

Procedural History

The Board of Education of East Newark (hereinafter the Board, the District) and the East Newark Education Association (ENEA, the Association) are parties to a Collective Bargaining Agreement (CBA) covering the period July 1, 2012, through June 30, 2015 (Exhibit J-1). That Agreement recognizes the Association "...as the exclusive and sole representative for collective negotiations for all certified teaching personnel employed by the Board with the purpose of negotiations on terms and conditions of employment" (J-1, Article 1).

The parties negotiated for a successor agreement throughout the fall of 2014 without substantial success. They invoked mediation through the Public Employment Relations Commission (PERC), and one session was held on April 18, 2016, with the appointed mediator. Although that effort did not produce a complete settlement, the parties met subsequently and agreed to a tentative agreement. The provisions of that agreement are embodied herein as Appendix B (Attachment A) and labeled as Exhibit J-2. The parties stipulate that together with mutual agreement on salary guides, Appendix B represents a fully bargained settlement. However, both the Board and the Association maintain that, without an agreement on the distribution of the overall wage increases contained within Appendix B, there is no agreement on the other items therein. Unable to agree on such a mutually acceptable distribution scheme, the matter was moved to PERC for the appointment of a fact-finder.

On November 8, 2017, the undersigned was assigned by PERC to serve in that capacity in accordance with N.J.A.C. 19:12-4.2. With the cooperation of the parties, a pre-hearing mediation session was held on December 9, 2017, in an effort to bring them to an acceptable resolution to their distribution impasse. However, no settlement was achieved at that session, and a fact-finding hearing was scheduled and held on March 20, 2018, at which time the parties were given full opportunity to submit evidentiary material and to raise any questions regarding their adversary's position. They were also allowed to submit rebuttal argumentation to the fact-finder before the close of business on March 28, 2018, after which this recommendation for settlement was to be made on the sole

issue of salary distribution reflecting the agreed-upon three-year percentage increases for 2016-17 through 2018-19.

Having received no rebuttal material from either party by the above deadline, this report and recommendation is now being issued.

Background

The East Newark School District is a Pre-K through eighth grade district servicing approximately 265 students with one full classroom per grade level. It is designated by the State of New Jersey as being within District Factor Group A (DFG-A), which is the state's lowest socio-economic category with 79.9% of its students eligible for free or discounted lunch. The ENEA, affiliated with the New Jersey Education Association (NJEA), is the bargaining agent for the 19.4 teaching positions in the district. East Newark is a Type I school district where Board of Education members are appointed by the mayor. For ninth through twelfth grades the district's public school students attend the neighboring Harrison High School as part of a tuition relationship with the Harrison Public Schools. (NJ Department of Education)

Appendix B (J-2, Attachment A, Changes to Article VIII) contains the negotiated annual percentage wage increases covering a four-year settlement as follows:

| | |
|---------|-----------------------|
| 2015-16 | Increment only (paid) |
| 2016-17 | 2.75% |
| 2017-18 | 2.75% |
| 2018-19 | 2.75%. |

Teachers were moved one step on the expired 2014-15 salary guide effective at the beginning of the 2015-16 school year (the first year of the successor agreement) at a cost of 2.71% based upon their salaries and guide positions and were paid their increments. The parties then agreed to a new scattergram drawn after the 2015-16 raise was put into effect and which serves as the basis for calculating individual and overall increases for settlement years two through four (U-1, p. 14).

The Association has proposed salary guides for each of the last three years of a settlement (U-1, pp. 17, 20, 23), all of which are calculated to meet the parties' agreed-upon percentages of 2.75% in each year. The Board has consistently proposed to apply those increases individually to each teacher in each year without their annual progression

on any salary guide, thus maintaining their positional salary status quo with respect to all other unit employees for the life of the agreement. The admitted result of this distribution proposal would be to effectively eliminate district salary guides altogether, as bargaining for a successor 2019-20 contract would involve no projectable salary movement or incremental load when each teacher's new 2018-19 salary would not match any step on the 2015-16 first year guide.

