STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Case Number M2008-327

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IN THE MATTER OF THE FACT-FINDING BETWEEN

KATONAH-LEWISBORO SUPPORT STAFF ASSOCIATION/ NYSUT/AFT/NEA
-and-
KATONAH-LEWISBORO UNION FREE SCHOOL DISTRICT
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FACT-FINDER'S REPORT AND RECOMMENDATIONS

Fact-Finder Rosemary A. Townley, Esq., Ph.D.

Appearances

For the District Gus Mountanos, Esq., Of Counsel
INGERMAN SMITH, L.L.P.
Karen Benedict, Deputy Superintendent
Mike Jumper, Assistant Superintendent for Business

For the Association Eric Marshall, Labor Relations Specialist
NEW YORK STATE UNITED TEACHERS
David Cook, President - Head Custodian
Jean Granelli, Teaching Assistant
Rosemary G. Foster, Computer Aide
Katherine Montell, Secretary

Fact-finding Hearing October 15, 2009

Post-Hearing Briefs January 4, 2010

Reply Briefs January 22, 2010

BACKGROUND

In accordance with the July 1, 2002 to June 30, 2006 collective bargaining agreement ("Agreement") between the Katonah-Lewisboro Union Free School District ("District") and the Katonah-Lewisboro Support Staff Association ("Association"), the undersigned was appointed as Fact Finder by the parties to hear this matter and, pursuant to the Taylor Law, submit her findings of facts and recommendations to the parties within 60 days of receipt of the parties' last submission.

The Katonah-Lewisboro Union Free School District (hereinafter referred to as the "District" or "Katonah") is a public school district educating over 4,000 K-12 students. The District is comprised of six (6) school buildings, including four (4) elementary schools, one (1) middle school and one (1) high school.

The District has three (3) bargaining units, including the Katonah-Lewisboro Association of Administrators & Supervisors "(KLAAS)," the Katonah-Lewisboro District Teachers Association "(KLDTA)" and the Katonah-Lewisboro Support Staff Association ("KLSSA" or the "Union").

The KLSSA is the exclusive bargaining agent for the following District personnel: office assistants, secretaries to school officials, secretaries to school principals, clerks, personnel clerks, library clerks, typists, senior typists, teaching assistants, teacher aides, computer aides, monitors, laborers, cleaners, custodians, head custodians, senior custodians, custodian/bus drivers, bus drivers, head bus drivers, chauffeurs, mechanics, auto mechanics, and bus driver/mechanics. In total, there are currently 326 employees within the Unit.[1,2] The KLSSA is affiliated with the New York

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1 Nurses have been a part of the Union for the life of the current Agreement and throughout negotiations. At a recent Board of Education meeting and at the request of the Nurses, the Board agreed to voluntarily

State United Teachers, the American Federation of Teachers and the National Education Association.

The parties have been negotiating for a successor collective bargaining agreement ("successor agreement") since April 2006. The current Agreement expired on June 30, 2006. The parties met in numerous negotiating sessions between April 2006 through February 11, 2009. On the last day of bargaining, the Union's negotiating team members were released from their work duties to meet with the Superintendent and representatives of the District. They were unable to reach any settlement regarding the issues and thus the District declared an impasse.

The District petitioned the New York State Public Employment Relations Board ("PERB") for the appointment of a fact finder who is empowered, pursuant to § 209 and 205(5)(k) of the New York State Civil Service Law ("Taylor Law") to, in sum and substance, inquire into the causes and circumstances of the dispute. Prior to fact-finding, and pursuant to the Taylor Law, the parties met in two sessions with Mediator Howard C. Edelman during May 2009 in an effort to resolve the outstanding issues but did not reach settlement.

The Fact Finder met with the parties in a session on October 15, 2009 in the District's administrative offices. At this session, the parties reviewed their respective outstanding issues and provided a brief overview of their positions. Thereafter, they submitted written Post-Hearing Briefs and exhibits in support of their respective positions, as well as Reply Briefs and exhibits on certain issues argued in the Post-

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recognize these employees as members of the KLDTA. Accordingly, the parties will not be addressing any issues relative to Nurses in this Fact Finding submission.

[2] This number is based upon District's central office records of the number of Unit members.

Hearing Briefs. The Fact Finder fully reviewed these submissions prior to the making of the final recommendations.

The parties agreed to submit ten (10) issues and certain related sub-issues to the Fact Finder which were as follows:

1. Salary Proposals (percentage/stipend increases)
2. Recruitment of New Employees Outside of Unit
3. Health Insurance Premium Contributions (for active employees and retirees)
4. Health Insurance Buyout
5. Vacation and Sick Leave accrual & Usage protocols
6. Personal Injury Benefits
7. Work Day/Week & Overtime
8. Grievance Definition
9. Discipline & Dismissal Protocols
10. Appointments

After a review of the submissions of the parties, and in light of the fact that many of the recommendations would need to be made on a retroactive basis, which would not be workable in many instances, the Fact Finder has focused upon the apparent most pressing issues as evidenced by the parties in their post-hearing briefs. These issues include (1) salary/stipend percentage increases; (2) health insurance premium contributions for active employees; (3) health insurance buyout; (4) the definition of a grievance, and (5) discipline and dismissal protocols. The remaining issues were either not supported by sufficient evidence of record to make an informed recommendation and/or the parties must focus on certain issues as a whole. Thus, the issues not addressed by this report are remanded to the parties for further negotiations.

It is also noted that prior to the fact-finding, the parties had agreed to a successor contract duration of five years 2006-2007 through 2010-2011.

THE PARTIES' PROPOSALS: ECONOMIC ISSUES

I. Salary Proposals

There were various proposals exchanged by the parties during the course of their negotiations over the years. This report shall focus only on the most recent proposals as of the time of the fact-finding session on October 15, 2009.

District Proposal

2006-2007 2.5% bonus
2007-2008 2.5% bonus
2008-2009 3.0%
2009-2010 1.0%
2010-2011 1.25%

Union Proposal

2006-2007 4.00%
2007-2008 4.00%
2008-2009 4.25%
2009-2010 4.35%
2010-2011 4.50%

Related Topic on Salary

Salary Adjustment Committee Article VII (A)(1)—The District proposes the elimination of the provision in the current agreement that provides for a committee to review salaries during the life of the agreement. The Union argues that if the District agrees to a successor agreement with general wage increases at least comparable to those of the comparison districts, thereby maintaining wage competitiveness, the Union shall agree to the District's proposal. If not, then the economic protection that this provision provides becomes all the more essential to the unit, and the Union cannot agree to its elimination.

Health Insurance Proposals

Annual Premium Contribution for Active Employees

District Proposal

Current contract: 2006-07: Employees pay 1% on base with $500 cap on family rate/yr. and 0.33% on base salary and $166.70 cap indiv/yr.

2007-2008	6%
2008-2009	6%
2009-2010	8%
2010-2011	9%

Union

2009-2010	6.0%*
2010-2011	6.5%*

* Provided salary increases slightly above going rate.

Health Insurance Waivers/Buyouts:

District Proposal: Article X (B) of the Agreement allows employees to waive their health insurance through a "buyout" of 50% of the cost of the annual premium paid by the District if hired prior to 7/1/95 and 35% of the cost of the annual premium if hired after that date (and with three years of service). The District proposes instead an annual credit made to the employee's Section 125 account in the amount of $3,000 for two-person or family coverage and $1,500 for individual coverage.

Union Proposal: Maintain the status quo as the buyout is within the range of others offered in area school districts which is well within the range of similar buyouts in the region which run from 25% to 50% of the annual premium.

