

**IN THE MATTER OF FACT FINDING BETWEEN:**

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HOLLIS SCHOOL DISTRICT

&

HOLLIS EDUCATION ASSOCIATION, NEA-NH

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**FACT FINDER'S REPORT AND RECOMMENDATIONS**

**Introduction**

The Hollis School Board ("Board" or "Employer") and the Hollis Education Association ("Association") have been negotiating over the terms of a successor collective bargaining agreement. The most recent Agreement was for the period of July 1, 2008 through June 30, 2010. The parties engaged in direct negotiations and reached a tentative Agreement in 2010 to take effect for the 2010-2011 school year, this successor Agreement was rejected at the 2010 School District meeting. As a result, teachers worked without an agreement for the 2010-2011 school year. The parties resumed negotiations in the 2010-2011 school year, engaged in mediation, but were unable to reach a successor agreement in time for the 2011 District Meeting.

By agreement of the parties, the undersigned was appointed to serve as the Fact Finder. A Fact Finding Hearing was held on May 27, 2011. Philip Pratt, UniServe Director, represented the Association, and Thomas Closson, Esq. Represented the School Board. The parties presented arguments and provided substantial documentation in support of their respective positions at the hearing and later provided supplemental material.

## **Background and Issues**

The Hollis School District is a single school district with two schools; Hollis Primary School, which consists of pre-school through grade three, and Hollis Upper Elementary School, consisting of grade four through grade six. The School District is part of SAU 41, which also consists of the Brookline School District, and the Brookline-Hollis Cooperative School District, which operates the middle school and high school, and is represented by a separate school board.

By mutual agreement the parties brought the following four issues to fact finding:

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## **Analysis and Recommendations**

Initially, it must be noted that the fact-finding process is a continuation of the collective bargaining process. It is not meant to supplant direct negotiations between the parties. Nevertheless, at times parties cannot reach a successor agreement and it is necessary for a neutral to offer recommendations, hopefully, to settle the unresolved issues, and bring a measure of finality to the impasse. In making their recommendations, fact finders are interested in such concepts as prevailing standards, that is, what benefits and conditions of employment exist in other New Hampshire School Districts. Seldom will novel and untried solutions be part of a fact finder's recommendations.

In making the recommendations in the present report, I have considered the traditional criteria often used by fact finders; concepts such as ability to pay, wages and benefits of comparable school districts, and the cost of living. I have attempted to make reasonable recommendations that are both fair and acceptable to the parties. Each of the issues will be separately addressed. It should be noted, however, that the recommendations are offered as a "total package" to resolve the current impasse.

### **1. Salary**

The current salary schedule is composed of six educational columns: BA, BA+15, BA+30, MA, MA+15, MA+30 and MA+45. There is also a separate column for registered nurses. The BA column has 11 steps, the BA+15 has 12 steps, the BA+30 column has 13 steps, the MA column has 14 steps, the MA+15 has 15 steps, the MA+30 and MA+45 have sixteen steps. There is also a separate schedule for those teachers who have reached the maximum salary. For the 2009-2010 school year the BA base is \$35,072 the maximum salary at the MA step is \$61,355 and the maximum salary for the MA+45 is \$70,036. For those teachers who have moved off the salary schedule the maximum for BA is \$53,208, the maximum salary at the MA step is \$63,192, and the maximum salary for the MA+45 is \$72,131.

### **ASSOCIATION POSITION**

The Association proposes a two-year agreement with a 3% increase for the 2011-2012 school year. This would permit a step increase effective September 1, and the remainder, approximately 1.25%, would be added to the existing salary schedule. For the second year, 2012-2013, the Association proposes a total new money increase that

would provide a step increase with the additional amounts being applied to increase the salary schedule.

The Association maintains that its salary proposal is reasonable and affordable. The Association states that it must be remembered that teachers received no salary or step increases for the 2010-2011 school year, and as a result, the salaries of Hollis teachers have fallen compared to teachers in comparable school districts. The Association states that at one time the salaries for Hollis teachers were competitive with the school districts in the region, but this is no longer the case. Specifically, the Association states that for the 2009-2010 school year the average salary for Hollis teachers ranked 6<sup>th</sup>, but for the 2010-2011 school year Hollis teachers now rank 7<sup>th</sup> out of ten comparable school districts, and the starting salary is now 9<sup>th</sup> out of the 10 school districts.

