

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
PERB Case No. 2007-016

In the Matter of the Impasse

- between -

The Board of Education of the
Lawrence Union Free School District

FACT FINDER'S REPORT
AND RECOMMENDATIONS

And

Educational Secretaries Association

Before: Janet McEneaney, Fact Finder

Appearances:

For the Union:

New York State United Teachers

By: Claudia Schacter-deChabert, Labor Relations Specialist

For the School District:

Minerva & D'Agostino

By: Dominic Minerva, Esq.

FACT FINDER'S REPORT AND RECOMMENDATIONS

The Employer, Lawrence Union Free School District, is a public K-12 school district in the County of Nassau. The District operates four elementary schools, one middle school and one high school. Student enrollment has decreased in the past five years, dropping from 3,643 in 2003 to 3,193 in 2008. The District sold an elementary school in 2007, the proceeds being used to renovate other school facilities and invest in a tax reserve fund.

The Educational Secretaries Association represents 53 clerical employees in the following Civil Service titles: Typist-Clerk, Senior Typist-Clerk, Stenographer, Senior Stenographer, Principal's Secretary, Account Clerk, Senior Account Clerk and Accountant.

The parties were signatories to a collective bargaining agreement that expired on June 30, 2007. They met to negotiate a successor agreement, but failed to reach agreement.

The Union submitted a Declaration of Impasse to the Public Employment Relations Board. In response, PERB appointed a mediator to assist the parties. The mediation efforts were unsuccessful with regard to salary, second-tier salary schedule, longevity, health insurance, optical insurance and accumulated sick days.

Thereafter, the Fact Finder was appointed and a fact-finding hearing was held on November 4, 2008, at the offices of the School District. The representatives of the parties appeared and were afforded full opportunity to offer testimony, evidence and argument in support of their positions. The Employer's request to submit additional information the following week was granted during the hearing.

The Employer subsequently asked to submit more information than it had originally requested. This request was granted over the objection of the Union. The District submitted written arguments concerning its reserve fund and the Union's submission of a previous Fact Finding report. The Union responded with written replies. The parties' arguments on these two issues are as follows:

The District's Reserve Funds

The District argues:

The District maintains a reserve to fund outstanding obligations and guard against deficits. The funds listed by ESA as "Insurance Recovery Reserved Funds" in the amount of \$6,116,317 were designated for expenditures for the 2006-07 fiscal year. The District's Auditor's Report shows that the money was designated for the subsequent year's expenditures.

The District's fund balances have been consistent with statutory limitations described by Real Property Tax Law Section 1318. The increase in fund balances is the result of increased statutory limitations. In 2005-06, the statutory limit was 2%; in 2006-07, it was 3%; and in

2007-08 it was 4%. This statutory increase evidences a preference for the school district to maintain unencumbered resources within its budget.

The District's fiscal health is also contingent upon State aid. One of the Governor's proposals to cut State aid reduces aid to Lawrence by 10%. The Governor has proposed a decrease of \$848,199 for the current fiscal year. The economic realities of the current recession must be considered.

The Union argues:

The focus on reserve funds is irrelevant to the District's ability to pay for salary increases. Because reserve funds are set up for a specific purpose and can only be used for that purpose, the Union does not claim they can be used for salary. The Town of Lawrence has established appropriate reserve funds with balances that indicate the District's strong fiscal health.

The funding available to pay for a salary increase is in the unreserved fund balance, which can be used for any purpose. The fund balance is growing because the District under-spent for three years.

At the end of the 2006-07 school year, the District had an unreserved fund balance of \$11,087,613. That amount was more than 12% of their operating budget, and well beyond the statutory limit of 4 percent. At the end of the 2007-08 school year, the balance would be more than \$8,000,000, or 9% of the budget. The Union could not project the level of the unreserved fund balance for the end of the 2008-09 school year because the District did not provide the Union with the current year ST-3 in a timely manner; however, once the ST-3 was provided to the Union, it was clear that the District continues to have a substantial unreserved fund balance that could be used to fund a contract for the ESA.

The potential State aid cut referenced in the District's letter was rejected by the State Legislature. Since State aid is not a major source of revenue to Lawrence, concerns about future reductions should not be a major part of any decision about the District's ability to pay.

The LFMA Fact Finding Report

The District argues:

The Union should not be allowed to submit the previous Fact-Finding Report for the Lawrence Facilities Management Association (PERB Case No. M2004-141). The fact-finding recommendation issued in the LFMA matter did not provide a blueprint for the contract that was ultimately agreed to by the parties.

