

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

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In the Matter of the Fact Finding Between:

**GREATER EGG HARBOR REGIONAL BOARD OF EDUCATION**

-and-

**Docket No. FF-2015-067**

**GREATER EGG HARBOR EDUCATION ASSOCIATION**

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Before: Susan Wood Osborn, Fact-Finder

Appearances:

For the Board:

Capehart & Scatchard, Attorneys  
(Joseph Betley, of counsel)

For the Association:

NJEA UniServ Office #6  
By Myron Plotkin, Field Representative

NJEA Research Division

By Leigh Smargiassi, Associate Director

Witnesses:

Leigh Smargiassi, NJEA Research Associate Director  
Stephanie Tarr, GEH Education Association President  
John Keenan, District Superintendent  
Thomas Grossi, District School Business Administrator

Also Present at the Hearing:

Lauren Tedesco, Attorney - Capehart & Scatchard  
Vicki Hood, Board Member  
Kristina Carr, Board Member  
Bill Darbyshire, EA Negotiations Committee Member  
Mark Hoban, EA Negotiations Committee Member  
Joy McAlister, EA Negotiations Committee Member  
Bridget Demary-Paine, EA Negotiations Committee Member  
James Boyd, EA Negotiations Committee Member  
Joseph Seaman, EA Negotiations Committee Member

**FACT FINDER'S REPORT AND RECOMMENDATIONS**

The Greater Egg Harbor Education Association represents certificated and support staff employed by the Greater Egg Harbor Regional Board of Education. The parties have an expired collective negotiations agreement covering the period July 1, 2012 through June 30, 2015. The parties have been negotiating the terms of a successor agreement since the early spring of 2015. The parties have not been successful in reaching a settlement.

**PROCEDURAL HISTORY**

On March 11, 2015, the Board and the Association jointly filed a Notice of Impasse with the Public Employment Relations Commission ("PERC"). The Commission assigned a mediator who met with the parties in an attempt to resolve the dispute, but the impasse persisted. Mediation was unsuccessful and the mediator recommended that the Commission advance the process to fact finding.

On May 13, 2015 I was assigned as the Fact Finder by the Commission pursuant to N.J.A.C. 9:12-4.2 and the mutual selection of the parties. On October 20, 2015, I conducted a mediation session with the parties in an effort to achieve a voluntary settlement of the contract. However, these efforts were not successful, and on January 14, 2016 a fact-finding hearing was held. The parties were each given full opportunity to present

evidence and argument in support of their respective positions on the issues. The Employer and the Association each submitted voluminous sets of documents which were placed into evidence at the hearing. In addition, certain stipulations of fact were entered into the record. The parties each submitted briefs limited to certain selected language issues by March 29, 2016, and the record closed on that date.

N.J.A.C. 19:12-4.3 defines the Fact Finder's function. Subsection (d) provides, "the Fact Finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible."

#### **FINAL OFFERS OF THE PARTIES**

Both parties have placed a myriad of proposals on the table. Upon the opening of fact finding, it appears that the parties' respective positions reverted back to "square one" with regard to the breadth of their demands. Prior to fact finding, the Association had proposed 3.5% across-the-board increase in each year of the contract, plus increments. However, on the fact finding hearing record, the Association substantially modified its financial proposals to reduce its salary demands for teachers to \$500 across-the-board increase per year plus increments for teachers moving through the step guide; and \$1,200 increase each year for employees at the top step. The Association continues to seek 3.5% for the support staff for each year of the contract, plus increments. The Association has also included economic

proposals for enhanced benefits in the areas of vacation leave, advanced education stipends, tuition reimbursement, extra-curricular and co-curricular stipends, longevity, shift differential, health care contribution reductions, and bereavement leave.

The centerpieces of the Board's proposals are additional time and greater discretion to the Board in scheduling, assignments and transfers, although at the fact-finding hearing, the Board did reduce its demands for more time back from the teachers. More specifically, the Board now seeks to lengthen the school year by two additional days (reduce from four additional days), to double the number of after-school faculty/departmental meetings (reduced from 30 to 20 meetings), and to lengthen the work day for support staff by thirty minutes daily. As to the enhancement of management's discretion, the Board proposes to eliminate the contract language limiting the length of class periods. It also proposes to eliminate the contract article concerning summer school, eliminate the stacking of FLMA leave with sick leave, and eliminate seniority from the layoff clause.

The Board has offered a 0.5% salary increase for all unit employees for each year of the contract, inclusive of increment payments. To accomplish this, the Board proposes a restructuring of salary guides. It also suggests that the minimum starting salary for teachers be increased to \$50,000. Each of these proposals will be discussed more fully below.

**FINDINGS OF FACT****Demographics**

The Greater Egg Harbor Regional High School District ("GEH" or "District") is a regional public high school district in Atlantic County, New Jersey. The District consists of three schools -- Oakcrest High School, Cedar Creek High School and Absegami High School. The District serves students in the ninth through twelfth grades from its constituent municipalities of Egg Harbor City, Galloway Township, Hamilton Township, and Mullica Township together with districts of the City of Port Republic and Washington Township (in Burlington County) who attend as part of sending/receiving relationships. (EA-F-1)

The GEH geographic area is the largest in the State, covering 293 square miles. The District offers a challenging and comprehensive curriculum designed to meet the needs of a diverse student population including special needs, vocational training, college preparatory, honors, advanced placement and training in the performing arts.

The District is classified by the New Jersey Department of Education as being in District Factor Group ("DFG") CD; the sixth-highest of eight groupings. DFG'S organize districts statewide to allow comparison by common socioeconomic characteristics of the local districts.

As of the 2014-15 school year, the District's three schools had an enrollment of 3,487 students and 285 classroom teachers

(on a full-time equivalent (FTE) basis), for a student-teacher ratio of 12:1. As of the 2015-16 school year, student enrollment decreased to 3,265 students.

The Greater Egg Harbor Regional Education Association's ("EA") bargaining unit consists of 307 certificated employees, including teachers, guidance counselors and nurses; 36.61 FTE<sup>1</sup> paraprofessionals; 29 secretaries; 53 custodians; and 7 maintenance employees for a total bargaining unit membership of 432.61.

On average, the teacher salary for the District during the 2014-15 school year was \$65,405, in contrast to the national average of \$46,325. The EA reports that the allocation of total teacher salaries is as follows: (EA-F-1; EA-J-4)

- 72.0% Regular education Programs
- 20.0% Special education Programs<sup>2</sup>
- 0.0% Vocational education programs
- 7.0% other educational programs

Egg Harbor City's students in the ninth through twelfth grades attend Cedar Creek High School, located in the northern section of Egg Harbor City. The school is zoned to serve students from Egg Harbor City, Mullica Township, Port Republic City, and Washington Township, while students in portions of

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<sup>1</sup> FTE is an abbreviation for "full-time equivalent."

<sup>2</sup> The GEH reports that its Special Education population exceeds the national averages and adds cost to the District.

Galloway and Hamilton townships have the opportunity to attend Cedar Creek through the School of Choice Program or through attendance in magnet programs offered at Cedar Creek. (EA-E-3a, 3d, 3e, 3f)

Galloway Township's public school students in the ninth through twelfth grades attend Absegami High School, located in the Township. Moreover, the students in the western portion of the township have the option of attending Cedar Creek High School in neighboring Egg Harbor City under the school of choice program. (EA-E-3b)

The students in the ninth through twelfth grades in Hamilton Township attend Oakcrest High School, located in Hamilton Township. (EA-E-3c) Oakcrest has been experiencing a decline in enrollment due to competing enrollment in the Atlantic City Institute of Technology (ACIT). The GEH pays for the tuition and transportation of the students attending ACIT.

National averages depict GEH at an 89.0% graduation rate compared to the 82.2% national average; a student to teacher ratio of 12:1 versus the national average of 16:1; and an average high school drop-out rate of 1.3% compared with the national average of 1.9%. The GEH reports its average SAT score at 1660 and the national average at 1710 (313 students surveyed); and the average ACT scores are 26 for both the District and the nation. Data analysis over the past five years indicates that improvement in the district's critical reading and math scores continue to

exceed both state and national averages. According to State standards, 83% of students in this district are considered proficient in math and/or reading. (EA-F-5)

The New Jersey Department of Education's Report Card Narratives for all three of the district's high schools boasts of a state-of-the-art Performing Arts Center; dual-credit possibilities; extensive AP program; and an Engineering Magnet ran in conjunction with nationally recognized Project Lead the Way.

On March 10, 2015, the District's Board of Education placed three bond referendum questions to its voters. At stake were a number of projects to upgrade and improve its school facilities, many of which would directly impact academic and athletic programs.

The State offered \$19.3 million in funding to support the programs, but only with a caveat that the voters also support the referendum with a contribution of its own. The Board of Education acknowledged its awareness that the economy in the District was struggling; however, it also stressed the importance of the offered State aid and low interest rates, combined with its need to invest in its communities. (EA-F-2) The voters approved the District's bond referendum.

The referendum would provide essential and required improvements to its high schools. Oakcrest High School and Absegami High School, built in 1960 and 1982 respectively, are

older buildings and were in desperate need of upgrades and repairs. No major renovations were planned for its newest Cedar Creek High School which was built in 2010.

The total estimated cost for the projects in the proposed referendum differed by each referendum question. The District prepared a tax impact for each constituent municipality. The tax impact considers the district's debt service aid it will receive annually. The tax impact for each municipality is illustrated in the table below: (EA-F-2)

<b>Tax Increase on \$100,000 Assessed Valuation</b>					
<b>Question #1</b>	<b>Essential Maintenance, Health, Safety, Security, Technology and Energy Efficiency.</b>				
<b>Municipality</b>	<b>Annual</b>	<b>Monthly</b>	<b>Daily</b>		
Egg Harbor City	11.30	0.94	0.03	<b>Total Cost</b>	<b>20,300,590</b>
Galloway Township	12.60	1.05	0.03	<b>State Share</b>	<b>11,060,878</b>
Hamilton Township	11.00	0.92	0.03	<b>District Share</b>	<b>9,239,712</b>
Mullica township	17.10	1.43	0.05		
<b>Question #2</b>	<b>Academic Program Area Improvements, Additions and Required Maintenance</b>				
Egg Harbor City	21.60	1.80	0.06	<b>Total Cost</b>	<b>26,038,555</b>
Galloway Township	23.90	1.99	0.07	<b>State Share</b>	<b>8,089,986</b>
Hamilton Township	21.00	1.75	0.06	<b>District Share</b>	<b>17,948,569</b>
Mullica Township	32.50	2.71	0.09		
<b>Question #3</b>	<b>Athletic Facilities</b>				
Egg Harbor City	6.80	0.57	0.02	<b>Total Cost</b>	<b>5,818,800</b>
Galloway Township	7.50	0.63	0.02	<b>State Share</b>	<b>229,166</b>
Hamilton Township	6.60	0.55	0.02	<b>District Share</b>	<b>5,589,634</b>
Mullica township	10.30	0.96	0.03		

Pursuant to the requirements of N.J.A.C. 6A:30, the District underwent the Quality Single Accountability Continuum (QSAC) District Performance Review (DPR). The District satisfied at

least 80.0% of the QSAC indicators in all five performance review areas and was designated as high performing. The State Board of Education certified GEHRHSD for a period of three years as providing a thorough and efficient system of education, in accordance with N.J.S.A. 18A:7A-14. The District's placement scores are as follows:

- 87.0% Instruction and Program
- 94.0% Fiscal Management
- 100% Governance
- 100% Operations
- 100% Personnel

The New Jersey Education Association (NJEA) provides monies to local schools in the form of grants. In 2014, the GEH received a PRIDE grant from the NJEA. This grant helped to reimburse the District for such initiatives as marketing to families new to the District; parent recognition at Student of the Month Luncheons; and graduation and prom activities. (EA-F-6)

The District has received many accolades regarding its athletic program's achievements. Such recognition was publicized in the District's local news and local press for accomplishments in achieving South Jersey's Group 2 football championship; New Jersey and Atlantic Coast Marching Ambassadors championship; AC Press Tennis Coach of the Year; and National tennis and cross country champions. (EA-F-8a)

Crime

According to a federal report released in June, 2014, parents worried about their children's safety, while at school, might not just be over-protective. It states that while the number of school-related deaths are starting to decrease, incidents of theft and violence -- including student violence against teachers -- are on the rise in America's schools.

The EA asserts that its teachers and support staff are very concerned with school crime and violence. In December of 2014, the Commissioner's Annual Report on Violence, Vandalism and Substance Abuse on New Jersey Public Schools, for the period July 1, 2014 to June 30, 2014, was published. This report provides the number of offenses committed, by district, in the following major categories: violence, vandalism, weapons, substance abuse and harassment, intimidation, or bullying (HIB). More than one type of offense may be reported for a single incident; therefore, the numbers within the major reporting categories below (excluding the "Total" column) are duplicated counts. The following chart details the number of offenses by major category for the GEHRHSD. (EA-F-8c-8d)

<b>Greater Egg Harbor Regional High School District (Crime Statistics)</b>							
<b>Year</b>	<b>Enrollment</b>	<b>Violence</b>	<b>Vandalism</b>	<b>Weapons</b>	<b>Substance Abuse</b>	<b>HIB</b>	<b>Total</b>
2013-2014	3,483	52	13	1	21	7	93
2014-2015	3,312	49	8	4	27	3	89

Local Economy:

Atlantic County and the Atlantic City area had a 2014 unemployment rate of 10.2%; however, 2015 unemployment decreased to 7.7% for both areas. In comparison, the nation's unemployment rate was 5.5% in 2014 and decreased to 4.8% in 2015 (BD-15). Home foreclosures in Atlantic County leads the national average, thanks to the desperate economic situation in the Atlantic City area. As of May, 2015, one in every 230 housing units in the County had been foreclosed. (BD-12)

Atlantic County and the District's sending municipalities 2010 income levels data is as follows: (EA-BB-1)

<b>2010 Income: Atlantic County &amp; Sending Municipalities</b>			
<b>Municipality</b>	<b>Medium Household Income</b>	<b>Median Family Income</b>	<b>Per Capita Income</b>
Atlantic County	54,766	66,920	27,247
Egg Harbor City	52,893	67,654	22,294
Galloway Township	65,908	76,106	24,302
Hamilton Township	59,085	62,354	25,292
Mullica Township	54,730	62,000	26,217
Port Republic City	77,063	89,375	36,408
Washington Township	96,250	108,239	24,808
*Source: 2006-2010 5-Year Army Community Survey Estimates			

The 2010 Census provides the following population estimates for 2014, along with poverty statistics from the 2010 Census for Atlantic County and the district's sending municipalities:

<b>Municipality</b>	<b>2014 Population Estimate</b>	<b>2010 Census Below Poverty</b>
Atlantic County	275,209	17.1%
Egg Harbor City	4,264	20.9%
Galloway Township	37,583	6.6%
Hamilton Township	26,647	10.2%
Mullica City	6,155	6.5%
Port Republic City	1,121	2.9%
Washington Township	673	21.1%

New Jersey's overall poverty rate for 2014 was 11.1%; whereas, the national poverty rate was 14.8%. (EA-E-4)

The Bureau of Economic Analysis reports that in 2014, Atlantic County had a Per Capita Personal Income ("PCPI") of \$43,336, 19<sup>th</sup> in the State, and 75% of the State average of \$57,620; and 94% of the national average of \$46,049. The 2014 PCPI reflected an increase of 4.0% from 2013. The chart below depicts the 2004-2014 Compound Annual Growth Rate for Atlantic County and New Jersey: (EA-E-2)

<b>Compound Annual Growth Rate (CAGR)</b>		
	<b>2013-2014 % Change</b>	<b>2004-2014 CAGR</b>
Atlantic	3.7%	2.6%
New Jersey	4.7%	3.2%

## **DISCUSSION OF THE PARTIES' PROPOSALS**

### **CONTRACT DURATION**

The Board proposes a three-year contract for the period July 1, 2015 through June 30, 2018. The Association initially

proposed a three-year agreement. One of its proposals included a reduction in the employees' contributions for health care.

Employees are currently in "Tier 4" of the contribution schedule as set forth in Chapter 78. However, in fact-finding, the Association modified its proposal to demand a one-year contract for 2015-2016, followed by a two-year contract for 2016-2018, with tier reduction becoming effective in the 2016-2018 contract.

In Clementon Bd. of Ed., P.E.R.C. No. 2016-010, 42 NJPER (¶ 34 2015), the Commission found that parties may legally agree to a one-year contract, followed by a multiyear contract. For the reasons set forth more fully later in this report, I have not recommended reductions in the health care contributions.

Therefore, there is no basis to recommend a contract length other than a three-year agreement. The parties have been in negotiations over this successor agreement for more than a year. If I were to award a contract of less than three years in length, the parties would quickly be returning to the negotiating table again. A three-year agreement will provide the parties with stability in their negotiating relationship. I so recommend a contract for the period July 1, 2015 through June 30, 2018.

