

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

In The Matter of Fact-Finding Between:

NEW LEBANON CENTRAL SCHOOL DISTRICT,

-And-

NEW LEBANON TEACHERS' ASSOCIATION.

**PERB Case No M2008-072
Before: John T. Trela
Fact Finder**

APPEARANCES

a. For the District:

Mary M. Roach, Esq.

b. For the Association

Pamela Melville, L.R.S. – NYSUT

BACKGROUND

The New Lebanon Central School District ("District") and the New Lebanon Teachers Association ("Association") are parties to a Collective Bargaining Agreement (CBA) dated July 1, 2004 through June 30, 2008. Negotiations for a successor to the 2004–08 CBA commenced in January 2008. Thereafter, approximately seven bargaining sessions were held continuing through May 2008 in which the parties were able to reach agreement on certain issues, with the exception of salary and employee health insurance premiums.

On or about June 13, 2008, the Association filed a Declaration of Impasse with the Public Employment Relations Board, resulting in the appointment of a

Mediator. When the mediation process failed to generate a new agreement, the parties mutually sought the appointment of a Fact Finder. Thereafter, the Director of Conciliation by correspondence dated November 4, 2008 appointed the undersigned in that capacity.

In lieu of a formal hearing, the parties then agreed to engage in a mediation session, which was held on January 13, 2009. When that session failed to produce a new agreement, the parties submitted briefs, reply briefs and other closing comments via email, setting forth their respective positions on the subjects of health insurance contributions, salary increases, and retroactivity.

During the course of negotiations, in mediation, and in fact-finding documents, the parties' positions have connected health insurance premium contributions and salary as *quid pro quos* and accordingly, the undersigned has fashioned this report in kind.

District Profile

The District is located in rural Columbia County, State of New York and includes portions of the Towns of Canaan, Chatham, Nassau, Stephentown and New Lebanon. The District student enrollment is approximately 528 students housed in 2 schools, one being an elementary school with grades K-6 and the other being a secondary school covering grades 7-12. The New Lebanon Teachers Association ("Association") represents a bargaining unit comprised of approximately 56 FTE certified faculty members. The base salary payroll cost of this unit for the 2007-08 school year was \$3,038,800. Accordingly every 1% increase in salary equates to a \$30,388 cost to the District. This figure excludes

such expenses as extracurricular activities, credits, longevity, additional classes, insurances and buyouts.

Salary and Health Insurance Premium Contributions

The Association seeks a 5.75% annual increase, which includes a 3.79% increase on Schedule plus an increment that the Association calculates at 1.96%. It also proposes a multiple year contract, preferably with a four (4) year duration with full retroactivity to July 1, 2008.

The District's offer for salary has changed substantially since the negotiations began. The District has stated that it has reduced its offer primarily due to the downturn in the economy and uncertainty towards the economic future, which includes State aid. At the onset of negotiations in January 2008, the District initially proposed a salary increase of 5%, which included the cost of the increment along with an increase in employee health insurance contributions from the current 10% to 15%.

Over the course of these negotiations, and after the economy tumbled in the fall of 2008, the District made various offers, including a 4% increase in salary (increment included) with a 13% contribution by employees or a 3.6% increase in salary (increment included) with a 12.5% contribution by employees. However each of these offers were tied to an escalation in premium costs to 15% by some method over the life of the contract. One proposal was to increase the percentage by 1 ½% each year until 15% was obtained. The District stated that they would entertain any of these options from the Association for purposes of settlement.

Contrary to the Association calculation that the increment cost is 1.96%, the District calculates the increment cost at 2.87%, which provided for an average per step value to teachers of 3.01%. The difference between the two positions, in the increment cost calculations is approximately 1%.

The Association rejected both the salary and the health insurance offer of the District; however they did counter propose an increase from 10% to 12% in health contributions if the District agreed to their salary increases of 5.75%. Moving to 12% in premium contributions they state, would put them at the top of their area of comparisons for teacher contributions with the Chatham Central School District, which now pays 12%.

