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

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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 the COLD SPRING HARBOR TEACHERS' ASSOCIATION and COLD SPRING HARBOR CENTRAL SCHOOL DISTRICT. PERB Case M2006-094. Rosemary A. Townley, Fact Finder.



## **BACKGROUND**

The Cold Spring Harbor Teachers' Association (“Association”) and the Board of Education of the Cold Spring Harbor Central School District (“District”) are parties to a collective bargaining agreement (“Agreement” or “contract”) that became effective on July 1, 2002 and expired on June 30, 2006.

The District is comprised of over 2000 students in four schools, with 336 employees, including 181.5 full-time equivalent teachers. The District is one of 18 component districts of Western Suffolk BOCES. (District Brief at1)

Informal negotiations regarding a successor agreement began during the early spring of 2006, at which time the District indicated that during the upcoming round of bargaining it would be most interested in obtaining greater contributions to health insurance premiums from active employees and a contribution from future retirees, the latter of which had never occurred. The Association representative informed the District that it would not continue informal sessions under such conditions. Formal negotiations began on March 29, 2006, when the Association proposed that the 2002-2006 be “rolled over” for another four years, with no change in its terms. After consulting with the District’s Board of Education (“Board”), the District’s representatives informed the Association on April 25, 2006 that its proposal had been rejected.

Thereafter, according to the Association’s characterization, the negotiations became “[l]ike no others in many decades” because the District presented the Association with more than two dozen proposals that would have impacted upon certain provisions of the Agreement which it regarded as vital, including Association rights, entitlement of unit members to leave time, length of the work day, evaluation of teachers and important

benefits. (Association Brief at 2-3).

After further negotiations, as well as mediation sessions over an 11 month period which did not resolve the contractual dispute, the Association petitioned the New York State Public Employment Relations Board (“PERB”) on April 10, 2007 for the appointment of a fact finder who is empowered, pursuant to § 209 and 205(5)(k) of the New York State Civil Service Law to, in sum and substance, inquire into the causes and circumstances of the dispute and, after a hearing where evidence is heard and/or taken, make findings of fact and recommendations for resolution of the dispute to the parties.

The parties are in agreement that the major issue which led to the breakdown of negotiations and the instant dispute is the matter of whether future retirees should be required to contribute to their health insurance premiums. The practice in the District, which had been memorialized in the 2002-2006 Agreement in Appendix B, was that the District would assume the full cost of health insurance premiums for bargaining unit members throughout their retirement.

The parties met in two fact-finding sessions on May 31, 2007 and July 19, 2007, in the District’s administrative offices in Cold Spring Harbor, New York, at which time the parties proffered oral arguments to support their positions, along with written briefs and exhibits numbering well over 1000 pages. Thereafter, the parties submitted rebuttal briefs and supplemental replies on certain issues.

I have carefully reviewed all of the materials submitted in order to reach the recommendations that are contained within this report.

Given that the retirement health insurance premium contribution issue led to the instant impasse and was the subject of much argument and discussion, if not the primary

focus of fact-finding, as well as the obvious importance of the salary proposals, these two issues are found to be the most important in terms of this Report, which will be limited to them. I found the remaining proposals not to be supported by sufficient evidence of record so as to form the basis for the making of informed recommendations.

Accordingly, I remand these issues back to the parties for their resolution.

### **Health Insurance Premium Contributions for Active and Retirees: Proposals**

#### **District Proposal**

Active employees shall contribute to health insurance premiums as follows (current contribution is 10%):

2006-2007	-	12%
2007-2008	-	16%
2008-2009	-	18%
2009-2010	-	20%

Current employees who decline health insurance shall be paid 25% of the applicable district contribution.

New unit members shall contribute 20% to health insurance premiums.

Active employees shall contribute to health insurance premiums in retirement as follows (currently no contribution):

retiring prior to July 1, 2008	-	15%
retiring prior to July 1, 2009	-	20%
retiring prior to July 1, 2010	-	25%

#### **Association Proposal**

Active employees shall contribute to health insurance premiums as follows:

2006-2007	-	10%
2007-2008	-	10.4%
2008-2009	-	10.8%
2009-2010	-	11.2%
2010-2011	-	11.6%

Active employees shall not contribute to health insurance premiums in retirement.

The District shall provide domestic partner coverage.

## Salary/Longevity: Proposals

### District Proposal

2006-2007	-	3%
2007-2008	-	3%
2008-2009	-	3%
2009-2010	-	3%

Maintain current longevity schedule

### Association Proposal

2006-2007	-	4.94%
2007-2008	-	4.77%
2008-2009	-	4.64%
2009-2010	-	4.63%
2010-2011	-	4.50%

Enhanced longevity schedule as follows:

1. In each of the first four years of the contract, revise Longevity Schedule to address less competitive salaries subsequent to Step 15. (Total longevity increases by 26.733% in 2006-2007, 16.042% in 2007-2008, 15.687% in 2008-2009 and 14.006% in 2009-2010.)
2. After the 4th year of the contract “fold” the “final” Longevity Schedule (2009-2010) into the existing 2009-2010 Salary Schedule (add each longevity amount to corresponding cell of the Salary Schedule).
3. After “folding” in the Longevity Schedule, and generating a new index from the revised Salary Schedule, apply the negotiated percentage increase for 2010-2011 to the merged Salary/Longevity Schedule to create the 2010-2011 Salary Schedule. Longevity Schedule disappears.

## **ARGUMENTS OF THE ASSOCIATION**

### Health Insurance Premium Payments

#### Retirees

The Association argues that the previous bargaining history concerning the recently-expired Agreement must be taken into consideration by the fact finder when making any recommendation regarding the issue as to whether there should be any change to Appendix B of the Agreement. This Appendix contains a letter which memorialized a practice of the District whereby teachers who had their health insurance premiums paid by the District while active employees would continue to have their health insurance premiums fully paid by the District while in retirement. The Appendix B letter reads, in relevant part: “Please be advised that nothing in the new agreement impacts upon the continuation of this benefit and that you will continue to receive fully paid health insurance.”

The Association contends that there were “long and somewhat acrimonious negotiations” which led to the 2002-2006 Agreement which “represented what one Board member described as a ‘sea change’ in the way the District and Association viewed things.” (Association Brief at 1) It says that, for the first time, the District relied upon the comparables of certain school districts with similar demographics and economic indicators, with a focus upon academic excellence and achievement, regardless of the geographic proximity of those districts to Cold Spring Harbor. According to the Association, these five school districts were East Williston, Manhasset, Jericho, Great Neck and Roslyn. (Association Exhs. 1-5)(“the Association’s comparable districts”)<sup>1</sup>.

