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Guilderland Central School District and Guilderland Teachers' Association(Guilderland Teaching Assistants Unit)

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Guilderland Central School District and Guilderland Teachers' Association(Guilderland Teaching Assistants Unit)

Abstract

Proceeding Between Guilderland Central School District And Guilderland Teachers' Association (Guilderland Teaching Assistants Unit). PERB Case No. M 2008-148. Donna Trautwein, Ph.D., Fact Finder.

Keywords

New York State, PERB, fact finding

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Proceeding Between
Guilderland Central School District
And
Guilderland Teachers' Association
(Guilderland Teaching Assistants Unit)

PERB Case No. M 2008-148

Report and Recommendations of Fact Finder
July 13, 2009

Donna Trautwein, Ph.D. Fact Finder

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Background

The Guilderland Teachers' Association (hereinafter Association) is recognized as the exclusive bargaining agent for the Guilderland Teaching Assistants Unit. Unit membership consists of all full-time and part-time Teaching Assistants, Occupational Therapy Assistants, Physical Therapy Assistants, Interpreters for the Deaf, and Community Resource Coordinators. During the 2007 – 2008 school year, approximately 240 full-time equivalent Teaching Assistants (for the 2008-09 school year), 4.6 full-time equivalent Occupational Therapy Assistants, and 1 Physical Therapy Assistant comprised the bargaining unit.

The Guilderland Central School District (herein referred to as District) and the Guilderland Teachers' Association Teaching Assistants Unit (herein after TA Unit) met in negotiations for the purpose of determining a successor agreement to their July 1, 2005 – June 30, 2008 collective bargaining agreement. The Parties met for eight (8) negotiation sessions beginning on April 30, 2008, and on September 5, 2008 the Parties jointly declared impasse.

The New York State Public Employment Relations Board (PERB) appointed Kevin Flanigan as Mediator. Mr. Flanigan conducted two mediation sessions with the Parties, October 20, 2008 and November 10, 2008. The mediation sessions were not successful, and the Guilderland Teachers' Association filed a request for fact-finding with PERB on January 29, 2009.

On February 11, 2009, PERB notified the Parties that Donna C. Trautwein, Ph.D. had been appointed as the Fact Finder. A fact-finding hearing with both Parties present was held on April 21, 2009, which culminated in an additional mediation effort. Although the Parties continued to work toward an agreement, efforts failed, and a Fact Finder's Report was requested.

OUTSTANDING ISSUES

Issue #1: Compensation and Longevity Payments

Association Position and Rationale

Background

The Association's position is that the TA Unit salary schedule is "simply uncompetitive." The Association's final specific proposal reduced the number of steps in the salary schedule from twenty-five (25) to fifteen (15) over a five-year period and "increases the competitiveness of the schedule." Costs for these changes would be: 2008-2009 – 8.9%; 2009-2010 – 7.91%; 2010-2011 – 7.93%; 2011-2012 – 9.56%; 2012-2013 – 13.67%. Costs for the final two years do not include turnover or retirements.

In terms of wealth and size, Guilderland compares with school districts in the Suburban Council. Of the thirteen Suburban Council districts, ten employ teaching assistants. The Guilderland TA salaries are lower than TA's in the other Suburban Council schools at all steps of the salary schedule, in addition to being lower than nearly all school districts in the region.

At step 5, Guilderland TA hourly wages are 47% lower than the median, 48% lower than the average of the other districts. At step 10, Guilderland TA hourly wages are 52% lower than the median, 54% lower than the average of the other districts. At step 15, the difference from the median is 37%; from the average of the other districts, 55%. Two other districts have TA schedules that include 23 steps. Guilderland TA salaries are 53% lower than one and 134% lower than the other. At the top step (25), Guilderland TA salaries are 29% lower than the other district whose schedule includes 25 steps.

A comparison of longevity stipends for Guilderland and five other districts shows that the Guilderland TA salaries become more competitive but continue to lag behind the other districts.

