

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding Between:

Mount Pleasant Cottage Union Free School District

PERB CASE No.
M2013-227

and

Mount Pleasant Cottage School Association of Teachers

APPEARANCES

For Mount Pleasant Cottage School District:

David S. Shaw, Esq.
Shaw Perelson, May & Lambert

For Mount Pleasant Cottage School Association Of Teachers

Tom Casey, Labor Relations Specialist
NYSUT

Before: Melinda G. Gordon, Esq., Fact Finder

BACKGROUND

A. The Parties to this Impasse

The Mount Pleasant Cottage Union Free School District (“District”) and the Mount Pleasant Cottage School Association of Teachers (“Association”) are parties to a Collective Bargaining Agreement (“CBA”) with effective dates July 1, 2007, through June 30, 2012. The District is a Special Act School District located in Westchester County.¹ Westchester County is also home to five (5) of the remaining ten (10) Special Acts School Districts in New York State.

The District educates students ages 5-21 placed in Residential Treatment Centers (“RTCs”) owned and operated by the Jewish Child Care Association, a private non-profit foster care agency. The District consists of two schools, Mount Pleasant Cottage School and Edenwald, which are public schools located on the grounds of the RTCs. The District also admits day students from local school districts if they cannot serve the needs of the student in-district.

The District enrolls approximately 255 students, about 10% of the students are day students from local districts. Nearly all of the students are classified and have Individual Education Plans (“IEP”). Classifications may include Emotional Disturbance, Learning Disability, Intellectual Disability, and Autism.

The Association is the exclusive bargaining representative of approximately forty-four (44) employees, consisting of teachers, psychologists, social workers, counselors and speech teachers.

¹ Special Act School Districts are school districts established on the grounds of charitable institutions caring for children and youth. Special Act School Districts service students who require a therapeutic educational environment and cannot be served in a traditional public school setting.

B. Pre-Impasse Negotiation History

As noted above, the most recent CBA between the parties covered a five-year period from July 1, 2007, through June 30, 2012. Negotiations for a successor agreement commenced on May 23, 2013. The parties met for negotiations on May 23, 2013, June 5, 2013, and October 30, 2013. After three negotiation sessions, the parties mutually declared impasse on October 30, 2013. The parties jointly selected a PERB mediator who met with the parties for four mediation sessions. Following the fourth mediation session on May 13, 2015, and the continuing impasse, the parties requested fact-finding. By letter dated July 18, 2016, the parties jointly requested to have the undersigned appointed as a Fact Finder. PERB appointed the undersigned as a Fact Finder on July 28, 2016.

By request of the parties, the undersigned conducted four (4) mediation sessions aimed at resolving the impasse without the need for a formal fact-finding report. When the parties' attempts at mediation proved unsuccessful, the parties agreed to submit fact-finding briefs on May 3, 2019, and reply briefs on May 10, 2019.

C. The Issues

By agreement of the parties, the following issues remain unresolved and subject to this Fact-Finding Report:

1. Retroactive Salary or Non-recurring Salary Payments
2. Longevity Pay
3. Active Employee Health Insurance Premium Share
4. Retiree Health Insurance Premium Share
5. Welfare Benefit Plan

D. Positions of the Parties on Open Issues

1. Retroactive Salary of Non-recurring Salary Payments

The District proposes zero salary increases for the first five (5) years of the contract, the 2012-2013 through 2017-2018 school years. The District proposed a step plus one percent (1%) salary increase for the sixth (6th) year of the contract, 2018-2019; for the seventh year (7th) year of the contract, 2019-2020; and for the eighth year (8th) year of the contract, 2020-2021.

The District urges the Fact Finder to reject proposals for retroactive pay. Special Act School Districts receive revenue based upon a tuition rate set by the Rate Setting Unit of the New York State Department of Education (SED). The Rate Setting Unit at SED bars from rate setting consideration monies identified as retroactive pay increases. The District asserts that the Association cannot produce a single Special Act School District CBA that includes retroactive pay increases because the funding mechanism for this type of school district prohibits retroactive pay increases.

The Association notes that the unit has not received a percentage increase for seven (7) years and asserts that retroactivity is essential for contract ratification by the unit. The Association contends that the unit cannot keep up with the salaries of surrounding Districts. As a remedy, the Association proposes adjusted salary schedules which would allow untenured and newly hired employees to receive a salary reduced from the base step on which they are hired, with increases through sub-steps until the employee obtains tenure.² Placement on the appropriate sub-step would depend on the number of years the member has completed in his/her probationary appointment.

²The District counters that the long term benefit of the Association's sub-steps proposal is minimal since census projections indicate a decreasing student population. If the number of students at the District decreases, teachers who leave the District may not be replaced. The District contends that this proposal would also potentially impact on the District's ability to attract properly certified teachers.

