

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

----- x Case No. 2005-056
HEMPSTEAD UNION FREE SCHOOL DISTRICT (UFSD) # 1 x FINDINGS OF FACT
x
-and- x REPORT
x and
UNITED PUBLIC SERVICE EMPLOYEES UNION (UPSEU) x RECOMMENDATION
----- x

HEARING HELD: November 1, 2006

FACT FINDER: Owen B. Walsh

LOCATION: Administrative Offices
HEMPSTEAD UFSD # 1

APPEARANCES;

For HEMPSTEAD UFSD # 1 (hereinafter, "District");

Dr. Nate Clay	Superintendent of Schools
Allan Philips	Interim Asst. Supt. for Personnel
Gerard Antoire	Asst. Business Manager
Michael Krauthamer, Esq.	School District Attorney
Lamb & Barnosky, LLP	

For UNITED PUBLIC SERVICE EMPLOYEES UNION (hereinafter, "Union");

Javort Booze	Head Custodian
Minnie Pearsall	Custodian
Aaron Finney	Custodian
Aloysius Elvin	Custodian
Claude Kendrick	Grounds man
Johnie A. Tyson	Grounds man
Glenn Bucknor	Electrician, Maintenance
Randy Tillman	Union Director of Organizing

BACKGROUND

On July 26, 2006, the undersigned was appointed as Fact Finder in the subject dispute by the New York State Public Employment Relations Board (PERB) in Case No. 2005-056 to inquire into the causes and circumstances of the dispute involving the District and the Union. Prior thereto, PERB had assigned a Mediator to meet with the parties in an effort to effect agreement and ultimate settlement of the impasse. After these meetings, the Mediator, Karen Kenney, submitted her Recommendations to the parties and the District's counsel subsequently advised that the District, in an effort at compromise, was willing to accept the Recommendation in its entirety and to memorialize its terms into an official Memorandum of Agreement to be presented to both parties for ratification. The Union, however, indicated that the Recommendation was not acceptable and requested appointment of a Fact Finder.

The undersigned contacted the parties, by their representatives, and scheduled a meeting to be held on September 13, 2006 in the Administration Building in the District. At that meeting, the parties outlined their respective positions and the Union indicated that it was in agreement with all of the terms of Mediator Kenney's Recommendations, except for salary.¹ Following that meeting, District counsel wrote to the Fact Finder that the parties, indeed, were in agreement with a majority of the items set forth in the Mediator's Recommendation, and specifically, the following items:²

* All employees shall be required to contribute 5% of the premium cost of health insurance effective July 1, 2006, 8% of the premium cost of health insurance effective July 1, 2007 and 10% of the premium cost of health insurance effective July 1, 2008. (Article VII, Section A of the contract).

* There shall be a reduction in the amount of annual sick days, from 14 to 12, that employees hired after July 1, 2006 will receive. (Article XXX, Section A).

* Employees shall be required to provide a physician's certificate for all absences of more than three consecutive days, rather than the five consecutive days currently in the contract. (Article XXX, Section E).

* For the first 10 years of service to the District, employees hired after July 1, 2006 would receive a reduction in the amount of annual personal days from three to two. (Article IX).

* Effective July 1, 2005, there shall be a \$100 increase in the off-schedule longevity stipend that employees with 15 years of service currently receive and, effective July 1, 2005, a \$300 increase in the off-schedule longevity stipend that employees with 20 years of service currently receive. (Article XXIII).

* Effective July 1, 2006, and for the following two school years, there shall be a \$36 increase per year in the amount that the District contributes toward dental insurance for each employee. (Article VII, Section C)

Accordingly, the parties have described the Unresolved Issues as concerning a Wage Increase for each of four years from July 1, 2004 and an increase in the Salary Steps from Steps 11 through 20. As well, the District has sought to reduce the number of Holidays from 19 to 16. (See Union Brief, Item 1; District Brief, pages 3-5).

At the Hearing on November 1, 2006, the Union argued that the contract should see a 5% wage increase, per year, from July 1, 2004 to June 30, 2009. Additionally, the Union sought a \$250 salary schedule increase (for a total \$500 step increase) for Steps 11 through 20 of the Salary Schedule while the District urged a reduction in the Holiday Schedule so that there would only be an aggregate of 16 paid

¹ UPSEU ltr dtd 9/26/06; Union Brief, Item 1.