When compared to seven other school related personnel groups in the District, TA Unit salaries are substantially lower for this unit. Schedules for these other salary groupings end at step ten. At this step, TA salaries are \$1.96/hr. less than the next highest grouping, and \$10.57 less than the top paid grouping. It takes the TAs nearly 24 years to reach the step ten salary levels of five of the seven groups. TAs are required to have State certification, and to meet various post-secondary educational and ongoing professional development requirements. TA minimum job qualifications exceed those required for other school related personnel.

During the fact-finding hearing the District commented on Unit salaries being set through a regular collective bargaining process. One of the TAs who participated in organizing the Unit, responded that "from day one we were told this is what you're getting, and that's it," and they've accepted it since 1993.

Guilderland Teacher salaries compare more favorably, ranking 277th out of 636 districts statewide that reported teacher salary data. This places them in the 44th percentile, or below the middle but not at the bottom of the group. At the request of the hearing officer, the District compared salaries for other school related personnel titles with those in the other suburban council districts. The actual comparison was with thirteen other districts in the region, only some of which are suburban council districts. Nonetheless, for four of the five titles (bus driver, custodial worker, maintenance mechanic, school monitor, food service worker), Guilderland salaries were below the middle of the group but not at the bottom. The school monitor position was the only other position paid lower than in the other districts. (See page 7).

Ability to Pay

In February 2009, NYSUT completed a budget analysis of the Guilderland School District, based on the last four Annual Financial Reports, Form ST-3, the District submitted to the State Education Department. As a result, the TA Unit asserted that the District is “well prepared to navigate the current economic downturn...,” with an Unreserved Fund Balance of \$7.9 million, or 9.8% of its budget. The Unit has concluded that the surplus was accumulated during the past three years by underestimating revenues and overestimating expenditures.

As a result of further email discussion among NYSUT, the District, and the Fact Finder, the Unit asserts that even after a transfer from the Unreserved Fund Balance of \$2.7 million to be allocated to the 2009-10 budget, the Unreserved Fund Balance equals \$5,307,827 prior to the close of the 2008-09 school year.

The Unit projects that as of June 30, 2009, the District will have an Unreserved Fund Balance of \$9,354,000, or approximately 10% of its budget, in contrast to the ceiling of 4% for the Fund Balance as required by State law. (The District strongly disagrees with this analysis and their assertions will be presented below.)

The recently passed District budget is based on a 1.79% increase in spending, and an estimated .58% increase in tax rate for residents in the town of Guilderland, the lowest rate of increase for more than 15 years. Although these are difficult economic times, a number of bright spots in the economy have appeared, including projected job development in the capital region. Furthermore, while it is difficult to project what will happen with state aid, historically the State Legislature has made preservation of education aid a top priority during economic downturns.

Although the District is experiencing modest enrollment drops (1.35%) across the District, the middle school is increasing. Nonetheless, reductions of classroom and special area teaching positions are spread across the entire district, including 5.6 FTE in the middle school. In addition the District has announced a reduction of 22 FTE Teaching Assistant positions in both regular and special education, spread across all levels.

Other factors also improve the District’s financial situation. Its TRS contribution rates are decreasing from 7.63% to 6.2%. The ERS contribution rates are decreasing from 8.2% to 7.2%. The Federal Stimulus package is expected to provide \$627,370 in IDEA funds to the District.

Recent negotiations settlements in the District roughly average 4.5%. The Teacher Unit three-year settlement for the period July 1, 2008 through June 30, 2011 includes general salary increases including increment of 4.7%, 4.4%, 4.4% respectively. At the mediation session of November 10, 2008, the District’s final offer was 4.5% including increment for each of three years (2008-09 through 2010-11), plus twenty cents (\$0.20) per hour added to each longevity increment for each year of the contract.

The Unit rejected this offer because it would not advance its position relative to other TA Units in the suburban council or to other school related personnel units in Guilderland. Since 1% of the unit payroll costs \$24,867, the Unit asserts that the District has more than adequate financial wherewithal to raise Unit members' salaries to a more competitive level.

