

PUBLIC EMPLOYMENT RELATIONS BOARD  
FACT FINDING IN IMPASSE BARGAINING

---

IN THE MATTER OF FACT FINDING BETWEEN

**THE LYONS CENTRAL SCHOOL DISTRICT**

**FACT FINDING  
REPORT**

**- AND -**

**THE LYONS TEACHERS ASSOCIATION**

**CASE NUMBER:  
M2013-086**

---

Re: Fact Finding of Outstanding Bargaining Issues

**BEFORE:** Stephen P. LaLonde, Impartial Fact Finder

**APPEARANCES:**

For the District: Brent D. Cooley, Sr. Labor Relations Specialist  
Denise Dzikowski, Superintendent  
Michael Pangallo, Asst. Supt. for Business  
Nelson Kise, Principal

For the Union: Jamie Guilian, Labor Relations Specialist, NYSUT  
Matthew Barr, President, LTA  
John Lawson, Chief Negotiator, LTA  
Anne Cook, Negotiator, LTA

**BACKGROUND**

The Lyons Central School District ("District") and the Lyons Teachers Association ("Union") met in negotiations for the purpose of determining a successor agreement to their July 1, 2010 – June 30, 2013 Collective Bargaining Agreement ("CBA"). The Parties met for five (5) negotiation sessions (April 23, 2013, May 2, 2013, May 16, 2013, May 29, 2013 and June 13, 2013). The District submitted a Declaration of Impasse to the New York State Public Employment Relations Board ("PERB") on June 14, 2013. Subsequent to the Declaration of Impasse, PERB Mediator, Ronald Kowalski, was appointed and met with the Parties on three separate occasions (August 26, 2013, December 11, 2013 and May 28, 2014) in an effort to mediate the Impasse. Mediation

efforts proved to be unsuccessful and the undersigned was appointed as Fact Finder on November 12, 2014.

An Initial Pre-Hearing Conference call (“IPHC”) was held between the Parties and the Fact Finder on November 19, 2014 at which time procedural issues were discussed and determined. During that conference call, the Parties agreed that they would submit pre-hearing and post-hearing response briefs. The Parties’ pre-hearing briefs were duly received by the Fact Finder on January 5, 2015.

A Fact Finding Hearing was held on January 20, 2015 at the Lyons Central School District offices. At the Fact Finding Hearing, the Parties summarized and clarified the information contained in their pre-hearing briefs and presented additional information and argument. Both Parties had full opportunity to present testimony and evidence in support of their respective positions on the outstanding issues at Impasse and to argue against the evidence and testimony presented by the other Party.

Post-hearing supplemental and response briefs were duly received by the Fact Finder on January 23, 2015 (for the Union) and January 29, 2015 (for the District) at which time the record was closed. Both Parties presented exhaustive data and argument in support of their respective positions on the issues (especially on salary and health insurance related matters). The Fact Finder has reviewed in detail all of the submissions, data and argument presented by the Parties. That data and rationales will not be repeated in this report but spoken to generally as they might apply. All the data and arguments have been considered in determining the recommendations made herein.

## **OUTSTANDING ISSUES**

The Parties brought the following issues to Fact Finding:

- Length of the Agreement
- Salary
- Health Insurance and Related Issues

- Length of Work Year
- June Work Schedule for the Elementary Grades
- Teacher Evaluation and Observation
- Sick Leave Accumulated Payment (Method of Payment)
- Insurance Buy-Out
- Retiree Healthcare Coverage
- Section 105 Plan (HRA)
- Discipline of Tenured Teachers
- Stipends (Amounts, Addition of Positions and Movement of Positions)
- Career Incentive
- Direct Deposit
- District Advisory Committee

Each of these issues will be addressed in turn with the relative positions of the Parties summarized and presented as each issue is identified.

**ISSUE #1: Length of the Agreement**

**District Position:**

The District proposes a three (3) year successor agreement covering the following years: 2013-2014, 2014-2015 and 2015-2016.

**Union Position:**

The Union also proposes the same three (3) year successor agreement.