Position of the Parties

The Board

The Board presented no alternative salary guides to those put forth by the Association. And although the Fact-finder received no post-hearing rebuttal to the Association's distribution plan, it was clear that their opposition to any salary guides going forward after 2015-16 is founded upon their objection to the anomalies and inherent unfairness within the base 2014-15 guide as it was applied in the first year of the proposed settlement. Both parties recognize those problems, but the Board continues to maintain that the 2014-15 guide, and by extension the 2015-16 guide where all teachers were moved one step forward, are the result of previous years of bargaining when the Association was allowed to apply the negotiated settlements on guides that created the very problems now faced in these negotiations. By now eliminating salary guides completely the Board seeks to prevent a continuation of the unequal distribution through guides generated by the Association where teachers who earn the most are rewarded with a lion's share of the settlement. The 2.75% of new money in each of the last three years of this settlement should go to each teacher irrespective of her 2015-16 salary or years of service. This equalized distribution of raises is the only sure guarantee of equity in the application of the increase. It is the position of the Board that, given the base scattergram and the wide disparity of salaries, any guides now generated will have to perpetuate a system that forces the Board to continually provide unequal raises.

The movement of teachers from the old guide into year one saw raises that ranged from \$253 to \$3,578 because unequal step increments were dictated by the 2014-15 guide. The small increments and enormous bubble steps are the result of prior negotiations where salary guides were distorted by the disproportionate application of

raises to those steps on which teachers were already earning the highest district salaries and where increases could guarantee ratification by the Association members.

The Board does not wish to again be locked into salary guides where the range of increases is so inequitable. All East Newark teachers should share equally in the distribution of new money that results from collective bargaining. The only way to insure this result is to eliminate the guides completely and provide each employee with the full 2.75% increase negotiated for each of the last three years of a new contract.

The Association

The Association recognizes the problems within the base guide structure, but it does not take full responsibility for guides that were ultimately accepted and ratified by the Board. That said, it is willing to point out the following areas where it agrees that the base guide falls short:

First, the actual range of increases generated by the base guide for year one of the proposed settlement is an unsustainable \$3,325. Worse, the year one guide itself, without applying the scattergram, contains incremental increases between steps eight through thirteen averaging only \$185. Incremental raises of \$112, \$127, \$164, \$230, or \$253 are inadequate for an additional year of experience. Meanwhile, several steps have increments higher than \$3,000 and the guide contains a final step of \$13,581. Teachers moving from Step 5 to Step 6 on the existing BA guide would see an increase of \$4,520, with similar increases within the other degree columns. Maintaining such disproportionate raises would represent even worse problems in future bargaining when multiple teachers moving through such large increments could eat most or all of any negotiated increases.

Second, where a well-structured guide will have equalized columns (i.e., the value of increased educational attainment) no matter where on the guide a teacher resides, the base guide reflects the value of a BA+15 that ranges from a low of \$486 (Step 10) to a high of \$1,871 (Step 17). Even greater differences appear within the MA, MA+15, and the MA+30 columns.

Third, the maximum salary is actually higher on the BA column than the other advanced degree columns. This means that a maximum teacher would actually be penalized for achieving advanced educational credit.

Finally, if the existing guide is not changed, the incremental cost in year four will be 4.0%, rendering the next bargaining difficult if not impossible.

The solution to these problems is not the elimination of annual salary guides as the Board is proposing. That idea merely exacerbates every one of the above issues by leaving every unit member exactly where she is relative to everyone else for another three years. The parties should instead be addressing the problems through the development of new guides that move toward sanity through the three final years of the settlement. The ENEA has sought the assistance of their state organization in proposing guides that achieve this goal.

The proposed guides add and devalue steps from year to year, two concepts that the NJEA normally seeks to avoid. However, such measures are necessary to get to a responsible and reasonable guide by year four. By that time, the Association has been able to achieve a salary guide (U-1, p. 27) that actually equalizes all increments at \$1,075, equalizes the column differentials (except for the last five steps of the MA column), reduces and nearly equalizes the range of increases significantly (U-1, p. 28), and takes the increment load going into successor bargaining down to 2.39% (U-1, p. 25). Furthermore, the cumulative (four year) total salary individual increases in the proposed guides range only between 9.63% and 12.64% (U-1, p. 31) from a non-compounded 10.96% overall four-year negotiated increase. These are not small achievements, and their result is both a fair allocation of the three 2.75% increases and a final guide in year four that makes the district more competitive while providing the 2018-19 bargaining teams with a sound basis going forward.