The Association also proposes that all non-tenured teachers employed at the time of ratification move up one full step on the appropriate salary schedule immediately following ratification. A BA40/MA schedule lane change was proposed as a cost saving to the District. A signing bonus consisting of a one-time payment equal to \$500.00 for every year employed at the District is also an Association proposal.³

Effective 2017-2018, the Association proposes, a 2.5% increase to all salary schedules. Effective 2018-2019, the Association proposes another 2.5% increase to all salary schedules. The Association contends that the District's salaries are lagging behind the salaries of surrounding school districts. As comparables, the Association references non-special act school districts. Association Brief at 10, Association Exhibits 4,5,6,7,8,9.

2. Longevity Pay

The District is willing to improve longevity pay. The District's rationale for improving the longevity benefit is to offset another District proposal seeking increases in contributions for retirement health insurance. The District contends that its longevity proposal coupled with improvements in wages would fund a 10% increase to offset the increase in retiree health contributions.

For 2018-2019, the District proposes to add a twentieth year (20th) longevity payment of \$3,350 and adjust the twenty-fifth year (25th) of longevity payment to \$4,450. For 2019-2020, the District proposes increasing the twentieth year (20th) longevity payment to \$4,100 and adjust the twenty-fifth year (25th) longevity payment to \$5,200. For 2020-2021, the District proposes increasing the twentieth year (20th) longevity payment to \$4,850 and adjust the twenty-fifth year (25th) longevity payment to \$5,950.

³ The signing bonus would be applicable to members of the unit employed during the 2017-2018 school year

The Association's proposal uses a different formula. Effective 2017-2018, the Association proposes that all longevity amounts increase by \$100. This amount would be retroactive for members employed by the District at the time of ratification of the new agreement. Effective 2018-2019, the Association proposes that all longevity amounts increase by another \$100. This amount would be retroactive for members employed by the District at the time of ratification of the new agreement. The Association's goal is to ensure that unit members remain competitive with neighboring districts.

3. Active Employee Health Insurance Premium Share

The District proposes increasing employee premium contributions to five percent (5%) effective 7/1/18, seven and a half (7.5%) effective 7/1/19, and to ten percent (10%) effective 7/1/20. The District posits that its salary proposal would cover the cost of increases in health insurance premiums.

The Association Brief did not contain a proposal on employee health insurance contributions. See Association Brief at 7. In a counterproposal dated March 23, 2018, the Association indicated a willingness to consider increases in Health Insurance Premiums.⁴ The Association proposed that for all active employees hired prior to ratification of the CBA by the District, employee premium contributions would continue at five percent (5%) for year 1 of the CBA. Effective year 2 of the CBA, employee premium contributions would increase to five and a half percent (5.5%), and during year 3 of the CBA employee premium contributions would increase to six percent (6%). Association Exhibit J-3.

4. Retiree Health Insurance Premium Share

The District proposes Retiree Health Insurance Premium Contributions of 30% between 15-19 years of service, 20% between 20-24 years of service and 10%

⁴ The Association indicates a willingness to consider contribution increases as long as the increases are phased in overtime and there is a commensurate increase in compensation. Association Reply Brief at 4.

for 25+ years of service. The District contends that Retiree Health Insurance costs constitute 7.6% of the annual District budget. To help offset the potential expense of retiree health insurance premiums to unit members, the District proposed increases in longevity payments.

The Association questions the District's accuracy in predicting the rate of increases to retirement health insurance contributions. Except as applied to new hires, the Association proposes that the Retiree Health Insurance Premium Contributions remain the same as in the current CBA. The parties are at complete loggerheads on this proposal.

5. Welfare Benefit Plan

The District proposes, effective with the 2018-2019 school year, to increase Welfare Fund Contributions by \$50.00 per capita per annum, and by an additional \$50 per capita per annum effective with the 2020-2021 school year.

The Association proposes that the District increase its contribution by \$50.00 per capita per school year for each year of the parties' agreement.

DISCUSSION & RECOMMENDATIONS

A. The District's ability to pay

The District is a Special Act School District and is largely funded through the SED's "ratemaking" process for not-for-profit special education providers. This process is subject to revisions which may result in the adjustment in the tuition due to the District for previous fiscal years. This reconciliation process can be unpredictable and retroactive payments owed to the District are paid only after a significant internal administrative process at SED and the State Division of the Budget. The reconciliation process may also produce recoveries of excess tuition paid to the District in a previous year.

According to the Association, tuition rate setting has increased. All Special Act School Districts received a 3.8% reimbursement rate increase in 2014-2015, a 4% reimbursement rate increase in 2015-2016 and 2017-2018 and a 3.4% increase in 2018-2019. Association Exhibits 10 & 11. These increases allow for an increase in District tuition rates. *Id.*

2012-2013	2013-2014	2014-15	2015-2016	2016-2017	2017-2018	2018-2019
0.0%	3% (Direct Care Costs Only)	3.8%	4.0%	4.0%	4.0%	3.4%

Association Brief at 14.

