

THE CITY OF CRANSTON

ORDINANCE OF THE CITY COUNCIL
RATIFYING THE SCHOOL COMMITTEE'S COLLECTIVE BARGAINING
AGREEMENT WITH RI COUNCIL 94, AFSCME, AFL-CIO CRANSTON
PUBLIC SCHOOL EMPLOYEES LOCAL 2044, SCHOOL SECRETARIAL UNIT
(Fiscal Years 2013 & 2014)

No.

Passed:

John E. Lanni, Jr., Council President

Approved:

Allan W. Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

Section 1. The Cranston School Committee having bargained collectively with the, RI Council 94, AFSCME, AFL-CIO Cranston Public School employees Local 2044, which is the certified bargaining representative of Cranston Public School Secretarial Unit as set forth in the attached interest arbitration award.

Section 2. The matter went to arbitration at the request of the parties and the Opinion and Award was rendered on September 6, 2013.

Section 3. , The School Committee posted a copy of the proposed contract and arbitration award was made public and posted on its website on September 30, 2013 in accordance with Section 11.02.1 of the Cranston Home Rule Charter as amended on (November 2, 2010 and certified on November 9, 2010) at least 72 hours notice prior to the public hearing on November 22, 2010 at which time the School Committee voted to accept said Award.

Section 4. That the agreement in writing between the School Committee and the RI Council 94, AFSCME, AFL-CIO Cranston Public School employees Local 2044, in the form of the interest arbitration award which is attached hereto, is hereby ratified, confirmed and approved by this City Council.

Section : This Ordinance shall take effect upon its final adoption.

Positive Endorsement

Negative Endorsement (attach reasons)

Christopher Rawson, Solicitor Date

Christopher Rawson, Solicitor Date

Introduced to: Charter Sec. 11.02.1
Referred to Finance Committee November 14, 2013

In the Matter of the Arbitration between *
 *
 RI COUNCIL 94, AFSCME, AFL-CIO * INTEREST ARBITRATION DECISION
 CRANSTON PUBLIC SCHOOL *
 EMPLOYEES LOCAL 2044, * SUCCESSOR
 * COLLECTIVE BARGAINING AGREEMENT
 -AND- * Commencing July 1, 2012
 *
 CRANSTON SCHOOL COMMITTEE *
 * DATE: September 6, 2013

DECISION AND AWARD OF THE ARBITRATION BOARD

STIPULATED ISSUE

The terms of a successor Collective Bargaining Agreement between the parties for the period commencing July 1, 2012.

INTRODUCTION

This case arises under the Municipal Employees’ Arbitration Act, R. I. G. L. 28-9.4-1, et. seq. (hereinafter the “Arbitration Act”). The Arbitration Board is a three person panel. Each party selected an arbitrator. Pursuant to the statute, the parties selected the neutral arbitrator. Two days of hearings on February 15, 2013 and February 20, 2013 were conducted at which the parties were given full opportunity to introduce documentary evidence, present witnesses, as well as cross examine those witnesses. Collectively the parties introduced more than 30 exhibits. Upon the conclusion of the hearing, both parties filed Briefs. The Arbitration Board met in executive session on March 14, 2013. This Decision and Award was drafted by the neutral arbitrator.

RELEVANT LAW

Most of the issues in the case are economic. Besides the Arbitration Act, there are a number of statutes which impact the funding and fiscal operations of the School Department. Most of the funding for the School Department comes from local aid appropriated by the Cranston City Council. Some funding comes from state aid. A much smaller amount comes from other sources.

Rhode Island General Laws, section 16-7-23, provides that each community shall contribute local funds to its School Committee in an amount not less than its local contribution for schools in the previous fiscal year except to the extent permitted by section 16-7-23.1. Neither party has indicated that this section of the general laws is applicable in this case.

Section 16-7-23 is the so-called “maintenance of effort” statute. It requires local funding at the same level as the previous year with two exceptions. The first exception is where a community has a decrease in student enrollment. In that case, the community may compute the maintenance of effort amount on a per-pupil rather than on an aggregate basis when determining its local contribution. The second exception is where a School Department has a non-recurring expenditure in one year which does not reoccur in the following year. With the approval of the Commissioner, that expenditure may be excluded in calculating the maintenance of effort amount that the local community must provide to the school district for that year.

The initial sentence in section 16-7-23 states that the School Committee's budget in each year shall provide for an amount from all sources sufficient to support the basic education program (“BEP”). Therefore, there is a floor beyond which a School Department budget cannot be cut, even utilizing the exceptions that are in the statute because programs necessary for the BEP must be maintained.

The statute also provides that at the end of a fiscal year any unexpended state and local funds shall remain a surplus of the School Committee and shall not revert to the municipality. It further provides that any surplus of state or local funds appropriated for educational purposes shall not in any respect affect the requirement that each community contribute local funds in an amount not less than its local contribution for the schools in the previous fiscal year.

The maintenance of effort statute was addressed by Justice Rubine just over a year ago in the case of School Committee of the Town of West Warwick vs. Edward A. Giroux, Town of

West Warwick. (RI Superior Court May 8, 2012). The court held that payments made directly to School Department vendors in 2008 had to be included when calculating the maintenance of effort funding required to be paid by the town in fiscal year 2009. While the judge ruled in favor of the School Committee in the case, he also noted that the School Committee was not without fault for the fiscal year 2009 funding fiasco. The judge noted that the School Committee concluded both fiscal years 2008 and 2009 with insufficient funds to meet obligations to creditors. The court noted that Rhode Island General Laws, Section 16-9-1 requires all School Committees to live within their means and to not incur debts which exceed their revenues. The court also noted that Rhode Island General Laws 18-2-9 (d) requires a School Committee to maintain a school budget which does not result in a deficit. The court admonished the School Committee, stating that in the future it should anticipate its financial needs and prepare a realistic budget to address those needs, rather than budgeting in a way that results in a shortfall at the end of a fiscal year and then asking the court for an emergency order to compel the town to appropriate funds to fill the budget gap. The court also noted a Cranston School Committee case, in which the Supreme Court said a Caruolo action is not intended to be used as an end of the year budget plug to fix the deficit that the School Committee had anticipated for months before the school year began.