THE STATUTORY CRITERIA IN FACT-FINDING

ABILITY TO PAY

District Argument

The District argues that, at the national level, the costs of the wars in Iran and Iraq, coupled by the sub-prime mortgage crisis on Wall Street in December 2007, leading to the closing of major trading houses and sale/mergers of bank, the plunging of the Dow Jones Industrial Average to below 7000 points in March 2009, the government bailout of General Motors Corp. are but a few of the events contributing to the precarious financial economy at the national level. It notes that the Congressional Budget Office's (CBO) annual report on the budget outlook for the fiscal years 2008-2018 includes forecasts of deficits in the amount of $1.4 trillion for the five years from 2005-2009 and $1.9 trillion for the four years from 2010-1014, exclusive of any war-related costs. The CBO report also indicates a slowing of economic growth and prospect of recession. These events place an additional strain on the average taxpayer, as events at the national level impact upon state and local budgets, including school districts. In August 2009, the CBO estimated that the national unemployment would be 9.3% in 2009 and would peak at an estimated 10.4% by mid-2010. The Bureau of Labor Statistics in a recent news release, however, reported that the unemployment rate increased from 9.8% to 10.2% during October 2009.

The District states that New York is the second most indebted state behind California and in 2005 was ranked fifth among all states in debt per person. State Comptroller DiNapoli anticipated out-year budget gaps from $3.1 billion in 2008-2009 to $6.6 billion in 2010-2011. The District argues that its expenses will be increasing next year by 5.4% without knowing the amount of revenue that will be available to it from the

State in the form of the yearly state aid formula. Moreover, it points out that prior to the reduction in state aid, it was in the bottom one-third of all school districts in Westchester and Putnam Counties in terms of percentage of state aid comprising annual budget. Also, it notes that Governor Paterson announced on or about December 14, 2009 that state aid to school districts would be withheld because of the State's critical economic condition and noted that the State of New York does not have sufficient funds to pay its bills. Under these circumstances, the District maintains, there is no guarantee that state aid will be forthcoming this school year. The Assistant Superintendent of Schools, Michael Jumper, has said that the District may be forced to borrow funds in the form of a revenue anticipation note or tax anticipation note in order to get through the end of the year and that thereafter, the impact would be upon programs and related matters. The District also maintains that its percentage contribution to the Employees' Retirement System (ERS) which is the system operated by the State that covers the members of this Unit is expected to rise given the ERS is dependent upon investment returns.

The District points out that it has asked the members of the District's teachers' union to voluntarily freeze salaries for a year in order to avoid cutting as many as 55 positions, as the single largest increase in the budget was caused by the salary increases. The District is also subject to a newly implemented state tax for metropolitan commuters, the Metropolitan Commuter Transportation Mobility Tax (MCTMT) effective September 1, 2009, which was designed to assist the Metropolitan Transportation Authority (MTA) with its financial problems. The taxes cannot be offset in any manner through employees' wages or benefits and is imposed at the rate of .34% of an employer's current payroll expense for all covered employees per payroll. The District expended approximately $211,000 for the MCTMT for the current fiscal year,

which is to be reimbursed by the State pursuant to the statute; the District argues that there is no guarantee that the reimbursement will continue into the future given the Governor's and State Legislature's recent drastic measures in reaction to the fiscal crisis. The District further argues that the District is required to publish the costs of retirement benefits for current and future retirees as an accrued, unfunded liability on its financial statement under the so-called Governmental Accounting Standards Board 45 regulations (GASB 45 regulations). As reported on the most recent financial statement of the District on July 1, 2008, it was estimated that the present value of funding this current and future retiree obligation is in excess of $150 million. Such reporting might negatively impact upon the District's bond rating, affecting the interest rate when borrowing money, and invite deeper public scrutiny of a budget.

Westchester County is also experiencing difficult economic times and the dire financial state of the County had prompted the now-former County Executive, Andrew Spano, to propose an austerity budget for 2010 due to the continuing decline in County revenues and increases in mandated costs. The proposed 2010 budget includes cuts of 37 County jobs, funding for only one-month to 14 senior-level positions and requires most employees to take an unpaid one week furlough. Despite significant cuts and the plans for savings and cost control implemented in 2008 and 2009, the proposed budget would require a 4.88% increase in the County tax levy to offset the projected decrease of $50.9 million in County revenues, due largely to decreased sales taxes and an increase in expenses of approximately $70.2 million, of which $46.2 million is attributed to mandated expenses and other costs beyond the County's control. According to the New York State Department of Labor, the unemployment rate in Westchester County has increased over the last seven years by 88% from an average rate of 3.8% in 2001 to a

current average rate (up to and including October 2009) of 7.16%.

Moreover, with County taxes comprising approximately 15-18% of a taxpayer's property tax bill, any increase in the tax rate has a significant impact on County residents. This follows an increase in County taxes of 2.97% in last year's budget, which resulted from a loss of $26 million in revenues from state aid, interest on investments and the mortgage tax and a $20 million increase in costs beyond the County's control. This constitutes an increase in lost revenues of over 95% and an increase in expenses beyond the County's control of 131% in one year. It queries how County residents will be able to continue absorbing such significant tax rate increases, given that school taxes make up approximately 60% of County residents' tax bills.

It also says Westchester County suffered greatly in the housing market in the last year. According to the 2009 Third Quarter Residential Real Estate Report published by Westchester-Putnam Multiple Listing Service ("MLS"), sales of single family homes in Westchester County decreased by approximately 8% from the first quarter of 2008 to the present. Moreover, the median sales price for single family homes in Westchester County decreased by 11%, falling from $699,300 last year to $630,000 currently.

In addition to the above referenced economic concerns, the District is also facing substantial increases with respect to the contributions it must make towards employee pension benefits, not only on behalf of the members of this Unit but on behalf of its entire staff. In the "Administrative Bulletin 2009-10" issued August 2009 by TRS, notification was provided to its members that the Retirement Board adopted an Employer Contribution Rate (ECR) of 6.19% of payroll for the 2009-2010 school year. However, in the November 2009 Bulletin, TRS indicated that based upon preliminary estimates, it is anticipated that the ECR for 2010-2011 will be between 8.5% and 9.0% of member

payroll. This represents an increase of between 37% and 45% in just one year. Moreover, it must be noted that this rate is determined annually through an actuarial valuation of the assets and liabilities of TRS and therefore any losses suffered due to the decline of the stock market stemming from the current financial crisis will continue to be borne in part by employers. Based upon the economic forecast for the State and the Nation, as set forth above, it is more than likely that the ECR will continue to rise in the future. The contributions required to be made by employers on behalf of staff members who are enrolled in the Employees' Retirement System (ERS) have significantly increased as well, according to State Comptroller DiNapoli.

The District also points out that the layoffs required in order for the District to continue to operate in a cost effective manner have been steadily increasing over the years, from 11.9 positions during the 2008-09 school year to 40 positions in the 2009-10 school year and an anticipated 30-40 positions (assuming no give backs from the unions) this coming school year 2010-2011.

It further points out that the District’s "Combined Wealth Ratio" (CWR), a measure of relative wealth indexing each district against the statewide average on property wealth per pupil and income wealth per pupil is decreasing. The District notes that its CWR for 2008-09 was 2.310 (with the State average at 1.00). In 2007-08 its CWR was 2.356 while in 2006-07 it stood at 2.497.

The District further argues that the taxpayers are overwhelmed with taxes which account for approximately eighty percent (80%) of the annual budget and thus any new cost including salary increases will be primarily funded by the taxpayers. It stresses that in light of the federal, state, county and local financial turmoil, the District is attempting to slow down controllable, built-in costs in the budget, including fiscally responsible

contracts with all unions in the District. This state of financial decline will continue for years and therefore the standard increases that may have been provided in the past to settle agreements are no longer possible. It argues that the “going rate” has dramatically changed over the last two years as numerous school districts have implemented salary freezes with their employees, as did the Superintendent and Administrators in the District in February of 2009 for 2009-2010 school year. The foregoing factors, according to the District, all impact upon its ability to pay any collective bargaining agreement settlement. It says that the District's teachers agreed to "significant" concessions and that its administrators took a salary freeze, waiving a 3.4% increase plus increment for the 2009-2010 school year.

