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BURLINGTON SCHOOL DISTRICT *
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and *
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BURLINGTON EDUCATION ASSOCIATION *
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FACT FINDING REPORT AND RECOMMENDATIONS

BEFORE: John B. Cochran, Esq.

APPEARANCES:

For the Association: David R. Boulanger,
UniServ Director

For the School Districts: Joseph E. McNeil, Esq.
Colin McNeil, Esq.

HEARING DETAILS:

Place of Hearing: Burlington, VT

Date of Hearing: June 30, 2016

INTRODUCTION

The Burlington Education Association (Association) is the collective bargaining representative for teachers employed by the Burlington School District (District). The District provides educational services for the residents of

Burlington, VT, a community of approximately 42,000 residents located in Chittenden County in northwestern Vermont. There are ten schools in the District, with a total student enrollment of approximately 4,000 and 418 teachers. The District's 2012 Annual Report reflects that thirty-five percent (35%) of the students are non-white, more than thirteen percent (13.6%) are English language learners, and forty-six percent (46%) are eligible for free or reduced meals. All of these figures are noticeably higher than the statewide averages, which present challenges for the District to meet the needs of its diverse student population.

The parties began negotiations for a successor to their 2013-2016 collective bargaining agreement in the fall of 2015. Because they were unable to reach agreement on the terms of a successor agreement, they proceeded to mediation in March 2016, but were still unable to reach agreement. Subsequently, the parties jointly selected me to serve as a fact finder, and, on June 30, 2016 I conducted a fact finding hearing and provided both parties an opportunity to present relevant evidence and argument on the issues that remain in dispute: 1) total compensation, including salary and benefits; 2) number of authorized personal days; 3) elementary teacher work day; and the high school teachers' work day.

At the hearing, the Association presented evidence and argument related to its proposal to amend Article VI, Teaching Duties, Article VII, Duties, and Article VIII, Working Conditions to clarify how teachers spend their time during the school day. Robert Abbey, a third grade teacher testified that the parties had agreed during their last round of negotiations to form a committee to explore changes in the elementary work day, and the committee had agreed in principal on the changes, which have not been fully implements. Similarly high school teacher Scott Hubbard recounted that he and the former high school principal had agreed on changes regarding the high school work day that would reflect current practices at the high school, although the parties had never formally adopted them. At the hearing on June 30, I advised the parties that I believed it was premature for me to address these two issues until the parties had had an opportunity to jointly explore the work day changes Abbey and Hubbard described. Therefore, because the parties have had fruitful discussions about the elementary and high school work days, I will defer any recommendations on the Association's specific proposals to give the parties an opportunity to continue discussing those two issues.

I have considered the remaining two issues in light of

the parties' oral presentations at the fact finding hearing and the supporting documentation they submitted in support of their respective positions on those issues. Based on the evidence and arguments presented by the parties regarding the "Living Contract" language in Article XVII.2(c) of the parties' 2013-16 collective bargaining agreement; financial challenges facing the District, and comparisons of existing and proposed salary and benefit levels to those in comparable communities, I make the following recommendations on remaining issues in dispute.

RECOMMENDATIONS ON ISSUES IN DISPUTE

ISSUE NO. 1

ARTICLE XVIII - SALARY

Current Contract Language

18.2(c) The parties have adopted a new model and methodology for determining professional compensation to those employees covered by the Agreement. The concept is known and designated as "the Living Contract." The parties have endorsed the principle that henceforth, compensation and other economic conditions will be determined by means of creating and thereafter preserving a relative placement for Burlington teachers among the school districts in Chittenden County, Vermont. The agreement is that Burlington teachers will, over the three (3) years of the CBA be placed in the middle of the middle tier of such compensation and economic conditions strata (currently 5th place among the 9 Chittenden County school districts). Changes to the current selection of economic conditions to be included in the middle of the middle comparison may be agreed to by the parties in the ground rules adopted at the beginning of each negotiation cycle. To this end, professional compensation for teaching

services will be as depicted on Exhibit A, attached hereto and incorporated in this Agreement for the 2013-2014, 2014-2015 and 2015, 2016 school years. Additionally, the legal obligation to preserve the status quo while the parties bargain a successor agreement shall be deemed to include the obligation to make the necessary adjustments so as to preserve the placement of Burlington teachers in the middle of the middle tier of Chittenden County for the 2016-2017 school year and to maintain such placement at least until good faith bargaining has occurred and/or utilization of the mandatory impasse procedures have been completed to a different result.