The Association states that its salary proposal would have the effect of raising the property tax bill for a home of \$400,000 by \$29.73 for the first year of the Agreement, and \$30.59 for the second year of the Agreement. The Association states that the per household income for Hollis is one of the highest in the State, and is the highest when considering the group of the ten comparable school districts. The Association states that there can be no question that its proposal is reasonable and affordable.

The Association contends that the economic conditions of the State are improving as the unemployment rate continues to fall, and the unemployment rate for New Hampshire is far better than the national rate.

The Association states that the costs of its salary proposal would have minimal impact on the School District budget as the District actually passed a budget that was less than the prior year. The Association states that this is not a situation where the School District does not have the ability to pay for salary increases but has indicated that it will only provide pay increases if teachers agree to a performance based pay system. The Association maintains, however, that the Board's proposal to pay teachers based on performance is not a well-defined plan; there is no language as to how this so called performance pay approach would even be implemented. The Association states that the Bedford School District adopted a performance pay system, and then eliminated the program when it was determined to be ineffective. In addition, the Association points to numerous studies that demonstrate that merit based pay systems have not worked, and do nothing to improve the education of students. Further, the Association states that the two other school districts in the SAU Brookline and Hollis do not have performance based pay systems, and in fact, of the ten comparable school districts only Windham has a provision on performance pay. The program in Windham, the Association states, provides extra pay for extra work, and does not condition salary increases on evaluations or the performance of students.

The Association states that the Board's performance pay proposal is premised on a new evaluation system that was put in place in January 2011, and it is part of a three-year cycle. Moreover, the Association states that there is now language in the Agreement that step increases can be withheld if teachers receive an unsatisfactory

evaluation. The Association states that this language has never even been implemented in the District.

#### SCHOOL BOARD POSITION

The Board proposes to change the method of providing salary increases to members of the bargaining unit. The Board's proposal would condition step increases and a cost of living adjustment to those teachers at the top of the salary schedule based on results of the teacher's annual evaluation. Based on its last proposal the School Board proposes:

#### Salary and Step increases

Teachers in their first to third year of teaching would need 3/4 "proficient" ratings and 1/4 "basic" rating to move a step.

All other teachers must have ratings of "proficient" on their evaluation to move a step.

Provide a cost of living adjustment of \$600 on July 1, 2011, and \$600 on July 1, 2012 to those employees on the top step of the salary schedule, subject to the same criteria that they have a rating of "proficient".

Teachers who achieve all "distinguished" rating would get step increase as well as a \$500.00 bonus.

#### Column Movement

The Board also proposed that to move across the salary schedule a teacher would have to meet the evaluation ratings stated above and also complete credits through a professional learning project model similar to what exists in the Portsmouth Teachers Agreement.

The Board argues that it is reasonable and appropriate to adopt a merit-based process to determine salary increases and column movement for Hollis teachers. The

Board states that merit based pay programs are part of both federal and state initiatives. The Board further maintains that it is apparent that as a result of the prior tentative agreement being rejected by the voters, that modest salary increases must be based, in part, on a teacher's performance, and not simply on years of service.

The Board also states that even without any increase in salaries it is faced with a 1.98% increase in wages and benefits for teachers. Specifically, the Board states that the District is being required by the State Retirement system to pay an additional \$51,249 toward employee retirements, and is also faced with increases in health care costs for employees. The Board further states that the cost of living has increased by only modest amounts, and the State and the region are still mired in a recession.

### **Discussion**

Determining the "appropriate" salary increase is not an exact science. In general, fact finders consider the cost of living, wages and benefits of comparable employees, the ability of the employer (or citizens) to pay for an increase in wages, the bargaining history of the parties and recent contract settlements. The issue, then, is what is the appropriate salary adjustment, if any, to the existing salary schedule. It is necessary to recommend a salary increase that, while considering the existing salary levels, also reflects the present financial circumstances of the community, the salary increases that have been agreed to in surrounding communities, and the cost of living.

## MERIT PAY

As a general matter the issue of performance-based pay for teachers is not often raised in a fact finding proceeding. In particular, it is a novel subject matter that is not contained in many teacher collective bargaining agreements. Indeed, neither the Brookline School District nor the Cooperative School District, both part of the SAU, now have performance or merit pay as a method of determining salaries for their teachers. Of the local school districts, only Windham has a method by which teachers can receive additional compensation. Salaries increases for Windham teachers, however, are not conditioned upon performance; rather what exists is a method to receive additional pay for additional work or extra responsibilities. The Bedford School District once had a component of performance pay but eliminated the program. Since merit or performance pay plans do not often exist in collective bargaining agreements in the region, it is difficult for a neutral to assess and comment upon particular performance based pay proposals.