² District Brief, p. 3.

Holidays, rather than the 19 provided in the contract that concluded on June 30, 2004.

FINDINGS and RECOMMENDATIONS

Having reviewed the documents, exhibits and briefs of the parties and considered the arguments of each, the Fact Finder details the respective positions, analyzes same and submits the following findings and recommendations on the unresolved issues of wages, salary schedule and holidays:

I . WAGES

A. District Position

Emphasis has been placed upon the financial ability of the District to pay as well as the interests and welfare of the Hempstead community, and the District asserted that it is in an “extremely restricted financial condition.”³ In support of its contention, the District has noted that the District’s Combined Wealth Ratio (CWR), the ability of a school district to raise local revenue and its ability to pay salaries, places it at the lowest reported CWR of the 56 school districts in Nassau County for the school year of 2005-2006. Indeed, the District disclosed, Hempstead had a CWR of 0.620, behind Roosevelt, Freeport and Elmont, at the bottom of the list, while Oyster Bay, was at the top with 4.167⁴ Thus, it observes, Hempstead is not only just one of four districts below the State average of 1.0, but it has the lowest “wealth” of any district in the entire County. The result, it argued, is that Hempstead, no matter how you compare districts, whether by Town, enrollment, geographic area, etc., is in the worst position of all the districts to afford salary increases and other enhancements for its employees.⁵

To buttress this argument, the District stated, that Hempstead was one of only four “high need” school districts in Nassau County (District Brief, p. 11, Exhibit 10, p. 21), that is, a district having high student needs relative to said district’s capacity to raise revenues, and concluded this affects the District’s ability to afford salary increases for its employees. In the same vein, it cites the Full Value of Taxable Valuation of Real Property per Enrolled Pupil (FV/Pupil) index (District Brief, Exhibit 11) and the Adjusted Gross Income per Total Wealth Pupil Unit (AGI/TWPU) calculation (District Brief, Exhibit 12) to demonstrate the fiscal limitations existing in the District. Reference is also made to a NEWSDAY report which ranked 289 Long Island communities by their per capita income (average income per resident) and average earnings per worker and noted the report placed the Village of Hempstead near the bottom, being 286 out of 289.⁶

From these data the District stated that increasing the tax levy for District families and individuals, who have such a low level of income, would have a larger impact and require a greater sacrifice than is placed on practically any other taxpayer in Nassau County. and it observed that the Board of Education of the District , cognizant of the foregoing factors, “focused its efforts on providing relief to the overburdened taxpayers” with a “7.3% reduction in the tax levy for the 2005-2006 school year.” The District declared that “it must balance its ability to provide fair and equitable raises for its staff against allocating the appropriate resources for its students, while at the same time being responsible to the District taxpayers.” (District Brief, p. 13.)

With these criteria in mind, the District maintained that the District had offered the Union a fair and equitable proposal which, in juxtaposition to the Union proposal and Mediator’s Recommendation, is as follows:

³ District Brief, p. 7.

⁴ District Brief, p. 8-11.

⁵ District Brief, p. 11.

⁶ District Brief, p. 13, Exhibit 13,

School Year	District %age Increase Plus Increment	Union %age Increase Plus Increment	Mediator Kenney %age Increase Plus Increment
2004-2005	0%	5%	\$350/\$550 ⁷
2005-2006	2% (based on the 2003-04 Schedule)	5%	3%
2006-2007	2%	5%	3%
2007-2008	3%	5%	3%
2008-2009	3%	5%	3%

The District notes that it has moved from its offer to the Mediator's Recommendation, which it has adopted and is considered by the District as being fair and reasonable in light of the economic status of the District. (District Brief, p. 5)

In addition, the District urges that for every increase in salary that is provided to the Union, the District incurs additional increases in its costs for overtime, the State Employees Retirement System, Social Security as well as the cost of leave entitlements afforded the Union membership; indeed, it noted, in one year alone (between school years 2004-2005 and 2005-2006) the District's contribution towards pensions for Union members increased 39%.⁸

Finally, the District argued, its proposal included a freeze of the 2004-2005 school year, and although the District adopted the Mediator's Recommendation of a one time off-step payment (see above), the Mediator recommended that the salary schedule for 2004-2005 remain frozen , demonstrating that the Mediator was "cognizant of the compounding impact that the District would be faced with allocating money to the 2004-2005 schedule." (District Brief, p. 16).