District Proposal

The District has made a two-prong economic proposal. First, it proposes that the parties delete the language of Article 18.2(c) from their collective bargaining agreement. Second, it is proposing a 1.8% across-the board salary increase, with no step increases for 2016-17.

The District asserts that the language of Article 18.2(c) setting out a "Living Contract," which guarantees Burlington teachers a total compensation package that assures they will always be in the "middle of the middle" of school districts in Chittenden County is ill-conceived for two principal reasons. First, it is not economically sustainable because it commits the District to meet an artificial compensation standard without regard to its ability to pay or the ability to allocate its scarce resources in the best interests of the diverse student population it must serve. Second, it is concerned that the existing contract language is undemocratic

and undermines local control over the District's finances because it bases the compensation for Burlington teachers on decisions made by other school districts in Chittenden County. In sum, the District believes that requiring it to compensate teachers at the "middle of the middle" for Chittenden County is at odds with the process of collective bargaining by subjecting it to unsustainable cost increases that are dictated by agreements in other districts over which it has no control.

According to Dr. Stephanie Seguino (Seguino), the Vice-Chair of the Burlington School Board and a member of its negotiating committee, the District's offer of a 1.8% salary increase reflects the District's goal of paying teacher salaries that are affordable on a sustainable basis while still offering teachers a competitive compensation package. Seguino testified that there are several financial constraints facing the District, including the loss of millions of dollars of federal funds, the loss of \$1,000,000 in annual PILOT funds, and the need for over \$65,000,000 for deferred maintenance and renovations to schools in the District. Further, she emphasized that, unlike most other districts in Chittenden County, Burlington is a more diverse district that includes large numbers of English language learners and students from economically disadvantaged homes,

which places additional financial pressure on the District to meet the educational needs of that diverse student body.

Similarly, Nathan Lavery (Lavery), the District's Senior Director of Finance, has identified fiscal constraints facing the District. For example, when putting together its FY '17 budget, it relied on Act 46, which had previously placed a cap on educational spending, and that cap for Burlington would have been approximately \$1,200,000 in FY '17¹. Further, to balance its FY 2017 budget, the District cut \$400,000 central administration staff and operational costs and an additional \$1,000,000 from its schools. In addition, it had to rely on \$1,100,000 surplus from an overcharge by the Burlington Electric Company, which was a one-time source of revenue that will not be available in future years.

According to Lavery, the cost of the Association's proposal, which he believes would include a 5.7% increase² in base salary, plus column and step movement and increased health insurance costs to the District would cost the District in excess of \$2,000,000 and far exceed its budgeted

¹ Because the State has changed how Act 46 is applied to various school districts, Burlington will not be subject to penalties for exceeding the cap going forward. However, the District based its FY '17 budget on the law as it was being applied at the time.

² This figure appears to be at odds with the Association's formal written proposal, which reflects a total new money salary cost of 5.29%.

\$1,200,000 spending cap. In contrast, the Districts proposal, which includes only a 1.8% across-the-board salary increase and no change in the percentage of the teachers' health insurance premium compensation, would cost approximately \$690,000, which is more in line with the District's ability to pay consistent with its budget.

In addition to its formal economic proposal, the District has presented evidence concerning an alternative approach to teacher compensation for 2016-17. That alternative approach, as described by Howard Smith (Smith), Burlington's former Interim Superintendent and a bargaining consultant for the District, focuses on "sustainability," which he describes as a balance between the demand on resources and the District's ability to meet that demand. According to Smith, the salaries for teachers in the District have caught up with other professions, and the District now needs to spend money differently to meet other educational demands.

In Smith's view, the Association's proposal is not sustainable because the total compensation for teachers, including step increases and increases in the District's cost of health insurance would be approximately 6.6%, compared to the average pay increase in the general workforce of 2-3%. Accordingly, he suggests an alternative model of teacher compensation that is not tied to comparisons with other

districts and does not include automatic step increases. Pursuant to this alternative approach, Smith presented a hypothetical salary grid for 2016-17 that he believes would distribute increases in a more equitable manner by eliminating step 1 and adding a new step to each column instead of step movement. And provide teachers with an average salary increase of 2.92% for the year. In addition, he suggests the parties agree to increase the employee share of health insurance premium contributions from 15% to 19% and to limit tuition reimbursement in a manner that gives the District the discretion to redirect professional development resources in an manner that best meets student needs.

Association Proposal

The Association proposes there be no change in the "Living Contract" language of Article 18.2(c), no change in the current salary grid, and no change in benefits Burlington teachers enjoy under the expiring agreement. Rather, the Association proposes a new money salary increase of 5.29% or \$1,470,692, which it contends is necessary for teachers to retain their relative position in the "middle of the middle" of total compensation among the districts in Chittenden County.