It must also be stated that Section 8.2 of the current Agreement allows the Superintendent "to withhold step, track, and/or across the board increases based upon unsatisfactory performance." Stated in other words, the Administration can, at the present time, condition salary increases to Hollis teachers based on satisfactory performance. There is no suggestion that up to this time the Administration has ever availed itself of this option. This provision still remains in the parties' successor Agreement.

The one change that I do recommend be added to the Agreement reflects what was discussed in the parties direct negotiations regarding those teachers who have superior performance. Specifically, the parties should add language to the Agreement that teachers that have received all "distinguished" ratings in their evaluations shall receive a \$500 bonus.

The parties should also create a joint-labor management committee to review a merit pay performance system. The parties will be able to consider the concept of performance-based pay, and will have time to consider this issue in time for negotiations for the succeeding contract period.

#### DURATION AND SALARY INCREASES

When the parties resumed negotiations after the District voters rejected the most recent tentative agreement, the discussion revolved around an agreement commencing July 1, 2011. An agreement was not reached and the District passed its budget for the 2011-2012 school year without voting on a new Agreement.

There is no dispute that an Agreement that commences on July 1, 2011 would require a Special District Meeting, which first requires court approval. It also appears that to go this route would result in delays and uncertainties. It is not my role as the Fact Finder to decide whether a Superior Court would determine that there was a sufficient emergency to justify a Special District Meeting. Nevertheless, at this time in the history of the parties' negotiations, where the District voters have already rejected a prior tentative agreement, the more practical

recourse would be for an agreement to commence July 1, 2012.

Based on the totality of facts, and the fact that the District has already passed its budget for the next school year, there should be no across-the-Board increase for the 2011-2012 school year. In addition, there should be no step increases for the 2011-2012 school year. In view of the fact that I have recommended a wage freeze for the 2011-2012 school year, there must be across-the-board wage increases and step increments in the 2012-2013 school year. Specifically, it must be remembered that by the 2012-2013 school year two years will have passed in which teachers will have received no increase in their salaries, and the District will have not had to fund any salary increases for its teachers.

The salary rates for teachers in the surrounding school districts for the 2010-2011 school year are as follows:

<u>District</u>	<u>BA Min</u>	<u>MA Min</u>	<u>MA Max</u>	<u>Max Pay</u>
Hollis	\$35,072	\$38,699	\$61,355	\$70,036
Amherst	\$38,270	\$42,279	\$71,802	\$74,718
Bedford	\$33,834	\$38,411	\$66,957	\$70,083
Bow	\$35,873	\$39,960	\$61,492	\$65,237
Brookline	\$38,368	\$44,667	\$64,920	\$71,978
Co-Op	\$36,158	\$39,960	\$61,406	\$68,713
Milford	\$37,263	\$62,333	\$68,014	\$71,168
Oyster Riv.	\$36,878	\$61,140	\$66,994	\$74,511
Stratham	\$38,658	\$61,147	\$72,787	\$78,405
Windham	\$37,254	\$57,487	\$66,239	\$74,991

There can be no dispute that by the 2012-2013 school year the salaries of Hollis teachers will fall further

behind the salaries paid to teachers in surrounding school districts.

Accordingly, I recommend that at the beginning of the 2012-2013 school year there be a 2% across-the-board-increase, and that those teachers eligible for a step increase receive a step increase at that time. In addition on the first paycheck after February 1, 2013, those teachers who were employed during the 2010-2011 school year who would have been eligible for a step increase for the 2010-2011 school year, but did not receive a step increase, should advance an additional step.

I recommend that at the beginning of the 2013-2014 school year there be a 2.5% across-the-board-increase, and that those teachers eligible for a step increase receive a step increase at that time. In addition on the first paycheck after February 1, 2014, those teachers who were employed during the 2011-2012 school year who would have been eligible for a step increase, but did not receive a step increase, should advance an additional step.

With respect to across the board salary increase, this amounts to a 4.5% increase over a four year period of time, a reasonable and affordable amount, well within the financial ability of the community, and an amount that is necessary to ensure that the salary schedule for the Hollis School District not fall further behind the school districts in the region.

#### **RECOMMENDATION - COMPENSATION**

The parties should agree to a two-year contract commencing July 1, 2012. At the beginning of the 2012-2013 school year there should be a 2% across-the-board-increase, and those teachers eligible for step increase should

receive a step increase at that time. In addition, on the first paycheck after February 1, 2013, those teachers who were employed during the 2010-2011 school year who would have been eligible for a step increase but did not receive a step increase should advance an additional step.

