

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

IN THE MATTER OF IMPASSE

between

THE DEPOSIT CENTRAL SCHOOL DISTRICT

and

**THE DEPOSIT TEACHERS' ASSOCIATION,
NYSUT**

NYSPERB Case: M2010-300

Report and Recommendations

of

Timothy W. Gorman,

Fact Finder

Appearances:

For the Association: Kate Andreatta, Labor Relations Specialist, NYSUT

For the District: Randy J. Ray, Director of Personnel Relations, Cayuga-Onondaga BOCES

Date of Hearing: September 10, 2012

Date of Briefs: October 26, 2012

Date of Report: November 26, 2012

INTRODUCTION

In accordance with Civil Service Law §209.3, the New York State Public Employment Relations Board appointed me as Fact Finder in an impasse between the Deposit Central School District and the Deposit Teachers' Association, NYSUT. On September 10, 2012, a fact-finding hearing was held at the Deposit Central School offices. At this hearing both parties gave overviews of their respective bargaining positions. By mutual agreement, the parties submitted briefs, which were received by me on October 26, 2012. Upon receipt of these briefs, I declared the hearing closed.

BACKGROUND

The Deposit Central School District (hereafter the Employer or the District) and the Deposit Teachers Association, NYSUT (hereafter the Association or the Union) are parties to a collective bargaining agreement. This agreement expired on June 30, 2010. Bargaining for a new agreement began in March 2010. After several meetings between the parties, the New York State Public Employment Relations Board appointed a mediator to assist in the negotiations. Despite the mediator's best efforts, the parties were unable to reach an agreement on a new contract. The District subsequently declared an impasse and filed with the New York State Public Employment Relations Board for fact-finding.

OUTSTANDING ISSUES

The parties have identified four major open issues. These are listed below:

1. Salary - Teachers and Registered Nurses
2. Longevity
3. Health Care Insurance, including:

- 3.1 Active employee and retiree contributions
 - 3.2 Retirement incentive - also known as attendance incentive
 - 3.3 Domestic partner coverage
4. Tuition Free Attendance - bargaining unit members' children

Note: The Association also mentioned a proposal for a longer duration of the new contract and pay for extra duties; however, since these were not part of the impasse declaration, they will not be addressed in this report.

SUMMARY OF THE PARTIES' POSITIONS

Salary Increases - Teachers and Nurses

The School District

The District's last proposal concerning salary for Teachers and Registered Nurses was an increase of two percent (2%) in year 2010-2011, two percent (2%) in year 2011-2012, and two percent (2%) in year 2012-2013. The District believes this offer to be fair and makes the following points in support of its proposals:

1. The District is financially poor. Of the eleven area school districts, Deposit ranks last in average income per pupil - \$33,000 less than the average of the other ten.
2. Financial assistance from the state has steadily declined. In school years 2009-10, 2010-11, and 2011-12 state assistance decreased by 5.3%, 1.6%, and 12.9% respectively.
3. The District's expenses regarding health insurance and retirement have steadily increased. It cites increases in health insurance rates from 2009-10 and projected through 2013-14 to be 4%, 4%, 11.99%, 5%, and 7% respectively. Increases in contributions to the teachers'

retirement system from 2009-10 and projected through 2012-13 are or will be (18.87%), 39.26%, 28.89%, and 6.57%.

4. The state's 2% tax cap levy limits the district in its ability to pay employees what they are seeking.

5. The District currently pays a superior salary to teachers. While paying slightly less for an entry-level teacher and a teacher with five years of service (with Masters Degree) the District exceeds the average salary of all other Broome County districts for teachers with 10, 15, 20, 25 years of service respectively. The District also exceeds all other Broome County districts in per pupil spending.

6. The consumer price index for the general region has not risen to a level that would justify a 3% across the board increase.

7. Salary settlements for Broome County School Districts are declining. This trend is clear in that few if any current settlements in school years 2011-12, 2012-13, 2013-14 were at 3.0% or greater.

The Teachers' Association

In the Association's last proposal concerning salary, it sought an increase of three percent (3%) in year 2010-11, three percent (3%) in year 2011-12, three percent (3%) in year 2012-13 for returning teachers either "on or beyond the top of the salary schedule", with all increases being retroactive. It also seeks a two percent (2%) increase of the teacher's step one salary schedule in each year of the new contract. These proposals are tied to a fair settlement on the issue of health insurance. The Association makes the following contentions in support of its proposals:

1. This proposal is less than the 3.49% area average of local settlements for 2010-11 and just slightly above the 2.97% and 2.76% averages in 2011-12 and 20-13, respectively, and ranks at or below the fiftieth (50th) percentile for teachers in the first eight (8) years of service.

2. The Association sees these increases as fair considering that the District's records show \$3,932,528 in its restricted fund balance and \$1,504,869 in its unrestricted fund balance at the end of the 2010-11 school year.

3. The District has received significantly more revenue than was projected in every school year between 2006-07 and 2010-11. In just the last three (3) years, revenues exceeded District projections by \$1,415,058, or an average of \$471,686 per year.