The Association contends it is incumbent on the District

to live up to the "Living Contract" language it agreed to only three years earlier. It emphasizes that, at the time the parties agreed to that language, they considered the relative financial position of Burlington teachers in relation to those in other districts in Chittendenn County and agreed that the District could only attract and retain the best teachers if its total teacher compensation package was at least in the "middle of the middle" for the county. According to the Association, salaries for Burlington teachers were 5th out of the nine (9) districts in the County, and, in light of increases in the other districts they are now 6th out of the nine districts. Therefore, for Burlington teachers to retain their relative standing in Chittenden County, their salaries must be adjusted by \$1,140,896. In addition, the Association is committed to continuing an indexed salary schedule that provides a pathway to the future and recognizes the long and arduous period of apprenticeship teachers go through. Therefore, in addition to the overall salary adjustments need for Burlington teachers to retain their position in the "middle of the middle," the Association proposes \$329,733 in step increases based on the current distribution on the salary schedule, for a total of \$1,470,692, or a total increase of 5.29%.

In the Association's view, its proposal is well within

the District's ability to pay because it represents only 34.8% of the District's overall FY '17 budget, a reduction from the percentage of the FY '16 budget devoted to teacher salaries, which was 35.04%. Further, the Union emphasizes that these increases are necessary for Burlington teachers to retain their relative position in the "middle of the middle" in light of 2016-17 new money salary increases in other districts in the county.

Recommendation³

The applicable Vermont statutes regarding fact-finding for negotiation disputes between school districts and teachers unions offers few insights into the criteria that fact finders should apply when making recommendations on wages and other economic benefit. However, both the portion of the law dealing with binding interest arbitration and As I Section 1732(d) of the Vermont Municipal Employees Labor Relations Act sets out the criteria that I believe are most

³ Although the District presented what it characterized as an "alternative" approach to compensation based on a new salary grid, the parties have never had an opportunity to negotiate over that concept. I believe it would be unfair for me to comment on it without the benefit of the Association's formal position on it. Therefore, my recommendation is limited to the parties' proposals during bargaining for their 2016-17 agreement, and, in light of my recommendation below, the District's alternative approach would be more properly raised during the parties' next round of negotiations.

relevant for analyzing the parties' respective economic proposals: 1) the wages and benefits of similar employees in comparable school districts; 2) the ability of the District to pay in light of current economic conditions; 3) the cost of living index; and 4) the overall compensation teachers currently receive. Therefore, my recommendation is guided by these criteria.

"Living Contract" Language

The starting point for my analysis must be the "Living Contract" language in Article 18.2(c), which the parties agreed to in their last round of negotiations in 2013. This unique language was designed to ensure that the total compensation for Burlington teachers remained in the "middle of the middle" for all school districts in Chittenden County. The challenge in applying this language literally is that it is necessary to calculate the current cost and value of each economic item in the parties' agreement including salaries, insurance benefits, education reimbursement, leave benefits, sick leave buyback, and any other financial incentives to arrive at a precise calculation of the total compensation package of Burlington teachers in relation to those in the other districts in Chittenden County. Because the parties' current round of

negotiations has focused primarily on salary comparisons, however, it is difficult, if not impossible for me as a fact finder to make any meaningful recommendations about what constitutes the "middle of the middle" for total compensation. Therefore, I will follow the parties' lead and focus on where the salaries of Burlington teachers fall in the county.

Although the District has proposed deleting the "Living Contract" language of Article 18.2 on the ground that it is not sustainable and cedes the District's ability to bargain economic items by linking them to the agreements negotiated in other districts, I am unable to recommend that the "Living Contract" language be deleted at this time for several reasons. First, even though the District is justifiably concerned that its teacher salary and benefit costs will become unsustainable because of significant increases in other districts, the record does not demonstrate that this has been the District's experience over the past three years.⁴ Second, because the relevant statutory language

⁴ Although new money salary increases for teachers in Burlington in the past three years were noticeably higher than those for teachers in other districts, it is not readily apparent that the Burlington teacher's relative total compensation, which was the goal of the "Living Contract" rose significantly. Further, even considering those salary increases, the salaries of Burlington teachers have slipped from 5th out of nine districts.

suggests that comparisons to salaries and benefits in other districts are valid criteria fact finders should consider when making recommendations, the "Living Contract" language merely incorporates those comparisons into the parties' agreement.