In summary, the City of Cranston has an obligation to provide funding under the maintenance of effort statute but the School Department is required to operate and expend the funds it has available to it in such a way that does not result in a deficit. In this case, to avoid deficit spending which it projected and to remain within the funding with which it had been provided, the School Committee sought very significant concessions from the bargaining unit. The Union characterized those concessions as extreme in light of the general makeup of this bargaining unit and the salary schedules of the members of the bargaining unit. As the case developed, the projected deficit for 2012-2013 did not materialize but the School Committee continued to project deficits in the following fiscal years.

FACTORS TO BE CONSIDERED

The Municipal Employees Arbitration Act does not expressly state any standards or provide a list of factors to be considered by the Arbitration Board in rendering its decision.

Rhode Island General Laws 28-9.4-12 merely states that the arbitrators shall make written findings and issue a written opinion upon the issues presented.

The statutory jurisdiction of the Arbitration Board is limited to addressing the unresolved issues which prevented the parties from entering into a successor collective bargaining agreement. Most of the unresolved issues in this case are financial. The standard generally applied by arbitrators for evaluating the various proposals of the parties is threefold: what is reasonable in light of all the evidence presented in the case, the statutory obligations placed on the School Committee and a comparison of similarly situated employees.

FACTS

The proposals of the School Committee were for the most part economic in nature so as to address its projected deficits. They included a 15% wage reduction across the board, health insurance plan design changes, freezing step increases, freezing longevity pay, reducing sick leave entitlement, eliminating four holidays and placing new hires in a defined contribution pension plan rather than placing them in the existing defined benefit pension plan. As initially proposed, the School Committee indicated that the effect of its proposals was a savings of \$272,000 in the remaining portion of fiscal year 2012-2013 and a total savings \$1,313,522 over the course of three years. While collective bargaining and impasse resolution procedures took place in 2012 and 2013 longevity was paid for fiscal year 2012-2013 and the proposed salary reduction and other proposed changes did not occur before the end of the 2012-2013 fiscal year so the projected savings for that year was not realized. However, as will be discussed below, there was no budget deficit in that fiscal year either.

At the hearing the chief financial officer for the school district testified that there was a projected deficit of \$1,504,898 in the total school department budget for fiscal year 2012-2013. That projection was caused by various revenue items, such as Medicaid revenue and special education outside tuitions, for which actual revenue was below the budgeted revenue. There was also a bad debt of approximately \$350,000 which had been carried as a receivable but had to be written off based on a recommendation from the School Department auditors. There were some offsetting increases in other revenue items but the chief financial officer testified that the net effect was a \$1.5 million shortfall for the 2012-2013 fiscal year. Savings were realized from concessions in the collective bargaining agreement with the custodians but the projected savings

was short of the budgeted goal. After applying the projected savings from the settlement with the custodians union, he testified that there remained a \$300,000 deficit in the budget which the School Committee was looking to eliminate through concessions from the secretaries' bargaining unit.

After the hearing concluded, the parties stipulated that there was a \$1.6 million projected budgetary surplus for health insurance in the 2012-2013 fiscal year. The information about the projected surplus for health insurance was provided to the arbitration board about two weeks after the arbitration hearing concluded and was considered by the arbitration board in issuing this decision because the parties stipulated that the information could be considered by the Board in rendering its decision.

The school district's chief financial officer testified about the Superintendent's proposed 2013-2014 fiscal year school department budget. That budget covered the period July 1, 2013 to June 30, 2014. The proposed budget anticipated a request to the city of Cranston for an additional \$3.2 million in funding over the amount that had been provided by the city to the School Department in the prior fiscal year. That amount represented a 3.5% increase in city funding. The statutory cap under Rhode Island law is a 4% increase per year. He testified that in recent years, the city had not given increases that approached the level of the cap. In the prior six years increases had ranged between \$1.6 million and \$900,000. In the chief financial officers opinion it was not reasonable to expect that the city would increase funding by \$3.2 million. He also pointed out other items in the proposed budget which were based on estimates rather than hard figures. Those items included pension costs, health insurance costs and special education tuitions.

The chief financial officer testified that the Superintendent's proposed budget had not yet been adopted by the School Committee. He also noted that the proposed budget by the Superintendent included \$1.9 million to fund a 2% raise for administrators which was being recommended by the Superintendent in order to retain and attract experienced administrators into the school district. Most of the administrators had not received a raise since 2006 or 2007 except for the few who received raises as a result of promotions.

The school district's financial officer also identified budgetary concerns for the 2014-2015 fiscal year. These items included contractual step increases, pension increases, health and dental insurance increases and special education and charter school tuition increases. The total

amount of these items was \$2.9 million but he acknowledged that some of the estimates were speculative. About one third of that amount was generated by step increases for teachers because almost half of that bargaining unit receives step increases annually.

He also testified that in preparation for negotiations with the union the school district requested information on wages paid to secretaries in other school districts. The document submitted as school committee Exhibit 9 contained a summary page and backup information from 8 communities. Those communities were:

Barrington	North Kingstown
Burrillville	Pawtucket
Johnston	East Greenwich
North Smithfield	Smithfield

On cross-examination he acknowledged that the school districts listed in the exhibit were the only ones who responded to the request for information by the Cranston School Department. The information in this exhibit will be addressed in greater detail below as part of the decision.

The chief financial officer also testified about a School Committee exhibit that compared savings generated from negotiations with other unions. Those unions represented teachers, bus drivers and custodians. The savings were generated by concessions made by those unions. For the teachers the savings came in a two year period (fiscal years 2011-2012 and 2012-2013). The total savings was \$4.8 million, most of which resulted from a salary freeze in those two years, a realignment of step payments, an increase to 20% on health insurance co-share and plan design changes to health insurance. There was no 15% salary reduction for the teachers. There are many more teachers than there are secretaries and the salaries of the teachers are much higher than those of the secretaries. He also stated that the salary concessions by the teachers resulted from them foregoing a raise that was due to them in addition to restructuring the annual steps to reduce the amount paid on each step.