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<sup>1</sup> On the other hand, the District maintains that the comparable districts identified by the Association during the predecessor negotiations were NOT the five comparables as set forth in its



The Association asserts that, along these same lines, the District increased salaries significantly in the 2002-2006 Agreement in an attempt to narrow the gap between the District and the Association's comparable districts, not quite to the level of these comparables, but by a percentage more than the "going rate" at that time.

It also maintains that the District, in turn, asked for and received a critical concession from the Association with respect to health insurance premium costs for active teachers. It says that the District argued at that time that the comparable districts all have teacher contracts with provisions for contributions by active teachers to the health insurance premiums. The Association agreed, in light of the Appendix B language regarding retirees, and a provision was added to the contract to provide that all active teachers contribute 10% percent of the premium cost of the New York State Health Insurance Plan, or the Empire Plan, which contribution became effective immediately and was not phased in which is the usual case in most contracts which implement such a provision for the first time.

The Association further submits that it had agreed during those predecessor negotiations, in the spirit of equity and fairness, to assign a cash value to accumulated sick leave at retirement and on a prospective basis only, as new employees would be paying part of their health insurance premium from the start of their employment, while current employees had not paid any premiums prior to the expired contract.

The Association stresses that the "spirit" of this bargaining history must be regarded seriously when making recommendations on this matter, emphasizing that this

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argument here but rather the six districts of East Williston, Jericho, Locust Valley, Manhasset, Roslyn and Syosset. (District Rebuttal Brief at 2). The District argues that the appropriate comparable school districts are those located in the Town of Huntington. (See District's arguments below).

critical *quid pro quo* exchange led it to believe that the teachers' respective health insurance needs and interests had been fully addressed during their retirement years. It says that it asserts they have paid for this "one singular advantage with both less benefits and lower salaries while active..." (Association Rebuttal Brief at 5).

The Association also contends that even if the District disputes the claim that any promises were made to the Association with respect to prospective negotiations, and/or that future Board members could not be bound by the actions of former members, the Association says that it is not arguing that there is any legal "bind" on the District. Rather, it says the District's failure to recognize the legitimacy of the Association's perspective regarding the importance of the benefit throughout the current round of negotiations, as well as its "concomitant characterization of the Association as obstinate, resistant to change and unrealistic" only served as a major obstacle to settlement. (Association Brief at 2).

The Association points out that it had proposed a method by which the retiree health insurance dispute could be resolved. It would be willing to increase the contribution by its active members from 10% to 11.6% over a five year period, along with a conversion of the District's Retirement Incentive proposal of \$250 for each year of service, provided that these two sources of funds be "dedicated" to offset District health insurance costs for future retirees. (Association Brief at 115).

It also says that the difference between the Board's proposal to increase the health insurance contribution for future retirees from zero percent to 25% over a four year period would cost that future retiree on a fixed income a total of \$12,644 during that time frame or an average of \$3,161 per year. (*Id.* at 123; 127). The Association further

contends that its analysis shows that the District has the ability to pay for this benefit, as is explained below, and therefore there is no economic need to make any changes in this benefit, especially in light of the fact that the teaching staff is not paid as well, or receives the same level of benefits, as its comparable districts. (Id. at 125-26 and 128-135).

#### Active Teachers Premium Contributions

With respect to contributions above the current 10% paid by active employees, which are sought by the District during this round of bargaining, the Association maintains that the status quo must be maintained. It says that the 10% contribution is in accordance with that paid by active teachers working in its five comparable districts. It notes that the average premium coverage paid by those comparable districts for both individual and family coverage is 87.6%, with the teachers paying the remaining 12.4%, which is a difference only of 2.4% as compared to the District's teachers contribution of 10%. (Id. at 117). It points out that the total annual premiums paid by the District for its 186 teachers<sup>2</sup> is \$1,401,432.72 and if that amount is divided among the District's 2989 families, then the cost to continue the benefit at the current level would represent a net difference of \$12.50 per family in the annual tax liability<sup>3</sup>.

#### Salary/Longevity

The Association stresses, in sum and substance, that the totality of the data regarding both the health insurance premium contribution issue for retired and active employees, as well as salaries, must be reviewed in light of the District's reputation of

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<sup>2</sup> The District reports the number of teachers at 181.5 FTEs. (District Brief at 1).

<sup>3</sup> Data source cited by the Association: NYSUT Nassau Regional Office Contract Analysis (February 2006).

“excellence” in all areas which must be attributed in large part to the devotion and quality of its teaching staff. (Association Brief, Part One, Sec. A, B, C, D, E, F). The Board recognized this factor during the last round of negotiations when it agreed to raise the salary levels to be closer to that of the Association’s comparable districts which, it maintains, should provide the comparable basis for a fair analysis for deciding this matter, as well as any questions dealing with salary and related pay issues.

The Association argues that its proposal to revise the existing salary schedule in each of the first four years of the new contract and to fold the final longevity step into the salary schedule in the fifth year of the contract would result in an increase totaling 23.48% over a five year period. (Association Brief at 128).

It notes that its comparable districts in during 2005-2006 were paid much more than the District’s teachers at virtually every step, including longevity, with teachers in the District earning \$3,151 less at Step 1 on average and those at MA, Step 20 earning \$6,860 less than the comparable district average at that step (Id. at 129). At MA+30, the differences at the same steps range from \$1,701 at Step 1 to \$3,091 less at Step 20. (Id. at 130). At the MA+60 level, the differences are \$283 less at Step 1 and \$2,027 less at Step 20. (Id. at 131). It summarizes that the average deficit per salary schedule cell is \$2125. (Id. at 132-133). The Association further states that a hypothetical teacher’s deficit, compounded if he/she worked in the District and remained at the MA+30 Step throughout his/her tenure, would be \$68,108. (Id. at 134).

#### Comparables/Ability to Pay

The Association maintains that the District has the ability to pay for the wage increase sought by the Association, as well as to maintain the retiree health insurance

contribution level at the status quo, as evidenced by the economic data. It points to the financial reports of the District, noting at the onset that it is the only school district that is situated in both Nassau and Suffolk counties, with one-third of its students situated in Nassau County. It also notes that the District's interscholastic sports teams compete in Nassau County's Section 8, which includes all the districts in the Association's comparable districts. It also points out that Great Neck, which is the western-most district among the comparables, is only 10 miles away from the District.