In addition, from the 2012-2013 school year to the 2017-2018 school year, actual expenditures by the District have been less than budgeted expenditures. *Id.*, Association Exhibit 10. During this period, the percent difference between actual and budgeted expenditures ranged from 7.3% under budget to 6.7% over budget. Association Brief at 11, Association Exhibit 11. However, it appears that Actual District Revenues have been flat since 2012-2013.

2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
16,187,161	16,098,738	15,748,998	17,280,081	16,234,724	16,133,438

Association Brief at 13, Association Exhibit 10.

The District notes that it has suffered deficits in its Unrestricted Fund Balance.⁵ Only on June 30, 2018, did the District have a positive Unrestricted Fund Balance of \$64,844. The Unrestricted Fund Balance, less funds appropriated for the subsequent year, is available to the District for any authorized expenditures.

6/30/2015	6/30/2016	6/30/2017	6/30/2018
-951,085	-840,113	-87,201	64,844

District Reply Brief at 3, Association Exhibit 10.

⁵ Unrestricted Fund Balance includes only funds with no constraints on spending or self-imposed constraints set by the school district.

The Association also contends that the overall operating costs of the District have decreased due to the decrease in Employer Contributions rates to the New York State Teachers' Retirement System. These savings, the Association states, may be used to fund a fair and equitable salary increase for bargaining unit members.

TRS Employer Contribution Rate Changes

	12-13	13-14	14-15	15-16	16-17	17-18	18-19	19-20
TRS Rate	11.84%	16.25%	17.53%	13.26%	11.72%	9.80%	10.62%	8.86%
		37%	8%	-24%	-12%	-16%	8%	-17%
							budgeted from the ST-3	*Estimated based on TRS ECR
District Retirement Expenditures	968,641	1,364,977	1,263,486	802,601	696,045	550,218	592,343**	494,177***
		396,336	-101,491	-460,885	-106,556	-145,827	42,125	-98,166
		41%	-7%	-36%	-13%	-21%	8%	-17%

Association Brief at 12.

The District concedes that the TRS rate is projected to be lower next year. The TRS rate, according to the District, cannot be relied upon as a steady revenue source upon which recurring contractual obligations may be built.

B. Clerical and Administrator's Settlements, Employer Exhibits B & C

The District states that settlements in both the clerical and administrator's bargaining units contained both changes to employee health insurance contributions and retiree health contributions. Effective February 1, 2018, employee health insurance contributions in the clerical unit rose to 5%. As of the 2018-2019 school year, members of the administrator's unit are paying 13% of health insurance premiums.

A summary of the District's contract with its clerical unit regarding retiree health contributions is as follows:

15-less than 20 years of employment with the District: 30% employee contribution
20- less than 25 years of employment with the District: 20% employee contribution
25 years of employment with the District: 10% employee contribution

In the administrator's unit, the District agreed to pay the cost of unit administrators who retired from the District to receive benefits from NYS TRS on or after July 1, 2017, based on their total years of service to the District as follows:

7 years: Retiree pays 40%
15 years: Retiree pays 25%
20 years: Retiree pays 10%

C. Recommendations

Before discussing recommendations for settlement, the parties need to consider the length of the contract. The District proposes a nine year contract which reaches back six years and forward three years. The Association's wage proposal suggests a seven year contract which reaches back five years and forward two years. This will result in the parties essentially returning to the table immediately. I would recommend a nine year contract ending in June 2021.

1. Retroactive Salary of Non-recurring Salary Payments:

The District's ability to fund increases is a matter of disagreement between the parties. The unit has forgone percentage increase for seven years, and as a result, the District has arguably saved monies by not having to pay percentage increases other than step increases.⁶ It also appears that the financial health of the District has improved since the initial expiration of the CBA.

⁶ Unit members at the highest step did not receive an increase.

Wage proposals are generally analyzed from two perspectives, that of internal comparables and external comparables. Both the District and the Association urge the undersigned to look at external comparables. External comparables of other Special Act School Districts were reviewed. External comparables of neighboring districts were found inapposite due to their method of funding. Internal comparables were also consulted. The recommendations below are consistent with these comparisons and the salary increases in other Special Act School Districts. Evidence of retroactive raises for Special Act School Districts units could not be substantiated.

I recommend the following salary schedule increases. These increases will ensure that the unit salaries remain competitive with units in other Westchester County Special Act School Districts and help unit members finance increases to health insurance premium contributions and retiree health premium contributions.