For the bus drivers union, the concessions occurred in the same two fiscal year period as the teachers. The total savings was \$739,000, most of which resulted from no salary increase in those two years, freezing of step payments for two years, an increase to 20% on health insurance co-share, elimination of four holidays, elimination of a fourth week of vacation time and plan design changes to health insurance. On cross examination the chief financial officer acknowledged that there was no 15% salary reduction for the bus drivers and that the savings attributable to salary was realized by budgeting a salary increase for the bus drivers and then

counting the savings when there was no salary increase. He also acknowledged that the only health insurance plan design changes for the bus drivers were office co-pays and prescription plan changes. That bargaining unit has around 85 to 90 members. He testified that the secretaries union involved in this case has around 60 to 63 employees.

For the custodians union the concessions occurred over three fiscal years (2011-2012 to 2013-2014). The total savings was \$2.2 million most of which resulted from a 15% salary reduction, an increase to 20% on health insurance co-share contribution, a \$500 deductible health insurance plan, elimination of four holidays, and plan design changes to the health insurance plan. The union President noted in the presentation of the union's case that the \$500 deductible plan was \$500 per member of the family until two members incurred \$1000 in medical expenses so the change was very significant both in cost savings to the school district and also in the impact on employees. Other changes in the health insurance plan included an increase in doctor office co-pays and an increase in prescription drug co-pays. The 15% salary reduction accounted for about half of the total \$2.2 million savings. The custodians bargaining unit has around 85 employees. The significant concessions by the custodians union occurred under the backdrop of a plan by the School Committee to privatize the custodians' work.

It was noted that the concessions being sought from the union in this case were similar to the concessions that were made by the custodians union, except for the increase in health insurance co-share because the secretaries' union is already paying a 20% health insurance co-share. The chief financial officer testified that the goal of the school committee in negotiating with the secretaries' union was to mirror the concessions by the custodians. Those concessions amounted to 26% of their pay. The concessions by the bus drivers union amounted to 19% of their pay. He testified that the concessions being sought from the secretaries in this case amounted to 22% of their pay.

On cross examination the chief financial officer testified that administrators in the School Department have individual contracts. They are not members of any bargaining unit. The average salary for administrators is around \$80,000 per year. Their co-share is 25% of the so-called working rate for health insurance. He testified that the working rate for a family plan of health insurance was about \$18,000 per year. He also acknowledged that for the 2012-2013 adopted school budget, the line item for administrative salaries was over \$5 million while the line item for the secretaries' salaries was just under \$2.5 million.

He further acknowledged that the Superintendent's proposed budget for 2013-2014 included a 2% raise in salary for administrators but that item was rejected by the School Committee on the evening just prior to the arbitration hearing. He also acknowledged that there was no salary reduction proposed for administrators in the 2013-2014 budget.

Regarding the School Committee's proposal to place new hires after July 1, 2012 in a defined contribution pension plan (i.e. a 401(a) plan), the chief financial officer acknowledged that specific details regarding the plan were still being developed with a plan administrator with whom the school district was working because the custodians accepted that proposal from the School Committee. The specific provisions of the plan were being developed. General details were available. The employer contribution would be 3% of salary with a 3% contribution from the employee. He acknowledged that the administrators of the school department were not in such a pension plan. The teachers and bus drivers also were not in such a 401(a) type of plan.

The Human Resources Office Manager for the school district testified regarding the sick leave proposal made by the School Committee. Using an exhibit that she prepared she detailed the amount of money that had been paid by the school district to employees who separated from employment for unused sick leave as well as the liability for future payments to current employees. If certain conditions are satisfied at the time that an employee separates from employment, the employee receives a payout for unused sick leave. For the period from January 2008 to December 2012 the amount paid by the school district to 19 employees was just over \$240,000. In its case, the union presented an exhibit which showed that just over \$160,000 was paid to retiring secretaries in the period from January 2006 through August 2011.

In terms of future liability, as of the time of the hearing, the HR Manager testified that for employees with a minimum balance accrual of 120 sick days and 20 or more years of service who would receive payment at \$50 per day, the monetary liability was \$204,000. Employees with a minimum accrual balance of 100 days and 10 to 19 years of service who would receive payment at \$20 per day amounted to a monetary liability of just over \$90,000.

On cross-examination the Human Resources Manager acknowledged that there was no short-term savings from the School Committee proposal. If all the members of the bargaining unit retired immediately the accrued liability would have to be paid but as a practical matter the payouts will occur over time as employees leave the employment of the school department. The

School Committee proposal to address the sick leave issue has multiple components which will be addressed in detail below.

The Human Resources Manager also testified about an exhibit she prepared detailing the School Committee's proposed 15% salary reduction. The exhibit listed all the employees who were in the bargaining unit at the time of the hearing. In separate columns it listed the current salary for the employee and the resulting salary if a 15% reduction was applied. The salary reduction generated a savings of \$300,000 just on gross salary, without taking into account any additional savings on collateral items that are linked to a salary reduction, such as FICA and Medicare payments. The savings amount was based on a calculation of the salary reduction for a full year.

An alternative salary reduction proposal was also described by her. The alternative scenario would increase the workday of seven and a half-hour per day people to eight hours per day and increase seven hour per day people to seven and a half hours per day so that each group would work an additional two and half hours per week. The increase in salary for the additional time using current hourly rates was calculated and then reduced by 15%. This generated a savings of \$150,000 per year. For the School Committee the savings was less than the goal that the Committee had set for itself. The impact on the employees was more hours of work for less pay.