**ISSUE #2: Salary**

**District Position:**

The District proposes the following pay increases for the successor agreement:

2013-2014 school year - \$1,400 increase in base salary over their 2012-2013 base salary for each returning unit member. The District contends that this represents a 2.63% wage increase.

2014-2015 school year – a 2.7% increase for each returning unit member over their 2013-2014 base salary.

2015-2016 school year – a 2.7% increase for each returning unit member over their 2014-2015 base salary.

The District opposes the Union's salary proposal calling for 3.1% plus \$300 for each unit member for each of the three years of the successor agreement. The district argues that the Union proposal would equate to raises of 3.67%, 3.64% and 3.62% respectively. Given the local and State economic situation and constraints on the District resulting from decreased State aid, the tax cap restrictions, declining enrollment, the impact of the Gap Elimination Adjustment (resulting in the District needing to draw increasing amounts from reserves) and the general low wealth of the District demonstrated through various comparative wealth ratios, the Union's proposal is not in keeping with the need for reasonable and moderate salary packages going forward. The District also notes that it tends to over-budget in the salaries category in order to cover unexpected employee costs that might arise and because the District cannot make up for under-budgeting and having a salary shortfall. In any event, the over-budgeting claims of the Union are exaggerated and inaccurate.

**Union Position:**

The Union proposes the following salary adjustments for the three years of the successor agreement:

2013-2014 school year - 3.10% + \$300.00 increase added to the previous year's salary for each returning unit member.

2014-2015 school year – 3.10% + \$300.00 increase added to the previous year's salary for each returning unit member.

2015-2016 school year – 3.10% + \$300.00 increase added to the previous year's salary for each returning unit member.

The Union contends that analysis of various data available during the negotiations demonstrates that the District is comparable to other Districts in areas of personal income per pupil, property value per pupil and other economic indicators. The Union states that its wage proposals are fair and reasonable increases for each of the years

for a 3 year successor Contract. The Union also argues that a percentage combined with a flat dollar amount in their proposal will mitigate raises impacting the lowest paid and highest paid unit members creating an expanding wage spread. The Union also contends that their proposal on salary is in keeping with the percentage increases that the District has concluded with other bargaining units. Further, the Union asserts that the District's offer represents only 2.7% of new monies for salary increases in each year of the successor agreement.

Also, the Union notes that the District salary offer cannot be viewed in isolation but must be considered in light of the District's proposal to increase unit members' share of health insurance premiums from 10% to 15% (a 50% increase). The net effect of this is that the membership is only realizing increases of slightly more than 2.0% which is below the current salary increases in the region of 2.40% with no increase in insurance contributions.

The Union also states that median salaries for unit members (2012-2013 data) indicates that Lyons ranks last out of 8 schools with student populations less than 1,500 in the county. Out of the total of 12 districts in the county, Lyons ranked no better than tenth. Additionally, the Union contends that the District regularly over-budgets in the area of teacher salaries each year to such an extent that the Union's proposals could be easily funded. Also, the Union notes that the employer contribution rate to the State retirement system will be reduced to 13-13.5% or even lower, resulting in even more savings to the District.

**ISSUE #3: Health Insurance Contributions (Active & Retired), Plan Discontinuance, HRAs and ACA Compliance**

**RE: ACTIVE EMPLOYEE HEALTH INSURANCE**

**District Position:**

Currently, active full-time unit members contribute 10% toward the base health insurance plan which is the Blue Point 2 Select plan which includes a co-pay of \$15 and

a prescription drug plan (\$0/\$30/\$50). The District is seeking to increase the contribution rate of active unit employees to 15% of the health insurance plan achieved through incremental increases over the proposed 3 year term of the Contract (11.7% for the 2013-2014 SY, 13.4% for the 2014-2015 SY and 15% for the 2015-2016 SY).

The District notes that health insurance costs continue to increase at a rapid rate and averaging double digit increases well above rates of cost of living indices. The net effect for the District is a current and future projection of significant increases in all of its 4 component base plan options. The District also states that most districts in the Finger Lakes region have reached agreements where their unit members contribute more than 10% toward the cost of their health insurance programs.

