

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**REPORT AND RECOMMENDATIONS
FOR SETTLEMENT**

In the Matter of the Fact-Finding Between

Manalapan-Englishtown Board of Education

-and-

Manalapan-Englishtown Education Association

PERC Docket No. FF-2012-032

Before: Frank J. Cocuzza, Fact-finder

Appearances:

For the District: William F. Hybbeneth, Consultant

For the Association: Joseph Keough, NJEA Field Representative

Peter Vala, NJEA Associate Director, Research
and Economic Services

Robert Bobick, NJEA Associate Director, Research
and Economic Services

Procedural History

The Manalapan-Englishtown Regional Board of Education (hereinafter the Board or the District) and the Manalapan-Englishtown Education Association (the Association) are parties to a Collective Bargaining Agreement (CBA) covering the period July 1, 2007, through June 30, 2011 (Exhibit J-1). That Agreement recognizes the Association "...as the majority representative for collective negotiations concerning terms and conditions of employment..." for the employee categories listed thereafter and addressed in this report (CBA, Article 1.1, Recognition).

The parties negotiated over a successor to that Agreement but made little progress in resolving the main issues of salary and health benefits prior to filing with the Public Employment Relations Commission (PERC) for impasse proceedings. A mediator was assigned by PERC who then met with the parties on several occasions, but their disagreement on the basic issues as well as a number of language and working conditions items remained unresolved. On January 9, 2012, the undersigned was assigned by PERC to serve as the parties' fact-finder pursuant to N.J.A.C. 19:12-4.2.

With the cooperation of the parties, a pre-hearing mediation session was held on February 9, 2012, in an effort to bring them to a voluntary resolution of the impasse. With no settlement having been achieved at that session, however, a hearing was scheduled and held on April 30, 2012, at which time the parties were given full opportunity to submit evidentiary documents and to present the testimony of witnesses in support of their respective positions. The parties agreed to submit post-hearing summaries of their presentations, which reached the fact-finder prior to July 30, 2012, and the record was deemed closed at that point.

Background

I have carefully reviewed all of the data submitted by the parties both in their thorough presentations at the hearing and in their post-hearing submissions. The reproduction of that copious material in this report is unnecessary. Some basic

information will be sufficient to establish a basis for the parties' rationales and the fact-finder's discussion and recommendations on the issues.

The Manalapan-Englishtown Regional school district is grouped by the state of New Jersey in District Factor Group (DFG) GH, a socioeconomic classification which places the district just below the state's most financially and socially advanced I and J groups. The district contains eight schools (one pre-K, five grades 1-5, one 6th grade stand alone, and one 7-8 middle school) serving the two suburban Monmouth County communities of Englishtown Boro (population 1,847) and Manalapan Township (population 38,872) (NJ Municipal-County Demographic data, 2009/10). The district sends its graduating eighth graders to Freehold Regional High School in Englishtown.

The 2009-10 NJ DOE district report card indicates a budgeted total cost per pupil for the district of \$13,308 compared to a state average for similar districts of \$14,288. Per pupil expenditures on classroom salaries and benefits (\$6,459) is also below the state average of \$7,759. Faculty salaries average \$56,688 (with a nine-year experience average) against the state's \$57,560 (ten years of experience). The report card also shows the district spending 56% of its total comparative expenditures for teacher salaries and benefits against a state average of 58%. Given its student outcomes, this relatively well-off school district is doing a superior job of educating its children while spending some \$1,000 less per pupil than the state average and approximately \$1,300 less on classroom salaries and benefits.

The parties agreed to a scattergram in March 2011 (Association Ex. 2-1) which indicates that in the base year of 2010-11 427.43 teachers were paid on a sixteen step salary guide at a total cost of 29.2 million dollars. The cost of movement on that four-column guide (i.e., increment) is \$676,413 or 2.32% of the guide cost (Ex. 2-2).