The Human Resources Manager also described another exhibit she prepared detailing the daily cost with benefits (the "daily rate"). As with the prior exhibit, it listed all the employees for this bargaining unit as of the time of the hearing. The cumulative cost for this bargaining unit including the daily rate of pay, pension, Medicare, etc. was \$9,824.00 per day. Based on fiscal year 2012-2013 costs, this figure represents the savings that would be generated on a daily basis if the entire bargaining unit gave up pay for a full workday.

The HR manager testified that administrators had not received an across-the-board raise in the prior six years. There were some individually contracted employees who had received a salary increase when they changed positions through promotion. In that same time period, the health insurance co-share increased for the administrators from 20% to 22% and then to the current 25%. The secretaries group received no salary increase in fiscal year 2010-2011 but did receive a 3% salary increase in fiscal year 2011-2012. That increase occurred in two 6 month steps of 1.5% each. The secretaries' co-share for health insurance is currently 20%.

The last item that the HR manager testified about was a proposal by the School Committee to add a definition for what “qualified” meant when filling posted vacancies. Section 21.2 of the collective bargaining agreement states will “All posted vacancies shall be filled by the senior qualified candidate.” The proposed definition would require testing in Microsoft Excel and Microsoft Word with a passing grade of 70 on each test. There were two alternative proposals for the definition but each proposal required proficiency in Microsoft Excel and Microsoft Word with a passing grade on each test. The proposed language change would apply to 12 month employees, also known as category three employees. This category distinguishes those secretaries from the secretaries who work less than 12 months a year. The category three employees are generally in the administration building but are also at some other buildings in the school district. The HR manager testified that the purpose of the proposal was to address situations where some people coming into the category three positions do not have qualifications to perform the work required in the position.

Regarding this proposal, the union President testified that the present job specifications for the secretarial positions required only a high school diploma and there was no requirement of proficiency with Microsoft Word or Microsoft Excel. She did acknowledge that familiarity with the Microsoft Word program was necessary for the secretary positions and that familiarity with Excel could be a benefit in some administrative jobs, but it was not necessary for all administration secretaries. The union suggested that setting up a committee to study which jobs require proficiency with Excel would be a better approach.

The union President also noted that although the School Committee asserted there were problems occurring when people were bidding into positions, her experience was that the problems occurred more often when people were bumping into positions; not bidding into the positions. The bumping occurred as a result of layoffs or possibly some other events. She also stated that when problems developed, the parties would meet to mutually work out of a resolution. In one such case the individual involved was given additional education about the programs and her work abilities improved. For these reasons the union President downplayed the need for the proposed language defining the term “qualified”.

The Superintendent testified that while she submitted a proposed budget to the School Committee that contained a \$3 million increase in city funding, she had little to no expectation of receiving that increase. She testified that her motivation for proposing a 2% raise for

administrators was twofold: the district needed to retain qualified administrators and her view of her role as an advocate for educators and students. When asked for her rationale of proposing a 2% raise for administrators in light of the proposed 15% salary reduction for the secretaries, she explained that there are 45 administrators, 36 of whom had not received a raise in a long time. The other nine who did receive a raise did so by virtue of promotions. The administrators also sustained a decrease in take-home pay because of the increase in the health insurance co-share to 25%. She also noted that the teachers had received no recent salary increase and they also had sustained a loss of pay due to increased health insurance co-shares.

She explained that currently deficit reduction payments of \$1.5 million per year were being paid to the city by the school department under a court order. That court order also stated that educational programs which were cut could not be restored until the deficit reduction payments were completed. Making the deficit reduction payments has had an adverse impact on school programs and budgeting. Those payments are scheduled to end in fiscal year 2013-2014 so no new programs can be implemented until fiscal year 2014-2015. As an example, she described a program for full day kindergarten. To implement the program the school district would need 13 additional teachers the cost of which would be approximately \$13 million. She stated that the School Committee position was that all the employees of the school department needed to share in making concessions in order to balance the budget and avoid deficits.

The union's President testified at the hearing. At the time she had held the office of president for 20 years and had been involved in the negotiations of many contracts over that period of time. She testified that the prior contract, which had now expired, was the result of mediation and arbitration procedures. The arbitrators' award from that time, which covered a period from July 1, 2010 through June 30, 2012, contained a wage increase of 1.5% on July 1 2011 and 1.5% on January 1, 2012. That award also increased the health insurance co-share payments by employees from 3% to 15% and then to 20%. The President testified that both parties accepted the award. In the spring of 2011 the School Committee approached the union to reopen the contract and give back the raises that were scheduled to take effect in July of 2011 and the following January. The membership rejected the request. The school department then laid off members of the bargaining unit. She also testified that during the two and half year period of the negotiations/mediation/arbitration, the bargaining unit was reduced by 19 positions. While a few

years ago the bargaining unit had 79 or 80 positions, currently there were 61 bargaining unit positions. This figure is slightly less than the number stated by the school department.

In regards to the negotiations for the contract which is currently before this arbitration board, the president testified that prior to the start of negotiations with this union, the custodians union entered into a contract agreement with the School Committee. Just prior to or during those negotiations with the custodians, the School Committee had issued a request for proposals for privatization of the custodial work. Responses to that RFP projected considerable savings for the school department if the custodial work was privatized. The settlement with custodians union included a 15% salary reduction and freeze on salary steps, an increase in co-share from 10% to 20%, health insurance plan design changes and the new \$500 deductible health insurance plan. It gave back of two holidays, which increased to four holidays in the out years of the contract. Sick leave was frozen.

The union President identified an exhibit which listed the initial proposals from this union for its negotiations of its contract with the School Committee. Those proposals will be addressed in detail below. The President testified that during negotiations with the school committee the union made an oral proposal that included a 0% salary increase and step freezes. The union also projected savings for the school department because more than five members of the bargaining unit retired and were replaced by people who were hired at lower steps in the salary schedule. Some were hired at a step higher than step one and the union argued that it should be credited with all the savings which would have occurred if the newly hired people started at the first step.

