

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

Case # M2010-123

FINDINGS AND RECOMMENDATIONS

February 27, 2012

In the Matter of the Impasse between *
MARATHON CENTRAL SCHOOL DISTRICT *
- and - *
MARATHON TEACHERS ASSOCIATION, *
NYSUT, AFT, NEA, AFL-CIO *

Representing the District:

Mark Pettitt, Director of Personnel & Labor Relations, OCM BOCES
David Cirillo, Asst Director of Personnel & Labor Relations, OCM BOCES
Floyd Parker, President, Marathon Central School District School Board
Rebecca Stone, Superintendent, Marathon Central School District

Representing the Association:

Joseph W. Beasley, Labor Relations Specialist, NYSUT
Carol Niggli, President, Marathon Teachers Association
Tim Holland, Biology Teacher, Marathon Teachers Association

Fact Finder:

Christina Sickles Merchant

The undersigned was appointed the fact finder in this impasse on December 1, 2010. Subsequent to this appointment, the parties returned to the bargaining table on their own to attempt to settle the issues between them. In September, 2011, the Association informed the Fact Finder that it was necessary to proceed with the Fact Finding. A meeting was held with the parties at the School in Marathon, New York on October 5, 2011, at which the parties clarified their positions on the issues in dispute. As agreed by the parties, written briefs in support of their positions were received by the Fact Finder on December 9, 2011.

Background

The parties to these negotiations began discussions for a successor to the 2006-10 Collective Bargaining Agreement in March of 2010. They met a total of seven times before jointly declaring impasse. The parties worked with mediator Kevin Flanigan, but were unable to reach agreement for a new contract. Subsequently, the Association requested that PERB appoint a Fact Finder to assist the parties.

The parties met with the Fact Finder on October 5, 2011, and she offered her services first as a mediator to assist the stalled negotiations. After brief caucuses, the parties decided to proceed with the Fact-Finding by reviewing the open issues and making arrangements for the submission of briefs in this matter.

Further, at this meeting, the District submitted its last proposal to the Association, as a statement of the open issues in negotiation. The Association submitted two documents, one of which was dated August 12, 2011 entitled "Marathon Teachers Association – Issues Presented to Fact Finder" and the second dated October 5, 2011 entitled "Marathon Teachers Association & Marathon Central School District (Agreed Upon Items through 4/11/11)." The October 5, 2011 document includes a number of items which have not been resolved, as indicated by the inclusion of them on the August 12th document. The Fact Finder believes that the parties have subsequently had discussions to resolve the discrepancies between the two documents and it is understood by the Fact Finder that the issues raised in the August 12th document are the ones placed before me.

The recommendations contained in this report are presented to resolve the issues in dispute.

Issues and Recommendations

Compensation

The District proposal on salary would provide the following adjustments on returning unit member base salaries:

2010-11	2.0%
2011-12	0% (salary freeze)
2012-2013	1.0%

The Association has proposed that the following adjustments on returning members base salaries occur based on a four year contract:

2010-2011	2.6%
2011-2012	2.6%
2012-2013	2.85%
2013-2014	3.5%

The positions of the parties are as follows:

The District's Position

The District identifies the ongoing restraints of the fiscal environment including: an ongoing economic downturn that has resulted in losses of State aid for public sector education; loss of funding from the American Reinvestment and Recovery Act (ARRA); passage of legislation that restricts the amount a school board is allowed to increase its tax levy, absent supermajority at the ballot box; and substantial increases in retirement costs, due to poor performance of the American economy and the NYS Teachers Retirement System's return on investments.

The District is offering 2% for 2010-11 despite these economic factors as that is the amount that was set aside for the teachers in 2010-11. However, the District believes that a salary freeze is needed in the 2011-2012 school year due to the fiscal environment and the pattern of results in regional negotiations. Data is shared that reveals that nearly one-half of the 23 component schools in the OCM BOCES have either accepted a wage freeze for the 2011-2012 school year or have reached agreement involving a substantial reduction in previously agreed to salary increases. The remaining Districts are either at impasse or have engaged in economic negotiations where the Union gave substantial concessions either in health insurance or other economic areas of the collective bargaining agreement in order to make possible increases ranging from 1.75 to 3.25%.