There are significant differences in circumstances between the LFMA and the ESA negotiations. In addition, the final LFMA agreement did not resemble the Fact Finder's recommendations. There are 9 employees in the LFMA unit and more than 50 ESA members. The LFMA contract contained provisions regarding merit payments for quality work and an

attendance bonus, and the parties had been without a contract six years. The ESA contract has no such provisions and the ESA contract expired in June, 2007.

The Union argues:

The LMFA bargaining unit and contractual terms differ from the ESA. However, the previous Fact Finder's report has probative value in the instant case; although compensation was handled differently, the Fact Finder's findings were accepted by the District in the areas of health insurance, attendance bonus, shoe and uniform allowance, binding arbitration, salary or promotion, and work week.

As to LFMA compensation, the agreement amounts to a 16.5% increase over the final four years of the contract. For 2008-09, the 5-step increase per unit member of \$6,000 represents a 10% increase on a \$60,000 salary. Thus, over five years, the total package agreed to by the District and the LFMA was 26.5%. It is also significant that the LFMA and District did not agree to a second-tier salary schedule. The ESA's salary proposal is for 20% over five years.

DISPUTED CONTRACT PROVISIONS

Compensation (Salary and Longevity)

ESA Proposal:

| | |
|---------|-------|
| 2007-08 | 3.5% |
| 2008-09 | 3.75% |
| 2009-10 | 4.0% |
| 2010-11 | 4.25% |
| 2011-12 | 4.5% |

Longevity payment of \$2,000 at the 17th and 20th years of service

District's Proposal: 3.25% per annum for five years

Union's Position

The parties agree that a five-year contract would be suitable. In addition, there is no dispute over the payment of step increases in each year of the contract where applicable. The cost of living has significantly increased since the beginning of bargaining and is now over five percent. Confidential secretary workers have received annual raises for the 2007-08 school year of from 4% to 8%. The ESA unit is down at least five positions, freeing up money which is available to pay for the cost of the new contract.

A budget analysis entered into evidence shows that the District's budget has the monies to pay for the modest increases requested. A school building has been sold and the District plans to close another building soon. According to the 2006-7 Lawrence School District profile, the

tax rate per \$1000 is extremely low, ranking 601 out of 672 districts. Indicators of wealth are extremely high: property value per pupil (43 of 677 districts); personal income per pupil (19 of 677 districts); and personal income per return (33 of 677 districts).

The Union's members are the first persons whom visitors meet when they enter the schools. It is because of their continued dedication and excellence that the District has won a welcoming reputation. Employees in the unit are working harder and doing more work than in the past.

Other increases already settled in the District's units include:

| | | |
|-----|---------|-------|
| IBT | 2007-08 | 3.75% |
| | 2008-09 | 3.75% |
| | 2009-10 | 4.0% |
| | 2010-11 | 4.25% |
| | 2011-12 | 4.5% |
| LTA | 2007-08 | 2.25% |
| | 2008-09 | 2.5% |
| | 2009-10 | 2.75% |
| | 2010-11 | 2.75% |

Currently, bargaining unit members receive a \$1,000 longevity bonus at the start of the 17th and 20th years of service. This is a modest proposed increase. Longevity was not altered in the last round of bargaining. It is a recognition for those who have dedicated their careers to the District. Estimated cost of this proposal is \$18,000.

District's Position

The District's salary increase offer is in line with other Nassau County school districts and other unions in the Lawrence district.

There is no other district in Nassau County that pays a higher maximum salary than the Lawrence Account Clerk salary of \$59,910. The average maximum salary for Account Clerks in Nassau County is \$49,400. Lawrence has 14 steps to reach the maximum amount, while nine districts have steps ranging from 16 to 30. Fourteen districts have fewer or an equal amount of steps. The minimum salary for Account Clerks in Lawrence is \$38,575. Two Nassau County districts paid a higher minimum salary.

The minimum salary for Lawrence Senior Account Clerks is \$40,596. Only three other districts in Nassau County paid a higher minimum salary. Twenty-four Nassau County districts paid a lower minimum salary. The maximum salary for Senior Account Clerks in Lawrence is \$63,779; the average maximum in Nassau County is \$55,441. In Lawrence, it takes 14 steps to reach the maximum. Seven other districts have a greater amount of steps and 14 districts have fewer or equal amount of steps.

