

**BEFORE
SEAN J. ROGERS
FACT-FINDER**

In the Matter of Arbitration between:

LITTLE ROCK EDUCATION ASSOCIATION,

and

LITTLE ROCK SCHOOL DISTRICT

(Impasse Resolution Fact Finding)

FMCS Case 12-51460-3

REPORT AND RECOMMENDATION

APPEARANCES

On behalf of the Little Rock Education Association:

Teresa Knapp Gordon, Vice-President, Little Rock Education Association – *representing the Association.*

On behalf of the Little Rock School District:

Kelsey Bailey, Chief Financial Officer, Little Rock School District – *representing the District.*

PROCEDURAL BACKGROUND OF THE ARBITRATION

This impasse fact finding proceeding arises out the *Agreement Between Board of Directors Little Rock School District and the Little Rock Education Association 2012-2015* (CBA). The CBA is effective until October 31, 2015, but provides for reopening of bargaining on wages and benefits no later than September 15, 2013 for School Year 2013-2014. On or about September 17, 2013 through October 18, 2013, the Little Rock Education Association (LREA or Association) and the Little Rock School District (LRSD or District) (Collectively the Parties) met on four occasions and negotiated over wages and benefits for School Year 2013-2014. The Parties were unable to reach agreement.

Thereafter, the Parties met with a Federal Mediation and Conciliation Service (FMCS) mediator. Mediation did not result in an agreement. In November 2013, the Parties determined that they were at impasse and unable to resolve the bargaining dispute through further bilateral discussions.

The Parties' CBA at Article 2, *Negotiations Procedures, I. Impasse*, establishes that if mediation fails to resolve a bargaining impasse, then either party may request that a fact-finding procedure be initiated to resolve the dispute with third-party neutral recommendations. Pursuant to CBA Article 2, on November 20, 2013, the Parties' representatives agreed and signed-off on a *Memorandum of Understanding* (MOU) to implement the CBA fact finding proceedings with a substantive modification to Article 2, I., E. The full text of Article 2, I., E. and the agreed MOU modification are reproduced below and discussed below.

From a panel of arbitrators provided by the FMCS, I was selected by the Parties to resolve the dispute.

On January 29, 2014, at the request of the Parties' representatives, I held a pre-hearing telephone conference with the Parties' representatives. As a result of the conference, the Parties agreed to certain hearing procedures, the start time, the location and other hearing process-matters.

On February 3, 2014, pursuant to the CBA and MOU, a hearing was held at the LREA office, Arkansas Education Association (AEA) Building, 1500 West 4th Street, Little Rock, Arkansas. At the hearing, the Parties were afforded a full opportunity: to present testimony, documents and other evidence; to examine and cross-examine witnesses; and to challenge documents and other evidence offered by the other Party.

LRSD's witness was: Jean Ring, Director of Finance and Accounting, LRSD.

LREA's witnesses were: Marshall T. Greene, LREA negotiator; Peggy Nabors, AEA Director of Legal Services; and Cathy Koehler, LREA President.

The witnesses were sworn and sequestered. No transcript was taken. By agreement of the Parties, my notes constitute the record of the hearing. The Parties agreed to submit the Little Rock School District Detailed Budget, 2013-2014 which is subject to arbitral notice. As Joint Exhibit (Jx) 1, the Parties submitted the desegregation

settlement in *Little Rock School District v. Pulaski County School District; et al.* USDC No. 4:82-CV-866 (*Desegregation Settlement*). The *Agreement Between Board of Directors Little Rock School District and the Little Rock Education Association 2012-2015* (CBA) submitted per-hearing was accepted as Jx 2. The November 20, 2013 *Memorandum of Understanding* (MOU) was accepted as Jx 3. Without objection from the District, the Association submitted a tabbed notebook containing Association Exhibits (Ax) 1-32. Without objection from the Association, the District submitted a tabbed notebook containing District Exhibits (Dx) 1-5 and the Detailed Budget 2013-2014, September 26, 2013. All submissions were accepted into the record. At the conclusion of the hearing, the evidentiary record closed. The Parties elected to make closing statements. The Parties agreed that there are no issues of timeliness or arbitrability, and the bargaining impasse is ripe for resolution by me as the fact-finder pursuant to their CBA.