## **SALARIES**

### **Association's Proposals**

#### **Teachers:**

Throughout negotiations and in mediation, the Association proposed a 3.5% across-the-board increase to the 2014-2015 salary

guide as well as step increases in each year of the successor contract. For the first time, at the fact-finding hearing, the Association modified its proposal as to teachers. It now proposes for teachers as follows:

- An annual \$500 increase to the step value for each step on the salary guides except the top step;
- An annual \$1200 increase in the value of the step maximums;
- Advance employees on the salary guide each year.

Support Staff:

For secretarial, custodial, maintenance<sup>3</sup> and grounds employees and paraprofessionals, the Association continues to propose a 3.5% increase in all step values as well as increment payments for each year of the agreement. It also proposes to reduce the number of steps on each guide, although it did not make any specific proposals about which steps on the guides should be eliminated. Further, the Association seeks to add a new longevity program as will be discussed more fully below. For paraprofessionals, it also asks that additional columns be added for advanced education as follows:

- AA - \$500
- BA - 1,000
- MA - 1,500

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<sup>3</sup>For purposes of the salary increases, maintenance employees include the one painter.

### **Board Proposals**

The Board proposes the following:

- Salary increases of one-half (1/2) of 1% for all unit employees in each year of the contract, inclusive of the cost of increments.
- Increase starting salary for teachers from \$46,637 to \$50,000.
- Eliminate the columns BA+15, BA+30, MA+15, MA+45; Add column for MA+60. It suggests that all certificated employees who have credits now eligible for the next level be "grandfathered" and they may continue to work toward and obtain the next level. However, thereafter and all other employees are limited to obtaining the MA, MA+30 and MA+60.

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### **Factual Support for the Parties' Proposals**

As support for its salary proposals, the Association offers data concerning the comparability of salaries and salary increases in other Atlantic County school districts, salary data from state-wide surveys, and comparison with other districts in this District Factor Group. It also argues that its demands are supported by cost-of-living data. The Association points out that employees' net pay is actually decreasing because of their rising contributions to health care.

As to the cost, the Association maintains that the increase it seeks might partially be funded by the savings of \$1.7 million gleaned from the retirements/resignations of 36 employees since December, 2014. The Association also contends that the difference between the amount budgeted in the 2014-15 budget, versus the amounts actually spent produced a net savings of

\$838,924 (excluding extraordinary aid) or 3.42% of base salaries. The EA also notes that additional employee health care contributions for the 2015-16 school year provided a savings of \$231,923 to the Board. (EA-CC-1)

The Board maintains that the Association's salary proposals are excessive and cannot be supported by the Board's budget. Further, it strenuously disputes that these "savings" from the 2014-15 budget are funds available for use on teacher raises. It especially argues that the legislature intended employee healthcare contributions enacted by Chapter 78 to provide tax relief for property owners and was never intended to be used to give employees the money back in the form of salary increases.

#### Comparables

The Association contends that salaries in other Atlantic County school districts as compared with Greater Egg Harbor show that this district is lacking in competitiveness. It also asserts that Atlantic County has the highest average salary increases in the state. According to the NJEA, of the 11 Atlantic County contracts with settlements for 2014-15, the average salary increase, inclusive of increments was 3.03%. This figure is applicable to bargaining units of certified staff and all-inclusive units. Further, the NJEA reports that the 2014-15 settlements, over and above the cost of increments, is 1.05% average in Atlantic County -- nearly the highest in New Jersey. For 2015-16, seven contract settlements in Atlantic County were

reported by the NJEA as of November 2015 and the average increase, inclusive of increments was 3.17% -- again, the highest in the State, while the Statewide average by that point was 2.58%. Of these, Atlantic County reported that salary increases, exclusive of increments, was 1.05%. (EA-G-4)

According to NJEA research (EA-H), a comparison of maximum teacher salaries on the BA column, MA column, and MA+30 column, in Atlantic County shows Greater Egg Harbor's teachers' salaries as compared with the 17 other districts with reported information. This comparison is shown in the table below:

<b>MAXIMUM SALARY COMPARISONS - ATLANTIC COUNTY</b>				
<b>District</b>	<b>BA</b>	<b>MA</b>	<b>MA+30</b>	<b>School Year</b>
Atlantic City	93,567	98,206	101,298	2015-16
Margate	83,766	89,766	92,766	2015-16
Mainland Regional	82,830	86,830	89,330	2015-16
Atlantic County Special Services	82,576	89,678	92,320	2015-16
Egg Harbor Township	81,293	84,543	86,543	2015-16
Linwood	81,045	86,064	91,394	2015-16
Egg Harbor City	80,789	83,364	84,588	2015-16
Ventnor	80,346	82,446	83,246	2014-15
Hammonton	80,000	84,800	87,440	2013-14
Brigantine	79,428	83,082	84,861	2013-14
Galloway Township	78,110	91,634	83,983	2015-16
<b>Greater Egg Harbor</b>	<b>78,075</b>	<b>81,825</b>	<b>84,329</b>	<b>2014-15</b>
Absecon	77,701	85,489	89,258	2013-14
Folsom	77,579	80,329	82,329	2015-16
Atlantic County Vo-Tech	76,159	77,751	79,303	2015-16
Hamilton Township	75,571	80,521	83,959	2014-15
Estell Manor	75,386	78,386	79,386	2013-14
Weymouth Township	59,798	63,498	65,348	2013-14
Buena Regional				
Corbin City				
Longport				

Mullica Township				
Northfield				
Pleasantville				
Port Republic				
Somers Point				
<b>Averages</b>	<b>79,112</b>	<b>83,790</b>	<b>85,649</b>	

\*School year shown is the most recent with salary data.  
Districts with no information shown above were not included in the NJEA research data provided.

As can be seen by this chart, Greater Egg Harbor's Regional District's top step pay rate ranks 12<sup>th</sup> among the 18 districts with information provided. In addition, GEH is below the County average of top pay for all columns on the guide.

Further, the BA maximum rate in GEH at \$78,075, ranks 31 out of 50 school districts in Statewide District Factor Group CD, with an average DFG teacher top BA salary of \$78,494.

The Board urges against reliance on comparable data. It argues that this method of determining appropriate salaries is outdated and merely leads to leap-frogging as each district tries to catch up to its neighboring districts. Moreover, the Board points out that the higher-than-average salary increases in Atlantic County were achieved with concessions from the local associations on additional time, changes in health insurance plans, and benefit reductions.<sup>4</sup> For instance, the contract in Atlantic County Special Services District, with a 2.25% increase

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<sup>4</sup> It should be noted that the Board's data, obtained from the New Jersey School Boards Association as of 10/5/15, shows a County average of 2.72% increase for 2015-16 but did not include some newer settlements such as the recently settled contract in Atlantic City.

also included conversion to an hourly rate of \$16 for teacher aides and a change in the overtime formula. The contract in Atlantic County Vocational School District, with a 3.58% increase in 2015-16 included an additional day in the school year in each of two years and a conversion of the overtime formula. In Egg Harbor City, the contract provided for a 3.45% increase but also included a one-half hour extension of the workweek and a health benefit plan reduction (from Direct 10 to Direct 15) worth \$773,000 in savings. Estell Manor's contract provided for a 3.25% increase in 2015-16 but also included additional faculty meeting time. Hamilton Township's 2014-15 contract provided for a 4% pay increase but with guide modifications to reduce increment values. Hammonton's contract resulted in pay increases of 2.8% for 2015-16 but with an additional professional development day, changes to the health care plan and reductions in the longevity plan for new hires. Margate City's contract included a 3.0% increase for 2015-16 but a reduction in sick leave benefits.<sup>5</sup>

The Association also points to the salaries of administrators in the GEH District as evidence that the Board is well positioned to offer this bargaining unit a far more equitable salary package than the Board has presently proposed. More specifically, it notes that Superintendent John Keenan's

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<sup>5</sup> Data Source: New Jersey School Boards Association research as of 10/5/15.

base salary was increased from \$165,000 to \$167,500 -- an increase of 1.5% -- for 2015-16; during the same time period his merit pay was also increased by 1.5% (EA-I-1a). In 2015-16, the Board increased the Business Administrator's base salary from \$128,000 to \$139,000 -- an 8.6% increase.

Further, the Board negotiated a successor collective negotiations agreement with the Principals' Association, which increased principals' salaries by 3.1% in each year of a three-year agreement covering 2014-2017. In a separate agreement covering seven school administrators, salaries were increased by 4.13% in 2015-16 and 3.59% in 2016-17. In addition, the District's department supervisors' salaries increased 2.48% in 2015-16 and 2.53% in 2016-17. (EA-I)

The parties each provided some of the labor contracts covering support staff in Atlantic County districts. I have supplemented the data supplied with information obtained from the PERC website, Tab "Public Sector Contracts." This data shows the following comparisons:

**SUPPORT STAFF MAXIMUM SALARIES IN COMPARABLE DISTRICTS**

District	Aides**	Secy	Cust	Maint	School Year	Notes
Atlantic Co. Spec Svcs/Vo-Tech	33,265	44,901	42,448	65,140	2015-16	+ Longevity
Egg Harbor City	22,203	50,226	43,749		2015-16	+ pay for degree; + Lgvtly
Egg Harbor Township	23,028	35,774	40,098	55,008	2012-13	+ Longevity
Galloway Township	34,135*	50,296	36,689	50,760	2015-16	+ pay for degrees; + Lgvtly
<b>Greater Egg Harbor Reg HS</b>	<b>27,940</b>	<b>54,646</b>	<b>52,060</b>	<b>54,123</b>	<b>2014-15</b>	

Hamilton Township		46,930			2013-14	+ Lgvtly + Stipend for College Credits
Mainland Regional	37,211	51,545			2015-16	+ Lgvtly + Stipend for College Credits
Mullica Township	25,951	43,261	47,345		2015-16	
<b>Average</b>	<b>29,105</b>	<b>47,197</b>	<b>43,732</b>	<b>56,258</b>		

\* Calculated based upon a daily rate of \$1189.64 X 180 days.

\*\* Salary reported above is for those Aides without advanced education.

It should be particularly noted that all of the districts shown above, provide either longevity pay or extra compensation for advanced degrees, whereas, GEH provides either.

#### Cost-of-Living

Many collective bargaining units' contracts and pension plans tie compensation changes to the Consumer Price Index (CPI) before adjustment for seasonal variation<sup>6</sup>. Relevant to this matter, the Philadelphia-Wilmington-Atlantic City CPI-U decreased over the last 12 months by 0.5%. (BD-10) The Association reports that the CPI for all Urban Wage Earners and Clerical Workers in the Philadelphia Southwest New Jersey area was a 1.4% increase from November 2013 to 2014 (EA-BB-2).

#### District's Ability to Pay/Impact on Taxpayers:

According to the District's Management's Discussion and Analysis of its 2014-15 fiscal year, the District's net position for fiscal years 2015 and 2014 is as follows:

<b>GEH CHANGES IN NET POSITION</b>		
<b>Revenues</b>	<b>FY2015</b>	<b>FY2014</b>
Charges for Services	1,905,418	1,822,030

<sup>6</sup> Exhibit EA-BB-1 does not indicate if the CPI was before adjustment for seasonal variation.

Operating Grants and Contributions	12,733,940	2,145,196
Capital Grants and Contributions	(2,850,442)	(1,359,058)
Property Taxes	33,162,013	31,381,626
Grants and Entitlements	32,572,468	36,999,713
Other	992,713	515,370
<b>Total Revenues</b>	<b>78,516,110</b>	<b>71,504,877</b>
<b>Program Expenses</b>		
Instruction	42,322,412	35,270,347
Tuition	8,490,221	7,576,720
Pupils and Instructional Staff	8,323,905	6,981,732
General Administration and School Administration	6,828,863	6,748,932
Plant Operations and Maintenance of Facilities	9,806,363	10,293,412
Pupil Transportation	5,087,173	6,292,391
Interest on Debt	1,508,659	1,580,629
Food Service	1,474,068	1,571,021
Other	441,211	522,262
<b>Total Expenses</b>	<b>84,282,875</b>	<b>76,837,446</b>
<b>(Decrease in Net Position)</b>	<b>(5,766,765)</b>	<b>(5,332,569)</b>

In total, the net position of the District decreased by \$5,766,765, which represents a 6.5% decrease from 2014. This change in the net position of the GEH represents a diminished financial position. (BD1-26; EA-CC-4)

EA exhibit EA-CC-1, "Revenue Available for Settlement 2014-15 Budget", depicts \$1,070,847, or 4.37% of base salary costs for settlement in this case. The \$1,070,847 consists of additional monies (from tuition and miscellaneous revenue) received in lieu of what was budgeted; and, of that total, \$813,434 represents Chapter 78's employees' share of health benefit contributions. (EA-CC-1) However, the Board's Business Administrator Thomas Grossi testified that it would be inappropriate to use Chapter 78 statutory resources as revenue for staff salary increases.

Equalized Valuation:

In consolidated and regional school districts, equalized valuation is calculated by the State Department of Education using averages of those municipalities that send students to the regional or consolidated district. The Equalized Valuation Summary in the chart below depicts the district's sending municipalities' 2014 total equalized valuation: (EA-E-7)

<b>Municipality</b>	<b>2014 Equal Valuation</b>
Egg Harbor City	211,221,274
Galloway Township	2,997,581,592
Hamilton Township	2,299,088,378
Mullica City	475,746,559
Port Republic City	132,055,983
Washington Township	95,561,201
<b>District Total</b>	<b>6,211,254,987</b>
<b>Atlantic County Total</b>	<b>40,696,526,627</b>
<b>New Jersey Total</b>	<b>1,165,964,531,500</b>

The total equalized valuation growth and equalized average value property growth both declined over the last three years for all municipalities, the District, Atlantic County, and the State of New Jersey; however, looking at the last ten years, growth was positive for all.

Equalized valuations places everyone on an equivalent level, especially for school funding purposes. In consolidated and regional school districts with more than one municipality, equalized valuation is calculated by the Department of Education using averages of those municipalities that send students to the

regional or consolidated district. The calculation is based upon the number of students from each constituent municipality. By equalizing property values, every municipality has the same valuation (100% or at market or true value); and, is in contrast to basing valuation upon what the municipality lists as the assessed value of property, for purposes of collecting property taxes. (EA-E-5)

#### Total Revenues & Appropriations

The Board argues that it simply does not have sufficient funding in its budget to meet the Union's salary demands. Its budgeted operating expenses decreased from \$78,142,000 in the 2014-15 school year to \$72,133,655 in the 2015-16 school year; In 2015-16, its projected revenue was \$78,142,000, with projected expenses at \$75,667,000, for a surplus of \$2,475,000. Total revenue per student is \$20,827, with expenses per student of \$20,167. The District's total education expenses (includes instruction, support services and other) were \$58,728,000, of which 56% was devoted to instruction; 41% devoted to support services; and 3% towards other. Salary expenses are reported at \$33,884,000. (BD-1-26; EA-CC-4; EA-F-1)

#### Revenues

The District's State-Local Revenue consists of 4% Federal monies, 45.0% State revenue, and 51.0% Local Revenue (EA-F-1). For 2015, general revenues accounted for \$66,727,194, or 86.0% of all revenues. Program specific revenues, in the form of charges

for services and operating grants and contributions, accounted for \$11,788,915 or 15.0% of total revenues of \$78,516,110 for the year ended June 30, 2015. GEH had \$82,808,806 in expenses; and, general revenues (primarily taxes, grants, and entitlements) of \$66,727,194 were adequate to provide for the majority of these programs. Among governmental funds, the General Fund had \$68,527,367 in revenues and \$72,035,788 in expenditures. The fund's balance decreased \$3,509,012 over 2014. (EA-CC-4; BD-1-26)

The "Comprehensive Annual Financial Report of the Greater Egg Harbor Regional High School District for the Fiscal Year Ended June 30, 2015" provides as follows:

The Statement of Net Position provides the perspective of the School District as a whole. Net position may serve over the time as a useful indicator of a government's financial position.

The District's financial position is the product of several financial transactions including the net results of activities, the acquisition and payment of debt, the acquisition and disposal of capital assets, and the depreciation of capital assets.

The District's combined net position was \$83,494,441 on June 30, 2015. This was a decrease of \$5,766,765, or almost 7 percent from the prior year.

The Greater Egg Harbor Regional High School District is in good financial condition presently . . . A major concern is the ability and willingness of the Governor and State Legislature to provide funding for education. The current state of the national, state and local economies will also have a serious impact on the district's ability to keep up with the demands of students' needs without impacting local taxes.

State Aid:

Thomas Grossi, GEH Business Administrator, stated that the District's State Aid has been flat for several years now. The district budgeted \$31,754,240 in State Aid for the 2014-2015 budget; however, it received \$10,090 less than budgeted; in the 2015-2016 budget, the district budgeted for State Aid in the amount of \$31,929,240, a 0.55% increase of \$175,000 from the previous budget year. (EA-CC-1)

Tax Rates:

The tax base of the four constituent municipalities is also the GEH tax base. In addition to State aid, local real property tax is the major funding source for the school district. The school district falls within the Atlantic City Metropolitan Statistical Area, an area coterminous with Atlantic and Cape May Counties. (BD-B-9) Property taxes made up 42% of revenues for governmental activities for the GEH for fiscal year 2015.

