

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

IN THE MATTER OF IMPASSE

NYSPERB Case: M2016-156

between

**THE MAINE-ENDWELL
CENTRAL SCHOOL DISTRICT
and**

**THE MAINE-ENDWELL
TEACHERS ASSOCIATION, NYSUT**

**Fact-Finding Report and
Recommendations**

of

**Timothy W. Gorman,
Fact Finder**

Appearances:

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

For the Association: Maine-Endwell Teachers Association chose not to appear
(see below)

Also Present

For the District: Jason VanFossen, Superintendent
Jeff L' Amoreaux, Assistant Superintendent

For the Association: None

Date of Hearing: October 30, 2017

Date of Briefs: None

Date of Report: November 20, 2017

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 Maine-Endwell Central School District and the Maine-Endwell Teachers Association, NYSUT. On October 30, 2017 a fact-finding hearing was held at the Maine-Endwell Central School District offices. At this hearing both parties were given the opportunity to present their respective bargaining positions. The District appeared at the hearing and made its presentation. The Teachers Association failed to appear (see a further account of this development below). Upon completion of the District's presentation I declared the hearing closed.

NOTE ON APPEARANCES OF THE PARTIES

The District and the Association agreed, via email on September 12, 2017, to appear at a fact-finding hearing on October 30, 2017. On October 25, 2017 the District and I received an email from Mr. Joseph Beasley, Labor Relations Specialist, NYSUT stating that the Maine-Endwell Teachers Association had filed improper practice charges against the Maine-Endwell Central School District with New York State Public Employment Relations Board. The email further stated that because of this filing the Association was postponing its involvement in the fact-finding process until those claims are adjudicated or it received direction from PERB to the contrary.

After consulting with PERB, on October 25, 2017, I sent a return email to both Mr. Beasley and Randy Ray, Labor Relations Specialist for the District., In it I stated that if

situations arise that can be determined to be central and not ancillary to any further discussions only then can the impasse procedure and fact-finding be postponed. I further stated to the parties that the issues raised in the Association's Improper Practice charge (that as of October 25, 2017 had yet to be processed by PERB) were ancillary, therefore the fact-finding would go on as scheduled on Monday October 30, 2017 at 10:00 am at the Maine-Endwell School District offices.

On October 26, 2017 the District and I received another email from Mr. Beasley stating again that the appropriate forum for determining whether the issues raised by the Association are central and not ancillary to any further discussions would not be found in the opinion of Mr. Ray, himself, or the fact finder, but by the Public Employee Relations Board and as such, it was, again the Association's intent to postpone involvement in the Fact-Finding process until those claims are adjudicated or it received direction from PERB to the contrary.

In a reply email to Mr. Beasley and Mr. Ray dated October 26, 2017, I reiterated that I was clear in my previous email that the fact-finding hearing would go on as scheduled on Monday, October 30, 2017 at 10:00 am at the Maine-Endwell School District offices, and whether or not the Association chose to participate in this hearing, was entirely up to Mr. Beasley and the Association's negotiating team.

Finally, in an email dated October 29, 2017, from Melissa Sperling, a member of the Teachers Association negotiating team, to Maine-Endwell Teachers Association colleagues (a forwarded copy of which was sent to the District's representative Randy Ray) (District

Ex-16) she states that “the Fact Finding meeting which was scheduled for 10/30 will not occur due to the filing of our [improper practice] charge to P.E.R.B.”

Given that my email to the parties on October 26, 2017 clearly stated that the fact-finding hearing would go on as scheduled on Monday October 30, 2017 at 10:00 am, this email distributed to the Association membership was erroneous as it gave the impression that all parties had agreed to an adjournment, when in fact it was only the Association that unilaterally chose not to attend.

On October 30, 2017 at 10:00 am the Association failed to appear for the fact-finding hearing. After waiting until 10:15 am and with the Association still not in attendance, I began the hearing and the District made its presentation. A summary of that presentation along with my report and recommendations follows.