The union had proposed a realignment of the salary steps to equalize the amount of the increase which occurred in moving from one step to the next. The union President testified that if the proposed so-called "equalization chart" of salary steps had been utilized money would be saved by the school Department because the newly hired secretaries would be on the realigned steps proposed by the union. On cross-examination she acknowledged that the first step was the same amount as in the past contract and that each step thereafter incorporated a 5% increase. She also acknowledged that most of the members in the bargaining unit were on the top step and that all the top step employees would receive salary increases under the proposed "equalization chart". In addition to the eight steps in the salary schedule, there are four classes of positions each with its own eight step salary schedule. Classification A has only one position.

Classification D at the other end of the spectrum has 45 bargaining unit people in the positions listed in that classification. The union President acknowledged that the proposed equalization chart prepared by the union would carry an increased cost for salaries over the amount currently being paid by the school district.

Regarding the school committee's proposed plan design health insurance changes which were projected to save around \$70,000 per year, the President stated that the union was looking for an acknowledgment of and the amount of reduction in the so-called "working rate" for the health insurance coverage that would occur from implementing the changes because that working rate is the amount to which the employees co-share percentage is applied.

Regarding the school committee sick leave proposal, the President testified that the union was agreeable to freezing the sick days currently accrued and agreeable to the concept that only those days would be compensated or paid out when an employee separated from employment. The union was also agreeable to the concept that the new bank of sick days would accrue at the reduced rate of 12 days per year but the union wanted all of them credited at the start of the year rather than accruing 1 day per month. The union wanted a carryover of the sick days from year to year, capped at 120 days, as a hedge against any employee suffering a long term illness and not having available sick leave time to cover the absence from work. It was also acceptable to the union that there would be no payment for these accrued sick days upon separation from employment.

The President also testified that as part of the proposal that the union made at the time, it wanted Article 28.1 entitled "No Strike/No Lockout" rewritten to make it more understandable; it agreed to a freeze of longevity pay and rejected the School Committee's pension proposal. The revised union proposal was rejected by the School Committee, which maintained its position on its original proposals that it had made.

The President testified that the union addressed the School Committee's request for monetary concessions late in the collective bargaining process when the union offered a counterproposal to reduce days of work and give up salary for those days. Under the union proposal, category 2 and category 3 secretaries would be paid for 10 less days each fiscal year. They would not receive pay for five holidays and they would take 5 days off and would not be paid for those days. The union calculated that this proposal would save the school department almost \$85,000 per year.

The union President also testified about an exhibit which compiled information from other school districts regarding salaries, health insurance co-share, the number of holidays and sick time accrual. The information was drawn from collective bargaining agreements for those districts. The districts from which the information was compiled are as follows:

Cranston (city)	Providence
Newport	Warwick
Pawtucket	West Warwick

The union also submitted exhibits detailing the actuarial valuation of the state MERS pension system, in which current members of this bargaining unit participate; the City of Cranston budget for fiscal year 2012-2013; the proposed state educational aid, which reflected a projected increase for Cranston; and articles regarding 401(k) type pensions.

ARGUMENTS OF THE PARTIES

Arguments of the parties relative to specific proposals will be addressed in the Decision and Award. A general summary of the positions of the parties is addressed here.

School Committee:

The School Committee approach to the case starts with what the law obligates the school district to do and what the law prohibits the school district from doing. The law requires the school department to provide an education for students that is compliant with the State's Basic Education Program ("BEP"). Other state laws prohibit the School Committee from operating with a deficit. It must deliver the education program within a budget that relies upon funding primarily from the city and the state.

The School Committee argued that even though there was a \$1.6 million surplus in healthcare insurance for the 2012-2013 fiscal year, the outlook for the 2013-2014 and 2014-2015 fiscal years is troublesome. The proposed school budget for 2013-2014 requests \$3.2 million in additional funding from the city. That amount far exceeds increases that the city has historically given to the school department. The projections for the following fiscal year of 2014-2015 show greater deficits due to projected increases in pension and healthcare costs. The school district is

repaying money loaned by the city to the School Committee to cover past deficits. The loan repayments are being made over a period of years and end within the next couple of years. In order to fund the loan repayment, education programs were cut and cannot be restored until the loan is paid back pursuant to a Superior Court Order in a case from 2010. To address the issues of compliance with the BEP, the loan repayment and to avoid deficit spending, the School Committee has been engaged in a long term consistent approach of seeking concessions from all the bargaining units at the school department. These factors form the backdrop of the Committee's proposals and its response to the union proposals, particularly the economic proposals.

Union:

The union argued that the amount of concessions sought by the School Committee from the secretaries' union far exceeded the payroll expense for the secretaries. The union contends that seeking over \$300,000 in concessions from this bargaining unit is fundamentally unfair and economically unjustifiable. On a pro rata basis, measured against the total deficit which the school committee asserted existed for fiscal year 2012-2013, this bargaining unit should be responsible for less than \$50,000 in concessions. The basis for the argument is twofold: the small size of the bargaining unit and the lower wages of the members of this bargaining unit, some of whom do not work 12 months a year.

By way of comparison, the union pointed to the school administrators. The union acknowledges that as a group, the administrators have not had an across-the-board salary increase in six years, but a 15% pay cut for that group would yield almost \$800,000 in one year and even a 9% pay cut would yield almost \$500,000 in savings. These results occur because of the higher salaries for the administrators even there are less of them (45) than there are secretaries (63).

The union noted the stipulation entered by the parties after the conclusion of the arbitration hearing that for fiscal year 2012-2013 there would be a surplus in the health care fund of approximately \$1.6 million. The union argues that this amount translates into an overall surplus of \$100,000 for the school department for fiscal year 2012-2013. For that reason the union concludes that no concessions are necessary from this bargaining unit for that fiscal year.

The union further argues that because the surplus will be carried into the next fiscal year no concessions are necessary from this bargaining unit for fiscal year 2013-2014.

