

State of New York
Public Employment Relations Board

Fact-finding proceeding between

Cleveland Hill Union Free School District

And

Cleveland Hill Education Association

PERB Case No. M 2007-062

Report and Recommendations of Fact Finder

Adam Kaufman, Esq. Fact Finder

Introduction

The undersigned was appointed Fact Finder by the Public Employment Relations Board on February 5, 2008.

The District and the Association are parties to a collective bargaining agreement for the period July 1, 2003 to June 30, 2006. The parties reached a tentative agreement in November, 2006 on a successor agreement which resulted in the execution on February 26, 2007 of a "Collective Negotiations Settlement Memorandum." The Association's membership rejected that contract settlement. After further discussions, the Association filed a Declaration of Impasse on June 15, 2007. PERB assigned Charles E. Leonard as mediator. Mr. Leonard arranged for and presided over three (3) mediation sessions.

At the third mediation session, on September 26, 2007, the parties reached agreement on a set of revisions to the February settlement agreement which were incorporated in an October 2007 Settlement Memorandum. Then new to the District and current Superintendent Gordon Salisbury was a participant. On November 2, 2007 the Association again failed to ratify the agreement. The Association then submitted a request to PERB for fact-finding. On February 26, 2008, I presided at a preliminary conference with the parties in order to explore and narrow the issues. During that session the parties reached a third tentative agreement. On March 13, 2008, the Association's membership again, for a third time, rejected the contract settlement reached by the parties' bargaining teams.

It was agreed by the parties that the issues in contention to be addressed in my Report and Recommendations were to be the duration and length of the agreement, additional assigned time during the work day, specifically at the District's elementary school and salary.

The parties filed Fact-Finding briefs on or before April 28, 2008 and reply briefs on or before May 23, 2008. I requested both briefs and reply briefs in the hope that not only the representatives of the parties but their negotiating teams and those they represent would study and more fully understand each others' position and rationale on the contested issues.*

* The District has called my and the Association's attention to what is clearly an inadvertent error in the Association's Reply Brief. On page 3 of that brief the Association states that the District's 2008-2009 budget increase (as compared to 2007-2008) is \$450,643, based upon the budget summary the District provided at Exhibit 10 of its Post Hearing Brief. The actual increase in the budget is \$1,212,215 a 4.57% increase. The number referred to by the Association is the increase in the property tax levy. A 4.5% increase. The numbers for the increase in budget and property tax levy both appear on the same page in that Exhibit.

Background

The Cleveland Hill Union Free School District is located within the Town of Cheektowaga in Erie County, New York. Cheektowaga is described as a “first-ring” suburb of the City of Buffalo. The District’s western boundary is contiguous to the City. The District operates a kindergarten to grade twelve program serving some approximately 1,470 students in 2007-2008 at an elementary school and a middle/high school. The Cleveland Hill Education Association represents approximately 137 teachers and faculty.

The District has a limited commercial tax base and has been facing declines in property values. I acknowledge, as the District emphasizes, the “generally bleak economic conditions in the Western New York region.” The District has the fourth-lowest rank in the measure of community wealth of 28 school districts in the region surveyed, surpassed only by the city school districts in Buffalo and Lackawanna and the rural North Collins Central School District. The District’s income per pupil is third lowest. Its full value per pupil is also the third lowest. The District is exceeded only by Buffalo and Lackawanna in both categories. The District taxpayers face the second-highest full value tax rate of those 28 districts with only Cheektowaga-Sloan having a higher rate. The Association concedes that these four (4) school districts (Buffalo, Lackawanna, North Collins and Cheektowaga-Sloan) of the western New York school districts surveyed have greater tax burden or poverty measures but underscores that each of those District salary schedules for teachers reflect higher wages than those paid to Cleveland Hill teachers. On Steps 2 – 23 of its 24 Step Masters schedule in 2005 – 2006, Cleveland Hill ranked lowest to fifth in the bottom quartile of school districts of a set of 28 Erie County school districts on a step to step comparison.

Salary

The February 2007 “Collective Negotiations Settlement Memorandum” contained the following salary increases:

2006-2007: \$500 added to steps 1-23 and \$1000 added to step 24

2007-2008: \$300 added to steps 1-23 and \$1000 added to step 24

2008-2009: \$500 added to steps 1-23 and \$1000 added to step 24.

The District calculates the resulting percentage increases (including increment) at 4.11%, 4.08% and 3.95%.

The second tentative agreement in October 2007 retained the salary increase for 2006-2007 specified above but adjusted the 2007-2008 and 2008-2009 increases to \$650 added to steps 1-23 and \$1350 added to step 24. The percentage increases (including increment) are calculated at 4.11%, 4.76% and 4.25%.

The February 2008 tentative agreement added a fourth year, 2009-2010, with \$550 added to steps 1-23 and \$1250 added to step 24. That increase (including increment) represented an increase of 4.37%. The four year average (including increment) was calculated at 4.37%.