BACKGROUND

The Maine-Endwell Central School District (hereafter the Employer or the District) and the Maine-Endwell Teachers Association, NYSUT (hereafter the Association or the Union) are parties to a collective bargaining agreement. This agreement expired on June 30, 2016. Bargaining for a new agreement began in March 2016. After some 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 and the Association then jointly declared an impasse and filed with the New York State Public Employment Relations Board for fact-finding.

OUTSTANDING ISSUES

The District identified three major open issues. These are listed below:

Contract Duration
Salary Increases
Healthcare Premium Contributions

The Association chose not to appear at the hearing, therefore outlined no open issues.

SUMMARY OF THE PARTIES' POSITIONS

Contract Duration

The District

The District proposed a two-year successor agreement covering July 1, 2016 through June 30, 2018 with changes to the Collective Bargaining Agreement involving only salary increases and healthcare insurance premium contributions.

The Association

The Association chose not to appear at the hearing, therefore gave no proposal or supporting information as to contract duration.

Salary Increases

The District

The District proposes salary increases of 2.95% on the first year of the new contract and 2.95% in the second year. The District believes this offer to be fair and makes the following points in support of its proposal:

The Combined Wealth Ratio of Maine-Endwell (District Ex-5) sits in the middle of all districts contained within the Broome Tioga BOCES component schools and is below the state average. The Combined Wealth Ratio (CWR) is a measure of relative wealth, indexing each school district against the statewide average on a combination of two factors; property wealth per pupil and income wealth per pupil. A school district's wealth is measured by comparing its property value per pupil with the state average property value per pupil, and the district's adjusted gross income per pupil with the state average adjusted gross income per pupil. The ratios derived from these comparisons are multiplied by .5 and added together to form the Combined Wealth Ratio.

Maine-Endwell's CWR is 0.543 and the state average for all schools within the Broome Tioga BOCES is 0.569; therefore, the District is not wealthy when compared to the average of the other 14 schools contained within the BOCES component schools.

The District tax levy per pupil (District Ex-8) is also in the middle of all districts in the Broome Tioga BOCES area, and is outpaced by six of the other fourteen districts. This, when combined with the Combined Wealth Ratio, shows that the District simply does not have unlimited funds for salary increases.

As for salaries of its teachers the District sits squarely in the middle of all districts contained within BOCES component schools (District Ex-10). Its average salary for full time teachers is \$58,680 which is above the average of \$57,726 for all schools. In a Basic Educational Data Summary (BEDS) (District E-11) Main-Endwell full-time classroom teachers are paid better than the BOCES District Average in the 5th, 25th, 50th and 95th percentiles average, and only slightly less in the 75th percentile.

Lastly, recent area contract settlements have come in at an average of 2.76% in 2016-2017 and 2.94% in 2017-2018 with the average salary increase for all districts from 2010-2011 through 2018-2019 being 2.69% (District Ex-13). These figures are below the District's proposed 2.95% increase for each year of a new two-year contract.

The Association

The Association chose not to appear at the hearing, therefore made no proposal or supplied any supporting information as to salary increases.

Health Insurance Premium Contributions

The District

The District has proposed that teachers contribute 11% toward their healthcare insurance premium in the first year of the new contract and 11% in the second year. Unlike the expired contract, these contributions will have no dollar cap associated with them. The District believes this offer to be fair and makes the following points in support of its proposal:

When compared with the average of all schools contained within the BOCES component school districts Main-Endwell pays a higher percentage of the total costs of healthcare premiums than other districts. For the 2016-2017 school year, the District paid 90.4% of an individual's healthcare premium, with the teachers paying 9.6%. As for a family plan the District paid 91.1% of the healthcare premium, with a teacher paying 8.9%. These percentages are higher than the average of other BOCES component schools. The average amount paid by the other districts was 88% of an individual plan and 87% of a family plan, while the teachers in these districts paid 12% of the premium for an individual plan and 13%

for a family plan (District Ex-14). When compared with other districts Maine-Endwell's proposal of and 11% teacher healthcare premium contribution is fair.