It notes that the Bedford Central School District recently settled with its non-instructional unit for a contract that expired in June of 2007. The salary increases are reflective of the current economic times. The following wage package was agreed to: 2007-08-3.5%; 2008-09-2%; 2009-10-2%; 2010-11-2% and 2011-12-2%, for an average increase of 2.3% per year. It is important to note that in the last round of negotiations the parties agreed to a three (3) year deal at a rate of 3.5% per year along with a $500 bonus for those on top step. Hence, the effects of this crisis are prevalent even in the more affluent communities like Bedford.

Yet even if there were no financial crisis, it is respectfully submitted that granting the going rate increase of between 3-3.5% to the Unit would be inequitable given that Unit members are already competitively compensated in comparison to other similar titles in surrounding school districts in Westchester and Putnam counties. This is most likely the reason the Unit took less than the "going rate" when it accepted a package averaging 2.95% during the last contract negotiations.

During the course of negotiations the Union made repeated representations that their members are compensated below the County median across all titles. However, the Union failed to provide the District with any evidence to substantiate these claims. The District thereafter presented the Union with a comprehensive analysis showing that, contrary to their assertions, Unit members are competitively paid and, in some instances, very generously paid in comparison to similarly situated employees in other school districts.

Based upon the above evidence and assuming the District were in a much more stable financial position, perhaps the wage package granted in the last round of negotiations would be appropriate (average of 2.95% over four years) assuming significant and meaningful concessions were made by the Union. Given the current state of the national, state and local economies and the dire predictions for the future, it is clear that a much more modest wage package is in order with meaningful concessions in order to bring the very generous benefit package more in line with the package granted to similarly situated employees in other school districts. The Board has a fiduciary responsibility to ensure that it is expending the community's tax dollars in a cost efficient way. Municipalities across the State are being asked to provide the same or similar levels of service while simultaneously reducing costs.

It says that the Union's demand for across- the-board increases averaging 3.76% per year is fiscally irresponsible and unwarranted under the circumstances because it fails to consider the dire economic climate. Also, the Union fails to recognize that the District will have difficulty funding the existing wage and benefit package, exclusive of increases to salary and/or enhancements to benefits. Furthermore, the Union's current demand far exceeds the wage increase granted in the last round of negotiations, fails to consider that

other employees in the District have taken salary freezes and quite frankly ignores the fact that these employees are more than competitively compensated in comparison to similarly situated employees in other school districts.

The District would be required to pay out an additional $477,814 just for contractual salaries in the first year of the CBA, under the Union's proposal, without considering the payment made to employees for accumulated leave time, health care buyouts or overtime costs. Over the life of the CBA, assuming a five (5) year agreement as proposed by the Union, the District could expect to pay out an additional $2,420,934. Since eighty (80%) percent of the District's revenue for the general fund is derived from residential property taxes, the majority of any increases for the Unit will be borne almost exclusively by the District's taxpayers who are already overburdened with taxes. The Union has the mistaken impression that the District is in a position to pay higher across-the-board increases than were paid to the District's teachers over two years ago, even in light of the District's recent request that the KLDTA agree to take a salary freeze this year due to the Board's real concern that it cannot pay the contractual increases.

In its Reply Brief, the District argues that the Union's reliance on economic indicators to show that a full recovery is underway is "preposterous." It notes that the Dow may have ended the year 2009 up 20% but it was far below the highs of 2008 and was down 10% from August 2008. It submits that the stock market trends of Wall Street do not demonstrate the actual economy of "Main Street" citing to an article in the October 25, 2009 issue of Business Week. It concludes that reliance on stock market indices to justify wage demands is misplaced.

It also notes that when relying upon the CPI, the contingency budget cap used by public school districts in New York is based upon the annual average national CPI for all Urban Consumers (CPI - U) and not the monthly CPI cited by the Union.

With respect to the budget surpluses alleged by the Union, the District argues that these "surpluses" were applied to each subsequent year's budget to keep the tax rate in the District at a reasonable level and thus are no longer available. It also says that its deposits to its Tax Certiorari Reserve Fund over the last three years is required whenever a district is served with a tax certiorari petition ("petition") and it must set aside funds to offset potential liability. Its auditors have recommended reserving 25% of the potential liability associated with each filed petition. It should be reserving approximately $2 million in the 2009-10 budget for such claims but has only set aside approximately $1.2 or 12.58% of the amount of outstanding claims. These claims could be very high, as in 2008-09, the District had to refund $357,527 in property taxes pursuant to one claim and in the fall/winter of 2009 expects to pay an additional $678,592.

The District also notes that the Union has erroneously combined "appropriated" funds with "undesignated" funds with respect to the unreserved fund balance of 2005-2006 through 2007-2008. It notes that of the approximately $6 million available at the end of 2007-08 school year, approximately $3 million was returned to the District taxpayer in 2008-09 to reduce the tax levy (which practice was true during the other years of the time frame cited by the Union).

Accordingly, it argues, any contention of the Union that the District "overestimated" its expenditures fails to take into account the unknown factors of tax certiorari claims and the funds returned to the taxpayers.

For all of the foregoing reasons, the District's argues that its current wage offer is

more than generous under the circumstances, provided the Union simultaneously offers the District meaningful concessions in return for these monies.

Union's Argument: Ability to Pay

The Union argues that the District is more than adequately able to afford a successor agreement that includes all of the Union's proposals and positions. It says that most economic indicators point to a full recovery from the crisis of 2008. It notes that although the District highlights the state of Dow Jones Industrial Average ('the Dow") in early 2009 when at its nadir, it fell below 7000 points in a rapid and precipitous drop, the parties are no longer bargaining in March 2009. The Union maintains that as of January 2010, the Dow is back above 10,000 where it has remained every day for the past several months. Moreover, it points out that it ended 2009 up approximately 20%, as did other indices such as the S&P 500 which was up approximately 25% and the NASDAQ, which was up approximately 45%, citing to a December 25, 2009 article in the New York Times. This same article reported that "equities are now at their highest levels since autumn 2008." It states that other markets are also indicating recovery and the District can no longer attempt to justify its austerity proposals by pointing to the state of the economy.

The Union refers to the Consumer Price Index (CPI) for the New York/New Jersey region, as reported by the U.S. Department of Labor, which has been "trending upward for the past five months" as follows:

2006: 3.8%
2007 2.8%
2008 3.9%
2009 1.8% as of November 2009 (most recent available)

The Union argues that the CPI percentages justify the wage increases proposed by the Union undermine the District's claims of financial hardship. It states that other

economic indicators, such as Gross Domestic Product and Inflation Rate, further support the Union's contention that austerity increases are not justified by economic conditions or forecasts.

The Union points to one of the District's claimed criteria of ability to pay — the 2009 federal budget deficit as the highest percentage of gross domestic product since World War II — as being irrelevant. The Union asserts that such a ratio has no bearing on the District's financial situation, and none on its ability to settle this contract. If the local unemployment rate was in a similar condition, the Union asserts, then the District would certainly have highlighted that fact and thus the only conclusion that can be drawn is that it is not. Similarly, it says, the District's reference to the $19 billion "one shots" between 2002-2006 in New York State, citing Comptroller Thomas DiNapoli's comments on nonrecurring resources, does not provide a connection with the District's financial situation or these negotiations. It maintains that the District's assertions that "Medicaid, public safety and employee healthcare are growing at increasing rates a trend that is expected to continue" and that "New York State residents . . . contribute the largest portion of their salary to State and local taxes" are not accompanied by any authority in support of the claims. It also notes that the 2010 increase in healthcare costs was the smallest in years. It also points to the District's highlighting of Governor's Paterson's proposed Deficit Reduction Plan (DRP) but notes that the District does not allege any negative impact on the District as a result. This is because the District and others in Westchester County will be minimally affected, at most, by the DRP, if it comes to fruition at all. Similarly, the District's argument concerning the Governor's withholding of state aid payments is not tied to any claim as to whether, much less how and to what extent this

factor might have upon District finances. It argues, therefore, that the inference must be made that no impact would be made.