As for that fiscal year and the years beyond, the union argues that the projected deficits by the School Committee should be viewed critically because of the poor forecasting of deficits that was done for fiscal year 2012-2013. The union suggests that the deficit concerns raised by the School Committee for future fiscal years do not reflect hard numbers and recent history shows that its ability to forecast budgetary needs is inherently unreliable.

The union contended that even if the School Committee's forecasted budgetary deficits were accurate for future fiscal years, the pro rata share of the deficit attributable to this bargaining unit would be approximately \$90,000 which can be achieved through concessions on freezing longevity and implementing health care plan design changes without implementing a 15% salary reduction.

The union noted additional financial information that should be considered by the Arbitration Board. Referencing exhibits which it presented at the hearing, the union argued that the School Committee can expect additional revenue under the state school funding formula in future years. In addition, the Cranston MERS pension is almost 95% funded so that there should be little to no increase in future year contributions to the pension fund.

Finally, in comparison to other communities, members of this bargaining unit are by no means at the top of the pack and in some cases, are very much near the bottom. The union notes that the Cranston city hall clerks start at a lower salary, but the highest step is over \$7000 more than the highest step for members of this bargaining unit who work 37.5 hours per week. The union also noted that clerks in Warwick, West Warwick and Newport start at a higher rate than members of this bargaining unit. While the clerks in the Providence school system are paid less than members of this bargaining unit those clerks are due to receive raises in 2013 and 2014. The union also noted that with respect to other benefits, the members of this bargaining unit are not "leading" in any single category with the exception of health insurance premium co-share which is at a contribution level of 20%.

DECISION AND AWARD

As noted by Arbitrator Gary D. Altman, Esquire in the decision dated October 7, 2010 for the contract prior to the one which is the subject of this case, the goal of the Arbitration Board,

within the obligations and limitations placed upon it by Rhode Island state law, is to balance the interests of the bargaining unit, the School Committee and the citizens of Cranston. Under Rhode Island law, the interest arbitration hearing is part of the overall negotiating process and is the final step in impasse resolution. Consistent with principles that guide neutrals in interest arbitration proceedings and as referenced by Arbitrator Altman in his decision, ability to pay, wages and benefits of comparable school districts and the cost of living were considered by this Arbitration Board in formulating its decision.

Contract Term

The union proposed a three year contract covering the period from July 1, 2012 to June 30, 2015. The initial proposal of the School Committee was for a two year contract commencing July 1, 2012 and ending June 30, 2014. The fiscal impact statement prepared by the School Committee which itemized the value of concessions that it sought to achieve in this process covered a three-year period and the testimony from School Committee witnesses stated concerns about projected deficits forecast into that three-year period. However, for a couple of reasons, the Arbitration Board establishes the contract period as two years commencing on July 1, 2012 and ending on June 30, 2014.

The first year of that period has already concluded. It had nearly ended by the time the parties filed their post hearing briefs and the Arbitration Board was able to meet in executive session to discuss the case. The next fiscal year, covering the period July 1, 2013 to June 30, 2014, just recently commenced. The Federal Affordable Care Act is causing rapid changes in the way that health insurance coverage will be provided. Not all of those changes are readily foreseeable at this point in time nor are the cost implications of those changes. This Arbitration Board is reluctant to delve into health insurance coverage issues that involve a period of time which is more than 12 months away.

The second reason for not venturing into a 3 year contract is an argument raised by the union when it attacked the credibility of the financial projections submitted by the School Committee. The reliability of those financial projections was adversely impacted by the stipulation submitted by the parties regarding a large surplus in the health insurance account for fiscal year 2012-2013. That stipulation was submitted to the Arbitration Board by the parties just two weeks after the conclusion of the final arbitration hearing. At the hearing the school district

was still projecting a deficit for that fiscal year. Likewise, history has shown that the union's forecasted increases in school department revenue and future stable pension contributions are not carved in stone.

The contract period of two years covers the year which has ended, provides a contract for the current fiscal year and provides the parties with ample time to negotiate the terms of a collective bargaining agreement that would commence on July 1, 2014. For these reasons the contract period is July 1, 2012 to June 30, 2014.

July 1, 2012 to June 30, 2013

This period has ended. The Arbitration Board awards no change in salary for this period and awards no changes in health insurance or any other provisions of the contract from the period of July 1, 2011 to July 1, 2012. All the terms and provisions of the collective bargaining agreement for that period of time remain the same for the first year of the contract.

July 1, 2013 to June 30, 2014

By maintaining the terms and provisions for 2012-2013 that were in the contract for the preceding year in this Award, the members of the bargaining unit avoid the drastic concessions sought by the School Committee for that year. However the evidence does not warrant extending that status quo beyond that year. While the union took issue in its Brief with the credibility of the fiscal projections for the upcoming years made by the School Committee, the union implicitly acknowledged the need for some economic concessions during the course of bargaining with its proposals for ten days off with no pay as well as a willingness to accept a longevity freeze and some health insurance plan design changes. The fiscal constraints on the school department were established by the evidence at the hearing and must be taken into consideration by the Arbitration Board. In light of the fiscal situation in the school district, concessions from this bargaining unit are warranted. Every other bargaining unit in the district was asked for and agreed to some concessions. This bargaining unit must also participate in addressing the fiscal issues of the school district.

Salary

For the period July 1, 2012 to June 30, 2013, the School Committee had proposed a 15% reduction in salary for all members of the bargaining unit. At the time of the hearing, the School Committee was still proposing such a salary reduction on a prospective basis.

The union initially proposed an equalization of the eight steps in the salary schedule. On each of those steps there are four classifications of employees. Classification A has only one employee. Based on the testimony at the hearing classification D has 42 employees. There are a total of approximately 63 employees in the entire bargaining unit. On many of the steps and classifications in the union's proposal, there was no increase in salary. However on the top step for every classification, the union's proposal resulted in a salary increase.