This Report and Recommendation is based on the record developed by the Parties and interprets and applies the CBA to the Parties' last best offers (LBO).

STATEMENT OF THE ISSUE

The Parties' stated the issue for resolution by the fact-finder is as follows:

Which Last Best Offer is the more reasonable based on the financial situation of the Little Rock School District?

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

From the *Agreement Between Board of Directors Little Rock School District and the Little Rock Education Association 2012-2015* (CBA). (Jx 2).

Article 2

NEGOTIATIONS PROCEDURES

* * *

I. Impasse

* * *

- E. The fact-finder selected will confer with the representatives of both parties and hold hearings promptly and will issue his decision not later than twenty (20) calendar days from the time hearings are concluded. The fact-finder's decision will be submitted in writing to both parties and will set forth his findings of fact, reasoning, recommendation, and conclusions on the issue(s) at impasse. The fact-finder will be without power or authority to make any decision which requires the commission of an act prohibited by law or which is a violation of the terms of this Agreement. The decision of the fact-finder will be non-binding upon the parties.

From the November 20, 2013 *Memorandum of Understanding between Little Rock School District and the Little Rock Education Association*. (Jx 3).

ARTICLE 2: SECTION I. – E.

The fact-finder selected will confer with the representatives of both parties and hold hearings promptly and will issue his decision not later than twenty (20) calendar days from the time hearings are concluded. The fact-finder's decision will be submitted in writing to both parties and will set forth his findings of fact, reasoning, recommendation, and conclusions on the issue(s) at impasse. The fact-finder will be without power or authority to make any decision which requires the commission of an act prohibited by law or which is a violation of the terms of this Agreement. The decision of the fact-finder will be binding (a judgment made by a third party to settle a dispute between two other parties, which is obligatory – both negotiating parties agree in advance to abide by the result) upon the parties, but subject to normal

ratification. This special agreement is a one-time event for the 2013-14 financial negotiations only and will sunset upon its execution.

IMPASSE RESOLUTION PROCESS

The CBA Article 2, I., E. states that the fact-finder's "decision . . . will be non-binding upon the parties." However, the Parties' November 20, 2013 MOU significantly modifies my power as the fact-finder as regards this Report and Recommendation. Specifically, as a result of the MOU, "[t]he decision of the fact-finder will be binding . . . but subject to normal ratification." The Parties also agreed that my Report and Recommendation, "is a one-time event for the 2013-14 financial negotiations only and will sunset upon its execution."

The Parties also agreed that the fact-finder's power to recommend the more reasonable last best offer is to be issue-by-issue and includes the power to recommend a more reasonable resolution of the impasse between the Parties' last best offer.

APPLICABLE STANDARDS

At the beginning of the hearing I asked the Parties to identify the standards they wished me to apply in considering which LBO was the more reasonable. The Association asserted the standards against which to measure the reasonableness of the LBOs should include: past collective bargaining agreements; the cost of living (specifically the Bureau of Labor Statistics CPI-U); the interest welfare of public; and the District's ability to finance the collective bargaining agreement.¹ The District asserted the standards against which to measure the reasonableness of the LBOs should include: affordability; reasonableness; and sustainability.

With the exception of *sustainability*, the standards asserted by the Parties are well-recognized measures of reasonableness as the basis of an arbitrator's or fact-finder's selection or recommendation of a LBO as the more reasonable resolution of a bargaining

¹ LREA suggested the standard "cost of living adjustments" or COLA. Based on LREA hearing presentation and exhibits, the fact-finder understands LREA use of the term COLA refers to the Consumer Price Index (CPI). CPI is a measure of changes in the price level of a market basket of consumer goods and services purchased by households defined by the Bureau of Labor Statistics (BLS). BLS describes the CPI as "a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services." LREA's presentation and exhibits reference specifically the CPI-U which is the average CPI change for U.S. cities. (Ax 18).

impasse. As described by the District, the *sustainability standard* is based on a future projection on whether the Association's LBO wage proposal to resolve the **current** bargaining impasse can be sustained by the District in the **next and future** negotiations at a time when the Association might seek an additional wage increase. The *sustainability standard* requires the fact-finder to assume facts and circumstances which are not in evidence and which are, at best, speculative projections prone to highly subjective opinions regarding both Parties' unknown and unknowable future conduct during bargaining. Moreover, the *sustainability standard* requires the fact-finder to project the financial condition of the District without any basis in fact, circumstances or evidence. For these reasons, as a measure for the fact-finder to apply as to whether one Party's or the other's LBO is the more reasonable based on a consideration and analysis of the current facts, circumstances and evidence established in this record, the *sustainability standard* lacks objectivity and reliability.