The number of guide steps is within the central range of all Monmouth County guides where very few contain as few as twelve steps or as many as twenty-three (Board Ex. 10a). The guide minimums and maximums on each column, however, place the district near the top of the county's 52 districts, and third among the county's fourteen DFG GH groups (Board, 10a-10b). When compared by both DFG and Group 1 factors within the county, Manalapan-Englishtown is first among seven in every column's minimum and maximum (Board, 10i). And among the seven sending districts to

Freehold Regional, only Howell (DFG FG) has higher BA and MA maximums (Board 10j). The district is obviously very well situated when its guide is compared within the county and among the Freehold Regional senders. Association exhibits attempt to mitigate this comparison by indicating a county placement of 23 of 53 districts on median salary (Assn 4-29), but only by extending the salary comparisons outside Monmouth to statewide DFG-GH districts is the Association able to show a less favorable comparative picture (Assn 4-35 thru 4-63). Most fact-finders would tend to agree with the Board when in their brief the argument is made that the further afield one gets with these salary comparisons, the more diluted their impact on the instant case becomes.

As difficult as it is for the Association to paint a dismal salary picture in Manalapan-Englishtown, it is almost as heavy a lift for the Board to conceal its ability to fund a fair increase. In fact, the Board has not made any claim regarding its inability to pay, but has consistently emphasized the necessity for a settlement that is within comparable ranges. The Association underscores the affordability issue by pointing to the district's low property tax ratio vs. the county and the state (Assn 6-18). On the revenue side, the Board has shown an average of \$850,720 in unanticipated surplus in each year over the last ten years and received in excess of \$700,000 in unanticipated state aid for the 2011-12 school year (2.4% of the base salary cost). This is in addition to a \$700,000 savings resulting from nineteen replacement teacher salaries (breakage) in 2011-12 (Assn 5-19 abc). And mandated Chapter 78 employee medical contributions will average over \$640,000 each year over the life of a three-year agreement (Assn brief, pp. 10-11). In short, while the Board has illustrated that its teachers are already comparatively well compensated, the Association has been able to show that there is definitely room for an adequate financial settlement.

To answer the question as to what a "comparable settlement range" might look like, the Association submits exhibits showing 31 of 54 Monmouth districts reporting 2011-12 settlements averaging 3.21%, 2.65% for 2012-13 (16 districts), and 2.25% for 2013-14 (5 districts). Statewide, DFG-FG districts averaged 2.89% in 2011 (54 of 75 districts reporting), 2.58% in 2012-13 (33 districts), and 2.15% in 2013-14 (11 districts) (Assn 5-25). Using only settlements reported by Monmouth County DFG-GH districts, the following can be extrapolated from the Association's 5-40 through 5-50 exhibits:

	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>
Monmouth Regional	2.0 %	2.0 %	2.0 %
Freehold Regional	4.0		
Oceanport	4.3		
Atlantic Highlands	4.5		
Shore Regional	3.95	3.95	
Freehold Township	3.5	2.9	

(It is assumed that the 2011-12 settlements in the 4% range were all back ends of multi-year agreements.)

In addition, the CPI for 2011 was 3.3% for NY/Northeast NJ and 2.9% for Philadelphia/Southwest NJ (Assn 5-23).

One health insurance issue has been contentious. The CBA currently requires a 10% premium contribution from unit members for SEHBP and Delta dental dependent coverage (Article XXVII.27.2:3). Whereas the Association understands that the Chapter 78 mandated employee contributions do not preclude this now additional contractual contribution, it argues that it is “logical” for it to be eliminated, pointing to the Board’s prospective statutory receipt of over 2% in average employee contributions vs. the base salary cost, and insisting that it is “onerous” for the Board to maintain that it should collect twice from the same employees. The Board has taken the position that nothing has been proffered by the Association of a comparable value as an inducement for the elimination of these in-house contributions, which have been part of the parties’ collective agreements since 1991. The 10% contractual employee contribution for dependent health coverage is not eliminated in the Board’s package. At the hearing the Board withdrew its proposal to move all unit employees from the SEHBP Direct 10 plan into the lesser Direct 15 plan.