With respect to the District citing to Assistant Superintendent for Business Jumper's comments that the only way the District can realize a sustainable budget is to modify collective bargaining agreements, this is self-serving "testimony" that is "inaccurate and patently absurd." Westchester County has approximately four dozen public school districts and hundreds of collective bargaining agreements. The Union is aware of no collective bargaining agreements that have been re-opened to provide financial givebacks to employers—though several school boards have publicly asked, no doubt. It is clear, the Union says, that those dozens of other school districts appear to sustain budgets even in tougher economic times.

The Union further maintains that the District's assertion that the County tax levy increase of 4.88% is "massive" is a statement made without any source of comparison, such as to other districts, or previous years, or other taxes. The Union also claims that the District refers to the Westchester County unemployment rate of 7.16% without providing any context as to how such a number affects the District's ability to pay, nor did it provide the District's rate of unemployment. The Union argues that this rate is nevertheless quite low compared with national average which recently topped out at over 10%, the New York City average of 10.6%, and the New York State average of 9%. None of the statistics presented with respect to the Westchester County housing market and the District are argued with respect to its ability to pay. Furthermore, the Union maintains, the Fact Finder knows that home prices in the District and in the region remain high despite last year's decline.

Although the District highlights the fact that the District may not continue to be

fully reimbursed by the State for the MCTMC, such is mere speculation at this point. The instant negotiations are for a relatively short term contract, perhaps only through 2011, and the full reimbursement is included in the 2010-11 Executive Budget. The District similarly speculates, without authority, that new accounting regulations regarding retirement benefits "will certainly raise greater public scrutiny. . . well into the future."

Although the District notes that it is among the lower third of school districts in the County with respect to amount of state aid that comprises its annual budget, the Union asserts that such a fact would tend to support the Union's contention that the State's financial condition has little, if any, direct impact on the District's ability to pay. The District's offer of further economic data drawn from local newspapers such as *The Record Review* and the *Journal News*, as well as the *Lewisboro Ledger* must be rejected as inappropriate sources for factual economic data for the purpose of formal fact-finding; a local reporter's observations and predictions do not constitute factual evidence.

In addition, it maintains that any evidence presented by the District consisting of reports and forecasts from the New York State School Boards Association (NYSSBA) must be regarded as far from neutral and therefore its analyses and commentary should be suspect. It claims that the Union by contrast, offers neutral-source commentary and forecasts and uses NYSUT research only for hard number data analysis of economic data supplied by the District or publicly available, with methodologies disclosed. The District refers to the NYSSBA's remarks following the Governor's proposed mid-year budget cuts for the 2009-10 school year but fails to note that those cuts never happened!

In addition, the Union argues that the District's ST-3 filings with the New York State Education Department also support the conclusion that it can well-afford to settle this contract along the lines proposed by the Union, based upon the District's Reserve

Balance, the Unreserved Fund Balance, the Expenditure Levels and Revenues. It notes that the ST-3 filings indicate that in 2008-09 the budgeted expenses were 27.6% above 2007-08 actual expenses.

It maintains that the Combined Wealth Ratio (CWR) of the District should also be considered by the Fact Finder as it is a measure of relative wealth, indexing each district against the statewide average on a combination of property wealth per pupil and income wealth per pupil. It further argues that the Total Weighted Pupil Units (TWPU) should also be considered as it is a weighted count based on the adjusted average daily attendance of K-12 pupil residents in the District, plus additional weightings for pupils with special educational needs, pupils with disabilities , and secondary school pupils; half-day kindergarten pupils are weighted at 0.5. The Pupil Wealth Ratio is equal to Selected Full Value of property divided by TWPU.

Depending upon the aid year and specific districts, the Union argues, the property value used may be for a single year, a two year average or a two-year average for which the increase in property value cannot exceed a specific percentage. The Alternate Pupil Wealth Ratio is calculated by dividing the Adjusted Gross Income of a district by TWPU. For the 1998-99 school year, the State average AV/TWPU was $246,400 and the Average Income/TWPU was $86,400, which supports the Union's assertion of the District's ability to pay, as well as the appropriateness of the selected comparison districts.

COMPARABILITY

The District's Comparables

The District has utilized Westchester-Putnam counties' medians in this Fact-Finding submission for purposes of salary comparisons, and has chosen several specific

school districts as comparables with respect to health benefits, leave time, and disciplinary procedures. It submits that the following school districts, based upon similar wealth and demographics, are appropriate for comparison purposes when it comes to determining the reasonableness of the respective positions of the parties: Bedford, Briarcliff, Byram Hills, Edgemont, Harrison and Mamaroneck.

Listed below are the reported median incomes for these school districts:

Katonah-Lewisboro	**$67,005**
Bedford	$47,449
Briarcliff	$70,958
Byram Hills	$69,226
Edgemont	$74,670
Harrison	$49,007
Mamaroneck	$55,395

The District is ranked 4th out of the seven Districts in this important statistic. Listed below are the rankings relative to ability to pay for these school districts.

School District	**Pupil Units**
Katonah-Lewisboro	11
Bedford	6
Briarcliff	12
Byram Hills	7
Edgemont	14
Harrison	3
Mamaroneck	8

The District ranks 5th out of the seven cohort districts.

School District	**Pupil Units**
Katonah-Lewisboro	**4,776**
Bedford	4,992
Briarcliff	1,974
Byram Hills	3,207
Edgemont	2,335
Harrison	3,996
Mamaroneck	5,944

However, it notes that if Briarcliff and Edgemont are excluded, the average number of pupils in the remaining districts is 4,583, which is close to the current number of students in Katonah.

The District also receives a comparable amount of state aid [as a percentage of general fund revenues] as the cohort school districts. This amount in 2007-08 was $7,440,799 or 7.24% of the General Fund (see chart on pages 27-28 for comparable districts).

While the Union insisted during negotiations that the District should be compared to school districts such as Chappaqua and Scarsdale with respect to the salary and benefits that the Union is entitled to, the District submits that it would be inappropriate to utilize these school districts for comparison purposes. Specifically, while Chappaqua is ranked 9th in ability to pay, which is close to the District's ranking, the median income in Chappaqua is $93,310, which is approximately $26,000 or 39% greater than the District's median income. Scarsdale is much higher in ranking than the District in ability to pay, ranking at number 2, as well as in median income, which is $97,865 or approximately $30,000 or 40% greater than the District's median income. Accordingly, the District believes that the school districts it has selected for comparables are more closely aligned to the District's wealth and demographics than Chappaqua and Scarsdale. It also points out that any argument regarding the comparison of superintendent salaries in the County must take into account that Superintendent Roelle has waived health insurance coverage, which it argues is a considerable cost.

The Union's Comparables

The Union asserts that the appropriate school district comparisons for the purposes of fact-finding are to similarly situated school districts based upon a variety of factors with academic and socio-economic foremost, as well as financial data. The District continued throughout negotiations to compare itself to all districts in Westchester County while rejecting average salary figures which do not fit into its argument. Such an approach is illogical and unreasonable as the District is far from a median school district. It argues that the District prides itself upon being one of the finest in the State and consistently ranks among the top few in the County among a variety of indicators including student performance, expenditures per pupil and community wealth.

The Union argues that the comparable districts for purposes of this fact-finding should be Bedford, Briarcliff, Chappaqua, Edgemont, Irvington, Rye Neck and Scarsdale. It says that unlike the County median figures, these districts have demographic similarity in a range of relevant measures such as finances, student population and performance, and academic reputation. Within a County that is home to some of the finest public schools in the State, if not the United States, the District ranks among the top in virtually every standard measure, including district finances; student population; student assessment performance and academic reputation.