At this juncture in the negotiations, the District now argues that any salary increases should be prospective, and should include no retroactivity. The District argues that that the Association should be sensitive to the current state of the economy and the cost burden that salary increases would have on taxpayers in the District. The District argues that this is not a wealthy district, with many needy families within the tax base. In support of this position, the District in its closing brief states that the median *per capita* income for District residents is just over \$20,000. This is the average medium income for each man, women and child for the District. According to census information, the median income per household within the District is \$44,805, which the District contends underscores the importance of imposing school district taxation with great caution. Additionally, in the last school year, the District has experienced an increase in students using both free and reduced meal privileges. (District Brief, p. 3) Accordingly, the

District believes that because the negotiations have been protracted, the Association should not be rewarded with retroactivity for being intransigent in their salary position.

The Association maintains that the District is in excellent financial condition. In support of this opinion, they offer an in-depth analysis of the District's 2006-07, 2007-08 and proposed 2008-09 budgets (Exhibit 7).

In relevant part, the analysis states that the most recent data available from SED on State Aid suggests that the District's projection of State aid may be underestimated by as much as \$265,000. They also suggest that other revenues may be underestimated by some \$360,000. Therefore, total revenues appear to be underestimated by \$625,000.

The Association continues, "It appears that the district will end the school year with an annual operating surplus of \$1,735,000. Assuming that no transfers are made to reserve accounts, there should be a balance of about \$2,195,000 in the unreserved balanced fund by the end of the year (Exhibit 7 at 7-8). Further the anticipated 2009-10 State Aid to the District will result in a funding loss of only \$177,069 (Exhibit 9 at 3). With the District in this exceptional financial position, *[the Association believes]* that no economic reason prohibits the Fact Finder from determining that the 5.75% annual percentage sought by the Association is appropriate and financially sound." The Association further states that "New York is set to receive \$24.6 billion over two years in Federal Stimulus Funds, including about \$2.5 billion for education. Other allocations include: \$940 million for Title I; \$760 million for IDEA; \$61 million for education technology; \$556 million in flexible

relief, which may be used for any government service.... The Federal Stimulus package effectively covers the Governor's proposed cuts and, thus, restores the State's School Aid. The result is the District cannot claim financial difficulty based on New York State's economic woes" (Association Brief, p. 4).

The Association then turns to comparisons of the Masters level teacher salaries standing of this unit to others in Columbia County as follows:

<u>Year 1</u>	10th lowest of thirteen districts,
<u>Year 5</u>	12th lowest,
<u>Year 10</u>	11th lowest,
<u>Year 15</u>	11th lowest,
<u>Maximum</u>	11th lowest of 12 districts (Hunter N/A) (Exhibit 3 at 5)

The Association also notes that recent settlements within this area of comparables show that their 5.75% proposal is well within the proposal that they seek the District to embrace for settlement. They argue that the annual increases they seek, are to maintain standing with their counterparts and do not elevate them to greater than their current standing. That is, the salary increase is a maintenance increase; it is not one that places the teachers in the median salary levels.

Regarding the area of health insurance premium contributions, the Association argues that the District proposal for a 15% contribution over a four-year term for unit members is too dramatic of an increase and is nowhere to be found within these comparisons. The Association has indicated its willingness to increase the health insurance contribution from 10% to 12% for this unit. Currently the Chatham Central School District has the highest contribution rate, which is 12%. They continue that it is unreasonable for the District to demand that

the contribution be greater than 12%. But the Association would be unwilling to increase the health insurance contribution from 10% in the event their annual salary raise is not 5.75%.

In conclusion, the Association contends that the evidence clearly demonstrates that the District can afford the Association's proposal of 3.79% in salary in addition to the 1.96% step increment. It is reasonable and fair to the community and the bargaining unit members, they argue. The District will certainly advertise that it obtained a significant increase from 10% to 12% in health insurance contribution by active members and future retirees.