The Association and the Board also have been unable to close a considerable gap on the issue of compensation. First, the Board points to a fairly recent Commissioner’s decision (Ramsey, 2011) in which it was held that any negotiated agreement that extends beyond three years, including any retroactive year(s), is precluded by law (decision submitted with Board brief). According to the Board that decision prevents the instant settlement from going beyond the 2013-14 school year. The Board then offers a three-

year salary package at 0% in 2011-12, 1.5% in 2012-13, and 1.5% in 2013-14 (all years inclusive of increment). In addition, the Board has been adamant in its position that there be no retroactivity for 2011-12 irrespective of whether or not the settlement should go beyond their zero offer for last year. [Note: At the hearing the Board stated that it could accept a salary increase for 2011-12, but underscored its opposition to any retroactive payment which might accrue as a result.] At the hearing the Board also withdrew its proposal to enroll new employees into the SEHBP Direct 15 plan, thus maintaining the richer Direct 10 plan for everyone. The 10% contractual employee contribution for dependent coverage is not eliminated in the Board's package.

The Association seeks a four-year settlement (despite Ramsey) of 2% in each year exclusive of increment, with full retroactivity for the 2011-12 school year. Using just the 2011-12 increment cost off the 2010-11 base (i.e., without using the Association's Exhibit 4 demonstration guides) would bring their demand to 4.32% in each of four years, or 18.4% compounded over that period, and 13.5% over the Board's three-year span. For comparison sake, the Board's 0%-1.5%-1.5% compounds to slightly over 3%. So after bargaining and through mediation, the parties are yet a whopping 10% apart over three years. And in addition to the retroactivity argument in year one, the Association absolutely must have the 10% employee dependent benefit contribution disappear.

And there are nine other issues:

- Article 7.4:1 and 7.4:2 (Faculty meetings)

The CBA allows for up to two faculty meetings and four professional meetings each month (7.4:1); and it allows for the combining of two one-hour professional meetings into one two-hour meeting each month (7.4:2). The Association proposes substituting the six meetings of 7.4:1 with three (3) monthly meetings and deleting the 7.4:2 combination provision. The Board opposes both changes.

- Article XXI (Sick leave)

The Association would change the current formula for sick leave severance pay (21.2:1) and the maximum payout (21.2:3) from \$80 per banked sick/personal day to \$100 per day and increase the maximum payout from \$8,000 to \$75,000. The Board rejects any proposal to alter

this provision.

- Article XXII (Personal/professional days)

22.1 provides for two personal days per year which cannot be taken at the beginning or end of a holiday or school closing. The Association proposes an increase to three personal days per year and an elimination of the restrictive holiday/school closing language. The Board rejects these proposals and would substitute the "...shall be granted..." language for professional days in 22.2:4 with more permissive "...may be granted..." language, a change which is not acceptable to the Association.
- Article XVII (Evaluation)

17.4:8 prohibits the observation of teachers on Back to School Night or during conference days. The Association would extend that prohibition to any shortened day, while the Board would accept such a restriction if the language "...unless the teacher agrees to such evaluation" were added.
- Article XXIII (Maternity/child rearing leave)

23.3 requires a teacher seeking medical or child rearing leave associated with pregnancy to give the Board sixty days notification. The Board would increase that notification period to ninety (90) days. The Association is opposed to the change.
- Article XXIV (Professional development)

24.4 currently allows for pre-course tuition reimbursement. The Board would move to reimbursement after satisfactory course completion, and would prohibit reimbursement for non-returning teachers as well as adding a schedule of repayment to the District for teachers who do not complete three full years of employment following reimbursement for earned credits. The Board also wishes to add new language granting columnar guide movement only on September 1st and February 1st. The Association is opposed to all these Article XXIV modifications.
- Article XXVII (Insurance)

The Board would delete all of 27.3, which provides for Board sponsored health benefits in retirement for qualifying employees, claiming that the

language predates the current law regarding retiree benefits, and that no retired unit members are currently covered under this article. The Association is opposed to the elimination. As previously mentioned, the Association wants the 10% dependent coverage contribution to vanish; the Board wants it to stay.