For these reasons, I am not persuaded that the *sustainability standard* is appropriate for my consideration of each Parties' LBO.

THE PARTIES

The Little Rock School District (LRSD) operates 30 elementary schools, seven middle schools, five high schools, an early childhood center, a career-technical center, an accelerated learning center and two alternative learning centers. LRSD employs approximately 3,700 people and educates more than 25,000 students.

The Little Rock Education Association (LREA) is the exclusive representative of all classroom teachers, including counselors, librarians, coaches, and excluding instructional aides who may have extensive instructional responsibilities, of the Little Rock School District.

INTRODUCTION

In recommending which Party's LBO submitted for impasse resolution is the more reasonable I have considered: past collective bargaining agreements; the cost of living, specifically the Bureau of Labor Statistics CPI-U; the interest welfare of the public; and the affordability of the LBO.

LAST BEST OFFERS AND RECOMMENDATIONS

ISSUE ONE WAGES

LRSD's LBO states:

For school year 2013-2014, the LRSD will . . . provide a salary increase of 1.50% for all eligible certified employees and all eligible non-certified non-administrative employees, retroactive to July 1, 2013. LRSD and LREA will re-open financial negotiations in the Spring of 2014 if additional general operating funding becomes available.² (Ax 2 and Dx 1).

LREA's LBO states:

For school year 2013-2014, the LRSD will provide a salary increase of 4.50% for all eligible certified employees and all eligible non-certified non-administrative employees, retroactive to July 1, 2013. LRSD and the Association will re-open financial negotiations in the Spring of 2014 if additional general operating funding becomes available. (Ax 2 and Dx 1).³

² LRSD's LBO combined its wage and benefits proposals. At hearing, the Parties stated that they wanted the wage and health insurance LBOs to be considered as separate issues by the fact-finder. For this reason, LRSD wage and health insurance LBOs are presented separately in this Report and Recommendation.

³ The Parties agree in the last sentence of their LBOs that they will "re-open financial negotiations in the Spring of 2014 if additional general operating funding becomes available." For this reason, this language is not discussed by the fact-finder in this Report and Recommendation.

CONTENTIONS

LRSD asserts that the cost of its LBO, a 1.50% across-the-board salary increase, will be approximately \$3.3 million at a time when LRSD is facing a \$5.0 million deficit and is \$3.3 million short in its revenue and expenditure projections.⁴ (Dx 1). Overall, LRSD asserts that 87% of its budget is committed to salaries including 29% of the salary cost to benefits.

More specifically regarding compensation, LRSD asserts that the weighted-average teacher annual salary is \$54,441.00. LRSD argues that additional teacher compensation includes the District's payments of \$16,698.53 in employer benefits, also known as other employment costs (OECs). LRSD asserts that OECs LRSD pays are 30.67% of the total of the weighted-average teacher annual salary for a total of \$71,139.53, salary and benefits. (Dx 2). LRSD argues this is just the weighted-average and many LRSD teachers are paid more.

LRSD argues that what is left of its annual budget is further reduced by debt service. LRSD argues that it has many older facilities, some 40 years old, and it has been 13 years since a new facility has been built in the District. Turning to its property tax revenue-base, LRSD argues that the decline in property values in the last two years has been approximately 1% or \$2.7 billion. LRSD argues that this decline has reduced tax revenues, also known as millage, available for the District's budget. At the same time, LRSD argues it has had to expend more on operating expenses for rising fuel costs and similar operating expenses.