District Position and Rationale

Background

The District's position is that over time it has adhered to a philosophy of "living within our means" with regard to collectively bargained wage and compensation settlements. Their goal has been to "provide a fair and equitable compensation that will maintain and preserve the strong educational program..." The current proposal is a fair offer considering "declining revenues causing a shift to property tax owners; an inflation rate of less than 1%; and negative prospective financial indicators such as the ballooning state deficit and expected sharp increases in mandatory employer contributions to the retirement system."

It is offering its earlier proposal that was of 3.5% wage increases, including increment, for each year of a three-year contract term (not the 4.5% that was offered at the mediation session and rejected by the TA Unit), in contrast to the Unit's proposal for wage increases ranging from 7.9% to 13.7% over a five-year contract term.

A summary of eleven current contract settlements provided by the District shows that percentage increases that apply to 2008 or later for ten of the eleven units are less than 3.91%. The exception is the Teachers' Unit, which has settled at 4.7%, 4.4%, 4.4% for 2008-2011. The higher settlement is a consequence of extending the Teacher day by 45 minutes.

Current economic conditions, including the recession, growing unemployment, the increased risk of home foreclosures, the collapse of the stock market, and the state deficit, make higher contract settlements irresponsible, as well as unresponsive to input from the Citizens' Budget Advisory Committee process. In addition, the March 2009 Consumer Price Index for the New York-New Jersey Region shows that the rate of inflation has fallen to eight-tenths of one percent (.8%) from the 1.5% of several months ago. The District's offer is more than four times the current rate of inflation in contrast to the Unit's request, which is 10 to 17 times the inflation rate.

Any increase in compensation for the TA Unit is affected by the large number of Unit members. In a comparison of 15 area districts with student population between 2200 and 10,500, Guilderland employs the largest number of Teaching Assistants, 45% more than the next highest district. When compared to the two districts closest in size, North Colonie employs 38 TAs; South Colonie employs 71 TAs; and Guilderland now employs 210 TAs.

The Unit has not provided a longevity payment proposal, although the District proposed a restructuring of eligibility levels without changing current payment amounts. Current longevity payments occur at 5, 8, 12, 16, 20, and 25 years. The District has proposed an equally spaced schedule occurring at 5, 10, 15, 20, and 25 years. The District's has not determined how the current longevity amounts would be applied since their proposal reduces the number of payment levels from six to five.

Prior contract negotiations with the TA Unit have taken place with a NYSUT representative at the table, and without the District's use of a professional negotiator. The settlements have been agreed to voluntarily and accepted by the Unit as fair. Only now, at this financially difficult time, are they asserting that their salaries are substantially lower than other area school districts and seeking wage parity.

Ability to Pay

Several factors, some current, some projected, are affecting the District's financial decision making. Health insurance premium costs are anticipated to increase 8-10%, and the Teachers' Retirement System has warned districts that the downward slide of capital markets is likely to contribute to a "significant increase" in the Employer Contribution Rate in 2010-11.

Given the \$11-16 billion deficit New York State is facing (depending on the effect of budget cuts and state level stimulus funding), education funding is going to be impacted. The Governor's Executive Budget proposal released in December proposed a reduction of \$2.7 million state aid for Guilderland. This would have resulted in a transfer of 4.8% onto the property tax. Federal stimulus funds will restore the potential reduction in school funding, but it is intended to be a one-time occurrence. It also does nothing to address rising costs incurred by the District. Stimulus funds are accompanied by warnings to districts that this is temporary funding, not to be used for ongoing expenses for staff, programs, and services. A recent Council of School Superintendents article supports the District's assertion that a substantial reduction in State Aid only has been "deferred for one to two years."

As of June 30, 2008, the District had an Unreserved Fund Balance of \$7,973,802. Of that, \$3,600,000 was designated for subsequent year's expenditures and allocated to the 2008-09 budget. Currently, \$2,665,975 has been designated out of the 2008-09 projected Unreserved Fund Balance to lower taxes in the 2009-10 budget.

