

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of Fact-Finding between

The Teachers Association of Sag Harbor,

Union

Fact-Finding Report

PERB Case No. M 2008-086

-and-

The Sag Harbor Union Free School District,

Employer

-----X

Before: **Elliott D. Shriftman, Esq., Fact Finder**

Appearances of Representatives:

For the Union:

Richard T. D'Esposito, LRS, New York State United Teachers

For the Employer:

Guercio & Guercio, LLP

By: Thomas Volz, Esq. and Jeff Mongelli, Esq.

Also in attendance:

For the Union:

Eileen Kochanasz, President

Donna Mannino, Vice-President

Maria Semkus, Member

James Kinnier, Member

For the Employer:

John Gratto, Superintendent

Pursuant to Section 209 of the New York State Civil Service Law, and under the authority vested in the New York State Public Employment Relations Board, the undersigned was appointed

to: 1) serve as Fact Finder of the parties' disputes, as described below, and 2) after making inquiry into the causes and circumstances of their disputes, to make findings of fact and recommendations as deemed necessary. A fact-finding hearing was held at the offices of the Sag Harbor Union Free School District, 200 Jermain Avenue, Sag Harbor, New York on May 11, 2009. The parties appeared; presented oral, written and slide or other visual presentations; were represented, as noted; and, were given a full opportunity to present evidence and make arguments. Each side submitted pre-hearing and supplemental briefs and exhibits to the Fact Finder. For reasons which need not be chronicled, the undersigned commenced but suspended working on his report following a conference call with the representatives at which it was agreed that they would jointly develop a document that would clarify the open items. On July 29, 2009 the parties submitted, as a joint exhibit, a document indicating the issues before the Fact Finder; each side's position with respect to each item; and, the current contract provision, if any, relating to those proposals. A few days later, the Union made a motion to be allowed to introduce another document into the record. The Employer objected. The Fact Finder held a conference call with the representatives of the parties on August 4, 2009; ruled in favor of the Employer; and, advised them that he would resume work on his report and recommendations.

BACKGROUND

For some forty years, the Teachers Association of Sag Harbor ("Union", "TASH" or "Association") and the Sag Harbor Union Free School District ("Employer" or "District") have been parties to a series of collective bargaining agreements covering all full and part-time Teachers, Support Service Teachers and long-term Substitute Teachers. The District operates

two schools: the Sag Harbor Elementary School and the Pierson Middle – High School. The last contract between the District and the Association expired on June 30, 2008 (“Agreement”). A copy of the Agreement was introduced into the record.

In February 2008, the parties commenced negotiations for a renewal accord but, unfortunately, on June 11, 2008, the date of their sixth bargaining session, they remained at impasse. It should be noted that, with the consent of the parties, PERB appointed Karen Kenney as mediator. Mediation sessions were held on August 5 and 22, 2008. Because mediation proved unsuccessful, the dispute was advanced to PERB for appointment of a Fact Finder.

The Declaration of Impasse, dated June 20, 2008, was introduced into the record. A copy of each side’s proposals was submitted to the Fact Finder.

Attached to the Declaration of Impasse is a “Details of Declaration”. It notes the dates of negotiation and the fact that the parties were able to reach agreement on only “a couple of extremely minor issues.” The outstanding issues are stated as:

Outstanding Issues

- Salary Schedules
 - Percent Increase
 - Schedule Modification
- Health Insurance (Employee Contribution)
- Health Insurance (Retiree Contribution)
- Health Insurance (Alternative Plans)
- Other Insurances

- Sick Leave
- Value of Accumulated Sick Leave at Retirement
- Sick Bank
- Work Day
- Work Year
- Professional Responsibilities

The following synopsis of position was sent to the Fact Finder on July 29, 2009:

ISSUE BEFORE FACT FINDER	DISTRICT POSITION	CURRENT CONTRACT PROVISION(S)	ASSOCIATION POSITION
LENGTH OF AGREEMENT	Three (3) years {2008-2011}	CBA expired June 30, 2008.	Four or Five years {2008-2012 or 2013}
SALARY INCREASE	<p>2.5% increase in each of three (3) years.</p> <p>Rejects Association proposal to change value of indices and the corresponding elimination of old steps 25, 26 and 27.</p> <p>Offers \$3000 annual stipend to any teacher with "National Board Certification" for as long as certification remains in effect, effective starting</p>	<p>Current salary schedule remains unchanged until application of negotiated increases.</p> <p>There is no current provision for additional compensation for having achieved "National Board Certification."</p>	<p>3.9% increase in each of four (4) or five (5) years.</p> <p>Increase value of index at:</p> <ul style="list-style-type: none"> • Step 23 (2.05 to 2.1) • Step 24 (2.05 to 2.1) • MA + 15 (1.12 to 1.14) • MA + 30 (1.15 to

	7/1/09.		1.16) Eliminate old steps 25, 26 and 27
ACADEMIC SUPPORT DUTY ----- CAFETERIA (LUNCH DUTY) SUPERVISION ----- OTHER DUTIES AND PROFESSIONAL OBLIGATIONS	<p>Proposes that teachers in District-identified academic areas (listed below) be relieved of “Academic Support Duty” obligations.</p> <p>Proposes that such teachers be assigned, instead, to a more “traditional” duty, including but not limited to “Lunch Duty” (Cafeteria Supervision).</p> <p>Proposes to eliminate “Lunch Duty” as a paid, voluntary duty.</p>	<p>Teachers are assigned to an “Academic Support Duty” period every day.</p> <p>“Lunch Duty (Cafeteria Supervision) is performed by teachers on a paid, voluntary basis. District has right to assign teachers in absence of volunteers.</p> <p>Teachers may be required to participate in “Professional Development Activities” twenty-seven (27) times per year during what would otherwise be a scheduled preparation period.</p>	Rejects District’s proposal.
	<p>Academic areas from which teachers would be assigned duties (in lieu of Academic Support Duty):</p> <ul style="list-style-type: none"> • Physical Education • Home & Careers • Psychologist • Guidance 	<p>Relevant contractual provisions are as follows:</p> <ul style="list-style-type: none"> • Academic Support Duty [Article V. Sect. C] • Lunch Duty [Article V, Sect. 	

	<ul style="list-style-type: none"> • ESL • Health • Study Skills • Special Education 	<p>A, Number 8]</p> <ul style="list-style-type: none"> • Professional Development Activities [Article V, Sect. F] 	
RETIREE HEALTH INSURANCE	<p>Proposes to eliminate the provision whereby unit members hired before July 1, 2000 receive 100% paid-for health insurance in retirement.</p> <p>Proposes that such teachers would, if retiring after June 30, 2010, have to contribute 15% of the premium costs in retirement.</p>	<p>Unit members hired prior to July 1, 2000 receive health insurance in retirement, 100% paid-for by the District.</p> <p>Unit members hired on or after July 1, 2000 receive health insurance in retirement, with the District paying 85% and the member paying 15% of the premium costs.</p>	<p>Rejects District proposal.</p> <p>Seeks to maintain current contractual status.</p>
BINDING ARBITRATION	<p>Rejects Association proposal.</p> <p>Notes that this was not included in “Impasse Declaration” nor among issues discussed between parties for briefing in Fact-Finding.</p>	<p>Advisory Arbitration.</p>	<p>Seeks “Binding Arbitration” as the final stage of the “Grievance Procedure.”</p> <p>Notes that absence of this in “Declaration of Impasse “and/or the pre-Fact-Finding discussions was an inadvertent omission.</p>
COMPENSATION FOR OVERNIGHT FIELD TRIPS	<p>Rejects Association proposal .</p>	<p>Contract does not currently provide for compensating</p>	<p>Seeks payment in the amount of \$145 per day for teachers who</p>

		teachers who supervise such overnight field trips.	supervise (chaperone) overnight field trips.
COACHING PERFORMANCE AND EVALUATION	Rejects Association proposal.	Coaches evaluated by Athletic Director subsequent to each season. Coaches receiving a “Does Not Meet District Standards” rating lose “priority consideration” (in that sport) over non-bargaining unit individuals in subsequent seasons.	Seeks to require District to formulate a “Coaching Improvement Plan” for any coach it deems “Does Not Meet District Standards” prior to such coach’s losing his/her “priority consideration” status over non-unit individuals.
OTHER INSURANCE COVERAGE	Districts rejects Association proposal to provide unit members with: <ul style="list-style-type: none"> • Life Insurance • Optical Insurance • Insurance Coverage for domestic partner District offers specific Disability Insurance policy, contingent upon Association consent to modify the current “Sick Bank” provided for in the Agreement (explained below under “Sick Bank” issue).	No provision for Life Insurance coverage. No provision for Disability Insurance coverage. No provision for Optical Insurance coverage. No provision to cover qualified domestic partners of unit members.	Seeks employer-provided insurance coverage as follows: <ul style="list-style-type: none"> • Life Insurance • Disability Insurance • Optical Insurance • Domestic Partner Insurance(s) coverage
SICK BANK	District proposes to	Unit members may	Accepts District offer

	<p>modify the “Sick Bank” provision as follows:</p> <ul style="list-style-type: none"> • District would provide Disability Insurance to unit members; any unit member qualifying for benefits under such policy would be ineligible for “Sick Bank” use. • District proposes a “Review Process” (with teacher participation) to determine eligibility for Sick Bank use by members whose circumstances do not qualify for disability benefits. • District proposes that there be some criteria established for sick bank use, including things like: requiring doctors’ notes, establishing “prolonged illness” thresholds, etc. 	<p>access a District-provided “Sick Bank” if they have exhausted their own sick leave.</p> <p>Sick Bank is allotted 200 days each year. Unused days from one year do not accumulate for future years.</p>	<p>of Disability Insurance (see Association proposal for same).</p> <p>Rejects District’s demand to modify Sick Bank use by unit members and/or to alter the procedures attached thereto.</p>
CASH VALUE OF			

<p>UNUSED SICK AND PERSONAL LEAVE</p>	<p>Rejects Association proposal.</p>	<p>Contract does not currently provide unit members with the right to convert unused sick and personal days to cash at retirement.</p>	<p>Proposes that unit members have the ability to convert fifty (50%) percent of accumulated sick and personal leave into cash at retirement at the rate of 1/181 of salary.</p> <p>Payment to be made as a “Mandatory Non-Elective Employer Contribution” to employee’s 403-b account.</p>
<p>ALTERNATIVE HEALTH INSURANCE PLAN</p>	<p>District proposes that it be permitted to offer alternative health insurance plans for employee consideration, with participation in any such plan optional to each individual unit member.</p> <p>District proposes that any savings achieved through employee election of an alternate plan be shared between the district and the employee.</p>	<p>Currently the District is obligated to provide teachers with health insurance through the New York State Health Insurance Plan (“NYSHIP”), also known as the Empire Plan, Core Plus Enhancements.</p> <p>There is no provision for alternate health insurance coverage.</p>	<p>The Association has neither accepted nor rejected the District’s proposal.</p>
<p>USE OF PERSONAL LEAVE IN RELATION TO HOLIDAYS</p>	<p>Prohibit the use of personal days before and/or after school holidays.</p> <ul style="list-style-type: none"> • Except in the case of an emergency 	<p>Contract currently provides:</p> <p>“Personal leave days will be granted for the days immediately before</p>	<p>Association interprets this language as allowing unit members to take a personal day on either the day before or the day after a school holiday, but</p>

	<p>or religious observance, or;</p> <ul style="list-style-type: none"> • If approved by the Superintendent. 	<p>and after school holidays only in the event of emergency or religious observance.”</p>	<p>not both.</p> <p>Association interprets the “emergency or religious observance” exception as being applicable to a unit member who seeks both the day before and the day after a holiday.</p>
<p>AVAILABILITY OF PAYCHECKS ON LAST SCHOOL DAY BEFORE VACATION PERIOD</p>	<p>Proposes the elimination of this obligation.</p>	<p>Contract currently provides:</p> <p>“Paychecks due during a vacation period will be made available on the last school day prior to the vacation period.”</p>	<p>Rejects District proposal.</p>
<p>COURSE APPROVAL FOR SALARY ADVANCEMENT</p>	<p>Proposes that approval of courses (other than graduate courses from accredited colleges or courses which are part of a required Master’s Degree program for permanent certification) for column advancement on the salary schedule would only be granted:</p> <ul style="list-style-type: none"> • for courses directly related to classroom content, or; • for skills related to specific subject areas of the 	<p>Contract currently provides:</p> <p>“Credit for graduate, in-service or SCOPE courses must have the prior written approval of the Superintendent. All graduate courses from accredited colleges shall be approved. Courses which are part of a required Master’s Degree program for permanent certification shall be approved. Other courses must be related closely</p>	<p>Rejects District’s proposal.</p>

	<p>teacher, and;</p> <ul style="list-style-type: none"> • both of these as determined by the Superintendent. <p>Alternatively, the District would agree to a modification of the current language to provide that “all courses (other than graduate courses from accredited colleges or courses which are part of a required Master’s Degree program for permanent certification) must be related closely enough to a teacher’s certification and current assignment within the District to receive the approval of the Superintendent.”</p>	<p>enough to a teacher’s certification or current assignment within the District to receive the Superintendent’s approval. The decision of the Superintendent shall be neither arbitrary nor capricious.”</p>	
<p>EXTRACURRICULAR AND COACHING RATES OF PAY</p>	<p>Raise coaching and extracurricular rate of pay by 2% per year in each year of the agreement.</p> <p>Reduce “Varsity Volleyball” coaching stipend from \$7,400 to \$5,500.</p> <p>Reduce “JV Volleyball” coaching stipend from \$5,757 to \$4,500.</p>		<p>Proposes that coaching and extracurricular rates of pay be raised in each year of the agreement by the same percentage increases that are applied to the salary schedule.</p> <p>Equalize pay for all coaching positions according to season.</p> <p>As part of the above proposal, freeze the salaries of the Varsity</p>

			and JV Volleyball coaches until such time as the other coaching positions in that season 'catch up.'
--	--	--	--

In addition to very extensive briefs, each side submitted numerous exhibits, which the Fact Finder highlights as follows:

Exhibits

District Exhibits

Exhibit A – Collective bargaining agreement between TASH and the Employer operative in the period, July 1, 2004 through June 30, 2008.