Regarding fund balance, LRSD witness **Jean Ring**, LRSD Director of Finance and Accounting, testified on direct-examination from Dx 4 that the District's fund balance is currently \$40,223,405.00. She said that expressed as a percentage this is 12.05% of LRSD's annual expenditure. Ring explained this would amount to approximately 6-weeks of the District's annual expenditures. Ring testified that the Government Finance Officers Association (GFOA) recommends two months of expenditures in a fund balance which would be \$55,639,147.00 or approximately 15% of LRSD's annual expenditures.⁵

⁴ Exhibit Dx 1 shows a 1.50% raise salary-cost is \$2,744,090.85 plus benefits-cost of \$594,095.67 for a total cost, salary and benefits, of \$3,338,186.51.

⁵ The Government Finance Officers Association is a professional association of approximately 17,500 state, provincial, and local government finance officers in the United States and Canada.

On cross-examination, Ring was asked to explain why there were changes in the LRSD's September 2013 budget meeting, when a deficit was shown which did not exist in any prior meetings? Ring testified that "the numbers were not complete until September. The State Department issues a preliminary budget, then we make our budget. It is an estimate and the estimate showed less revenue then spending." Ring was asked to explain the basis for the change and she responded, "I don't know the answer. I am not prepared to answer directly." Ring was asked if she participated in the budget preparation? She responded, "I help with certain numbers."

LRSD argues that the current pay plan includes a 3% step increase and a top of scale at Step 20. (Jx 2). LRSD argues this step compensation provides additional salary money to LRSD teachers. For all these reasons, LRSD concludes that a 1.50% across-the-board wage increase is reasonable, affordable and sustainable, and therefore, the more reasonable last best offer. LRSD asks the Fact-finder to recommend it LBO.

LREA asserts that LRSD has money for a teacher wage increase of 4.50%, which is its last best offer. LREA argues that its LBO is supported by the CPI-U and wage comparables around the state where teachers are paid higher than LRSD teachers. LREA argues that LRSD claims it has a deficit, but the District has the money to pay LREA's LBO. LREA challenges the sudden reporting of a deficit in the September 2013 budget meeting, when a surplus existed before, as the District's effort to hide money. LREA asserts that its members protect the interest and welfare of children. Since, LRSD has the ability to pay a living wage and a fair wage, LREA argues the District should compensate teachers for their important role protecting the interest and welfare of children.

LREA asserts that LRSD did not approach the bargaining with a sincere resolve to reach agreement because LRSD met to negotiate with LREA only three times and at the FMCS for mediation only to declare impasse.

As regards comparables, LREA asserts that the LRSD starting salary is \$34,206.00 for 9.25-month teachers while for the Southeast region, 41 school districts have an average starting salary of \$40,000.00 or more.⁶ (Ax 16).

⁶ Arkansas, Tennessee, Louisiana, Alabama, Mississippi, South Carolina and Georgia,

LREA's first witness was **Marshall T. Greene**, LREA negotiator, who had participated in the Parties' negotiations since the beginning of the 2013. Greene testified that while LRSD's starting salary was \$34,206.00 for 9.25-month teachers there are 41 school districts with starting salaries of \$40,000.00 or above in the Southeast Region, repeating LREA's assertion on this argument.⁷ (Ax 16)

Greene testified that Arkansas State documents on LRSD's fund balance show an increase of approximately \$4.9 million more than last year in the Legal Fund Balance. Greene testified that the current year Legal Fund Balance is \$41,440,137.96. He said, "fund balances, except one year, have been going up every year. Last few years it [the increase] tripled from \$4 million to \$12 million." (Ax 14). Greene testified that "the local millage collections, increased every year for last three years . . . [and] the General Fund Balance has continued to increase."

As regards teacher pay raises, Greene testified that "last year, raises were 1 to 1.5% for certified [teachers] and 2% for non-certified employees" which includes educational support professionals. He testified that non-represented managers and supervisors received administrative salary increases which varied, "by individuals, my research showed that past summer they received double-digit percentage raises."

Greene testified that in the last 10 years the LRSD teachers have received a total of 13.2% increases in pay. Yet, over the same 10 years, Greene said "the cost of living for Little Rock-North Little Rock-Conway has been 29%, which is less than half made up by the raises." (Ax 19).