The Association further argues that any contentions of the District based upon the 2006 State Comptroller's Report of former Comptroller Alan Hevesi ("Comptroller's Report") are essentially "cherry-picking" the language in order to paint a bleak picture of the Long Island economy, as Hevesi's conclusions regarding Suffolk County which were included in the same report presented a positive portrait. It noted that the economy on the island was a strong one "[t]hat has achieved record highs in employment and population in recent years..." (Association Rebuttal Brief at 2). It further notes that Hevesi also stressed the assets of the county and cautioned that the aging infrastructure and certain "downtown districts" would require care, but that such data would not be relevant here. It also points out that the report was filled with other positive and optimistic data, such as the County's population having become more educated, and a growth in employment with a drop in unemployment during the past two years, along with many other upbeat indices of strength in the County, which the District failed to include in its comments. (Id. at 2-4).

Any claim by the District that its contribution to NYSTRS has increased over the past 11 years must be balanced by the fact that the population in the schools has increased

by approximately 50%, thereby requiring more teachers. It also points out that the volatility of Wall Street as related to the stability of the state pension funds essentially cuts both ways, as the contribution rate for school districts decline when the market rises. It further emphasizes that teachers who are required to contribute 3% of their income to NYSTRS, depending upon their date of hire, receive no relief regardless of the workings of Wall Street. (Id. at 4).

The District's argument's regarding value and impact of the salary schedule increment is one of "dunning" the teachers, according to the Association, as the increment is essentially a deferred income payment. It says that teachers cannot reach the top of their salary schedule until they work for approximately 20 to 30 years, while a District has the opportunity to save the difference along the way. It points out that an experienced staff likely has a low incremental value, and vice-versa, which should establish that any focus on this aspect of the salary schedule is irrelevant. (Id. at 4-5).

The Association also asserts that the "benefits disparity" claimed by the District is real, but it favors the District in terms of per cost of employee benefits, which is an area where the teachers fall far behind other districts, especially when the significance of their lesser salaries are factored in. The only factor that served to even this disparity was the 100% health insurance premium paid during retirement, which the District now seeks to remove. (Id. at 5).

With respect to the financial and economic data (Association Brief, Parts Two and Three), the Association notes that the District has the second lowest school tax rate per \$1000 assessed value among the Association's comparable districts and is 20% lower than the average of all of them, excluding the District. (Id. 47). Even if the analysis is

done within the school districts in the Town of Huntington, there are nonetheless five school districts with a higher school tax rate per \$1000 and three with a lower one when compared with the District. (Id. at 48). There is an approximately \$300,000 difference in the price of two comparable homes in Huntington and Cold Spring Harbor, in terms of similar assessed valuation, land, and tax bills, with the Cold Spring Harbor home selling higher due in part, as noted by a local realtor in 1998, to the reputation and high quality of the school district. (Id. at 49-50).

The Association further notes that a comparison of the District's total percent distribution of expenditure on instruction as opposed to the Association's comparable districts shows that the District spends only 73%, which is lower than the other five districts and their average<sup>4</sup>. (Id. at 54). The same analysis using the school districts in the Town of Huntington show that the District spends 73% of its total expenditures on instruction, while all other school districts are higher except Harborfields, which it equals in spending, while the average of the school districts in the Town is 77%. (Id. at 58). It notes that the District spends 4% of its total expenditures on administration, which is the highest in the Town, and that the average is 2% among the school districts. (Id. at 59). It further points out that the total expenditure for instruction in Suffolk County is 75% while the District spends 73%. (Id. at 46).

The Association cites to the expenditures per pupil reported as of October 2006 between the District and its five comparable districts and notes that the District spends

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<sup>4</sup> All averages exclude the Town of Huntington. Data source reported as used by the Association: NYSED Statistical Profiles of Public School Districts: Chapter 655 Report, Volume 2: Table 2, October 2006.

\$16,932 while the average among the five comparables is \$21,947.<sup>5</sup> As compared to the expenditures per pupil in the Town of Huntington school district, the average was \$15,338, with two school districts spending more than the District. (Id. at 76) The average per pupil expenditure among all Suffolk County school districts, excluding school districts under 300 students, was \$16,436. (Id. at 82).

The Association further maintains that the District is one of “significant means” and cites to data from the New York State Education Department’s “School District Fiscal Profiles: Master Files 2004-2005.” (Association Brief, Part Three). These charts show that among the Association’s five comparable districts, the average property value per pupil is \$793,509 while the average in the District is \$1,050,920; (Id. at 85); in the Town of Huntington the average is \$552,859 (Id. at 88); in Suffolk County the average property value excluding districts with less than 300 students is \$694,101 (Id. at 94); the income per pupil in the District is \$601,394 while the average among the five is \$408,964; in the Town of Huntington the average is \$176,185; (Id. at 89) and in Suffolk County school districts, excluding those with less than 300 students, the income per pupil is \$134,482 (Id. at 95). It also notes that the combined wealth ratio of the District (“CWR”) is 3.755 while the average among the five districts is 3.387; (Id. at 87) and in the Town of Huntington the ratio is 1.622 (Id. at 90). In Suffolk County, excluding those districts with less than 300 students, the CWR ratio is 1.681 (Id. at 96).

The Association further notes that the District’s taxpayers voted to approve school district bonds in 2001 in the amount of \$40.8 million for a capital renovation project to support added instructional space, a state-of-the-art Performing Arts Center, a

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<sup>5</sup> Association data cited: “NYSED School District Fiscal Profiles: Master Files 2004-2005.” It is noted that financial data provided in this part/section by the Association based upon reports in *Newsday* were not relied upon, as it was unclear as to the newspaper’s source of data.(pp. 71; 73; 74; 75; 77; 80; 81; 83).



new gym, and other renovation at the school buildings. (Id. at 97-98). It further cites to a report by Simon & Shuster entitled "The School Match Guide to Public Schools" which ranks the District "[a]mong 7% of schools nationwide cited as school systems that enhance real estate values and draw people to an area." (Id. at 98-99). It also points to a non-school district \$9.5 million bond passed by the "community" for a new library sometime on or about March 2005, with a gap of three million dollars that was needed to finish the project being filled by donations. (Id. at 100).

