

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

In The Matter of Fact-Finding Between:

FALLSBURG CENTRAL SCHOOL DISTRICT,

-And-

**FALLSBURG SCHOOL RELATED
PERSONNEL ASSOCIATION.**

**PERB Case No M2008-015
Before: John T. Trela
Fact Finder**

APPEARANCES

a. For the District:

Anthony Massar, ONC BOCES Negotiator.

b. For the Association

Robert M. Ringwood, L.R.S. – NYSUT

BACKGROUND

The Fallsburg Central School District (“District”) and the Fallsburg School Related Personnel Association (“Association”) are parties to a Collective Bargaining Agreement (CBA) dated July 1, 2002 through June 30, 2007. Negotiations for a successor to the 2002–07 CBA commenced on August 23, 2007 and continued for six additional sessions, ending in an impasse at the conclusion of the March 19, 2008 meeting. During those sessions the parties tentatively agreed to a number of issues in a signed MOA dated September 18, 2007. They included Work Schedules, Personnel Files, Grievance Procedure, Association Leave, and In-Service programs.

Thereafter the parties submitted a joint request for the undersigned to be assigned as mediator and accordingly was assigned by correspondence from the Director of Conciliation dated April 23, 2008. Four sessions were then held between May 12, 2008 and August 20, 2008 in an attempt to bring resolution to this impasse. After the August 20 meeting, the parties met on a number of occasions without third party assistance but were unable to bring about an agreement. The parties then requested that the undersigned be assigned as fact finder and an additional mediation session was held on March 9, 2009 in lieu of a formal hearing. Briefs, rebuttal briefs and other closing arguments via email were exchanged and the record was closed on May 20, 2009.

The parties agreed that the issues for determination are Salary (including retroactivity and duration); Longevity, Health Insurance Contributions and NYSUT Benefit Trust contributions.

District Profile

The District is located in rural Eastern Sullivan County, State of New York and includes portions of the Towns of Fallsburg, South Fallsburg, Glen Wild, Greenfield Park, Hurleyville, Lock Sheldrake, Mountindale, Woodbourne and Woodbridge. The District student population of approximately 1,450 is housed in 2 schools, one being an elementary school and the other being a secondary school.

The District serves a multi-cultural community of approximately 20,000 people. The District budget for the 2007-08 School year was \$33,289,136 and for the 2008-09 School year, was \$36,034,000.

The Association (“Association”) represents a bargaining unit comprised of approximately 52 members in the job titles of Clerical positions, School Nurses, Teacher Aides, LAN Technician, Child Care Coordinator and Teaching Assistants. The base salary payroll cost of this unit for the 2007-08 school year when negotiations started, was \$1,254,991. The parties are in general agreement, that the increment is valued at approximately 1% for the base year.

The District also recognizes four additional bargaining units, which have settled agreements in place including the Teachers Unit with 157 members, the Cafeteria Unit with 15 members, the Custodial Unit with 23 members and the Administrators Unit with 8 Unit members. The District also employs 9 employees who are not represented by bargaining units.

Issues at Impasse

The parties have been helplessly deadlocked over a combination of salary increases and health insurance since negotiations started almost two years ago in August of 2007. The disagreement continues over:

- Duration
- Retroactivity
- Salary
- Longevity
- Health Insurance contributions
- NYSUT Benefit Trust

During negotiations, mediation and fact-finding, the parties expressed their respective positions in “package-type” proposals and accordingly shall be treated in kind in this report.

ASSOCIATION

At the onset of negotiations on August 23, 2007, the Association sought a 5% increase in salary plus increment, fully retroactive to July 1, 2007. They have also proposed that the longevities which are now valued at \$1,750 after 10 and 15 years of service, and \$1,000 after 20 and 25 years of service, be increased by 5% in each year and, that a clause to provide that “All longevities shall be cumulative” (Association proposals p.3). Longevities at this juncture are not treated as cumulative in the parties’ current Agreement.

The Association argues that longevity payments are very much a part of salary, and that the District must remain competitive with surrounding School

Districts. They also note that the teachers' unit received a 5% increase in longevity and that any less of an increase, would be unfair to this unit.

The Association has also proposed a five (5) year agreement. In addition they seek an increase in contribution to the NYSUT Benefit Trust Fund of \$100 each year to the current fixed contractual amount of \$1,100.

With the passage of time since negotiations started, the current Association salary proposal is 4% plus increment, which the Association argues, is reasonable given a number of factors. When compared to surrounding school districts, the salaries of teaching aides and teaching assistants are woefully behind their counterparts and it takes some seven years to get to the top of the salary schedule compared to some other Districts at step 3.

The recent settlement with the CSEA unit in this District, the Association states, resulted in salary increases of 10% for employees earning less than \$20,000 effective July 1, 2008, 10.5% effective July 1, 2009 and 11.5% effective July 1, 2010. Those employees earning between \$20,000 and \$30,000 will receive increases of 8% in each of those years and those earning over \$30,000 will receive 6% in each of those years. The District must address these considerable gaps in compensation, to remain competitive with their counterparts.

