

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT FINDING BETWEEN
UNIONDALE UNION FREE SCHOOL DISTRICT**

-And

PERB Case No M2015-096

Before: Thomas Linden

UNITED PUBLIC SERVICE EMPLOYEES UNION

REPRESENTATIVES

A. For the Employer

Myrtle Dickson, Assistant Superintendent for Human Resources
Carol Melnick, Esq., Jaspens Schlesinger LLP
Steven Epstein, Business Office

B. For the Union

Joel Bradley
James McAllister
Robert Kirk
Etienne Carelus
George Brodus
Brian Honahan, UPSEU
Randy Tillmen, UPSEU, Director of Organizing

PRELIMINARY STATEMENT

The Taylor Law provides for fact finding as part of the statutorily mandated process of alternate dispute resolution. It is, by its nature, an extension of the collective bargaining process and comes about only after the parties, for whatever reason, have been unsuccessful in the negotiation and mediation process. The sole reason for the existence of any of these extensions of the process is to bring the parties to an agreement. It is the fact finder's responsibility to help the parties pay a visit to the other side's perspective, even if they do not fully agree with it. It is obvious that the parties to the agreement in question had ambitious goals; it is now time to take stock of what can be reasonably attained in bargaining.

DISTRICT AND BARGAINING UNIT PROFILE

The Uniondale Union Free School District (hereinafter, "District") is in Nassau County, New York. There are nine schools within the District including five elementary schools, two middle schools, one pre-K and one high school. The latest enrollment figures show a student population of 6,571. According to the Declaration of Impasse filed by the United Public Employees Union (hereinafter, the "Union"), there are 82 bargaining unit members.

The Union represents this “wall- to-wall unit” which includes:

“Cleaners, Attendants, Stock Assistants, Custodians, Bus Drivers, Groundskeepers, Maintenance Helpers, Pool Operators, Recreation Aides, Head Custodians, Assistant Head Custodian, Maintenance Personnel, Senior Maintainer, Supervisory Groundskeeper, Audio Visual Computer Technicians, Transportation Supervisor, Audio III. Visual Technician, Information Technician Aide and Information Specialist I, II, and III.”

BACKGROUND

The District and the Union are parties to a collective bargaining agreement (hereinafter, the “CBA” or “Agreement”) covering the period between July 1, 2010 and June 30, 2014, which, notwithstanding its expiration, remains in full force and effect pursuant to Section 209-a(1)(e) of the Taylor Law. In an effort to negotiate a successor agreement, the parties participated in five negotiation sessions between January and June, 2015. After these negotiations failed to generate a new agreement, the Union filed a Declaration of Impasse with the Public Employment Relations Board (hereinafter, “PERB”) which was received on July 23, 2015. Shortly thereafter, PERB appointed Ms. Karen Kenney as mediator and despite her efforts, no agreement was reached and subsequently, by letter of June 7, 2016, the Union requested the case move to fact finding, and on June 27, 2016, the undersigned was appointed.

A fact finding/mediation session was held on September 20, 2016 and a number of items were discussed with no agreement reached. It was agreed that briefs would be submitted to the fact finder by October 20, 2016. Upon receipt of the briefs on that date, the file was closed. There were no rebuttal or supplemental briefs.

THE ISSUES

- Duration of the CBA
- Salary
- Snow Day Compensatory Payment

DURATION OF THE CBA

Fact Finder Discussion and Recommendation on Duration of the CBA

At the meeting of September 20th , there were discussions of duration of the CBA, and when I indicated I was leaning toward recommending additional years beyond those discussed previously, there was not much pushback. A CBA with an expiration date of June 30, 2018 or June 30, 2019, does not give the parties enough time to recover from these negotiations. In the interest of further stability between the parties going forward, it is recommended, that the new agreement continue

through June 30, 2020 so that the full impact of the recommendation will be realized. It is the fact finder's belief that having an agreement that expires before 2020 will leave the parties little breathing room to heal their relationship and develop some history under the new CBA. Working under an expired agreement is awkward at best, and sometimes the relationship is focused on the protraction of the process and not on cooperation. With additional duration, the parties will avoid being engaged in what might seem like perpetual bargaining. It is with these factors in mind that I have recommended a five year agreement.

SALARY

District Position on Salary

The District contends that, with respect to salary, it has “consistently provided the Custodial Unit with salary increases, plus steps, that were reasonable and in line with the financial and economic hardship” it encountered. The District believes that the recent economic recession and the impact of the tax levy cap have contributed to the difficulty in providing anything more than what was offered during negotiations and mediation. The District has offered the following:

2014-2015 1.5% + Step

2015-2016 1.5% + Step

2016-2017 1.5% + Step

The District points out that this offer is directly in line with increases offered to other units within the District.

The District believes this offer to be fair and reasonable and has offered no resistance to retroactive payment of the increases as listed above. In keeping with the provisions of the Triborough Amendment, all step increases due this unit have been paid. It is also noted that it is the District's understanding, that the Unit was in agreement with this offer, provided that other items were resolved.

Union Position on Salary

The Union contends that the District's salary offer is insufficient when weighed against similar Nassau County bargaining unit increases. The Union argues that the average General Wage Increase (GWI), was 3.3% for the contract years in question, much higher than the increase offered by the District. In addition, the Union contends that this unit has an increment value far less than most custodial units in Nassau County.

With respect to the other bargaining units within the District, the Union contends it is getting short-changed with respect to salary increases and points to the recently negotiated clerical unit agreement which provides a yearly average salary increase of 1.85%, exclusive of step increase. The Union infers that post recession,

the District now has the means to give the unit a well deserved modest salary increase.