Regarding the 3% step increase LREA members have received, Greene asserted the increases were "part of the pay plan, not subjects of negotiations."

LREA next witness was **Peggy Nabors**, Arkansas Education Association (AEA) negotiator and AEA Director of Legal Service and Research. Nabors testified in part about the desegregation settlement in the recently settled lawsuit *Little Rock School District v. Pulaski County School District, et al.* USDC No. 4:82-CV-866 (*Settlement*), also known as

⁷ Exhibit Ax 16 was prepared by the National Education Association (NEA) and compares the average annual starting pay for teachers and locals at or above \$40,000. The Southeast region includes the comparators of Arkansas, Tennessee, Louisiana, Mississippi, Alabama, Georgia, South Carolina and Florida.

the deseg-settlement.⁸ (Jx 1). Nabors testified that the *Settlement* would result in approximately \$37.3 million per year being paid to LRSD from School Year 2014 through School Year 2018. Nabors testified that “it is the purpose of deseg-settlement to plan for good education and cover obligations” including student bus-transportation for “minority-to-majority (M-to-M) transfers.”

Nabors testified that the last fact finding was approximately 30 years ago, so long ago she “could not remember it.”

Nabors said some school districts have been put on a State watch list for declining fund balance over two-consecutive years. (Ax 30). This allows Arkansas to find out the cause of the declining fund balance and alleviate the problems with a plan, Nabors said. She said that LRSD is not on the State watch list because its fund balance is increasing each year and increased by approximately \$4 million this year.

As regards comparable salaries of LRSD teachers, Nabors testified that approximately 200 LRSD administrative positions are paid salaries of \$100,00 or more.

Nabors described the trend in property tax as having shown an increase of about \$2 million in 2012 more than 2011, and about \$1.5 million in 2013 more than 2012. (Ax 10). She said Little Rock City is collecting more tax dollars even though there is a slight decrease in assessments because the number of properties being assessed is increasing with more population, and she testified, “more population means more taxes.” (Ax 9).

Turning to Ax 9, page 199, *entitled Legal Balance, Teacher Salary, Operating and Debt Service Fund*, dated October 1, 2013, Nabors testified that the budgeted Legal Balance changed from approximately \$41 million in 2013 to approximately \$37.9 million in 2014, a difference of approximately \$4 million less without apparent reason or explanation.

⁸ The lawsuit stems from a 1982 LRSD suit asserting that the two other districts surrounding LRSD, North Little Rock School District (NLRSD) and Pulaski County Special School District (PCSSD), were steadily attracting all the white students and would eventually leave LRSD an all-black district. An initial 1989 settlement plan was reached in which Arkansas was ordered to make annual payments to LRSD, NLRSD and PCSSD to aid desegregation efforts. The *Settlement* requires annual state payments from school year 2014 through school year 2018 as follows: LRSD \$37,347,429.00 per year; NLRSD \$7,642,338.00 per year; and PCSSD \$20,804,500.00 per year.

On cross-examination Nabors testified that the Legal Fund Balance also changed by increasing from 2012 to 2013 “from approximately \$18 million to approximately \$36 million nearly double.”

Nabors was asked of the three school districts in Pulaski County, how many in are in distress? She testified, “Pulaski County, arguably.” She said Pulaski County was under some Arkansas controls because of “criminal incidents.” Nabors testified that NLRSD had financial difficulty, “one year only, but climbed out.” She testified that the State is not concerned with one year only, but believes that “two-consecutive years, [is] something to watch.”

LREA’s last witness was **Cathy Koehler**, LREA President, who gave an overview of past bargaining between the Parties in “traditional negotiations.” She said for this bargaining cycle, the Parties “did interest-based negotiations” (IBN). Koehler testified that the Parties attempted “a collegial approach, trained together, ate together and agreed to facilitate and serve student interests so as to be proud of result.” Koehler testified that LREA would not use IBN in the future because “the person controlling negotiations [for LRSD] was not in room and their team does not have power to make a decision.”

Kohler testified that LRSD has added new positions with

teachers on special assignment . . . [who] do not teach classes as substitutes, but then they are told not substitute, and LRSD also hired Board-approved, three mini-administrators who are a joke and a waste of \$1 million.