The minimum salary for Lawrence Senior Stenographers is \$35,620. Three Nassau County districts paid a higher minimum salary and 19 districts paid a lower minimum salary. The maximum Lawrence Senior Stenographer salary is \$56,638. The average maximum salary for Senior Stenographers in Nassau County is \$52,863. Twenty districts paid a lower maximum salary and two other districts paid a higher maximum salary. It takes 14 steps to reach maximum pay in this Lawrence title. Seven districts have more steps and twelve have fewer.

The Lawrence Senior Typist Clerk's minimum salary was \$32,249. The maximum Lawrence Senior Typist Clerk's maximum salary was \$51,302. Five Nassau County districts paid a higher maximum salary and thirteen paid a lower minimum salary. The average maximum salary for Senior Typist Clerks in Nassau County is \$46,872. It takes 14 steps to reach maximum pay in Lawrence. Seven districts have a higher amount of steps and 18 districts have a lower amount of steps.

The Lawrence Steno-Secretary minimum salary is \$35,620 and the maximum salary is \$56,638. Ten Nassau County districts paid a higher salary and nine districts paid a lower salary. The average maximum salary for Steno-Secretary in Nassau County is \$55,849. It takes 14 steps to reach maximum pay in Lawrence. Seven districts have a higher amount of steps and 8 districts have a lower amount of steps.

The minimum salary for Lawrence Stenographer is \$32,813. Seven Nassau County districts paid a higher minimum salary and 13 paid a lower minimum salary. The maximum Lawrence Stenographer salary was \$51,887. Six districts paid a higher maximum salary and 14 paid a lower maximum salary. The average maximum salary for Stenographers in Nassau County is \$47,855. Lawrence has 14 steps for reach this maximum amount. Eight districts have a greater amount of steps and 12 districts have fewer or an equal number of steps.

In June 2007, the Lawrence Typist Clerk's minimum salary was \$31,639. Four Nassau County districts paid a higher minimum salary and 28 districts paid a lower minimum salary. The maximum Lawrence Typist Clerk salary was \$50,674. Three Nassau County districts pay a higher maximum salary and 29 districts pay a lower maximum salary. The average maximum salary for Typist Clerks in Nassau County is \$43,135. Lawrence has 14 steps to reach the maximum amount. Fourteen districts have a greater amount of steps and 20 districts have fewer or equal steps.

According to these salary comparisons, the ESA staff receives top salaries compared to other Nassau County school districts. The District cannot afford to offer further increases and benefits. It would only consider such increases in exchange for a second tier of salary schedules applicable to employees hired after ratification of the new contract.

According to the 2006-07 NIS report, five other Nassau County districts paid an increase of 3.25%. Ten Nassau County districts paid an increase of less than 3.25%. Twenty-seven Nassau County districts paid an increase of more than 3.25%. The average increase in Nassau County was 3.44% for the 2006-07 school year.

The District's offer of a 3.25% salary increase per year is in line with the usual and customary annual salary increases provided by the District. Counselors and Psychologists receive an annual salary increase of 2.5% through the 2009-2010 school year. Administrators receive an annual salary increase of 2.27%, increasing to 2.95% in 2009. Teachers receive an annual salary increase of 2.75% through the 2010-11 school year. Facilities and Management unit members receive an annual 2.25% increase per year. The Local 237 contract provides for a higher increase, but the unit has agreed to concessions, including a second-tier salary schedule.

DISCUSSION: The economic concerns of the parties reflect the current tensions of the collective bargaining process in the public sector, as well as the general economic climate. School districts feel pressure to exercise fiscal prudence, while employees want to be compensated in a way they believe reflects the value of their performance.

The comparative evidence concerning salaries in Nassau County shows that pay rates for ESA members in all titles tend more towards the high end of each range. There are no historic factors compelling higher-than-average raises. On the other hand, the District's excellent conservatorship of its funds makes it unnecessary to recommend below-average salary raises.

Unit members have been without a contract for almost two years. While this is a significant length of time, it is not so excessive as to justify a salary increase greater than average for Nassau County. For that reason, the recommendation is for salary increases close to the average for Nassau County.

Longevity bonuses benefit students, and the community in general, by motivating seasoned staff to remain in their jobs for the long-term. ESA estimates the cost to the District of the proposed increase will be \$18,000 over the life of the contract. The District is concerned about its budget over the next five years. Considering the cost of recruiting and training new employees, an investment of half that amount should benefit both the District and eligible ESA members.