(EA-CC-4)

The 2015-16 estimated Equalized Total School Tax Rate for each of the District's four constituent municipalities is as follows: (BD-4)

Egg Harbor City -	0.6019
Galloway Township -	0.5981
Hamilton Township -	0.5093
Mullica Township -	0.5335

Tax Levy Cap:

In addition to State Aid, local real property tax is the major funding source for the district. (BD-9) The following charts depict each of the four constituent's and the two sending municipalities' total tax levy amount at the County and municipal levels; in addition, the municipality's regional, contract, joint school budget and the District's school budget tax apportionments are provided for comparative analysis: (EA-E-6)

<b>Tax Apportionment - Egg Harbor City</b>									
<b>Tax Year</b>	<b>Total Levy</b>	<b>County Levy</b>	<b>County v. Total (%)</b>	<b>Municipal Levy</b>	<b>Mun v. Total (%)</b>	<b>Reg, Con, Jnt School Budget</b>	<b>Reg Sch v. Total (%)</b>	<b>District Sch Budget</b>	<b>District Sch v. Total (%)</b>
2010	8,160,090	1,003,268	12.3%	3,608,335	44.2%	1,242,957	15.2%	2,305,540	28.3%
2011	8,897,594	1,086,636	12.2%	3,810,753	42.8%	1,345,800	15.1%	2,654,406	29.8%
2012	8,886,687	963,285	10.8%	3,833,059	43.1%	1,379,444	15.5%	2,710,900	30.5%
2013	9,292,212	1,189,024	12.8%	4,046,623	43.5%	1,215,436	13.1%	2,841,129	30.6%
2014	9,392,406	1,138,470	12.1%	4,108,341	43.7%	1,304,495	13.9%	2,841,100	30.2%

Egg Harbor City's Total Levy represents the smallest of GEH's constituents' budgets. The City's district school budget comprised nearly 30% of its total levy in all five years of its budget; whereas, the municipal levy remained mostly consistent in the low fortieth percentiles.

<b>Tax Apportionment - Galloway Township</b>									
<b>Tax Year</b>	<b>Total Levy</b>	<b>County Levy</b>	<b>County v. Total (%)</b>	<b>Municipal Levy</b>	<b>Mun v. Total (%)</b>	<b>Reg, Con, Jnt School Budget</b>	<b>Reg Sch v. Total (%)</b>	<b>District Sch Budget</b>	<b>District Sch v. Total (%)</b>
2010	72,592,413	12,110,541	16.7%	15,081,766	20.8%	16,120,081	22.2%	29,280,026	40.3%
2011	73,577,586	12,894,586	17.5%	15,836,156	21.5%	15,798,742	21.5%	29,048,103	39.5%
2012	74,333,014	12,578,997	16.9%	16,322,040	22.0%	16,280,599	21.9%	29,151,378	39.2%

2013	77,808,024	14,611,605	18.8%	16,952,484	21.8%	16,582,281	21.3%	29,661,654	38.1%
2014	79,791,672	12,992,582	16.3%	18,546,118	23.2%	17,482,015	21.9%	30,770,956	38.6%

Galloway Township had the highest total levy of the four constituent municipalities for the past five years. The Township budgeted around 38.0% to 40.0% towards its district school budget in all five years of its budget; however, its municipal levy consisted of an average of 21.8% of the total levy.

<b>Tax Apportionment - Hamilton Township</b>									
<b>Tax Year</b>	<b>Total Levy</b>	<b>County Levy</b>	<b>County v. Total (%)</b>	<b>Municipal Levy</b>	<b>Mun v. Total (%)</b>	<b>Reg, Con, Jnt School Budget</b>	<b>Reg Sch v. Total (%)</b>	<b>District Sch Budget</b>	<b>District Sch v. Total (%)</b>
2010	54,524,837	8,455,443	15.5%	17,173,971	31.5%	9,505,101	17.4%	19,390,321	35.6%
2011	56,690,626	9,355,542	16.5%	17,774,079	31.4%	9,952,018	17.6%	19,608,987	34.6%
2012	56,232,130	9,042,374	16.1%	17,673,531	31.4%	10,226,028	18.2%	19,290,197	34.3%
2013	59,715,483	11,353,891	19.0%	17,457,544	29.2%	11,228,047	18.8%	19,676,001	32.9%
2014	59,756,889	10,837,456	18.1%	17,495,722	29.3%	11,798,359	19.7%	19,625,352	32.8%

With the second highest total levy of the GEH's constituent districts, Hamilton Township budgeted 32.8% of its resources in fiscal year 2014 -- less than the previous four years. Its municipal budget for the five-year period was an average of 30.6% of the Township's total levy.

<b>Tax Apportionment - Mullica City</b>									
<b>Tax Year</b>	<b>Total Levy</b>	<b>County Levy</b>	<b>County v. Total (%)</b>	<b>Municipal Levy</b>	<b>Mun v. Total (%)</b>	<b>Reg, Con, Jnt School Budget</b>	<b>Reg Sch v. Total (%)</b>	<b>District Sch Budget</b>	<b>District Sch v. Total (%)</b>
2010	11,560,789	2,052,271	17.8%	3,148,013	27.2%	2,531,179	21.9%	3,829,326	33.1%
2011	11,605,046	2,135,643	18.4%	3,201,656	27.6%	2,436,917	21.0%	3,830,830	33.0%
2012	11,480,814	2,148,030	18.7%	3,234,144	28.2%	2,352,473	20.5%	3,746,167	32.6%
2013	11,990,477	2,496,558	20.8%	3,325,539	27.7%	2,349,383	19.6%	3,818,997	31.9%

2014	12,159,183	2,342,513	19.3%	3,425,990	28.2%	2,571,684	21.2%	3,818,996	31.4%
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Mullica City's district school budget consisted of an average 32.4% of its total levy. As is demonstrated with three of the four District's constituent municipalities, each appropriates more of its resources towards the GEH district school budget than its county or municipal budgets.

For the 2014 tax year, sending municipality Port Republic City, appropriated an average of 59.2% of its total levy of \$2,803,776 to the District's budget. Moreover, Washington Township, with a total levy of \$1,450,339 for 2014, appropriated 74.7% for the District's school budget. On average, the Township allocated 71.4% towards the District's school budget over the past five years. (EA-E-7)

GEH's local tax levy increases for the last five years, to include the proposed budget for 2015-16 school year, is as follows:

2010-11	- \$26,744,585	+7.99%
2011-12	- \$26,813,993	+0.26%
2012-13	- \$27,350,273	+2.0%
2013-14	- \$29,251,250	+6.95%
2014-15	- \$29,836,275	+2.0%
2015-16	- \$30,433,000	+2.0%

The District's tax levy cap for the 2015-16 budget is \$30,433,000; a 2.0% increase from the 2014-2015 budget which equals \$596,725. The constituent municipalities' General Fund

amounts comprise the district's total tax levy as follows: (EA-CC-2)

Egg Harbor City -	\$1,156,761
Galloway Township -	\$16,312,772
Hamilton Township -	\$10,653,955
Mullica Township -	<u>\$2,309,512</u>
	\$30,433,000

No cap adjustments were made for the latest budget; and, no tax levy cap has been banked since the 2011-2012 budget.

Fund Balance:

The GEH's Fund Balance is a major source of revenue. The District's restricted and/or unreserved fund balance accounts for excess surplus and unreserved monies designated for subsequent year's expenditures. Also the fund consists of reserves for encumbrances; and the remaining balance is unassigned. Its remaining fund balance for the year ended June 30, 2015 was \$176,052 of the total \$2,226,964 balance.

The GEH's Fund Balance demonstrates variable increases and decreases for a ten-year period from 2005-06 through 2015-16. These increases were as high as 25.3% to decreases as high as 48.4%. For example, the 2011-12 fund balance of \$3,300,793 increased by 22.1% in the 2012-13 budget to \$4,031,803; however, in the 2013-14 and 2014-15 budgets the balance decreased by 9.34% to \$3,655,034 and decreased by 48.39% to \$1,886,424, respectively. The 2015-16 budget shows an increase of 6.02% from the previous year to \$2,000,000. In fact, the district's overall

fund balance decreased, on average, \$88,682 from the 2002-03 to 2015-16 budget years. (EA-CC-2)

Employer's Net Debt:

The District's debt limitations are 3.0% of the total equalized valuation basis of its four constituent municipalities.<sup>7</sup> As of December 31, 2014, 3.0% of the averaged (2012-2014) equalized valuation of real property with improvements is \$186,075,679, with the school district debt of \$39,355,000, leaving a remaining debt incurring capacity for the District of \$146,720,680. (BD-9; EA-CC-4)

**DISCUSSION OF SALARY PROPOSALS**

**TEACHERS**

Existing Scattergram - Teachers

The District's teaching staff continue to be paid from the 2014-15 salary guide as set forth below:

2014-15 TEACHERS' SALARY GUIDE														
STEP	BA	INCR	BA+15	INCR	BA+30	INCR	MA	INCR	MA+15	INCR	MA+30	INCR	MA+45	INCR
1	46,637	633	47,887	636	49,137	640	50,387	644	51,637	647	52,887	651	54,137	654
2	47,270	501	48,523	502	49,777	501	51,031	501	52,284	501	53,538	501	54,791	501
3	47,771	525	49,025	524	50,278	525	51,532	524	52,785	525	54,039	524	55,292	525
4	48,296	1,098	49,549	1,098	50,803	1,098	52,056	1,098	53,310	1,098	54,563	1,099	55,817	1,098
5	49,394	1,509	50,647	1,510	51,901	1,509	53,154	1,510	54,408	1,509	55,662	1,509	56,915	1,509
6	50,903	1,204	52,157	1,203	53,410	1,204	54,664	1,203	55,917	1,204	57,171	1,203	58,424	1,204
7	52,107	1,403	53,360	1,404	54,614	1,404	55,867	1,404	57,121	1,404	58,374	1,404	59,628	1,404
8	53,510	2,909	54,764	2,908	56,018	2,908	57,271	2,908	58,525	2,908	59,778	2,908	61,032	2,908
9	56,419	4,211	57,672	4,172	58,926	4,212	60,179	4,212	61,433	4,212	62,686	4,212	63,940	4,212
10	60,630	4,814	61,844	4,854	63,138	4,813	64,391	4,814	65,645	4,813	66,898	4,514	68,152	4,813

<sup>7</sup> The combined 3-year equalized valuation average for the District's four constituent municipalities is \$6,202,522,663.

11	65,444	4,513	66,698	4,512	67,951	4,513	69,205	4,512	70,458	4,513	71,412	4,812	72,965	4,513
12	69,957	8,118	71,210	8,115	72,464	8,111	73,717	8,108	74,971	8,104	76,224	8,101	77,478	8,097
13	78,075		79,325		80,575		81,825		83,075		84,325		85,575	

The parties have stipulated that eligible employees have not moved on the salary guide since the expiration of the 2012-2015 contract. In addition, employees did not longevity increased as they reach service benchmarks after June, 2015.

#### Minimum Starting Pay for Teachers

The Board proposes to increase starting pay from \$47,887 to \$50,000. The Association has neither agreed to nor objected to this proposal.

According to the NJEA, the Statewide average starting salary for teachers on the bachelor's guide is \$50,347 (G-3).

Starting salaries in Atlantic County range between \$42,530 (Mainland Regional) and \$53,010 (Atlantic County Special Services) with an average 2015-16 starting salary of \$49,542. (EA-H)

The cost to bring employees on the BA guide up to a minimum pay of \$50,000 (new value of step 5) effective July 1, 2016, would be \$29,176; however, this would be partially offset by what would have been their normal increment amount. It should be noted that eliminating steps 1 through 4 on the BA guide would necessitate a concomitant elimination of those steps on all other guides at the same time. Otherwise, starting pay for the entry level candidates with a BA degree would be higher than starting pay for candidates

with advanced degrees. Eliminating steps 1 through 4 on all other teacher salary guides and moving those employees up to step 5 would have an additional cost.

#### Proposed Elimination of Columns

The Board proposes to eliminate some of the education columns on the teacher's salary guide and grandfather employees currently on that step. It argues that recent publications have suggested that teachers are generally over-educated and that such advanced degrees do not meaningfully contribute to improving the quality of teachers. However, the Board did not produce any evidence of any other district in New Jersey which has abolished the step guides for advanced education. Moreover, it seems counter-intuitive to think that a dumbing down of classroom teachers will lead to better educated students. I am not inclined to award the Board's proposal to eliminate advanced-degree columns from the guide.

#### Increment Cost

There are currently 180 certificated employees moving through the salary guide in 2015-16. The cost of increments for these employees in 2015-16 and beyond is shown in the following chart:

<b>INCREMENTS (WITHOUT GUIDE MODIFICATIONS)</b>				
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>TOTAL</b>
BA	215,054	258,333	261,358	734,745
BA+15	79,519	107,879	64,144	251,542
BA+30	17,850	21,059	34,867	73,776

MA	155,045	193,024	132,451	480,520
MA+15	59,588	42,983	28,280	130,851
MA+30	7,422	9,024	14,015	30,461
MA+45	25,324	11,533	19,325	56,182
<b>TOT</b>	<b>559,802</b>	<b>643,835</b>	<b>554,440</b>	<b>1,758,077</b>

Guide Modifications:

The Board proposes that guide modifications are necessary to the teachers' guides, but did not make specific proposals on how this could be accomplished. I note that the existing salary guide from the 2014-15 contract is a 13-step guide with a bubble step of \$8,118 going into top step. If, as the Association suggests, teachers' top pay was increased by \$1,200 in each year of the contract, this bubble step would increase to \$11,718 by 2017-18. There are 13 teachers eligible to move to step 13 in 2015-16 and 21 more in 2016-17.

In addition, there are 180 teachers moving through the salary guide in 2015-16; increment amounts on four of the steps on each guide (not counting movement to the top step) exceed \$4,000, significantly ratcheting up the overall price tag for the payment of increment costs.

In comparing the GEH step guide to guides in other Atlantic County districts, the data shows a range among other county districts between 13 and 20 steps, with an average of 15 steps. District Factor Group CD has step guides ranging from 9 steps to 24 steps with an average of 16 steps. Greater Egg Harbor Regional currently has 13 steps on its guide; however, as I have

recommended above, it will be necessary to eliminate the first four steps of the salary guide (all columns) in order to fairly implement the Board's proposal to move starting pay to \$50,000. Before additional modifications, this will leave 9 steps remaining.

The price tag for the increment payments for teachers over the life of the contract is as follows:

TEACHER TOTALS						
2015	%	2,016	%	2,017	%	Total
559,802	2.8%	643,835	3.1%	554,440	2.6%	<b>1,758,077</b>

As can be seen, the cost of teacher increments in this district is substantial. While I cannot recommend the Board's proposal, which would effectively eliminate all step increases for the life of the contract, neither can I recommend the Association's proposal of across-the-board increases combined with increments on the present increment scales which would effectively increase salary budget costs by 3.9% to 4.4% per year.

I believe it is far preferable for all employees to receive some increment every year than for any employee to be frozen in place on the salary guide for an extended period of time.

Therefore, in light of the foregoing, I recommend the following modifications to the teachers' BA salary guides effective 7/1/16:

**BA MODIFIED GUIDE**

Step	14-15	15-16*	New	Incr	15-16 Ees
1	46,637	47,137			0
2	47,270	47,770			12
3	47,771	48,271			7
4	48,296	48,796			4
5	49,394	49,894	50,000	1,903	4
6	50,903	51,403	51,403	1,204	13
7	52,107	52,607	52,607	1,403	6
8	53,510	54,010	54,010	2,909	9
9	56,419	56,919	56,919	2,105	12
			59,024	2,106	
10	60,630	61,130	61,130	2,407	7
			63,537	2,407	
11	65,444	65,944	65,944	2,257	8
			68,201	2,256	
12	69,957	70,457	70,457	2,205	3
			72,662	2,204	
			74,866	2,205	
			77,071	2,904	
13	78,075	79,275	79,275		48

\* Includes proposed increases of \$500/\$1,200.

Comparable modifications should be made to all other teachers' salary guides as well to include the additional steps and to maintain the disparity between each education level. This will reduce the cost of increment payments in 2016-17 from \$643,835 to \$354,292 -- a savings of \$289,543. One would expect comparable savings in the payment of 2017-18 increments.

