

NEW YORK STATE PUBLIC
EMPLOYMENT RELATIONS BOARD

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WANTAGH UNION FREE SCHOOL
DISTRICT,

Employer,

Case No. M2008-191

-and-

FACT-FINDING
and
RECOMMENDATIONS

WANTAGH REGISTERED PROFESSIONAL
NURSES ASSOCIATION,

Union.

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APPEARANCES:

For the District: Christopher Venator, Esq.
Ingerman Smith LLP
150 Motor Parkway, Ste. 400
Hauppauge, NY 11788

For the Union: Elizabeth Pallas, RN
Wantagh Reg. Prof. Nurses Assn.
c/o Wantagh High School
3297 Beltagh Avenue
Wantagh, NY 11793

Hearing before: OWEN B. WALSH
Attorney at Law
34 Audrey Avenue
Oyster Bay, NY 11771

Hearing on: July 22, 2009

At: Administration Building
Wantagh High School
3297 Beltagh Avenue
Wantagh, NY 11793

BACKGROUND

The undersigned was appointed Fact Finder on April 14, 2009 by New York State PERB Director of Conciliation, Richard A. Curreri, to contact the parties, conduct a fact-finding hearing, and report thereon.

After repeated unsuccessful efforts at reaching the parties, contact was made, a preliminary meeting was held with party representatives on June 18, 2009, at the Administrative Offices of Wantagh School District, progress was made on limiting open issues, and a Hearing was scheduled for July 22, 2009.

In accordance with the direction of the undersigned, the parties exchanged Briefs or Position Papers prior to the Hearing and the District stated:¹ it educates over 3,710 K-12 students in five school buildings, including three elementary schools, one middle school and one high school (housing grades 9-12) and it is one of 54 Nassau County school districts.

The Union provided a copy of the prior Collective Bargaining Agreement (CBA) between the District and the Wantagh Registered Professional Nurses Association (marked Joint Exhibit A at the Hearing), which ran for three years (July 1, 2005 to June 30, 2008), thus the Union has been working without a contract for over one year, and it stated the major issues are:

"salary, recognition of a lead nurse position, and a lunch break. Many of these issues have been ongoing for years, and are some of the reasons as to why established nurses have left the district."²

POSITIONS OF THE PARTIES AS TO SALARY, LEAD NURSE POSITION and LUNCH BREAK

SALARY

The Union asserted:

¹ District Fact Finding Submission, page 1.

² Union Position Paper, page 1.

"[T]he salary for the Wantagh nurses is one of the lowest in the surrounding area ... [and it] believes ... because of this significant pay discrepancy that the...District has lost four nurses since April 2002 to other districts (See Attachment C). These nurses all cited a significant salary increase and a guaranteed lunch break in which they were allowed to leave the building as their reason for leaving the Wantagh School District."³

Further, the Union modified its proposal by submitting a chart reflecting a proposed increase for starting nurses and yearly thereafter, over the life of the contract.⁴

The District, addressing the salary comparison argument raised by the Union, cited its inability to pay higher salaries since it was "a high tax, low wealth school district" which was unsuccessful in attaining greater amounts of State aid, so it was "exceedingly dependent upon local property taxes to meet its budget needs."⁵

Indeed, the District noted, the \$64,735,634 budget it proposed for the 2008-2009 school year (representing a 7.8% increase over the previous year) was rejected by the voters, and the "District was forced to adopt a contingency budget."⁶ That budget was a little over \$1.5 million less than the rejected District proposal, or \$63,190,454.⁷ The District's Counsel acknowledged that, nevertheless, the 2008-2009 budget was still greater than the previous year, but the District had to eliminate three clerical positions, eight monitor positions, and most sports and extra-curricular activities, though the sports program was reinstated through community donations.⁸

However, the District observed, the 2009-2010 District budget of \$66,855,511 (representing a 5.8% increase over the contingency budget) was approved by the voters, yet the District has not restored the eliminated positions⁹ and the Union's demand for a \$1,000 plus 3% increase per year for existing nurses and \$1,000 increase in starting salary for all new hired nurses would result, for the majority of this five-member unit, in

³ Union Position Paper, page 1.