Exhibit B – Union’s proposals for a successor collective bargaining agreement, dated February 5, 2008.

Exhibit C – District’s proposals for renewal bargaining, dated February 5, 2008.

Exhibit D – Declaration of Impasse filed by the Association on June 20, 2008.

Exhibit E – Letter, dated January 30, 2009, from PERB to the parties confirming the undersigned’s appointment as Fact Finder.

Exhibit F – Excerpts from newspaper and other publications relating to the country and region’s economic woes and proposed cuts to school aid, among other related topics.

Exhibit G – Copies of collective bargaining agreements between teacher unions and school districts which are in their second, third or fourth year of effectiveness and include the following school districts: Bridgehampton, East Hampton, Three Village Central School District, Port Jefferson School District, Mattituck-Cutchogue School District, Westhampton Beach School District,

Hampton Bays Public Schools and Southampton School District. Also submitted is an expired collective bargaining agreement for Southold School District.

Exhibit H – Excerpt from Salary Work Book and Fringe Benefit Study prepared by BOCES of Nassau County for the Nassau-Suffolk School Boards Association showing Suffolk County percentiles and rankings by districts and dollar value.

Exhibit I – Excerpt from “The School District Almanac Percent Teacher Turnover” for making ranked comparisons by size and wealth groups for school districts in Suffolk County, including Sag Harbor.

Exhibit J – Administrative Bulletin issued in November 2008 by the New York State Teachers’ Retirement System discussing, “Estimated Range for the Next Employer Contribution Rate”.

District’s Exhibits Attached to Supplemental Brief

Attachment 1 – Newspaper articles regarding school districts in crisis and New York State Pension Fund decline in value and tax impact for rising pension costs.

Association Exhibits

Exhibit 1 – District produced reports regarding student performance, including charts headed, “Advanced Placement Statistics”; “Advanced Placement Summary”; “Comparison 2006-2007”; “Intel Semifinalists 2009”; and, “Pierson High School Profile 2008-2009”. The latter exhibit shows the colleges and universities to which students were admitted in 2007 and 2008, among other topics.

Exhibit 2 – Newsweek article, “America’s Top Public High Schools”, ranking high schools throughout the country and showing that Pierson is ranked 858 of 1425.

Exhibit 3 – Chart, reflecting “History of the Budget Vote 2002-2008”.

Exhibit 4 – Vote results for the Sag Harbor District Budget Votes on May 21, 2002; June 3, 2003; May 18, 2004; May 17, 2005; May 16, 2006; May 15, 2007; and May 20, 2008, respectively.

Exhibit 5 – Charts/graphs showing data relevant to school district profiles, statement about school district rankings within the State of New York, property value per pupil, personal income per pupil, personal income per return, tax rate per \$1000 property value, median salary, full-time teachers per 1000 students, expenditures per pupil. All of the foregoing exhibits compare the District to Bridgehampton, Tuckahoe, Southampton, Port Jefferson, East Hampton, Westhampton Beach, Southhold, Mattituck, Hampton Bays and Three Village. This set of exhibits ends with the statement, “In the school year 2008-2009, school districts in this comparison are getting a 3.54% increase on top of the step increases.”

Exhibit 6 – Chart headed, “Beyond the Curriculum”, indicating programs attended by teachers, their description and cost

Exhibit 7 – Summary of bargaining positions of the parties

Exhibit 8 – Various comparative analyses for salary data presentation, scatter gram and charts reflecting salary schedule comparisons for teachers with Bachelor or Master degrees at various step levels for calendar year 2007-2008.

Exhibit 9 – Similar to Exhibit 8 but for calendar year 2008-2009

Exhibit 10 – Charts/graphs comparing Sag Harbor salary step progressions to the average drawn from other districts deemed relevant together with analysis of comparative cumulative earnings.

Exhibit 11 – Comparative charts for Sag Harbor and other districts regarding a retiree’s contribution to health insurance for both individual and family coverage.

Exhibit 12 – Charts for Sag Harbor and other districts relative to comparative employee contributions to health insurance for active employees both for individual and family plans.

Exhibit 13 – Historical comparisons of teacher contributions for health insurance premiums on a dollar basis for active employees selecting individual or family coverage.

Exhibit 14 – Charts and slide presentation for workday and duty assignments on a comparative district by district basis.

Exhibit 15 – Charts relevant to optical disability, life and domestic partner insurance district by district.

Exhibit 16 – Charts and slide presentations relative to the value and use of sick leave on a district by district universe comparison for both payment for unused sick days and sick bank.

Exhibit 17 – Miscellaneous pay issues district by district comparison relating to overnight chaperone pay and post-season pay.

Exhibit 18 – Charts relating to terms and conditions of employment, including course approval and coach evaluation. [The latter by stipulation seems to have been removed from consideration by the Fact Finder.]

Exhibit 19 – Pages simply indicating the topics of: Union rights/contract enforcement and binding arbitration.

Exhibit 20 – Chart indicating estimated annual costs for District teachers covered under a vision care plan.

Exhibit 21 – New York State United Teachers 2006-07 School District Profiles containing data drawn from information received from the State Education Department, including rankings.

Exhibit 22 – Data disc containing information compiled or created in the course of negotiations with

BOCES.

Exhibit 23 – Collective bargaining agreement between the parties, operative in the period July 1, 2004 through June 30, 2008.

Exhibit 24 – Empire Plan group rates in effect for years 1996 through 2007 for monthly contributions.

Exhibit 25 – Compilation of source materials used by the Association in preparing its exhibits.

Association Exhibits Attached to the Supplemental Brief

Attachment A – Chart showing differences with respect to step increases for teachers with varying degrees and credits above them.

Attachment B – Comparasion of Teacher/Student Day in subject districts.

Attachment C – NYSUT’s Schedule of Annual Salary Increases Per Collective Bargaining Agreement.

Other facts are intertwined with the parties’ arguments, all as noted in the Contentions section to follow.

CONTENTIONS¹

¹ The statement of the parties’ contentions is drawn from their written submissions and is set out

Union's Contentions

THE SAG HARBOR SCHOOL-COMMUNITY

An Excellent District Within An Outstanding Region

No purpose can be served by pursuing herein the ageless 'nature vs. nurture' debate in the evaluation of student performance.

What is arguably true, however, even if somewhat subjective, is that a 'culture' of a school district is often recognizable, and that a combination of community commitment, well conceived educational and economic priorities and a dedicated and talented teaching staff will almost always produce consistently high results. It does take a host of the right ingredients for a school to turn out a fine 'finished product' in the form of a highly successful student. In this regard, there is success in Sag Harbor sufficient to spread the credit around to all, be they parents, teachers, administrators, Board members or others.

The culture, if you will, of the Sag Harbor school community is clearly evidenced by any number of measurable criteria. The materials contained in the Association's presentation represent the merest sampling of achievement. All of the 'slides' in Exhibit 1, with the exception of the Intel semifinalists, which came from a Newsday article, were produced by the district as evidence of the quality education afforded to Sag Harbor students. They trumpet the successes of Sag Harbor's students on Advanced Placement examinations, standardized testing, and the highly prestigious Intel competition.

None of this can come as a surprise. The Sag Harbor School District has long enjoyed a fine reputation in a region that historically prides itself on the quality of its schools. That culture, be it local or regional, has provided amazingly fertile ground upon which some very talented children have grown and gone on to greatness. And real estate values have long reflected that. As the fact finder will see throughout the Association's presentation, Sag Harbor's place in all of this is very much 'in the midst' of it all. They enjoy success equal to or better than most of their East End neighbors, as is true also of their relative wealth and tax efforts, discussed later herein.

THE ABILITY TO PAY

Relative Wealth

The current economic circumstances, while disturbing to say the least, do provide an opportunity for people and institutions to demonstrate that they can remain committed to long-held educational principles while simultaneously pursuing taxpayer-sensitive approaches to spending. Sag Harbor, like so many school districts throughout the region, state and country, has spent a great deal of time and energy in pursuit of these goals, while simultaneously seeking to educate community residents of their success.

Conspicuous by its absence is any mention of a commitment to the people behind those fine programs, the same people whose talents and efforts contribute to the test scores, admissions to colleges, and

here in different line spacing, font size and style to differentiate their words from the Fact Finder's. Each side submitted lengthy, "cover the waterfront" briefs. Although a majority of their words are captured here, if the Fact Finder simply copied them *verbatim*, even with the use of smaller font, this report would exceed over a hundred pages. The task was to omit what appeared to the undersigned to be repetitive arguments or facts. He apologizes to the parties in advance if, in their view, the omissions were not of that ilk. Omitted from this summary are some of the assertions relating to **how** the parties had bargained in the past; the "trials and tribulations" attendant to the last round of negotiations; and, the causes for why the parties are at impasse, including but not limited to, claims that a party gave a deaf ear to the other's proposals or disingenuously minimized the value of a proposal. This is not to say that the Fact Finder did not consider all of the facts and arguments advanced by the parties. To avoid confusion, their footnotes appear in parenthesis at the point in their text where the footnote mark was inserted.

advanced placement successes.

While the district does not appear to be cutting programs or staff, it has become apparent in these negotiations that they are seeking to subsidize the cost of education in Sag Harbor by providing raises that are lower than the going rate and simultaneously moving to a greater 'cost-sharing' relationship with its teachers with respect to retiree health insurance benefits.

There is a simple truth that the district has chosen to ignore throughout these negotiations. When all the layers of the onion are peeled away, it is simply self-evident that Sag Harbor, by virtually every significant economic indicator, sits right in the middle of some of the best tax-payer supported school districts in the state.

Association Exhibit 5 (*School District Profiles, 2006-2007*) clearly demonstrates the economic reality that the district will attempt to distort, providing a realistic picture of the district's relative fiscal status:

- Property Value Per Pupil: 14th highest statewide/4th highest, subject districts.
- Personal Income Per Pupil: 54th highest statewide/6th highest, subject districts.
- Personal Income Per Return: 63rd highest statewide/7th highest, subject districts.
- Tax Rate Per \$1000 Property: 660th lowest statewide/8th lowest, subject districts.
- Median Salary/All Teachers: 74th highest statewide/4th highest, subject districts.
- FT Teachers/1000 Students: 28th highest statewide/2nd highest, subject districts.
- Expenditures Per Pupil: 25th highest statewide/4th highest, subject districts.

With one of the lowest tax rates in the entire state, and with only three districts (East Hampton, Southampton and Bridgehampton) with a lower rate among the subject districts, it is very clear that taxpayers in the Sag Harbor school district enjoy the benefits of a unique confluence of fortuitous circumstances. One could very reasonably argue that owning a home in this school district is one of the best investments there is, across all levels of consideration: economic, educational, cultural and quality of life.

Further, it is clear that the district is willing to spend money to maintain these levels of quality educational opportunities, as can be seen in the student/teacher ratios and expenditures per pupil, which go hand in hand. These serve to maintain low class sizes, one of the most universally accepted tenets of successful educational programs.

To the casual observer, the statistic on "Median Teacher Salary" might appear not to be helpful to the Association's salary arguments. First, median salary is never the best indicator of the relative 'wealth' of a salary schedule; it is as much a product of the seniority and degree status of the staff as it is the numbers on the schedule, as the fact finder well knows. A very 'rich' schedule could produce a very low median salary if more than half the staff were very early in their careers, and/or not yet in possession of advanced degrees. Similarly, a relatively modest salary schedule could yield a high median salary if most of the staff were very senior and maxed out on the degree/credits columns.