RECOMMENDATION:

- Year 1: 3.4%
- Year 2: 3.4%
- Year 3: 3.4%
- Year 4: 3.5%
- Year 5: 3.5%

A longevity bonus of \$1500 at the 17th and 20th years is recommended.

Second Tier Salary Schedule

District Proposal: Creation of a Schedule B salary schedule for all titles \$8,000 below current compensation for all new hires. This schedule is to be frozen for the life of the contract.

ESA's Position

Everyone should be treated equally and fairly. It is unfair to disadvantage those who are not yet hired, especially when the District has enough money to pay for decent raises for everyone. In prior negotiations, the ESA agreed to E and O entry level steps which added two years to progression to top step on the salary schedule. The ESA schedule has very modest increment increases, and increment alone would not be enough to keep up with the cost of living. A recent addition to the unit, the Accountant, was hired on step 10 because salary at the earlier steps was insufficient.

When the IBT unit agreed to give the District a second-tier salary schedule, the percentage increases for members at the time were more generous than what the District has offered the ESA. If the District's proposal is accepted, the percentage increases should be significantly higher.

District's Position

The Board of Education believes that the current tax structure, along with declining enrollment, will not allow for future tax increases. Establishing a second tier is a way to achieve tax rate stability that will continue to provide substantial increases to the current staff.

The District is committed to negotiating a second tier in each of its contracts; thus, its willingness to consider the ESA's higher salary demands is conditioned on establishing a second tier. The recently-negotiated Local 237 contract includes a second-tier provision.

DISCUSSION: Establishing a second-tier salary schedule would have a great impact on the future of ESA unit members, as well as on the future of the union itself and its bargaining positions. Speculation about the future is not enough to justify instituting a second tier. In addition, a flat across-the-board wage cut of \$8,000 and 5-year freeze would incur difficulties during the next round of bargaining.

The record demonstrates that the District has managed its resources prudently enough to fund average salary increases for the next five years. The District is closing schools and the ESA has lost members in these titles. The evidence shows it is unlikely that the District will be hiring in such numbers as to seriously disadvantage it for the life of the new contract. There is not enough in the record to conclude that a second-tier schedule is necessary for the financial well-being of the District.

RECOMMENDATION: A second-tier salary schedule should not be established.

Unused Sick Days

ESA's Proposal: Increase maximum accumulation to 300. Increase percentage paid to 75% for 20 years or more, 70% for 15th through 19th year, 60% for 10th through 14th year

District's Proposal: Sick days to be credited at their value at the time of accumulation, with use of days to be on an FIFO basis. New employees will be permitted to accumulate 75 days for purposes of retirement payment.

ESA's Position

Unused sick days should be paid for when the time is used, as set forth in a longstanding provision of the contract. Currently, the ESA contract provides a maximum of 150 days for use. The LFMA unit has a maximum of 265 days for use and, for retirement, a maximum of 300 days paid at \$100 a day. Thus, the ESA proposal is an understandable parity request with the LFMA.

The IBT unit has a 265-day maximum. At retirement, IBT members receive 200 days at 50% (20 years); 200 days at 45% (15-19 years); and 200 days @ 35% (10-14 years). The total number of days reimbursed increases to 265 as of 7/1/11.

Agreeing to the District's proposal would be a regression for the ESA. It would also be counterproductive for the District since, to calculate the cost of each sick day, the District would have to pay for hours of overtime. Sick days are there for those who need them. If they are not used, members can be rewarded at the end of their careers. Seventy-five days of accumulation at retirement is not enough.

DISCUSSION: The contracts entered into evidence show that the District has negotiated varying plans for accumulating sick leave with each of its unions. The comparisons are complicated by a number of factors, including the two-tier schedule negotiated by L. 237. Although the particulars of each unit's agreement on this subject make comparing them difficult, ESA appears to have the lowest number of maximum accumulated sick days per year, with other units allowed to accumulate at least 200 days a year. .

The District's proposals would amend the contract so that the monetary value of sick days would be calculated at their value under the present-day contract when claimed at retirement. Traditionally, accumulated sick time claimed at retirement has been discounted upon retirement so that the ends contemplated by this proposal would be achieved; in other words, the net present value of the sick time is approximated by discounting their future value upon retirement. Although it may not be a precise calculation, the traditional method bypasses future disputes about the exact monetary calculations of time earned now. Discounting future value avoids instituting a cumbersome record-keeping system that may give rise to disagreements in the future. For these reasons, too, it is not recommended that the parties embark upon a scheme in which the "chronologically oldest" sick days would be used first.