18-19- Step plus 1.5%

19-20- Step plus 1.5%

20-21- Step plus 1.5%

2. Longevity Pay

There is no evidence to support retroactive longevity pay for a unit in a Special Act School District. As a result, I recommend an adoption of the District's longevity increases which includes for 2018-2019, the addition of a twentieth year (20th) longevity payment of \$3,350 and increasing the twenty-fifth year (25) longevity payment to \$4,450. For 2019-2020, I recommend increasing the twentieth year (20th) longevity payment to \$4,100 and adjusting the twenty-fifth year (25) of longevity payment to \$5,200.

For 2020-2021, I recommend increasing the twentieth year (20th) longevity payment to \$4,850 and adjust the twenty-fifth year (25) longevity payment to \$5,950.

3. Active Employee Health Insurance Premium Share

Due to the delay in reaching an agreement between the parties, the District has shouldered the burden of increases to employee health insurance premiums. Based on an analysis of the trends in the District's contracts and Westchester County Special Act School Districts regarding increases of employee contributions to Employee Health Insurance Premiums,⁷ I recommend that employee health contributions be increased to 6% effective July 1, 2019, and increased to 7% effective July 1, 2020. For any employee who commences employment with the District after July 1, 2019, I recommend that employee health contributions increase to 10%.

4. Retiree Health Insurance Premium Share

The parties have failed to have substantive discussions regarding the District's proposal for employee contributions to Retiree Health Insurance Premiums. Each side presents a legitimate position regarding the impact this proposal will potentially have on the unit. The District maintains that the increases it has proposed in longevity payments provide a method for unit members to fund the increases in retiree health contributions. Long term employees who are considering retiring in the future benefit from the District's additions to the longevity schedule.

The Association states that the cost of the proposal to unit members erases any increases provided in other areas of the CBA. The Association fears that the

⁷ For the 2018-2019 school year, other Westchester County Special Act School Districts are at 10% employee premium contribution rates or higher for individual, family and where applicable, two-person insurance. District Exhibit D. Greenburgh Eleven UFSD is the only exception.

unit would not ratify a contract containing the District's proposal. The Association is willing to consider the proposal for new hires.

Both the Clerical Staff and Administrative Staff, which are significantly smaller units, agreed to changes in this area.⁸ However, the Association notes that the lack of retention of Clerical and Administrative staff minimizes the impact of the proposal on those units. In contrast, teachers who generally have long careers with the District will be substantially impacted. A review of other special act school district contracts was not instructive.

To provide some relief to the District and movement on the roadblock on this issue, effective 7/1/19, for employees with 15-19 years of service I recommend employee contributions of 10%. For employees with 20-24 years of service, I recommend employee contributions of 8%. For employees with 25 +years of service, I recommend employee contributions of 5%.

This recommendation allows long term employees who are considering retiring in the future to benefit from the District's longevity schedule. This recommendation, while providing some relief to the District for the costs associated with Retiree Health Insurance, also allows a phase-in period for unit members. For employees hired after the ratification of the agreement by the District, I recommend adoption of the District's schedule of 30% employee contribution for employees with 15 to 19 years of service, 20% employee contribution for employees with 20 to 24 years of service, and 10% employee contribution for employees with 25+ years of service.

⁸ The Clerical Unit has five members and the Administrative Unit consists of six members. According to the Association, members in both units have significantly less service years in the District and are assumedly less likely to have full careers at the District. Arguably, unit members would never reach the years of service credit required in their respective CBAs.

5. Welfare Benefit Plan

There has not been an increase to the Welfare Fund for twelve years, and the fund requires an increase in funding to maintain coverage. There is limited comparative data available on welfare fund contributions in other Special Act School Districts and within District contracts.

The parties are in agreement regarding the contribution rate but disagree on implementation dates. The District proposes implementation in 2018-2019 and 2020-2021. The Association proposes implementation during each year of the contract. Based on the evidence presented regarding the problems with maintaining coverage in the plan, I recommend implementation of the District's contribution of \$50 per capita per annum for the 2018-2019 school year and 2019-2020 school year.

6. Tentative Agreements

All tentative agreements reached by the parties are hereby incorporated in the undersigned's recommendations. The following represents the tentative agreements reached by the parties:⁹

1. [D-1] : Article VII (A) - **Screening Committee** - Delete in its entirety as proposed, provided that the association shall continue to have input on the selection of mentors. (At pg. 5)
2. [D-2] : Article VII (C) - **Access to Inter-school Mail Facilities** - Delete that part of the paragraph that refers to such access by the Association. (At pg. 6)
3. [D-4] Article XII (C) & (F) - **Teacher Observation and Evaluation** - Remove language that is replaced by APPR sections 3012-c and 3012-d. (At pages 11-13)
4. [D-6] **Sabbatical Leave** - TA

⁹ All Tentative Agreement recommendations are based on District Exhibit E.