And, last but certainly not least, the ten (10) districts that are the subject of the various comparisons throughout this entire analysis received raises to their salary schedules, exclusive of the value of incremental step movement, ***that average three point five four (3.54%) per cent for the 2008-2009 (present) school year, which will be the first year of the new agreement in Sag Harbor.***

Specific

The Association's discussion and analysis of the outstanding issues, both in this brief and in the presentation at the hearing, will be divided into three (3) distinct sections: "***Salary,***" "***Retiree Health Insurance,***" and all other "***Terms and Conditions of Employment***" issues.

SALARY

Prior Bargaining History

In bargaining there are a few driving forces that influence the negotiations of salary. One of these is the ability to pay of the employer, reviewed earlier herein. Other major influences on such negotiations include, but are not necessarily limited to:

- Salaries in comparable school districts.
- Recent contract settlements.
- Prior negotiations between the parties.

In two successive negotiations, those in 1996 and 2000, the Board was able to negotiate salary increases that resulted in Sag Harbor teacher salaries becoming significantly non-competitive with surrounding districts.

From the Association's initial proposal to its last, two things were always apparent. First, TASH never sought to 'make up' for all previously 'lost ground' in a single negotiation. And, second, TASH never sought a place above other districts within the pool with whom they traditionally had been compared in bargaining. They sought to be competitive with those districts, rather than at or near the bottom of any comparison, as they had been.

The Current Negotiations

The data contained in Association Exhibit 8 (*SALARY COMPARISONS 2007-2008 SALARY SCHEDULES*) clearly demonstrates that Sag Harbor, by the end of the present contract, occupied a place, away from the 'bottom of the pack.' It is equally evident that, for the most part, at most cells they still don't even make it to median within the subject districts. They fare a little better at the starting salary, where they are the third highest, but immediately fall to the bottom third of the group for the next three examined cells (MA Step 5, MA + 15 Step 10, and MA + 30 Step 15). At MA + 45 Step 20 they fall right in at median, with an equal number of districts above and below. They manage to break into the top four at MA + 60 Step 25, and have the highest salary at the highest step (MA + 75 Step 30 or Highest Step). That is at because virtually all of the other districts have a maximum step lower than 30 years, so TASH compared its step 30 with their maximum step.

While TASH was pleased with the progress achieved in 2004, they naturally sought to address the fact that, for most of a teacher's time at Sag Harbor, (s)he will have a salary in the bottom third of the component districts, and make many thousands of dollars per year less than the average salary of all the teachers in all the districts at the same steps along the way. The Association came to the table with that as their stated goal. They were disappointed that the district, as seen through their proposals, sought to widen the gap.

To demonstrate this graphically, the Association prepared an analysis of the results of the last proposals of the parties regarding salary, as well as the average of the two, within the context of already existing (in the subject districts) salary schedules. The results (see Association Exhibit 9, *2008-2009 SALARY SCHEDULE COMPARISONS*) are intriguing.

In order to appreciate the significance of these differences, an analysis was done to all salary schedules at all steps. Averaging the salaries of all subject districts at each cell of the salary schedule, a new 'average' salary schedule was created. That schedule was then contrasted, step by step, with the Sag Harbor schedule, all in 2007-2008 dollars. The results are stunning, as seen on the second page of Association Exhibit 10 (*AVERAGE OF SUBJECT DISTRICTS AT EACH CELL COMPARED TO SAG HARBOR*).

Wherever the average salary is greater than that of the same cell on the Sag Harbor schedule, the chart reflects that as a negative number, in red. *Fully 80% of the entries on this chart are in the red and of these the vast majority lag between \$4,000 and \$8,000 behind. Bear in mind that this is after four years of 'catching up.'*

Following that chart in the same exhibit is a series of line charts that illustrate the steady decline from starting salary to maximum salary across all the degree columns, at each step. Naturally, it is an inescapable fact of life that a Sag Harbor teacher will make significantly less money during a typical career than most of his east end colleagues, and far less than the average. This is demonstrated in the last chart in Association Exhibit 10 (*CUMULATIVE EARNINGS*), where they surpass only one district.

Applying all the components of the Association's last proposal (increase 3 horizontal indices, the step indices at the bottom plus the across the board increase), Sag Harbor's relative position among the previously reviewed districts would not change significantly.

The increases to the horizontal (column) indices would slightly reduce the huge differences that currently exist in the great middle of the schedule, where teachers spend most of their careers, and where Sag Harbor teachers make six, seven and even more than *eight thousand dollars less than their*

peers, on average.

For all of the reasons stated herein, the fact finder is asked to recommend the Association's salary proposal for purposes of this settlement.

RETIREE CONTRIBUTIONS TO HEALTH INSURANCE PREMIUMS

Bargaining History

Until the contract commencing July 1, 2000, all teachers retiring from the district received fully paid health insurance from the district in retirement, either individual or family coverage as appropriate. In those negotiations, the district sought to change that so that future retirees would have to share the cost to some degree. TASH objected, pointing out that teachers who were already working there, some of them for many years, had begun and continued their careers in Sag Harbor under a contract that for decades held the promise of retiree health insurance at no cost to them when they retired. Many career decisions were based, in no small part, on that consideration. It was widely seen as at least some small payback for historically lower salaries. The district ultimately agreed, and a compromise was reached. Those already working in the district (hired before July 1, 2000) would, upon retirement, enjoy the same 100% paid-for benefit as always. Those hired on or after that date would be required to contribute 15% of either the individual or family premium in retirement.

Both sides agreed that this constituted a fair and reasonable solution, wherein those who began under one set of rules would continue there under, and those who came after would be advised from the outset about the new regulations.

This continued for the last nine years. At a time when the teaching population has reached virtually the exact midpoint of the transition---sixty current teachers will, if they retire from Sag Harbor receive 100% premium coverage, and sixty one will pay 15%---the district has chosen to try to impose a veritable sea change on arguable the most important benefit of employment. Again, the question begging an answer is, "Why?"

The Current Reality

The district has placed all its eggs in one basket in arguing that all Sag Harbor teachers who retire in the future, with the exception of those who retire at the end of this year, should pay 15% of the health insurance premiums in retirement. They rely on the premise that Sag Harbor enjoys a much better level of benefit in this one area than most of the other subject districts. They look at districts like East Hampton and Southampton and offer them as examples, in 2008, of how much one could be paying. Fifteen percent isn't so bad when considered against their 50% for individual coverage. They point to the six districts where, allegedly, retiring teachers pay three and four times more than their Sag Harbor counterparts for family coverage. They are right in only one, limited way. This might be the only place where Sag Harbor teachers enjoy a better *relative status* when considered in the mix of subject districts. But they have terribly misstated the degree to which that is true, and totally ignored some extremely relevant factors that more than completely negate whatever advantage may exist, as Association Exhibit 11 (*RETIREE CONTRIBUTION TO HEALTH INSURANCE*) demonstrates.

First let's look at the 2008 reality, for both individual and family coverage. Only three districts require a greater share of the premium to be borne by the teacher than the post-2000 Sag Harbor teacher, and four more contribute more than the pre-2000 SH teacher, for a total of seven out of ten. That means that half the Sag Harbor teachers (pre-2000) rank 3rd from the top (for lowest contribution) and the remaining half rank 7th from the top (or, in other words, the fourth highest contribution level).

Similarly, when considering contributions to family coverage, the district ignores the fact that several districts have the same 'split' (date of hire dependent) rules governing contribution rates. Looking at a chart of 2008 contribution rates considering the *lowest* employee contribution, there are two other districts that also enjoy 100% and three more that are at or below 10%. When considering only the highest rate of contribution, three districts contribute less, one the same and six more.

Again, while the data supports a conclusion that, at least in one area, half of Sag Harbor's teachers enjoy a relative advantage over most of their geographic contemporaries, the other half do not enjoy nearly so great a 'separation' from the pack, and the district would have the fact finder recommend that all be 'leveled down.'

And this analysis has yet to examine several vitally important and absolutely relevant considerations, to wit:

- Disparity between the cumulative earnings of the Sag Harbor teacher with other districts..
- Disparity between the values of accumulated sick leave as a benefit of retirement of the Sag Harbor teacher with other districts.
- Disparity between the health insurance contributions of active employees in Sag Harbor with other districts.

Any one of these would sufficiently tip the scales so as to negate any advantage in retiree contributions to health insurance. Together, they form an indomitable alliance in support of the Association's position.

- Southampton and East Hampton, the two districts, again, that the district most often lists as the poster children in defense of its demands in this area, provide up to a full year's pay (Southampton) or more (East Hampton, 200 days) at retirement, both at the final year's salary.
- Westhampton pays up to 75% of final year's salary.
- Three (3) others pay up to half (or more) of final year's salary.
- The lowest of them (Three Village) pays up to \$22,500.

It is simply indisputable that those amounts of money, all of which likely go in as non-elective employer contributions, with the obvious tax savings, pay for the lion's share of an employee's future health insurance contributions. Although the Association lacked the time and resources to do an actuarial study, it is not unrealistic, and perhaps even likely, that teachers enjoying these benefits at their maximum amounts, with conservative and secure investments, would never have to look elsewhere for the funding of their health insurance obligations. This is almost certainly true after age 65.

Contributions to Health Insurance by Active Employees

Although not an issue in these negotiations, an examination of the Sag Harbor teacher's payment toward health insurance premiums while in active service is germane, for the same reason as the two above considerations: it's all money, no matter how you slice it and no matter what you call it.

ALL OTHER UNRESOLVED PROPOSALS

WORK DAY AND DUTY ASSIGNMENTS

There is no issue after salary and health insurance with greater potential for generating ill will and resentment the parties than this. Viewing the district's proposal through the prism of the bargaining history is, once again, necessary to secure an understanding of why this is so. Generally speaking, the district's proposal stands for rewarding the Association's prior accommodation of professed educational needs by seeking still more concessions in this area. The unambiguous message can only be, "No good deed goes unpunished."

The Evolution of Duties and the Work Day
[Chronology of changes from 1992 to date are noted]

The Reality of the District's Position

Reduced to its simplest components, here's what the district's latest proposal consists of, on a

practical basis as it would be implemented and as it would affect teachers.

- Not all teachers would provide Academic Support. Administration would identify teachers who would not provide it (they gave as examples Physical Education, Home and Careers, some Special Area teachers, etc. during bargaining sessions).
- Any such teacher would, instead, be assigned to a more traditional duty. The most specific such duty mentioned was cafeteria supervision, but others were possible.
- Cafeteria duty would no longer be covered on a paid, volunteer basis.
- The number of students assigned to each teacher in academic support would, of necessity, increase significantly, because the district indicated that a fairly large (considering the size of the school) number of teachers would be utilized in the non- academic support duties, thereby increasing the student to teacher ratio in the previously described 'home bases.'

The Fallacy of the District's Position

This is a cost-savings measure. Nothing less, nothing more.

The notion that it can be carried off without any adverse effect on the entire efficacy of the academic support model is so devoid of merit as to be almost unworthy of response. How can teachers effectively supervise up to, say, twenty children in place of the 10 or 12 they had in their rooms before, and still be able to provide the services that were the whole point in the first place? Answer: They cannot.

How will teachers feel about being designated as non-essential to academic support? More importantly, how will students feel about the importance of courses taken with those teachers in the future. Have you 'shared' with a Middle Schooler lately? They 'get it' faster than the speed of light. Credibility of teachers and the program diminish with this proposal, and it is particularly offensive in light of the district's long history of professing to seek change in this area 'for the kids' only to evidence a willingness to throw it all aside in the interests of saving a few bucks of cafeteria duty pay.

For all the reasons stated herein, the fact finder is urged to reject this proposal of the district in the strongest terms.

OTHER INSURANCE BENEFITS

The fact finder is asked to review the documents found in Association Exhibit 15, "Other Insurance Benefits," for charts with data in support of the Association's position. Such charts are self-explanatory, and require no further illumination herein.

VALUE AND USE OF SICK LEAVE

The fact finder is asked to refer to the overwhelmingly supportive data (Exhibit 16) and argument offered in the examination of the "Retiree Health Insurance" issue in support of the Association's position with respect to this term and condition of employment, as if they were stated.

MISCELLANEOUS PAY ISSUES

Overnight Chaperone Pay

As Association Exhibit 17, "Overnight Chaperone Pay," makes clear, seven of the eleven component school districts provide some compensation for teachers who give of themselves to this extent. When one considers the greater burden of responsibility that accrues to teachers in general, but particularly on overnight trips, it is simply mind-boggling that the Association has been forced to take an issue such as this to fact-finding. The fact finder is asked to recommend the very modest stipend of \$145 per day.