B. Union Position

Briefly stated, the Union seeks a 5% increase per year effective July 1, 2004 until the proposed contract termination on June 30, 2009. In support of its contention, it has submitted comparable data from area school districts (Elmont, Floral Park, Franklin Square and New Hyde Park) together with the Collective Bargaining Agreement (CBA) of the Sewanhaka Central High School District which encompasses the four aforesaid area school districts. (Union Brief, Item 1, page 4). The wage increase for the Non-Supervisory Custodial Full Time Personnel in the latter district, for the period of July 1, 2004 thru June 30, 2007, reflects a 3.5% increase in each of the three school years covered by said contract.

Another comparable area school district, the Union noted, was Hempstead Union Free School District, where an increase of 3% (plus increment) was provided Clerical personnel. in 2004-2005, but no related Salary Increase data for custodial personnel except from five areas (Uniondale, Valley Stream, Wantagh, Westbury and West Hempstead) where a uniform 3.5% increase was provided and only three (Wantagh, Westbury and West Hempstead) had percentage increments ranging from 0.9 to 3.0%. (Union Brief, Item 1, p.5, Nassau BOCES, N.I.S., p.57).

The Union also provided data from North Shore CSD, that indicated for certain of the years in question, Custodial Wage Increases in school year 2005-06 of 3%, 2006-07 of 3.15%. 2007-08 of 3.15% and 2008-2009 of 3.15% (Union Brief, Part 1, p. 6); for the Roosevelt UFSD, that indicated for certain of the years in question, Custodial Wage Increases in school year 2004-05 of 3.35%, 2005-06 of 3.35%, 2006-2007 of 3.25% and 2007-08 of 3.25% (Union Brief, Part 1,, p.7); for the Westbury UFSD, that indicated for certain

⁷ A one-time off-step lump sum payment for employees in the job title of cleaner and the higher one time off-step lump sum payment for employees in other job titles, with all employees required to remain in active service with the District at the time of ratification to be eligible for these increases.

⁸ District Brief, p 15, Exhibit 17.

of the years in question, Custodial/Maintenance Wage Increases in school year 2004-05 of 3.25%, 2005-06 of 3.25% and 2006-07 of 3.5% (Union Brief , Part 1, p. 8); and, for the West Hempstead B of E, that indicated for certain of the years in question, Custodial/Maintenance Wage Increases in school year 2004-05 of 3.5%, 2005-06 of 3.75% and 2006-07 of 3.75% (Union Brief, Part 1, p 9) .

ANALYSIS

The District makes the more compelling “ability to pay” argument. Indeed, it should be noted, that of the districts asserted by the Union to be comparable in ability to pay, only the Roosevelt district (at a CWR of 0.649) was near it (at the bottom with a CWR OF 0.620) as one of the four districts in Nassau County below the State average CWR of 1.0. Further, the other districts asserted to be “comparable” only had salary increases in the 3 to 3.75% range which is much below the 5.0% sought in each year in question, from July 1, 2004 to June 30, 2009. As noted in the District’s Post-Hearing Brief⁹ , “these other districts are able to afford the salary increases they provided because they are ‘wealthier’ districts based on the applicable statistical data provided by the New York State Education Department.”

Of significance also is the District Post-Hearing Brief argument that , even as to Roosevelt, a comparison of the relative benefit packages (Hempstead to Roosevelt) “clearly indicates that Hempstead provides its employees with far superior terms and conditions of employment” such as, four more holidays than are provided in Roosevelt and with a health insurance contribution of only \$200 per year as against a healthy insurance contribution in Roosevelt of 25% of the premium cost.¹⁰ Finally, as noted in Exhibit 1 to the District’s Post Hearing Brief (salary schedules reflecting what the Union salaries would be if the District’s proposed salary increases were recommended), Union members in job titles of cleaner, custodian and groundskeeper (which constitute a majority of the bargaining unit), would have a higher starting and top salary in each year of the proposed contract than their counterparts in Roosevelt.

