

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

<p>In the Matter of the Fact-Finding between, ORLEANS-NIAGARA BOCES, Employer, -and- ORLEANS-NIAGARA ADMINISTRATORS AND SUPERVISORS ASSOCIATION, Union.</p>

REPORT
AND
RECOMMENDATION

PERB CASE NO.
M2007-072

Before: MICHAEL S. LEWANDOWSKI, Independent Fact Finder

Appearances:

- For the Employer: Wayne M. Van Vleet
Director of Labor Relations

- For the Union: Thomas M. Pomodoro
Charles Kramer
SAANYS Negotiators

The Orleans-Niagara BOCES ("BOCES") and the Orleans-Niagara BOCES Supervisors and Administrators Association ("Union" "Association") failed to reach agreement in collective negotiations for a successor agreement to the collective bargaining agreement ("Agreement") that expired on July 1, 2006. Mediation efforts failed so the parties petitioned the New York State Public Employment Relations Board ("PERB") to appoint a Fact Finder. I was subsequently designated as that Fact Finder. The Association represents twelve (12) administrators and supervisors in the BOCES.

In accordance with the preceding designation, the parties agreed to meet on October 25, 2007 and set in place a process to go thru the instant fact-finding. The process included an

exchange of data and arguments via written submissions. The issues presented for review by me were narrowed to those reported on here. As part of the agreed to process, by mailings dated January 11, 2008, the parties provided substantial evidence in the form of documents in support of their respective positions.

The following constitutes my findings and recommendations on the issues submitted.

ISSUES

The parties have narrowed the issues to be reviewed here to various aspects of salary, health insurance issues and the length of the Agreement.

LENGTH OF CONTRACT

The parties have both indicated an interest in a four-year agreement. Given that interest and the passage of time since the

expiration of the Agreement and given the efficiency of not having to re-enter negotiations soon after reaching an agreement here, **I recommend the new agreement commence July 1, 2006 and continue for four (4) years expiring on June 30, 2010.**

COMPENSATION/WAGES

The parties differ as to their proposals on wage increase amounts during a new agreement.

The Association proposes a \$3,000 per year increase in salaries with an additional adjustment to be paid to the four lowest paid administrators. Under the Association proposal, salary increases are to be retroactive to July 1, 2006. The District has an interest in increasing the salaries of the lowest paid administrators and the Association proposal would accommodate the District's need to adjust those salaries. Not considering the salary adjustments for the lowest paid administrators, the salary increases provided by the Association proposal would increase salaries by 13.7% in total or 3.425% per year.

By including adjustments to the salaries of the lowest paid administrators, the salary package would be significantly higher.

The Association is vehemently opposed to any salary agreement that would cap its highest paid members thus

discriminating against the Association's most senior members. The Association cannot agree to limit, as in the instance of member Barbara Hall, a senior member to a .75% increase for three (3) years with a 0% increase in year four.

The District proposed no salary increase for the first year of the new agreement noting that the District has failed to achieve any retroactive savings in health insurance costs because of the inability of the parties to reach agreement.

The District proposes increasing salaries in each of the remaining three years by an average of 4.2% in school year 2007-2008; 4.2% in school year 2008-2009 and 3.2% in school year 2009-2010. The increases would range from \$780 for the highest paid administrator to \$7,551 for the lowest paid administrator. The District's proposal would average 2.9% per year over a four (4) year deal. A listing of the salary increases proposed by the BOCES follows.

Year 1: 0%

Year 2: 4.2%

Year 3: 4.2%

Year 4: 3.2%

Total over 4 years: 11.6% divided by 4 = 2.9% per year.

DISCUSSION AND ANALYSIS

The first consideration to be made by any fact finder when it comes to any increases in salary or benefits should be a review of the employer's ability to pay. It does not matter what any of the comparison data shows if an employer lacks the ability to pay an increase. Usually, the best indicator (not that there are not other valid indicators) of ability to pay is data showing what the public employer has voluntarily paid to members of other bargaining units of the employer. It is appropriate to conclude from reviewing data that shows the public employer has found funds to pay salary increases to its other employees, as is the case here, that regardless of justification for the increases, the employer found that it had the funds to agree to the increases contained in those settlements. It is therefore also fair to conclude that similar funds could be found to pay such increases to the unit being reviewed by the fact finder. The conclusions may be adjusted based on evidence of a unique or unusual change in status such as a major concession on the part of a union. No evidence of such an event exists here so I conclude that the BOCES can afford to pay a salary increase similar to that paid its other employees here.

Here, the data shows that the BOCES reached agreement with the union that represents approximately 19 FTE staff in the Staff Specialist Association. That agreement calls for an aggregate 3.5% per year for 4 years. The BOCES also reached agreement with

the union that represents its clerical staff (CSEA) to provide a 3.75% per year increase to members of that union for four years.