Kohler testified that the new Superintendent added a Deputy superintendent, after Kohler was “told we could not have one, but the new Superintendent got it.” She said LRSD, “has hired certified auxiliary long-term substitutes in the elementary schools with no benefits, but they are not being used as substitutes.”

On cross examination, Kohler testified that LREA had “no problem with meeting with the Federal Mediator, but LRSD declared impasse on the first day.”

For all these reasons, LREA concludes, its LBO of 4.50% is the more reasonable.

DISCUSSION

For the following reasons, the fact-finder recommends that the wage increase for School Year 2013-2014 be 3% across-the-board.

LRSD's LBO wage proposal is a 1.50% wage increase and LREA's LBO wage proposal is a 4.50% wage increase for School Year 2013-2014. The Parties are separated by 3% which is significant in these economic times, especially in public employment.

In support of their LBO, both Parties presented exhibits on past collective bargaining agreement wage increases. LRSD presented an exhibit on past collective bargaining raises for the past 15 years, 1998-2013, while LREA asserted, based on LRSD's exhibit, that only the past 9-years, 2004-2013, should be considered in recommending the more reasonable LBO. (Ax 17 and Dx 3). LRSD's 15-year look-back covers years which do not recognize evolving current economic realities and financial pressures in public sector employment. Specifically, LRSD's exhibit includes early years in which the District agreed to teacher wage increases which were not explained by LRSD and do not have relevance and materiality to the current wage negotiations. Simply stated, LRSD's 15-year look back is too attenuated to form the basis for recommending which Parties' LBO is the more reasonable pursuant to the appropriate standards.

LREA's 9-year look-back eliminates the significantly higher 10% pay raise for School Year 2003-2004 compared to all the pay raises over the 15-year look-back. The range for the past year pay raise of the 9-year look-back runs from a low of 0.50%, School Years 2004-2005 and 2008-2009, to a high of 3.0%, School year 2006-2007. Significantly, all other years' pay raises are 2.0 % or less. The fact-finder concludes that the 10% pay raise 10-years ago is a clear outlier and forms a natural break point for a reasoned analysis of the Parties' past collective bargaining agreements. For these reasons, LREA's 9-year look-back is the more reasonable providing a history and a degree of currency to the present negotiations.

Analyzing the past 9-school years of contract pay raises, LRSD and LREA agreed to the following wage increases:

School Year	Percent Raise
2004-2005	0.50
2005-2006	1.61
2006-2007	3.00
2007-2008	2.00
2008-2009	0.50
2009-2010	1.25
2010-2011	1.50
2011-2012	1.00
2012-2013	1.75
Total	13.11
Average	1.46

The record establishes that the current CPI-U is 1.50%. (Ax 18). Therefore, LRSD's LBO essentially matches the 9-year average of collectively bargained pay raises and the CPI-U. In contrast, LREA's LBO is approximately three times the 9-year average of collectively bargained pay raise average and the current CPI-U.

The District did not challenge LREA's LBO by asserting an inability to finance LREA's LBO and there is no evidence in the record supporting an inability to pay LREA's LBO. The District did not argue that LREA's LBO was unaffordable even though affordability was an appropriate standard requested by LRSD as a measure of the Parties' LBOs.

The record establishes that *Settlement*, coming after the Parties impasse, will result in \$37,347,429.00 per year of State money being paid to LRSD for the next 4-years. This State money is needed by LRSD for many expenses such as new school construction cited by LRSD and M-to-M costs cited by LREA. Obviously, this money cannot be appropriately viewed as the basis for teacher pay raises alone. However, there is no doubt, based on the record created by the Parties, that the State money provides LRSD with the resources

to afford more than 1.50% in teacher wage increases for 2013-2014. In addition, LRSD has enjoyed a rising Legal Fund Balance each of the last 2 years.

For all these reasons, I am not persuaded that a 1.50% wage increase for LRSD teachers is reasonable based on the appropriate standards. However, LREA LBO for a 4.50% wage increase, triple the CPI-U and triple the 2012-2013 collectively bargained wage increase and triple the 9-year average of collectively bargained pay raise, is not reasonable as an alternative by default based on the appropriate standards.