Among the comparable school districts cited by the Union, it points out that while Bedford was still in negotiations at the time of the submission of the briefs, the comparable employee units received **salary increases** as follows:

	2006-07	**2007-08**	**2008-09**	**2009-10**	**2010-11**
Briarcliff	3.5%	3.5%	3.5%		
Chappaqua	3.5%	3.5%	3.45%	3.45%	3.45%

Harrison	3.75%	3.75%	3.75%	3.75%
Irvington		3.75%	3.75%	3.5%
Rye Neck				
-Clerical		2.95%/$500bonus	3.5%	3.75%
-Custodial		3.25%	3.25%	
Scarsdale		3.05%	3.5%	3.5%

(Based upon the 2008-09 Merritt-Lindsay Report)

The Union also points out that among school districts with comparable enrollments, the District had the second highest number of administrators, the highest cost of administrative salaries for 2007-08 and the highest cost per student for administrative salaries, despite being the third smallest of the seven school districts selected by the state auditors for comparison. It notes that the Administrative Costs per Pupil was $1578 in the District while the County average was $1269. The Union also notes that Superintendent Roelle's salary of $265,000 placed him seventh among the 45 Westchester and Putnam County superintendents and more than 10% above the regional median and in the general company of the superintendents from Edgemont (1st, $285,000); Scarsdale (2nd, $280,895); Rye Neck (3rd, $279,585); Briarcliff Manor (4th, $276,000) and Irvington (9th, $256,695). Only the new superintendents from Bedford and Chappaqua earned less. The District should not be regarded as a "median" district, therefore, by any measure as its financial situation reflects choices as well as external economic pressures.

The District's use of county wide average data for Unit salaries is inconclusive, according to the Union, as in some titles the District is above the average, in others it is below and in other titles it is split. To compare the District to the County-wide median is

"disingenuous and self-serving" and a more comparable comparison to the District would be those districts proposed by the Union. It concludes that the financial data establishes that the District has the ability to pay its demands pursuant to a new collective bargaining agreement.

The Union points out along with financial and socio-economic facts, the academic reputation of the District must be considered as a factor in any comparability assessment. It notes that in 2007 it ranked 10th in SAT scores, according to “trulia.com;” it was 10th in overall ranking according to “schooldigger.com;” it ranked 6th in terms of the percentage of graduates who go to college, and 14th in the percentage of four-year graduation rate, according to Westchestermagazine.com.

The Union notes that it reviewed the ST-3 financial filings of the District with the New York State Education Department ("NYSED") and concludes that the District can well afford to settle the successor contract along the lines proposed by it, as evidenced by the District's Reserve Fund Balance, Unreserved Fund Balance, Expenditure Levels and Revenues. The 2008-09 ST-3 filings indicate budgeted expenses at 27.6% above 07-08 actual expenses. It also notes that the District's ability to pay is similar to that of the Union's comparison districts; with the District's "Adjusted Gross Income" in 2006 per return at $270,414, which ranked 9th among comparables; Scarsdale at $589,596 which ranked 1st; Rye Neck at $232,034, ranked 13; Irvington $180,850 ranking 15; Edgemont $268,539 ranking 10th; Chappaqua at $376,623 ranking 5th; Briarcliff at $271,460 ranking 8th and Bedford at $253,497 ranking 12th.

Although the District identifies several “comparable” school districts, it offers no rationale justifying its choice of alleged comparable districts, which stands in stark contrast to the Union’s assertion of comparable districts in its submission. The Union

asserts that, based on the incontrovertible strength of its rationale for comparison and the Chappaqua and Scarsdale Districts' absence of any such rationale, the Fact Finder should rely upon the Union's points of comparison only when issuing her recommendations. With respect to financial comparability, the Union points out that the Ability to Pay should also be measured by the 2006 New York State Adjusted Gross Income ("AGI")…… (see Union's arguments in the above "Ability to Pay" section (pages 19-20) regarding the financial data for its comparable districts)

RECOMMENDATIONS ON ECONOMIC ISSUES

Ability to Pay/Comparables

The Fact Finder has reviewed all the relevant information concerning ability to pay and comparables. Much of the data is overlapping in nature and therefore shall be discussed together. She recommends that the following school districts be regarded as comparable for purposes of this report: Bedford; Briarcliff and Edgemont. There are a number of reasons for this recommendation, most significantly the fact that both parties cited these districts as comparable within their arguments. Although it may be possible to find comparability among a variety of school districts on a number of issues, this recommendation is heavily weighed in favor of the financial data of the District, as opposed to student performance and academic reputation. While the totality of factors is to be considered, the latter two appear to be more directly relevant to instructional positions, such as teachers, rather than custodial and clerical positions. Accordingly, the financial information was heavily relied upon by the Fact-Finder.

In addition, the Fact Finder does not find Chappaqua or Scarsdale to be comparable to the District. The significant differences in the median incomes, averaging around 20% or more, as well as other financial indicators place those two districts in an

outlier status in terms of this report.

The following chart depicts the relevant financial data used by the Fact-Finder in making her determination on salary, as well as other economic issues such as health insurance premiums:

DISTRICT FINANCIAL DATA

	Median Income 2008-2009	Rank in Ability to Pay 2008-2009	Property Wealth Per Pupil in 2006	CWR 2006
Katonah Lewisboro	**67,005**	**11**	**895,048**	**2.44**
Bedford	47,449	6	1,335,116	3.60
Briarcliff	70,895	12	692,704	2.37
Edgemont	74,670	14	753,898	2.23

SPENDING

	Personal Income Expenditures (2007-08)	Total Expenditures (2007-08)	Expenditures per Pupil (2007-08)	Total Expenditures (2006)
Katonah Lewisboro	**$501,194**	**106,348,274**	**26,856**	**93,680,249**
Bedford	$652,648	110,875,052	25,689	97,765,295
Briarcliff	$449,401	50,812,681	28,871	41,907,325
Edgemont	$422,741	43,057,553	22,103	36,969,408

STATE AID

	2007-2008 State Aid	2007-2008 State Aid % of General Fund
Katonah Lewisboro	**7,440,799**	**7.24**
Bedford	6,024,882	5.57
Briarcliff	4,008,514	8.2
Edgemont	2,482,162	5.72

As can be seen from a review of these tables, there is comparability among these districts with respect to certain key financial indices, such as median income; rank in

ability to pay; property wealth per pupil; combined wealth ratio; personal income expenditures; total expenditures; total expenditures per pupil; amount of state aid and state aid percentage of general fund. Although there can never be complete comparability with respect to all the indices, there is sufficient comparability among the districts chosen by the Fact Finder to provide a basis for this recommendation-report.

It is noted that certain of the usual ability to pay arguments were not raised by the District. For example, although the District explained in great detail the fiscal and unemployment problems of the United States government, the New York State Government, and the County of Westchester, there was no information regarding the direct actual impact of these problems upon the District. Although one would need to live in a soundproof bubble to be unaware of the seriousness of the fiscal situation both in the States and worldwide, as well as the trickle-down effect to a locality, nonetheless the District must demonstrate how the situation impacts directly upon the District budget; e.g. have housing costs decreased significantly with inventory rising? Are there numerous foreclosures in the District? What is the unemployment rate in the District? Has the median income dropped over the years? In short, the "last dot was not connected" in terms of presenting a total picture of the District's financial situation.

This is not to say, however, that the District did not demonstrate the need for cost savings which are reflected in the recommendations in this report. It is not improper for the District to rely upon the unpredictability of the New York State legislature and the Governor with respect, for example, the distribution of state aid. Rather, it is sound business practice to accommodate the ever-changing messages from Albany while attempting to develop a school district budget. Although there are many other districts in the area whose reliance upon state aid is much greater than that of this District, which is a

reflection of its wealth, State aid to this District nonetheless represents 7.24% of the general fund or approximately $7.5 million dollars, which is nonetheless a significant amount and sufficient percentage of the general fund for concern. If the District does not receive the anticipated State aid, it will impact upon its overall budget and, in turn, the operation of the District. Accordingly, the State aid/impact is not a mere conjecture on the part of the District but a reality based upon the collective actions or inactions of the "Albany-on-the-Hudson-Troupe."

Moreover, certain of the most significant costs facing the District are those which are essentially outside its control such as the increase in the annual District contribution-payments to fund the pensions paid by the Employee Retirement System which in the past had relied on investments. Although the total value of the pensions is treated as an unfunded liability which must be carried on the books, there is a fixed dollar amount which must be paid by the District which appears to fluctuate with the stability of the market. As a result, although the District is given advance notice of the increases, in this Fact Finder's experience there have not been decreases (or at least significant decreases) in the rate of the contributions made by political subdivisions, including school districts, in New York State over the years.