**Union Position:**

The Union's proposal is in agreement with active unit members increasing their percentage of contribution toward health insurance premiums. Unit members will contribute 11.7% for the 2013-2014 SY, 13.4% for the 2014-2015 SY and 15% for the 2015-2016 SY while the District contribution will change from the current 90% to 88.3%, 86.6% and 85% respectively. Upon hire, new unit members will pay 15% of the health insurance premium. The Union notes that they have historically worked with the District to manage health care costs in the District and the agreement on the phasing in of the increase to 15% contribution was a product of the negotiation discussions. However, the Union notes that its agreement with the District on the health insurance contribution rate increase was linked to the acceptance of the Union's salary proposal. The Union also contends that analysis of the district's financials demonstrates that the District has over-budgeted in employee benefits and is capable of funding health insurance costs without health care concessions made by the Union. This reinforces the Union's linkage to their proposal on salary.

**RE: HEALTH INSURANCE FOR RETIRED MEMBERS**

**District Position:**

The District notes that under the contract, a unit member with 20 years of full-time service can retire with the District's health insurance plan and have the District paying 90% of the insurance costs until the death of the employee. This coverage is extended to the spouse of the retired employee with the spouse covered until the death of the retiree. The District contends that this provision creates a legacy cost that is unsustainable as health insurance costs continue to spiral, individuals are living longer in retirement and spousal coverage only increases the burden. The District calculates that the legacy costs to the District for each employee retiring and living only to age 75 would cost the District approximately \$300,000.

What the District proposes is to provide the 20 year employee coverage at the same rate of contribution for the former employee and spouse until the former employee reaches the age of Medicare eligibility. At that point, the District would continue to pay the negotiated contribution rate for the cost of a Medicare supplement policy for the retiree only and would no longer pay for the retiree's spouse. The District argues that payment for a retiree's spouse beyond a certain point is no longer tenable.

The District further notes that looking at the combined offer of the District on salary and health insurance contributions (employee contribution increasing to 15% by the third year), the net result for the unit members would be a raise of 2.3%, 2.34% and 2.36% for the 2013-2014, 2014-2015 and 2015-2016 school years respectively and is below the BOCES region increases in other districts.

#### **Union Position:**

The Union has been willing to work with the District regarding the costs of health insurance for active members and has agreed to a stepped increase in member contributions from the current 10% to 15%. However, the Union is opposed to any diminution in retiree health care benefits as it would be out of keeping with the majority of county and WFL region school districts who do provide health insurance contributions for the retired employee and spouse until the death of the retiree. The District's proposal would constitute a large reduction in benefits for retirees and the District has

offered any equitable *quid pro quo* on this issue. Even if this proposal was to be applied prospectively to new hires, it constitutes a tiered benefit system that the Union finds unacceptable that not all members would be entitled to the same benefit levels. If the individuals are performing the same work, they are entitled to the same benefits. Further, the Union contends that the District's legacy cost projections are not as great as the District is claiming. This provision for retiree healthcare payment should not be changed.

**RE: Affordable Care Act (“ACA”) Compliance Issues & HRA Reimbursements**

**District Position:**

The District provides a health reimbursement arrangement (“HRA”) through a Section 105 Plan in which the District contributes \$700 each year to the account of each full time member. The District has no desire to increase the amount that it annually contributes to the 105 Plan as it feels the contribution amount now is generous.

The District is asserting that in order to comply with the ACA's requirement to provide a health care plan that is “affordable”, the employer is required to offer a HRA (105 Plan) if the HRA is integrated into a health insurance plan that is offered by the employer. The District contends that under this requirement, a stand-alone HRA does not provide (by itself) the level of benefits expected by ACA nor would it be considered integrated. The District contends that the easiest way to prove HRA integration would be to provide the HRA only to those unit members who are enrolled in one of the health care plans offered by the District that complies with the ACA requirements.

**Union Position:**

The Union is opposed to any restriction on those offered HRA coverage. Further, in light of the District agreeing to a \$1,500 contribution for administrators, the Union is requesting that the unit's HRA be increased to \$750 in the second year of the Contract and \$800 in the third year of the Contract.



