

Employment Relations Board (“PERB”) indicates that the parties met for negotiations six times before declaring impasse. (Jt. Ex. 1) The parties had two mediations sessions with a PERB mediator. They were unable to reach agreement during mediation. By letter dated February 15, 2018, the Association’s representative, Jonathan Hickey, wrote to PERB requesting the appointment of a Fact Finder. (FF’s Ex. 3.) By letter dated April 2, 2018 PERB appointed the undersigned to serve as Fact Finder in this case. (FF’s Ex. 1.) A Fact Finding hearing took place on May 21, 2018 and June 27, 2018. The parties were each afforded the opportunity to present witnesses and documentary evidence. At the close of the hearing the Fact Finder requested additional information regard health insurance issues. The Fact Finder indicted that the record would be held open for the submission of additional documentary evidence but stated that only such evidence as could be submitted jointly would be received. The additional evidence was received on July 25, 2018 and at that time the record was closed. The parties submitted post hearing briefs dated August 10, 2018

UNRESOLVED ISSUES

The Declaration of Impasse form is accompanied by a five page list of outstanding issues. At the hearing itself the witness who testified limited their testimony almost exclusively to the issues of wage, health insurance and the District’s “ability to pay.” Similarly the documents submitted by the parties focused on these issues.

Smaller Issues

There were a number smaller demands made by the Association. Several of these have now been withdrawn by the Association. Therefore I will address them only briefly and simply recommend that the District position on the following issues should be accepted:

1. In their brief the Association withdrew its demand with regard to duration of the contract. Accordingly, the Fact Finder recommends that the contract be for five years as proposed by the District.
2. The Association and the District have agreed to a new proposal which would allow unit members to carry over up to five unused vacation days each year. The parties differed as to the date by which those carried-over vacation days must be used – the District proposing that they be used by August 31 of the following school year and the Association proposing December 31. In its post hearing brief the Association indicated that the date proposed by the District was acceptable. Accordingly, the Fact Finder recommends that Article V of the collective bargaining agreement be amended to allow bargaining unit members who have accrued, unused vacation days to carry over a maximum of five days to the following school year to be used by August 31 of said year, as reflected in the District counter-proposal of April 24, 2017
3. Article VII, B covers Personal Leave. The Declaration of Impasse indicates that the Association demanded one additional leave day to be used without explanation. The district opposed the additional day. In their post-hearing brief the Association has withdrawn its demand. The Fact Finder recommends that the

already generous leave policy contained in the collective bargaining agreement remain unchanged.

4. The parties remain at impasse with regard to the general wage proposal. However the Association has withdrawn its demand for minimum of \$.15 differential between returning employees and new employees holding the same job title. Therefore the Fact Finder recommends against the Association's proposal to amend Article X, Section C to reflect a minimum wage differential of \$.15.
5. The Association had proposed an increase in the Opt-Out payment made to member who do not take health insurance through the District. In its post-hearing brief the Association withdrew this proposal.

Other than the question of the contract's duration, the above mentioned issues each have a cost factor attached. At the hearing the District introduced two documents reflecting its calculation of the parties opposing proposal. The starting salary differential is costed out by the district as \$15,919 in new money over the life of the agreement. The cost of the withdrawn demand for an addition personal leave day is estimated as \$11,840 in new money. (Dt. Ex. 14) The new money cost associated with Opt-Out increase is estimated as \$48,000. The situation with regard to the vacation carryover proposals is less clear. District Exhibit 14 calculates that the cost of the association's proposal to allow employees to use those vacation days by December 31 to be \$22,269, yet District Exhibit 15 assigns no cost to the District proposal to allow the same five days of carried over vacation if used by August 31. The District offers no explanation for the difference in Exhibits 14 and 15. In any case, the Association has now

agreed to the August 31 and the Fact Finder will there for conclude that the \$22,269 is to be subtracted for the estimate made in Exhibit 14.