#### Proposed Salary Increases - Teachers

The Association reduced its proposal for teachers from 3.5% to \$1200 at the top of the guide and \$500 for all other steps. For teachers at step I of the salary guides (all education levels), this is approximately equivalent to a 1.1% raise; for

teachers approaching top step of the salary guide, a \$500 increase amounts to approximately .07% increase. The \$1,200 increase on the top of the salary guide is worth between 1.36% and 1.51%. The total cost of the Association's proposal, inclusive of the current increment plan (without guide modifications), would be as follows:

COST OF EA PROPOSAL							
Cost	2015	%	2,016	%	2,017	%	Total
Incr	559,802	2.8%	643,835	3.1%	554,440	2.6%	<b>1,758,077</b>
ATB	242,400	1.2%	251,500	1.2%	271,800	1.3%	<b>765,700</b>
<b>Total</b>	<b>802,202</b>	<b>4.0%</b>	<b>895,335</b>	<b>4.4%</b>	<b>826,240</b>	<b>3.9%</b>	<b>2,523,777</b>

The Board proposes a .5% increase in each year inclusive of increments. The total cost of the Board's proposal would be \$122,471 per year or \$367,413 over a three-year period. This proposed increase would not be large enough to pay increments to even the teacher group alone for even one year of the three-year agreement, as increment costs, for example in 2015-16, for the teacher group is \$559,802. In fact, the Board's final offer here would require a freeze on all guide movement for all unit employees for the entire length of the contract, as no increment could be afforded, even with guide modifications, under its terms. Further, the proposal would allow a mere \$282 average per unit employee, per year, of wage increases for the three-year period.<sup>8</sup> The Board's proposal would be destructive to employee

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<sup>8</sup> \$122,471 divided by 433 unit employees equals \$282 per person per year.

morale and would contribute to a loss of experienced teachers who would virtually have their pay frozen for a three-year period. This in turn would diminish unit continuity as turnover among the teachers would no doubt increase.

Balancing the needs of the Association to ensure that its members receive a competitive compensation package with the needs of the Board to conserve scarce resources is never a single-dimensional undertaking. I am guided by, but not bound by, the general principles set forth in N.J.S.A. 34:13A-16 wherein the legislature established certain criteria for determining an interest arbitrator's award for police and firefighters. Among the factors the legislature felt important in crafting a new contract to establish terms and conditions of employment are: the interest of the public, the particular interests of each of the parties, the employees' existing salary and benefits as compared with other employees of the same employer and in similar jurisdictions, the lawful authority of the employer, the impact of the settlement on the taxpayers, and any other factor traditionally considered in arriving at a fair and reasonable result. One such other factor traditionally considered is whether the party seeking changes to the existing contract provisions has adequately demonstrated the need or desirability for the change being proposed. Another consideration is whether the parties might have voluntarily negotiated to the result being proposed. Finally, it is also important to note that no one

single issue in dispute can be considered in isolation; rather, the salary and benefits package being recommended must be taken as an integrated whole.

Here, in evaluating the parties' respective proposals, I have considered the interest of the public, the employer's ability to pay, and its lawful authority including adherence to cap laws. GEH is restricted by cap laws to a 2% increase in tax levies on each of its constituent districts. This is especially true for its 2015-16 budget wherein overall appropriations were increased by 9.6% from the prior school year -- from \$76,837,446 to \$84,282,875. The tax levy was increased for 2015-16 by 2% which equals \$596,725. Therefore, to simplify the question, it could be said that the employer's spending limit for unit salary increases, at least for this year, is limited to the levy cap increase of \$596,725 -- unless it gets revenue from sources other than taxes or uses surpluses from the year before.<sup>9</sup> And, apparently it has obtained additional funding from non-tax sources, as it has increased its total expenditures from 2014-15 to 2015-16 from \$76,837,446 to \$84,282,924.

Further, the Association maintains that (a) the district spent \$838,924, less in 2014-15 than it budgeted, (b) the breakage

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<sup>9</sup> However, it should be noted that total base salaries for all unit members totaled \$24,494,187 in 2014-15, which was 31.9% of the total budgeted expenditures of \$76,837,446. For 2015-16, the Board budgeted total expenditures of 84,282,924; 31.9% of that is \$26,886,237.

available from retirements and employee resignations since late 2014 has provided the Board with \$1.7 million in savings, and (c) the Board has "saved" \$231,923 from additional health care benefits from its employees in 2015-16.

On the other hand, determining appropriate salary and other benefits for these unit employees also involves a comparison with how the Board has treated its other district employees as well as how employees in similar titles are treated in comparable school districts. The factor of internal comparability, based upon existing Commission and court precedent, is a factor that is not only a factor specifically addressed in N.J.S.A. 34:13A-16g(2)(c), but also has been found to fall within the criteria of the "interests and welfare of the public" and the "continuity and stability of employment." The PERC Commission has held,

Pattern is an important labor relations concept that is relied upon by both labor and management ... deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. County of Union, P.E.R.C. No. 2003-33, 28 NJPER 459,461 (¶33169, 2002); County of Union, P.E.R.C. No. 2003-87, 29 NJPER 250,253 (¶75, 2003).

Further, an internal pattern of settlement properly focuses on the terms of economic improvement offered in a given round of negotiations. See, Somerset County Sheriff's Office v. FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008); and County of Passaic, P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009); County of Passaic, P.E.R.C. No. 2011-36, 36 NJPER 412

(¶159 2010). Here, the most recent salary increases for GEH employees not in this bargaining unit included a 1.5% increase in 2015-16 for the superintendent; an 8.6% increase for the business administrator; a 3.1% increase for principals; a 4.13% increase for the school administrators and a 2.84% for the department supervisors.

While these salary increases do not demonstrate any particular lock-step pattern of settlement among district employees, it can certainly be said that the Board has consistently demonstrated its willingness to compensate its administrative and supervisory staff at significantly more than its current offer to the Association's members. While it appears that none of these bargaining groups receive increments in addition to their salary advancements, nevertheless, the increases are worthy of comparison for any total compensation package considered for this bargaining unit.

Also important, and contrary to the Board's assertion that comparability with other districts should be disregarded, is a comparison with teachers in other districts in similar jurisdictions. Indeed, the legislature saw fit to specifically include this factor in its list of relevant criteria for establishing terms and conditions for police and fire departments. N.J.S.A. 34:13A-6. I see the appropriate comparative "similar jurisdictions" as: first, in Atlantic

County (with a special emphasis in the sending districts to GEH) and then with other teachers in the same DFG group throughout the State, especially in South Jersey.

Top pay for Greater Egg Harbor teachers is \$78,075 with a bachelor's degree, \$81,825 with a master's degree and \$84,329 with a master's degree plus 30 credits. This compares with the county average top pay for a bachelor's degree of 79,112. Greater Egg Harbor teachers rank 12<sup>th</sup> among the 18 districts surveyed in Atlantic County. In addition, Greater Egg Harbor is below the average of all teachers statewide in DFG CD. The reason this factor is important is that a failure to maintain a wage rate that is competitive for the geographic area is that it increases employee turnover, which in turn has a negative impact on continuity among the teaching staff. The same could be said for support employees as well. A lack of continuity among the unit employees and a lack of stability is not in the public interest.

I am cognizant of the Board's argument that other Atlantic County districts achieved settlements above the State average, in part, by pairing those increases with concessions on the part of the Unions for longer work years and benefits reductions. (See the review of settlements on page 17). I agree that this is an important consideration and I have considered this in recommending salary increases.

In light of all of the foregoing, I recommend the following compensation package for teachers:

- increase starting salary to \$50,000 effective July 1, 2016
- eliminate steps 1 through 4 of all teachers' salary guides effective July 1, 2016
- step movement for all eligible teachers in each year of the contract
- increase the value of the top step by \$1,200 in each year of the contract.
- increase the step value for all other steps by \$500 in each year of the contract.

Support Staff:

For all support staff, the Association proposes step increases as well as 3.5% for each year of the contract. The Association's proposal for paraprofessionals also includes additional compensation for paraprofessionals as a reward for advanced degrees. This latter proposal is not recommended; not because I believe it is a bad idea, but because it may result in too many employees chasing scarce tuition resources. There are 36.61 paraprofessionals in this district; if all of them were put on an advanced degree schedule with a BA degree, the cost to the Board would be a \$36,610 increase. While this in and of itself is a "drop in the bucket" as compared with the overall budget, nevertheless I do not recommend it because it may diminish the opportunities for teachers to obtain additional graduate credits.

As to the proposed salary increases, I note that, while other Atlantic County districts refer to this job title as "aides" I believe the duties are comparable. Average salary among the districts with data is \$29,105; GEH paraprofessionals are paid anywhere from \$22,203 to a high of \$37,211. Therefore, Greater Egg Harbor's compensation for paraprofessionals with a top pay of \$27,940 is about \$1,200 below the county average. Nevertheless, I am not prepared to recommend the Association's stratospheric proposal of 3.5% plus increments. The cost of the Association's proposal, if implemented in full, would be:

<b>PARAPROFESSIONALS</b>							
<b>Cost</b>	<b>2015</b>	<b>%</b>	<b>2016</b>	<b>%</b>	<b>2017</b>	<b>%</b>	<b>Total</b>
Incr	19,646	2.5%	15,935	1.9%	14,631	1.7%	<b>50,211</b>
ATB	21,892	2.8%	25,144	3.1%	24,192	2.8%	<b>71,227</b>
<b>Total</b>	<b>41,538</b>	<b>5.3%</b>	<b>41,079</b>	<b>5.0%</b>	<b>38,822</b>	<b>4.5%</b>	<b>139,082</b>

For secretaries, the cost for the Association's proposal is:

<b>TOTAL SECRETARY COSTS</b>							
<b>Cost</b>	<b>2015</b>	<b>%</b>	<b>2,016</b>	<b>%</b>	<b>2,017</b>	<b>%</b>	<b>Total</b>
Incr	13,412	1.0%	11,165	0.8%	12,281	0.9%	<b>36,857</b>
ATB	46,528	3.5%	48,642	3.5%	50,739	3.5%	<b>145,909</b>
<b>Total</b>	<b>59,940</b>	<b>4.6%</b>	<b>59,807</b>	<b>4.3%</b>	<b>63,020</b>	<b>4.4%</b>	<b>182,767</b>

As compared with other Atlantic County school district secretaries reported, GEH's are fairly well paid. Secretaries in Atlantic County are paid between \$35,774 and \$54,646, with GEH being the highest paid. Average salary is \$47,197. However, it must be remembered that virtually all of the other districts also

offer their secretaries additional compensation in the form of longevity pay, which is not offered by GEH.

As for custodial, maintenance and grounds keepers, the cost of the Association's proposal for this group is:

<b>CUSTODIANS COSTS</b>							
<b>Cost</b>	<b>2015</b>	<b>%</b>	<b>2,016</b>	<b>%</b>	<b>2,017</b>	<b>%</b>	<b>Total</b>
Incr	40,336	2.0%	43,297	2.1%	36,473	1.8%	<b>120,106</b>
ATB	71,127	3.6%	75,078	3.6%	79,274	3.7%	<b>225,479</b>
<b>Total</b>	<b>111,463</b>	<b>5.6%</b>	<b>118,375</b>	<b>5.8%</b>	<b>115,747</b>	<b>5.5%</b>	<b>345,585</b>

<b>MAINTENANCE COSTS</b>							
<b>Cost</b>	<b>2015</b>	<b>%</b>	<b>2,016</b>	<b>%</b>	<b>2,017</b>	<b>%</b>	<b>Total</b>
Incr	3,086	0.9%	2,177	0.7%	3,582	1.1%	<b>8,845</b>
ATB	11,692	3.6%	12,212	3.7%	12,719	3.6%	<b>36,623</b>
<b>Total</b>	<b>14,778</b>	<b>4.5%</b>	<b>14,389</b>	<b>4.4%</b>	<b>16,301</b>	<b>4.7%</b>	<b>45,468</b>

As to comparable salaries in other Atlantic County districts, GEH's custodians are well paid. Top pay in Atlantic County ranges from \$36,689 to \$52,060, which is the GEH custodial salary. However, it must be remembered that some of the other districts offer longevity programs to their custodial employees which boosts up compensation. As to the maintenance employees, GEH's maintenance employees are nearly \$2,000 below average for Atlantic County.

The combination of these proposed salary increases together with the increment costs is simply not realistic within the Board's budget constraints. The Association's salary proposal also far exceeds the comparable salary data presented by the

Association in terms of average settlements in Atlantic county of 3.15% in 2015-16.

In light of the foregoing, I recommend a 3.0% increase for each of the support staff groups, inclusive of increment costs, for each year of the agreement.

As to the paraprofessionals, it has been agreed that the work year for paraprofessionals will be lengthened to match the work year of teachers. This means that they will have their work year increased from 173 days to 185 days -- a 6.9% increase in work year, which must be fairly compensated. I recommend that the parties extend the annual compensation for paraprofessionals to include a pro-rated increase to match the extension of their work year, in addition to the increases set forth above.

Support Staff Guide Modifications:

The Association also proposes to shorten the salary guides for paraprofessionals, custodial/maintenance employees, and secretaries. The paraprofessionals' guide currently has 17 steps, while the custodial guide has 28 steps, the maintenance guide has 20 steps, and the secretaries' guide has 25 steps. No data has been provided to compare the length of these guides to other districts to evaluate whether they are out of line with comparable employees in other districts. However, on their face, the length of all of the support staff salary guides seems excessive. The theoretical purpose of salary guides is to bring in a new, perhaps

inexperienced employee and, as their skills ripen with experience, they are worth more to the employer, and thus move up the salary guide. It would be hard to imagine that it takes 28 years for a custodian, for example, to fully develop his full potential value to the district. It should not take an entire career for an employee to reach maximum pay. Therefore, I recommend that the support staff guides be modified to reduce the number of steps. I leave this task to the parties' negotiations committees to develop modified guides.

### **OTHER ECONOMIC ISSUES**

#### **Article IX - School Calendar/Employee Work Year**

The Association proposes to add a new Section B to this Article as follows:

The work year for the Child Study Team shall include ten days during the summer. Work under this section shall be compensated at the per diem rate and computed as part of annual salary. For the purpose of this section, the per diem rate is calculated as 1/184 of annual salary.

The work year for the School Nurse shall include ten days during the summer. Work under this section shall be compensated at the per diem rate and computed as part of annual salary. For the purpose of this section, the per diem rate is calculated as 1/184 of annual salary

The Association argues the proposed language restates the current practice of the number of extra work days and the rate of pay for those days for nurses and Child Study Team members. The current practice is that they work 10 extra days at the rate of 1/184 per

day. The Association is not seeking any improvement of change in the practice.

The Board argues the new section is unnecessary because the CST's summer schedule is created by the Board and dictated by need. It asserts when CST members are needed, a schedule is created and they are paid accordingly, at the per diem rate.

While the Association asserts that the 10-days work in the summer is already the past practice, I find that this proposal would, in essence, guarantee the ten days. I am not inclined to limit the Board's discretion to decide if ten additional days' work is actually needed. Rather, I recommend the following contract provision:

If members of the child study team or the school nurses are required to work during the summer, they shall be compensated at a per diem rate calculated as 1/185 of annual salary.

**Article IX, School Calendar/Employee Work Year**

Snow Days:

The Association proposes<sup>10</sup> to add to Article IX (Work Year) the following new provision:

When school is closed for a snow day, employees reporting to work shall receive pay at the rate of time and one-half in addition to their regular pay.  
Employees unable to report to work on their regular

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<sup>10</sup> Bracketed material is proposed to be deleted; underlined material is proposed to be added.

shift shall only receive ½ day compensation for the day and/or be allowed to utilize accrued leave time.

The Association argues that this proposal is fair given that all other 12-month employees receive a snow day as an additional day off with pay while custodians who work on a snow day are actually working one more day than other 12 month employees. It also points out that such a provision would give custodians an incentive to dig out and to report for work on snowy days.

The Board argues that hourly employees who are not able to report to work due to snow should not be paid at all, and reporting to work on snow days is part of their underlying job requirements; thus, there is no justification for overtime pay.

I do not recommend this new section. The proposal amounts to a pay rate of double time and a half for custodial employees reporting to work on a normal workday. The proposal exceeds the normal overtime rates in Article IX and is also out of sync with the secretaries' provision for working on a snow day.

I agree with the Board's position here that working on bad weather days, evenings and holidays are part of the normal job responsibilities of custodial employees. Further, providing hourly employees compensation for not reporting to work is not justified. There does not appear to be any legitimate justification for recommending the proposal.

Custodial/Maintenance Shift Differential:

The Association proposes to modify Section C(1)(c) as follows:

2.c. Night Differential Pay - [twenty-five cents (\$0.25)] seventy-five cents (\$0.75) per hour night differential for work between 6:00 p.m. and 6:00 a.m. effective 7/1/15.

The Association seeks to increase the night shift differential currently allowed for custodial and maintenance employees from \$.25 per hour to \$.75 per hour for all time worked after 6:00 p.m. and before 6:00 a.m.

The Board argues the second shift differential increase is not needed or warranted because the actual work that is completed on the second shift does not justify any differential.

The record does not indicate how many custodians work after 6 p.m. Assuming that one-third of the 53 members of the custodial staff works on the evening shift that would aggregate to 2,000 hours per year per employee, (40 hours per week X 50 weeks per year) X 17.5 employees = 35,000 hours the cost of the Association's proposal would be approximately \$17,500. On the one hand, the custodians have not had an increase in their shift differential pay since at least 2012; the current stipend is at most \$10 per week -- an insignificant amount which does not fairly compensate the employee for the inconvenience of having to work the night shift. On the other hand, the increase the Association

seeks amounts to a 200% increase in the stipend, which I find excessive. I recommend that the parties increase the night shift differential to \$.50 per hour, effective July 1, 2016.