Furthermore, the District disputes the calculation of an Unreserved Fund Balance prior to June 30, 2009 of \$5,307,827. The District asserts that NYSUT's projection of a fund balance of \$8,287,827 as of June 30, 2009 is inaccurate because it was built "off a base figure that was not calculated correctly." Instead, the District's calculations are that after subtracting the \$2,665,975 from an undesignated Unreserved Fund Balance of \$4,373,802, the District has a balance of \$1,707,827 "subject to any operating surplus/deficit" in 2008-09.

New York State requires that a district's undesigned Unreserved Fund Balance be no more than 4% of the budget, not the entire Unreserved Fund Balance. Therefore, the District states that the Unit's estimate of a 10% Unreserved Fund Balance in excess of state requirements is a "gross misrepresentation."

Efforts to address these complex financial challenges combined with the impact of no new state aid forced the District to eliminate 36 full-time equivalent positions, and to considerably reduce allocations for equipment, supplies, conferences, professional development, contractual services, building maintenance, and pupil transportation. Furthermore, the Governor and State Legislature continue to discuss the possible enactment of a property tax cap. Under a tax cap, increased fixed costs such as negotiated compensation increases could force the district to cut programs and eliminate more positions.

Recommendation

Settle these negotiations with a five-year contract, July 1, 2008 to June 30, 2013. This would include the past year, 2008-09 and four years into the future. During the five year contract period, increase the salaries of the Teaching Assistants Unit to make them 80% of the average starting salary in the Suburban Council by the end of the contract period. Reaching this goal also will give the Teaching Assistants a relative salary position consistent with nearly all other units in the District.

Discussion

At the outset, it should be noted that no evidence was presented suggesting that Guilderland TAs have a smaller workload than do TAs in comparable districts as a result of the substantially greater size of this bargaining unit.

In Guilderland, TAs are used in both regular education and special education programs. Kindergarten and first grade classrooms have a TA three (3) hours per day; second grade classrooms, two (2) hours per day. TAs also are used to provide extra help in math and reading programs and in enrichment programs. Regular education TAs comprise 35% of the unit; special education, 65%.

The model for providing special education services utilizes a larger number of TAs than other models. The use of TAs is under review, and the number has been reduced from 300 in 1993, to 240 in 2007-08 to 210 in 2009-10. The District also tries to educate as many special education students in-district as possible, including using self-contained classes with mainstreaming support services. This also increases the number of TAs needed.

When compared to the other nine Suburban Council School Districts on 2006 Property Value Per Pupil and 2007 Income Per Pupil, Guilderland ranks third highest in each category. When Guilderland is compared to the Suburban Council Districts on 2007-08

Approved Operating Expenditures Per Pupil, Guilderland ranks fifth. Guilderland asserts that it has worked within the means of its local constituencies, employing sound fiscal management practices to enable it to weather bad economic times. These data, along with those cited above, support this assertion.

Comparisons of Guilderland’s salaries to surrounding Suburban Council Districts mostly mirror this picture. For 2007-08, median Guilderland Teacher Salaries were above the statewide median. The table below presents the relative rankings of starting salaries for five CSEA positions. Four of the six salaries are close to but just below the average starting salaries for the Suburban Council.

Guilderland Compared to Suburban Council CSEA Position Salaries

Position	Average Starting Salary (incl. Guilderland)	Guilderland Starting Salary	Guilderland as % of Avg. Starting Salary
Bus Driver	\$16.34	\$15.03	92%
Custodial Worker	\$14.07	\$12.35	88%
Maintenance Mechanic	\$17.15	\$15.25	84%
School Monitor	\$14.23	\$7.96	56%
Food Service Helper	\$10.74	\$10.42	97%
Teacher Assistant	\$12.46	\$9.00	72%

It takes a Guilderland TA four years to reach a salary equivalent to the starting salary of the next lowest district, and nearly 24 years to reach a salary equal to the highest starting salary among the Suburban Council District. The chart below shows how the top salaries of the nine districts compare.