Leaving aside the health insurance issues for the moment, the above concessions by the Association narrow the difference in the cost of the parties proposals. Under the District's proposal new wage increase, increases in the minimum wage law, the longevity payments add up to \$443,312 in new money (Dt. Ex 15). Subtracting the estimated cost of starting salary compression adjustments, vacation carryover and additional personal days, the Association's non-health related proposal cost out at \$514,066 in new money. The difference being only \$71,754 in new money over 5 years in non-health insurance related costs.

Wages

The difficulty faced by both parties is the pressure of the state's minimum wage law increases. (Jt. Ex. 25) As indicated above, nearly two thirds of the bargaining unit's member are teacher's aides whose starting salary is the state minimum wage. The legislated increase in the minimum wage has apparently outstripped the contract wage increases negotiated by the parties. Joint Exhibit 20 is a list of bargaining unit members, their job titles, seniority dates and wage rates. There are six teachers aides in the unit who were hired in 2008 and thus have 10 years of seniority. Those aides earn between \$10.40/ hour at the lowest and \$10.78/hour at the highest. As of December 31, 2018 the minimum wage in New York will be \$11.10/ hour. Despite having worked for the District for ten years, none of these employees will be earning as much as the new minimum wage that becomes effective at the end of this year. As Joint Exhibit 25 shows, the annual increase in the state minimum wage for the next few years is

\$.70/hour. The 12/31/16 increase amounted to a 7.2% increase. The largest negotiated wage increase this bargaining unit has seen in the last 8 years was the 3% increase in the recently expired one year contract.

The District is proposing a 2.6% increase in each of the five years going forward. The Association proposed 3% plus \$.10 in each year. The minimum wage increases scheduled to go into effect for the next three years range between 7% and 5.9%. The contractual wage increases proposed by the parties would go into effect on July 1 of each year. Thus for the last six months of each calendar year returning employee will be receiving wages slightly above the minimum wage until that difference is out stripped by the new minimum wage that come into effect at the end of the calendar year.

The collective bargaining agreement contains a Pay Range chart, (Jt. Ex. 3, Article X (C).) The District has submitted a schedule of proposed starting salaries for the various job titles within the unit. Jt. Ex. 15.) The Association position on the Pay Range is somewhat unclear. In Joint Exhibit 15 the Association's proposal states "Starting Wages To Be Determined following completion of negotiations of wages for returning members." However, as indicated above, the Association has withdrawn its proposal that all returning employees earn at least \$.15 more than the hourly starting rate for their job title.

Both parties propose an increase in longevity pay of \$100 for each of the four "years of service" categories.

Health Insurance

There are several aspects to each of the parties health insurance proposals. Currently bargaining unit members have RASHP II Blue Point 2 Value (“Value”) as their base plan. Since 2015 members hired before 7/1/2010 have been paying 10% of the premium cost while members hired after that date have been paying 15% of the premium. In addition the contract provides for a \$700 annual payment into a Section 105 Medical Reimbursement (HRA) account for unit members who take the district insurance or are enrolled in any other plan that qualifies under the Affordable Care Act. There is an Opt-Out provision which provides a \$200 payment per year for members who chose not to take the health insurance benefit. The dollar amount of the Opt-Out has not changed since at least 2010. Joint Exhibit 21 shows that approximately 20% of the unit takes the Opt-Out payment in lieu of coverage.

In January of 2017 the District made available the RASHP II High Deductible plan (“HDHP”). Joint Exhibit 22 shows that only two people have chosen the HDHP since it became available.

The District proposes several changes to the current provisions. First they propose raising the premium payment for the Value plan over the life of the agreement from 10% to 11.5% for those hired before 7/1/2010 and from 15% to 16.5% for those hired after 7/1/2010. The District proposes that all newly hired bargaining unit members have the HDHP as the base plan and that they pay 20% of the premium. Those new hires and any current member switching to the HDHP would be eligible for a Health Saving Account. New hires would receive a \$1000 contribution for a family plan in their first year and a \$1500 contribution each year thereafter. Current bargaining unit members who switch from Value to HDHP would

receive a one-time payment of HSA \$3000 and have a 5% premium reduction for three years. In addition they would be eligible for a family plan HSA payment of \$1450 (but would lose their \$700 annual HRA payment.) Finally, the district proposes adding language to the provision for retiree health insurance that would require employees hired prior to 7/1/2014 to have at least 10 years of “consecutive” service. Historically the contracts have not required that such service be consecutive. (Jt. Exs. 3,4 & 5.)