⁴ Union Post Hearing Letter, dated July 23, 2009.

⁵ District Fact Finding Submission, page 2.

⁶ Id. at page 2.

⁷ District Post-Hearing Letter Submission, dated July 27, 2009.

⁸ District Fact Finding Submission, page 2.

⁹ Id. at page 2,

almost a 6.5% salary increase per year.¹⁰ In response to an inquiry from the Fact Finder, the District's Counsel stated that "the District is unable to specifically determine the exact amount budgeted for Wantagh Nurses for the 2009/2010 school year."¹¹

Yet, the District stated, it is willing to provide a 2% salary increase, paid retroactively for the 2008-2009 year, in order to settle the CBA and it acknowledged that the overall impact on the tax rate would not be significant if the District were to agree to the Union's salary proposal, since it is only a five-member unit, yet "the precedent ... from providing such increases in the current economic climate would be disastrous."¹² And this is so, the District states, as there are several other bargaining units in the District that are currently in negotiations, although it is at impasse with the Custodial unit and no progress has been made with the Supervisors unit.¹³

In further support of its position, the District asserted that it is in the bottom quartile of property wealth in Nassau County and Exhibit B of its Submission reflected that the District ranked 45th of 56 Nassau County districts in the Nassau-Suffolk Salary Study of 2007-2008.¹⁴

However, Exhibit A to the District's Submission reflects that the Voters approved the 2009-2010 Budget of \$66,855,511, by 2,768 to 1,752, with a tax levy to be \$49,275,921, a 4.35% increase over the prior year, while the school tax on the average single-family house will rise 5.12%¹⁵ and it argued that "any additional increases beyond that originally offered by the School District would require the taxpayers to shoulder an inappropriate tax burden."¹⁶

LEAD NURSE POSITION

The Union provided a 14 point listing of the extensive responsibilities of a Lead Nurse,¹⁷ and at the Hearing focused on the considerable time and effort expended by Nurse Pallas in the training and mentoring of the several new District nurses due to

¹⁰ Id. at page 2.

¹¹ District Post-Hearing Letter Submission, dated July 27, 2009.

¹² District Fact Finding Submission, page 3.

¹³ Id. at page 5.

¹⁴ Id. Exhibit B, attached to Submission.

¹⁵ Id. Exhibit A, attached to Submission.

¹⁶ Id. at page 4.

¹⁷ Union Position Paper, Attachment E

the retirement of one and the departure of two who left for better pay and working conditions at other school districts. In addition, that nurse served as liaison to building principals, was a support person for the Administration on health issues and coordinated health data and individual building surveys, all while being responsible as the Nurse assigned to her building, of the five Buildings in the District.

The District considers this position to be "an unnecessary expenditure ... [and] districts that have such positions are typically larger districts that employ many more nurses than that employed by Wantagh."¹⁸

LUNCH BREAK

The Union stated that Nurse lunch breaks are frequently interrupted by student and staff and they seek the same lunch break as all other units in the district possess, which is an uninterrupted forty or sixty minute period and one in which those school employees are allowed to leave the school grounds. In addition to the interruption, Nurses cannot leave the school grounds and this is a reason cited by former nurses who have left to work in surrounding districts.¹⁹

The District offered to "make efforts to improve upon the conditions associated with the nurse's lunch break,"²⁰ but argued at the Hearing that they were "uniquely skilled" employees whose presence was required in the building assigned at all times; and it was acknowledged that all other school personnel had regular lunch breaks.

FINDINGS AND RECOMMENDATIONS

The District has just experienced a year under an austerity Budget and its taxpayers have clearly resolved to operate under a Budget proposed by their School Board. The Nurse unit did not accept the District's salary offer and, for 2008-2009, was paid the same salary as paid in the school year prior. The District has lost a number of former nurses to other districts with higher salaries and better working conditions. The Union seeks to improve the salary of this small unit (three of the five members are new), to eliminate the loss in nursing personnel it

¹⁸ District Fact Finding Submission, page 6.