The Arbitration Board does not adopt the proposals of either party. A 15% salary reduction for members of this bargaining unit is extreme, especially in light of other parts of this Decision. Many people in the bargaining unit do not work a full year. Category one and category two employees only work during the school year or a short period of time before and after the school year. Only category three employees work a full calendar year. In addition, the salaries for these employees are not exorbitant. The top step salary ranges from \$18.90 an hour to \$20.31 an hour. This decision will award some of the other concessions sought by the School Committee. For that reason and taking those other concessions which cause a wage reduction to employees, the Arbitration Board rejects the proposal of the School Committee to reduce salaries across-the-board by 15%.

On the other hand, the union's proposal for reorganizing the salary steps causes an overall salary increase for the school department, even though some steps are less than the hourly rates in the old contract. The result occurs because most members of the bargaining unit are on the top step. Any increase in salaries on the top step causes an increase in school department expenses. That proposal of the union on salary equalization is rejected by the Arbitration Board. To achieve a salary savings for the school department, the union proposed that members of the bargaining unit be given days off without pay.

This Award includes a variation on the proposal made by the union. For full time employees there will be 10 days during the 2013-2014 contract year for which those employees will not be paid. There are 14 paid holidays listed in the contract. 5 of those holidays shall not be paid holidays. In addition, each full time bargaining unit member shall have 5 workdays off

without pay. These are not so called “pay reduction days” or days worked for less salary. These are days in which the employee will be off but will not receive salary for that day off. For bargaining unit members who work less than a full year because they are not employed in the summer months, the days will be 4 unpaid holidays and 4 workdays off without pay. The award of this salary reduction is for the fiscal year 2013-2014 only.

Based on the testimony of the School Committee witnesses, one day has a value of \$9,824.00. Ten days generates \$98,240.00 in savings for the school district. The amount will be a little less based on the proration for bargaining unit members who do not work a full year.

The Arbitration Board leaves it to the parties to determine the specific holidays and the other 4 or 5 days, as applicable, for which no salary will be paid. The Arbitration Board retains jurisdiction for 30 days from the date of the decision in case the parties cannot reach agreement on these issues.

This salary award does not achieve the savings sought by the School Committee in its 15% across the board salary reduction proposal. To achieve some long term salary savings as an alternative to immediate drastic salary reductions, members of this bargaining unit hired after the date of this award, in addition to the 10 days discussed above, will be subject to a new salary schedule. That salary schedule will reduce the number of steps; retain the same classifications of A through D; and reduce the hourly rates in the steps. Adopting concepts from the proposals made by the parties, the steps are equalized in that the differential between each step is and the hourly rates are less than the current hourly rates.

The parties submitted comparables from other school districts and municipalities but there was little to no testimony on how those other districts and municipalities compared to Cranston in terms of budget size, budget surplus or deficit, if any, the number of students and other factors such as ability to pay. The information provided by the School Committee came from 8 communities who responded to a request for information. The members of the Arbitration Board are long term residents of this state and can take arbitral notice of the fact that almost all of the 8 communities have school districts smaller in size based on student population than Cranston with the possible exception of one or two of the communities.

The union offered comparables from 6 communities. Only one was common with the School Committee submittal (Pawtucket). One of the remaining five was information about

Cranston city employees. Information from Providence and Warwick, both large school districts, was part of the submittal by the union.

The Arbitration Board reviewed the information provided by the parties and compared the current top step hourly rates in the Cranston school department to the comparables that were submitted by the parties. In some cases the hourly rates had to be calculated by the Arbitration Board from yearly salaries and hours of work that were included in the exhibits.

The City of Cranston clerks are a little below this bargaining unit at the lower end of the hourly rate spectrum (\$18.63 to \$18.90) and a little above this bargaining unit at the higher end of the spectrum (\$21.48 to \$20.31). Pawtucket has a similar result (\$18.30 to \$18.90 and \$20.48 to \$20.31). Smithfield also has a similar result (\$18.35 to \$18.90 and \$21.51 to \$20.31).

The Warwick school department went 6 years without a salary increase before raises of 2%, 1% and 1% were implemented, the last of which occurred on February 1, 2013. As a result of those raises Warwick hourly rates are higher than this bargaining unit across the board (\$19.84 to \$18.90 and \$23.80 to \$20.31). Barrington is also higher across the board (\$19.45 to \$18.90 and \$21.60 to \$20.31).

On the other hand, Providence's hourly rates, even with two 4% raises on September 1, 2013 and September 1, 2014, will be below the current salaries for this bargaining unit (\$13.53 to \$18.90 and \$19.04 to \$20.31). Burrillville and North Smithfield also have lower hourly rates than in Cranston.

Based on this analysis, the current hourly rates for this bargaining unit are not way out of sync with other communities. Warwick's high hourly rates appear to be a catch-up effort after 6 years without any raises. That long term history of no raises in Warwick has not existed in Cranston.

To address the salary cut proposed by the School Committee, the Arbitration Board, while rejecting the proposed 15% wage reduction for current employees, did consider a reduced hourly rate schedule for new employees using a 15% across the board reduction in the hourly rates and consolidating the steps from eight to four steps. The current hourly rates were reduced by 15%. Steps 5 through 8 would become the new four step salary schedule. Within the first three steps the increases from step to step ranged between 65 and 70 cents. The increases to the last step were only 31 cents. 35 cents was added to each of the top steps to address the union's

desire for an equalized salary schedule and to create a 66 cent increase (consistent with the other steps) from step three to four. The results in the top steps were:

A	B	C	D
\$17.61	\$17.08	\$16.89	\$16.42

The hourly rates are \$2.50 to \$2.70 below the current hourly rates and are not consistent with the hourly rates from the comparable communities that were submitted by the parties.

In reviewing all the comparable communities, two of them are deserving of particular focus. One group is the clerks in Cranston city hall because they are in the same community as the school district and the city is the major revenue source for the school district subject to the same taxpayer base as the school district. The other group is the school department clerks in Pawtucket because both parties submitted that group as a comparable for consideration by this Arbitration Board.