Overtime:

The Board proposes to change the current policy of overtime being paid after working 40 hours per week inclusive of the 30-minute lunch to paying overtime for work in excess of 40 hours a week exclusive of the 30-minute lunch period. The Board proposes that any retroactive overtime pay be paid at the retro year's rate and not the newly negotiated rate.

The Association does not agree to this proposal. I find that the Board has provided no justification or cost data to support this proposal or to demonstrate that overtime costs are a problem. Therefore, I do not recommend that this proposal be included in the parties' new contract. I do not have sufficient information before me to determine the wisdom or viability of limiting adjustments to overtime worked in 2015-16 by virtue of the negotiated wage rate increase. Therefore, I do not recommend this limitation.

**Article IX, School Calendar and Employee Work Year**

The Board has several proposals on the table concerning the length of the work day and the work year. It also has proposals that would give the Board greater discretion in teachers' scheduling. These proposals will be reviewed sequentially.

The Board proposes to modify Section B.1. as follows:

1. The work year for teachers working in the employ of the Board prior to September 1 of any school year shall not exceed [184] 186 days. At least [three (3)] five (5) days of in-service per year will be devoted to meeting the State's 100-hour requirement. One of the in-service days will be four hours of in-service with the remainder of the day specifically being utilized for departmental meetings.

2. Teachers newly employed for a school year may be required to work [one (1)] up to four additional days prior to September 1 as determined by the Superintendent.

The Board argues that lengthening the work year is necessary for the District to achieve its educational goals. With regard to new teachers, the Board contends that the current practice of bringing newly hired teachers in one extra day before school begins, is grossly insufficient to provide the teacher with proper orientation.

The Association asserts that any lengthening of the work year must be accompanied by a concomitant increase in annual compensation. With regard to orientation for new teachers, the Association insists that any additional work days added before the beginning of the school year, be consecutive and immediately before the opening of school.

I recommend, with modifications, the Board's proposal to alter the teachers' work year. I recommend that the work year be lengthened from 184 days to 185 days and that the in-service days be increased from three to four, per year for full-time teachers.

I particularly note that the Board's original proposal of 189 days was reduced at fact finding to 186 days. However, I also note that adding an additional day to the school year is one-half of 1% or .5% increase in the length of the year. This fact will be taken into consideration in my salary recommendations.

The evidence in the record shows these changes are reasonable in comparison with similar districts in Atlantic County and surrounding counties, as follows:

<b>School District</b>	<b>Total Work Year</b>	<b>In-Service Days</b>
Washington Twp.	187	Unknown
Hammonton	186	Unknown
Hamilton	185	Unknown
Folsom	185	5
Egg Harbor City	184	4
Galloway	184	4
<b>Average</b>	<b>185.17</b>	<b>4.33</b>

As can be seen by the chart above, my recommendation for a 185-day work year is well within the average, both for the total school year length and the number of in-service days. I recommend the Board's proposal.

Further, I recommend that newly-hired teachers be required to work up to three additional days as part of their orientation given the many State mandates and new responsibilities and protocols they must learn. The days must be immediately prior to the opening of school and must be consecutive. It must be remembered that, consistent with the Board's proposal, starting

pay for newly hired teachers is being increased to \$50,000 and this additional commitment of time for new teachers is therefore fairly compensated.

The Board also seeks to modify sections 4 and 5 as follows:

4. Guidance Counselors shall be assigned up to two days immediately following the last teacher day for the purpose of performing guidance counselors' duties. Such days shall be at least six (6) hours in length. Work under this section shall be compensated at the per diem rate and computed as part of the annual salary. For the purposes of this section [effective 2012 - 2015, the per diem rate is calculated as 1/184 of annual salary effective for the 2015 -2016 school year the per diem rate is calculated as 1/200 of annual salary.

5. The work year for Guidance Counselors shall include eight (8) weekdays prior to the normal reporting date for a teacher in his/her building. Work under this section shall be compensated at the per diem rate and computed as part of the annual salary. For the purposes of this section [the per diem rate is calculated as 1/184 of annual salary] the per diem rate is calculated as 1/200 of annual salary. The Board cites N.J.S.A. 18A:30-6<sup>11</sup> and N.J.A.C. 6A:23A-3.1(e) (9)<sup>12</sup> as support for a per diem

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<sup>11</sup> N.J.S.A. 18A:30-6 Prolonged absences beyond sick leave states:

"When absence, under the circumstances described in section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the board of education may pay any such person each day's salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary."

<sup>12</sup> N.J.A.C. 6A:23A-3.1 is titled, "Review of Employment contracts for superintendents, assistant superintendents and school business administrators." Section (e) provides:

rate of 1/200. The statute applies to situations where approved and accrued sick leave has been exhausted and authorizes, but does not require, boards to continue to pay an employee according to a formula. The cited rule recommends a standard rate to be used in superintendents, assistant superintendents' and school business administrators' contracts, all of whom work 12 months per year. Neither provision directly applies here; neither provision is preemptive.

I acknowledge that the Board is advocating for consistency with these rates and with State policy. However, I do not find these statutory and regulatory examples apply and the "policy" implied therein to outweigh the parties' most recent contract and established practice. Moreover, the Board's proposal would effectively reduce per diem compensation to Guidance Counselors without justification.

Consistent with the new year length, I recommend all per diem calculations be based on a denominator of 185. The parties' most recent per diem rate was tied to the overall work year and I will not change this ratio or practice. No evidence suggests the previous rate was problematic or excessive.

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(Footnote continued from previous page:) "[t]he contract review and approval shall be consistent with the following additional standards," and paragraph 9. states, "[c]ontractual provisions that include a calculation of per diem for 12-month employees shall be based on a 260-day work year."

Work Hours - Support Staff

The Board proposes to modify Section C of this article to change the work hours for custodians, groundskeepers and maintenance personnel, as follows:

1. Custodians, Groundskeepers and Maintenance Personnel

a. The September to June work schedule is as follows:

- (1) The base work day shall not exceed eight (8) hours, [including] excluding a [designated] thirty (30) minute [uninterrupted] lunch period, except for overtime requirements.

The Board argues that under guidance from the US Department of Labor the Fair Labor Standards Act ("FLSA") rest and meal periods are not compensated as work time. Therefore, The Board seeks to exclude thirty minutes of uninterrupted lunch from the base work day calculation, citing Bureau of Wage and Hours Fact Sheet #22, which provides information about what constitutes compensable time under the FLSA, and Babcock v. Butler County, 806 F.3d 153, (3<sup>rd</sup> Cir. 2015). The fact sheet states, in relevant part:

Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

In Babcock, the court, adopting the fact-sensitive "predominant benefit test" held that correction officers who were not "primarily engaged in work-related duties" during their daily

meal breaks need not be paid for their breaks. The employees' collective agreement with Butler County provided that correction officers worked eight-and-one-quarter-hour shifts, including a paid one-hour meal period. Fifteen minutes of the meal period were unpaid. The arguments focused on what the corrections officers were permitted to do and restricted from doing during their breaks and who predominantly benefitted from the break. The prison's policy provided that, while on their meal breaks, officers could not leave the prison without permission, must remain in uniform, be in close proximity to emergency response equipment, and were on call for emergencies. The plaintiffs argued the policy interfered with their ability to use their meal period to run personal errands, sleep, breathe fresh air and smoke cigarettes. Butler County filed a motion to dismiss, arguing the corrections officers received the predominant benefit of the meal period. The district and appellate courts agreed with the County.

Noting that nothing in the FLSA directly addresses compensation for meal periods, the court said that courts have generally "eschewed a literal reading of a Department of Labor regulation," stating that during a meal break an employee must be completely relieved from duty. Instead, the Court approved the totality of the circumstances analysis to determine, case-by-case to whom the benefit of the meal period inures. The parties' collective agreement provided a partially compensated meal period

and overtime if a meal break was interrupted by work. The Court said this arrangement assumed the officers were not working during meal periods, but paid them if they actually worked. The Court noted the collective bargaining agreement was only one of the factors it considered, and reiterated that a collective bargaining agreement cannot be a defense to liability under the FLSA.

The Association argues that the FLSA permits parties to negotiate a paid meal period and that is what the Board and Association now have. It opposes the Board's proposed change, arguing that it amounts to increasing the parameters of the workday from 8 to 8 and ½ hours with no additional compensation. It asserts the law permits paid meal periods.

I do not recommend this proposal. Neither the USDOL Fact Sheet nor the Babcock case hold that a paid lunch period is illegal. Parties are permitted, under the FLSA, to negotiate paid meal periods. No other evidence in the record supports the need for the change. There is no evidence the Board has become liable for misapplying the compensability or overtime rules of the FLSA. The 30-minute lunch period is now part of the 8-hour workday. Removing compensation for two and one-half hours per week, lengthens their workday and affects their overtime. If I were inclined to recommend the proposal it would be along with a concomitant increase in pay, which cannot be sustained, given the Board's budget.

Work Hours - Secretarial Personnel

The Board proposes to change the daily work hours from the current 8-hour day inclusive of lunch and two 15-minute breaks to 8 hours exclusive of lunch and the two 15-minute breaks.

The Board also proposes, in conjunction with the above proposal, that base overtime on hours worked in excess of 40 hours per week, exclusive of lunch and breaks.

The Board proposes to alter the lunch hour provision of secretarial personnel consistent with its identical proposals discussed above concerning custodial workdays. It seeks to eliminate paid lunch periods and change the overtime basis. For the reasons previously expressed herein, I do not recommend the Board's proposals concerning Article IX, D. 1. and 5.

Work Hours - Paraprofessionals<sup>13</sup>

The Board proposes to modify Article IX (E) to adjust paraprofessionals' work year to be the same as for the teaching staff plus three (3) in-service days. The Board proposes that it shall determine the length of the work day not to exceed 7 hours and 30 minutes. The modified work day language as proposed by the Board is as follows:

1. The work year for assistants shall not exceed [be 173] 186 full days and eight (8) half days plus three (3) in-service days. This work year includes assistants not being required to attend or work on

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<sup>13</sup>I note that the Board seeks to change the language from "paraprofessionals" to "assistants". This proposed change has not been explained in the record, nor is it justified. I decline to recommend the language change.

[one] (2) days in which in-service training is given to teachers.

2. [All days under 1. above shall be scheduled on days which are listed in the school calendar.]
3. The work day for full-time assistants shall be seven (7) hours and 30 minutes Monday through Friday. Half days under C.1. above shall be three (3) and one-half hours in length. The Board may create and fill less than full-time assistants' positions.
4. Full-time assistants shall receive a 30-minute duty-free lunch.
5. Full-time assistants shall receive two (2) twenty (20) minute breaks per day. There shall be one (1) twenty (20) minute break on half days.

The Board did not include current contractual subsections E (6) and (7) in its proposed revised language. Therefore, I assume that the Board's intention is to delete these two subsections. Subsection 6. has to do with paraprofessionals required to participate in training outside their regular work day and presumably covered by the Board's proposal to increase the work year to 186 days. Subsection 7 provides:

When a paraprofessional who is certified to work as a substitute, is assigned by the Board or its agents, to act as a full-day substitute, he/she shall receive \$15 in additional to his/her pay as a paraprofessional.

The Board has not explained any basis for extracting this subsection from the contract and therefore, I do not recommend it. Further, it appears the Board is seeking to eliminate subsection 2 from this article; this subsection guarantees that

paraprofessionals' work days coincide with the school calendar. The Board did not support this proposal and I do not recommend it.

With regard to the Board's proposal to require paraprofessionals to work the same work year as teachers and to attend 3 in-service training days, I recommend the adoption of this proposal with modifications. The Association agrees with the proposal, as long as the Board compensates the paraprofessionals for the extra days. The parties will modify the amended language above to reflect that the teacher's work year is now 185 days. Paraprofessionals will have an increase in compensation of an amount equal to the increase in work year from 173 days to 185 days, effective in the 2016-17 school year.

#### Work Hours - Custodians

The Board proposes to delete Article IX, Section C (1) (a) (3) from the contract. This Section provides,

Starting time of each shift shall be designated annually by the Board of Education not later than thirty (30) calendar days prior to September 1 of each year.

The Board also proposes to replace paragraph C (1) (d) regarding shift assignments and transfers; this paragraph currently provides:

The Board may schedule two (2) custodial employees per building on a Monday - Thursday and Saturday schedule. The District may not involuntarily assign any employee who was on staff before December 2, 1997 to such a schedule. An employee assigned to the Monday - Thursday and Saturday shift shall remain on that shift for at least six months, unless the Board allows a transfer before that date. On the first

work day of the pay period following the sixth-month anniversary, the employee may transfer to a Monday - Friday shift if there is a custodian on staff with less seniority than he/she has at that time. In the absence of volunteers, the least senior employee shall be assigned to the Monday - Thursday and Saturday shift.

The Board proposes to replace this paragraph with:

The Board reserves the right to, from time to time, establish all work shifts and starting and ending times thereof as it may determine to meet its operational needs.

The Board argues it has the managerial prerogative to determine the starting and ending times of shifts and it needs flexibility to change these times throughout the school year in order to maintain efficiency of operations.

The Association argues the existing provision is longstanding and there are no problems the Board identified justifying the change. The Association further argues that PERC has ruled that although an employer has the prerogative to determine the hours and days of operations and the number of employees who work, the days and hours of individual employees are generally mandatorily negotiable.

I do not recommend the elimination of C. 1(a)(3), or the replacement of C.1.d. with the proposed new paragraph. The Board already has the discretion to determine starting times. Public employers have a prerogative to determine the hours and days during which a service will be operated and to determine the staffing levels at any given time. But within those limits, work

schedules of individual employees are mandatorily negotiable.<sup>14</sup>

The need for this change is not supported in the record.

e. Summer Work Hours

The Board proposes to delete entirely the current provision providing for summer work hours on a weekly schedule of four (4) ten (10)-hour days.

The Board argues the schedule for summer hours has not been successful since the provision has been in place. It asserts that summer hours have resulted in less coverage and productivity. It asserts that, in the summer, the Board's facilities need to be available to the public Monday through Friday.

The Association argues some employees work Monday through Thursday and some work Tuesday through Friday for longer hours than during the year when students are present. Thus, the Board has ample coverage.

I do not recommend the proposal. The Board asserts, without providing specific examples or other evidence, that summer hours have resulted in less coverage and productivity. The schedule appears to provide coverage from Monday through Friday.

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<sup>14</sup>See, Morris Hills Reg. Bd. of Ed., P.E.R.C. No. 2012-12, 38 NJPER 153 (¶43 2012) (teacher work hours mandatorily negotiable); Local 195 IFPTE v. State, 88 N.J. 393 (1982); Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n., 81 N.J. 582 (1980); Englewood Bd. of Ed v. Englewood Teachers Ass'n., 64 N.J. 1, (1973).

Overtime - Custodians

Article IX, Section C(1)(f)(1) and (4) currently provides,

(1) All work performed in excess of any work week of forty (40) hours, including two and one-half (2 1/2) hours of uninterrupted hours of lunch period, shall be compensated at the rate of time and one-half. . .

(4) The parties agree that the retroactive overtime pay rates between July 1, 2012 and June 20, 2013 agreements, shall be paid on the hourly rates in effect for that specific year.

The Board proposes to change the current policy of overtime being paid after working 40 hours per week inclusive of the 30-minute lunch to paying overtime for work in excess of 40 hours a week exclusive of the 30-minute lunch period. Further, the Board proposes that any retroactive overtime pay be paid at the previous contract rate and not the newly negotiated rate.

The Board argues these changes are needed to bring it into compliance with the FLSA. The Association rejects these proposals.

Since I do not recommend changing the lunch period of custodial or secretarial employees from a paid to unpaid period, I do not recommend f. (1). The Board has not supported the need for the change. The FLSA does not preclude the inclusion of lunch time as compensable work time and parties are able to negotiate a paid lunch period, as they have done here. The proposal would delay the eligibility for overtime by two and one-half hours per week before overtime becomes payable. See above discussion.

I also do not recommend f. (4) above. The FLSA provides that employees receive time and one half their regular rates of pay for any work in excess of 40 hours in a week (See, Fact Sheet #22, Board's exhibit K, paragraph 1). If employees' base salary or "regular rates of pay" are increased retroactively, their overtime rates must also be increased.

### **Article X, Class Size Hours and Teaching Load**

#### Length of Teachers' Work Day

The Board seeks to modify Article X, Section A. as follows:

1. The in-school workday for certified staff, exclusive of extra-curricular positions, shall not exceed seven (7) hours and fifteen (15) minutes Monday through Friday. [The student day shall be reduced by ten (10) minutes per day from the 2009 - 2010 student day which will become effective upon the signing of the 2010 - 2012 Agreement]. The starting and ending times shall be determined by the Board. The student day shall also be structured within this time frame. Teachers are required to remain until the departure of school buses and until completion of after-school meetings and student help obligations. [Class periods shall not exceed 46 minutes in length; however, teachers are required to remain until the departure of school buses]. The length of the class periods shall be as determined by the Board. Athletic coaches and activity advisors are required to remain until after the departure of the activity or athletic buses when their activities are in session.