The Association argues that while the District originally maintained that all of its other units, as well as Superintendent of Schools, had agreements which contained provisions for the contribution of some portion of the premium of health insurance in retirement, it needed to amend that statement when the custodial unit rejected its tentative contract. It pointed to an October 23, 2007 update letter from the District to the Association and Fact-Finder that the Custodial Unit, which had been characterized as the "most notable" of all the bargaining units that had agreed to contributions to their health insurance in retirement given their lower salaries, had recently rejected the tentative agreement during a ratification vote. The Association believes that the rejection of the contract by the custodians represents a collective statement of "enough" in terms of the District's attempt "to reach into their pockets." (Association Reply, October 26, 2007).

## **ARGUMENTS OF THE DISTRICT**

### Comparables

With respect to the comparable districts, both for purposes of health insurance and salary, it notes that the Association continually emphasized that it should be

compared to its five selected school districts in Nassau County, rather than the surrounding districts in the Town of Huntington. It maintains that the Association failed to set forth the specific standards by which their comparable districts were chosen, excepting the use of general language such as their selected ones are “districts of similar geographics” or have similar “academic excellence.”(Brief at 2).

The District points out that during the 2002-2006 negotiations, the Association identified the comparable districts as East Williston, Jericho, Locust Valley, Manhasset, Roslyn and Syosset, yet “inexplicably” deleted Locust Valley and Syosset and added Great Neck during the current round of bargaining as comparables. (Id.).

It contends that the Association’s use of “comparables” changes, depending upon the issue at hand, noting that it drew heavily on its original Nassau comparables districts for purposes of salary analysis while focused upon districts in Suffolk County when dealing with health insurance, where the comparison with these districts is less favorable. The District asserts that the “comparables” used in this fact-finding cannot be the “moving targets” proposed by the Association, based upon the convenience of the subject matter being raised by it at a particular time.

It contends that the only fair and equitable comparison with respect to comparable school districts is that found in the neighboring, surrounding districts within the Town of Huntington. (District Rebuttal Brief at p. 2).

## Health Insurance Premium Payments

### Retirees

With respect to the health insurance premium rates, the District's current plan is the Empire Plan which has raised its rates every year over the last six years. It points out that in 1998 it paid \$1,044,504 in premiums for active and retired teachers and that the estimated cost for 2007 (based upon the percentage increase from the previous year's amount) would be \$2,556,261.(District Brief at 15). It further contends that given the unpredictable nature of these costs, both for the Empire Plan as well as health plans in general nationwide, there is little doubt that costs will continue to increase and probably at the same rapid pace. It notes that these costs comprise a significant portion of the District's annual budget.

It argues that its proposal that teachers be required to contribute towards their retirement health insurance costs in the amount of 15% (if retiring before July 1, 2008); 20 % (if retiring before July 1, 2009); and 25% (if retiring before July 1, 2010) is a reasonable one. It says that fully paid health insurance premiums in retirement is “[i]n today's world an exorbitant and unjustifiable benefit, and one which is extremely rare in school districts today.” (District Brief at 16). It points that the Association's comparable school districts in Nassau County all have provisions in their contracts for retiree payment toward the health insurance premium, with Jericho having the highest requirement of a 50% contribution for individual and 65% for family premiums. (Id.).

With respect to the Union's position that future retirees should not be required to make any contribution to their health insurance premium payments that the District now fully pays, the District argues that such a position is “untenable” given the erratic and

unpredictable nature of health care costs, in light of the foregoing statements. It points out that as a result of the 2002-2006 contract, teachers were given the ability to accumulate unused sick days for the purposes of a pay out at retirement in exchange for contributing ten percent (10%) of the health insurance premium. It notes that although the Association recognizes the need for an increase in the contribution rate for active employees, it is at a “sluggish pace” and only “if offset by its salary demands.”(Brief at 16).

The District contends that the teachers contribute a relatively small percentage of premium costs and that other District employees have agreed to increased contributions, both while active and in retirement. It stresses that certain employee groups with lesser salaries, such as the members of the Clerical Unit and the Teacher Aides/Assistants Unit, either have been or will be contributing to their health insurance premiums when they retire, ranging from 10% to 25% depending on date of hire and/or years of service. In addition, it notes that administrators, as well as the Superintendent of Schools, are required to contribute to their health insurance premiums in amounts ranging from 15% to 25%, depending upon the date of hire. (Brief at 16-18).

The District noted after the hearing by letter dated October 23, 2007, that while the tentative agreement between the District and the Custodial Unit contained a contribution rate for health insurance premiums in retirement, that tentative agreement was not ratified by the membership of the unit, although there was no detail in the letter from the District as to the reasons for the rejection of the tentative contract.

The District maintains that fully paid health insurance in retirement is an “exorbitant and unjustifiable benefit” and one which is rarely found in collective

bargaining agreements between teachers and school districts. It points out that the six districts that the Association identifies as the 2002 basis for comparability all require their retirees to contribute to the premium and that in one district, Jericho, the contribution rate for retirees is 50% for individual coverage and 65% of the premium for family coverage. The District notes as “remarkable” that the Association acknowledges that teachers in the District pay 27.4% less than the average for individual coverage and 33.4% less than average for family coverage of the premiums paid by retired teachers in the districts that the Association identifies as comparable. (District Rebuttal Brief at 3).

The District further responds to the Association’s proposal to resolve the retiree health insurance dispute by increasing the contribution by its active members from 10% to 11.6% over a five year period, along with a conversion of the District’s Retirement Incentive proposal of \$250 for each year of service, provided that these funds be “dedicated” solely to offset District costs for future retirees, (Association Brief at 115). The District says that no retired teacher would be required to contribute to the fund and thus it is merely a “conduit” by which the District would continue to pay for retiree premiums but on an indirect basis. (District Rebuttal Brief at 3).

It further maintains that this new fund would be “woefully insufficient” in terms of having any financial impact on significantly reducing the health insurance costs of retirees to the District, and urges that it not be considered in any serious manner. (Id.).

Active Employees

With respect to active teachers, who now contribute 10% towards their premiums, it points out that the Association itself notes in its Brief that its teachers pay 2.4% less than the teachers in its comparable districts. (District Rebuttal Brief at 3).