4. The Association points to the fact that during the past two years six teachers have retired and the District replaced these teachers with one (1) full-time teacher and an eight-tenths (.8) position, resulting in savings of \$417,000.

Longevity

The School District

The District has proposed the following for longevity:

10 years of service	\$500
15 years of service	\$500
20 years of service	\$500
25 years of service	\$0

Longevity would not be added to the base salary.

The District asserts that longevity should not be added to the base salary as it has historically been intended as a reward for an employee's years of service, and therefore it is

improper to use it to augment base salary, which is compensation for work performed. This enhancement of base salary would benefit the more senior teacher at the expense of the newly hired teacher even though both perform the same duties.

The Teachers' Association

The Association has proposed the following for longevity:

10 years of service	\$500
15 years of service	\$500
20 years of service	\$500
25 years of service	\$500

Longevity would be added to the base salary.

The Association maintains that this payment schedule would replace the current schedule for longevity and would end disputes involving aspects of this clause in the current CBA, the most recent being a dispute concerning credit awards at time of hire versus years of service with the District. It also states that longevity pay is common in public employment and is recognition of an employee's years of service with the district.

Health Care Insurance, including: Active employee and retiree contributions, retirement (attendance) incentive, domestic partner coverage

The School District

Active Employees - The District proposes that it will pay a percentage of the PPO plan, and the employee will contribute a percentage. If the member wished to remain on the indemnity plan, they will pay 100% of the cost differential. The employee share of the PPO plan is as follows:

2010-11	10% of premium
2011-12	13% of premium
2012-13	14% of premium

The District asserts that it spends more per teacher on health insurance than the majority of Broome County districts (see table 9, pgs 25-26, District's brief). It maintains that the Association cannot have its proposed wage settlement and then be unwilling to make a health insurance contribution similar to the area school district average. Lastly, the District asks that the premium contribution be retroactive, just as salary increases have traditionally been. This would send a message that the dragging out of negotiations by the Association will not be rewarded.

Retirees - For retiree health insurance, the District proposes the following:

Teachers who retire on or prior to June 30, 2011 pay a 5% contribution to health insurance

Teachers who retire on or prior to June 30, 2012 pay a 10% contribution to health insurance

Teachers who retire on or after to July 1, 2013 pay the same rate contribution as active employees

The District states that it now covers 100% of retirees' health insurance coverage, and Deposit is the one of only districts to offer this full coverage, as most other Broome County school districts require its retirees to contribute to their individual and/or family health insurance. The district believes that its retirees should share in the cost of health insurance.

Retirement (Attendance) Incentive - the District rejects the Association's proposal and proposes no change to the current rate.

Domestic Partner Coverage - The District currently covers spouses in same sex marriages in accordance with New York State law. However, it rejects the Association's domestic partner coverage proposal because of its vagueness in definition and difficulty in implementation. The District should not be put in the position of being the judge of who qualifies as a domestic partner.

The Teacher's Association

Active Employees - The Association proposes an employee contribution rate to the PPO health insurance plan as follows:

2010-11	10% of premium
2011-12	10% of premium
2012-13	10% of premium

This proposal is contingent upon on a 3% retroactive salary increase, so long as no member would be harmed financially by this arrangement. The Association believes that the District is economically stable (as detailed in the NYSUT Budget Analysis provided to the Fact Finder) and can afford this settlement.

Retirees - The Association proposes that retirees pay a flat \$350 annually for a family plan or \$150 annually for a single plan. However, this is only acceptable to the Association with the above-mentioned salary increases and an increase to the retirement (attendance) incentive.

Retirement (Attendance) Incentive - The Association seeks to modify the agreement and increase the unused sick days by \$15 per day for up to 100 days and up to \$50 per day for days 101-250.

This attendance incentive would ease new costs for future retirees who have served the district and planned on fully paid health insurance in retirement. This proposal is the same as the incentive granted to the District Superintendent in 2011.

Domestic Partner Coverage - The Association proposes that the District cover domestic partners of members. This would allow peace of mind for families and would recognize the changing way in which a family is now defined by society. This proposal would promote equal pay for equal work as well as overall fairness.

Tuition Free Attendance - bargaining unit members' children

The School District

The District rejects this proposal as a slippery slope. Tuition Free Attendance could greatly increase costs to the District if a teacher or teachers enrolled a child with special needs. In addition, if many teachers took advantage of this provision class sizes could rise and the District would be forced to increase staff to accommodate these new students. The District has not budgeted for this scenario and district taxpayers should not be required to pay for the education of a teacher's child simply because the teacher chooses to live outside the district.

The Teachers Association

The Association would like to have district teachers who live outside the district be able to have their children attend the district schools, tuition free. Instead of having to rush out to pick up their children, the teachers could stay at school and continue with their after class duties. This would be a morale booster and allow teachers to combine some professional and personal responsibilities.