Turning to costs, the difference between the Parties is significant, particular when LRSD's costing model is applied to the percentage of LREA's LBO. Specifically, LRSD calculated the cost of its 1.50% LBO wage increase at \$3,338,186.51. (Dx 1). This cost calculation was unchallenged by LREA. (Ax 24). Therefore, the record shows that LREA's LBO of a 4.50% wage increase will cost LRSD \$10,014,559.53 based on LRSD's costing model. The record also supports the conclusion that, among the comparable Southeast region states, LRSD teachers are behind in compensation at the entry level sufficiently to warrant a wage increase at a level that will continue to attract new, qualified teachers.

A reasonable pay increase is called for under all the facts and circumstances. Based on the entire record and for the reasons discussed above, to strike a balance among all these factors and based on the appropriate standards proposed by the Parties as well, I find that the more reasonable wage increase for LRSD teachers for School Year 2013-2014 is 3.0% across-the-board.

RECOMMENDATION

For School Year 2013-2014, I recommend an across-the-board wage increase of 3.0% as the more reasonable and fair settlement of the dispute under the appropriate standards. The fact-finder recommends that the CBA language state:

For school year 2013-2014, the LRSD will provide a salary increase of 3.0% for all eligible certified employees and all eligible non-certified non-administrative employees, retroactive to July 1, 2013. LRSD and the Association will re-open financial negotiations in the Spring of 2014 if additional general operating funding becomes available.

ISSUE TWO

HEALTH BENEFIT INSURANCE

LRSD's LBO states:

For school year 2013-2014, the LRSD will continue to contribute \$357.70 per month towards health insurance for all eligible employees . . . LRSD and LREA will re-open financial negotiations in the Spring of 2014 if additional general operating funding becomes available.⁹

LREA's LBO states:

For school year 2013-2014, the LRSD will contribute an additional \$22.68 per month to the health insurance contribution beginning January 1, 2014. Overall, the monthly contribution will increase from \$357.70 to \$380.38.

Beginning with the school year 2013-14, the LRSD will contribute \$750.00 to a Health Savings Account for any employee who participates in the Bronze Plan.¹⁰

CONTENTIONS

LRSD asserts that when the Parties came to the bargaining table health insurance costs were up for the whole state as the result of catastrophic losses. LRSD explained the District pays \$357.70 per month toward enrolled employees' health insurance premiums. LRSD's LBO is to continue that level of payments maintaining the CBA *status quo*. LRSD asserts that it receives only \$150.00 per month that is funded by the State and the District must pay the remainder. LRSD argues it has no additional funding source to pay increasing health insurance premiums. LRSD argues it can continue the current funding of health insurance premiums but it cannot increase its payments or add a Health Savings Account (HSA) to the Bronze plan.

LREA witness Nabors provided the only testimony on LREA's LBO. She described the three plans. She explained that the Gold Plan was a Preferred Provider Organization

⁹ LRSD's LBO is a status quo with no change to its contributions to the CBA health insurance premiums.

¹⁰ The record established that LRSD employees are offered three levels of health insurance plans known as the Gold Plan, a high option plan, the Silver Plan, a mid-range option plan, and the Bronze Plan, a low option plan.

(PPO) which has no deductible with an 80/20% co-pay in network and higher out-of-network. Nabors believed the Gold Plan may be in a death-spiral as increases in costs and premiums continue year after year.¹¹ Nabors testified that she understood the Gold Plan might “price itself out of business.” Nabors testified that “Gold will not last, it needs a lot of changes and there is still 3-years of contract with the providers.” She testified the Parties needed to address the issue “next January.”

LREA provided no testimony, exhibits or evidence in support of its LBO regarding the HSA addition to the Bronze Plan.

DISCUSSION

Based on the record developed by the Parties, I recommend LRSD’s LBO as the more reasonable resolution of the impasse based on the appropriate standards.

Neither Party developed a significant, relevant and material body of evidence, testimony nor exhibits supporting their LBOs on this issue. LREA introduced no relevant and material evidence to support the increase in LRSD’s payments to the Gold Plan premium or the need to add an HSA to the Bronze Plan. The changes LREA seeks to these important and significant benefits must be supported a demonstrated need for the change and facts supporting LREA’s LBO as the more reasonable resolution of the impasse.