Guilderland Compared to Top Step Salaries of Suburban Council Districts

District	Top Step Salary (2008-09))	# Steps to Top
Guilderland	\$18.00/hr*	25*
A	\$34.15	23
B	\$23.89	25
C	\$20.26	10
D	\$20.31	12
E	\$15.85*	16*
F	\$17.47	8
G	\$18.25	14
H	\$17.58	10

*2007-08 salary

Several strategies could be utilized to make these adjustments and lessen the short term financial impact on the District when the economy is so unpredictable.

- Increase salaries by a specified number of cents/hour on September 1, and increase them a second time by a specified number of cents/hour on February 1. For many past contracts, this unit has received percentage increases as opposed to flat dollar (or cents per hour) increases. This has the effect of increasing the salary spread across the schedule. Utilizing this strategy would begin salary movement toward the goal, reduce the spread in the schedule, and lessen the financial impact in the near term.
- Provide a retention adjustment to more senior unit members, such as those above step 5, in the form of a flat dollar amount to be included in the base salary. Or the amounts could be varied according to years of employment, such as differing amounts for 5, 10, and 15 years. These adjustments could be specified now, but made later in the life of the contract when, hopefully, the economy is more stable.
- Restructure the longevity amounts, as proposed by the District, and increase them to help reach the goal cited above.
- Compress the salary schedule by reducing the number of steps in the schedule, which has the effect of increasing salaries more rapidly. For example, one step could be removed from the schedule for each year of the contract. With a five year agreement, the number of steps would be reduced from 25 to 20.

Issue #2: Retiree Health Insurance

Association Position and Rationale

The Unit proposed deleting Article XII, C. 1. c. which states that retiree health insurance will be available provided that “the employee has no less than fifty (50) accumulated sick leave days at the time of retirement.”

The Unit also proposed modifying Article XII, C. 2. to enable all unit members to receive retiree health insurance after 12 years of District service, eliminating the requirement for 50 accumulated sick days for eligibility, and with the employer contributing 80% of the premium, and the retiree contributing 20%.

The Unit also proposed modifying Article XII, C. 4. so that the District would increase its premium contribution rate from the current 50% to 80% for surviving spouses.

The Unit seeks to have parity with other bargaining units in the District. Currently, Unit retirees with at least 12 years but less than 20 years of District service are treated differently from most, or possibly all, other bargaining units. All active District employees have the same eligibility standard of 12 years of service but have differing premium contribution rates and many do not require numbers of accrued sick days for eligibility.

District Position and Rationale

The District has responded that no change should be made to the existing retiree health insurance provisions. They argue that similar provisions requiring minimum numbers of accrued sick days to be eligible for the retiree health benefit, and that differing employer contribution rates exist for other bargaining units. The Guilderland Employees Association (maintenance, transportation, and for service personnel) are required to have accrued 100 sick days for eligibility; the Teacher Aides Association requires 125 accrued sick days for eligibility.

All twelve of the District's bargaining units have some threshold of years of service to be eligible for retiree health insurance. For some units, the number of accrued days at retirement determines the District's contribution toward the premium.

Likewise, the District's premium contribution for surviving spouses varies among the units, with the Employees Association and Teacher Aides Association receiving no contribution.

The District also argues that the cost of providing retiree health insurance is a long term liability, increasing faster than the cost of living and consuming an ever increasing proportion of the budget.

Recommendation

Make no change to the existing health insurance provisions.

Discussion

Since there is not a common standard across the district for the provision of retiree health insurance, the members of the TA Unit are not uniquely burdened by the current provisions. Furthermore, the federal government is working to address how health insurance is provided across the country, which may have a substantial impact on health insurance costs, availability, and taxation of benefits.

Issue #3: Issues Pertaining to Occupational Therapy Assistants and Physical Therapy Assistants

Salary/ Length of Workday

Association Position and Rationale

The collective bargaining agreement does not specify the number of hours that constitute a workday for either Occupational Therapy Assistants (OTAs) or Physical Therapy Assistants (PTAs), who currently work seven (7) hours a day, including lunch.