The Fact Finder as a Westchester resident is also aware of the well-known and difficult to dispute fact that the District has a great academic and community reputation which serves as a magnet for families. At the same time, as noted in the District's argument, approximately 80% of the annual budget is funded directly by the taxpayers. Accordingly, any additions to or deductions from the budget will be borne primarily by these taxpayers which must be considered in any recommended increase. The recommended increases are those that are well within the ability to pay indices.

In light of the foregoing comments and the salaries paid by the comparable school districts below, the Fact Finder recommends increases as noted below as follows: 3.5% in 2006-07; 2.5% in 2007-08; 2.5% in 2009-10; and 2.0% in 2010-2011.

Salary Increases	**2006-2007**	**2007-2008**	**2008-2009**	**2009-2010**	**2010-2011**	**2011-2012**
Katonah Lewisboro	3.5%	2.5%	2.5%	2.5%	2.0%	
Bedford	3.50%	3.50%	2.00%	2.00%	2.00%	2.00%
Briarcliff-Custodians & Drivers	Not avail	3.50%	3.50%	3.75%	Not avail	Not avail
Briarcliff – Teacher Aides	Not avail	6.00%	7.00%	3.00%	Not avail	Not avail
Edgemont - CSEA	Not avail	Not avail	Not avail	Not avail	Not avail	Not avail

The Fact-Finder finds that these increases result in an average of 2.6% over the five year period and fall within the range of the recently-settled contracts for units in the comparable districts.

Certain districts, such as Briarcliff, provided higher salary increases than the other comparable districts. It must be pointed out that Briarcliff's non-instructional contract ran from 2004-2009 and was apparently settled in 2007 when the financial situation was different.

It is the Fact Finder's belief that these increases reflect the current economic realities while at the same time the District's financial ability to pay in light of the raises recently-negotiated in the comparable districts.

Related Salary Issue: Article VII (A)(1)

The language in the current agreement provides that "a committee will be established to review salaries of the bargaining unit with salaries of similar positions in the county utilizing mutually agreeable criteria. The committee will render its recommendations by November 1, 2003. Should that committee find that unit salaries lag

behind any Westchester County district salaries, the category(s) will be elevated to a place above the County median for those titles determined to be below the County median."

There may have been a time in the District when such a clause may have been reasonable or equitable if Unit member salaries were well below the median at some point. However, for the reasons set forth below, this clause does not appear to serve any purpose. In the first instance, it appears that no such “salary review committee” was ever established by the parties during the term of the current contract or in any other contract for decades. More importantly, if the Union is to argue that it should be regarded as comparable to certain school districts of equal wealth to the District, then any comparison to County medians would be a contrary argument. Moreover, the evidence of record demonstrates that the Unit members’ salaries are very competitive with that of the County medians. The parties should not include in their contract a provision which has not been used for decades and has the potential to cause uncertainty at some later date, especially when they have the ability to invoke fact-finding if an impasse is reached. Accordingly, it is recommended that this provision be eliminated from the Agreement.

HEALTH INSURANCE

District Argument on Health Insurance Premium Contribution: Article X (A)

The District argues that it provides a self-insured health plan which offers extensive benefits to Unit members and that the cost of providing family coverage has increased over the last six (6) years, with an annual cost of $9,120 in 2002 and a current annual cost of $18,168, representing an increase of approximately ninety-nine (99%) percent. Since 2002, Unit members have not increased their annual contributions of a flat

dollar rate of $166.70 for individual coverage and $500.00 for family coverage towards these premiums.

The District also maintains that the actual percentage of the premium paid by unit members is negligible in the context of what other similarly situated employees are paying in the region and is declining because the employee pay a flat dollar contribution as the cost of the coverage increases. It notes that for the 2009-10 school year, the actual percentage of the premium cost paid by unit members was 1.8% for individual and 2.7% for family coverage which are well below the going rate for health insurance premium contributions in the region. With the increase in contribution to 6.0% for 2008-2009; 8.0% for 2009-2010; and 9.0% for 2010-2011 as requested by the District, a unit member would be required to contribute an additional $180.00 per year in 2008-2009 (approximately $15.00 per month) for individual coverage and an additional $331.00 per year in 2008-2009 (approximately $28.00 per month) for family coverage. In 2009-2010 the unit member would be required to pay an additional $251.00 per year (approximately $22.00 per month) for individual coverage and an additional $590.00 per year (approximately $49.00 per month) for family coverage.

With respect to the school districts that the District argues should be regarded as "comparable" for purposes of this report, it notes that in Harrison, similarly situated employees contributed 8% towards the cost of health care premiums during the 2006-2007 school year and 9% effective July 1, 2007 (moving from a flat dollar amount of $550 (family) and $275 (single) during the 2000-2001 and 2001-2002 school years, which was increased to 6.5% in 2002-2003 and 7.0% in 2003-2004. In the Bedford schools, members of the School Unit contributed 5.5% toward health care premiums in 2005-2006 and 6.0% in 2006-2007 which was increased in the recent settlement to 8%

(for those earning less than $35,000) and 10% (for those earning more than $35,000). In Byram Hills, members of its School Unit contributed 5% towards the cost of health care premiums for individual and 9% towards the cost of health care premiums for family coverage in 2005-2006 and in 2006-2007 the contribution towards family coverage was increased to 10%. In Briarcliff, similarly situated unit employees contributed 5% towards health care premiums for both family and individual coverage starting in the 2004-2005 school year and continuing to the present. In Edgemont, members of the clerical unit pay a flat dollar contribution towards health care coverage but at a significantly higher rate than what the members of this Union contribute ($600 for family coverage and $340 for single coverage in 2005-2006 which was increased to $643 for family coverage and $364 for single coverage as of July 1, 2007). In the Edgemont custodial unit, the members contributed $450 for family coverage and $225 for individual coverage during the 2005-2006 school year. Effective 2007-08, the employee contribution in Edgemont for clerical and custodial members was increased to an actual percentage of the premium (5% for both individual and family coverage). In Mamaroneck, members of the Teacher Aides Unit are permitted to buy into the district's health care plan and the district will contribute $100 annually towards such coverage for the 2003-2004 school year to the present; and the Mamaroneck Federation of School Secretaries as well as the Mamaroneck Custodial and Bus Drivers Union had been receiving health insurance coverage at no cost to the employee as of the 2003-04 school year. In the most recent settlement for these units the health insurance premium contribution was increased to 5% effective with the 2010-11 school year. A retirement contribution was also negotiated requiring unit members to contribute at the same percentage of the premium paid as active employees.

Union's Argument on Health Insurance Premium Contribution

The Union argues that the District's proposal regarding increases in the health insurance premium contribution rate is out of step with the going rate in the region in general and in the school districts specifically. The Union has proposed, in an effort to secure salary increases slightly above going rate, contributions to health insurance annual premiums at a fixed percentage of premium cost - starting at 6% in the first full year of the agreement, and rising to 6.5% in the subsequent year if the salary increases sought are granted.

Moreover, among the comparison districts, the following represents the best information available at present regarding Health Insurance Premium Contribution Rates, as follows: Bedford: since 2006: 6%; Briarcliff Manor: 2009: 5%; Chappaqua/Clerical: 2006: 5%; 2007; 5%; 2008; 6.5%; 2009: 7.75%; 2010: 9%: Chappaqua/Custodial: 2007: 6%; 2008: 7%; 2009: 8 %; Edgemont/Clerical: since 2006: $340 individual/$600 family; Edgemont/Custodial: since 2006: $225 individual/$450 family**;** Irvington: 2006: 4%; 2007: 4.5%; 2008: 5%; 2009: 5% (with flat dollar amount caps); Rye Neck/Clerical: since 2007: 10% for those hired after 1/1/86; Rye Neck Custodial: since 2008: 0% individual/15% family for those hired after 1/1/86; Scarsdale: 2009: 0%

Furthermore, the Union emphasizes that retroactive increases to health insurance contribution rates beyond a few months are exceedingly rare in the region. It maintains that if a successor agreement is executed sometime in the spring or summer of 2010, the increase should commence in September 2010. Union will not agree to any increase commencing prior to September 2010.