## **Re: Written Waiver of Healthcare Coverage**

### **District Position:**

The District seeks a written waiver from an employee who declines to enroll in a District provided healthcare plan. The District is concerned that under the ACA, if an employee declines to enroll in a District offered healthcare plan and gets healthcare through an exchange they might represent that they were not offered an affordable healthcare plan through the District. This could subject the District to fines or penalties. The District wants a written waiver from each full time employee who declines District coverage as tangible evidence that the individual was offered enrollment in a District plan but the employee declined. This is a protection for the District under the ACA.

## **Re: Payment in Lieu of Taking Insurance (“Buy-Out”)**

### **District Position:**

The District wants the language of Article VI, Section B to remain unchanged regarding a payment to an employee in lieu of enrolling in health care with the District. The current language indicates that if 17 unit members do not participate in taking a health care plan for the entire school year, each person who waives this coverage would receive \$2,000. If as few as 15 waive health care coverage, then the payment is pro-rated. Some unit members were married to other unit members who had the insurance; some did not take it because they were covered under a spouse who was employed outside the District; and some did not need the insurance. The District contends that this language was a recent addition to the Contract and was a compromise struck between the Parties. The District does not want to alter the compromise negotiated on this point.

### **Union Position:**

The Union argues that the contractual language triggering the buyout option was never intended to be unreachable over the course of time. Since its inception, the unit membership has declined from 110 to 82 (loss of 28 members). The original

formulation no longer accomplishes the purpose and intent of the buy-out concept. The Union is proposing the elimination of the current formula and to offer the health insurance buy-out to any member who obtains insurance outside the District's programs. The Union also notes that if unit members are obtaining health insurance elsewhere, then that represents a significant savings to the District in not having to fund insurance for those individuals and the buy-out option and amount of buy-out still results in significant savings to the District. If the District is concerned about the issue of "double spouse" (both unit members who are married opting out of the District insurance and both collecting the buy-out, then that is something the Union is willing to discuss with the District.

#### **ISSUE #4: Length of Work Year**

At the Fact Finding Hearing on January 20, 2015, the District withdrew its proposal on the length of the work year.

#### **Issue #5: June Work Schedule for Elementary Grades**

##### **Union Position:**

The Union states that the elementary calendar at the end of the school year is driven by the District's attainment of the required number of student attendance days for the year. Currently, if that requirement is met then elementary teachers receive the equivalent of 2.5 days without students in June. The Union seeks to restructure the current lack of consistency by re-organizing the days without students throughout the whole month of June. The Union proposes to redistribute the days without students so that each Friday in June (3 before the end of school) would be a half-day without students. The proposal would retain the last assigned teach work day as a full day without students. The increasing need for end of the year reports and required activities in a variety of areas requires that elementary teachers need the time to prepare these year-end tasks and time should be established outside the unpredictable vagaries of achieving state minimum days of attendance.

**District Position:**

The District is opposed to any changes in the elementary June work schedule. The District notes its concern that the Union's proposal (albeit effectuated after the District has met its maximum number of days for state aide purposes) would make every Friday in June a half-day without students and in the final week of work in June, would require up to the full week of days be without students. The District seeks to maximize the amount of instruction from teachers and not to reduce such opportunities. They are also concerned that student attendance drops on half-days. The District further notes that the current Contract language is the result of a compromise between the District and Union and one that the District does not want to modify. The District further contends that there is always more work to be done at the end of the school year and that this is expected and must be planned for in closing out the school year.

**ISSUE #6: Teacher Evaluation and APPR Articulation****District Position:**

The enactment of the Annual Professional Performance Review process in 2010 established procedures and requirements for evaluation of teachers and principals in New York State. APPR required that a number of issues be negotiated between Districts and teacher Unions with Contracts signed after July 2010 ("local component" of the APPR process). The negotiated APPR local component cannot be contrary to the requirements of the overall APPR program enacted. The Parties did negotiate a local component of the APPR process and it currently is a document that is not part of the Contract. The District opposes the Union's proposal to make the APPR document an appendix to the Contract. They note that there is no requirement to place the APPR plan or parts of it into the Parties' Contract. Also, the District points out that the APPR plan is new as to what is or is not negotiable as well as the fact that the law has been modified a number of times since its inception. It is still in flux and memorializing it into the Contract will only compound the implementation and application of the APPR

process going forward. At the Fact Finding Hearing, the District indicated that it would accept the revised proposal for clarification presented in the Union's brief.