With respect to the 2012-2013 school year, the District is proposing a 1% increase to its teachers' base salaries. This position is based, among other factors, on a forecast of continued fiscal restraints due to unforeseen increases in the Teachers' Retirement System due to ongoing fiscal malaise in the U.S. stock markets; the impact on the

District of the State's Tax Cap legislation; and increased cost of health insurance and inflationary costs of supplies, equipment, and related services. The District estimates the need to account for an increase to budget in 2012-13 of over \$350,000, without taking account of any salary increases for the teacher bargaining unit or any other District employee. Along with expected decreasing State and Federal support, the District predicts that the size of the budget shortfall for next year will actually be much higher. The District is opposed to use of unrestricted reserve funds as a poor business practice and seeks relief in other economic benefits to the unit in order to help fund the 1% increase proposed. Specifically, the District proposes to freeze all extracurricular positions' stipends and eliminate the Longevity Adjustment provided for under Appendix II, Section 3.1.

The Association's Position

The Association maintains that the District can do better regarding its teachers than the above referenced position of 2%, 0%, and 1% over three years. It takes this position because of certain key observations. First, it maintains that the Unrestricted Fund Balance for the District in 2010-2011 was slightly above the 4% maximum allowed by Real Property Law Section 1318. Further, it maintains that for the 2011-2012 school year, the Fund Balance will be substantially above the maximum of 4%. In addition, the Association notes that the tax levy to District residents has remained relatively constant over the past four years and that the District enjoys a history of passing its local school budgets, including that for 2011. Lastly, the Association notes that the Board of Education has made changes to the staffing level of the District in light of decreasing enrollment and budgetary concerns due to the recent recession. As a result, nine and one-half positions were eliminated and a balanced budget and a significantly large amount of capital will remain in its Unreserved Fund Balance for 2011-2012.

The Association documents that the compensation for the teachers in the Marathon School District is among the lowest in the State. Through additional data, the Association asserts that the District has the means to provide the increases proposed by the Association, which are 2.6%, 2.6%, 2.85%, and 3.5% over four years.

The Association makes a separate case of the same across the board increases for returning teaching assistants as they are included in the same line item as teacher salaries in the overall budget. Moreover, the Association argues that such assistants work closely with their teachers. The District does not make a separate proposal with respect to teaching assistants and hence, in fact, includes them in its across the board salary proposal.

Further, the Association proposes that the same across the board increases be added to the stipends of extra-curricular staff. The Association argues that historically, the

parties have based stipend increases on the overall salary increases negotiated for returning teachers, guidance counselors and school psychologists. The Association emphasizes the importance of the roles performed by staff in an extra-curricular fashion, especially for the students. Comparisons are made with other school districts across the Central New York area, where this District appears to be among the lowest in payment for coaches, senior class advisor and yearbook advisor.

Fact Finder Recommendation

Having examined all of the data and information supplied by the parties, I have several observations and recommendations. First, there is no question that the fiscal environment has been and continues to be a great challenge to the District. Fortunately, the District has been proactive in reducing costs wherever possible, including laying off and not filling 9.5 positions in Spring 2011. In this regard, it is notable that the Association was supportive of this action. In addition, the Unreserved Fund Balance has been useful in covering the lack of continued funding from State and Federal sources. The Association has demonstrated that the Marathon teachers are among the lowest paid in the State and has questioned the ability to pay position of the District.