- Articles VII, XI, and XVI (Hourly rates)

The Association proposes raising all contractual hourly rates (currently \$33.50 in all three articles) by the same percentages each year as the negotiated settlement. The Board finds the rates sufficient and proposes freezing them at their current level.

- Honoraria (Extra/co-curricular guides)

As with the hourly rates, the Board proposes freezing the current stipends and establishing a joint committee to review all honoraria. The Association seeks an increase by the negotiated settlement percentages in each year and rejects the Board's committee proposal.

Recommendations

Before I offer suggestions for unraveling this dispute, I must state that I am aware that my efforts will be wasted if this report does not reside within the bounds of acceptability to both parties. I have attempted to strike a balance between the positions of the Board and those of the Association. However, the report must be viewed as a whole document. A recommendation in any one area is not made in isolation, and I have given consideration to each issue's impact on the report's entirety. I expect both the Board and the Association to be disappointed with some recommendations, but I urge them both to view the report as an attempt at a balanced and realistic template for settlement. On this basis I make the recommendations that follow.

Salary (Article XI)

Although both parties did a superior job, both had a difficult time justifying their extreme salary positions. There is nothing in the budgetary documents, the comparatives, or the record upon which I might rely to recommend either a three-year 3% increase (with no retroactivity) or a four-year 17.28% increase. Secondly, I have to agree with the Board in its reliance upon Ramsey in arguing against a four-year deal; but for me, their steadfast position against any retroactivity for year one is problematic. Their rationale represents an attempt to punish the Association for not bargaining in a manner and timetable acceptable to the Board, and perhaps for the Association's having refused to re-open on salary in the last year of the previous agreement as well. I am mitigating the effect of the retroactivity, however, by moving half of what is owed into July 2013. Also, given the difficulty the parties will have mutually developing first-year guides with an increase less than the incremental load and mindful of the length of time it has already taken to effect a settlement, I am making a recommendation regarding a simpler distribution of the retroactive percentage. Therefore, based upon these views and a thorough review of all the salary exhibits presented, I recommend:

Year one (2011-12): 2.0% of the 2010-11 base cost retroactive to July 1, 2011, with no incremental movement. The 2% is to be applied to each step of the 2010-11 guide without movement (i.e., everyone will remain on his/her step into the 2011-12 school year). Half of the retroactivity owed to each teacher will be paid in a lump sum on or before December 1, 2012, and the remaining half on July 1, 2013.

Year two (2012-13): 2.5% (inclusive of increment) of the new 2011-12 base cost with guides to be mutually developed.

Year three (2013-14): 3.0% (inclusive of increment) of the new 2012-13 base cost with guides to be mutually developed.

Health Insurance

It is difficult to ignore the fact that the contractual employee contribution of 10% of premium for dependent coverage is now in addition to the substantial statutorily mandated contribution. Although the state did not see fit to require such in-house contributions to phase out with the implementation of Chapter 78, it is also true that the parties' 1991 agreement on this matter could not have envisioned such a circumstance. Furthermore, the Association has shown just such a phase out of in-house provisions in districts throughout Monmouth County, and they have done a good job of illustrating the financial impact of the double contribution. Affected employees have already contributed the 10% for the retroactive year of 2011-12, and I have recommended salary retroactivity over the Board's strong objections, so I will leave last year's contributions alone and provide a two-step elimination of the 10% going forward. **I recommend a reduction to 5% of dependent premiums for all coverages for 2012-13 and the elimination of the contributions entirely for 2013-14. The parties will develop save harmless language requiring a 5% and 10% phase in over two years following any statutory elimination of the Chapter 78 contributions.**

27.3 is a article that the Board wishes to strike as obsolete, but the Association claims to have some members currently enjoying retirement benefits under its provisions (if not in this unit, then among previous MESSA members). The Board's briefs indicated that there are no such retirees among former teachers, and if any exist among former support employees, they do not wish to curtail those benefits by eliminating the language. Both points are well taken. **I recommend replacing 27.3 with language that eliminates the benefit prospectively, but which holds current retirees save harmless.**