**Union Position:**

The Union is opposed to the District initial proposal calling for the elimination of some of the current language and provisions of the Contractual evaluation process not specific to APPR specifically in regard to those positions not covered under APPR as recognized in *NYS Education Law* §3012-c. Those individuals not covered under APPR are covered under the evaluation process found in the Contract and this should be maintained. The Union proffered language in its brief that would clarify Sections #1 and #2 and further indicated within that language that the negotiated APPR agreement between the Parties was, in fact, viewed as a separate document from the Contract itself.

**ISSUE #7: Payment for Accumulated Sick Leave**

**Union Position:**

The Union is opposed to the District proposal to change the cash payout for accumulated sick leave to a non-elective contribution to a 403(b). Changing the method of payout will only serve to complicate the process and availability of these funds for the unit members. While it may shelter the funds from immediate taxation, it will make it more difficult for members to access these funds in times of need and subject them to tax penalties for early withdrawals. There is no problem with the current system for payout used in the District and there is no compelling reason presented to change it.

**District Position:**

The District is on record during the negotiations of agreeing to increase the dollar amounts by \$5 per accumulated sick day in each of the two categories of this provision. This was done in response to the Union proposal that the payment for accumulated sick leave at the time of an employee's retirement be increased. The District indicates that the Union accepted this increase in negotiations in December 2013. The District

indicated at the Fact Finding Hearing that this was an issue that would not hold up the Contract.

**ISSUE #8: District Advisory Team**

**District Position:**

Article XV of the Contract provides for a District Advisory Team made up of teachers, administrators, coordinators and department heads with Union members serving on the Team to receive compensation at the rate of \$22/hour. The District is proposing the deletion of this Article recognizing the fact that the District no longer has such a District Advisory Team. The title “District Advisory Team” is no longer accurate and does not reflect the current reality. District may be willing to consider a new name and function to conform to what is happening now.

**Union Position:**

The elimination of the language/Article referencing the District Advisory Team proposed by the District is opposed by the Union. This Article and its provisions are currently being used by the District for the Curriculum Council in the application of the number of meetings, meeting times and rates of pay. This provision should not be deleted but merely updated to reflect its current use.

**ISSUE #9: Teacher Discipline: Alternative 3020-a Contract Procedure**

**Union Position:**

The Union states that at the time of the initial negotiation proposals between the Parties on this point, a case was moving through the NYS Courts (*Kilduff*) which, on November 20, 2014 was decided by the Court of Appeals, finding that a tenured teacher must be given the option of either a Contractual disciplinary process or the statutory 3020-a process. The issue has been determined and the Parties must implement it.

**District Position:**

The District notes that Article XII of the Contract dealing with Due Process contains an alternative disciplinary procedure that replaces the Section 3020a procedures of *Education Law*. In June 2013, the Union proposed to modify the language to provide teachers with the option of either using the contractual process or opting for the statutory 3020a process. At the time the District opposed the proposal but notes now that the matter is moot based on a decision by the NYS Court of Appeals finding that a tenured teacher has the legal right to choose either a Contractual process or the statutory 3020a process in disciplinary matters (*Kilduff v. Rochester City School District*, decided November 20, 2014, citation omitted).

#### **ISSUE #10: Payments for Extra and Co-Curricular Activities**

##### **District Position:**

The District opposes the Union proposals for increasing extra duty and co-curricular stipends and the addition of extra pay duties to the schedule. The District is not persuaded that Library and Chess Club should be added to the schedule as these activities meet during the school day in any event and should not be compensated further. The District contends that the Union has made no credible showing that stipends need to be raised (Union proposal for 3.5% increases in each of the final two years of a successor agreement) or that Senior Class Advisor and Varsity Club Advisor need to be jumped two levels in compensation under the schedule. The District argues that with no demonstrable need provided to adjust stipends, they should remain as is and any monies be applied to base salaries.