The same considerations concerning proposals for a second-tier salary schedule apply to the proposal to reduce maximum allowable sick leave accumulation to 75 days for new hires. There is not enough demonstrated need at the present time to justify reducing sick leave accumulations so drastically for newly-hired employees. As mentioned above, there is a value to the community as a whole in motivating seasoned employees to remain with the District.

RECOMMENDATION: ESA unit members should receive payment for unused sick days according to the following rate schedule:

20 years or more - maximum of 200 days at 50% of daily rate of pay
15-19 years - maximum of 200 days at 45% of daily rate of pay
10-14 years - maximum of 200 days at 35% of daily rate of pay

It is recommended that the contract continue to provide that a lump sum payment will be made for unused sick leave at a percentage of the daily rate of pay during the last year of employment.

Health Insurance

ESA Proposal: Increase payout for declination of health insurance to \$2,000 for the family plan and \$800 for the individual plan.

District Proposal: Increase employee contribution to 20%.

ESA's Position

The ESA payout for declination of health insurance is \$1200/\$700. The ESA asserts that the payout for those in its unit should be the same as those in other units. The current payout is \$2000/\$800 in the LTA unit for those declining health insurance coverage.

Currently, ESA pays 18% towards health insurance. ESA salaries are not as high as other units who pay more and whose salaries are higher. The ESA should not have to increase its already high contribution (as a percentage of salary) to health insurance.

District's Position

The District's last proposal of March 3, 2008, continued a provision that union members' health insurance premium contribution rise to 20% from 18%. This raise is in keeping with the contributions made by other unions in the district. The Teachers' contract provides that its members will pay 18% as of July 2008 and 20% as of July 2009; the Administrators' contract provides that its members pay 23% as of July 2008; the counselors and Psychologists' contract provides that its members pay 18% and 19% as of, respectively, July 2008 and July 2009.

The Union proposes that its health insurance withdrawal for family coverage be increased from \$1200 to \$2000. Although the Lawrence Teacher contract and Counselors and Psychologists contracts provide for an amount of \$2,000, the other three union contracts do not provide such a high rate. Administrators are paid \$500 if they withdraw from the District's health plan and members of Local 237 and the LFMA receive \$1200 when they withdraw from their plans.

DISCUSSION: The rising costs of health care are a burden on employees and employers throughout Nassau County and the country. It is more than likely that these costs will continue to rise over the life of the contract. Other District employees are paying 20% of their health

insurance premiums. Paying that amount is not unreasonable and should not be unduly burdensome to ESA members.

The Union's proposal would have the District pay more to employees who opt out of the group plan. The District will agree to that proposal if its additional out-of-pocket costs are offset by higher contributions from employees who remain in the plan. When employees opt out of the plan, the District's total health insurance costs go down. It should be willing to incent its employees for the lower costs, as long as the incentive does not become economically inefficient. As the cost of premiums goes up, it makes sense to increase the health insurance withdrawal, also. Declination payments of \$1500/\$900 are reasonable, considering their value to the District.

RECOMMENDATION: Health insurance premium contributions should be 18% in the first two years and 20% in the following three years. Declination payments should be \$1500 and \$900.

Optical Insurance

ESA Proposal: Increase optical payment to \$200.

ESA's Position

The optical payment has not changed since 7/1/00. \$150 is not sufficient to cover the cost of eyeglasses. Those in our unit especially need proper eye coverage.

District's Position

The Lawrence Teachers contract provides that the District will contribute \$30 and Union will contribute \$15 per member. Administrators, Counselors and Psychologists do not receive optical insurance. The Local 237 and LFMA contracts provide \$150 for optical reimbursement. Optical reimbursement of \$150 is equal to or better than optical reimbursement for other unions in the District and should not be increased.

DISCUSSION: A payment of \$150 appears to be comparably correct for optical insurance in this District.

RECOMMENDATION: The optical benefit should remain at maximum reimbursement of 150 per year for the cost of one eye examination and/or one pair of eyeglasses and/or one pair of contact lenses.

It is anticipated that these recommendations constitute an appropriate and equitable framework for resolving this impasse, which arises during a difficult economic time. All items not discussed or specifically recommended are deemed to be dropped. These recommendations should be acceptable to the parties, who are ultimately concerned with the well-being of the school system and its importance to the community of Lawrence as a whole.

Janet McEaney
Fact Finder

Dated: March 28, 2009
New York, New York