The Association proposes an increase in the HRA annual payment from \$700 to \$1250. Under the Association proposal Value would remain the base plan for all bargaining unit members, existing and those newly hired. The HDHP coverage would remain an option. Those who opt for the HDHP would receive a one-time HSA contribution of \$2000.00 and have their premium paid 100% by the District. Said employees would not receive an HRA contribution. Those remaining in the Value plan would have their HRA annual payment increase from \$700 to \$1,000. The Association also proposes an increase in the Opt-Out payment to \$1,000 if fewer than 21 bargaining unit members opt-out, \$1,500 if 21-25 opt-out and \$2,000 if 26 or more opt-out. Finally, the Association proposes to add a survivor health benefit which would provide one year of health coverage to a surviving spouse and dependent children of a member who died in service.

In its post-hearing brief the Association indicated that it would withdraw that part of its proposal related to the incentive for switching to HDHP and accept the District’s proposal of a one-time payment of \$3,000 to the members HSA, thereafter annual HSA contribution of \$1,200 for single and \$1,450 for family, and a 5% reduction in premiums for three years. Although willing to accept the District’s proposed level of incentives for those switching to HDHP, the Association remain opposed to HDHP becoming the base plan for new hires.

STANDARDS FOR FACT FINDING

Section 209 of the New York Civil Service Law governs the fact finding process in this case. However that section does not set forth standards for fact finders to follow in making an informed recommendation to the parties. N.Y. Civ. Ser. L. section 209(3)(c). Many fact finders look to Civil Service Law section 209(4)(c)(v) which list the factors to be considered by interest arbitrators for those public safety bargaining units which have interest arbitration under the Taylor law. Those standards, as they appear in the statute, are list below:

a. comparison of the wages, hours and conditions of employment of under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for

compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

Following these guidelines, parties to interest arbitrations in New York typically present the interest arbitration panel with copies of the collective bargaining agreements for bargaining units with similar work force and job titles in similarly sized municipalities, fire districts, and public authorities. Neither party to this hearing present presented the fact-finder with collective bargaining agreements from other school districts. For a bargaining unit composed primarily of employees making the minimum wage, comparisons to other district provides little or no guidance in determining the appropriate wage increase.

During the fact finding hearing neither party discussed “comparables” as that term is typical used under the Taylor law. The only collective bargaining agreements submitted to the fact finder were those of other bargaining units in the District. This makes sense because the parties have not asked the fact finder to determine whether this unit should receive wages and benefits comparable to those of other clerical/teacher-aide units in the county or the state. Rather, the issue parties have placed before the fact finder is whether it is necessary to the District long term financial health to require all future members of this bargaining unit to be in the HDHP rather than the Value plan.

The District argues in its brief that the fact finder should not consider the teachers unit, the nurses unit or the administrators and managers unit because they are not comparable. The cases cited by the District deal with the question of unit placement and the “community of

interest” standard. The “community of interest” standard is the one applied in representation hearing. That is not the question in this hearing.

As the District noted in its brief, “The District cannot consider the Association’s proposals without regard to educational programs for students, compensation of other employees, and other expenses.” (District brief, p.3.) The health insurance benefits received by other District employees (including teachers, the largest group of District employees) is part of the “compensation of other employees,” which the District itself acknowledges must be considered when looking at the Association proposal that Value remain the base plan for all of its members during the duration of this agreement.

The bulk of testimonial and documentary evidence presented by the parties focused on the “ability to pay” standard. More specifically the District’s ability to pay health insurance costs in the future. As might be expected the Association points to the District’s large restricted fund balance (second largest in the county) and the fact that the District has had an operating surplus for each of the last five school years. The District points to its limited tax base, its high tax rate (highest in the county) and the projected increases in the cost of health care.