##### **Union Position:**

The Union argues that it is important for the District to remain competitive in the area of extra-curricular compensation compared to other Districts. Already, some unit members are going to other Districts to coach because of the disparity. The Union is agreeing to a freeze in payment for the first year of the successor agreement but feels it is essential that a 3.5% increase in extra-curricular stipends be made in the second and third years of the agreement. Even with this, Lyons will still not be competitive with other Districts

in this area. The Library and Chess Clubs should be added to the salary matrix as these clubs offer more opportunities for student involvement and the time devoted by staff to provide these clubs warrants compensation. Moving the Senior Class Advisor up one level in the salary matrix and the Varsity Club Advisor up two levels is justified as the work and responsibilities for both positions have expanded well beyond those when the positions were originally established.

**ISSUE #11: Career Incentive**

**Union Position:**

The Union seeks the addition of a career incentive payment of \$1,000 upon a unit member reaching 15 years of service in the District. The Union states that the overall cost is not that significant, that the District has over-budgeted funds available to cover the cost of this proposal and that it would be more in keeping with other units who receive career incentives more frequently than teacher unit members. Currently, unit members receive \$500 after 10 years of service and \$2000 after 20 years of service.

**District Position:**

The District is opposed to adding an additional career incentive payment.

**ISSUE #12: Direct Deposit**

At the January 20, 2015 Fact Finding Hearing, the District announced that this proposal was being withdrawn.

**DISCUSSION & RECOMMENDATIONS**

Each of the issues presented above will be discussed in turn (as necessary) and the Fact Finder's Recommendation(s) will follow.

**ISSUE #1: DURATION**

The Parties are in agreement over the duration for a successor agreement.

**RECOMMENDATION:**

1. It is recommended that the Parties implement a three (3) year successor agreement covering the following school years: 2013-2014, 2014-2015 and 2015-2016.

**ISSUE #2: SALARY**

A review of the salary proposals and voluminous data presented by the Parties, both in isolation and in the broader context of the totality of the outstanding issues, leads to the following recommendation.

**RECOMMENDATION:**

1. 2013-2014 school year – 2.9% wage increase (retroactive) in base salary for each returning unit member over their 2012-2013 base salary.
2. 2014-2015 school year – 2.9% wage increase (retroactive) in base salary for each returning unit member over their 2012-2013 base salary.
3. 2015-2016 school year – 2.9% wage increase in base salary for each returning unit member over their 2012-2013 base salary.

**ISSUE #3: Health Insurance Contributions (Active & Retired), Plan Discontinuance, HRAs and ACA Compliance**

Given the historic and continuing structure of healthcare in the United States as opposed to other industrialized countries, both Parties find themselves in ever increasing difficulty in dealing with the escalating costs and complexities of such a system. This results in a situation where there are no easy answers and no painless options for contemplation and implementation. In light of this scenario, the following recommendations are made vis-à-vis the elements of healthcare at issue between the Parties.



**RE: ACTIVE EMPLOYEE HEALTH INSURANCE**

**RECOMMENDATION:**

1. It is recommended that the contribution rate for health insurance premiums over the term of the successor agreement be:
  - a. 2013-2014 SY – 11.7% by unit members, 88.3% by District (retroactive)
  - b. 2014-2015 SY – 13.4% by unit members, 86.6% by District (retroactive)
  - c. 2013-2014 SY – 15.0% by unit members, 85.0% by District

**RE: HEALTH INSURANCE FOR RETIRED MEMBERS**

**RECOMMENDATION:**

1. On the matter of health insurance for retired members, it is recommended that for any unit member retiring during the 2015-2016 SY, that the District no longer pay for the retiree's spouse health insurance coverage beyond the age of Medicare eligibility but continue to maintain payment for the retiree until death.

**RE: Affordable Care Act (“ACA”) Compliance Issues & HRA Reimbursements**

**RECOMMENDATION:**

1. It is recommended that the offering of HRA to all unit members not be changed or restricted.
2. It is recommended that the District HRA contribution be increased to \$775 in the 2015-2016 SY.

**Re: Written Waiver of Healthcare Coverage**

**RECOMMENDATION:**

1. It is recommended that the Parties discuss the format and language of any waiver of healthcare coverage consistent with the requirements and liabilities of the ACA and not contrary to the terms and conditions of healthcare coverage offered to unit members within the Contract.