The Board argues that it has a management right, in fulfilling its educational policy objectives, to decide the starting and stopping times of the school day as well as the

length of the class periods. The Board asserts the current class period structure limits its instructional goals as well as the testing mandates from the state.

The Association strenuously objects to the proposed modifications of its teacher work hour's clause. It contends that the Board has proffered no basis to replace a negotiated provision with what is, in essence, management's discretion. This dispute between the parties came to a head over the Board's implementation of revised class periods to accommodate State-mandated PPARC testing in 2014, and again, in 2015. Based upon the then current contract language, the grievance arbitrator found that the Board could not contractually alter the length of class periods without first negotiating such a change with the Association. Greater Egg Harbor Regional Board of Education, Docket No. AR-2016-026 (1/5/16). Thus, the Board seeks to negotiate over this contractual language.

I recommend the Board's proposal with the caveat that any modification to the teacher work day neither extend the total length of the work day nor have the effect of diminishing the existing number of teacher preparation periods.

The Board has a managerial prerogative to determine the starting and ending times and to structure the school day within those timeframes. A school board has a prerogative to determine the structure of the school day and to establish block

scheduling.<sup>15</sup> It is important to note that the Board does not seek to lengthen the teacher work day in any way by this proposal. While it appears that there is no contractual provision for a guaranteed number of teacher preparation periods, there is, no doubt, but that there is an existing past practice in effect which sets this term and condition of employment. The Board has not stated that it wished to alter the number of teacher prep periods. The existing contractual restrictions on the total length of the teacher's work day, together with the District's past practice on teacher prep periods, does not permit the Board or the District's administration to significantly alter employee's terms and conditions of employment in any event. However, there are times such as the PPARC testing, where the Board simply needs some flexibility in class scheduling to achieve its educational goals and to accomplish State-mandated requirements. On balance, I recommend the parties adopt the Board's proposals concerning teacher work year in line with the restrictions outlined herein.

#### B. Meetings

The Board is proposing to increase after-school faculty meetings from 10 per year on Mondays to twenty (20) faculty/

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<sup>15</sup>South Hunterdon Reg. Bd. of Ed., P.E.R.C. No. 2013-67, 39 NJPER 460 (¶146 2013), Morris Hills Reg. Bd. of Ed., P.E.R.C. No. 2012-12, 38 NJPER 153 (¶43 2012); Elizabeth Bd. of Ed., P.E.R.C. No. 2004-9, 29 NJPER 389 (¶123 2003), Jersey City School Dist., P.E.R.C. No. 97-151, 23 NJPER 396 (¶28182 1997); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 97-117, 23 NJPER 238 (¶28114 1997).

departmental meetings per year for matters related to the faculty, including professional development<sup>16</sup>. The proposal also extends the length of such meetings from 45 to 60 minutes each.

The Board proposes this language:

Two meetings per month for a total of 20 faculty/departmental meetings per school year to be used for professional business or for professional development. Each meeting will not exceed 60 minutes in length. The first meeting of the month will be scheduled on a Monday, and the second meeting will be scheduled on a Monday, Tuesday, or Wednesday. A meeting schedule will be published at the beginning of every school year. Start time for meetings will be 15 minutes after the end of the last academic period.

The Board argues that the additional meeting days and longer faculty meeting times are necessary to meet its 100-hour professional development mandate. It also contends that the additional meeting time is necessary to cover all of the intricacies of curriculum development and technological advances with the teaching staff. The Association maintains that that the Board is already meeting its 100-hour State-mandated professional development time and that additional faculty meetings are burdensome and unnecessary.

I recommend the Board's proposal with modifications. I recommend that the Board have discretion to schedule a maximum of 15 faculty/departmental meetings per school year and that the

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<sup>16</sup>The Board's original proposal called for expanding the number of meetings from 10 to 20. By email of January 17, the Board amended this proposal. The amended language appears above.

meetings be scheduled on Mondays or Tuesdays. I decline to recommend that the length of the meetings be extended to 60 minutes. The Board's proposal would be a 50% increase in the number of faculty meetings and a 33% increase in the length of such meetings. I have cut back the number of recommended faculty meetings, in part because I have added one day to the school year which the Board may use for professional development. I have not recommended lengthening the meeting times because it may interfere with teachers' after-school childcare and other personal commitments. I emphasize that 15 is a maximum number of meetings and that the Board may not require this many meetings. The impact on teachers in accepting this proposal would be an additional 3.75 hours per year of faculty meeting time (5 X 45 minutes). This increase in work hours will be taken into consideration in my above salary recommendations.

#### IEPs

The Association proposes to add a new paragraph within Section D., as follows:

When a teacher has to write an IEP, the teacher will be relieved from his/her duty period or receive compensation at the hourly rate if the IEP is written outside of school.

The Board argues that writing IEPs are part of teachers' professional responsibilities and as such, there is no basis to pay them separately for this task.

I recognize that this school district has a significant number of special education students and that the completion of IEPs can be a time-consuming endeavor. To the extent that the Association is seeking any additional compensation for members of the Child Study Team to write IEPs, I find that such additional compensation is unnecessary and inappropriate. To the extent that the Association is seeking additional compensation for classroom teachers to complete their part of IEP forms, the Association has not provided sufficient information -- such as, the number of IEPs the average teacher would be expected to complete in a school year, and the length of time it would take to complete one -- for me to properly evaluate this proposal. Therefore, I cannot recommend the inclusion of this provision in the successor agreement.

#### After-School Help

The Board proposes to add a new section to Article X, as follows:

Effective 7/1/16, all teachers shall be available to provide extra help to students immediately following the end of the student day.

The Board argues adding the provision creates accountability for teachers who fail to consistently carry out this duty. The Association objects to the proposal and asserts that teachers are well aware of their professional responsibilities to the students

and already regularly provide extra help to students at the end of the day. That assertion was unrebutted. I do not recommend this new section. The Board has not supported the need for the paragraph with any factual support. The section is also unnecessary as the Board already has authority to hold accountable teachers who fail to perform any professional duty.

### **Article XI, Salary and Benefits**

#### Longevity

The Association proposes that the current longevity benefit for teachers remain as per the expired contract. It also insists that, as per past practice, the parties treat the cost of longevity increases (as teachers reach new benchmarks of service) as "outside the box" - that is, that such costs not be inclusive in the cost of salary increases.

The Union seeks to expand the longevity program for secretaries, custodians, and paraprofessionals. For the support staff, the Association proposes a new longevity guide which would be applied after the employee reaches maximum step on the salary guide, as follows:

L-1: in the year following one year at max step	1,700
L-2: after the last step on the guide +3 years	2,700
L-3: after the last step on the guide +5 years	3,700
L-4: after the last step on the guide +7 years	4,700
L-5: after the last step on the guide +9 years	5,700
L-6: after the last step on the guide +12 years	6,700

The Board seeks to eliminate longevity for those who do not now have it and to freeze all current employees at their existing

longevity step. Longevity was most recently increased in the 2013-14 school year by \$500. Longevity payments for teachers ranges between \$3,500 and \$9,500, depending upon the length of service. For school year 2014-15, the price tag for the existing longevity program for teachers was \$507,000. If the existing compliment of teaching staff continued with the District, the longevity program would increase by 22% in 2015-16, and inflate to a cost of \$621,000. In 2016-17, the program will increase to \$699,000 -- a 12.9% increase, and then rise to \$771,000 by 2017-18 -- another 10.3%. However, it is a given that the loss of personnel through attrition, especially the retirements of long-time employees with the highest levels of longevity pay, will trim these costs. (B-3)

The trend in New Jersey is moving away from longevity benefits; it is currently far more frequent to see longevity being eliminated or ratcheted back than any expansion of the program. While it is true that the teachers in this district enjoy a benefit from the longevity program that is not available to the support staff, I must consider the longevity program as part of the overall compensation package being recommended. No one single element of the package can be treated in isolation. In this district, there are very few members of the support staff as the top of the salary guides; therefore, an expansion of the longevity program to include support staff would only benefit a select few people. While arguably this would minimize the

financial impact of such a program on the Board, I believe it to be preferable to put available resources into other forms of compensation such as salaries, it would benefit the greatest number of employees.

As to the Board's proposal to eliminate/freeze longevity, I do not recommend this proposal either. Such a major concession on the part of the Association is unlikely to be acceptable unless it is paired with some positive gain in favor of the Association's membership.

I am inclined to recommend the parties maintain the current longevity program. I recommend that the parties continue their past practice of treating longevity increases as "outside the box", in terms of cost calculations.

#### Miscellaneous Salary Issues

The Association proposes to increase the annual stipend for custodians managing the receiving room from \$1,000 to \$1,500. It also proposes to increase the annual stipend for custodian day coordinators from \$1,000 to \$1,500. The Association contends that these stipend amounts have not been increased in 19 years. The Board argues that there is no basis to increase the stipends. This is a 100% increase in this first instance, and a 50% increase in the second instance. The Board objects to both of these proposals. I find no basis to recommend these increases.

The Association also proposes a new section in this article that District nurses first be offered positions requiring a nurse

on an overnight field trip. While the Board acknowledges that this is already the practice, it objects to such language in the contract as a requirement. I see no basis to include this provision in the contract.

The Association also proposes a new section in this article which will provide "all staff shall be able to send their children to any Greater Egg Harbor Regional High School, at which they are employed tuition free". The Board asserts that this perk is already covered by Board policy which charges employees and there is no basis to add this as an additional benefit. Without additional data on the number of students involved or the costs, I am unable to recommend this provision.

The Board proposes to modify section K. of this article which presently provides that buildings and grounds employees holding a "valid fireman's license" and assigned as fireman on duty for the shift, shall receive a \$10 per diem stipend. The Board proposes to modify this clause so that the employee receives a \$1,000 per annum added to his contractual salary. The Association objects to this proposal and asserts that it would actually decrease compensation by \$1,400 per year if the employee worked 240 days. I have not been provided with sufficient justification to recommend this proposal and it is rejected.

**Article XII, Health Insurance**

The Association proposes a one-year contract followed by a two-year contract, and that the following language be added during the second contract term:

At the end of Tier 4, employees shall contribute the following towards their health insurance costs in lieu of the Tier 4 payments:

Single Coverage - 1.5 % of salary per year  
Husband/Wife, Parent Child - 3 % of salary per year  
Family - 5% of salary per year.

The Board proposes to add language to the contract that would require all employees to contribute at Tier 4 for the term of the agreement.

I recommend the Board's proposal. In Clementon Bd. of Ed., P.E.R.C. No. 2016-010, 42 NJPER (¶34 2015), the Commission considered the negotiability of a proposal that unit members contribute 1.5% of base salary as their health benefit contribution after full implementation of Chapter 78. The Commission found that Chapter 78, N.J.S.A. 18A:16-17.2, expressly, specifically and comprehensively sets forth that health benefit contribution levels become negotiable in the "next collective negotiations agreement after . . . full implementation" of the four-tiered level of employee contributions is achieved." The statute established the fourth tier as the existing term and condition of employment. Here, the parties have just begun contributions at Tier 4 in school year

2015-2016. Therefore, I do not recommend the Association's proposed new section reverting to a contribution rate of 1.5%.

While in Clementon, the Commission found that parties may agree to a one-year contract, followed by a multiyear contract in which tier reductions are legal, I do not recommend health benefit contribution reductions during the three-year period 2015-2018.

First, the reductions the Association seeks are substantial. If the average teacher's salary in Greater Egg Harbor is \$65,405 annually, an employee in Tier 4 of Chapter 78 would contribute 29% of the premium charge. The 2015-16 premium for single coverage under Horizon Direct-15, for instance is \$8,558; therefore, the current employee contribution at 29% would be \$2,482. For family coverage under Horizon Direct-15, the premium is \$24,475 and the average employee contribution would be \$7,098. According to the Association's proposal, the contribution would drop to 1.5% of salary or \$981 on the average teacher's salary -- a significant reduction. This would transfer the burden to pay for teachers' health benefits back to the Board. This is not the year to make such a change.

Second, the Association's evidence shows that 73 districts in New Jersey have agreed to reduce health benefits contributions, it was unable to demonstrate that any of the sending districts to Greater Egg Harbor Regional or other comparable Atlantic County districts have implemented

contribution reductions. Accordingly, I recommend that the parties adopt the Board's proposal to incorporate Tier 4 contributions into the 2015-2018 contract. I do not recommend the Association's proposal.

#### Dental Insurance

The Association seeks to modify Section D of this Article to require the Board to pay the full premium in effect for the life of the contract. The Board asserts that the current language should be maintained. Currently, Section D. provides:

D. The Board contribution toward a family Dental Plan shall be the actual premium in effect each year of this Agreement. The premium in effect at each enrollment level for 2011-2012 shall become the Board maximum contribution for future years unless and until changed by the parties in writing.

The Association proposes to modify this section as follows:

D. The Board's contribution toward a family Dental Plan shall be the actual premium in effect each year of this Agreement. [The premium in effect at each enrollment level for 2014-2015 shall become the Board's maximum contribution for future years unless and until changed by the parties in writing].

I recommend neither of the parties' positions on this issue. Rather, I recommend that the parties agree to pin the Board's maximum contribution to the premiums in effect for the 2015-16 school year. I recommend the following language:

D. The Board's contribution toward a family Dental Plan shall be the actual premium in effect each year of this Agreement. The premium in effect at each enrollment level for 2015-2016 shall become the Board's maximum contribution for future years unless and until changed by the parties in writing.

Retirement Medical Benefits

The Board proposes to limit the availability of health benefits coverage for future retirees. Section E, of Article XII, currently provides as follows:

E. Employees retiring from the district under the Teachers' Pension and Annuity Fund (TPAF) or the Public Employees' Retirement System (PERS) shall be eligible to enroll in any or all of the coverages provided under A. or B. in the District Sub-Group Retirees Plan. Enrollment in this plan shall be the responsibility of the retiree. Payment of the cost of coverages elected shall be the responsibility of the retiree and shall be remitted as directed.

The Board proposes to grandfather current retirees who have maintained the insurance provided no other employee or retiree will be eligible. Currently there are 7 retirees maintaining prescription coverage and none maintaining medical coverage. The Board asserts on the advice of its insurance broker that the proposal is needed to reduce exposure to higher premium costs for future years.

The Association opposes this proposal. It argues that since the Board is not directly responsible for paying the premiums for retired teachers, there is no expense to the Board and therefore, no cost savings will flow from implementing this proposal.

I do not recommend this proposal because the Board has not supported the change with any evidence, and it appears it will not result in savings to the Board.

**Article XVII, Holidays**

Both parties seek changes in Article XVII. The current language provides for 12 named paid holidays for custodians, groundskeepers and maintenance workers covered by the contract. Section B currently provides,

B. When a holiday falls on a Saturday or Sunday, the Board shall designate the preceding Friday or the following Monday as the holiday if school is closed or grant the one compensatory day if school is open.

The Association seeks to add the following sentence to Section B:

B. When a holiday falls on a regularly scheduled day off, then a compensatory day will be granted.  
(Clarification so all support staff receives compensation for 16 holidays).

The Association's proposal is precipitated by the fact that during the summer custodial staff works a four-day work week -- either Monday through Thursday or Tuesday through Friday. If the holiday is celebrated on a Monday, then custodians on the Tuesday through Friday work schedule lose out on the benefit of the holiday because they are already off Mondays. The Association is seeking to ensure that all unit employees have the benefit of the holiday off. It appears that the Board is not conceptually opposed to this proposal.

The Board proposes to change the title of Article XVII to read: "Holidays - 12-Month Custodians, Groundskeepers and Maintenance workers". The genesis of this proposal is a recent grievance arbitration award in which the Arbitrator concluded

that because the caption of this article referred to all support staff, he interpreted a broader reading to this clause than the Board believes the parties intended. The Board is now seeking to restrict this Article to only 12-month custodial, grounds-keepers and maintenance workers.

I recommend both proposals. I agree with the Association that its proposed added language lends clarity to the Article that all employees - no matter their shift, have the full benefit of the holiday article. I also agree with the Board that changing the title of the Article will make it clear that the intent of the parties, as reflected in the very specific language in Section A, was to cover 12-month custodians, groundskeepers and maintenance workers.

**Article XVIII, Vacations - Support Staff:**

The Association seeks to modify Section D of this article. This section currently provides:

D. After twenty (20) years of consecutive service, each employee shall receive twenty-one (21) vacation days.

The Association proposes to replace the current language with the following:

D. After (twenty (20)) Fifteen (15) years of consecutive service, each employee shall receive twenty-one (21) vacation days.

I find that this proposal has not been justified by the record. Therefore, I do not recommend so modifying this Article

**Article XXIII, Athletic and Extra-Curricular Stipends**

The Association proposes to modify the athletic stipend schedule (E-1) and the Extra-Curricular stipend schedule (E-2) as follows:

- Delete the current 4 steps in the respective guides and leave only the step 4 stipend. All employees not on step 4 would move to step 4.
- Add in Post-Season as follows:
  - Head Coaches - \$35 a day
  - Assistant Coaches - \$30 a day
- Increase each stipend on step 4 and the post season salaries by 3.5% in each year of the Agreement.
- Increase each stipend amount in the "Additional Extra-Duty Stipend Schedule" (E-3) as follows:
  - All hourly/game extra duty payments - \$2/hr. increase
  - Annual stipend shall be increased by \$50.
  - Homebound Coordinator increased by \$2 per student.