For its part, LRSD’s LBO seeks to continue the current CBA health benefits plan which, at this time, is the more reasonable approach particularly since the Parties’ will soon be engaged in full term negotiations of a new CBA.

Both LREA’s and LRSD’s presentation established the boundaries of significant and looming health benefits problems which the Parties must address. Based on the projections regarding health costs and premiums, Nabors’ testimony correctly characterized the Parties’ health insurance benefits as needing changes and improvements. Changes and improvements to health insurance benefits are efforts

¹¹ Death-spirals occur in health insurance when costs rapidly increase as a result of changes in the covered population usual from older members who incur more medical care costs. The result is adverse selection of that health insurance where lower-risk policy holders choose to change lower cost policies or become uninsured.

requiring significant bilateral cooperation through the collective bargaining processes. Unilaterally imposed changes to health benefit plans, costs and premiums almost never result in improvements and almost always leave one party or the other, and more often both, dissatisfied with the results or facing increasing costs and premiums.

In this regard, a fact-finder recommendation for LREA's LBO would result in unilaterally imposed changes to the Parties' health benefits plans thereby lacking the bilateral commitment needed for a lasting solution to this important work place benefit. The record establishes that the Parties' collectively bargained health insurance benefits need significant changes and improvements, arguably a complete overhaul. An overhaul will require a long term, extended and ongoing commitment to finding improvements and implementing changes by both Parties, perhaps outside the collective bargaining schedule, with clear and shared goals.

For these reasons, I recommend the creation of a bilateral, cooperative effort committee to implement meaningful improvements and savings to the Parties' health benefits plans. Specifically, I recommend the immediate creation of a joint labor-management committee to include the individuals with the power to make changes and continuous improvements to the Parties' health benefits plans. This committee should be ongoing and not limited by collective bargaining schedules or contract terms.

Until bilateral changes and improvements to the Parties' health insurance benefits can be achieved through collective bargaining, the fact-finder recommends that the Parties maintain the *status quo* reflected in their current CBA for School Year 2013-2014.

RECOMMENDATION

I recommend for School Year 2013-2014 LRSD's LBO on health insurance benefits as the more reasonable and fair settlement of the dispute. The fact-finder recommends that the CBA language state:

For school year 2013-2014, the LRSD will continue to contribute \$357.70 per month toward health insurance for all eligible employees. LRSD and LREA will re-open financial negotiations in the Spring of 2014 if additional general operating funding becomes available.

I also recommend the creation of a joint labor-management committee to identify, negotiate and implement improvements and savings to the Parties' health benefits plans. This committee must include individuals with the power to negotiate and implement working condition changes and establish continuous improvement processes in the Parties' health benefits plans.

RECOMMENDATION SUMMARY

Issue One

For School Year 2013-2014, it is recommended that LRSD's teacher wage is increased by 3% across-the board as the reasonable and fair resolution of the bargaining dispute. I recommend that the CBA state:

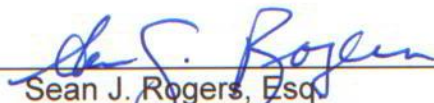
For school year 2013-2014, the LRSD will provide a salary increase of 3.0% for all eligible certified employees and all eligible non-certified non-administrative employees, retroactive to July 1, 2013. LRSD and the Association will re-open financial negotiations in the Spring of 2014 if additional general operating funding becomes available.

Issue Two

For School Year 2013-2014, it is recommended that LRSD's *status quo* LBO on health insurance is the reasonable and fair resolution of the bargaining dispute. I recommend that the CBA language state:

For school year 2013-2014, the LRSD will continue to contribute \$357.70 per month toward health insurance for all eligible employees. LRSD and LREA will re-open financial negotiations in the Spring of 2014 if additional general operating funding becomes available.

In addition, LRSD and LREA shall create of a joint labor-management committee to identify, negotiate and implement improvements and savings to the Parties' health benefits plans. This committee must include individuals with the power to negotiate and implement working condition changes and establish continuous improvement processes in the Parties' health benefits plans.


Sean J. Rogers, Esq.
Leonardtown, Maryland
March 3, 2014