Since the Therapy Assistants are salaried and not hourly employees, the Unit asserts that extending the workday to seven (7) hours and 45 minutes is a 7% increase in the workday and should be compensated. They are requesting a 5% increase in annual salary.

District Position and Rationale

The District concurs that the length of workday for OTAs and PTAs is not defined in the existing contract. They expect that the therapy assistants should work the same length of day as the Teachers, which is seven (7) hours and 45 minutes and receive no increase in salary. This would allow the therapy assistants to service students during the instructional day and still allow time to meet with teachers, attend weekly meetings, or prepare reports or other paperwork.

Recommendation

Increase the salaries of OTAs and PTAs .5% (one-half of one percent) in recognition of the longer workday.

Discussion

Although the Therapy Assistants' workday is not defined in the contract, their seven hour day was consistent with the previous seven hour workday for Teachers.

When the Teacher workday was increased from seven (7) hours to seven (7) hours and 45 minutes, the teachers received a higher salary increase than other bargaining units. The increase over and above other units amounted approximately to between .65 and .75 percent.

Furthermore, the District argued in its discussion of salary increases that the average salary increase for Teachers of 4.5%, which was greater than other units, reflects the increased length of workday. It would therefore be consistent with that logic that the Therapy Assistants also receive a salary increase to reflect the increased length of workday.

However, this fact-finding report is already recommending a substantial increase in salary for all Unit members, which mitigates the size of the increase recommended for the longer workday.

National Board Certification Salary Differential for OTA's

District Position and Rationale

The District has proposed an annual \$300 payment, not added to the base salary for annual salary increment purposes, for OTAs who receive and maintain National Board Certification.

Association Position and Rationale

This issue was not addressed in the Unit's brief. During the fact-finding hearing, the NYSUT representative suggested that since this amount is approximately 1% of an average OTA salary, a more appropriate amount would equal 2.5% of average OTA salary. This would be respectively consistent with the amount paid a Teacher.

Recommendation

Pay \$300 annually to OTAs who receive and maintain National Board Certification. This amount would not be included in the base salary for purposes of calculating annual salary increments.

Issue #4: Unused Sick Leave Buyout at Time of Retirement

Association Position and Rationale

Article X, Section G of the collective bargaining agreement addresses the payment for unused sick leave at retirement. The current benefit provides \$40 per day for each day of accumulated sick leave above 50 days and not to exceed 75 days. The Unit proposes a benefit of \$60 per day for each day of accumulated sick leave, starting at one (1) day, and not to exceed 100 days.

They assert that the Teacher Unit and Clerical bargaining unit have no 50 day requirement. Clerical employees receive \$85 per day starting at one (1) day and not to exceed 100 days. Teachers receive \$80 per day starting at one (1) day and not to exceed 200 days. In addition, Teachers who have accrued more than 200 days may receive an additional \$2500 for each of two blocks of 50 accumulated days.

Comparison of Sick Leave Buyouts at Time of Retirement
Existing Provisions

	Min/Max # Days	Payment/Day	Max Regular Benefit	Additional Benefit
Clerical Unit	1/100	\$85	\$8500	None
Teacher Unit	1/200	\$80	\$16,000	\$5000
TA Unit	50/75	\$40	\$3000	none

District Position and Rationale


The Unit's position would increase the number of people eligible for sick leave buyouts by eliminating the minimum accumulated days for eligibility. It also would increase the maximum possible payment to \$8500 from the current \$3000. Both of these provisions would substantially increase the District's possible financial liability.

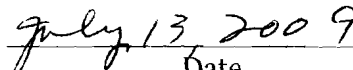
Recommendation

Make no change in the provisions for payment for unused sick leave at the time of retirement. At this time, it is more important to focus District resources on rectifying the salary disparity.

CONCLUSION

All terms and conditions of employment not addressed in this Fact-Finding Report or mutually agreed to by the parties shall remain in full force and effect.


Donna C. Trautwein, Ph.D.


Date