The recommendation contained in this report shall be based on the cost associated with each parties proposals in the light of the District’s overall financial picture. That financial picture must be looked at in the context of the projected wages and benefits of all the District’s employees, not just the cafeteria, custodial and support staff as urged by the District.

DISCUSSION

Wages

New York State has increases in the minimum wage scheduled to take effect on December 31 of the next several years. The amount of the increase for 2018, 2019 and 2020 have already been determined. For each of those years the increase is \$.70, which amounts to from 7.2% to 5.9% increases over the previous year, an amount far in excess of the wage increases proposed by either party. Thus the cost to the District for any contractually negotiated wage increases is a cost born for only six months of the year, that is, until the next minimum wage increase out strips the contractual raise. What is clear from these facts is that it is the state mandated minimum wage law rather than contractually negotiated wage increases that are driving up the Districts salary costs.

With regard to the Pay Range chart the district has submitted a specific proposal. The Association's post-hearing brief states the following: "In order to create a final agreement which accounts for negotiated raises and future increases to minimum wage, the Association proposed determining the new starting rates at the conclusion of negotiation. This remains a part of the Association's proposal." The Association position on this issue is untenable: negotiation are already concluded.

While the District proposes a 2.6% wage increase annually, it's Pay Range charts only provides for a 2.2% increase in the starting wage of those titles which pay above minimum wage. The Association points out that the Pay Range proposal from the District has several

job titles receiving less than the minimum wage for the school years 2020-2021 and 2021-2022. One example is the position of Account Clerk Typist. In 2016 the minimum wage was \$9.70 (Jt. Ex. 25) and the Account Clerk Typist had a starting wage of \$10.50 (Jt. Ex. 3), \$.80/hour above the minimum wage. In 2017 the minimum wage rose to \$10.40, an increase of \$.70. Under District proposal a newly hired Typist would start at \$10.74, only \$.34 above the minimum wage. In 2018 a newly hired Typist would receive the minimum wage exactly. And then, as the Association points out, the Typist would receive less than the legally permitted minimum wage in the last two years the District's proposed schedule. Joint Exhibits 3,4 and 5 show that there are several bargaining unit titles, such as the K-5 School Secretary and the Office Clerk 2, which have historically received starting wages substantially in above of the minimum wage. Under the District proposal those difference would be eliminated. These are minimum starting salaries and the District is, of course, free to hire people into these titles at a higher rate, which they clearly have done as reflected in Joint Exhibit 20 which shows a Clerk II hired in 2017 receiving \$16/hour when the contractual minimum was \$11.55.

Health Insurance

Relative to their wages the cost of health insurance premiums is quite high. (Dist. Ex. 12.) Despite this fact, it appears that approximately 80% of the unit receives it health insurance coverage through the plans offered in the Association's contract with the District. Slightly more than half of those taking insurance under the contract are enrolled in a Family plan. (Jt. Exs. 21

and 22.) For ease of discussion, reference will be made only to cost regarding the Family plan with the understanding that the Single Person and Two Person coverage are less expensive.

The Value plan and the HDHP provide nearly equivalent coverage. (Dist. Ex. 4.) The monthly premium for the HDHP Family is \$1,253.10 while those for Value are \$1,740.60.

(Dist. Ex 1.) District Exhibit 12 shows that a new hire paying 20% of the premium for HDHP would pay \$72.40 per year less in premiums than a new hire paying 15% of the premiums for Value. (The difference in the figures used in District Exhibit 1 and those used in District 12 appears to be based on District Exhibit 12 including the cost of the Dental plan in addition to the health care coverage.)