The District stresses that the current average salary increase of area school districts for teachers as reported by Erie 1 BOCES is 4.04% for 2006-2007, 3.96% for 2007-2008 and 4.08% for 2008-2009.

The District believes that settlement should be reached on the salary agreed to by the parties in the second tentative agreement with this caveat: that the salary increase for 2006-2007 should be made retroactive only from July 1, 2007. The District calculates that this modification would reduce the cost of that salary offer by \$71,500, which it believes is appropriate in light of the fact that the District has lost the opportunity to reduce health insurance costs by over \$80,000

in an agreed to shift from its current HMO insurance plans to the Erie 1 BOCES Health Insurance Trust Plan.

The Association suggests that it does not have objection to the concept of adding flat dollar amounts to the current Master's schedule. It notes that in most cases the salaries on a step by step comparison are below Erie County averages by several thousands of dollars. The Association quotes the former Superintendent of Schools, Bruce Inglis, as having described the pay schedules in Cleveland Hill as being "Bottom Feeders."

The Association notes that the District's current teaching staff is comprised of fifty-seven per cent (57%) at or below step twelve (12) on the Master's schedule. The Association believes "that without making significant improvements in the wage arena, they will never have the opportunity to work with the best, the brightest and most qualified new educators the area has to offer."

The Association's salary projections using the first two (2) years of the second and third tentative agreements and comparing those salaries to data available from twenty-five (25) districts only shows modest gain for some steps, no gain for others and other steps "falling" in relative position.

The Association now proposes that the following amounts be added to all twenty-four (24) steps of the Master's salary schedule: \$1800 in 2006-2007, \$2000 in 2007-2008, \$2300 in 2008-2009.

The District calculates this Association proposal as resulting in increases of 6.49%, 7.07% and 6.76%. The October 2007 tentative agreement would have resulted in the addition of \$1,790,366 of new money by District calculation when measured against the 2005-2006 base. This new Association proposal, says the District, would increase that cost by \$1,025,550 to a total of \$2,815,916.

The District suggests that the relative standing of Cleveland Hill teacher salary vis-à-vis teacher salary in area school districts did not occur "overnight" and was not unilaterally imposed by the District but was collectively bargained over the years. To rectify "an asserted problem" with regard to salary schedules in a single round of

bargaining, argues the District, is not prudent, practical or feasible. The Association believes that the District has the fiscal capacity and that there is the available political support in the community to increase teacher salaries to “attract and maintain” high caliber educators. Further, the Association argues, that there has been significant “breakage” through retirements of senior teachers since July 1, 2006 which reduces the actual cost to the District if the 2005-2006 base was adjusted to reflect those staffing changes. With regard to the negotiated settlements of the past, the Association might argue, “that was then, this is now.”

Extra Assignment for Elementary School Teachers

In the February 2007 Settlement Memorandum, contract modifications were agreed to that permitted the assignment of a sixth teaching period in place of a supervisory assignment at the secondary school level where the need arose. In October 2007 the Association agreed to language that permitted the assignment of secondary school teachers in “core subject assignments” to an additional assignment of no more than fifteen (15) students for a period not to exceed thirty (30) consecutive minutes per week for “duties related to academic achievement.” Teachers in “non-core subject assignments” could be assigned thirty (30) minutes per week for supervision duties. In that October tentative agreement the Association agreed that elementary school teachers would be available thirty (30) minutes per week to provide “general academic help and/or supervisory duties.”

During my exploratory meeting on February 26, 2008, the District and Association bargaining teams reached an understanding that further limited the proposed extra assignment for elementary teachers. The February 2008 tentative agreement provided that two (2) elementary teachers would be assigned on a rotating basis to cover an entrance to the elementary school from 7:40am to 8:10am where parents or guardians drop students off before the start of the actual

student day. The parties understood that on average an elementary teacher would be assigned once every five (5) weeks resulting in three and one-half (3 1/2) to four (4) hours per school year beyond their current schedule.

The Association now opposes this extension of the work day/work year on the ground that it “is not an educationally-driven proposal.” The Association does not believe that current supervision is inadequate and notes that the elementary teacher work day is at the Erie County average. The Association believes that teacher aides are currently performing that assignment. The District disputes that there are aides assigned to perform that supervisory function. The District considers the extension of elementary teachers’ duties to be necessary supervision and not an “undue burden” and further considers the assignment a quid pro quo for “the significant salary increases proposed by the District.”

Duration

The February 2007 “Collective Negotiations Settlement Memorandum” and the October 2007 tentative agreement were for a period of three (3) years, July 1, 2006 to June 30, 2009. The February 2008 tentative agreement was for a period of four (4) years, July 1, 2006 to June 30, 2010. Each party has now taken the position that the successor agreement to the collective bargaining agreement that expired on June 30, 2006 should be for a three (3) year period.