The Association argues that the District clearly has the ability to pay. Over the years, the District has had the tendency to over-budget for actual expenses. The percentage difference between actual and budgeted expenditures, ranged from 3.1% to 5.5% under budget over a three-year period from 2004-2007 (Association brief, p.7). For the same years, the District's actual revenues

received were greater than the levels projected, with actual revenues exceeding the District's projections by some \$2,400,000 (Exhibit 14, pg.5).

The District ended the 2006-07 year with an unreserved fund balance of over \$2,500,000, the same year as the last date in the parties' current agreement. A budget analysis of the District by the Association (submitted during mediation) estimates the 2007-08 school year district expenditures can expect to be about \$1,300,000 less than budget (Exhibit 14, pg.6). Also, the District's projection of State Aid could be underestimated by as much as \$655,000 with other revenues underestimated by some \$315,000 with a total revenue underestimation of \$970,000. With the District expected to end the 2007-08 school year with an annual operating surplus of \$2,200,000 and assuming no transfer made to revenue accounts, the District was looking at some \$2,800,000 as a balance.

Fallsburg can also expect an increase in State Foundation Aid, beginning in the 2007-08 school year of over \$5,000,000 or 53.1% over the next four years. This aid can be used for any purpose, including salary increases. (Exhibit 14, pg. 7).

Increases in State Aid, million dollar surpluses, a historical pattern of over-budgeting actual expenditures and underestimating projected revenues, eliminates any argument the District may attempt to raise in its ability to offer these salary increases.

The cost of living has increased since negotiations started between the parties going from 2.8% in 2007 to 3.9% in 2008. An increase above the cost of living is required to stay competitive. The salary increases sought are more than

reasonable based upon all the aforementioned data. A five-year agreement is sought with full retroactivity in order to keep pace with settlements of counterparts of the District.

Finally, the Association notes that it has reluctantly indicated a willingness to increase health insurance contributions from the current 5% even though members of this bargaining unit are some of the lowest paid employees in the District.

DISTRICT

The District has made a number of proposals for compensation and health insurance, since the negotiations started. Since the downfall of the economy in the fall of 2008, the District readily admits that it has reduced its offer, but adds that the economy and the uncertainty of future economics has given it little choice.

At this juncture, the District proposes a three (3) year agreement, which provides for a salary increase in the first year, 2007-08, of 3% including increment, increment only in the second year, 2008-09, and 3% including increment in the third year, 2009-10. In the area of longevity, the District offers a \$100 increase in each of the categories effective July 1, 2009. For the benefit trust, the District offers a one-time increase of \$150 effective July 1, 2009. The District also seeks an increase in health insurance premium contributions from the current 5% to 10%. Over the course of these negotiations, the District proposed increasing health insurance contributions through a phase-in over the life of the new agreement. At this juncture, however, because the agreement is about to move

into the 3rd year, they propose no change in health premiums for the first two years and an increase to 10% effective July 1, 2009.

The District is quick to point out that all other bargaining units have agreed to pay 10% of health insurance premiums or have agreed to other “trade offs” plus additional contributions to offset salary increases. The teachers’ unit for example, has agreed to increase workload by increasing the number of workdays by 2 to 3 days each year and to increase premium contributions from 5% to 8.5%.

The District argues that the issues herein are entirely economic. As a result of the financial crisis that has devastated our National, State and local economies, the District sees little need for an extensive economic analysis. The parties to this impasse are well aware of the negative impact of our declining economy and the effect it has had on our banks, lending institutions, the automotive industry, public and private retirement funds, corporations and education. The resultant loss in finances and jobs is staggering and we have yet to feel the long-term negative consequences.

In the fall of 2008, the District had been advised by the State Education Department that because of fiscal distress, reduced current year revenue collection, and projected future budget deficits, aid payments for the current budget year would be reduced. The District also believed that they would receive less aid for the 2009-2010 school year (and probably for several years to come) than it had previously anticipated. These indications came while negotiations were ongoing for this unit. In fact, the District received \$138,707 (.82%) less in State aid for the 2009-2010 school year (District brief, p.7).

During preparation for the 2009-2010 school budget, the District calculated that if it just presented to the voters a rollover budget from the previous year, the result would be an approximate 11% tax increase. This option was not viewed as acceptable. Therefore the Board of Education approved a budget that reflected the loss of State aid of \$138,707 and a reduction of 8.5 positions (6.5 teaching and 2 custodial). This budget is a 1.29% increase over the previous budget and projects a 3.9% tax levy.

The District states that over 25% of the residents of Fallsburg fall below the poverty level, compared to the state average of just over 14%. Approximately 8% of Fallsburg residents have an income that falls 50% below the poverty level with a state average of 7.4%. Sullivan County has an unemployment rate of 10.2% as of January 2009, up from 7.1% the previous year.