The important cost issue for employee is in the distinction between the co-pay system in Value and the deductible system under the HDHP. As the name indicates, high deductible plans set a ceiling or deductible level. All costs, whether routine doctor visits, X-rays, injections, lab work, prescriptions, ER, ambulance, childbirth, surgery, etc. are paid for in full by the employee until that ceiling or deductible level is reached. In the case of the particular plan under discussion here, the deductible is \$3,600 for Family coverage. After reaching that threshold the plan covers most medical expenses at 90%. Under the Value plan the employee pays \$20 for most of these service with the remainder of the cost covered by the plan. Thus, for a typical office visit costing \$106 (Jt. Ex. 26(A)) the member covered by Value would pay \$20 and the member covered by HDHP would pay the entire \$106 unless they had reached their \$3,600 annual limit. (If the HDHP member had reached their deductible limit they would pay \$10.60 for the doctor visit.)

While figures were not provide for the cost of hospital stays and surgeries, one can reasonable assume that the HDHP member would pay their entire \$3,600 annual limit and

then 10% of all cost beyond that, while the Value member would pay \$100 for the hospital admission and an additional \$100 for the surgery. (Dist. Ex. 4.)

The Association's main argument is that these out-of-pocket costs ("OOP") are too steep for minimum wage workers. The District makes two arguments in response. First they point out that the \$1500 annual HSA contribution will offset the out-of-pocket expenses. (Since employees currently receive a \$700 HRA contribution which would not be available to those enrolling in the HDHP, the additional money to offset OOP expense is \$800.) Obviously \$1500 in an HSA will not cover all of the \$3600 deductible. Thus the District makes its second argument: that most people enrolled in the HDHP never reach their deductible limit. .

In their brief the District states "Indeed, most people in HDHP would have had all their out-of-pocket expenses covered by the HSA contributions proposed by the District." (Dist. Brief p.11.) The District statement is not accurate. Joint Exhibit 26 (E) , which the District cites as its authority, shows that more than 50% (47 of 89) of the people enrolled in HDHP family had OOP in excess of \$1500 and nearly 30% had exceeded the \$3,600 annual deductible limit. These are not "outliers and exceptions" as the District argues.

During the hearing the District introduced an exhibit which showed that the average OOP for people in the HDHP family was \$3,328. (Dist. Ex. 13.) The Fact Finder requested that the parties provide the equivalent information for those enrolled in Value. Joint Exhibit 26 (B) and (D) shows the OOP for those in Value and HDHP respectively to be \$1,036 and \$2,156.. (My understanding of the difference in the figures contained in District Ex. 13 and those contained in Joint Ex. 26 (D) is that the former represents Blue Cross's entire book of business -1,545 subscribers- while the later represents only those enrolled through RASHP –

89 subscribers. A larger sampling typically yields more accurate picture. However it should be noted that we only have the Value Family OOP for RASHP enrollees.)

The majority of this bargaining unit makes the minimum wage. When that employee goes to the doctor he or she pays only a \$20 co-pay if they are in Value. They would pay the full \$106 if they were in HDHP. The Value enrollee has a \$700 HRA contribution with which to offset an average \$1,036 in average annual OOP. The HDHP enrollee has \$1,500 in HSA contribution with which to offset an average of \$2,156 (Jt. Ex. 26 (D)) or \$3,328 (Dist. Ex. 13) in annual OOP. Thus the average HDHP enrollee will have either \$320 or \$1828 in additional OOP each year as compared to someone enrolled in Value.

Averages can be deceiving when looking at such a small sample. There were 26 the 89 HDHP enrollees who had a 2017 OOP of less than \$750, yet there were 25 enrollees who had a 2017 OOP of more than \$3600, that is, they exceeded the deductible limit. Under the District proposal those first 26 would have an extra \$750 left in their HSA to spend on other health related expenses. While the 25 would have a minimum of \$2100 in uncovered expenses. (Jt. Ex. 26 (E)) The Value OOP distribution chart (Jt. Ex. 26 (C)) looks quite different. 44% of the enrollees had an OOP of less than \$100 and a full 90% had OOP of less than \$2000 in 2017.

There can be no doubt that switch to HDHP with premium payment at 20% would mean a significant increase in the cost of health coverage for these minimum wage workers even with the increase from \$700 HRA contribution to \$1500 in an HSA. The idea that the HSA is a more valuable benefit because it is “owned” by the employee is only meaningful if the entire amount isn’t eaten up by the increased OOP.