Post Season Pay

The Association seeks only to memorialize the current practice here.

COURSE APPROVAL

The heart of the district's proposal, reduced to bare bones, encompasses a few basic objectives:

- To eliminate the right of teachers to take valuable in-service courses for professional and salary advancement.
- To provide the superintendent with virtually absolute authority regarding the right to approve or disapprove course work for salary advancement.
- To change the very criteria upon which approval for courses will be based within the contractual criteria (change "closely related" to "directly related," change area of consideration from "certification and teaching assignment" to "classroom content or skill related to specific subject areas of teacher as determined by the superintendent.").
- To permit the superintendent latitude broad enough to allow for personal applications of educational or other considerations, unencumbered by teacher rights as defined by contract.
- To limit, to the superintendent's authority, the right of teachers to have courses that are part of their Masters degrees and/or permanent certification approved.

The Association would effectively surrender the right of teachers to advance professionally and on the salary schedule other than navigating the virtually limitless authority of the superintendent. For obvious reasons the Association rejects the proposal in its entirety, and urges the fact finder to do the same.

PAYROLL ON HOLIDAY

The district seeks to alter the long standing practice of providing paychecks on the last day of work preceding a holiday or vacation. They claim it is an "auditor's requirement. The Association remains skeptical of the actual requirement.

COACHING AND EXTRACURRICULAR PAY

[This is now moot]

The Association seeks to provide an opportunity to coaches who have been rated "Does Not Meet District Standards" with an "Improvement Plan" to carry out for one year before being relieved of duties. Since Sag Harbor is the only district in the mix that even has a coaching evaluation, that hardly seems an unreasonable demand, and we hope the fact finder agrees.

ELECTRONIC POSTING REQUIREMENT

The District's overly broad expectations here (see description of proposal) coupled with the constant state of inadequate, inoperable equipment and insufficient technical support make this a proposal without meaning.

BINDING ARBITRATION

Stated as simply as possible, there can be no legitimate reason why one party would be resistant to the idea of having an impartial adjudicator render a *final* decision on a matter. The Association has no right of review and rejection. The Association is willing to live with the results of the hearing, and has been for as long as this has been proposed, almost beginning some 30 years ago.

Union's Supplemental Argument

- The Association has revised several "slides" within its presentation, in response to the Fact Finder's request, to identify the maximum number of steps on the salary schedules of the subject districts (salary comparison slides). Please see Association exhibit 8 (2007-2008 salary comparisons) and Association exhibit 9 (2008-2009 salary comparisons). The last three (3) slides of each exhibit, representing steps 20, 25 and 30 (or highest step), have been modified as requested.

- The Fact Finder sought clarification from the Association regarding the status of the "post-season pay" (coaching) issue. This shall serve to confirm that the parties have agreed to memorialize the current practice with respect to this issue. This need not, therefore, be addressed by the Fact Finder.
- Appended hereto as Attachment A are the 2007-2008 salary schedules of the subject districts used by the Association in the development of the charts found in Association Exhibit 10, AVERAGE OF SUBJECT DISTRICTS AT EACH CELL COMPARED TO SAG HARBOR. Also included is the 2007-2008 Sag Harbor salary schedule (please note: it is labeled "Pierson," the school name) as well as schedules that represent the "average" salary of all subject districts (exclusive of Sag Harbor) at all cells.
- Appended hereto as Attachment B is a chart prepared by the Association reflecting the number of periods, the length of the teacher (and student) days and the ways by which student remediation and/or enrichment are addressed in the subject districts. This is provided to the Fact Finder in response to his request for greater detail regarding the "Duty Assignment" issue in these negotiations. It is entitled "Comparison of Teacher/Student Day in Subject Districts" and will also be transmitted electronically at the Fact Finder's request. It will be reviewed later, herein.

Salary Increases/Comparable Districts

It is somewhat difficult, as a practical matter, to discern the District's point of view on this issue. We heard talk of how difficult it was to assess any "trends" in the current "economic climate." That did not, however, discourage the District from pointing out those agreements that the Fact Finder is asked to accept as being reflective of "the times."

There are almost too many flaws in the District's arguments to confront, but several deserve special attention:

- Notwithstanding the parties' informal agreement to use the "subject" districts to which the Association limited its analysis, the District went so far afield as to include districts not on Long Island or even within the metropolitan area. Poughkeepsie, Troy and Putnam Valley simply have no place in the comparability discussion, even if there hadn't been a prior understanding of what districts were relevant. To include them is self-serving to the point of absurdity, and should not be a part of these deliberations. That the district "cherry picked" far-flung districts to make an indefensible point is, simply stated, disingenuous.
- The District would have the Fact Finder believe that negotiations as we know them have ended for the foreseeable future. That is pure nonsense. Selectively (again) pointing to certain agreements, the District failed even to accurately portray them. William Floyd, for example, was described as having made a significant "concession" in reducing their "negotiated increase." They did no such thing. William Floyd has an increase to their salary scheduled for next (2009-2010) year of 3.5%. That increase **will** be implemented as scheduled. What the parties **did** agree to do was:
 - Each teacher would have \$1190 deducted from their gross salary, spread out over the course of the year.
 - The salary schedule amounts remain unchanged, rendering this a "one-time" reduction with no effect on future earnings.
 - In return, the District guaranteed not only that all **teachers** would retain their jobs, but that all **positions** would be preserved, but for two (2) lost to declining enrollment. Twenty seven (27) positions would otherwise have been lost.
 - **Also noteworthy is that William Floyd pays 100% of the health insurance premium for both active employees and future retirees.**
 - **Elwood also "re-negotiated" an existing contract. They were scheduled to receive 3% next (2009-2010) year. They agreed to a zero instead, and in return received a four (4) year extension at 3%, 3.5%, 3% and 3.5%. Even inclusive of the zero, that averages 2.6% over five (5) years. Moreover, their salary schedule is very**

competitive compared with Sag Harbor's, especially when factoring in longevity payments that are tied to the salary schedule. Sag Harbor has no longevity.

- Neighboring Bridgehampton, which settled its contract just days before the Sag Harbor hearing received 3% per year for five (5) years, after having been without a contract all of last year and most of this year. And, even with increases to the teacher contribution to health insurance, they will only be contributing 12% of the premium by the **end** of the contract, compared with Sag Harbor's 15% **for the last ten (10) years.**
- Cold Spring Harbor and Longwood both settled during the fall, as the economic crisis was peaking. Cold Spring Harbor averaged 3.6% for six (6) years, with significant increases to longevity as well as salary schedule adjustments similar to what the Association is seeking in Sag Harbor. Longwood, a district of considerably less means than Sag Harbor, averaged 3.24% over five (5) years, beginning with this year. That agreement was not finalized until mid-November.
- Negotiations have been and continue to be alive and well in Suffolk County. For a complete and up-to-date perspective, the Fact Finder need only examine Attachment B, appended hereto, "NYSUT Suffolk Regional Office/Schedule of Annual Salary Increases Per Collective Bargaining Agreement."

Step Advancement/Column Movement

Let the record be set straight once and for all with respect to the "automatic" raises teachers get "just by virtue of staying a year."

- Of course step movements represent an increase to a District's payroll from one year to the next.
- Of course districts budget for that, since they can accurately predict it almost to the dollar.
- Of course every district on Long Island has the exact same reality, and all data reported by the Association reflect raises exclusive of step advancement, or increment, or by whatever name it might be known.
- And, significantly, of course **NO** district truly wants to do away with steps because it's a built-in **suppressor** of teacher salaries.

It is simply irrefutable that salary schedules provide management with a long "phase-in" of teachers' salary over anywhere from 15 to 30 (or more) years. In what other profession do you not earn the "professional wage" attendant to your position until you are at or near the end of your career? This is the ultimate double jeopardy. We will delay as long as possible your arrival at top salary, and then treat that as a benefit to you whenever we negotiate. Not a bad tactic if you can get away with it. The Fact Finder shouldn't be so persuaded.

The same arguments apply to column movements, with three noteworthy additions:

- Teachers **must** pursue a Masters Degree for certification purposes, and **all** districts reward that, as well as other professional advancement, with higher salaries.
- There is an attendant cost to teachers in their pursuit of degrees and other professional growth.
- The statistics cited by the district for 2007-2008 and 2008-2009 were intended, presumptively, to convince the Fact Finder of the high cost associated with the District's expense **on an annual basis**. This is deceptive. Conveniently left out is the fact that 2007-2008 was the first year of eligibility for a new column (MA+75) for Sag Harbor teachers. Many teachers availed themselves of that benefit. The Association sought more detailed information from the payroll department on what might be a more "typical" year in this regard, but the data was not available in any easily retrievable format, notwithstanding the District's ability to organize such data for its own purposes.

Anecdotally, payroll officials indicate that five to six teachers per year represented a more typical picture of column movement.

"The Economy"

While the economy affects all of us and, obviously, all school districts, "The Economy" has become both a sword and a shield for negotiators seeking to give less and take more. Greed and opportunism were the key ingredients of our recent economic meltdown. To allow that same recipe for disaster to permeate the negotiations process would have a chilling effect on labor in general and public sector employees in particular.

Public sector employees have traditionally enjoyed more in the way of security, be it job security, pensions or benefits, than their private sector counterparts. The trade off has always been that they will never have the earnings potential available in the private sector. One can accept that. But what one cannot accept, in all of its attendant irony and injustice, is that those same "securities" will come under attack every time "things go bad" in the economy.

Management likes to say "Those days are over" a lot whenever provided with any opportunity. An experienced negotiator could grow quite wealthy upon receipt of a dollar for every such representation.

As we have demonstrated overwhelmingly, the vast majority of school districts continue to negotiate through these "times," despite the attendant "uncertainties" and the settlements do not support this district's arguments.

The Fact Finder is urged to consider all of this, as well as the District's relative economic health, and, arguably, wealth, and reject yet another argument of convenience.

Personal Days Before/After Holidays/Vacation

Personal days, either before or after a holiday or vacation period, **are** granted by the District. The Association was unable to obtain empirical data (again) from the District, but has questioned both teachers and District officials, and it is irrefutable that, for a variety of reasons, and under varying circumstances, **some** teachers are permitted and others denied. This runs counter to any principle of fairness, and is the reason why the Association seeks clarification that teachers **shall** be permitted to utilize personal leave on one end or the other of a holiday/vacation period, but not both.

Academic Support/Duty Period

First, for the purpose of absolute clarity, the District's apparent attempt to characterize the Association as being opposed to this proposal because they view it as lengthening the work day is without any basis in fact.

The work day for teachers has been 7 hours and 1 minute for many years, and has no bearing on the Association's position.

What we have steadfastly maintained is that, on a "practical" basis, the teacher day has been extended by virtue of it being exactly the same as that of the students, thereby making it virtually impossible to "work" within the 7 hours, 1 minute.

But, that's not the issue, in any event. What is at issue is the heart of what the Association considers "legitimate" interests in these and previous negotiations, A few reminders are in order.

- The **District** sought and achieved a 9 period day.
- The **District** subsequently sought and achieved a 10 period day, with academic support built into the day.
- The **District** subsequently sought and achieved "Professional Periods" from teachers (27 per year/last negotiations) because, after all teachers now had **three** preps.

As indicated before and restated now, this is about two things:

- Money. The District seeks to do away with paid cafeteria supervision. This is the means toward that end, as they have candidly admitted.
- Misplaced educational priorities. When the District sought academic support in bargaining 9 years ago, they assured the Association that it would never become a "dumping" ground or glorified study hall. By proposing to remove Phys Ed, Special Ed, and Special Area teachers from Academic Support, the numbers assigned to the remaining teachers **must** increase. At the High School, where the number of students in each group ranges from 7 to 15, the Association estimated that the range will increase to between 10 and 18. At the even more critical Middle School setting where teacher's support of students is essential in so many ways, the numbers would increase from a 6 to 10 range to a 10 to 14 range.

The Fact Finder is urged to see the proposal for what it is and reject it. Association Attachment A, appended hereto, shows that the most common practice among the subject districts is to have a 9 period day with an extra help component after school. In Bridgehampton and Sag Harbor they elected to go with a ten period day, of the same approximate length, with extra help ("Academic Support" in Sag Harbor) built into the day. It occurs every day; at the end of the day ("10th" period), is 34 minutes in duration, and is conducted by all teachers. It represents the culmination of one informal (circa 1993) negotiations and two formal (2000 and 2004) negotiations between the parties, all at the demands of the District. If the District is still not satisfied with the results, perhaps they need to be reminded of the old adage, "*Be careful what you wish for; you just might get it.*"

Employer's Contentions

Following is a discussion of the parties' positions on the significant issues that must be resolved in order to reach a final settlement of this contract, including salary, column and increment adjustments, duty assignment period, course approval, health insurance in retirement, advance payment for vacation, personal leave, alternative health insurance, disability insurance/sick bank, electronic posting, coaching and extra-curricular activity stipends, unused sick and personal leave, insurance procurement, stipends for overnight field trips and performance reviews of coaches.