I recommend that at the beginning of the 2013-2014 school year that there be a 2.5% across-the-board-increase, and that those teachers eligible for step increase receive a step increase at that time. In addition on the first paycheck after February 1, 2014, those teachers who were employed during the 2011-2012 school year who would have been eligible for a step increase but did not receive a step increase should advance an additional step.

The parties should add language to the Agreement that teachers that have received all "distinguished" ratings in their evaluations shall receive a \$500 bonus. Finally, the parties should establish a joint labor management committee to discuss and review performance pay prior to negotiations for the next collective bargaining agreement.

## **2. Health Insurance**

Under the current agreement each Staff Member who is regularly employed by the District for 30 or more hours per week will be provided with "partial payment" toward any healthcare plan offered by the Board. At the present time these plans include *JY-RXIO/20/30*, *C100MC-RXIO/20/30*, *BC3T-I0-RXIO/20/30*, and *MTB5-RX 10/20/30*. The partial payment is equal to 85% of the cost of a single, two-person, or family Blue Choice Plan up to a maximum District cost of \$1,140 per month.

#### ASSOCIATION POSITION

The Association proposes that the parties agree to increase the monthly cap for the 2011-2012 period to \$1,260.00, and increase the cap for the 2012-2013 contract period to \$1,360.00. The Association states that having a cap on the District's share of health insurance premiums results in many teachers having the sole burden of increasing health care premiums.

The Association states that for the 2010-2011 school year the parties did not reach agreement, and as a result there was no increase to the cap, teachers received no pay increases, and teachers who have two-person and family coverage have had to pay more toward their health insurance coverage. Specifically, the Association states that those employees selecting family coverage had to shoulder the entire premium increases; under the Matthew Thornton plan they are now paying \$174.42 more per month, and those with Blue Choice are paying \$182.05 more per month than the prior year. The Association states that without an increase in the cap teachers with family and 2-person coverage will continue to shoulder all of the premium increases. The Association maintains that it was never the intent of the parties that teachers bear the entire rise of rising health insurance premiums.

#### BOARD PROPOSAL

The Board proposes no increase in the current health insurance cap. The Board states that the parties reached tentative agreement to establish a joint labor management committee to review health insurance options, and would also be willing to add the "Lumenos Plan" as an additional insurance option for teachers. The District maintains that

it is faced with increases in insurance premiums of \$47,613 and that this is not the time for the Board to increase the cap on the amount that it must contribute for health insurance premiums.

**Discussion**

The parties in the past agreed that the District would provide health insurance to those staff members employed by the District for 30 or more hours per week. The parties also agreed that the District’s contribution would be 85% of the Blue Choice Plan. In addition, in prior negotiations the parties agreed to cap the District’s financial liability for health insurance premiums. For the last agreement the parties agreed that the cap should be \$1,140.00.

The effect of rising health care costs over the last three years is shown below:

	<b>Employee</b>	<b>District</b>	<b>Total Cost</b>	<b>Districts Share</b>
<b>2009 Annual Contribution</b>				
<b>Single</b>				
JY-RX	\$2,338	\$6,309	\$8,647.00	72.96%
C-100-RX	\$1,699	\$6,309	\$8,008.00	78.78%
BC/3T-RX	\$1,113	\$6,309	\$7,422.00	85.00%
M/T-RX	\$802	\$6,309	\$7,111.00	88.72%
<b>2-Person</b>				
JY-RX	\$4,677	\$12,618	\$17,295.00	72.96%
C-100-RX	\$3,398	\$12,618	\$16,016.00	78.78%
BC/3T-RX	\$2,226	\$12,618	\$14,844.00	85.00%
M/T-RX	\$1,605	\$12,618	\$14,223.00	88.72%
<b>Family</b>				
JY-RX	\$9,668	\$13,680	\$23,348.00	58.59%
C-100-RX	\$7,942	\$13,680	\$21,622.00	63.27%
BC/3T-RX	\$6,360	\$13,680	\$20,040.00	68.26%
M/T-RX	\$5,521	\$13,680	\$19,201.00	71.25%
<b>2010 Annual Contribution</b>				
<b>Single</b>				
JY-RX	\$2,953	\$6,996	\$9,949.00	70.32%