None of these goals can be accomplished by the Board's insistence on eliminating the district's salary guide. Therefore, the Fact-finder should reject the Board's salary scheme as counterproductive and a prescription for even more problems post 2018-19. The only reasonable solution is the introduction of new guides that address all the inadequacies of the old one while remaining within the confines of the overall bargained increases. The ENEA has sought to do so with its proposed 2016-17, 2017-18, and 2018-19 salary guides.

Analysis and Recommendation

Both the Board and the Association recognize that previous bargaining in East Newark has brought them to a point where their base salary guide is untenable. The 2014-15 guide (and by extension the 2015-16 guide) not only presents the parties with all the problems they have enumerated throughout bargaining, mediation, and fact-finding, but also places the district last in Hudson County in teacher minimum and maximum salaries (U-1, p. 1) and has the lowest minimum salary among all of New Jersey's DFG-A districts (U-1, p. 2). The guide's low starting and middle range salaries have no doubt contributed to an average of teacher in-district experience of only 4.41 years, last among DFG-A districts and 579th of all 581 New Jersey school districts (U-1, pp. 2-3).

I am in agreement with the parties that these problems cannot continue to go unaddressed and that the instant bargaining represents an opportunity to make progress toward solving many of them. However, I cannot recommend a settlement that leaves the parties worse off than when they began bargaining. This would be the situation if the Board's intention to operate without any salary guides prevails. Every teacher in the district (and the district as a whole) would see no relief from the inadequacy and inequality of the base salary guide. For instance, the year one scattergram (2015-16) indicates that a teacher exists at BA Step 1 (\$38,000), and another exists at BA Step 18 (\$57,351). The difference in their salaries is now \$19,351. The Board would apply the negotiated 2.75% to the salaries of these two teachers three times over the course of the next three years, bringing the Step 1 teacher to \$41,201 and the Step 18 teacher to \$65,090. Their salary difference would then be \$23,889, illustrating that the flat application of the three 2.75% increases magnifies the very salary inequalities that the Board seeks to eliminate. (The same comparison can be made between any two salaries on the guide because applying the same percentage increase to two numbers will always expand the difference between those numbers.) In addition, the Board leaves unanswered such important questions as what, if anything, teachers will be paid for achieving advanced educational credits, or what salaries teachers can expect by continuing their careers in East Newark, or how teachers will react to having new employees paid above those with multiple years of experience – three mysteries sure to add fuel to the district's hiring and retention problems.

The Association's proposed salary guides obviously address these issues. They also target salary disparities by distributing new money equitably throughout the guides. For example, the seven lowest-paid teachers on the year one BA column would earn between \$41,222 and \$44,391 when 2.75% is applied three times to their 2015-16 salaries, averaging \$42,561. On the Association's year four guide (2018-19), however, the salary range of those same seven teachers is \$41,750 to \$44,795, averaging \$43,034. And by year four the Association has lowered the range of increases for teachers actually on the scattergram to only \$650. In the Board's proposal that range of increases would be \$1,640 for BA teachers alone. Again, given the same new money, the Association does a much better job than the Board of applying it equitably.

East Newark has the lowest starting salary of any public school district or any public charter school in the state. The district also has the lowest median teacher salary in the state. The Association has combined the first two guide steps in years two and four to accelerate the movement of the starting salary, and it has combined Steps 9 to 11 and Steps 12 to 15 in year two to insure that no teacher on the scattergram gets a raise less than \$1,031. In addition, the proposed guides introduce Steps 7a and 8a into the year four guide. No teachers currently employed will pass through these new steps, but beginning with the successor agreement the existing bubble steps will have been eliminated.


At the end of the Association's four-year plan the district will still have an inadequate BA starting salary of \$41,000 (likely to remain the lowest in the state), but on the other end of the guide two of their highest salaried teachers will still be four years away from their columns' maximums, providing the parties with some distribution relief in their next bargaining. Also, there will be an increment pattern that, although not perfect, is much more manageable and fair than that within the 2015-16 guide, and the column differences will have been practically equalized up and down the guide. Moreover, the increment load will be trimmed to 2.39% going into successor bargaining. All of this represents significant progress toward sound guides upon which East Newark teachers can project a logical financial career path.