Recommendation

The Fact-Finder recommends that the health insurance annual premium contribution system be changed from a flat dollar amount to a percentage of premium, as

the record evidence supports that health care costs, whether self-insured or not, historically have been and appear to continue to be on the rise. The annual premium contribution rates by employees in similar units in the two of the three comparable districts of Bedford and Briarcliff, also self-insured, are at 5% and 9%. Accordingly, and in light of the competitive contract increases, especially during the retroactive years of the contract, it is appropriate that a rate of 6% of the annual health insurance premium be set down as a contribution by each employee. Also, four of five years of the successor agreement now have passed. The 6% increase for the individual, more than one person and family plans are hereby recommended to take effect during the last year of the agreement in 2010-2011. Moreover, in light of the fact that health insurance contributions are not usually collected on a retroactive basis, the six percent (6%) of annual premium shall commence with the 2010-2011 school year.

Health Insurance	**2006-2007 Fam / Indiv**	**2007-2008 Fam / Indiv**	**2008-2009 Fam / Indiv**	**2009-2010 Fam / Indiv**	**2010-2011 Fam / Indiv**	**2011-2012 Fam / Indiv**
Katonah Lewisboro	1% of base salary not to exceed $500 / 0.33% of base salary not to exceed $166.70	0%	0%	0%	**6%**	
Bedford	6%	8% if salary is less than $35,000 or 10% if salary is greater than $35,000	8% if salary is less than $35,000 or 10% if salary is greater than $35,000	8% if salary is less than $35,000 or 10% if salary is greater than $35,000	8% if salary is less than $35,000 or 10% if salary is greater than $35,000	8% if salary is less than $35,000 or 10% if salary is greater than $35,000

Briarcliff - Custodians & Drivers		5% of premium	5% of premium	5% of premium	5% of premium	
Briarcliff – Related Professionals (provided only to persons who have no other access to group coverage)		50% in 1st to 3rd year of service, 25% 4th year, 20% 5th year, 10% sixth and after.	5% of premium	5% of premium	5% of premium	
Edgemont -Clerical	$340 / $600	$340 / $600	$340 / $600	$340 / $600	$340 / $600	$340 / $600
Edgemont – Custodial	$225 / $450	$225 / $450	$225 / $450	$225 / $450	$225 / $450	$225 / $450

Health Insurance Waivers: Article X (B)

The District costs for health insurance premium buyouts/waivers over the past four years has been as follows:

Year	**# Buyouts**	**Cost to District**
2006-07	86	$408,540.00
2007-08	85	$436,812.00
2008-09	88	$476,590.00
2009-10	77	$465,423.00

The District argues that the purpose of offering a buyout in the past was to save it costs on health insurance when an employee was able to secure coverage from another source, as the District paid a premium per person to a carrier. Here, it maintains, there is no longer such a savings, as the District is self-insured. This means that the annual insurance cost is premised upon actual use by the employee, who submits claims which are paid during the year. Few self-employed plans offer any buyout, such as Bedford and Byram Hills, or only offer flat dollar buyout amounts, such as in Edgemont where the clerical unit members receive $1,500 and custodial $750 for such waivers. Similarly, it

points out, the Mamaroneck Non-Teaching Unit members receive a flat $1000 for waiver and the remaining members receive no buyout.

The District argues that the Katonah-Lewisboro teachers recognized the inequity inherent in the buyout under a self-insured program and agreed to significantly reduce the monies during the last round of negotiations to the amount set forth in the District Proposal**,** which is an annual credit made to the employee's Section 125 account in the amount of $3,000 for two-person or family coverage and $1,500 for individual coverage.

The Union argues that the buyout amounts currently paid by the District are well-within the range of industry buyout standards in the region, which run generally from 25%-50%, and is not remotely typical in the region. Thus, it maintains, no change is justified.

Recommendation

The self-insured District has demonstrated that the costs for this waiver totaled one million seven hundred eighty seven thousand, three hundred sixty five dollars ($1,787,365.00) from 2006 through 2010, for an average of four hundred forty-six thousand, eight hundred forty-one dollars per year ($446,841.00). In addition during each of the four years, the number of employees taking the buyout totaled 86, 85, 88, and 77 respectively. Assuming that the Unit size of 326 members has remained relatively stable, then approximately 85 employees a year, or about 25% of the unit has exercised the waiver option, which is a costly one. Furthermore, one of the largest of the comparable school districts which has self-insured plans, Bedford, does not provide for buyouts or waivers. This is a cost that should be contained, in light of the self-insured nature of the health insurance coverage. It is recommended that a similar program be implemented so that an annual credit be made to

the employee's Section 125 account in the amount of four thousand dollars ($4,000) for two-person or family coverage and two thousand dollars ($2,000) for individual coverage). These amounts are higher than those offered to the Katonah-Lewisboro teachers' union but they take into account the difference in the salaries between the two groups.

NON-ECONOMIC ISSUES

Disciplinary Procedure: Article XII (E) and (F)

The District argues that with respect to Section E of this article, which provides for due process disciplinary hearings pursuant to Section 75 of the Civil Service Law, the language is ambiguous, cumbersome and ineffective because it has resulted in needless litigation. In its current form, competitive class employees with twelve weeks of continuous service may exercise the option to have a so-called "Section 75 hearing" or an arbitration hearing in order to have his/her case heard. These employees "have three weeks in which to inform the District of the preferred venue. Excepting those educational employees who are covered by a different disciplinary statute, "all other employees must use the grievance and arbitration process" but a "non-competitive and labor class employee" who has five years of service in the District "must be given the option of the Section 75 hearing in lieu of a cause dismissal using the grievance and arbitration process." There is no further language, however, with respect to a time limit as to when the employee must inform the District of the preferred venue.

The District presented two cases which involved Unit members and litigation, one case due to the lack of clarity as to the time of filing of the preferred venue. The grievant in that case belonged to the third group of employees referred to in this provision as the

"non-competitive and labor class employee."

The District also wants to revise the current disciplinary procedure for new hires to the procedure set forth in Section 75 of the Civil Service Law. It is also proposing to extend this protection to non-competitive and labor class employees and to increase the probationary period for new hires within these classifications from twelve (12) weeks to four (4) years. It also wishes to eliminate language in the agreement that specifically requires it to engage in the progressive discipline of staff.

The Union recognized the problem with the lack of certainty without the three week forum selection language but rejects any notion of limiting the forum selection to only one. It also rejects any elimination of the requirement of progressive discipline which it regards as a fundamental element of due process. While it would be willing to discuss limiting new hires who are eligible for Civil Service Law Section 75 rights to that forum after a successor contract is reached, it would do so only if the hearing officer is mutually selected by the District and the Union.

In light of the demonstrated problem caused by a lack of a time limit for the exercise of the forum option, the Fact Finder recommends that Article XII, Section (F)(1)-Dismissal be modified to read as follows: "All other employees must use the grievance and arbitration provisions. It should be noted that non-competitive and labor class employees who accrue five (5) years of service in a position in the District must be given the option of the Section 75 hearing in lieu of cause dismissal using the grievance and arbitration process. ***These employees have three weeks in which to inform the District of the preferred venue***." In this way, these classes of employees (noncompetitive and labor) will have the same time limit of three weeks during which time they must inform the District of their choice of forum so that both parties will have

finality on the issue. There was sufficient evidence to show that, absent such parallel language, there was and is ample room for litigation.