FACT FINDER'S REPORT AND RECOMMENDATIONS

Salary Increases

Both parties made strong arguments concerning salary. The District's salary survey (Table 8, pg 21, District's brief) does show a decline in percentage increases for Broome County districts, a loss in state aid, and the limitation of the so-called 2% property tax cap. However, while these settlements have consistently decreased, very few of them were across the board two percent (2%) increases such as the District is now proposing (all of the districts cited by the Deposit District have had a decrease in state aid and are under the same constraint of the 2% property tax cap). This, when coupled with the replacement of six retired teachers with one (1) full-time teacher and an eight-tenths (.8) position, plus the district's reserves, indicates that there is some room in the District's budget for increases beyond the two percent (2%) range.

Recommendation - Given the information provided by both parties, and considering the overall financial position of the District, along with settlements and financial burdens carried by Deposit and other districts, I believe the salary increases for the Teachers and Nurses should be as follows:

2010-11	3.0%
2011-12	2.5%
2012-13	2.0%

All increases to be retroactive.

Longevity

The parties' only real conflict with the issue of longevity is whether it should be added to teacher's base salary or should simply be a standalone payment. In this instance, the District makes a valid point when it states that longevity is a reward for years of service while salary is

the payment for actual day-to-day work. I realize the Association is trying to bolster its member's salaries, but adding longevity to the base wages of teachers is simply not the proper way to achieve this goal.

Recommendation - I recommend that the parties adopt the Association's proposal for longevity payment amounts, but also adopt the District's proposal of untying this payment from base salary. This is as follows:

Longevity Payments

10 years of service	\$500
15 years of service	\$500
20 years of service	\$500
25 years of service	\$500

Longevity will not be added to the base salary.

Health Care Insurance, Including: Active employee and retiree contributions, retirement (attendance) incentive, domestic partner coverage

Active Employees - After considering both parties' proposals, I believe the Association's view that a ten percent (10%) contribution in each of the three years of a new contract simply does not take into account the rising cost of healthcare premiums. Conversely, the District's proposal for teachers' contributions to increase from 10% in the first year to 14% in the third year of the contract is a hefty increase in contributions in two years. This increase in percentage contributions seems extreme given that the Broome-Tioga-Delaware Health Insurance Consortium approved a modest (when compared to past rate increases) five-percent (5%) rate increase for 2012-13 (see exhibit 17, Associations brief).

Recommendation - I recommend that the health care premium contributions be as follows:

2010-11	10% of premium
2011-12	11% of premium
2012-13	12% of premium

If an employee wished to remain on the indemnity plan, they will pay 100% of the cost differential.

The District also proposed that these contributions be retroactive, however, in the many contracts that I have read I have never seen this proviso, so I will not recommend it in this report.

Retiree - As for retirees, I believe the District has made a strong case. Deposit district retirees do not contribute to their health insurance premium. Most other districts in Broome County require retirees to contribute; Deposit should be no different.

Recommendation - I recommend that the parties adopt the District's language on retiree contributions to the health insurance premium as follows:

Teachers who retire on or prior to June 30, 2011 pay a 5% contribution to health insurance

Teachers who retire on or prior to June 30, 2012 pay a 10% contribution to health insurance

Teachers who retire on or after to July 1, 2013 pay the same rate contribution as active employees

Retirement (Attendance) Incentive

The Association sought an increase in this incentive as a way to ease new costs for future retirees who have served the district and planned on fully paid health insurance in retirement. While this is a laudable goal for the Association to pursue, it, in essence would negate the reasonable requirement of having retirees contribute some amount to their healthcare plan, a contribution that they have never been required to make in the past.

Recommendation - I recommend that the parties make no change to the retirement (attendance) incentive at this time.

Domestic Partner Coverage

With regard to this proposal, I believe the District's hesitation is well founded. It is unfair and, in reality, unworkable to ask the District to be the arbiter of what constitutes a "domestic partner."

Recommendation - I recommend no change in this language. The District will continue to cover married couples and spouses in same sex marriages in accordance with New York State law.

Tuition Free Attendance - Bargaining Unit Members' Children

As outlined above both parties gave their prospective positions on this issue, but aside from some anecdotal information and speculation on the relative advantages and disadvantages of this point, neither side presented any relevant data as to what other school districts have or have not agreed to concerning this issue, or the costs and benefits of inserting this provision into the CBA.

Recommendation - Because of the lack of information presented on this issue, I recommend that the parties do not adopt this arrangement at present, but jointly investigate the relative costs and benefits of tuition free attendance of bargaining unit members' children.

CONCLUSION

It was clear from the hearing and the submitted briefs that the parties have zealously represented their respective interests. I believe the parties have been negotiating in good faith, but at the hearing, I did sense that a level of frustration has set in on both sides.

It is my fervent hope that this report along with its recommendations will serve as a catalyst to restart the parties' negotiations and lead to an agreement that is mutually beneficial to all.

Date: _____ Signed: _____
Timothy W. Gorman, Fact Finder