To support its proposal that healthcare premiums paid by teachers should have no dollar cap attached to the percentage, the District pointed to a December 10, 2015 signed healthcare side letter of clarification in the expired contract. The two pertinent paragraphs read as follows:

“The purpose of this letter to provide clarification to a recent change made to the health insurance provisions of the Maine-Endwell Teachers Association contract. The parties agree that upon expiration of the 2013-2016 Collective Bargaining Agreement, if a successor agreement is not entered into prior to July 1, 2016, that the contribution rate for Maine-Endwell Teachers Association members toward the annual health insurance premium shall be the lesser of either eleven percent (11%) of the cost of a family plan or two thousand one hundred dollars (\$2100) and/or eleven percent (11%) of the cost of an individual plan or nine hundred fourteen dollars (\$914).

The Parties further agree that upon reaching a successor Collective Bargaining Agreement to the 2013-2016 contract the cap of two thousand one hundred dollars (\$2100) or nine hundred fourteen dollars (\$914) shall sunset and be eliminated, and Maine-Endwell Teachers Association members shall pay a minimum eleven percent (11%) toward their annual health insurance premium” (District Ex-1 page 67).

With this letter the Association has effectively agreed to eliminate the caps on teacher healthcare premium contributions in a successor Collective Bargaining Agreement.

The Association

The Association chose not to appear at the hearing, therefore made no proposal or supplied any supporting information as to teacher healthcare insurance premium contributions.

FACT FINDER'S REPORT AND RECOMMENDATIONS

NOTE ON REPORT AND RECOMMENDATIONS OF THE FACT FINDER

It is difficult to write a report and give recommendations as to the issues in this impasse with only one party participating. The Association made the conscious decision not to take part and contribute to this process. Had it done so the issues they raised and proposals they put forth would have been given consideration in fashioning some recommendations for the parties to use as they further negotiate a new contract. Notwithstanding the Association's lack of participation, the Public Employment Relations Board has given me the power to carry out the purpose of the fact-finding process, which is to inquire into the causes and circumstances of the dispute and transmit these findings to the employer and employee organization involved. Those findings are below.

Contract Duration

Recommendation

With no other information than the Districts, I find a two-year agreement covering July 1, 2016 through June 30, 2018 to be appropriate.

Salary Increases

Given the District's Combined Wealth Ratio (CWR) that is lower and its average salaries being higher than the average of all districts contained within BOCES component schools, along with the recent settlements of other teacher contracts, the District's proposal

of salary increases of 2.95% in the first year of the new contract and 2.95% in the second year is reasonable.

Recommendation

Teacher's salaries will be increased by 2.95% in first year of the new contract and 2.95% in the second year of the new contract.

Health Insurance Premium Contributions

The District has proposed that Teachers contribute 11% toward their healthcare insurance premium in the first year of the new contract and 11% in the second year. In the current 2016-2017 school year the District is paying a higher percentage of the total healthcare premium than the average of other BOCES component schools. It pays 90.4% of an individual's healthcare premiums, with the teachers paying 9.6%. As for a family plan the District paid 91.1% of the healthcare premium, with the teachers paying 8.9%. The average amount paid by the others districts was 88% of an individual plan and 87% of a family plan, while the teachers in these districts paid 12% of the premium for an individual plan and 13% for a family plan.

The District also proposed the elimination of the dollar caps associated with the percentages paid by teachers toward healthcare. The side letter (see above) states that the Teachers would agree that the caps on healthcare insurance premium contributions would sunset and therefore be eliminated from the new contract.

As the Association failed to appear and therefore made no case as to why this side agreement should not take effect in the new contract, I believe this agreement should be honored by both parties.

Recommendation

Teachers will contribute 11% toward their healthcare insurance premium in the first year of the new contract and 11% in the second year. These percentage contributions will have no dollar caps attached to them.

CONCLUSION

It was disheartening to see the Association refuse to participate in the fact-finding process. Had they done so this report and its recommendations may have been different and more inclusive of the Association's concerns and proposals. With the Association's input the parties could have used this report to serve as a catalyst to resume their negotiations which could lead to an agreement that would have been mutually beneficial to all.

Date: _____ Signed: _____

Timothy W. Gorman, Fact Finder