The District's attempt to eliminate progressive discipline when dealing with unit members as currently set forth in Article XII, Section E Discipline is one that the Union opposes. The Fact Finder does not recommend the elimination of progressive discipline when dealing with unit members, as such a method forms the foundation of due process in the workplace. Moreover, it ensures that employees are being treated equally and fairly, among other features. It appears that one of the District's concerns lies within its interpretation of progressive discipline, as it contends that it is a process that would preclude it from imposing summary discharge upon an employee for an egregious act prior to any due process hearing. There is no question that the exception to progressive discipline is just that type of situation in which an employee's misconduct is so egregious that immediate action is warranted, rather than beginning with an oral warning. As a result, the language of this provision should be modified so to explicitly state, as recognized by arbitral precedent, that there is an exception to progression when disciplining an employee under certain circumstances.

Accordingly, the following provisions should be amended as follows: Article XII, Section E Discipline (first line): "It is the intent of the parties that the Process of Progressive Discipline be used in dealing with employees of this unit, ***excepting exigent or emergency circumstances requiring immediate discharge**, **such as acts of violence, drunkenness, or similar egregious misconduct***……." In order to make the language of this entire section parallel in nature, it is recommended that the following language in italics be added to ensure that the exceptions to progressive discipline, again according to arbitral precedent, are recognized: Article XII, Section (F)(1): "If the District/Supervisor

determines that steps taken in the progressive discipline process have failed to correct the behavior, the District can dismiss the employee for cause. The steps may be waived ***in exigent or emergency circumstances requiring immediate discharge, such as acts of violence, drunkenness, or similar egregious misconduct.***

With the addition of this language, the progressive discipline system is both preserved while providing a means to recognize the well-known exception to the system described above.

Probationary Appointments: Article XII, Section F.2

(Probationary Appointments for Competitive/Non-Competitive Labor Positions): Change the sentence below the category to read: "*It is recognized that probationary periods can be extended by the employer for a period of up to 24 weeks, with an additional 12 week period at the discretion of the District*."

Definition of a Grievance: Article III (A) (1).

The following language for the definition of a "grievance" is recommended, in lieu of the current language which is a bit confusing and apparently has led to numerous grievances. The recommended language is as follows: "***A grievance is any claim or dispute by an employee or group of employees concerning an alleged violation, misinterpretation or inequitable application of this agreement***." This language should clarify the parameters of a grievable claim or dispute so that all parties understand its meaning.

NEW

Attendance Review Plan: The parties are to formulate an attendance review plan, based upon a reasonable, progressive system so that all employees understand the

consequences of their absences, the burdens placed upon their co-workers, and other relevant factors inherent in such plans. The District's plan was overly harsh/punitive while the Union's was too lenient—an attempt should be made to select the best features of both and establish a workable timetable. The parties are to seek review plans used by other school districts and develop one that could take into account many of the issues raised in the outstanding issues regarding use of leave time, such as the appropriate use of doctor notes for absences; and the progression of discipline to be assigned to violations of the plan.

CONCLUSION

As fact finder, it is my opinion that the foregoing analysis based upon the Taylor Law criteria represents a fair balance between the needs and rights of the Union members and the obligations and burdens on the District. I strongly urge the parties to adopt the recommendations as presented, and to consider alternatives with respect to the issues remanded to them, in order to end the dispute which has engaged the efforts of the bargaining teams for nearly three years without a resolution and which led to this fact-finding forum.

As the parties have mutually agreed to an agreement duration which will run from July 1, 2006 through June 30, 2011, there will be ample time for the discussion of the issues and hopefully to an earlier resolution of the successor agreement so as to restore a more positive labor-management relationship between this Union and the District.

RECOMMENDATIONS OF THE FACT-FINDER

(CORRECTED FOR TYPO ON 04/15/10)

A. SALARIES

1. Salary Schedule Increases shall be granted as follows:

2006-2007	3.5%
2007-2008	2.50%
2008-2009	2.50%
2009-2010	2.50%
2010-2011	2.00%

2. Salary Adjustment Committee: The language of Article VII (A)(1) of the Agreement shall be abolished. This language would provide automatic increases to Unit members who held titles/salaries that lagged below "any Westchester County district salaries" so that their salaries would be "elevated to a place about the County median for those salaries determined to be below the County median." It is apparent that this language which has been in the agreement for decades has not been used. Moreover, it flies in the face of any "comparable school district" criteria test that is to be used during a fact-finding, as the Union cannot argue that certain school districts are comparable while at the same time maintaining that the County median must factor into the analysis. Furthermore, any contract language which is "tied into" the workings of another contracts or in this case all the other school districts contracts in Westchester County, results in a constant uncertainty as the durations of all contracts are staggered. Needless to say, the contract between the Unit and the District could be subject to constant re-openers if ever invoked, despite the fact that the titles/salaries in this unit are far above the county, which could lead to budgetary disaster. There is no place for such language when employees have Taylor Law protections available to them.

B. HEALTH INSURANCE

1. Premium Contributions for Active Employees: (Article X (A)All employees in the Unit shall pay six percent (6%) of the annual premium of either individual or family health insurance commencing with the 2010-2011 school year.

2006-2007	0%
2007-2008	0%
2008-2009	0%%
2009-2010	0%
2010-2011	**6.00%**

In light of the fact that health insurance contributions are not usually collected on a retroactive basis, the six percent of annual premium shall commence with the coming school year 2010-2011.

2. Health Insurance Waiver: Article X (B). The current waiver of health insurance shall be change from an annual lump sum payment of one-half of the annual premium (if hired prior to 7/1/95) or 35% of annual premium (if hired post 7/1/95) to an annual credit made to the employee's Section 125 account in the amount of four thousand dollars (44,000) for two-person or family coverage and two thousand dollars ($2,000) for individual coverage).

C. DISCIPLINARY PROCEDURE: Article XII (E) and (F)

1. Discipline Article XII(E). The current language is to be modified to include language covering potential summary discharge circumstances, as follows: "It is the intent of the parties that the Process of Progress Discipline be used in dealing with employees of this unit, *excepting exigent or emergency circumstances requiring immediate discharge*.

2. Dismissal Under Exigent Circumstances: Article XII(F)(1). The current language is to be modified to include the italicized language covering potential summary discharge circumstances, as follows: "If the District/Supervisor determines that steps taken in the progressive discipline process have failed to correct the behavior, the District can dismiss the employee for cause. The steps may be waived ***in exigent or emergency circumstances requiring immediate discharge, such as acts of violence, drunkenness, or similar egregious misconduct."***

3. Probationary Appointments for Competitive/Non-Competitive Labor Positions: Article XII, Section F. 2.: It is recommended that the last sentence of this subsection be changed to read as follows: "***It is recognized that probationary periods can be extended by the employer for a period of up to 24 weeks, with an additional 12 week periods at the discretion of the District***."

(Last paragraph of same section) The italicized sentence shall be added to the last paragraph of Section F (1)-Dismissal to make clear the time frame in which the District is to be given notice of forum preference: "All other employees must use the grievance and arbitration provisions. It should be noted that non-competitive and labor class employees who accrue five (5) years of service in a position in the District must be given the option of the Section 75 hearing in lieu of cause dismissal using the grievance and arbitration process. ***These employees have three weeks in which to inform the District of the preferred venue***."

D. **DEFINITION OF A GRIEVANCE**: Article III (A)(1). The following italicized replacement language for the definition of a "grievance" is recommended, in lieu of the current which is overly broad and confusing: "***A grievance shall mean any claim or dispute made by an employee or group of employees concerning an alleged violation, misinterpretation or inequitable application of the provisions of this agreement***."

E. **NEW: ATTENDANCE REVIEW PLAN**

The parties are to formulate an attendance review plan, based upon a reasonable, progressive system so that all employees understand the consequences of their absences, the burdens placed upon their co-workers, and other relevant factors inherent in such plans. The District's plan was too harsh while the Union's was too lenient—an attempt should be made to select the best features of both and establish a workable timetable. Other school districts in the area have plans that may serve as a model for the development of such a plan.

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On this 14th day of April, 2010, I, Rosemary A. Townley, Esq., Ph.D., affirm, pursuant to the New York State Civil Service Law § 209 and §209 (5)(k), that I have executed the foregoing as my FACT-FINDING RECOMMENDATIONS.

Dated: April 14, 2010

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Rosemary A. Townley, Esq., Ph.D.