However, the Union, in accepting the Mediator’s Proposal on the issue of Health Insurance, has agreed that all employees in the Unit would be required to contribute 5% of the premium cost of health insurance effective July 1, 2006, 8% of said premium cost effective July 1, 2007 and 10% of said cost effective July 1, 2008, rather than the flat \$200 per year it has paid in the past. As well, the Union has accepted a two-day reduction in the amount of annual sick days (from 14 to 12) for employees hired after July 1, 2006. Moreover, and as considered below, the District seeks a reduction in the overall number of holidays available to Union members (from 19 to 16 days off), and this is another diminishment in benefits with a dollar cost attached to it.

RECOMMENDATION:

The foregoing benefit reductions on the part of the Union require some further consideration by the District, vis-a-vis its current salary proposal since it will experience lower operational costs and in effect realize savings, a portion of which may be applied to salary needs; indeed, as is noted by the Union in its Post Hearing Brief,¹¹ the “District’s budget was passed by District taxpayers for the 2006-2007 year” and the Union, without more, contends that funding for the Union was included in the budget. Be that as it may, it is recommended that the District, consistent with the Mediator’s Recommendation, enhance the one-time off-step lump sum payment (to those in the Cleaner title as well as to those in other job titles) for school year 2004-2005 by utilizing a portion of the savings to be effected by the greater contribution to be made by the Union members to the Health Insurance premium cost in the remaining years of the proposed contract term.

⁹ School District Attorney letter dated November 29, 2006, page 1.

¹⁰ Id. at page 3.

¹¹ UPSEU letter dated November 29, 2006, page 2.

As for requested salary step increases from Step 11 to 20 (from \$250 to a total of \$500 between each step), the Union offered as comparable data (from Item 2 of its Brief) the Wage Increase in the Freeport School District provided by the NIS 2003-2004 Report which stated Freeport had a 19 step schedule with a maximum salary of \$52,789; however, the 20 step schedule in Hempstead for the Custodial Unit (see Agreement between the District and Union, July 1, 1999 to June 30, 2004, Union Brief) had a 20 step schedule with a maximum salary of \$55,560 and at the 19th step, a salary of \$55,309, or more than \$500 in excess of the comparable salary paid in Freeport. Accordingly, the data provided by the Union does not support its contention for a step increase and; indeed, the other economic data that has been provided supports the District's argument that its benefit package is more than comparable with districts within its combined wealth ratio area. No step increase appears warranted at this time.

II. HOLIDAYS

District Position:

In support of its proposal that Holidays in the District be reduced from 19 per year to 16, the District cited a survey of districts in Nassau County responding to the number of paid holidays provided custodial employees,¹² and noted the average number to be 15.9 and urged that reducing the number of paid holidays in Hempstead will bring the district in line with the average other custodial employees receive in Nassau County. In addition, the District argued, with school closed, custodial staff can perform work necessary to keep the buildings in the best condition possible and it sought the deletion of the paid holidays of Holy Thursday, one day during the February winter break and one day during Christmas break.

Union Position:

No formal argument was submitted on this item.

ANALYSIS:

It is obvious that elimination of three paid holidays and requiring work by the custodial staff on those days will not only effect productivity but also result in savings to the District. Those savings are available for application to other areas of the District/Union collective bargaining agreement, such as employee's salaries. Although there was no manifest concession on this item, it recommended that a reduction in the number of paid holidays from 19 to 16 be made, with the realization that a portion of the savings be applied to the salary area of the District/Union Agreement, such as is recommended above, an enhancement of the "one-time off-step lump sum payment".

CONCLUSION

It is anticipated that the foregoing Findings and Recommendations will assist the parties toward a negotiated resolution of the current impasse and lead to a Collective Bargaining Agreement for the July 1, 2004-June 30, 2009 contract term.

¹² District Exhibit 19, Negotiations Informational Services for Chief School Administrators and Negotiators, 2005-2006-Custodial Agreements; District Brief, page 17.

Respectfully submitted,

OWEN B. WALSH,
Fact Finder

Dated: Oyster Bay, New York
18 December 2006

Copy to:

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