The Union's position on salary increases at the conclusion of mediation was as follows:

| | |
|---------|--------------|
| 2014-15 | 1.75% + Step |
| 2015-16 | 2.00% + Step |
| 2016-17 | 2.00% + Step |
| 2017-18 | 2.00% + Step |

Fact Finder's Discussion and Recommendation on Salary

There is no question that the stagnation in the overall economy triggered in 2008 continues to have a lingering effect on the District and on resident taxpayers. This, coupled with the tax levy cap, is a vexing reality for both the District and the Union.

The fact finder believes that the totality of circumstances supports a modest pay increase in each year of the proposed agreement. The first three years of the agreement have already passed and all increments due have been paid under Triborough. The District's offer with regard to percentage raises is recommended with

increases added in keeping with the additional years of duration as recommended previously.

The following is the recommendation on salary:

| | |
|---------|--------------|
| 2014-15 | 1.50% + Step |
| 2015-16 | 1.50% + Step |
| 2016-17 | 1.50% + Step |
| 2017-18 | 1.50% + Step |
| 2019-20 | 1.50% + Step |

These modest increases would provide percentage pay increases through June 30, 2020 amounting to 7.5%. This, coupled with yearly step increases, is an economic package both sides can live with. All of the first three years of percentage increases would be retroactive.

SNOW DAY COMPENSATORY PAYMENT

District Position on Snow Day Compensatory Payment

Historically, snow removal in the District has been routinely performed by members of the unit in question. It is the District's position that snow removal during

regular hours is part of a Unit member's responsibility, something they are informed of during their employment interview. It is the current practice and the District considers it a "past practice" that unit members do not receive anything above regular pay for snow removal during M-F hours. If the snow removal happens on a holiday, such as Martin Luther King Day, unit members are given a compensatory day off. Also, according to Article XII, E, of the current CBA:

"If an employee is required to come in to work for a period which is not contiguous with his/her regular shift, he/she shall be paid for a minimum of three (3) hours time at overtime rates. In the event that any employee is required to work on Sunday for snow removal work, he/she shall be paid "double time" instead of time and one-half for such overtime work."

The above premium pay provision includes, at least tacitly, a minimum threshold for "show up pay" of three hours. While these provisions are all fine and good, the problem comes when we talk about what happens during snowstorms that happen during the regular work week.

In what it refers to as "recognition and support of the unit's efforts" (brief p.4), the District offered the following proposal to be added to Article XII of the current CBA:

"Full time employees of the unit (expressly excluding part time employees and subs) shall receive two hours of compensatory time if such employee reports to work for snow removal during a regular school day when school is closed for snow. Compensatory time is to be used during school recess and/or

when students are not in session for up to two hours per day and shall not exceed a maximum of eight hours per year. Compensatory time will have no cash value, and must be used by June 30 in the year that the time accrued. Compensatory time shall be scheduled subject to the approval of the Director of Facilities and Operations and Building Principal.”

The District contends that this proposal will not severely impact the budget, yet still gives acknowledgement to the unit for a job well done.

The District also reports that surrounding Districts provide little guidance or standardization as to how this is handled. Contract provisions run the gamut from no benefit at all to time and a half for snow removal during the regular work week.

Union Position on Snow Day Compensatory Payment

The Union believes that unit members should receive compensation for time worked on snow days during the week if school is closed. They point to other bargaining units that receive snow day compensation even if they do not report to school that day. The Union believes that the offer made by the District as enumerated earlier in this report is insufficient.

During the meeting of September 20th, the Union submitted a document showing eight nearby school districts and how they handle snow days for custodial units.

Of the districts listed, four of them provided time and a half for work on snow days. The other four districts listed provided some type of compensation or compensatory time off.

The Union was not specific in its counterproposal only contending that 2 hours of compensatory time was not sufficient.

Fact Finder Discussion of Snow Day Compensatory Payment

There are a number of factors at work here. Unit members are expected, rightfully so, to come in when a snow day cancels school. As the District noted, this is indeed a type of past practice that applies to all unit members who have a reasonable expectation that it will continue during the life of the current CBA. This, however, does not preclude the Union from attempting to modify or improve working conditions or work rules that are not necessarily addressed in the CBA. Compensation for snow day work is, in my opinion, a mandatory subject of bargaining. To say employees, when interviewed, were all informed they would have to come to work on snow days is fine. However, this is not something that is set in stone or something that can't be modified or improved during collective bargaining. That being said, the District has attempted to come up with a solution that might be acceptable to the Union. The fact finder believes they did not go quite far enough.

The proposal offered to the Union provides two hours of compensatory time for each snow day worked. Coupled with this is a cap of one day's accumulation per year. In other words, if an employee comes in for four snow days, he/she will receive four, two- hour blocks of compensatory time which equal one day in compensatory time, to be used within certain constraints as listed in the District's proposal.

The fact finder recommends that the District provide compensatory time in blocks of four hours with the proposed cap of a one day limit on time taken. This way, if there are two snow days, an employee would receive one compensatory day and if there are four snow days the employee would still only receive one day compensatory time. This, in effect, does not add to the liability of the District but does provide an acceleration for the unit member to reach the one day level.

Concluding Statement

The fact finder hopes this report provides a roadmap to settlement. It is also hoped that the recommendations set forth herein be adopted and embraced by both parties and that they form the basis for a new CBA. The parties may not see these recommendations as a perfect resolution to this impasse, however, they do represent a reasonable solution to resolving these negotiations. The parties are encouraged to adopt them as written and to do so as soon as possible

October 30, 2016

Bellport, New York

Thomas J. Linden PERB

According to the District's brief, in recognition of the unit's efforts, they have offered limited compensatory time in the event that school is closed for snow and unit members report to work for snow removal. The offer is as follows:

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