Attracting and retaining quality teachers should be a goal of both the Board and the Association. The old salary guide was an impediment to this goal, with teachers

remaining in the district for less than five years on average. The Board's proposed elimination of guides will create an even worse situation, sending the district into a downward spiral that future negotiations will never generate enough money to reverse.

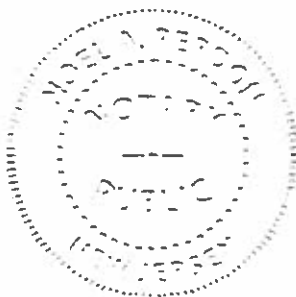
To completely repair the base salary guide would take a much larger settlement than the 10.96% four-year agreement of the parties. However, the Association has done a more than credible job of working within the 8.25% increases over the last three settlement years to create guides that make a substantial and positive difference for the district. If these guides are accepted, the Board and the ENEA will have taken a major step toward equity and stability, and they will have laid the foundation for a much easier bargaining process next year.

I have carefully examined the facts presented to me regarding the parties' sole outstanding issue of the distribution of their negotiated settlement. I will conclude by stating that the purpose of fact-finding is to provide a road map that should lead to the conclusion of protracted bargaining. However, a fact-finder must always bear in mind that his efforts are wasted if his recommendations do not reside within the bounds of acceptability to both parties. While I fully understand and appreciate the Board's aversion to an existing flawed salary guide that is the result of decades of previous bargaining, I am now recommending their acceptance of the Association's 2016-17, 2017-18, and 2018-19 corrective guides (Attachments B, C, D). I urge the Board to consider my rationales for this recommendation and move to conclude a bargaining event that has gone on too long. In doing so, I believe that they would be addressing the very real problems that have led to their rejection of the premises upon which salary guides are based. Furthermore, both parties need a resolution and respite so that they can return to the kind of positive cooperation that facilitates the business of educating the borough's children.


Frank J. Cocuzza, Fact-finder

Dated: 4-3-18

Oradell, New Jersey



NOEL A. PERDON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 11/13/2022

Attachment A

Appendix B

East Newark Education Association Response to Redline Draft of the 2015-2019 Collective Bargaining Agreement

Page 1 – Agreement and Preamble – Although these additions were not bargained they are acceptable.

Pages 5 and 6 – Article IV Dues and Check-off – We agree to the changing of “Employer” to “Board” and “Union” to “Association.”

Pages 9 and 10 – Article VI Authority of Board. – The entirety of the article is repeated. Delete the repetition.

Page 14 – Article VIII Salary Guide – Although we agree that the negotiated increase is 2.75% for each of the last three years of the contract and that the first year unit members received their increment we would prefer to have this reflected in the guides, not stated in this section of the CBA.

Page 14 – Article X Coaches – The rate for coaches at the end of the expired CBA was \$781.69, not \$744.03. The increases in each year should be calculated on that base.

| Year | Percent | Amount |
|-----------|---------|----------|
| 2015-2016 | 2.57% | \$801.78 |
| 2016-2017 | 2.75% | \$823.83 |
| 2017-2018 | 2.75% | \$846.48 |
| 2018-2019 | 2.75% | \$869.76 |

Page 17 – Article XI Specialists, Missed Preparation Time and Home Instruction – Section B include Technology Teacher. The new hourly rate is \$45.00. Thus, the per period compensation is \$33.75 and the two period compensation is \$67.50.

Pages 22, 23 and 24 – Article XIV Teachers’ Hours and Year –
Section D, last sentence should read, “Teacher meetings shall commence at 3:10 p.m. and run until no later than 4:00 p.m.”

Section E – To reflect current practice, the evening meetings should be 6-8 p.m. Also, to reflect current practice the Spring should have only one (1) evening Parent/Teacher Conference.

Section F – To reflect current practice, it should state, “In addition, all unit members shall attend the Winter/Holiday Concert as an additional evening session.

Section H – The new hourly rate is \$45.00 and the ½ hour rate is \$22.50.

Pages 26, 27 and 28 - Article XVI State Health Benefits Plan (Should be School Employees Health Benefit Plan)

Section A should be titled "Medical Insurance" not "Hospitalization".

Section

A 2 Should include family, member-spouse/partner and member-child(ren).