It is often possible for parties faced with these circumstances to negotiate together to fashion an agreement that is either a reduction in scheduled salary increases or the creation of cost savings in other areas of economic benefit to employees or some combination of these two. However, based upon the parties' positions and the data supplied, I am recommending the following across the board salary increases and cost savings in the area of compensation for a three year contract:

Appendix I – Salary increases – modify as follows:

- a. Section 1 – modify to reflect that salary increases for returning unit members shall be as follows:

2010-2011 2.0%

2011-2012 0%

2012-2013 2.5%

- b. As there is no evidence of discussion and positions of the parties with respect to the District's proposed change in starting salary and experience increments in Section 2 of Appendix I, I recommend that there be no change in that provision.

- c. Section 7 – modify to reflect that salary increases for returning Teacher Assistants shall be as follows:

2010-2011 2.0%

2011-2012 0%

2012-2013 2.5%

Appendix I – Extra-Curricular Pay – Modify as follows:

- a. Section 2 – replace the current Section 2.1 with the following:

The salaries of all returning coaches, advisors, consultants, and coordinators will be maintained at the 2009-2010 level, including any previously granted longevity, for the term of this three year agreement.

- b. Section 3 – At Section 3.1, provide that the longevity adjustment will be applied for the 2010-2011 school year. No longevity adjustment will be made in the 2011-2012 or 2012-2013 school years.

- c. Section 7 – Replace the current Section 7.1 with the following:

The base extra-curricular salaries will be maintained at the 2009-2010 level for the term of this three year agreement.

Health Insurance Opt-Out

The parties are in agreement to institute a new health insurance opt-out provision that will pay a unit member who does not take the District's health insurance plan a cash buy out of one thousand two hundred dollars (\$1,200). In addition, both parties agree that the unit member would have to be out of the health insurance plan for a full year (September 1 to August 31) and that the payment would be made at the end of the coverage period.

The parties' positions vary with respect to the plan administration and eligibility to participate in the opt-out provision when the unit member is married to another District employee. The Association proposes the following language on plan administration:

Employees who chose to participate in the opt-out program and suffer a life event (loss of alternative insurance coverage for any reason) shall be granted

participation in the health insurance program immediately upon notice to the School District.

The District proposes the following language in the alternative:

Employees who chose to participate in the opt-out program and lose their alternative insurance coverage for any reason, shall be allowed to rejoin the health insurance program upon notice to the School District and application to the carrier. In no case will an employee who is receiving coverage through a spouse or parent employed by the District be eligible for this benefit.

The District argues for the greater clarity of its language in terms of the basis for a return to the program. In addition, the District notes that the purpose of the opt-out was as a cost savings measure and allowing those who receive coverage through a spouse or parent employed by the District to opt-out and be paid \$1,200 would defeat that purpose. No mention is made of the cost impact of including this eligibility restriction.

The Association states its concern that the language proposed by the District acts to restrict participation in this bargaining unit when the same restriction is not applied to the District's current administrators and support staff. Moreover, the Association provided information that there are no restrictions to such opt-out language among over 17 other school districts.

Fact Finder Recommendation

I recommend the additional clarity of the District's language as noted below but without the additional restriction on eligibility.

Article V – Insurance – New Section, Health Insurance Opt-Out

The School District will pay a one thousand two hundred dollars (\$1,200) cash buy out to any member of the bargaining unit who does not take advantage of the District's health insurance and can demonstrate health coverage from another source. To qualify, non-participation must be for an entire year from September 1 to August 31. Payment of the cash buy out will occur at the end of the coverage period for which the employee opted out. Employees who chose to participate in the opt-out program and lose their alternative insurance coverage for any reason, shall be allowed to rejoin the health insurance program upon notice to the School District and application to the carrier.

Assignments and Transfers

The Association is proposing that bargaining unit members required to move a classroom or work station be granted two paid work days to do so. This proposal arises out of the concern that movement of teachers in this manner is at times capricious on the part of the District. The hope is that the additional requirement of payment for such moves will act as a deterrent to unnecessary moves.

The District avers that the set up of a classroom or work area is a normal and expected duty for all school personnel either because of a change in classroom or for the initial set up at the beginning of the school year, for which no additional compensation is paid.