This discussion includes an analysis of the current economic climate facing Long Island and the District and references numerous articles (copies of those articles referred to herein is attached collectively as Exhibit "F"). The discussion also includes an analysis of teachers' contracts from 10 public school district in Suffolk County (including Sag Harbor), (those contracts are attached hereto as Exhibit "G"), information from the Nassau-Suffolk School Boards Association Salary Workbook and Fringe Benefit Study, 2007-2008, (a copy of the referenced items are collectively attached as Exhibit "H"), information from SCOPE Education Services, (a copy of that information is attached as Exhibit "I") and information from the New York State Teachers' Retirement System, (a copy of that information is attached as Exhibit "J").

1. Ability To Pay

The average Long Islander has always been overtaxed and the ability to pay local taxes has therefore always been a daunting challenge. Now, in addition to the normal challenges facing Long Islanders, the current, unprecedented economic crisis has the local taxpayer hoping to avoid being laid off and hoping to avoid foreclosure. The current crisis has affected every facet of the average American's financial status. From the catastrophic collapse of Wall Street to the ever increasing unemployment rate, the question is not whether the taxpayer can afford to pay local taxes but whether the taxpayer can simply survive the current economic downturn.

New York has been hit the hardest by the current, unprecedented economic crisis.

Not only is the State mired in the economic crisis, but Long Island, in particular, has been affected like no other region in the State. On March 6th, Carrie Mason-Draffen reports, in an article entitled, "Joblessness is at a 16 year high:"

Long Island's economy has continued its rapid deterioration, shedding 23,200 private sector jobs in January, compared with a year ago.

The unemployment rate shot up 6.9%, the highest in 16 years, according to data released yesterday by the State Labor Department.

...the weakened Long Island economy has sent the unemployed scrambling for a dwindling number of jobs. [Carrie Mason-Draffen, *Joblessness is*

at a 16-year High, Newsday, March 6, 2009]

According Ms. Mason-Draffen, unemployment in Suffolk County has reached 7.3% and unemployment in **Southampton Town has reached 8.6%**. [Id.] (85% of the taxable properties in the Sag Harbor UFSD are in Town of Southampton). Pearl Kamer, Chief Economist for the Long Island Association, stated:

The recession is going to be longer and deeper than anyone anticipated. We have been constantly surprised on the downside. [Id. quoting Pearl Kamer.]

More recent figures paint an even grimmer picture. These figures indicate that Long Island has lost 20,600 private-sector jobs in February, compared with February of 2008 [Carrie Mason-Draffen, *LI Unemployment at Highest Since 1992*, Newsday, March 27, 2009, www.newsday.com/services/newspaper/printedition/friday/news/ny-bzjobs27608517]. According to figures released by the New York State Labor Department on March 26, 2009, the unemployment rate in the State is now at 7.5 percent, Suffolk County is now at 7.9 percent and **Southampton Town is at 9.4 percent**. [Id.]

Not only are the unemployment rates soaring on Long Island, bankruptcy filings are up almost 55% as compared with the filings in February of 2008 [Emi Endo, *Bankruptcy Filings Up 55% on LI*, Newsday, April 2, 2009]. According to recent data a total of 715 residents and businesses filed for bankruptcy in Nassau and Suffolk County [Id.] A family which manages to keep its home by filing for Chapter 13 bankruptcy is now also faced with a job layoff. [Id.]

Two myths have emerged as a result of the current economic crisis as it relates to education on Long Island:

Myth #1: School districts will be able to afford increases in teachers' salaries and increases in costs associated with health care as a result of State aid;

Myth #2: School districts will be able to afford increases in teachers' salaries and increases in costs associated with health care as a result of the federal stimulus package

As will be set forth below, school districts on Long Island can no longer rely on State aid to supplement the increasing costs of teachers' salaries and health care costs and cannot rely on a federal "stimulus" package for the upcoming school years. As a result, school districts have no choice but to look to the taxpayer to bear the burden of these ever increasing costs.

In light of the current recession, when every Long Island taxpayer is faced with an expanding laundry list of economic hardships and financial disappointments, turning to the Long Island taxpayer to fund teacher salary increases and increases in costs associated with healthcare is simply unconscionable. At a time when the Long Island taxpayer is forced to make massive sacrifices in an economy rife with unemployment, foreclosure, bankruptcy filings, and a complete absence of property tax relief, a teacher's demand for extensive salary increases is out of sync with reality.

In addition, the general woes of the Long Island and State economy are exacerbated in Sag Harbor since Sag Harbor is a resort community. It is very likely that spending, through tourism, will be significantly decreased due to the reality that many Long Islanders and New Yorkers simply have far less disposable income than in years past.

MYTH #1

**SCHOOL DISTRICTS WILL BE ABLE TO AFFORD INCREASES
IN TEACHERS' SALARIES AND INCREASES IN COSTS
ASSOCIATED WITH HEALTHCARE AS A RESULT OF STATE AID**

The District has an obligation to the Sag Harbor taxpayers to predict the economic future of this State and the effects it will have on local school districts. In order to accurately make such a prediction, one must rewind to the events that commenced in the Fall of 2008 with the presentment of the Governor's budget proposal; events which are still unfolding as of the writing of this brief and events which will no doubt result in significant changes in the fundamental principles of fiscal responsibility and school funding.

A. Financial Status of the State of New York - Pre Federal Stimulus Package

Prior to the passage of the Federal Stimulus Package, the State's financial status was in a state of peril and in November of 2008, Governor Paterson responded by proposing extensive cuts in an effort to adapt to the new fiscal reality facing the State. While these cuts have, in large part, been "taken off the table," the relief is temporary. We believe the economic future of the State and the District is still in jeopardy.

As a result of the Governor's pre-federal stimulus package proposal, local Long Island school districts would have lost as much as 10 percent of their State aid [Oliver Peterson *State Proposes Cuts To School Aid*, The East Hampton Press, 27 East, November 17, 2008, www.27east.com/story-print.cfm?id=180650] In fact, those proposed cuts to State school aid would have been deepest in richer school districts [Id.]

B. Long Island School Districts, State School Districts, Community Leaders and Local Officials React to the Governor's Proposal

Locally, Sag Harbor Village officials recently voted to give themselves a pay cut in January of 2009 and warned that the Village would have to be frugal in considering its budget for the coming years [Michael Wright, *Board Takes Pay Cut*, Southampton Press, February 26, 2009] While the cuts were somewhat small; \$2,000.00 for the mayor and \$1,000.00 for each of the four trustees, they are consistent with the fiscal responsibility the village must endure for the upcoming years [Id.]

These actions by administrators throughout the State recognize the fiscal hardships faced by communities and will help minimize tax increases at a time when, in many cases, people are struggling to maintain jobs and their house.

C. The Ripple Effect of the Economic Crisis - Related Financial Difficulties Facing the Long Island Tax Payer and School Districts

1. The New York State Retirement System

The New York State Comptroller, Thomas DiNapoli, at the yearly "State Issues Conference" in Albany discussed the State's financial crisis [Brian M. Butry, *DiNapoli Sees ERS Rate Increase in 2011*, On Board, March 16, 2009] At the conference, Comptroller DiNapoli indicated that he fully anticipates the State Employees' Retirement System to continue to lose money in the current economy which will certainly lead to increased contribution rates for employers in the future [Id.] The fund has already suffered a 20 percent decline in value this past year and the Comptroller warned the losses would mount [Id.] The Comptroller stated; "I anticipate a very significant loss" [Id. Quoting Comptroller DiNapoli.] While the decline in value will not have a short term impact on school districts since contribution rates are locked in through 2010, the Comptroller definitely expects a rate increase in 2011 [Id.]

This decline will, no doubt, result in further financial strains to school districts in the form of rate increases. And those rate increases will result in a greater increase in taxes for every school district in the State.

2. The MTA Tax Plan and Fare Increase

Faced with a \$1.2 million deficit, the Governor and the Democratic majority have proposed to adopt a payroll tax that would assist in bailing out the MTA [Stacy Altherr, *MTA Tax Plan Draws Ire*, Newsday]. The tax would be paid by employers in the 12 counties served by the MTA [Id.]. Lorraine Deller, executive director of the Nassau Suffolk School Boards Association, reading a statement on behalf of the organization's President, Jim Kaden, stated:

Nowhere but in the increasingly bizarre world of New York State government would school budgets be raided to fund a transit system. [Id. Quoting Ms. Deller.]

The Nassau-Suffolk School Boards Association indicated that \$24 million would be collected from Long Island school district payrolls by multiplying each district's payroll by 0.3 percent, the amount originally requested by the MTA [Id.]. According to Ms. Altherr, that amount for the region is now estimated at 0.23 percent [Id.]. Clearly, this proposal, if passed, will have an additional financial strain on school districts which will ultimately be borne by the Long Island taxpayer.

3. The STAR Property-Tax Reduction and Rebate Program is Cancelled

According to Joye Brown, in the article, "STAR Rebates Fizzle, LIers Burn" the STAR Program was essentially created as a result of high school property taxes [Joye Brown, *STAR Rebates Fizzle, LIers Burn*, Newsday, April 2, 2009]. The program assisted the Long Island taxpayer in two ways: (1) the reduction part - wherein a property owner could apply for a partial property tax exemption resulting in decreased local school taxes for that property owner; and (2) the rebate part - wherein the state would mail out checks to homeowners each fall, the amount of which varied by income, community and whether the homeowner was elderly [Id.].

As if the proposed State budget has not hit Long Islanders hard enough, the current budget proposal does not include the rebate portion of the STAR program [Id.]. As a result, Long Islanders will lose an estimated \$370 million in rebate checks [Id.].

D. Specific Financial Difficulties Facing the Sag Harbor Tax Payer

1. Upgrades to the Sag Harbor School District School Buildings

According to Architect, Larry Salvesen, who performed a study regarding long range facility needs of the Sag Harbor School District, there currently exists numerous pressing maintenance needs

and minor improvements at both school buildings that are, "necessary to comply with building and safety codes, like upgrading heating systems, repairing handrails and doors and replacing cracked or broken floor tile." [Michael Wright, *Sag Harbor Sticker Shock: Schools Need \$5m of Work*, Southampton Press, March 12, 2009]. As a result of the analysis prepared by the Mr. Salvesen's firm, a committee of 17 local residents, school faculty and administrators prioritized the various projects [Id.].

2. Updated Tax Assessment Regarding the
East Hampton Portion of the School District

The Sag Harbor School District straddles the town line between East Hampton and Southampton. [Beth Young, *A Lopsided Tax Bite for Some in Harbor*, The Southampton Press, February 5, 2009] Because of the East Hampton's town's inability to routinely reassess property, Sag Harbor School District taxpayers on the East Hampton side of the town line pay far more than their share of the school district taxes as compared with those taxpayers on the Southampton town side [Id.] [Writer then quotes from that article].

3. Potential Short Fall in Capital Fund
Resulting the Likelihood of Tax Hikes

Town officials from the Town of Southampton have recently confirmed bookkeeping errors in 2005 and 2006 which erroneously inflated the Town's budget surplus in subsequent years, surplus which was used to offset spending and avoid property tax increases [Brian Bossatta, *Officials Unravel Mystery of Deficit*, The Southampton Press, April 2, 2009]. Supervisor Linda Kabot and Deputy Supervisor Bill Jones have indicated that \$4.9 million from the Southampton Town general funds had been earmarked for capital projects in 2005 and 2006, but that money was never transferred from the general accounts into the capital budget [Id.] According to Richard Blowes, Town Management Services Administrator, had the transfers been made, the general fund budget would have been reduced, likely resulting in higher taxes [Id.]. Since the \$4.9 million was never transferred from the Town's general funds to the capital budget, that money was instead used to keep taxes level and help fund the town's operating costs. As a result of this failure, according to Supervisor Kabot, property taxes will likely be raised for 2010 [Id.].

Collectively, therefore, there are, and there will be, significant demands upon the property owners of the District, causing them to be responsible for big tax increases, exclusive of the teachers' salary proposals. Those unrelated tax increases nonetheless will have the effect of diminishing the ability of District taxpayers' ability to pay already high school taxes.

MYTH #2

**SCHOOL DISTRICTS WILL BE ABLE TO AFFORD
INCREASES IN TEACHERS' SALARIES AND INCREASES
IN COSTS ASSOCIATED WITH HEALTHCARE AS A RESULT
OF THE FEDERAL STIMULUS PACKAGE**

A. The Federal Stimulus Package - Temporary Relief for the Upcoming School Year

The American Economic Recovery and Reinvestment Act was recently passed as a way of stimulating the current depressed U.S. economy.