B and C should reflect the current coverage for Dental and Prescription.

Page 34 – Appendix B East Newark School District Extra Compensation Pay 2015-2019 –
Hourly rates should reflect the \$45.00 rate for Missed Prep and Lunch Duty. The Coaching
Stipend should reflect the amounts in Article X (page 14).

Attachment B

YEAR 2
2016-17

East Newark

| Salary Guide Step | 1,000 | | 2,000 | | 3,000 | | 4,000 | |
|----------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| | BA | BA+15 | BA+30 | MA | MA | MA+30 | MA+30 | |
| 1-2 | 39,264 | 40,264 | 41,264 | 42,264 | 42,264 | 43,264 | 43,264 | |
| 3 | 40,209 | 41,209 | 42,209 | 43,209 | 43,209 | 44,209 | 44,209 | |
| 4 | 41,174 | 42,174 | 43,174 | 44,326 | 44,326 | 45,174 | 45,174 | 2.750% |
| 5 | 42,174 | 43,174 | 44,174 | 45,174 | 45,174 | 46,428 | 46,428 | 2.662% |
| 6 | 43,374 | 45,097 | 45,374 | 46,374 | 46,374 | 47,374 | 47,374 | |
| 7 | 47,494 | 48,494 | 49,494 | 50,494 | 50,494 | 51,494 | 51,494 | |
| 8 | 48,744 | 49,744 | 50,744 | 51,744 | 51,744 | 52,744 | 52,744 | |
| 9 | 49,744 | 50,744 | 51,744 | 52,744 | 52,744 | 53,744 | 53,744 | |
| 10 | 49,744 | 50,744 | 51,744 | 52,744 | 52,744 | 53,744 | 53,744 | |
| 11 | 49,744 | 50,744 | 51,744 | 52,744 | 52,744 | 53,744 | 53,744 | |
| 12 | 50,394 | 51,394 | 52,394 | 53,394 | 53,394 | 54,394 | 54,394 | |
| 13 | 51,294 | 52,294 | 53,294 | 54,472 | 54,472 | 55,294 | 55,294 | |
| 14 | 51,294 | 52,294 | 53,294 | 54,472 | 54,472 | 55,294 | 55,294 | |
| 15 | 51,294 | 52,294 | 53,294 | 54,472 | 54,472 | 55,294 | 55,294 | |
| 16 | 53,124 | 54,124 | 55,124 | 56,124 | 56,124 | 57,124 | 57,124 | |
| 17 | 54,979 | 55,979 | 56,979 | 57,979 | 57,979 | 58,979 | 58,979 | |
| 18 | 56,859 | 57,859 | 58,859 | 59,859 | 59,859 | 60,859 | 60,859 | |
| 19 | 58,764 | 59,764 | 60,764 | 63,076 | 63,076 | 62,764 | 62,764 | |
| 20 | 60,694 | 61,694 | 62,694 | 63,694 | 63,694 | 64,694 | 64,694 | |
| 21 | 62,649 | 63,649 | 64,649 | 65,649 | 65,649 | 66,649 | 66,649 | |
| 22 | 64,629 | 65,629 | 66,629 | 67,629 | 67,629 | 68,629 | 68,629 | |
| 23 | 66,634 | 67,634 | 68,634 | 70,947 | 70,947 | 70,634 | 70,634 | |
| 24 | 70,740 | 71,740 | 72,740 | 74,578 | 74,578 | 74,740 | 74,740 | |