Throughout bargaining, this unit has attempted to persuade the District to agree to their proposals by comparing their position with that which was agreed upon in contracts from other districts within the BOCES. The District bargaining team has consistently stated that it is not interested in what other districts and their bargaining units have negotiated into their contracts. The District position in this regard, has not changed with regard to the issue of comparability.

The District strongly believes that comparisons of collective bargaining agreements from other school districts are meaningless. Fallsburg Central School District has no input, and has not participated in the collective bargaining of contracts within other districts. It has had no input in developing the school budgets of other districts. Voters within those districts approve the tax levy of

those districts. Whatever was given and gained during bargaining in those locals, were done as a result of long-standing labor relations policies and practices between those parties. Comparability is therefore a false criterion and should not be relied upon as a tool in the resolution of the impasse between the Fallsburg District and this unit (District brief, p.8).

Discussion and Opinion

The process of fact-finding is statutorily mandated and has long been considered as an extension of the negotiations process, whereby an impartial Fact Finder renders a report in writing that would constitute a reasonable basis for settlement. The report, is one person's written opinion as to where a contract should settle after a review and analysis of the facts presented by the parties.

Recommendations have traditionally taken into account factors such as the financial impact upon the community (ability to pay), tax burdens compared to other communities, Consumer Price Index, and comparability to other school districts.

Since the fall of 2008, a new factor has been added to the "mix" that the undersigned believes must be taken into consideration and given due weight. This, of course, is the current recessionary state of the economy.

Clearly, both the Association and the District have enunciated their respective positions in cogently written arguments. The Association argues that some of the titles they represent are the lowest paid and should not be singled out when other settlements within the District are viewed.

The District argues that with the current downturn in the national and local economy and the increased financial burden on the taxpayers in this community, a salary settlement should include an increase in health insurance contributions, and that an increase to 10% is reasonable. The District makes it clear that all other units have agreed to 10% premium contributions during the current contract cycle or have agreed to increased work loads or working additional days. It points to the tax burden falling on residents who, for the most part, have low to moderate incomes.

While the undersigned recognizes and understands each of these respective arguments, neither the Association nor District proposals should be accepted fully as final terms for a settlement given the current state of the economy.

The District has insisted on a 10% increase in health insurance premiums during the life of this contract, and turns to the four other bargaining units that have accepted this increase as one of the foundations for justification. There is no question that health insurance premiums have escalated. However, the District negotiated significantly higher salary increases with those units to offset that increase, that it does not offer to this unit. The District argues that it cannot offer those increases at this juncture due to the downturn in the economy.

The Cafeteria Unit in this District has agreed to pay 10% of premium for health insurance, but has been also given yearly pay raises of 5% in exchange. The Custodial Unit in this District has agreed to pay 10% of premium for health insurance, but has also been given yearly pay raises of 5% in exchange. The Teachers unit in this District has agreed to pay 8.5% of premium for health insurance and has agreed to work an additional 2-3 days a year (prior to Labor Day) and has been given salary

increases of 5.08% in exchange. The Administrators unit in this District has agreed to pay 10% of premium for health insurance in exchange for \$900 increases on step plus very generous increments to members of this unit.

The District should not expect members of this unit to pay 10% of premium in exchange for increases of 3% including increment in year one, increment only in year two and 3% including increment in year three. The District should also not expect members of this unit to agree to no retroactivity because of a “mutual” impasse in contract talks.

In bringing this matter to closure, the parties must recognize that we are in a serious economic period, and therefore a recommendation of “moderation” in these negotiations is warranted.

The undersigned does not believe that unit members should be required to pay 10% in premiums at this time. Salary increases, however, should be fair and reasonable given the nature of other school district negotiated settlements, and the current economic climate.

Finally, with regard to duration, the District seeks a three year agreement due to the uncertainty of the economy and questions regarding funding of schools in the future. The Association seeks a five year agreement to provide stability to the labor relations relationship especially since the parties are about to embark on the third year. Given the views of both parties, the undersigned believes that a four year agreement would best serve the interests of the parties.

Therefore, the undersigned makes the following recommendation to the parties for settlement:

Recommendation

Salary/Duration

Effective: July 1, 2007 3.00 % including increment for all unit members.
July 1, 2008 3.00 % including increment for all unit members.
July 1, 2009 3.25 % including increment for all unit members.
July 1, 2010 3.25 % including increment for all unit members.

Health Insurance:

July 1, 2007 5% premium contribution
July 1, 2008 5% premium contribution
July 1, 2009 7% premium contribution
July 1, 2010 8.5% premium contribution

Longevity

July 1, 2009 increase each longevity by \$100

Benefit Trust

July 1, 2009 increase the District contribution by \$150

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Conclusion:

With these recommendations, the undersigned has attempted to balance the interests of the parties. Accordingly, the parties are urged to adopt these recommendations as a means of resolution to this impasse.

State of New York
County of Albany

I, John T. Trela, do hereby affirm my oath as Fact-Finder; that I am the individual described herein and who executed this instrument, which is my Recommendation.

July 7, 2009


John T. Trela,
Arbitrator