New York will receive approximately \$24.6 billion in stimulus cash over the next two years. [James T. Madore, *Stimulus Aid*, *Newsday*, February 15, 2009]. Locally, the Sag Harbor School District will receive \$195,000.00 from the Federal Stimulus Package for special education programs which will offset approximately \$180,000.00 the District expects to lose in State aid for the 2009-2010 school year [Michael Wright, *Federal Stimulus Bails Out Harbor School Budget*, The Southampton Press].

As will be discussed below, the Federal Stimulus Plan, while providing temporary relief to the State, local school districts and taxpayers, will have no lasting impact in the upcoming years.

B. The Federal Stimulus Package - No Relief for the Future

A significant question that has been raised is whether the Federal Stimulus Package will have a long-lasting, positive impact on the Long Island economy and the struggling Long Island taxpayer beyond the upcoming year. Martin Melkonan, an economics professor at Hofstra University fails to see improvement in the near future, even when considering the Federal stimulus money [Carrie Mason-Draffen, *LI Unemployment at Highest Since 1992*, *Newsday*, March 27, 2009, www.newsday.com/services/newspaper/printedition/friday/news/ny-bzjobs27608517]. [The writer then quotes from the article appearing in *Newsday* and from statements made by public officials].

**C. Significant Developments Post-Federal Stimulus Package -
William Floyd and Crown Point**

The new fiscal reality local school districts are faced with is evidenced by union

concessions subsequent to the passage of the Federal Stimulus package. For instance, recently, teachers at the William Floyd School District agreed to give up \$1 million in pay raises in order to save jobs [John Hildebrand, Newsday, Wm. Floyd Teachers Give Up \$1 Million in Raises, April 21, 2009, www.rr.com/home/home/article/4473267/7518092/wm-floyd_teachers_give_up_11]. Specifically, the teachers voted, overwhelmingly, to accept a 2.5 percent pay hike next year, rather than the 3.5% raise that was originally negotiated. Board President, Robert Vecchio, commented that the agreement would permit the District to avoid cuts in staffing and student services which were contemplated by the current economic recession [Id.].

It is clear that the William Floyd agreement is important for other Long Island school districts that are facing similar financial problems [Id.].

So while many Long Islanders are currently struggling in an economy mired in soaring unemployment, layoffs, foreclosures and bankruptcies, the Sag Harbor teachers are struggling to receive an extra 1.4% salary increase above and beyond the 2.5% raise (exclusive of increment and column adjustment), proposed by the District. This fact-finding brief will analyze the outstanding proposals from each side. These proposals must be analyzed in the context of the current economic collapse burdening this country, this State and Long Island. For instance, a 3.9% raise (on top of the average step increase of 2.7%) must be viewed differently today when compared to the same 3.9% raise before the economic collapse. A failure to contemplate the current economic climate would result in a failure to contemplate the most significant fact currently facing both the District and the teachers.

III. SALARY ANALYSIS

A. Salary Proposal Analysis

Unlike the Crown Point School District, the District is not asking the Teachers to accept a salary freeze. On the contrary, even in light of the current economic crisis, a time when most Long Islanders are lucky to earn a paycheck, let alone a raise, the District is proposing the following salary increase -- 2.5% for each year of a three-year agreement, *exclusive of increment or column increases*. This proposal is consistent with the recently negotiated William Floyd contract extension wherein, as discussed above, the teachers agreed to 2.5% pay raise rather than the 3.5% raise originally negotiated. Here, rather than accept the District's offer, the teachers have demanded a salary increase of 3.9% over a four-year agreement, exclusive of increment and column increases.

The cost of increasing teachers' salaries is much higher than the simple result of adding the annual percentage increases multiplied by the beginning payroll. With or without the increases, the teachers, under the terms of their most recent contract (kept in force under Triborough provisions) receive an increase in salary by virtue of their moving up a "step" on the salary schedule. This increase, commonly referred to as "increment", is calculated on a percentage basis, by determining the cost of moving every teacher up one step and then dividing that number by the cost of payroll. Column increases also must be taken into account. Column increases are those increases for post employment continuing education (i.e. graduate credits or "in-service" credits). Such increases are also automatic in the salary schedule.

(i) Increment Increases:

We need to look at isolated increment costs on the Sag Harbor Teachers salary schedule for the 2007-2008 school year. The increment between BA Step 1 and Step 2 is \$2,297 or a 5% increase; the Step 1 salary being \$45,937 and the Step 2 salary being \$48,234. The increment between Step 2 and Step 3 is \$2,297 or a 4.76% increase; the Step 3 salary being \$50,531. The increment between Step 3 and Step 4 is \$2,297 or a 4.55% increase, the Step 4 salary being \$52,828. Thus, without any salary increase and without any column advancement, a teacher's salary will automatically increase 15% from his/her first year to the beginning of his/her fourth year. Again, this is exclusive of salary raises or column advancement. [Charts reflecting step progressions for a teacher with BA and MA degrees follow.]

(ii) Column Advancement:

We must also look at isolated column increase costs. In the Sag Harbor Teacher Salary Schedule for the 2007-2008 school year, the column increase between the BA column Step 1 Salary and the BA+15 Step 2 Salary is \$3,744.00, an 8.15% increase, the BA Step 1 salary being \$45,937.00 and the BA+15 Step 2 salary being \$49,681.00. The column increase between the BA+15 Column Step 2 salary and the BA+30 Column Step 3 salary is \$3,882.00 or a 7.81% increase. The column increase between the BA+30 column Step 3 salary and the BA+45 column Step 4 salary is \$4,019.00 or a 7.5% increase. Thus, provided the teacher has completed the requisite credits, a teacher's salary will automatically increase \$11,645.00, or 25.34% from his/her first year at a BA Step 1 salary to the beginning of his/her fourth year at BA+45 Step 4 salary. And since it is required that a teacher attain a master's degree within five years of initially being appointed as a teacher, it is likely that most teachers will move from step 1 to 4 within four years; it is a virtual certainty that they will do so within five years. [Chart reflecting step jumps 1 to 5 in BA category follows.]

(iii) Financial Impact of the District's Proposal: As set forth above, the District has offered to increase teacher salaries 2.5% per year over a three year agreement in addition to the

aforementioned increments. The following is the financial impact of the District's salary proposal, if accepted by the Union. [Relevant charts follow]

If the District's salary proposal was accepted, teacher salaries would increase, based on the salary increase and increment, a total of **\$1,548,036**, or **15.92%**, over the life of a three year Agreement. This total amount *excludes* increases related to column advancement.

(iv) Financial Impact of the Association's Proposal:

As set forth above, the Union has offered to increase teacher salaries 3.9% over a four year agreement. The following is the financial impact of the Union's salary proposal, if accepted by the District. [Relevant charts follow.]

If the teachers salary proposal was to be accepted, teacher salaries would increase based on the salary increase and increment, a total of **\$2,776,565**, or **28.56%**, over the life of a four year Agreement. This total amount *excludes* increases related to column advancement.

(v) Salary Comparison with Similar School Districts

Comparing the Sag Harbor teachers' salaries with teachers' salaries of similar school districts, it is clear that the *current* teacher salaries in Sag Harbor, *without any increase*, are by no means low or unfair.

The 2007-2008 Salary Workbook and Fringe Benefit Study reports selected steps for each participating school district. That worksheet identifies the participating school districts that are placed in order of their percentage rankings. While the Sag Harbor School District information was not reported, the workbook figures are instructive when comparing the data to the district's current salary schedule. For instance, out of 34 participating school districts (35 if one includes Sag Harbor), the district's BA Step 1 of \$45,937.00 would be ranked No. 10 out of 35 participating school districts. That is, only nine other participating school districts have a higher BA Step 1 salary. When compared to the District's current BA Step 1 salary, only two east end participating school districts are higher (Fishers Island and Mattituck-Cutchogue). (See enclosed)

In addition, the District's current MA Step 21 salary (\$100,143.00) would be ranked No. 7 out of the 35 school districts. No participating east end school district is ranked higher. (See enclosed). The District's current MA Plus 30 Step 21 salary (\$105,655.00) would be ranked No. 7 out of the 35 participating school districts. Only one participating east end school district, Westhampton Beach, is higher, ranked at No. 4. (See enclosed). The District's current MA Plus 60 Step 21 teachers' salary of \$111,168.00 would be ranked No. 7 out of the 35 participating school districts and only one participating east end school district, Westhampton Beach, is higher. (See enclosed).

It is anticipated that the teachers will argue that the District can afford the 3.9% increase since the Superintendent, as a result of consolidation of support staff and administrative positions and other cost-savings initiatives, has saved the District more than \$300,000.00. That argument was included in the teachers' submission/presentation entitled "Both Sides of the Coin" dated January 20, 2009. This argument, however, assumes that the savings, which resulted from the consolidations, are going to be used by the District for teacher raises rather than for items that benefit the students of the District, such as special education programs or after school programs.

In subsequently formulating the budget, the Superintendent and administrators implemented an additional \$700,000 in cost-savings compared to current year expenditures. Again, it would be incorrect and inappropriate for the teachers to claim that those savings could be used to pay for teachers' salaries in the proposed contract. The proposed tax rate increase for the 2009-2010 budget is about 3.79% *after implementing the cumulative \$1,000,000 in cost-savings measures*. In fact, it could correctly be argued that without those cost-savings initiatives, 10-12 teaching positions would have been cut for the 2009-2010 budget. As it stands now, only one teaching position will be cut from the budget.

(vi) Column Adjustment/Step Adjustment

Not only are the teachers requesting salaries be increased by 3.9 percent plus increment (that averages 2.7%) for each of four years, they are also requesting column and increment adjustments which would have the effect of increases to specific portions of the salary schedule. Regarding the demand for column adjustments, the teachers propose to increase the multipliers for the three middle columns of the salary schedule as follows:

- Masters - from 1.09 % to 1.12 %
- Masters + 15 - from 1.12 % to 1.14 %
- Masters + 30 - from 1.15 % to 1.16 %

Regarding the demand for step adjustments, the teachers propose to change Step 23 from 2.05 to 2.10 and Step 24 from 2.05 to 2.15 %.

Clearly, the purpose of these adjustments is to accelerate the pace at which the teachers will achieve the highest salary. Thus, as the average Long Islander plummets straight into an economic depression and unemployment in the Town of Southampton soars to 9.4 percent, residents of the school district can rest assured that with such adjustments to the salary schedule the teachers can achieve a top salary faster and more efficiently than ever before. Instead of trying to assist the District in cutting costs, in a time when the State is faced with the most serious crisis since the Great Depression, the teachers are not only asking for more, but for more at a faster rate. Such adjustments are totally inconsistent with the notion of fiscal responsibility that is currently being forced upon the State, local municipalities, school districts, private companies and private citizens.

In reality, teachers who remain in the District achieve a very high salary and the District is under no obligation to "fix" a perceived flaw in the salary schedule where none actually exists. The 2007-2008 Sag Harbor Teacher Salary Schedule is comparable to the 2008-2009 salary schedules of other school districts. For instance the following charts compare portions of the 2007-2008 Sag Harbor salary schedule with portions of the 2008-2009 salary schedule of two other local school districts, (Three Village and Mattituck-Cutchogue) [Charted salary schedules follow].

Moreover, the District's rate of teacher turnover does not reflect a need to accelerate the pace at which teachers achieve a top salary. Based on information from the New York State Education Department Accountability and Overview Report, the turnover rate of the Sag Harbor teacher is low when compared to other Districts in terms of District size and wealth. Enclosed hereto as Exhibit "G" is a copy of a study appearing in "Vital Signs" published by SCOPE Education Services. According to that study, in the 2007 academic school year, Sag Harbor teachers had the third lowest percentage turnover rate (tied with Greenport), when compared with eight other school districts categorized by size and the fourth lowest percentage turnover rate when compared with nine other school districts categorized by wealth. See Exhibit "G".

The teachers refer, in their submission/presentation entitled, "Both Sides of the Coin," to police salaries as a basis for such adjustments to the salary schedule. Such an argument is without merit since it is wholly irrelevant that the police, in Suffolk or Nassau County, reach a top salary in five years. The position of police officer is completely different than the position of school teacher and a comparison of the two professions, including salary, has no merit. Regardless, the fact that the counties have accelerated salaries does not justify a demand for it here, at this time of crisis.

IV. DUTY ASSIGNMENT PERIOD

Currently, teachers are not required to serve a duty assignment period (i.e., lunch duty, proctoring testing rooms, study hall, hall duty, etc.), that is common to teachers in most districts in the State. As a result, the District expends approximately \$54,000.00 for lunch supervision alone. Currently, the teachers provide academic support as part of the daily school schedule that affords teachers and students the opportunity to address academic issues. Generally, students seek out academic support from teachers in subjects such as science, math, social studies and English, more than subjects such as physical education. As a result, the District is proposing that certain teachers perform a duty period, while others would continue with academic support. Specifically, teachers in physical education, home and careers, guidance, English a second language, special education, study skills, health and the psychologist would be assigned no more than one duty period per day. Those teachers would be relieved of their academic support period. This proposal ensures that the students are receiving the necessary academic support and also has the positive effect of the District saving costs by not having to pay employees for duty periods.