Attachment C

YEAR 3
2017-18 East Newark

| Salary Guide Step | BA | 1,075 BA+15 | 2,150 BA+30 | 3,225 MA | 4,300 MA+30 | |
|-------------------|--------|----------------|----------------|-------------|----------------|--------|
| 1 | 39,344 | 40,419 | 41,494 | 42,569 | 43,644 | |
| 2-3 | 40,284 | 41,359 | 42,434 | 43,509 | 44,584 | |
| 4 | 41,249 | 42,324 | 43,399 | 44,474 | 45,549 | 2.750% |
| 5 | 42,234 | 43,309 | 44,384 | 45,459 | 46,534 | 3.364% |
| 6 | 43,434 | 45,157 | 45,584 | 46,659 | 47,734 | |
| 7 | 47,514 | 48,589 | 49,664 | 50,739 | 51,814 | |
| 8 | 48,764 | 49,839 | 50,914 | 51,989 | 53,064 | |
| 9 | 49,764 | 50,839 | 51,914 | 52,989 | 54,064 | |
| 10 | 50,364 | 51,439 | 52,514 | 53,889 | 54,664 | |
| 11 | 50,364 | 51,439 | 52,514 | 53,889 | 54,664 | |
| 12 | 50,364 | 51,439 | 52,514 | 53,889 | 54,664 | |
| 13 | 51,464 | 52,539 | 53,614 | 54,689 | 55,764 | |
| 14 | 53,264 | 54,339 | 55,414 | 56,489 | 57,564 | |
| 15 | 53,264 | 54,339 | 55,414 | 56,489 | 57,564 | |
| 16 | 53,264 | 54,339 | 55,414 | 56,489 | 57,564 | |
| 17 | 55,099 | 56,174 | 57,249 | 58,324 | 59,399 | |
| 18 | 56,959 | 58,034 | 59,109 | 60,184 | 61,259 | |
| 19 | 58,844 | 59,919 | 60,994 | 62,069 | 63,144 | |
| 20 | 60,754 | 61,829 | 62,904 | 64,919 | 65,054 | |
| 21 | 62,689 | 63,764 | 64,839 | 65,914 | 66,989 | |
| 22 | 64,649 | 65,724 | 66,799 | 67,874 | 68,949 | |
| 23 | 66,634 | 67,709 | 68,784 | 70,947 | 70,934 | |
| 24 | 66,634 | 67,634 | 68,634 | 70,947 | 70,634 | |

Attachment D

Year 4
2018-19

East Newark

| Salary Guide Step | BA | 1,075 BA+15 | 2,150 BA+30 | 3,225 MA | 4,300 MA+30 | |
|-------------------|--------|----------------|----------------|-------------|----------------|--------|
| 1-2 | 41,000 | 42,075 | 43,150 | 44,225 | 45,300 | |
| 3-4 | 41,750 | 42,825 | 43,900 | 44,975 | 46,050 | |
| 5 | 42,700 | 43,775 | 44,850 | 45,925 | 47,000 | 2.750% |
| 6 | 43,695 | 44,770 | 45,845 | 46,920 | 47,995 | 2.385% |
| 7 | 44,795 | 45,870 | 46,945 | 48,020 | 49,095 | |
| 7a | 46,045 | 47,120 | 48,195 | 49,270 | 50,345 | |
| 8 | 47,295 | 48,370 | 49,445 | 50,520 | 51,595 | |
| 8a | 48,545 | 49,620 | 50,695 | 51,770 | 52,845 | |
| 9 | 49,795 | 50,870 | 51,945 | 53,020 | 54,095 | |
| 10 | 51,045 | 52,120 | 53,195 | 54,270 | 55,345 | |
| 11 | 52,045 | 53,120 | 54,195 | 55,570 | 56,345 | |
| 12 | 52,045 | 53,120 | 54,195 | 55,570 | 56,345 | |
| 13 | 52,045 | 53,120 | 54,195 | 55,570 | 56,345 | |
| 14 | 53,145 | 54,220 | 55,295 | 56,370 | 57,445 | |
| 15 | 54,845 | 55,920 | 56,995 | 58,070 | 59,145 | |
| 16 | 54,845 | 55,920 | 56,995 | 58,070 | 59,145 | |
| 17 | 54,845 | 55,920 | 56,995 | 58,070 | 59,145 | |
| 18 | 56,595 | 57,670 | 58,745 | 59,820 | 60,895 | |
| 19 | 58,395 | 59,470 | 60,545 | 61,620 | 62,695 | |
| 20 | 60,245 | 61,320 | 62,395 | 63,470 | 64,545 | |
| 21 | 62,145 | 63,220 | 64,295 | 66,310 | 66,445 | |
| 22 | 64,095 | 65,170 | 66,245 | 67,320 | 68,395 | |
| 23 | 65,365 | 66,440 | 67,515 | 68,590 | 69,665 | |
| 24 | 66,635 | 67,710 | 68,785 | 70,947 | 70,935 | |
| 24 | 66,635 | 67,710 | 68,785 | 70,947 | 70,935 | |