The Board agreed to eliminate all but step 4 of the athletic guide and move any employee not already on step 4 up to step 4. The Board rejects the Association's proposal to increase the stipend amounts in Schedules E-1, E-2 and E-3.

The Association argued that stipends have not been increased in several years. Recognizing the parties consent to moving employees up to step 4 of the stipend guide and abolishing the remaining steps, I so recommend its adoption. I also recommend a

one-time, modest increase in all stipends of 3%, effective July 2016. The resulting new stipend rates and the cost attendant thereto, are as follows:<sup>17</sup>

<b>ATHLETIC SALARY SCHEDULE</b>				
<b>Coaching Assignment Exhibit E-1</b>	<b>Step 4 2014-15</b>	<b># of Sports</b>	<b>Total Cost</b>	<b>(3%) 2016-17</b>
Football	8,883.67	1	8,883.67	9,150.18
Basketball/Wrestling	8,031.73	2	16,063.46	16,545.36
Softball, Baseball, etc.	7,179.80	8	57,438.40	59,161.55
Cross Country, etc.	6,242.14	5	31,210.70	32,147.02
Winter Cheer	4,367.89	1	4,367.89	4,498.93
Fall Cheer	4,283.23	1	4,283.23	4,411.73
Football Assistant	5,901.36	1	5,901.36	6,078.40
BB/Wrest Asst.	5,390.21	2	10,780.42	11,103.83
Crew Assistant, Softball, Baseball, etc.	4,708.67	8	37,669.36	38,799.44
CC, Tennis, etc. Asst.	4,112.85	5	20,564.25	21,181.18
Winter Cheer Asst.	3,175.19	1	3,175.19	3,270.45
Fall Cheer Asst.	3,004.80	1	3,004.80	3,094.94
<b>Total</b>	<b>65,281.54</b>	<b>36</b>	<b>203,342.73</b>	<b>209,443.01</b>
			<b>Increase</b>	<b>6,100.28</b>

<b>EXTRA-CURRICULAR SALARY SCHEDULE</b>				
<b>Activity Exhibit E-2</b>	<b>Step 2 2014-15</b>	<b># of Classes</b>	<b>Total Cost</b>	<b>(3%) 2016-17</b>
Art, Forensics, etc.	1,859.24	7	13,014.68	13,405.12
Weight Room	1,537.76	1	1,537.76	1,583.89
Academic Competition, etc.	2,019.98	15	30,299.70	31,208.69
Chess, French, etc.	2,180.73	12	26,168.76	26,953.82
Drama Asst.	2,261.10	1	2,261.10	2,328.93
Media Asst., etc.	2,448.63	6	14,691.78	15,132.53
NHS, NHS Tech, etc.	2,555.79	3	7,667.37	7,897.39
Class 09', Yearbook., etc.	2,770.11	2	5,540.22	5,706.43

<sup>17</sup> For purposes of these calculations, I have made certain assumptions about the number of sports coached based upon the language in Exhibit E-1 in the contract.

Class 10', Stage Craft, etc.	2,984.44	4	11,937.76	12,295.89
Class 11', Drama	3,413.08	5	17,065.40	17,577.36
Social Studies	3,402.37	1	3,402.37	3,504.44
Band Front, Class 12', etc.	3,841.72	7	26,892.04	27,698.80
Yearbook Edit	4,377.53	1	4,377.53	4,508.86
Band, Band Front	4591.85	2	9,183.70	9,459.21
Band (Summer)	7913.85	1	7,913.85	8,151.27
<b>Total</b>		<b>68</b>	<b>181,954.02</b>	<b>187,412.64</b>
			<b>Increase</b>	<b>5,458.62</b>

<b>ADDITIONAL EXTRA-DUTY SALARY SCHEDULE</b>		
<b>Exhibit E-3</b>	<b>2014-15</b>	<b>(3%) 2016-17</b>
Homebound Tutor (hour)	39	40
Ticket Seller/Indoor Guard (game)	50	52
Timekeeper (game)	59	61
Graduation/Bacc. (annual)	911	938
Bus Supervisor (annual)	1,693	1,744
Supv. Summer Litho. (hour)	29	30
Asst. Summer Litho (hour)	29	30
Summer School Teacher (hour)	33	34
Approved Tutorial (hour)	33	34
Summer Curr. Dev. & Non-Class	29	30
Writing Course of Study (Semester & FY)	867	893
Site Manager	8,468	8,722
Late Detention (hour)	27	28
Absegami PAC House Mgr.	1,782	1,835
Sound & Light (Outside Grps)	31	32
Local Prof. Dev. Cmte. Mbr.	677	697
Homebound Coord. - 11 mos. (per student)	66	68
Summer Weight Rm. (hour)	30	31
Drama - 1, 2, 3 Act Plays & Musical	1050	1,082
Drama Asst. - 1, 2, 3 Act Plays & Musical	630	649

I also recommend that the parties incorporate the Association's proposal to add a stipend of \$35 per day for head coaches' post-season games and \$30 per day, for assistant coaches' post-season games, effective July 1, 2016.

**Article XXVIII, Tuition Reimbursement**

Article XXVIII - Section A.4. currently provides,

A. There shall be a reimbursement plan for tuition paid by teachers under the following terms . . .

4. The individual per-teacher maximum tuition reimbursement shall be \$1,500.00 per teacher. Unit wide Board maximum reimbursement per year shall not exceed \$53,000.00.

The Association proposes to modify this provision as follows:

4. The individual per-teacher maximum tuition reimbursement shall be the cost of six (6) graduate credits at Stockton University per teacher. Unit wide Board maximum reimbursement per year shall not exceed \$53,000.00.

The parties have agreed to modify Section 4. as follows:

The individual per-teacher maximum tuition reimbursement shall be the cost of six (6) graduate credits at Stockton University per teacher. Unit wide Board maximum reimbursement per year shall not exceed \$53,000.00.

Since the parties have agreed to this change, I recommend this proposal.

The Association also proposes to add the following language to the tuition reimbursement article:

Whenever teachers are mentioned, include paraprofessionals throughout the entire Article.

However, the Board objects to the addition of paraprofessionals as potentially eligible for tuition reimbursement.

I do not recommend the addition of this language. The Association has not demonstrated the need for this language. The desirability of the benefit is assumed and I do find persuasive the Board's reasons for rejecting the proposal -- that paraprofessionals do not have an instructional role and the cost would be at the expense of the teachers' tuition reimbursement budget. I agree with the Board that expanding the fixed pot of available funds to cover additional eligible employees - paraprofessionals, would have the effect of limiting opportunities for advanced education for teachers. I do not recommend this proposal.

Article XXIX, Uniform Allowance

The Association seeks to modify Article XXIX to add the following:

D. Each Custodial and Maintenance employee shall receive \$200.00 reimbursement every two years for the purchase of work boots, winter gear and coats. An employee shall be able to utilize the entire amount in the first year if necessary. Employees must submit receipts for items purchased in order to receive reimbursements. Such reimbursements shall be made by the Board with 45 days of receipt of the paid bill.<sup>18</sup>

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<sup>18</sup> Bracketed material is proposed for deletion; underlined material is proposed to be added.

The current contract does not provide any uniform allowance for custodial and maintenance employees, although the practice has been for the Board to periodically provide boots to these members of the bargaining unit. The Association seeks to solidify this benefit with contract language and a specific periodic payment. The Board contends that the past practice is sufficient and that no contract language is necessary.

An allowance of \$200 every other year for the purchase of these necessary items is fair and reasonable. The cost to the Board is a mere \$5,300 per year. I recommend the inclusion of the Association's proposal in the next contract, effective July 1, 2016.

## **LANGUAGE ISSUES**

### **Article I. Recognition**

The Board proposes the exclusion of the Secretary to the Director of Curriculum and Instruction as a confidential employee. The Board asserts the position works with other non-unit employees in the central administrative offices and is exposed to confidential negotiations information. The Association disputes the assertion.

N.J.S.A. 34:13A-6 (d) provides that the Public Employment Relations Commission ("Commission") has primary jurisdiction over issues concerning the appropriate collective negotiations unit,

including disputes over the statutory exemption as a confidential employee. N.J.S.A. 34:13A-3(g) defines confidential employee.

I find this proposal concerns an issue that is not mandatorily negotiable. In Borough of Wood-Ridge, P.E.R.C. No. 88-68, 14 NJPER 130 (¶19051 1988), the Commission acknowledged the parties' rights to negotiate over changes to their recognition clauses, disputes over the scope of bargaining units should be decided by the Commission.

Since the issue here concerns a statutory exclusion, I will not make any recommendation concerning the continued inclusion of the Secretary in the Association's unit. The Board may seek resolution of this issue through the Commission's Unit Clarification procedures, N.J.A.C. 19:11-1.1(4) and 1.5.

#### **Article VIII - Employment Procedures**

##### Current Language:

##### D. Notification for Support Staff Employees

1. Employees shall be notified of their contract status for the ensuing year as follows: by May 15 for custodial employees, secretarial employees and paraprofessionals. Employment contracts shall contain a standard sixty (60) day notification clause for termination of contract.

2. Buildings and Grounds Department employees, Secretarial and Assistant layoffs shall be district-wide and shall be by seniority per classification, i.e., last-in, first-out. Recall list shall be maintained for one hundred twenty (120) calendar days. Recalls shall be by reverse procedure. Recalled employees shall have seniority rights and accumulated sick leave restored.

The Board proposes to delete the following language from Article VIII., D.:

1. [Employment contracts shall contain a standard sixty (60) days notification clause for termination of contract].
2. Buildings and Grounds Department employees, [Secretarial and Paraprofessional] layoffs shall be District-wide and shall be by seniority per classification, i.e. last-in, first out. Recall lists shall be maintained for one-hundred twenty (120) calendar days. Recall shall be by reverse procedure. Recalled employees shall have seniority rights and accumulated sick leave restored.

The Board asserts the last sentence of D.1 is inconsistent with the resignation provision in B. 2, which requires a support staff employee to provide 14 days' notice of his/her resignation. Further, the Board argues the parties have agreed to a thirty-day notification for termination of employment contracts.

The Board also argues that layoffs should be governed, not by seniority, but by the Board's judgment of employees' relative strengths, work skills, experience, performance ratings, knowledge of technology, and personal attitudes, and with consideration for operational efficiency. The Board further argues some secretaries have legal tenure (See, N.J.S.A. 18A:17-4) and can "bump" less senior employees during RIFs.

The Association argues that no statute or regulation gives secretaries seniority they can use in reductions-in force actions. It notes the decision to conduct a layoff is not

negotiable, but the procedures for a layoff or RIF, including the use of seniority, are negotiable.

I do not recommend the proposed changes. The first part of the proposal would leave employees with *no* minimum advance notice of termination and appears to conflict with N.J.S.A. 18A:27-10.2, requiring that Boards notify paraprofessionals by May 15 whether they will be offered employment contracts. Moreover, Article VIII (B) provides that (tenured) employees who are resigning must give sixty (60) days' notice, and non-tenured employees must give either the notice specified in their individual employment contracts or fourteen days' notice. Elimination of the sixty-day notice for termination of the contract would apparently result in no requirement on the Board's part to give employees advanced notice. Fundamental fairness would seem to dictate that employees be given notice that their contract is being terminated, therefore, I cannot recommend that Board's proposal with regard to D (1).

The proposed deletion of VIII, D. 2 strips secretarial and paraprofessionals of their existing seniority-based layoff rights and alters the scope of their layoff rights. Secretaries do not receive seniority by law or regulation but exclusively under the Agreement. They may be tenured and, therefore, the proposed change would provide greater layoff rights for tenured than non-tenured secretaries. Paraprofessionals would simply be left with no layoff rights. The Board asserts that it is burdened by the

limits imposed by these rules, and argues factors other than seniority - productivity, evaluations, etc. - are more rational and effective criteria for layoffs. The Board has not supported these assertions with any factual support. Nor has it demonstrated a need for this change. I am not persuaded the use of seniority, an objective criterion, is inferior to the other subjective criteria, which may in fact, lead to favoritism. I conclude that reducing the affected employees' rights is not warranted. Further, except in extraordinary circumstances, giving employees potentially no advance notice of the termination of their contracts is unwarranted and seems unfair. Accordingly, I do not recommend these changes. Leaving the provisions in section D in place continues to afford the Board the ability to conduct reductions-in-force.

**Article IX, School Calendar and Employee Work Years:**

Section C of this article pertains to custodial staff overtime. The Association proposes to modify the current language in Section C.1.f. (2) as follows:

C.1.f. (2). All overtime work shall be determined by the Business Administrator. [Reasonable efforts shall be made to equitably distribute overtime to all members per shift.] Overtime shall be granted based on a seniority list of members by school in each category. After a member has worked overtime or refused an opportunity to work overtime, their name shall go to the bottom of the list. Exceptions may be made due to the need for a special skill or qualification.

The Association asserts that the current standard of "reasonable efforts" has not resulted in an equitable distribution of overtime, but rather, results in favoritism.

The Board argues against a seniority list for overtime, which it asserts artificially limits opportunity for employees seeking overtime.

I recommend the Association's proposed modifications to Article IX. C.1.f. (2). The language to be deleted is vague and the new language provides an objective criterion and method (rotation) to guide the assignment of overtime, provided candidates are equally qualified. It also spells out what happens when employees decline overtime opportunities, while reserving to the Board its inherent authority and discretion to determine whether to offer overtime work. Moreover, the parties appear to favor the use of seniority in other contractual contexts and the proposal will lead to greater predictability in overtime assignments.

**Article XV - Temporary Leaves of Absence:**

The current language of Section A (1). provides,

A.1. Personal Leave

a. Three (3) days leave of absence for personal, legal, business, household, religious or family matters which cannot be handled outside of the workday for which he/she need not state any reason for two (2) of the three days other than he/she is taking the personal day under this provision.

c. [Approval for personal leave for teachers will not be granted on the days preceding or following a vacation period except with the approval of the Superintendent.]

The Association proposes to delete Article A.1.c in its entirety. The Association seeks to eliminate this subsection as the Superintendent has recently imposed a blanket policy of no approvals for personal leave before or after vacations and this issue is in arbitration. The Board objects to the deletion of paragraph c., which it asserts prevents abuse. It notes that there already exists a problem with Monday-Friday use of personal leave. The Association counters that there is no evidence of an abuse problem and deleting the paragraph will result in less chance of favoritism in administering the leave benefit.

The Board seeks to add modifying language to the first sentence of A(1)(a) to clarify that 3 days' personal leave is available for full-time employees only. The Board also proposes to add a sentence at the end of (A)(1)(a), which would state:

For part-time employees, the three (3) personal days shall be pro-rated based upon the ratio the part-time employment bears to full-time employment.

The Board argues it seeks equity between full and part-time employees with regard to personal leave. Part-time employees' personal leave benefit should be prorated.

The Association argues that the part-time employees' benefits are already prorated.

I do not recommend deleting paragraph c., but would recommend the addition of the phrase after the word superintendent, "and such approvals will not be unreasonably withheld." I agree with the Association's contention that leave time is already pro-rated for part-time employees. A half-time paraprofessional who works four hours a day charges four hours off when granted a personal day; a full-time employee charging a personal day has seven hours deducted from his/her time bank. Therefore, part-time employees are already receiving fewer hours of personal leave by virtue of the nature of their employment hours. Further pro-ration of leave time would be unnecessary and unfair. I do not recommend the Board's proposal.

#### Bereavement Leave

The Association proposes the following changes in this section:

#### Death in the Immediate Family

[With approval of] Upon notification to the Superintendent or Business Administrator, an employee [may] will be granted days of absence, without loss of salary, due to death in the staff member's immediate family. The number of days of absence granted shall be [determined by individual circumstances] as follows, and shall not be deductible from the three (3) days of personal leave as defined in Section a.

	<u># of Days</u>
(1) Husband of wife	<u>7</u>
(2) Children ( <u>including step</u> )	<u>7</u>
(3) Father and Mother ( <u>including step</u> )	<u>5</u>
(4) Brother or Sister ( <u>including step</u> )	<u>5</u>
(5) Father and Mother-in-law	<u>3</u>
(6) Grandparents	<u>3</u>

(7)	Grandchild	<u>3</u>
(8)	Brother-in-law	<u>3</u>
(9)	Sister-in-law	<u>3</u>
(10)	Member of the household	<u>3</u>
(11)	<u>Nephew or Niece</u>	<u>1</u>
(12)	<u>Aunt or Uncle</u>	<u>1</u>

The Board counter-proposes up to 5 days for the death of spouse or children and, for other members of the immediate family, up to 3 days. It rejects any additional relationships. The Board cites uniformity and consistency for its proposal. The Board also objects to limitations on the Superintendent's discretion in granting such leaves.