It is therefore logical to conclude that an agreement here that provides an aggregate increase similar to the other units referred to above could be affordable to the BOCES.

It is recognized that the terms and conditions found in the agreements between the BOCES and the other units are not the same as that which the Agreement with the Administrators and Supervisors have (evidence shows this unit has benefits and salaries superior to the other units) but that aspect of the findings is addressed by a modification of health insurance benefits that would come from a new agreement reached here and a reduction in the amount of retroactive pay.

I find that there is evidence that shows sufficient funds to provide an increase in salary to members of this unit.

The remaining question here is how much of an increase is appropriate given the data. The BOCES provided data (BOCES exhibit 44) too numerous to incorporate into this report that shows the administrators in this unit earn salaries that compare favorably to salaries paid administrators in component school districts and other Western New York BOCES (BOCES exhibit 46).

This data may be interpreted to mean that the administrators here should be eligible for a salary increase equal to that which the other administrators in districts within the BOCES and other Western New York BOCES have received.

The Association submitted data (Association exhibit 4) that shows that all districts in Niagara County (during the period of 7/1/06 - 7/1/09) settled agreements that contained wage increases of between 3.5% and 4.1%.

<u>DISTRICT</u>	<u>7/06</u>	<u>7/07</u>	<u>7/08</u>	<u>7/09</u>
Lewiston-Porter	3.0	3.2	3.4	3.6
Newfane	3.25	3.25	3.25	3.25
Royalton-Hartland	3.7	3.7	3.7	

The Association asserts that the BOCES proposal without the salary adjustments, at 3.425% per year falls below the average of all the Niagara-Orleans district settlements. This data may be interpreted to mean that the administrators here should receive no less of an increase than their counterparts in districts within the BOCES.

Considering the above arguments and data and taking particular notice of the fact that the BOCES has agreed to fund increases for its other bargaining units for 3.5% and 3.75%, I recommend that the salaries in this unit be increased by 2.9% effective July 1, 2006 then 3.5% each year of the agreement thereafter. The decreased first year percentage to be used to

offset in some way the savings lost by the fact that the agreement to changes in health care will not be in effect until July 1, 2008.

The parties should agree to permit the BOCES to increase the salaries of its lowest paid administrators in amounts that exceed the percentages listed here, subject to availability of funding. It is my determination that the parties will not reach an agreement that does not include some form of retroactive payment of salary increases nor will they be able to reach an agreement that does not provide a fair salary increase to the highest paid administrators. The percentage increases provided here for all administrators are in keeping with the BOCES' ability to pay and with similar increases paid to administrators in component districts.

HEALTH INSURANCE

There is abundant data to show that health insurance premiums are increasing at an alarming rate. Data provided by the District shows that the proposal made by the District on April 17, 2007 is in line with the provision of benefits enjoyed by administrators employed by Western New York BOCES in general. The plain fact is that with the skyrocketing cost of health insurance over recent years the trend is for employees to pick up more of their share of the costs and in some cases to endure reduced benefits. Public sector employees in general share less of a burden in this area than do private sector employees.

These facts are undeniable given the current state of affairs in this area.

My understanding of the status of this issue in this dispute is that the parties have tentatively agreed to the BOCES' proposal dated April 17, 2007 (attached to this recommendation, however, given the loss of savings due to the passage of time while the parties were unable to agree to the entire package of negotiations, this issue is not resolved. The Association here petitions the Fact Finder to grant the BOCES proposal only if a fair retroactive salary increase accompanies the provision.

I therefore recommend that the parties adopt the April 17, 2007 BOCES' proposal on changes in health insurance effective July 1, 2008 as well as the salary increases proposed above.

I recommend that the parties agree to the above resolution of their differences in the area of salary and health insurance and that they adopt the agreements reached in negotiation sessions prior to the beginning of the fact-finding process.

SUMMARY OF RECOMMENDATIONS

1. The parties should agree to a four (4) year agreement commencing July 1, 2006 and ending June 30, 2010.
2. The salaries of employees in this unit are to be increased 2.9% retroactive to July 1, 2006; 3.5% retroactive to July 1, 2007; 3.5% effective July 1,

2008 and 3.5% effective July 1, 2009. The District shall be permitted to increase the salaries of the lowest paid administrators over and above the percentage increases detailed above.

3. The parties should agree to accept the BOCES health care proposal dated April 17, 2007 (attached) in its entirety.
4. The parties should incorporate into their new agreement all agreements reached prior to the commencement of the instant fact-finding process.

Respectfully submitted,

Dated: February 11, 2008

MICHAEL S. LEWANDOWSKI
Fact Finder