Honoraria and Hourly Rates

The contractual hourly rates in Articles VII, XI, and XVI are \$33.50. The Board proposes a freeze at that rate while (based upon my recommendation of 7.5% in wage increases over three years) the Association would have the hourly rate increased to \$36.00 by 2013-14. **I recommend freezing the rate until July 1, 2013, at which time it will increase in all three articles by \$1.00 to \$34.50.**

The extra and co-curricular guides (Honoraria) should be increased by 7.5% over the 2012-13 total guide cost effective July 1, 2013, with the distribution of that increase to be mutually developed by the parties through a committee which will make its recommendations to the Superintendent and the Association prior to the close of the 2012-13 school year. The base guide cost will be calculated utilizing only positions filled and active during the 2012-13 school year.

Faculty Meetings (Article VII)

The Association has offered no cogent reason to reduce the total number of meetings or the combination of meetings beyond a comparison with Holmdel and Marlboro, while the Board raises legitimate concerns about staff training vis-à-vis the newly minted state evaluation mandates. **I recommend no changes to the Article VII faculty and professional meeting provision.**

Sick Leave at Retirement (Article XXI)

The Association would increase the total payout at retirement from its present \$8,000 (at \$80 per diem substitute pay) to \$75,000 at \$100 per diem. The Board justifiably raises the same concerns over severance packages that have been voiced at the state level where a \$15,000 cap has been discussed. On the other hand, Article 21.2 requires teachers to be TPAF retirement eligible to qualify, so that at 10 sick days (21.1:1) and two convertible personal days (22.1:1) per year, the average teacher should have easily accumulated enough days to reach the \$8,000 maximum generated by both formulae in 21.2:1, leaving little incentive for further accumulation. **I recommend leaving the 21.2:1 formulae intact while raising the maximum payout of 21.2:3 to \$10,000 for employees retiring on or after December 31, 2013. I further recommend that said employees receive up to \$5,000 for cash-in upon retirement and the remainder of their bank value up to the \$10,000 maximum on the first anniversary of their retirement effective date.**

Evaluation (Article XVII)

My meetings with the parties leads me to believe that both would accept a recommendation to extend the current 17.4:8 prohibition on observations on Back to School Night and conference days to any shortened school day if language is included requiring individual teacher agreement to such observations, the Association's fear of intimidation notwithstanding. **I so recommend.**

Personal and Professional Days (Article XXII)

I recommend neither the increase sought by the Association (and their elimination of the restrictive language) nor the Board's proposed change to more permissive granting language.

Maternity Leave (Article XXIII)

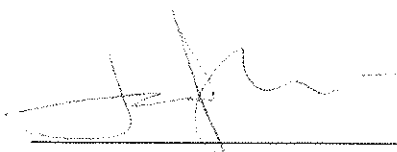
The Board's reason for seeking an increase in the sixty-day notice requirement of 23.3 to a ninety-day requirement is more persuasive than the Association's reason for maintaining the *status quo*. The increase should do no harm to unit personnel, and it has the potential for upgrading the quality of replacement teachers. **I recommend a 23.3 increase to ninety (90) days notice effective with any such leaves commencing during the 2013-14 school year.**

Professional Development (Article XXIV)

I have not been provided with enough evidence on this issue to make an intelligent decision. The Board claims that its proposal on course approval merely memorializes current practice. The Association references a settlement achieved through arbitration in 2012 that contains language to be incorporated into a successor Agreement. **I can only recommend that the parties alter Article XXIV in a manner reflecting their current practices and agreements.**

I believe that I have completely addressed the parties' outstanding issues. It remains only for me to conclude by reiterating that the purpose of the fact-finding process in public education bargaining is to provide a roadmap leading to settlement. In

that spirit, I once again urge the parties to mutually review and adopt the recommendations set forth here. Both the Board of Education and the Association need a speedy resolution to this impasse after so many months of contentious bargaining. By utilizing the template I have provided, they should be able to have an agreement in place with just a bit more work.



Frank J. Cocuzza, Fact-finder

Dated: 8/28/12
Oradell, New Jersey



SCOTT JAMES GOWE
Notary Public, State of New Jersey
My Commission Expires
December 9, 2015