A look at a sampling of school districts in Suffolk County shows that that the payment by District teachers is below the average paid by many other school districts' teachers in a sampling of County schools, who have agreed to a phased in increase in their contributions through 2010 as follows:

School District	05-06	06-07	07-08	08-09	09-10
East Islip		12%	15%	16%	17%
West Islip		11%	12%	13%	15%
Sayville		8.5%	10%	11.5%	13%
Greenport	6%	7%%	8%	9%	10%
Western Suffolk BOCES	11%	12%	13%	14%	15%
Hauppauge		14%	16%	17%	18%
Sachem		14%	16%	17%	

(District Brief at 17)

It urges that its proposal that active teachers' contributions be increased to 12% (2006-07); 16% (2007-08); 18% (2008-09); and, 20% (2009-10) be implemented, given the foregoing arguments and data.

### Ability to Pay

The District notes the overall economic milieu, both in the country and in Long Island, to support its position that the District faces the same extreme financial uncertainty as all other entities. It notes the Congressional Budget Office's forecast of a federal budget deficit to a total of \$1.4 trillion for the five years after 2004 and \$1.9 trillion from 2009 to 2019, excluding any future military expenditure. (District Brief at 1).

The State economy is one of great uncertainty, the District notes, pointing to the 2006 Comptroller's Report, which noted that the 2006-2007 State budget included a two-year gap of up to \$13.9 billion. It also points to the reports of current Comptroller DiNapoli, who estimates the growing debt and out-year budget gaps will grow as quickly as revenues in the 2005 through 2009 fiscal years, with no fiscal strategies in place to address the problem. (District Brief at 1-2).

The District points out that the 2006 Report warned that local governments, including those in Long Island, would be affected by this milieu, and that there were certain "fiscal pressures" which could limit its future growth, such as unrestricted aid to local governments which failed to maintain pace with inflation or budget growth. The District points to the increases in the cost of heating oil since 2004, which have totaled 16% since that time<sup>6</sup>, as an example of one of the uncertainties cited by the Comptroller. (Id. at 2-3).

The District points to the "dramatically escalating costs" based upon the volatility of Wall Street, which impact upon the District, as well as upon other governmental units, with respect to the mandated contributions made to the New York State Teachers

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<sup>6</sup> District source cited: Energy Information Administration, Official Energy Statistics.

Retirement System (“NYSTRS”) and the New York State Employee Retirement System (“NYSERS”). It notes that its contribution to NYSTRS in 1997-1998 was \$137,358 and \$27,416 to NYSERS respectively while in 2006-2007 the contributions were \$1,788,907 and \$345,655 respectively. (District Brief at 3).

It further contends that the new GASB 45 regulations require the District to include retirement benefits for retirees and current employees as an accrued, unfunded liability on its financial statements, and that such costs for the bargaining unit as of July 1, 2006 were estimated to be approximately \$33 million.(Dist. Exh. 17). These liabilities may significantly impact upon the District’s ability to borrow, as it could negatively affect its bond rating.

The District emphasizes that although the Association focuses upon the wealth of its taxpayers, the fact finder must also consider in any ability to pay argument the fact that the District’s receipt of State Aid has been “stagnant” over the past 13 years and comprises but a small portion of its annual budget (Dist. Exh. 17, p.1). Yet the tax levy in both the Towns of Huntington and Oyster Bay between the school years 1996-1997 through 2005-2006 significantly increased. (District Exhs. 17, pp, 2-3). The District notes that such data underscores the tax burden that must be shouldered by its residents, especially in light of the lack of a viable commercial tax base. (District Brief at 14).

With respect to the statutory criteria of “ability to pay” the District notes that the financial condition of the District must include a review of available revenue to the District, in addition to the wealth of its taxpayers. It notes that assessed valuation in the school district as set forth in Exhibit “15” contains the various sources of revenue of the District over the past decade.



It points to the chart contained in its Exhibit “16” which demonstrates that over the past 13 years, Cold Spring Harbor’s receipt of state aid has been stagnant. As a result, expenditures, including teacher salaries, are funded by the taxpayers of the community through tax levies, which have steadily increased since 1993, as demonstrated by its Exhibit 15 which contains the assessed valuation, the tax rate per \$100 for both the Towns of Huntington and Oyster Bay, the tax levies (with STAR), the budgeted state aid, as well as other sources of revenue for the District.

For example, it notes that the tax levy in the Town of Huntington in 1993-94 was approximately \$16 million and it escalated to approximately \$40 million dollars in 2005-06. (District Exh. 17). The District also notes the great disparity between the growth of the tax levy compared to its receipt of state aid during the same time frame. (District Exh. 17).

The District emphasizes that it is most significant that the budgeted state aid has remained approximately \$2 million to \$2.5 million over the same time frame and thus the District’s receipt of such funds has been stagnant at best. (District Exh.15). It maintains that such a change demonstrates the shift in the New York State government’s “[p]hilosophy to diminish state support for education.” (District Brief at 14). Hence, the weight of the tax burden falls squarely on the shoulders of the residents of the community, according to the District. (District Brief at 14).

The District points out that the fiscal data relied upon by the Association in its Brief is not the most current, as it is from the 2004-2005 aid year. For example, it points to the cite of the District’s Income Per Pupil at \$601,394 in 2004-2005. It notes that the same figure for the 2006-2007 school year was \$361,064, which is a 40% drop during the

two year period. It also points out that the trend with respect to the District's Combined Wealth Ratio ("CWR") also represented a significant decline over a two year period, as it dropped from 3.755 to 2.987.<sup>7</sup> It further notes that there has been a 13%-17% decline in the sale of homes in the communities which comprise the District during the same two year time frame.<sup>8</sup>

The District also notes that the disparity in tax levies in Nassau County school districts, including the Association's comparables, is a broad one, as the amount of the total levy paid by commercial properties in the latter's comparables, as opposed to the commercial taxpayers of the District, are as follows:

<u>% of Commercial Taxpayers/ Levies</u>	
C.S. Harbor	0.78%
Manhasset:	19.74%
Roslyn	20.59%
Jericho	29.13%
Syosset	21.46%
East Williston	5.68%

(District Rebuttal Brief at 4-5).

The District concludes that the Fact Finder must consider the most recent data, which shows a decline in the important fiscal indices of the District, along with a significantly increased tax levy over the past years, and the absence of a commercial base in her analysis regarding the District's ability to pay.

