union on the other hand believes the compensation in these areas be increased by the same percentage as salary increases. This is a long standing practice, they contend, and there is little reason to change it for this agreement.

Fact Finder Discussion on Extra Pay

The fact finder recommends that all positions listed in Appendix E, Compensation for Co-Curricular Activities; Appendix F, Miscellaneous Rates of Pay, and Appendix G, Compensation for Coaching Activities; be increased by the amount salaries are increased **in each of the last three years** of the new agreement.

Fact Finder Recommendation on Duty Assignments, Use of Prep and Lunch Periods

The fact finder makes no recommendations on these items and remands them back to the parties for further negotiation.

FACT FINDER'S RECOMMENDATION RECAP

Salary

- **July 1, 2012** **0%** **+ Step**
- **July 1, 2013** **0%** **+ Step**
- **July 1, 2014** **0%** **+ Step**
- **July 1, 2015** **1%** **+ Step**
- **July 1, 2016** **1.25%** **+ Step**
- **July 1, 2017** **1.25%** **+ Step**

Longevity

No change in longevity. Further negotiation is recommended.

Health Insurance Contribution Rate

- **July 1, 2016** **17%**
- **July 1, 2017** **18%**
- **No change for retirees**

Dental Insurance

Increase to \$2,000 for individual and \$2,000 for lifetime orthodontic.

Extra Pay

Increase all amounts listed in Appendix E, F and G by salary increase amounts in new CBA.

Duty Assignments, Use of Prep and Lunch Periods

Remanded back to the parties for further negotiation.

Concluding Statement

The fact finder hopes this report provides a roadmap to settlement. It is also hoped that the recommendations set forth herein be adopted and embraced by both parties and that they form the basis for the new CBA. The parties may not see these recommendations as a perfect resolution to this impasse; however, they do represent a reasonable solution to resolving these negotiations. The parties are encouraged to adopt them as written and to do so as soon as possible.

January 26, 2015

Thomas J. Linden, Fact Finder