C-100-RX	\$1,884	\$6,996	\$8,880.00	78.78%
BC/3T-RX	\$1,234	\$6,996	\$8,230.00	85.01%
M/T-RX	\$890	\$6,996	\$7,886.00	88.71%
<b>2-Person</b>				
JY-RX	\$5,500	\$13,680	\$19,180.00	71.32%
C-100-RX	\$4,082	\$13,680	\$17,762.00	77.02%
BC/3T-RX	\$2,782	\$13,680	\$16,462.00	83.10%
M/T-RX	\$2,093	\$13,680	\$15,773.00	86.73%
<b>Family</b>				
JY-RX	\$12,213	\$13,680	\$25,893.00	52.83%
C-100-RX	\$10,299	\$13,680	\$23,979.00	57.05%
BC/3T-RX	\$8,544	\$13,680	\$22,224.00	61.56%
M/T-RX	\$7,614	\$13,680	\$21,294.00	64.24%
<b>2011 Annual Contribution</b>				
<b>Single</b>				
JY-RX	\$3,375	\$7,691	\$11,066.00	69.50%
C-100-RX	\$2,557	\$7,691	\$10,248.00	75.05%
BC/3T-RX	\$1,357	\$6,996	\$8,353.00	83.75%
M/T-RX	\$844	\$7,599	\$8,443.00	90.00%
<b>2-Person</b>				
JY-RX	\$8,454	\$13,680	\$22,134.00	61.81%
C-100-RX	\$6,818	\$13,680	\$20,498.00	66.74%
BC/3T-RX	\$4,418	\$13,680	\$18,098.00	75.59%
M/T-RX	\$3,207	\$13,680	\$16,887.00	81.01%
<b>Family</b>				
JY-RX	\$16,201	\$13,680	\$29,881.00	45.78%
C-100-RX	\$13,992	\$13,680	\$27,672.00	49.44%
BC/3T-RX	\$10,752	\$13,680	\$24,432.00	55.99%
M/T-RX	\$9,117	\$13,680	\$22,797.00	60.01%

The facts show that with the fixed dollar cap in place, teachers who must elect two-person and family coverage have faced significant increases in their health insurance costs, whereas the District share has remained fixed. For example for teachers who had 2-person Blue Choice coverage for 2009-2010 the District paid 85% of the coverage, and those teachers with Matthew Thornton the District paid 88% of the coverage. Teachers who had family Blue Choice coverage for 2009-2010 the District paid 68% of

the coverage, and those teachers with Matthew Thornton the District paid 71% of the coverage.

For the 2011-2012 school year the District's cap has remained the same resulting in teachers with 2-person Blue Choice coverage the District will now 75% of the coverage, and those teachers with Matthew Thornton the District will pay 81% of the coverage. Teachers who have family Blue Choice coverage for 2011-2012 the District will 55% of the coverage, and for those teachers with Matthew Thornton the District will pay 60% of the coverage.

These are dramatic increases in insurance rates for these teachers. The rising costs of health coverage should not be borne entirely by employees of the District. In the vast majority of school districts in the area, the employer and employee both share in the increasing costs of health insurance. Indeed, it must also be pointed out that at the present time Administrators receive 100% paid health insurance cost paid by the District. The cap must be increased over the course of this successive Agreement.

**RECOMMENDATION - HEALTH INSURANCE**

For the first year of this new Agreement the District should increase the cap amount by \$50.00 per month for those teachers electing 2-person coverage, and \$100 per month for those teachers electing family coverage. For the second year of the Agreement the District should again increase the cap amount by \$50.00 per month for those teachers electing 2-person coverage, and \$100 per month for those teachers electing family coverage. The parties should also agree to establish a joint labor management committee to review insurance options.

### **3. Reduction in Force**

Section 10.8 of the current Agreement provides:

The School Board will:

1. Apply the Reduction-in-Force Policy approved by the Hollis School Board on July 27, 1989, known as Board Policy GCPA, and;
2. Follow the policy during the term of this Agreement, and;
3. Make no changes to policy during the term of this Agreement, and;
4. Said policy shall be subject to the grievance and arbitration provisions of this Agreement.