**Re: Payment in Lieu of Taking Insurance (“Buy-Out”)**

**RECOMMENDATION:**

1. It is recommended that the current numerical threshold for triggering the health insurance buy-out provision, be eliminated.
2. It is recommended that the payment in lieu of taking District health insurance be offered to any unit member obtaining health insurance outside of the District.
3. It is recommended that the Parties discuss further the situation of the “double spouse” opt-out and its implications for buy-out.

**ISSUE #4: Length of Work Year**

At the Fact Finding Hearing on January 20, 2015, the District withdrew its proposal on the length of the work year.

**Issue #5: June Work Schedule for Elementary Grades**

**RECOMMENDATION:**

1. It is recommended that the current language for the June work schedule for elementary grades not be changed.

**ISSUE #6: Teacher Evaluation and APPR Articulation**

**RECOMMENDATION:**

1. It is recommended that the Contractual language for the evaluation of non-APPR affected unit members be maintained.
2. It is recommended that the negotiated APPR plan between the Parties remain as a separate document from the Contract.
3. It is recommended that the Parties discuss and adopt the language offered by the Union in its pre-hearing brief (p. 24) as a clarification for the APPR and Contractual evaluation components therein.

**ISSUE #7: Payment for Accumulated Sick Leave**

**RECOMMENDATION:**

1. It is recommended that the Parties increase the dollar amounts for payment of accumulated sick days by five dollars (\$5.00) per accumulated sick day in each of the two categories of this provision of the Contract.
2. It is recommended that options for the payment of accumulated sick leave remain unchanged.

**ISSUE #8: District Advisory Team**

**RECOMMENDATION:**

1. It is recommended that the Parties update the title and operational elements of this provision to reflect the current function of this group.

**ISSUE #9: Teacher Discipline: Alternative 3020-a Contract Procedure**

Since the commencement of negotiations between the Parties, the issue of contractual v. statutory disciplinary procedures and whether or not a tenured teacher has the option of utilizing the statutory provisions of 3020-a over a contractual process, has wended its way through the New York Court system. The issue has subsequently been decided by the New York Court of Appeals in *Kilduff v. Rochester City School District* (decided November 20, 2014, citation omitted) in which the Court ruled that a tenured teacher

has the right to select which process to use in the matter of a disciplinary proceeding and is not bound to only a disciplinary process contained in the collective bargaining agreement. Therefore, the essential issue debated by the Parties has been rendered moot.

**RECOMMENDATION:**

1. It is recommended that the Parties agree to language in the disciplinary section of the Contract that reflects the determination of the Court of Appeals and clarifies that a tenured employee has the option of selecting either the Contractual disciplinary process or the statutory *Education Law* §3020-a disciplinary process.

**Issue #10: Extra Curricular Stipend Amounts and Positions**

**RECOMMENDATION:**

1. It is recommended that extra-curricular stipends be increased by 3.5% in the 2015-2016 SY
2. It is recommended that the Senior Class Advisor and Varsity Club Advisor positions be moved up one (1) level on the salary matrix in the 2015-2016 SY
3. It is recommended that the positions of Library Club Advisor and Chess Club Advisor be added to the salary matrix at Level 6

**ISSUE #11: Career Incentive**

**RECOMMENDATION:**

1. It is recommended that a career incentive payment of \$1,000 at the 15<sup>th</sup> year of service in the District, not be added to the Contract.

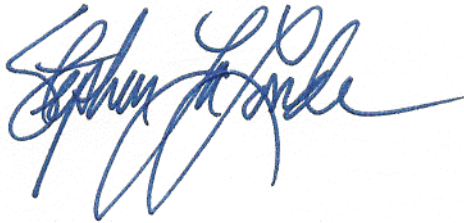
**ISSUE #12: Direct Deposit**

At the January 20, 2015 Fact Finding Hearing, the District announced that this proposal was withdrawn.

\* \* \*

#### AFFIRMATION

I affirm on my oath that I am the individual described herein and that the foregoing is my Fact Finding Report with Recommendations in the above captioned matter.



---

Stephen P. LaLonde  
Impartial Fact Finder

Dated: March 8, 2015