This is not to suggest that the "Living Contract" language is in the best interest of either party going forward. The District has raised legitimate concerns about sustainability. Similarly, the Association could face smaller salary increases or benefit cuts in future years based on the relative standing of Burlington teachers to those in other districts. However, because the parties are only negotiating a one year contract and potentially face sweeping changes in the cost of health insurance benefits in future years, I do not believe this is the time to abandon contract language that has only been in their agreement for the past three years, without further study in light of the uncertain bargaining landscape they will be facing during their upcoming round of negotiations.

At the same time, strict adherence to the "Living Contract" language will lead to an overall salary increase of 4.10% and a total salary increase including steps of 5.29%, which: 1) is grossly out of line with the average new money increases of 3.25% in the other districts in the county,

except Winooski; and 2) which could impact the District's ability to meet competing educational needs in the next year. Therefore, I recommend that the parties agree to suspend the application of the "Living Contract" language in Article 18.2(c) for the term of their 2016-17 agreement and revisit it's continued viability of that approach in their upcoming negotiations for a successor to their 2016-17 agreement in light of anticipated far-reaching changes in how health insurance benefits will be funded.

Salary Increase

I find a salary increase of 5.29% new money this year is disproportionate with increases in surrounding districts and would place a financial burden on the District for several reasons. First, the average increase in surrounding districts was 3.25%. Second, the cost of living increase during the first five months of 2016 was approximately 1.4%. Third, the District prepared a budget based on what it believed was an increased spending cap for 2016-17. Further, the District's 2016-17 budget included sizable administrative and operational cuts. Fifth, it relied heavily on a one-time source of money that will not be available in future years.

On the other hand, the District's offer of a total new money increase of 1.8% is unreasonably low when compared with

other districts in Chittenden County and would only give those teachers who are not eligible for a step a nominal increase that is less than the rate of inflation and place them in a significantly weaker position in comparison with their peers in other districts in Chittenden County. Further, Lavery testified that the District had approximately \$1,700,000 in total new money available to it for fiscal year 2016-17. Fourth the spending cap the District relied on when it prepared its budget no longer applies, which gives it more flexibility. Therefore, even though the District has legitimately concerns about allocating scarce financial resources, it has budgeted adequate money to fund an increase greater than 1.8%. Smith confirmed this when he testified that the District's budget could fund a total compensation increase of 2.46%.

A fair and reasonable new money salary increase lies somewhere between the Association's 5.28% proposal and the District's offer of 1.8%. Although there is no magical formula for identifying that point, I am guided by several factors. First, I have recommended that the "Living Contract" language in Article 18.2(c) be suspended for the 2016-17 contract term, which automatically gives the District relief from compensation increases it may not have been able to afford without jeopardizing educational

programs. Second, any increase the teachers receive must be meaningful enough to keep it from falling further behind their peers in Chittenden County. With the exception of Winooski, teachers in all other districts in the County received average salary increases in the range of 3.25%. Recommending anything less than that for Burlington teachers would subject them falling behind their current standing of 6th out of nine (9) in the county. Third, it is important for the parties to keep in mind, that they will shortly begin a new round of negotiations that will include several big picture issues, like the changing health insurance landscape and the future workability of the "Living Contract" paradigm. Therefore, I find that a salary increase of 3.25% would preserve the relative standing of Burlington teachers while those negotiations are ongoing, without placing an unreasonable financial burden on the District in the next year.

ISSUE NO. 2

ARTICLE XXIII - LEAVES OF ABSENCE

Current Contract Language

23.1(a) The Board will grant personal leave to full-time teachers of us to thirty-one (31) school hours in any one year . . .

District Proposal

The District proposes to reduce the amount of personal leave available to teachers from four days to three days. In support of its position, the District emphasizes the high costs associated with substitute coverage when a teacher is out of the classroom. In addition, it emphasizes that three days is the norm in other districts in Vermont.

Association

The Association opposes any change in the number of personal leave days available to Burlington teachers.

Recommendation

I do not recommend the parties reduce the number of personal days available to teachers from four (4) to (3). This is an economic item that is part of the overall compensation received by teachers. I have determined that a 3.25% new money salary increase is a fair and reasonable increase that allows Burlington teachers to retain their relative standing in the County, and a reduction in personal days would impact that balance. Further, it is difficult to meaningfully compare the number of personal days Burlington

teachers receive with the number teachers in other districts receive because many of those districts offer emergency and other kinds of leave in addition to personal leave.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John B. Cochran". The signature is fluid and cursive, with a large initial "J" and "C".

John B. Cochran, Fact Finder