The current policy on RIF is as follows:

When it is determined to reduce the number of professional teaching staff, the following procedure will be utilized:

1. As soon as a reduction-in-force becomes necessary the President of the Association shall be notified in writing, specifying the nature of the proposed reduction.
2. Reductions will first be accomplished by attrition (resignations, retirements, refusal to contract).
3. If more reductions-in-force are necessary, then part-time Staff shall be laid off.
4. For purposes of this policy, classifications will be defined as follows:
  - a) Kindergarten through 6<sup>th</sup> grade; 7<sup>th</sup> grade through 8<sup>th</sup> grade; and 9<sup>th</sup> grade through 12<sup>th</sup> grade.

b) Grades 7-8 and 9-12 classification will be defined by major teaching subject areas including, English/Reading, Foreign Language, Home Economics, Industrial Arts, Mathematics, Health, Science, and Social Studies.

c) Specialized teaching areas including Art, Business Education (Typing included), Computer, Gifted/Talented, Guidance, Nurses, Library, Music (General, Choral, or Instrumental), Physical Education, and Special Education shall be classified grades K-6 and 7-12.

5. Within these classifications, probationary teachers shall be laid off first. If further reductions are necessary, then teachers on continuing contract will be laid off. A continuing contract teacher is one who qualifies for notice, reasons, and a School Board hearing under the provisions of RSA 189: 14-a. Among continuing contract teachers, the following criteria will be utilized:

- a) New Hampshire Certification.
- b) Academic and professional preparation beyond minimum requirements.
- c) Teaching performance as determined by previous evaluations.

6. If these factors are substantially equal, then seniority shall determine the order of layoff, with the least senior teacher being laid off first. Seniority is defined as the total years of uninterrupted service to the Hollis School District within a bargaining unit position. Approved leaves or transfers to a non-bargaining unit position shall not result in loss of previously accrued seniority. However, resignation shall terminate all previously accrued seniority.

B. Teachers shall be recalled in reverse order of layoff for any open position within the classification in which the layoff occurred. Only continuing contract teachers shall be eligible for recall rights. The same conditions as A.4 shall apply to recall.

1. Laid off teachers shall be eligible for recall for a two (2) year period following their final date of employment.
2. Teachers shall be responsible for notifying the Superintendent in writing of their current address. Recall notices shall be mailed certified, return receipt requested.
3. Teachers shall have twenty (20) business days to respond to any recall notice. Failure to accept recall to a permanent full-time position shall terminate the teacher's rights under this Article.
4. No new employees shall be hired for any vacancy within a classification while there are laid off personnel from those classifications available to fill those positions.
5. Teachers recalled shall retain previous seniority and other accrued contract benefits, such as accumulated sick leave.
6. Should a vacancy occur within a classification and there are no teachers on the recall list for that classification, then that vacancy shall be offered to the most senior teacher laid off from another classification who is certified and substantially qualified to teach that position. If the laid off teacher refuses the vacant position his/her recall rights shall be retained.

C. In the event that a Cooperative School District is approved, the Board agrees to negotiate with the Hollis Education Association regarding any layoffs of persons covered by the negotiated Agreement at that time.

#### SCHOOL BOARD POSITION

The School Board proposes to eliminate the current RIF policy and replace it with the following:

A. When the Board finds it necessary to reduce the number of certified full-time and/or part-time positions for reasons of declining enrollments, budget reduction, change in or consolidation of Board-authorized programs, or for any other reason determined necessary or desirable by the Board, the following reduction-in-force policy will be implemented:

1. As soon as a reduction-in-force becomes necessary the President of the Association shall be notified in writing, specifying the nature of the proposed reduction.

2. Reductions will first be accomplished by attrition (resignations, retirements, refusal to contract).

3. For purposes of this policy, classifications will be defined as follows:

a) Regular education pre-kindergarten through 6th grade;

b) Specialized teaching areas including Art, Computer, Gifted/Talented, Guidance, Nurses, Library, Music (General, Choral, or Instrumental), Physical Education, and Special Education.

4. The following criteria should be used to determine the order of teachers being laid off within a classification:

a) New Hampshire Certification.

b) Academic and professional preparation beyond minimum requirements.

c) Teaching performance as determined by previous evaluations.

5. If the factors set forth in paragraph 4 are substantially equal, then seniority shall determine the order of layoff within a classification, with the least senior teacher being laid off first. For purposes of this policy, seniority is defined as the total years of uninterrupted service to the Hollis School District within a bargaining unit position. Approved leaves or transfers to a non-bargaining unit position shall not result in loss of previously accrued seniority. However, resignation shall terminate all previously accrued seniority.

B. Teachers shall be recalled from a reduction-in-force based on the criteria set forth in A. 3 and A. 4 above.

1. Laid off teachers shall be eligible for recall for a two (2) year period following their final date of employment.

2. Teachers shall be responsible for notifying the Superintendent in writing of their current address. Recall notices shall be mailed certified, return receipt requested.