¹⁹ Union Position Paper, page 3.

²⁰ District Fact Finding Submission, page 7.

has experienced, and to provide a certain equity with other District employees as regards luncheon entitlements.

As to the salary proposal, the District has heretofore rejected the State Mediator's proposed \$1,000 plus 3% increase, which the Union would accept, and has stated that "it is being consistent with its bargaining position with all its units ... [and it] simply cannot afford to provide significant salary increases to any group of employees"²¹ as it has in the past when it negotiated increases of 3.5% or better to Teachers, Administrators, and Clerical Staff for the 2009-2010 school year.²²

One can appreciate the current School District approach as well as its concern for its taxpayers, however, the fact is that the District is to pay 3.5% or better to three of its other District employee units in 2009-2010 and it paid whatever was the increase to those units in 2008-2009, while the Nurse Unit was paid at their 2007-2008 rate. Remember, this small unit is composed of "uniquely skilled" employees who cannot be guaranteed (by contract) an uninterrupted luncheon break or an opportunity to enjoy it off school grounds, as other District employees do. So they should merit particular concern to the District.

Under the circumstances, it would seem that the District could improve its salary offer with a flat dollar increase plus a percentage (as the District has done with its Clerical Staff in the 2009-2010 School year, as part of a formerly negotiated contract)²³ and negotiate these amounts with the Union. It would not be inappropriate to do so since both sides must realize the state of the economy as well as the extent and uncertainty of rising costs and expenses on the District's budget.

As to the Lead Nurse Position, presently, one nurse, Nurse Pallas, has borne the brunt of "breaking-in" the new nurses to the District and to mentor their progress. She serves in other capacities as well (see footnote 16). These services are above and beyond her duties as a building Nurse. It is submitted that this should be recognized with some modest title and dollar amount attached to it.

²¹ District Fact Finding Submission, page 5.

²² Id. at page 5.

²³ See fn. 22.

The final issue, lunch break, was fully detailed at the Hearing, and several suggestions made respecting its resolution, including providing for a contracted-for lunch break and where it is interrupted, the nurse would have the time added to her leave bank so it could be compensated for in additional time off or in pay at close of service to the district. This is a quality of service issue, directly related to the morale of the Nursing staff, and as the evidence bore out, connected to the continuity of tenured service. No question was raised as to the dedication of this group of District employees and resolving the matter, perhaps along the lines suggested, will both enhance morale and encourage greater Nurse tenure in the district.

CONCLUSION

It is anticipated that the foregoing Findings and Recommendations will assist the parties toward negotiating a resolution of the current impasse and lead to a Collective Bargaining Agreement for the next contract period.

Respectfully submitted,

OWEN B. WALSH

Dated: Oyster Bay, New York
10 August 2009

Copy to:

Christopher Venator, Esq.
Ingerman Smith, L.L.P.
For Wantagh UFSD

Elizabeth A. Pallas, RN
President, Wantagh Registered
Professional Nurses Association
For Wantagh RPNA

Richard A. Curreri,
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INTRODUCTION

The within Amendment is to the Report prepared in the captioned proceeding, dated August 10, 2009, since on further reflection of this matter, the undersigned realizes that the recommendations could have been more specific, and in order to advance the matter, and facilitate further discussion and collective negotiations between the parties, the undersigned submits the following detail as to the three key issues:

1. Salary: Add \$1,000 to the base, plus the 2% heretofore offered.

2. Lead Nurse: The District should grant the Title, as the Nurse by her service deserves it, and as to the compensation, go at least half way as to what was suggested.

3. Lunch Break: The parties should contract for it; but if the District insists that Nurses stay in the building, then compensate the Nurses for the lunch time spent "on campus" when no medical emergency arises and where everyone else is free to go out for lunch.

CLOSING

It is anticipated that the foregoing detailed recommendations will be of assistance in resolving the current impasse.

Respectfully submitted,

Dated: Oyster Bay, New York
14 August 2009

OWEN B. WALSH

Copy to: Christopher Venator, Esq.
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For Wantagh UFSD

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