I recommend the Board's proposed number of days and relationships; the Association's proposal seems excessive and is unsupported -- there are no examples in the record showing bereavement leave benefits provided by comparable districts. Further, I recommend that the language in Section 2 be modified as follows:

[With approval of] Upon notification to the Superintendent or Business Administrator, an employee [may] shall be granted up to five (5) days leave of absence, without loss of salary, due to the death of the staff member's spouse or children. Up to three (3) days leave of absence may be granted for the death of other members of the employee's immediate family to include mother, father, brother, sister, mother-in-law, father-in-law, grandparents, grandchildren and members of the employee's household.

### **New Article - Legal Proceedings**

The Association proposes to add a new section as follows:

An employee subpoenaed to testify in any legal proceeding shall be granted days of absence with no loss of pay.

The new section was not supported by either facts or argument. I find it unnecessary -- full-time employees already receive three personal days which may be used for this purpose. Accordingly, I do not recommend this provision.

**ARTICLE XVI - EXTENDED LEAVES OF ABSENCE:**

The current contract provides, in relevant part, as follows:

A. Child Rearing Leave

(1) Pregnant employees who are medically disabled are entitled to sick leave utilization in accordance with N.J.S.A. 18A:30-1 et seq.

(2) An employee with a child less than three (3) months old may apply for and will be granted an unpaid Child Rearing Leave of Absence without pay provided application is made at least sixty (60) days prior to commencement of such leave.

\* \* \*

(5) Child Rearing Leave shall not exceed eighteen (18) calendar months, without the approval of the Board.

\* \* \*

(8) For the purposes of salary guide placement for the year subsequent to the Child Rearing Leave, six (6) full months, constitutes one-year credit for twelve (12) months employees and five (5) full months constitutes one-year credit for ten (10) months employees.

B. Adoption Leave (Teachers):

The Board shall grant adoption leave without pay to any teacher upon request, subject to the following stipulations and limitations:

(1) Any teacher adopting an infant child shall receive leave similar to Child Rearing Leave, which shall commence upon receiving de facto custody of said infant, or earlier if necessary to fulfill the requirements for the adoption.

\* \* \*

(3) Adoption Leave shall not exceed twenty-four (24) calendar months, without the approval of the Board.

C. Miscellaneous Provisions:

Child Rearing (All Employees) and Adoption Leaves (Teachers Only)

(1) Salary shall not be paid to the employee during leave under Paragraphs A (excluding A. (1) or Paragraph B. above.

(2) Leave time under A. and B. above shall not be considered as experience time for salary purposes and the employee shall return to the district's employ on the salary guide in effect at the time of return with employees having the same number of years' experience and training.

(3) One-half (1/2) year or more of experience gained prior to or upon return from leave under A. and B. above during an academic or school year shall be considered as one full year of experience for purposes of salary guide placement for the subsequent school year.

D. When a teacher is ill or disabled for a greater number of days than the total number of sick days that he/she has accumulated, the Board of Education may pay such person each day's salary less than the pay of a substitute, if a substitute is employed, or the estimated cost of the employment of a substitute is employed, for such length of time as may be determined

by the Board of Education in each individual case. A day's salary is defined as 1/200 of the annual salary.

The Board proposes the following modifications to this clause:

(1) Pregnant employees who are medically disabled are entitled to sick leave utilization in accordance with N.J.S.A. 18A:30-1 et seq. The sick leave shall run concurrently with any eligibility for leave under FMLA. The employee shall complete and file or have completed and filed with the Business Administrator the FMLA/USDOL physician/medical leave forms.

(2) An employee with a child less than three (3) months old may apply for and will be granted an Unpaid Child Rearing Leave of Absence without pay provided application is made at least sixty (60) days prior to commencement of such leave and provided the employee is eligible for the leave under the FMLA.

(5) Child Rearing Leave shall be subject to A (3) and (4) above the period provided by FMLA [not exceed eighteen (18) calendar months].

(8) For the purpose of salary guide placement for the year subsequent to the Child Rearing Leave, the employee must have worked one work day more than 50% of the employee's normal work days. [six full months constitutes one full year credit for twelve (12) months employees and five (5) full months constitutes one-year credit for ten (10) months employees].

A. Adoption Leave - (Teachers):

(1) Any teacher adopting an infant child shall receive [Similar] on the same terms as Child Rearing Leave, which shall commence . . .

(3) [Adoption Leave shall not exceed twenty-four (24) calendar months, without the approval of the Board].

B. Miscellaneous Provisions:

The Board proposes deleting sections C.1., 2., and 3 in their entirety. In addition, it proposes to modify Section D as follows:

C. When a teacher is ill or disabled for a greater number of days than the total number of sick days that he/she has accumulated, the Board of Education may pay such person each day's salary less the pay of a substitute, if a substitute is employed, or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the Board of Education in each individual case. The Board shall have no legal obligation to grant additional paid sick days. A day's salary is defined as 1/200 of the annual salary.

The Board proposes the above changes to Article XVI in order to have certain employees on extended leaves of absence use their accrued sick leave concurrently, as opposed to consecutively, with FMLA designated leave. The Board asserts its reason for the proposed changes is to have Board policy and the collective agreement in line with the legislative intent of the FMLA, with its preference for the concurrent, not consecutive, use of sick and FMLA leave. The Board argues the pertinent federal regulations contemplate the use of paid leave concurrently with FMLA leave and state that employers "may require" employees to substitute accrued paid leave for unpaid FMLA leave. By using the phrase, "may require," the FMLA does not preempt negotiations over the issue.

Moreover, the Board has not identified any specific data on the costs or savings of its proposals, and has not identified or proven the scope of a problem the change would remedy.

The Board asserts it has certain responsibilities to designate leave according to the FMLA. These duties were also discussed in the Lumberton Education Association v. Lumberton Board of Education, P.E.R.C. No. 2002-13, 27 NJPER 372, aff'd. 28 NJPER 427 No. A-1328-01T5 (App. Div. Oct. 8, 2002). In that matter, the Appellate Division affirmed the Commission's finding<sup>19</sup> that the subject of stacking contractual leave benefits with FMLA leave entitlements is mandatorily negotiable. The Board has not demonstrated the need for changing the existing language or convinced me that the federal regulations compel its interpretation. Accordingly, I do not recommend the proposed changes to this Article.

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<sup>19</sup> In Lumberton, the Commission held that the Board violated the Act when it unilaterally adopted a policy requiring employees to use their paid leave days accrued under the locally negotiated agreement before they could take leave under the federal Family and Medical Leave Act and further refused to negotiate over the issue. PERC found that a decision by a school board to prohibit stacking of leave is not preempted by statute and is generally subject to mandatory negotiations. PERC ordered the Board to rescind its policy and to negotiate with the Association over whether family leave must be taken concurrently with paid leave. See also, Bridgeton Bd. of Ed., PERC No. 2011-64, 37 NJPER 72 (¶27 2011), (charge dismissed where Association refused to negotiate FMLA-sick leave policy in four successor contract negotiations and where Board acknowledged policy was negotiable).

**Article XXI - Involuntary Transfers and Reassignments - Teachers**

The Board Proposes to delete the following paragraph in its entirety:

B. [No involuntary transfer will be made after the last day of school except in an emergency (as determined by the Superintendent)].

The Board asserts that transfers are managerial prerogatives and thus, non-negotiable.

I do not recommend this proposed deletion, as there is no support in the record for the need to delete the paragraph. While involuntary transfers are not mandatorily negotiable, the timing of them - a procedural aspect of making the transfers - are negotiable.

**Article XXIII - Involuntary Transfers and Reassignments - Support Staff**

The Association proposes to modify this clause as follows:

Notice of an involuntary transfer (i.e., either a change from school to school, change of a shift assignment or a change in job assignment (or a totally different assignment, [i.e., secretary to custodian, etc.] shall be given to an employee as soon as practicable. If requested, a conference with the Business Administrator will be provided prior to such transfer or, if not feasible, within forty-eight (48) hours of becoming effective.

I recommend this proposal since the parties have agreed to this change.

**Article XXV Summer School Teachers**

The Board proposes the deletion of the entire article. It argues that summer school is a State-approved instructional program that extends school for students for additional credits and credit recovery. It asserts it is not an extension of the school year for teachers. It argues a seniority list for summer school is nonsensical because the teachers employed during summer school are at-will as evidenced by their hourly pay and they cannot receive tenure credits for having taught in the summer program.

The Association argues the provision has been in place for a long period and the Board has not identified a problem with its administration before this. It asserts the procedures have served to avoid certain disputes over summer school hiring.

The work year limit of 184 (now 185) days seems to support the Board's theory but the collective agreement effective dates are from July 1 through June 30 and not all benefits end after the last day of school, like tenure, health insurance, pensions, etc. I need not resolve whether the summer program is an extension of the teachers work year. In large measure, the Article merely established procedures to be followed. The Board has not demonstrated the problems it has encountered with the Article as a whole, and I do not recommend its entire deletion. As the Association argued, in some cases procedures minimize conflicts between unit members seeking limited positions in the summer school program.

However, I recommend the elimination of paragraph 4, which requires the Board to hire teachers who apply by March 15. I find this impermissibly interferes with the Board's managerial prerogative to hire those it deems qualified. I find the other provisions do not appear to require the Board to hire any particular individual for summer school merely because of seniority.

If the Board would consider hiring in-district teachers and the evidence appears to show that it has done this, then the retention of procedures and a seniority preference system, used by the parties for years, should not be eliminated. The Board retains all rights to hire teachers for the program.

#### **SUMMARY OF FACT-FINDER'S RECOMMENDATIONS**

##### **Contract Duration**

- 3-year agreement covering the period July 1, 2015 through June 30, 2018

##### **Salary and Guide Modifications**

- Increase teacher starting salary to \$50,000 effective July 1, 2016.
- Eliminate the first 4 steps of all teacher salary guides effective July 1, 2016.
- An annual \$500 increase to the step value for each step on the teacher salary guides except the top step in each year of the contract.

- An annual \$1200 increase in the value of the step maximums on the teacher salary guide in each year of the contract.
- Advance teachers on the salary guide each year of the contract.
- Modify teacher salary guides effective July 1, 2016, as follows:

<b>BA MODIFIED GUIDE</b>					
<b>Step</b>	<b>14-15</b>	<b>15-16*</b>	<b>New</b>	<b>Incr</b>	<b>15-16 Ees</b>
1	46,637	47,137			0
2	47,270	47,770			12
3	47,771	48,271			7
4	48,296	48,796			4
5	49,394	49,894	50,000	1,903	4
6	50,903	51,403	51,403	1,204	13
7	52,107	52,607	52,607	1,403	6
8	53,510	54,010	54,010	2,909	9
9	56,419	56,919	56,919	2,105	12
			59,024	2,106	
10	60,630	61,130	61,130	2,407	7
			63,537	2,407	
11	65,444	65,944	65,944	2,257	8
			68,201	2,256	
12	69,957	70,457	70,457	2,205	3
			72,662	2,204	
			74,866	2,205	
			77,071	2,904	
13	78,075	79,275	79,275		48

- Increase salaries of custodial, maintenance and groundskeepers, secretaries and paraprofessionals by 3% in each year of the contract, inclusive of increment costs.
- Modify support staff salary guides to reduce the overall number of steps.

**Other Economic Issues**

- Increase stipends for athletic activities, extra-curricular activities, and extra duties by 3% effective July 1, 2016.
- Eliminate steps 1, 2, and 3 in the Athletic and Extra-curricular activities stipend schedule and move all employees to step 4, effective July 1, 2016.
- Add a stipend of \$35 per day for head coaches' post-season games and \$30 per day, for assistant coaches' post-season games, effective July 1, 2016.
- Increase the night shift differential for custodians to \$.50 per hour, effective July 1, 2016.
- Provide custodial, maintenance and groundskeepers with a bi-annual allowance of \$200 for work boots and winter gear, effective July 1, 2016.
- Modify Article XXVIII, Section 4., effective July 1, 2016, as follows:

The individual per-teacher maximum tuition reimbursement shall be the cost of six (6) graduate credits at Stockton University per teacher. Unit wide Board maximum reimbursement per year shall not exceed \$53,000.00.

- Add the following provision to Article IX:

If members of the child study team or the school nurses are required to work during the summer, they shall be compensated at a per diem rate calculated as 1/185 of annual salary.

- Add a provision to Article XII, Health Insurance, that would require all employees to contribute at Tier 4 for the term of the agreement.
- Modify Article XII, Section D, Dental Insurance, as follows:

The Board's contribution toward a family Dental Plan shall be the actual premium in effect each year of this Agreement. The premium in effect at each enrollment

level for 2015-2016 shall become the Board's maximum contribution for future years unless and until changed by the parties in writing.

- Change the title of Article XVII to read:
 

Holidays - 12-Month Custodians, Groundskeepers and Maintenance workers.
- Add the following sentence to Section B:
 

When a holiday falls on a regularly scheduled day off, then a compensatory day will be granted.
- Modify Article IX, to increase the teacher work year from 184 days to 185 days, with at least four (4) days of in-service, effective July 1, 2016.
- Modify Article IX, (B) (2), effective July 1, 2016, as follows:
 

2. Teachers newly employed for a school year may be required to work [one (1)] up to three additional days prior to September 1 as determined by the Superintendent.
- Modify Article IX to make the per diem rate calculation based on 1/185 of annual salary, effective July 1, 2016
- Modify Article IX(E) (1), effective July 1, 2016, as follows:
 

1. The work year for assistants shall not exceed [be 173] 185 full days and eight (8) half days plus three (3) in-service days. This work year includes assistants not being required to attend or work on [one] (2) days in which in-service training is given to teachers.
- Increase the salaries of paraprofessionals to compensate them for the additional work days on a pro-rata basis.

- Modify Article X, Section A (1), effective July 1, 2016, as follows:

1. The in-school workday for certified staff, exclusive of extra-curricular positions, shall not exceed seven (7) hours and fifteen (15) minutes Monday through Friday. [The student day shall be reduced by ten (10) minutes per day from the 2009 - 2010 student day which will become effective upon the signing of the 2010 - 2012 Agreement]. The starting and ending times shall be determined by the Board. The student day shall also be structured within this time frame. Teachers are required to remain until the departure of school buses and until completion of after-school meetings and student help obligations. [Class periods shall not exceed 46 minutes in length; however, teachers are required to remain until the departure of school buses]. The length of the class periods shall be as determined by the Board. Athletic coaches and activity advisors are required to remain until after the departure of the activity or athletic buses when their activities are in session. Nothing in this article shall be interpreted so as to permit the Board or the District's administration to alter the existing practices concerning teacher preparation periods.

- Modify Article X, Section B, effective July 1, 2016, as follows:

B. Meetings

A total of 15 faculty/departmental meetings per school year to be used for professional business or for professional development. Each meeting will not exceed 45 minutes in length. The first meeting of the month will be scheduled on a Monday, and the second meeting, if any, will be scheduled on a Monday or Tuesday. A meeting schedule will be published at the beginning of every school year. Start time for meetings will be 15 minutes after the end of the last academic period.

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- Modify Article IX(C) effective July 1, 2016, as follows:

C.1.f. (2). All overtime work shall be determined by the Business Administrator. [Reasonable efforts shall be made to equitably distribute overtime to all members per shift.] Overtime shall be granted based on a seniority list of members by school in each category. After a member has worked overtime or refused an opportunity to work overtime, their name shall go to the bottom of the list. Exceptions may be made due to the need for a special skill or qualification.

- Modify Article XV (A) (1) (c) as follows:

c. Approval for personal leave for teachers will not be granted on the days preceding or following a vacation period except with the approval of the Superintendent. Such approvals shall not be unreasonably withheld.

- Modify the language in Article XV, Section (A)2,

Bereavement Leave, effective July 1, 2016, as follows:

[With approval of] Upon notification to the Superintendent or Business Administrator, an employee [may] shall be granted up to five (5) days leave of absence, without loss of salary, due to the death of the staff member's spouse or children. Up to three (3) days leave of absence may be granted for the death of other members of the employee's immediate family to include mother, father, brother, sister, mother-in-law, father-in-law, grandparents, grandchildren and members of the employee's household.

- Add the following new section to Article XVIII, Vacation, as follows:

Employees will be allowed to carry over no more than five (5) unused vacation days into the following year. Those five (5) carry-over days will be the first vacation days utilized in that following year.

- Modify Article XXIII as follows:

Notice of an involuntary transfer (i.e., either a change from school to school, change of a shift assignment or a change in job assignment (or a totally different assignment, [i.e., secretary to custodian,

etc.] shall be given to an employee as soon as practicable. If requested, a conference with the Business Administrator will be provided prior to such transfer or, if not feasible, within forty-eight (48) hours of becoming effective.

- Modify Article XXV, Summer School, to eliminate paragraph 4.
- All proposals not modified above or elsewhere in this report are not recommended.

*Susan W Osborn*

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Susan Wood Osborn  
Fact-Finder

DATED: May 20, 2016  
Trenton, New Jersey

State of New Jersey }  
County of Mercer }

On this 20th day of May, 2016, before me personally came and appeared Susan Wood Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.