3. Teachers shall have twenty (20) business days to respond to any recall notice. Failure to accept recall to a permanent full-time position shall terminate the teacher's rights under this Article.

4. No new employees shall be hired for any vacancy within a classification while there are laid off personnel from those classifications available to fill those positions who meet the criteria set forth in A. 3 and A. 4 above.

5. Teachers recalled shall retain previous seniority and other accrued contract benefits, such as accumulated sick leave.

6. Should a vacancy occur within a classification and there are no teachers on the recall list for that classification, then that vacancy shall be offered to the most senior teacher laid off from another classification who meets the criteria set forth in A. 3 and A. 4 above.

The Board states that under the current RIF policy layoffs are based on seniority. The Board maintains that its revised proposal would have layoffs be based more on merit and qualifications of teachers than the current seniority based RIF policy. In addition, the Board maintains that its revised RIF proposal would grant the Board more flexibility, and should be adopted.

## ASSOCIATION POSITION

The Association opposes the Board's proposal. The Association maintains that the current proposal has been in place for many years. The Association states that under the Board's proposal a first year teacher would be treated the same as a twenty-year teacher, and that the Board's proposal does not indicate how it would consider old evaluations from former administrators when assessing the qualifications of the teachers to be laid off. The Association states that only one agreement in the comparable group of school districts (Oyster River) now permits a non-continuing contract teacher to be retained over a teacher with continuing contract status. Finally, the Association states that the Board never articulated any problems that existed with the current language, but simply stated that no final agreement would be reached unless and until the Association agreed with the School Board's new language.

### **Discussion**

It must be remembered that I am not approaching this subject as a subject that has not been previously addressed by the parties. Specifically, the Board adopted a policy on Reductions in Force, and pursuant to Section 10.8 of the current Agreement, this policy was incorporated into the parties' Agreement.

A review of the Board's policy shows significant changes to the current policy, and would base Reductions in Force upon prior evaluations and "professional preparation"; the Board's proposal would move from an objective standard to a subjective determination made by the School Administration. The Board's proposal cannot be

recommended at this time. First, as stated above the Board's proposal is a significant revision of the current policy, and major changes are not generally accomplished in a fact-finding proceeding. Moreover, it is difficult to recommend the Board's proposal when it is not a prevailing condition of employment found in other comparable teaching agreements. Indeed, a review of the RIF language in the comparable districts shows that the language that now exists for the Hollis School District is in fact the prevailing standard. Moreover, as stated above the current policy has been in place for a number of years and there is no suggestion that there have been any disputes over the implementation of the current language. In sum, there is insufficient justification to recommend that there be any changes to the current RIF policy.

#### **RECOMMENDATION - REDUCTION IN FORCE**

The Board's proposal to modify the current RIF policy is not awarded.

#### **4. Just Cause and Management Rights**

There is no provision in the current Agreement with respect to just cause. There is a current management rights provision in the Agreement, which reads as follows:

14.1 The Board, subject only to the language of this Agreement, reserves to itself full jurisdiction and authority over matters of policy and retains the right in accordance with applicable laws and regulations to direct and manage all activities of the District.

14.2 The parties understand that neither the Board nor the Superintendent may lawfully delegate the powers which by law are vested in them, and this Agreement shall not be construed so as to limit or impair these respective statutory powers.

The Board proposes to add an additional paragraph to the current Management Rights provision.

Except as specifically limited by express provisions of this agreement, the school board, either directly or acting through its designees, reserves the rights to exercise management prerogatives to include, but not be limited to; unilaterally determine the standards of service to be offered by it; set the standards of selection of employees; select employees; direct and assign its employees; take disciplinary action; relieve its employees from duties because of lack of work or other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which its operations are to be conducted; determine the content of job descriptions and classifications; allocate and reorganize positions and staffing; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organizational and the facilities, methods, means and technology of performing its work.

The Board maintains that in consideration of the Association agreeing to the Board's management rights provision it is willing to add the following just cause provision to the parties' Agreement:

No teacher shall be disciplined without just cause. Discipline is defined as formal written reprimands, suspensions and dismissal. Just cause shall not extend to the non-renewal of a probationary teacher (See RSA 189: 14-A). Counseling shall not be considered a disciplinary action. Upon the employee's request, the employee shall be entitled to have present a representative of the Association during any meeting in which disciplinary action is taken.