This section of the contract is entitled "Duty Period." However, the real issue separating the parties should more accurately be termed a "Supervisory Responsibility." The majority of local and similar school districts require a duty or supervisory period. Some examples are:

[Examples are provided.]

It is anticipated that the teachers will argue that they are currently assigned to an academic support "duty assignment" period each day. However, academic support is not a duty assignment. In addition, as discussed above, the District is attempting to remove academic support in those areas of low need. Because there are areas of low need, academic support periods in subject areas such as Physical Education and Home and Careers, are of little use to either the students or the teachers of those subject areas. Rather than have the teacher occupy an empty class, or one in which there is little academic support, the District's proposal would simply require the teacher to work in a more traditional setting, such as study hall duty or lunch duty.

The teachers also object to the assignment of a supervisory period because they believe it creates a "second-class" teacher. That is, some teachers might be perceived as more important than others because they would be required to provide extra academic support to students while other teachers of "less important subjects" (such as physical education) would be assigned lunch duty. Teachers at the middle and high school level teach five (5) classes, are responsible for an academic support period, have a lunch period and three planning periods in a 9-period school day (plus a 34 minute activity period). If the teachers' main concern is the perception that some teachers are

"second-class teachers" it would be agreeable to the District if this contractual term stated, to the effect that all teachers shall teach 5 classes and an academic support period and shall also be responsible for one supervisory responsibility. Such a supervisory responsibility could include coverage for the lunchroom, bus duty, hall supervision, supervising a study hall, supervising in-school detention, or serving as an Advisor to students. Any of those supervisory responsibilities would still leave teachers ample time to plan lessons, meet the needs of students and simultaneously enable the safe, smooth operation of the middle/high school.

V. COURSE APPROVAL

Each year, tens of thousands of taxpayer dollars are spent for increased salaries to teachers who have completed additional course work by virtue of lane movements on the salary schedule. In the 2007-2008 school year, approximately 57 out of 116 teachers received increases in lane movements, costing the District an additional \$173,735 - an approximate 3.5% increase for those teachers in that year. The current contract calls for approval of courses which are related closely enough to a teacher's certification or current assignment. This is clearly too broad since many courses could be related to the teacher's certification but completely unrelated to the teacher's current assignment or prospective assignment. In fact, that language makes it virtually impossible for the Superintendent to exercise any discretion since almost any course could be broadly construed to be related to the teacher's certification area.

The District is proposing to approve courses directly related to classroom content or skills related to specific subject areas of the teacher as determined by the Superintendent. This proposed language will ensure that the courses taken by the teachers are relevant to the teacher's assignment thereby benefiting the students of the District. Furthermore, at a time where fiscal prudence is more essential than ever, the proposed language would ensure that dollars devoted to paying for additional credit hours have a clear relationship to improved instruction.

The teachers have argued, in the submission/presentation, "Both Sides of the Coin," that the District is getting a good investment when it comes to course credits and salary advancement. They have provided a calculation regarding the 2007-2008 increases relative to course credits. That calculation indicates that 57 teachers earned 15 credits for salary increases of \$173,735.00. They then multiply 57 (the number of teachers) by 15 hours, which equals 12,825 hours of class time. They then divide \$173,735 by 12,825, which equals \$13.55 per hour of class time. The teachers then conclude that this is a good investment for the District.

This calculation fails to consider, however, the following critical factor: once the teacher obtains the salary increase for the course credit, the District must pay the salary increase for the balance of the teacher's career with the District. Column advancement is not a one-time payment. As the teachers are well aware, a teacher who advances into the next column does not revert back to the prior column after the completion of the school year. This issue cannot be analyzed by taking a snapshot of one school year. If the teachers are, however, proposing a one-time payment, wherein the teacher does revert back to the prior column, the District will certainly consider such a proposal.

VI. HEALTH INSURANCE IN RETIREMENT

Currently, teachers hired prior to July 1, 2000 do not contribute toward health insurance in retirement. Teachers hired since July 1, 2000 contribute 15% toward health insurance costs in retirement. The District has requested that all teachers contribute 15% toward health insurance in retirement effective July 1, 2010. It is the District's belief that all teachers, not just the newest, should shoulder some of the burden of rising health insurance costs.

Furthermore, due to the decline of the stock market over the last year, the New York State Teachers' Retirement System has already informed school districts to expect a large increase in pension contribution rates effective with the 2010-2011 school year.

Rising health insurance costs support the District's position that all employees share the burden of those costs, and employees hired before July 1, 2000 should not be exempt from this burden with respect to contributing toward such costs in retirement. The trend among school districts in New York is clearly one toward an increase in health insurance contributions, even in retirement. The majority of local and similar school districts require contributions of retirees that are comparable to the District's proposal. Some ask for a greater burden from their employees: [Examples are given.]

VI. ADVANCED PAYMENT FOR VACATION

Currently, the Collective Bargaining Agreement requires the District to make paychecks available to teachers on the last school day prior to a vacation period. District auditors have advised the District to refrain from this practice since it amounts to an advanced payment. In addition, there is no legal authority for such advanced payments to be made by the District. As a result, the District has proposed to remove the advanced payment requirement from the contract.

The bulk of local and/or similar school districts are not contractually required to provide such an advanced payment. Out of nine local and/or similar school districts, (Mattituck- Cutchogue, Port Jefferson, Westhampton Beach, Southampton, East Hampton, Southold, Hampton Bays, Bridgehampton and Three Village), only two (Mattituck-Cutchogue and Port Jefferson) require such advanced payment. The fact is, most employees have direct deposit and concerns relative to the timing of one's paycheck are therefore moot. That TASH is not in agreement with the District's proposal evidences TASH's unwillingness to agree to even the most reasonable common sense proposals.

VIII. PERSONAL LEAVE

As a result of current contractual language, teachers insist that they should be permitted to take a personal day either before or after a school holiday regardless of an emergency or religious observance. This current contractual provision has a negative impact on the District. The fact that teachers are permitted to take off the day either before or after a school holiday or break - regardless of an emergency or religious observance - results in understaffing and the need to hire substitute teachers to replace full-time teachers for that personal leave. In addition, not only is instruction disrupted, this practice sends a negative message to the students who are required to attend school before a holiday commences and return once the school holiday is completed. As a result, the District proposes that teachers be permitted to take a personal day before and/or after a school holiday in the event of an emergency or religious observance, or if approved by the Superintendent.

Many of the local and/or similar school districts do not permit teachers to take personal days either before or after a school holiday or break. [Examples are provided.]

IX. ALTERNATIVE HEALTH PLAN

The current contract provides in pertinent part:

A. Hospital and Medical Insurance - The district will provide the following hospital and medical insurance benefits for all employees covered by this agreement who qualify in accordance with procedures and regulations of the New York State Government Employees Insurance Program and Civil Service Laws and Regulations:

(1) Empire Plan Plus Enhancements - The district will provide either the individual or family coverage according to the employee's eligibility. The district will assume payment of the premium costs of the Empire Plan Plus Enhancements in accordance with the provisions of Article XI, Section C, No. (1) below.

The result of this language is that the District is unable to secure health insurance at a lesser cost. In addition, employees are not given the opportunity to select an alternative health plan that is more suitable to their needs and requires less of a sacrifice of personal income. As such, the District proposes a revision to the contract language permitting it to offer alternative health plans for employee consideration. In addition, should the employee elect the alternative health plan, both the District *and the employee* share in the savings. Significantly, this proposal would not require the employee to accept the District's offer of an alternative health plan. Rather, the decision is entirely up to the employee. Such a proposal is clearly an effective way of controlling health insurance costs, while at the same providing employees with an agreed upon plan. Why the Union resists the win-win proposal is beyond comprehension.

Contracts of local or similar school districts contain language regarding alternative health plans. [Examples are provided.]

X. SICK BANK/DISABILITY INSURANCE

The current contract language states as follows:

(4)(a) The District shall provide a community sick bank of two

hundred (200) days for the use of teachers who deplete their personal sick banks.

(b) Each year of this Agreement the District shall provide such additional days to the community sick bank as are needed to start the school year with two hundred (200) days in such sick bank.

Unlike many similar school districts on Long Island, wherein the employees are required to donate days into a sick bank, [for districts that have sick banks that are funded in whole or in part by the employees, see West Hampton, Port Jefferson, Southampton, East Hampton, Bridgehampton and Mattituck-Cutchogue] the District's sick bank is funded entirely by the District. The District's sick bank is obviously extremely costly to the District. As a means to control costs, the District is proposing to obtain disability insurance for teachers. Teachers whose illnesses or injuries qualify under that disability insurance policy would be eligible for those benefits in lieu of withdrawing sick bank days.

This type of provision can be found in other similar school districts.[Two examples are provided].

XI. ELECTRONIC POSTING

In order to improve communication between teachers and students, the District has proposed the use of an internet-based electronic posting system. Specifically, the District has proposed the following language:

- E-Boards: Teachers shall be required to utilize e-boards for weekly updates, homework assignments, grading policies, field trips, major test dates, grade books, attendance lists, course syllabus, and such other items as directed by administration.

It is the District's position that this new provision will be beneficial to both the teachers and the students of the District. In fact, it is the District position that such requirement would actually benefit the teachers since it would permit teachers to post assignments in a more uniform fashion, thereby eliminating various clerical functions and saving valuable time. In addition, such a proposal would alleviate District costs associated with photocopying and paper purchases.

XII. COACHING AND EXTRACURRICULAR ACTIVITY STIPEND

[This issue has been withdrawn from the Fact Finder's consideration per stipulation of the parties].

TEACHERS' PROPOSALS

XIII. UNUSED SICK AND PERSONAL LEAVE

The teachers are demanding the ability to convert up to 50% of unused sick leave and personal leave into cash upon retirement at a rate of 1/181 of their salary.

It is clear that such a proposal would result in a tremendous expense for the District and its taxpayers. The following are examples of the financial impact that the provision would have on the District: [Examples are given].

As discussed in detail above, in the current economic climate, where the concept of State aid is clearly eroding and where school districts are doing everything possible to cut back, such a contract provision would have the effect of adding unnecessary expenses.

Moreover, the purpose of sick leave and personal leave is for teachers to take time off due to illness, emergency or urgent business. Sick leave and personal leave are benefits not given to teachers as a way to earn money upon retirement. Either a teacher is sick and he/she uses a sick day or the teacher is not sick and the teacher comes to work.

XIV. OVERNIGHT FIELD TRIPS

The Association proposes that teachers participating in overnight school trips be compensated at the rate of \$145.00 for each day of such trip. It is the District's position that such compensation is unwarranted since overnight field trips are part of the teachers' responsibility and a component of the curriculum, for which they are paid well.

XV. PERFORMANCE OF COACHES [Moot]

XIV. INSURANCE

The teachers are demanding that the District provide them with the following insurance: life insurance, disability insurance, optical insurance and domestic partner insurance coverage. First, the District has offered to provide the teachers with disability insurance in conjunction with the

District's sick bank proposal. See **Section X** above. Specifically teachers whose illnesses or injury qualifies under that disability insurance policy would be eligible for those benefits in lieu of withdrawing sick bank days. Second, given the current economic climate, there can be no doubt that providing the teachers with the insurance that is being demanded will result in an expense that the District simply cannot afford.

Third, local and similar school districts do not offer all of the insurance benefits that are being requested by the teachers. *Southold* provides disability insurance, but not life, optical or domestic partner insurance; *Bridgehampton* provides optical and domestic partner insurance, but not life or disability; *Three Village* provides life insurance, but does not offer disability, optical or domestic partner insurance; *Hampton Bays* provides life and disability insurance, but not optical or domestic partner insurance; *Southampton* provides domestic partner insurance, but not life, disability or optical; *East Hampton* provides disability insurance but not life, optical or domestic partner insurance; *Westhampton* provides life and disability insurance but not optical or domestic partner insurance; *Port Jefferson* provides life insurance but not disability, optical or domestic partner insurance; *Mattituck-Cutchogue* provides optical insurance, but does not provide life, disability or domestic partner insurance.

CONCLUSION

The District is appreciative of the efforts by the Fact Finder in making recommendations to resolve the impasse in negotiations. We believe the various positions of the District stated herein are fair, reasonable and equitable and should be recommended.