Fact Finder Recommendation

I make no recommendation for changes in this provision of the agreement.

Teaching Hours

The Association proposed a change to Article IV, Section 2.3 so that unit members would receive notice 48 hours in advance of any meeting with parents. The current climate in which teachers are increasingly being assessed based upon student performance leads to concerns regarding unplanned for time away from the classroom. The Association asserts that the District has not been mindful of the impact of such absences on the teacher's overall performance.

The District believes that there are many instances when a unit member may need to meet with a parent, not all of which can be scheduled two days in advance. Such a provision is believed to place undue obstacles and delays in the way of resolving these matters. The District believes that the current language where "no appointment with parents involving a teacher shall be scheduled without prior notification of the bargaining unit member" provides adequate protection for teaching personnel, so that they are not surprised when entering a meeting with parents.

Fact Finder Recommendation

I make no recommendation for changes in this provision of the agreement.

Teacher Evaluations

The Association is proposing that in Section 7.2 of Article VIII of the Agreement, the number of evaluations for probationary teachers be increased from three per year to four and that all such evaluations take place during the period of the school year. The Association believes that expansion of the number of observations would provide

teaching staff with an additional opportunity to collaborate with their superiors, to receive feedback on their professional growth and develop and adopt goals for success.

According to the District, the State of New York has passed substantial revisions to Section 3012 of the Education Law. These changes call for a major overhaul of evaluation procedures for tenured and non-tenured teachers in New York. In addition, the District notes that the new law also mandates negotiations over the procedures for evaluations covered under the Annual Professional Performance Review (APPR) which School Districts are now required to develop, maintain and implement. The District believes that any changes in the evaluation provisions of the Agreement should be discussed in the negotiations over the new APPR and in the context of the committees established by the parties for this purpose.

Fact Finder Recommendation

I urge the parties to return to the bargaining table and the appropriate committees to negotiate all aspects of the change in the APPR and its impact on District teaching staff. I make no recommendation for changes in this provision of the Agreement in isolation from such comprehensive negotiations.

Sabbatical Leaves of Absence and Professional Development Fund

The District proposes that the monies for the salary increase for the 2012-2013 school year be offset by other changes in the budget. To accomplish this in part, the District proposed the following changes to Article XIV, Leave Allowance, Section 8, Sabbatical Leave of Absence:

- a. At subsection 8.1, provide that for the term of the Agreement, sabbaticals will be suspended and 100% of the Professional Staff Development Fund be used for staff development activities related to the implementation of the APPR through projects under sub-section 8.3.
- b. At subsection 8.4, provide that effective with the 2012-2013 school year, the multiplier for calculating the Professional Development Fund will change from "one and one-half percent (1.5%) to one percent (1%)."

The Association contends that reducing this provision of the Agreement at this point in time is ill-advised given the wholesale changes in teacher assessment and performance being mandated by the New York State Department of Education.

Fact Finder Recommendation

As noted in my above recommendation with respect to negotiation over changes in the APPR and its impact on District teaching staff, I make no recommendation for changes

in these provisions of the Agreement in isolation from the comprehensive negotiations which must take place in the District.

Article XX – Retirement Incentive (School Nurse Provisions)

The current contract is silent with respect to the issue of granting retirement incentives to school nurses. The District has suggested that the parties continue negotiations over the incorporation of the nurse and occupational therapist titles into the Agreement outside of these negotiations. The District is concerned that a comprehensive settlement, based on the previous work done by the parties prior to the current impasse, be recommenced.

The Association has proposed that the same retirement incentive as for teachers be offered to these titles, in addition to payout for sick leave accumulation upon retirement and according to a set schedule. The Association notes that the current staff in these titles are “years away from retirement.”

Fact Finder Recommendation

I make no recommendation for changes in these provisions of the Agreement in isolation from the ongoing negotiations which should be recommenced and satisfactorily concluded.

_____/s/_____
Christina Sickles Merchant
Fact Finder

February 27, 2012
Ithaca, New York