### WAGES

The District argues that it is undisputed that the school district is a high performing one with a history of academic and athletic successes on the part of its

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<sup>7</sup> District's source: (NY) State Aid and Planning Service 10/17/2006.

<sup>8</sup> District's source: "Cold Spring Harbor Market Report: First Quarter 2007" (Daniel Gale/Sotheby's).

students. While it maintains, that the student success rate is attributable to the efforts and abilities of the teaching staff, it is also true that empirical research over a 50 year period has well-established that student achievement rates are also significantly correlated to socioeconomic factors, such as that provided by family and peer groups.<sup>9</sup>

The District also contends that the argument that teachers should profit financially because of the success of its students is “insulting to those teachers who labor tirelessly in less privileged districts, with far more challenging conditions, and where student success is less readily recognizable.” (District Rebuttal Brief at 1-2). It further notes that the District provides a safe working environment, unlike many others in the county, with smaller classes of students who are more apt to be motivated to learn, which provides an optimum teaching experience. It pointed out at the fact-finding hearing that teachers want to work in the District, as evidenced by the approximately 5200 applicants who submitted resumes for the open positions at the end of the 2006-07 school year.

The District argues that the base wage demand of the Association would represent over a five year period an increase of 23.48% in base salary and if the demand to increase longevity, as well as the cost of the increment are included, the total package cost would expand to 40.522% over five years. (District Exh. 2) (Brief at 9-10).

The District maintains that its proposed increase in base salary of 3% for each of the four school years represents a 12% increase, exclusive of increment of 2.43% in 2006-2007. Therefore, it says, its proposal would net an increase of over 21% over a four year period.

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<sup>9</sup> The District cites to Coleman, James, TOWARD OPEN SCHOOLS, PUB. INT. (Fall, 1967).; Ryan, James E. & Heise, Michael (2002), “The Political Economy of School Choice,” *The Yale Law School Journal*, Vol. LLL, No. 8 (2002); Rusk, David, “To Improve Poor Children’s Test Scores, Move Poor Families,” *ABELL Rep.*, June-July (1998); Prospects: Final Report on Student Outcomes 73, The U.S. Dept. of Ed., (1997).

It notes that the projected total payroll for the unit, the largest in the District, and assuming 181.5 FTEs and no new hires/resignations, would be \$15,147,757.40 and the projected cost of a one step increment movement of 2.43% would be \$359,649.10. It notes that more than 50% of the teachers are paid on the higher salary columns of MA+30, MA+45, MA+60, MA+75 or Ph.D. columns. (District Brief at 10).

The District points out that the settlements with its other bargaining units were as follows: (1) Administrators: 3.5% in each of a three year agreement (2005-2008); (2) Clerical Unit: 4.5% in each of a three year agreement (2004-2007); and (3) Teacher Aides/Assistants: 4.25% (2005-2008 and 4.0% (2008-2011). Its tentative agreement with the Custodial Unit was not ratified by the membership.<sup>10</sup>

It maintains that the teachers' salaries far exceed those of its surrounding districts in the Town of Huntington at virtually all steps and salary columns, with a few exceptions. (District Exhs. 7-8).

It also points out that even if the Association's comparable districts are used for salary purposes, the District teachers compare favorably at the MA+60 level in total salary (base + longevity for teachers with 30 years of experience) during 2005-2006, as they would earn approximately \$115,000. The Association comparables for the same time frame would be as follows (in rounded numbers):

Association Comparable School Districts

\$114,000	(East Williston)
\$114,000	(Great Neck)
\$118,000	(Jericho)
\$111,000	(Manhasset)
\$115,000	(Roslyn)
\$110,000	(Syosset)

(Note: The latter three school districts do not include longevity)(District Exh. 9).

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<sup>10</sup> As per letter from Board Counsel Warren Richmond III dated October 23, 2007.

The teachers in the District also earned more than teachers in other school districts in the Town of Huntington at the MA+60 level, using the same base salary criteria, as follows:

<u>Town of Huntington School Districts</u>	
\$117,000	Commack
\$108,000	Half Hollow Hills
\$106,000	Harborfields
\$102,000	Huntington
\$ 110,000	Northport - E. Northport

(Note: Commack and Northport-E. Northport only include longevity) (District Exh. 9).

The District further argues that salary increases enjoyed by teachers in the District have compared very favorably with increases in the Consumer Price Index (“CPI”) over the past 20 years and that for selected teachers over this time period the increases have escalated to well over 150%. (District Brief at 13) (District Exhs. 10-12).

The District also points out that the salary increases received by teachers at the MA level, Steps 1,6,11,and 16 show that they have received substantial increases over the past 35 years, from 1968-2006, as compared to the average increases afforded to teachers in both Nassau County (District Exh.. 13) and Suffolk County (District Exh. 14).

## FACT FINDER'S FINDINGS/RECOMMENDATIONS

### Comparables

The analysis in this fact-finding report, pursuant to the statutory criteria, shall be two-fold. First, I shall determine the comparable school districts to serve as the “yardstick” for measuring the proposals made by the parties. Second, I shall determine whether the District has the “ability to pay” for the demands as made by the Association, in light of the comparables as well as the relevant evidence of record.

The Association maintains that the relevant comparable school districts are Manhasset, Roslyn, Jericho, Great Neck and East Williston, all of which are located in Nassau County, and argued at the fact-finding hearing that these were the school districts used by the parties as comparables during the 2002-2006 round of bargaining because they had “similar demographics...regardless of direct geographic proximity and particularly in the context of academic excellence and the highest standards of achievement and performance throughout all aspects of the public education experience.” (Association Brief at 1).

The Association did not rebut, however, the District’s rebuttal argument that the Great Neck school district was not included as one of the comparables during the 2002-2007 round of bargaining or that Locust Valley and Syosset, which are not included in the Association’s five comparable districts cited throughout this proceeding, were included during that round. Given the Association’s non-rebuttal, I must assume that the school districts used by the parties as comparables during the last negotiations were, therefore, Manhasset, Roslyn, Jericho, Locust Valley, Syosset, and East Williston (“the 2002 six district comparables”).