The District submitted a number of additional documents with regard to high deductible plans. These documents were submitted with its post- hearing brief but were not introduced into evidence at the hearing or during the post-hearing period in which the record was left open. The District requests that the Fact Finder take administrative notice of these documents because they are readily and publicly available. Many facts are publicly available. But to introduce new documents after a hearing is closed and without one's opponent being given the opportunity to review them and respond is simply not permissible.

Article VII, subsection E provides for retiree health benefits. Those hired before 7/1/2014 can received retirement health benefits after "10 years or more of service in the District", while those hired after that date must have "15 years or more of consecutive (not including layoff periods) service in the District." The District proposes to add language restricting eligibility for those hired before 7/1/14 to those who's 10 years of service is consecutive. The District has not provided any estimate of cost saving from this proposed change. The only rational or argument in support of the change offered by the District is that it is a "reasonable extension of the current contract language." (Dist. Brief p.13.)

Joint Exhibit 5, the contract between the parties covering the period from July1.2010 through June 30, 2013 provides that members are eligible for retiree health insurance after 10 years or more of service with no requirement that those years be consecutive. The subsequent contract (Jt. Ex. 4) covers July 1,2013 through June 30, 2016. However it was not ratified until January of 2015. That contract added language requiring those hired after 7/1/14 to have 15 years of service and that those years had to be consecutive. Neither that contract nor its successor added the consecutive requirement for the more senior group. Seven other bargaining units in the District have contracts which provide for retiree health benefits. Six of

those seven contracts have no requirement that the eligibility years be consecutive. Only the Support Staff contract requires that the eligibility years be consecutive. (Jt. Exs. 6-12.)

Ability to Pay

It is clear that the District has worked hard to maintain its sound financial health given its limited tax base, high tax rate and the restrictions place upon it by the state tax cap. The district should not be punished for having budgeted conservatively and thoughtfully, but neither should it employees. The Association has withdrawn its demand for salary compression adjustment, for additional unexplained day, for vacation carry over use-by date, and increased opt-out payments. These concession by the Association narrow considerably the difference in the cost of the two proposals. Based on the recommendation that the parties accept the District wage offer but not its health care changes, the District will not incur the approximately \$70,000 in additional wages proposed by the Association , yet neither will it gain the approximately \$80,000 in saving project in its health care changes. (Dist. Exs. 14 & 15.) This is a relatively small difference given the overall District budget of more than \$80,000,000.

The District has not made a persuasive case that imposing increased health care cost on these its lowest paid employees is essential to the future financial health of the District. The Association points out that after these parties declared impasse, the District settled contracts with the Teacher and the Administrators units without demanding that these

employees switch to HDHP as their base plan. In response the district argues that we should not look at these two units because they are composed of highly paid/highly skilled employees and are therefore not comparable.

But the question here is not comparability, rather the question is numbers. These two units represent more than 50% of the District's organized work force. Having not insisted that this larger group of employees switch to HDHP, the District fails to persuade this Fact Finder that the District's long term financial health depends on the Association, a smaller unit, being required to do so.

The new costs associated with contract are well within the District typical operating surplus and/or available reserve funds.

RECOMMENDATIONS

1. The duration of the contract should be 5 years, from July 1, 2017 through June 30, 2022.
2. Bargaining unit member should receive a 2.6% pay increase on July 1 of each year retroactive to July 1, 2017.
3. The Pay Range chart should reflect a 2.6% annual increase in the starting wage of each job title that is paid above the state mandated minimum wage.
4. Value 2 should remain the base plan with no increase in the premium percentages paid by members of the bargaining unit.

5. The HDHP should continue to be made available with the District providing the incentives contained in its proposal to employees who switch to HDHP (one time \$3000 payment, HSA payments, 5% reduction in premium for 3 years.)
6. Retiree health insurance eligibility provision (Article VIII, Section E) for those hired prior to 7/1/2014 should remain unchanged.

S/ _____
Matthew J. Fusco
Fact Finder