The Association believes that it will have the opportunity to negotiate a reduction in the number of steps on the current salary schedule in the next full round of bargaining and notes that the salary increases in the proposed fourth year were less than those offered in years two (2) and three (3). The Association believes with the proposed fourth year its “relative salary rankings in the county would at best remain stagnant, or at worse, drop even lower.” Cleveland Hill teachers, states the Association, consider that “even one additional

year as proposed, hinders their ability to negotiate for any additional changes.”

The District simply states that an agreement that would expire in June of 2009 “will enable the parties to return to the bargaining table sooner rather than later after agreement is reached during this round of negotiations to again address their respective issues of importance.”

The parties recognize, given the position they have now taken, that, assuming a settlement of the instant impasse, they are likely to be back at the collective bargaining table in early 2009 addressing the issues of compensation, as well as, health insurance and other benefits, the length of the teacher work day and work year, and other terms and conditions of employment.

Recommendation

Many would like to believe that the public sector collective bargaining process is a rational one; that somehow unqualified fairness and absolute equity will prevail. As the parties here recognize, it is in large measure about what is politically and pragmatically achievable. Commentators wiser than I have suggested that to reach resolution of a bargaining impasse each party should be able to write the other side’s victory speech. Each party needs to have the capacity to see things from the perspective of those on the other side. This is particularly true in the public sector and where there is no finality in the applicable impasse resolution procedure.

Each party to this impasse wants closure so that they may begin again. Presumably in the next round of bargaining the process will begin with a clearer understanding of the issues and the expectations that each side has. Each party, it is now believed, should then be able

to fully comprehend and clearly articulate and communicate to the other side what it needs to gain approval of a settlement by its constituency, whether it is the Board of Education or the membership of the Association.

At the time of the receipt of this Report the members of the Association will have gone without a negotiated salary increase for two (2) years. At this point in time the District and the Association have been unable to move to the Erie 1 Health Insurance Trust, which appears to be in the interests of both parties. The District has been unable to implement agreed-to modifications in the assignment of middle and high school teachers. Other modifications of the collective bargaining agreement mutually agreed to in November 2006 and September 2007 and incorporated in the October 2007 Collective Negotiations Settlement Memorandum are similarly awaiting implementation.

At this stage of the bargaining for the successor agreement to the one that expired in June 2006 we have fundamentally and effectively a dispute over compensation. For all intents and purposes there is only salary to be discussed with the harmonic of early arrival supervision at the elementary school. Simply bargaining salary in isolation of other issues may not be productive. As a Transit Workers Union official in New York City once commented about negotiations: "Everything is related to everything else."

The prospect of salary increases retroactive to July 1, 2006 of the magnitude requested by the Association, notwithstanding anything I might recommend, would appear gossamer. The District has raised, in this proceeding, the issue of limiting the retroactivity of salary increases to which the Association has taken "great umbrage." Bargaining over the single issue of salary might extend well into the next school year. Beginning a third year without a settlement is potentially disruptive and divisive and may divert attention from what is the focus of both the Superintendent and the members of the Association: teaching, learning and student performance.

With regard to the elementary school I note that the District and the elementary school have recently been cited as a "higher performing/gap closing district and school" by the New York State

Education Department. Teachers at the elementary school are clearly carrying out their primary function. I do suggest, however, that with economic conditions what they are at the moment in this country, and particularly in western New York, there is the prospect of more and more children arriving early as single parents and two parents in a household are forced to take whatever employment is available and find the need to drop off their children early on the way to work. This is increasingly an issue in communities throughout the region. It is an issue that needs to be addressed.

The Superintendent of Schools entered this round of bargaining midstream and on information and belief it appears that the Association negotiating team will reconstitute itself. Both sides deserve the opportunity to reassess their respective positions in the context of the collective bargaining agreement as a whole. The Association has made its point about compensation. Restructuring of the salary schedule and increasing teacher pay, it must be understood, is dependent on a myriad of factors, not the least of which are the willingness and capacity of the District and its community to fund those increases. The parties wish to begin again. I see no reason to delay.

I recommend the following as a resolution to this impasse:

A two (2) year agreement retroactive to July 1, 2006 and ending June 30, 2008.

Salary: For bargaining unit members employed by the District on June 1, 2008 increases retroactive to July 1, 2006:

2006-2007 \$500 added to steps 1-23 and \$1000 added to step 24
2007-2008 \$650 added to steps 1-23 and \$1350 added to step 24

All contract modifications and amendments contained in the October 2007 Collective Negotiations Settlement Memorandum are to be incorporated in the 2006-2008 collective bargaining agreement except that Section 11.1 (c) relating to

elementary teachers is to be deleted. The issue of supervision of early arrivals at the elementary school by teachers should be postponed to the next and immediate round of bargaining.

Bargaining for a successor agreement should begin with a mutual exchange of proposals on or before October 15, 2008.

Adam Kaufman

On this 26th day of June 2008 I, Adam Kaufman, Esq., do hereby affirm that I am the individual described in and who executed this instrument which is my Fact-Finding Report and Recommendations.

Adam Kaufman