Moreover, the Association stressed during this proceeding that the comparables used during the 2002 round were essentially “[t]o raise salaries significantly in an attempt to ‘narrow the gap’ that existed between the salary schedules of those districts and that of Cold Spring Harbor. They did not close the gap; it was not their intention to reach exact parity with those other districts, and they did not do so. They did raise salaries by a percentage greater than the going rate at that time.” (Id.). So it appears that the six district comparables were relied upon as a relative target for 2002-2006, but not an exact one, when setting salaries only. The Association does not claim that any other benefits were negotiated with an eye towards reaching near-parity with these comparable districts. As a result, I am left with the impression that the parties, on a one- time basis, decided to identify those districts which academically and demographically resembled the District and use the composite/average of those districts’ salary schedules to exceed whatever the “going rate” was at the time in the area of the District.

The lack of concurrence between the parties and/or lack of rebuttal by the Association as to the school districts that had been selected forces the fact finder to assume that there were six school districts “in play” during the 2002 talks. Even if this one-time occurrence were to provide some guidance, which would be flimsy at best, it appears that the Association argues that these comparables are to be relied upon for salary only and not other important and costly benefits, such as health insurance. Such a position is one that has never been presented to me during my many years of serving as a fact finder in the public sector. If school districts are to serve as comparables, then their entire contracts are to be relied upon for comparative purposes.

In my opinion, a party cannot “cherry-pick” certain school districts in terms of packaging a set of comparables and maintain that the particular package is to be considered by a fact finder in the future for one major element of a contract dispute, such as salary, while ignoring the same comparables for other aspects of the agreement, such as health insurance benefits, absent clear and unequivocal agreement between the parties that they have agreed to use different sets of comparables for different purposes, which is obviously not the case here.

It is well-established that comparable school districts are those that share similarities with the District, such as geographic size and proximity, number of students and buildings, financials, relative similar tax bases, and other similar indicia. I have found that in most situations, a school district’s comparables generally are those other school districts which are contiguous to it and found within the same town and county as the school district in question, and thus subject to the same taxing authority, especially when those other districts are component members of the same BOCES.

In this matter, the District falls within the Town of Huntington and within the County of Suffolk, except for one elementary school which is geographically located in the County of Nassau. The District is a component school district member of the Western Suffolk BOCES. It is difficult, therefore, to accept any comparables excepting those school districts which are in the same town and county as the District, and share the similar indicia as noted above.

Accordingly, and pursuant to the criteria set forth above, I find the comparable school districts to be found within the Town of Huntington, namely Elwood, Half Hollow



Hills, Harborfields, Huntington, and Northport-East Northport, all meet the aforementioned criteria.

### Ability to Pay

The second factor to be considered is a school district's ability to pay for certain contract proposals. There is no dispute between the parties that the District is an affluent one. There is dispute, however, as to the relevant financial data to be used to determine its financial climate at this time. Moreover, given the duration of the contract would be on a going-forward basis for four years, starting with the 2006-07 school year, the trends in costs which have impacted upon these financials must be carefully assessed when making any recommendation.

For the most part, the critical financial data presented by the Association regarding the District's wealth was based upon the "NYSED School Fiscal Profiles: Master Files 2004-2005" school year. For example, it noted that the Income Per Pupil was \$601,394, which presents a relatively wealthy taxpayer profile to the reasonable person. The District, however, pointed out that the same figure for the 2006-2007 school year dropped 40% to \$361,064 which would reflect a very comfortable income to a reasonable person but nonetheless demonstrates that the wealth of the District's taxpayers "took a major hit" for reasons unknown. Similarly, the Combined Wealth Ratio in 2004-2005 was reported by the Association to be 3.387. By the 2006-2007 school year, that figure dropped to 2.987 which, again, represents a decline of note with respect to the District's wealth ratio.

Moreover, although the Association pointed out that the same home in the District as opposed to one in Huntington would cost approximately \$300,000 more, the District points out that the local Sotheby's Realty report for the first quarter of March 2007 indicates a decline in home sales over the last two years in the range of 13%-17%. In addition, the tax levy in the Town of Huntington more than doubled over a ten year period, while the District's percentage of taxes paid by commercial taxpayers most recently was 0.78% and there is little hope for any increase in state aid, given that it has constituted approximately 10% or less in each District budget over the past 10 years.

Furthermore, while the Association points to the \$40 million bond issue passed in 2001 for school renovation and related projects, all of which appear to improve not only the educational program but the teaching environment, it must be noted that the bond would have been issued pre-GASB 45. If a bond were to be passed today, the District would be compelled to list retirement benefits for retirees and current employees as an accrued, unfunded liability on their financial statements which might impact upon the rating assigned to the bond. Although an unknown factor at this time, GASB 45 requirements must be regarded as real factors when comparing the past ability on the part of a community to raise funds for capital projects versus that community's future ability.

In short, while the District remains affluent and the Association maintains that its residents could, in sum and substance, readily maintain the status quo in light of escalating costs, the foregoing data show that "its taxpayers' pockets are not bottomless." Given that the taxpayers are virtually funding the entire school budget, with virtually no commercial tax base, or additional state aid in sight, or viable hope for any other funding source, along with the negative data regarding the precipitous drop in its financials over

the past two years alone, I find the District's ability to pay for a contract that maintains the status quo in high cost areas to have been impacted by these factors.

### Health Insurance for Retirees

One would have to live in the proverbial "bubble" to avoid the inescapable conclusion that health insurance costs are one of the most unpredictable and out-of-control budgetary items in both the private and public sectors. The fact that it is of great concern to the parties to this dispute is understandable from both sides. On the one hand, the Association contends that it was led to believe, due to the "spirit" of the 2002 negotiations which led to Appendix B confirming the District's longstanding practice of providing free health insurance for teachers in retirement, in exchange for the contractual provision whereby teachers would immediately begin paying 10% of their premiums while actively employed by the District, that the teachers' concerns regarding this topic during their retirement years had been fully addressed. It also believes that it has paid for this benefit by accepting lower salaries over the years, which shall be discussed below.

On the other hand, the evidence shows that the teachers were allowed prospectively to receive cash for their unused accumulated sick leave. In addition, there is no doubt that the costs of health insurance premiums, which have nearly tripled for the District over the past ten years, must be dealt with, in light of its decreasing financials along with the certainty of increasing and unpredictable mandated costs. Thus, its proposal to slightly alter the status quo by having the retirees pay part of their premiums during retirement is justified.