## ASSOCIATION POSITION

The Association states that it was willing to accept the Board's proposed addition to the Management Right article, if the Board would adopt its proposed language on employee discipline. The Association states that its proposal on just cause was taken from the Brookline Teachers' Agreement and reads as follows:

1. No teacher shall be disciplined without just cause. Discipline is defined as warnings, reprimands, adverse evaluation, suspensions, non-renewal, dismissal, or other actions of a disciplinary nature, which are noted in writing in the teacher's personnel file. However, just cause shall not extend to the non-renewal of a probationary teacher (See RSA 189: 14-A). Counseling shall not be considered a disciplinary action.

2. Any staff member shall be entitled to have present a representative of the Association during any meeting which involves or may involve disciplinary action. When a request for such representation is made, no action shall be taken with respect to the employee until such representative of the Association is present. If disciplinary action is likely to occur at a given meeting, the teacher shall be advised immediately of said possibility and be advised by the Employer of the right to representation under this provision of the Agreement.

The Association states that the Board's counter-proposal on just cause is too restrictive and removes matters that teachers should have the right to challenge. Moreover, the Association maintains that the Board's proposed language with respect to those situations in which a representative can accompany a teacher to a disciplinary meeting is also too restrictive, is more restrictive than the current law, and that a representative should be able

to be with an employee in those meetings in which a teacher could face disciplinary action. The Association further maintains that contract provisions for just cause and progressive discipline are common contract provisions. Specifically, the Association states that the other two school districts in the SAU, Hollis and the Hollis Brookline Cooperative School District now have just cause provisions, and even the Hollis Support Staff Agreement contains just cause provisions.

### **Discussion**

The parties, during their direct negotiations, discussed the Board's proposal to add additional language to the Management Rights Clause in return for the Association's proposal to add just cause language to the parties' Agreement. The Association was willing to agree to the Board's proposed management rights language, if, in turn, the Board would accept its proposal language on just cause.

The Board was willing to agree to add a just cause provision, but its proposed language was more restrictive as to what matters would be subject to the just cause standard, and also with respect what issues an employee could have the assistance of an Association representative in meetings with the Administration over proposed discipline.

There is no question that it is appropriate to include just cause provisions in a collective bargaining agreement. Indeed, the vast majority of the school districts in the region have just cause provisions in their agreements. Moreover, two other school districts in the SAU have just cause or progressive discipline provisions for teachers,

and the Hollis School District has such a provision for its support staff employees. The existence of the just cause standard in so many contracts is strong evidence that resorting to the courts is not the preferred method to handle disciplinary and non-renewal disputes. Certainly, the just cause standard protects against arbitrary and capricious treatment. In addition it protects employers against complaints by employees that discipline is unfounded. There is no good reason that a just cause provision should not be added to the parties' Agreement.

The Association's proposed language on just cause, however, is too broad. Oral reprimands and adverse evaluations are matters that are not commonly subject to challenge in the grievance procedure. The Board's proposal on so called "Weingarten rights", those situation in which employees may choose to have an association representative accompany them when meeting with the administration, is too restrictive. The Board's proposal is, in fact, more restrictive than exists under the current law.

As the parties have agreed in concept to modifying the management rights provision and adding just cause I believe that a reasonable compromise should be as follows:

**RECOMMENDATION - MANAGEMENT RIGHTS AND JUST CAUSE**

The parties should agree to add the amended management rights provision proposed by the Board. In addition, the parties should agree to the following just cause/disciplinary provisions:

1. No teacher shall be disciplined without just cause. Discipline is defined as written warnings, suspensions, non-renewals, and dismissals. However, just cause shall not extend to the non-renewal of a

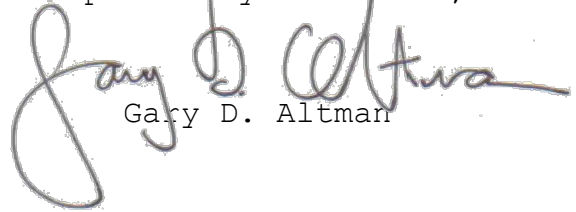
probationary teacher (See RSA 189: 14-A). Counseling shall not be considered a disciplinary action.

2. Any staff member shall be entitled to have present a representative of the Association during any meeting, which involves or may involve disciplinary action.

**Conclusion**

I have no illusions that the preceding recommendations are perfect. I have attempted to balance the interests of the employees, the School District, and the citizens who live in Hollis. I hope that these recommendations are helpful to the parties in reaching a successor Agreement.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary D. Altman".

Gary D. Altman

Brookline, Massachusetts  
August 5, 2011