SUPPLEMENTAL BRIEF

1. In order to ensure accuracy, we revisited the portion of the District's Fact-Finding brief entitled, "Insurance" (see Section XIV, Page 62 of brief). As a result of this review, we have determined that some of the comparison districts that we initially believed did not offer certain insurance coverage, do in fact provide such coverage. Many of the Collective Bargaining Agreements of those Districts refer to health plans in general terms without identifying the specific type of insurance that is included. Therefore, the section entitled, "Insurance" should be revised to state as follows:

XIV. INSURANCE

The teachers are demanding that the District provide them with the following insurance: life insurance, disability insurance, optical insurance and domestic partner insurance coverage. First, the District has offered to provide the teachers with disability insurance in conjunction with the District's sick bank proposal. See **Section X** in main brief. Specifically teachers whose illness or injury qualifies under that disability insurance policy would be eligible for those benefits in lieu of withdrawing sick bank days. Second, given the current economic climate, there can be no doubt that providing the teachers with the insurance that is being demanded will result in an expense that the District simply cannot afford.

Third, local and similar school districts do not offer all of the insurance benefits that are being requested by the teachers. [Nine examples are provided].

2. At the Fact-Finding presentation on May 11, 2009, reference was made by the Association to the recent Bridgehampton agreement. While that Agreement provides for 3% salary increases, significant concessions were made by the teachers in Bridgehampton. For instance:

- The teachers agreed to a professional period for the elementary school teachers from 2:00 p.m. to 2:45 p.m. Previously, that time period was unassigned and at the discretion of the individual member.
- The school calendar was increased from 183 days to 184 days.
- The teachers agreed that secondary and middle school teachers would perform a professional period during which the District would assign activities listed within the agreement.
- Regarding priority considerations for extra curricular employment, the teachers agreed that the priority will not apply to teacher unit members who have not performed in a satisfactory manner in the past.
- Teacher health contribution for the 2006-2007 school year was 8.5% for individual or family premiums. The teachers have agreed to the following health contributions:

2008-2009 - 10 percent
2009-2010 - 10.5 percent
2010-2011 - 11 percent
2011-2012 - 12 percent

Based on existing language, individuals who retire after July 1, 2004 are required to contribute toward health insurance in accordance with the percentage of contribution applicable to such member at the time of retirement. As such, and by way of example, if an individual decides to retire during the 2011-2012 school year, that individual will be required to contribute 12% in retirement.

3. The teachers briefed the issue of binding arbitration as part of their presentation and brief. The District objects to this issue being raised at this time. That issue was not contained within the teachers' declaration of impasse. See Exhibit "D" contained within the District's submission. Moreover, prior to the submission of the fact-finding brief, this office e-mailed to the teachers' representative a list of items we believed were to be included in the fact-finding presentation. Binding arbitration was not included within that list.

4. We have attached hereto a recent editorial entitled, "There's a Crisis Coming for School Costs" that was contained within Newsday on May 15, 2009 [*There's a Crisis Coming for School Costs*, www.newsday.com/news/opinion/ny-vpschl1712766398may15,0,20860785]. That editorial is consistent with the position taken that the federal stimulus package only provides temporary relief for school districts on Long Island. As indicated in the editorial:

Federal stimulus money is expected to disappear by 2011. The teachers' retirement fund has lost so much money in the market crash that schools' pension contributions will soon soar [Id.].

The editorial states as follows:

School spending, which accounts for 60-70 percent of property taxes in Long Island communities, needs to slow down so we can all afford to live here together - teachers included. We shouldn't wait two years for a crisis before taking action [Id.].

We have attached an article entitled, "State's Painful Pension Woes" that was contained within Newsday on May 30, 2009 [Quotations therefrom follow].

We have also attached an article entitled, "Pension Costs Rise, Taxes Next?" appearing in Newsday on June 7, 2009. In that article, experts predict a pension "tsunami" the impact of which will be particularly significant on Long Island [¹ *Pension Costs Rise, Taxes Next?*, Sandra Peddie, Newsday, June 7, 2009][quotation follows].

5. Lastly, to the extent TASH refers in their supplemental brief to recently negotiated contracts with other 12 month units of the District, it most be noted that those units are significantly smaller and require less resources than the teacher unit.

FINDINGS AND RECOMMENDATIONS

At the outset, the Fact Finder must commend the parties for their well-crafted presentations – they are much more than briefs – replete with exhibits, charts and source materials. A fact is, by definition, a thing known or proved and it seems only logical that the universe of facts available to

the Fact Finder should be limited to those facts presented to him by the parties and such other facts for which he may take notice. The latter category includes things that are well reported in newspapers, magazines and other forms of media as well as indisputable facts such as, for example, when the sun is not blocked by clouds its warmth is more readily felt by humans and others. In his letter appointing the undersigned as Fact Finder, PERB's Director of Conciliation reminded the parties that the Fact Finder's engagement was limited to three days, including hearings and time used by the Fact Finder in preparing his report, and then urged the Union and the Employer to "place before the Fact Finder only those issues of high priority which can be reasonably handled in a limited time period." Apart from obvious budgetary considerations facing that agency, the precise reason for this limitation is not disclosed in the appointment letter, and it is possible that it is not revealed in any writing from PERB; it would appear that its principal objective was to have the Fact Finder make recommendations on key items which could then be used as a catalyst for resolution, through resumed collective bargaining, of all open items. While, from any perspective, such contemplated scope of mission was well-exceeded by these parties, they should not worry because the Fact Finder will not consider their broadly expressed terms of impasse to be violative of PERB's advice.

The Fact Finder is not an accountant but his work with Major League Baseball and, most recently, with the National Hockey League, both involving salary disputes, requires him to "work with numbers". Still, he makes no claim that he could ever possibly calculate the "pricing" or "costing" of each upward or downward adjustment of a contract term with the same precision of a professional "bean counter".

The Fact Finder lives in Water Mill, New York, a ten-minute ride from Sag Harbor, one of

the most charming villages in New York State, if not, the entire country. The thousands of tourists and locals who walk its charming streets or dock their boats at its resplendent marinas support this accolade. At the same time, the apparent aura of wealth and prestige, quite evident in the summer months, does not necessarily translate to a community whose residents universally enjoy great wealth or who are all gainfully employed. The School District's charted accomplishment of raising the levels of student performance, scholarship and awards echoes the patent return to glory of old Sag Harbor. Administration, faculty and parents must be credited for this positive change. At the same time, local taxpayers must appreciate that a school district's ability to "produce" high achievers, the ones valued by top universities, inures to their benefit both in terms of objective things, like increased property values, and subjective things, like the good feeling about living in a prestigious community. This is not to say that a school district should not endeavor to operate, at high standards, with a tightly planned budget to prevent its residents from paying exorbitant taxes. That is a given. The approach is mandated even more when, as now, the economy is in recession and teetering on the brink of disaster. On that subject, the evidence produced by the Employer clearly shows that Long Island has been hit hard by the economic downturn in terms of high unemployment, lost revenue, and loss of available subsidies, to name a few. There are some indicators suggesting that a positive turnaround is or soon will be in place but the doubters' voices are stronger than their opposites. No one can accurately predict when the recession will be over. For sure, teachers face what we all do – increased taxes and rising prices in nearly everything that is in the class of necessities – but the Fact Finder is persuaded that this is not the time to seek wage and benefit increases that are above current patterns.

Against this background, the Fact Finder will discuss the contract proposals set forth in the

parties' July 29, 2009 synopsis. The first is the period of duration of the successor collective bargaining agreement. As we are more than a year beyond the expiration of the Agreement and inasmuch as both parties recognize that the successor accord will be retroactive to the expiration of the nominally expired one and, further, in view of the inability of the parties to have reached even a tentative understanding on major items, it makes no sense to recommend a contract of three years. A four-year agreement is appropriate and the Fact Finder so recommends.

Regarding annual wage increases, giving due consideration to the evidence of comparables, weighted in the context of the current and projected economic conditions, the Fact Finder recommends these increases in salary: July 1, 2008: 3.0 percent; July 1, 2009: 3.4 percent; July 1, 2010: 3.9 percent; and, July 1, 2011: 3.9 percent. No recommendation is made with respect to changes in the index and step adjustments reflective of educational degrees plus credits earned.

As for the topics of academic support duty; cafeteria (lunch duty) supervision; and, other duties and professional obligations, the Fact Finder recommends that the parties revisit these topics after a tentative accord is reached on all other issues.

Regarding retiree health insurance, while appreciating the ever-increasing costs of health insurance in all sectors, in view of the broad efforts currently being made by our federal and state governments to make dramatic changes in universal health insurance and giving due deference to the reality that prospective retirees, who are currently active unit members, had "paid for" contingent protection in some *quid pro quo* way, that is, they had to survive long enough to enjoy the benefit, the Fact Finder is not persuaded that a change requiring an increased contribution in premiums from them is warranted. The so-called "unborn" are the ones for whom some cost saving measures could be achieved. To that end, the Fact Finder recommends adding a paragraph

specifying that unit members hired **after** the start of the Fall 2009 school year would receive health insurance in retirement with the District paying 75% and the employee paying 25% of the premium costs.

Regarding binding arbitration, the Fact Finder believes that inasmuch as the issue was raised prior to the start of the hearing, it is properly interposable herein by TASH. Many school districts and municipalities have accepted the wisdom of binding arbitration, at least for disciplinary matters. The legal and other costs associated with arbitration are appreciable and there is little reason why the parties should not be bound by the decision of an arbitrator mutually selected by them. The Fact Finder recommends that, effective with the execution of the successor accord, the parties accept binding arbitration for all disputes.

The next topic is compensation for overnight field trips. The Fact Finder does not understand why teachers who chaperone such trips should not be given some compensation for the loss of their personal time. \$100 per day is reasonable and it is so recommended.

The issue of coaching performance and evaluation, if still on the table, raises questions about fairness in assessing the worth of a coach.² The idea of letting employees know that their performance “Does not meet District Standards” in advance of their losing “priority consideration” in that sport makes sense. Some people do correct their behavior and performance level when constructively admonished. The TASH proposal is valid and still leaves a good deal of discretion in the District in formulating a coaching improvement plan and the Fact Finder recommends that it be implemented immediately.

The District has tied together the topics of “other insurance coverage” and sick bank. In an

² The Fact Finder is under the impression that this topic was tabled. If that is the case, the parties are free to ignore the recommendation made here.

economic downturn, the Fact Finder does not believe that adding additional insurance benefits makes good sense with this exception: the District's offer to provide disability insurance should be implemented in the last year of the successor accord but should not be tied to modification of the sick bank policies in effect now. The sick bank clause should remain *status quo* with this exception: the District's proposal that there be some criteria established for sick bank use is reasonable and should not cause an unfair burden to the employee taking advantage of the sick bank.

With respect to the cash value of unused sick and personal leave, the Fact Finder makes no recommendation because it is not clear just what the precise economic impact would be on the District.

The Fact Finder recommends that the District's proposal for alternative health insurance plans be implemented because there is no apparent downside to unit members.

Regarding the use of personal leave in relation to holidays, the Fact Finder reads the current language as allowing an employee to use personal leave days for the days **before and after** school holidays when, and only when, the personal leave is needed because of an emergency or religious observance. It is common and often understandable that employees wish to bridge personal days with holidays for a variety of reasons, including the ability to travel out of town. At the same time, employers find such scheduling adjustments burdensome and costly. No language changes are recommended.

The *status quo* is recommended with respect to the clause addressing availability of pay checks on the last school day before the vacation period and the same is true with respect to the proposals surrounding course approval for salary advancement. With respect to the latter, the Fact Finder must acknowledge that until we have use of a crystal ball, it is impossible to know whether a

course will have immediate and direct relation to current classroom content. The current language vests decision making power in the Superintendent with respect to approval for “other courses”. TASH’s burden in challenging a decision using the “arbitrary or capricious standard”, the one set forth in the Agreement, is not an easy one to meet.

With respect to the topic of extracurricular and coaching rates of pay, the Fact Finder recommends a raise in the rate of pay by 2.5 percent for each year except for Varsity and Junior Varsity Volleyball which coaching positions shall not receive increases in rate of pay until the other coaching positions have been equalized.

Finally, with respect to electronic posting, the Fact Finder recommends that each side’s proposal be merged. With respect to the Association’s concern about the District’s use of the phrase, “such other items as directed by administration”, the Fact Finder recommends that the administration give 60 days advance notice when it seeks to add an additional item to the electronic posting system and that the Employer carry the burden of showing that this new item is important and will not be unduly burdensome to the faculty.



Elliott D. Shriftman, Esq., Fact Finder

Dated: August 17, 2009

State of New York)

ss.:

County of Suffolk)

I, Elliott D. Shriftman, do hereby affirm upon my Oath that I am the individual described in and who executed this instrument, which is my Fact Finder's Report and Recommendations.

A handwritten signature in black ink, appearing to read "Elliott D. Shriftman", with a long horizontal stroke extending to the right.

Elliott D. Shriftman