A review of the comparables shows that virtually all school districts, even those which comprised the Association’s comparables, have contract provisions which require a contribution toward premium payments for retirees to offset the cost to the District, ranging from a high in Great Neck and Jericho, where retirees pay 50% of individual and 35% of family premiums to a lower amount in East Williston, where a retiree pays 10% towards both individual and family premiums. The bargaining units in the school districts which have settled to date, for the periods covering 2006-2007 through 2009-2010, phased in retiree contributions at a rate from 10% to 25%, depending upon date of hire, and include the administrators and Superintendent. Thus, those working at lower salaries than the teachers, such as the teacher aides and assistants, will be making contributions to their health insurance in retirement.<sup>11</sup>

The Association’s proposal of establishing a “dedicated fund” comprised of the teachers’ retirement incentive of \$250 per year and an amount which would be paid by the active teachers over the next four years equal to approximately less than two percent of the premium would fail to “make any dent” in reducing the enormous cost of this benefit that the District would shoulder alone in years to come. Nor does it address the cost of the unknown premium when the active teachers begin to retire.

Accordingly, the following schedule is recommended to respect to contributions to health insurance premiums in retirement by active employees:

If retiring prior to July 1, 2008	8%
If retiring prior to July 1, 2009	10%
If retiring prior to July 1, 2010	15%

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<sup>11</sup> Although the Association argues in its October 26, 2007 letter that the custodians rejected its tentative contract which contained a provision for retiree contributions, such a contention is speculative, as there is no information as to the reasons for the lack of the contract ratification.

Active Employees

The same reasoning applies with respect to the need to increase contributions for active employees, as the costs of the premiums are exorbitant. The following, phased-in schedule is recommended with respect to active employees, which is in line with the rates paid by many of the school districts in the area and, in some cases, far below that of the majority of the Association's comparables:

2006-2007	10%
2007-2008	12%
2008-2009	14%
2009-2010	16%

Salary

In sum, the District has proposed a 3% increase for each year of a four year contract, while the Association has proposed 4.94%, 4.77%, 4.64%, 4.63% and 4.5% over a five year contract term. The Association has also proposed changes regarding longevity which essentially serve to pay the longevity bonus sooner and/or "fold" the bonus into the contract base with the bonus disappearing by 2010-2011.

Given that it appears that there is no dearth of applicants who wish to teach in the District, and no evidence which suggests that the District is having problems keeping experienced teachers on staff due to its current system, I find no rationale to make any recommendations concerning any amendment of the longevity schedule in the manner proposed by either the Association or the District.

The Districts' teachers who are at the MA+60 level, with 30 years experience (base and longevity) are earning approximately \$115,000, which is considerably more than other teachers in the school districts in the Town of Huntington, excepting Commack, where the similarly situated teacher would receive approximately \$117,000, with the remaining districts paying (in approximate dollars) as follows: Half Hollow Hills (\$108,000); Harborfields (\$106,000); Huntington (\$102,000) and Northport-East Northport (\$110,000). Even when comparing the same level of salary to the Nassau six comparables, the teachers at this level remain higher than those who work in four of the cited districts (Syosset at \$110,000; Manhasset at \$111,000; and East Williston and Great Neck at \$114,000). The District's teacher's salary at this level equals that of Roslyn and is only surpassed by Jericho, at \$118,000, with these two school districts enjoying a commercial tax base of approximately 25%.

An appropriate increase is one which would allow the District to maintain its standing within the Town of Huntington, as the District has not persuaded me that there are exigent circumstances to warrant any immediate reduction as the second highest paid among the Town's school districts, although there are fiscal concerns which were addressed above and acknowledged by increases in contributions to the health insurance premiums for active and retired teachers.

In light of the foregoing, the following salary increases are recommended as follows:

2006-2007	3.50% plus increment
2007-2008	3.50% plus increment
2008-2009	3.50% plus increment
2009-2010	3.50% plus increment

### **Remaining Proposals of the Parties Not Addressed in This Report**

As mentioned earlier in this Report, the overwhelming majority of the evidence and argument focused upon the issuance of payment of premiums by retirees for health insurance in retirement and by contributions to premiums by active teachers, as well as other salary matters. I found that given the enormity of the issues and the obvious importance of these two main issues to the parties, as well as the dearth of evidence on all remaining proposals not addressed in this report, I determined that the findings and recommendations needed to focus on the key issues. Accordingly, the remaining issues are remanded to the parties for further negotiation in the hopes that they will be able to reach settlement on all points.

### **CONCLUSION**

It is my opinion that the foregoing obligations represent a fair balance between the needs of the Association and its members, and the rights and obligations of the District. Despite the parties' positions on the health insurance for retirees issue, I strongly urge them to adopt the recommendations as presented, and to consider the alternatives, in order to end the dispute which has escalated over the past year and allow the District, the staff and the students to return to a more positive labor-management relationship.

**RECOMMENDATIONS**

1. The Agreement shall extend from July 1, 2006 through June 30, 2010.

2. Salary Schedule increases shall be granted as follows:

2006-2007	3.50% plus increment
2007-2008	3.50% plus increment
2008-2009	3.50% plus increment
2009-2010	3.50% plus increment

3. Contributions to Health Insurance Premiums in Retirement

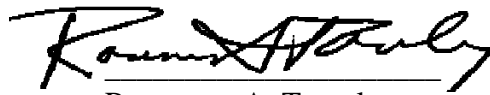
If retiring prior to July 1, 2008	8%
If retiring prior to July 1, 2009	10%
If retiring prior to July 1, 2010	15%

4. Contributions to Health Insurance Premiums by Active Employees

2006-2007	10%
2007-2008	12%
2008-2009	14%
2009-2010	16%

5. All remaining proposals are remanded to the parties for further negotiation.

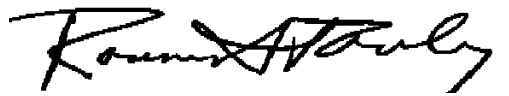
Dated: November 5, 2007  
Larchmont, New York

  
\_\_\_\_\_  
Rosemary A. Townley  
Fact Finder

STATE OF NEW YORK                    )  
COUNTY OF WESTCHESTER        ) ss:

On this 5<sup>th</sup> day of November, 2007, I, Rosemary A. Townley, Esq., Ph.D., affirm, pursuant to Section 7507 of the New York Civil Practice Law and Rules, that I have executed the foregoing as my FACT FINDER'S REPORT AND RECOMMENDATIONS.

Dated: November 5, 2007

  
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Rosemary A. Townley, Esq., Ph.D.  
Fact Finder