The District disagrees with the financial statistics enunciated by the Association and argues fiscal restraint in these economic times. They argue, "With no intention of being hyperbolic, one need only read the newspaper or listen to the start of each national television news broadcast, to recognize the urgency of the current economic picture. Nationally, over 650,000 people have lost their jobs in each of the last three months. National financial institutions are taking federal bailouts with no positive result guaranteed. Local institutions are closing their doors. Stated simply, the general economic outlook is grim with no expectation that it will improve in the short term" (District Brief, p.3).

The District states that the *Education Law* limits a school district to maintaining an unreserved fund balance of only 4%. If there are monies in excess of that limitation, the excess funds must be used to reduce the tax levy. They should not be used to bind the District to salary increases which would be considered excessive in these difficult times.

The District disagrees with the assertion of the Association that State Aid may be underestimated by as much as \$265,000. It is simply incorrect. In fact there will be a shortfall in aid of \$108,000 represented by a reduction in aid from \$4,005,708 to \$3,896,934 for 2009-2010. The Association figures they say, do not take into account that the District intends to apply \$400,000 to lower the long-term borrowing undertaken in connection with recent required renovations to the elementary school. By reducing the amount of this balance, the District anticipates savings of approximately \$180,000 for each of the 15 years remaining on the long-term borrowing. Simply stated, the District has many worthy recipients of any perceived "excess" of cash on hand beside the salary increases sought by the Association. The District simply must set itself up, both in the short and long-term picture, for whatever future economic difficulties may come its way.

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. It is essentially, one person's written opinion as to where a contract should settle. 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. Given the uncertainty of the current economic times, 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 their salary proposal merely keeps them at pace with their counterparts in the educational community.

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 health insurance costs must be kept manageable. It points to the tax burden falling on residents who, for the most part, have low to moderate incomes. This is evidenced by the median *per capita* income and median income per household within the District.

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

The undersigned disagrees with the notion that a salary increase totaling 5.75% is appropriate given the current economic state of affairs, notwithstanding the comparison settlements the Association has submitted for this forum. While the Association argues that they are only seeking 3.79% in "new money", there is a very generous increment built into the current salary schedule that cannot be ignored.

In contrast, the undersigned also disagrees with the District when it argues that a 15% contribution for health insurance is a reasonable increase from the current 10%, given the salary offer they have made to the Association. This proposal might have been acceptable in a different day, when salary increases were not restrained by the current state of the economy. An increase to 15% in health insurance contributions, given the District's most recent salary offer, is unreasonable and would further reduce the buying power of unit members.

The undersigned stresses that we are in a serious economic period, and therefore a recommendation of "moderation" in these negotiations is warranted.

The District has recently awarded its Superintendent and Administrative Staff with salary increases of 3%. Each of these incumbents now pays 15% in health insurance premium contributions. In comparison, the undersigned does not believe that unit members should be required to pay the same 15% in premiums at this time. However, a salary increase in the 3%-3.50% range, including increment, is fair and

reasonable given the nature of other school district negotiations' settlements, and the current economic climate.

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

Recommendation

Salary

Effective: July 1, 2008 3.25 % including increment for all unit members total cost.
July 1, 2009 3.50 % including increment for all unit members total cost.
July 1, 2010 3.50 % including increment for all unit members total cost.

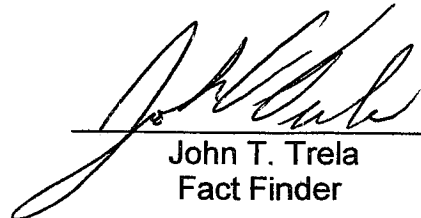
Health Insurance:

July 1, 2008 10% premium contribution
July 1, 2009 11% premium contribution
July 1, 2010 12% premium contribution

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.

Dated: May 13, 2009



John T. Trela
Fact Finder