The Cranston city clerks are 27 cents an hour lower than the school department secretaries at the lower end of the salary scale and 17 cents an hour higher than the school department secretaries at the upper end of the salary scale. In Pawtucket the school department clerks are 60 cents an hour lower than the school department secretaries at the lower end of the salary scale and 17 cents an hour higher than the school department secretaries at the upper end of the salary scale. Where the differential is 60 cents an hour or less in comparable work environments, it is not warranted to establish a new hire salary schedule that has a differential of four times that amount for this bargaining unit. Thus no new salary schedule is awarded.

Health Insurance

The members of this bargaining unit currently pay a co-share of 20%, which is commensurate with the amount that members of other bargaining units within school district are required to pay. No change in that percentage amount is awarded. The School Committee proposed changes in the health insurance plan. Those changes included a \$500 deductible plan, which in a family insurance plan requires two people to personally incur out-of-pocket expenses for health care totaling \$500 each. Other health insurance changes that were proposed by the School Committee included:

- increases in office visit co-payments (\$15.00 Primary; \$25.00 Specialist; \$50.00 Urgi-visit; \$100 ER) and

-increases in prescription drug co-payments(\$7.00/\$30.00/\$50.00).

To the extent that these modifications cause a reduction in the working rate, the bargaining unit employees shall participate in the reduced cost of the working rate.

The modifications in health insurance listed above are awarded by the Arbitration Board. Based upon information provided by the School Committee witnesses, the annual value of those modifications in coverage is \$77,488.00.

Step Freeze

Employees on the salary steps will not receive the increase in step pay for fiscal year 2013-2014. Commencing July 1, 2013, salaries will be based upon the step rate that the employee received in the prior fiscal year. This step freeze will be for fiscal year 2013-2014 only. School Committee witnesses placed the annual value of this item at \$11,579.00.

Longevity

Members of the bargaining unit receive longevity payments after completing ten, fifteen and twenty years of service. As an additional cost savings measure, the School Committee proposed that the longevity payment due for 2013-2014 not be made. This item is awarded by the Arbitration Board. The value of this item is \$34,000.00.

Sick Leave

The School Committee proposed several modifications to the sick leave policy. One modification involved changing the accrual to one sick day per month. That part of the proposal is awarded by the Arbitration Board. The School Committee also proposed a requirement that an employee work more than 85% of the work days in a month in order to earn the monthly accrual of one day. That item is rejected by the Arbitration Board. It has an arbitrarily high threshold for work attendance before an employee can accrue a sick day for the month. As proposed, leave time would not count as a work day. In addition, the inability to accrue sick days because of circumstances beyond the control of the individual adversely impacts an employee who may suffer a legitimate long term illness. To the extent there may be an issue with abuse of sick, a more targeted solution should be proposed; not one that may punish innocent employees.

Another aspect of the School Committee proposal included a freeze in the Sick Bank accruals for all employees, with no new accrued sick days being added to the days already accrued by an employee. The newly accrued sick days would be part of a separate bank of days for which no payout to bargaining unit members would be made when the employee separated from employment. A payout for the old accumulated sick days in the sick bank would occur when bargaining unit members who worked for the school department for ten years or more or upon their retirement.

As proposed by the School Committee an employee could use the old accumulated sick leave days only if an employee accrued and exhausted twelve days of sick leave in a contract year. The Arbitration Board modifies the language to state that an employee can use the old accumulated sick days if the employee exhausts the sick leave days accrued after July 1, 2013. As proposed by the School Committee it appears that an employee would have to accrue all twelve sick days at the rate of one per month before the old sick days could be used. Under that interpretation a legitimately ill employee could not use the old accumulated sick days for 12 months. That interpretation is rejected by the Arbitration Board, which awards the language above so that the old days can be used for sick leave if the new accrual (ex. 3 days after 3 months; 5 days after 5 months; 7 days after 7 months; etc) is exhausted.

Finally, the School Committee proposal allowed an employee to accumulate up to 5 days of unused sick time but these days would not be subject to the payout when the employee retired. The Arbitration Board awards that part of the proposal.

There may be little to no short term savings from this item because sick leave payouts only occur when a person separates from employment with the school district. The evidence showed that annual payouts fluctuated from year to year. Over time the amount of the payouts will decline because the newly accrued sick days are not subject to payouts. There is long term savings to be realized from the sick leave award by the school department, which the Arbitration Board has taken into account in addressing other components of this award. Allowing access to the accumulated sick leave already accrued by employees offers protection for an employee who must remain out of work due to a long term illness or injury.

As detailed above modifications in sick leave accrual and use are awarded with all the awarded provisions to be effective as of July 1, 2013.

Define “qualified” in Article 21

The School Committee proposed definitions of the term “qualified” in section 21.2. The union rejected the proposed definitions. At the executive session, the arbitrators for the parties advised that representatives of parties were discussing this item.

No award or rejection of this proposal is made by the Arbitration Board, which retains jurisdiction for 30 days from the date of this award in case the parties cannot reach a resolution on this issue.

New hires in a Defined Contribution Pension Plan

The School Committee proposed placing newly hired employees in a defined contribution pension plan (a 401(a) type plan). Currently employees are in the State Municipal Employees’ Retirement System (MERS). State law requires that these employees be in the state pension plan. The custodians agreed to this proposal from the School Committee but implementation of that agreement required amendment of the state pension laws by the General Assembly.

For several reasons the Arbitration Board rejects this proposal. No amendment to the state pension law to facilitate this proposal has been made. In addition, no specifics for the plan were described in the testimony at the hearing so evaluation of the plan is impossible. Annual savings of almost \$40,000 were projected by the school department but without specific provisions for the pension plan, the actual savings and the impact on the employees cannot be determined. Without such information, the Arbitration Board rejects this proposal.

Delete provisions in Article 31

The union made 3 proposals relative to Article 31 to delete an outdated longevity money amount, to insert the present amount of the annual longevity payment and to delete outdated sentences referring to longevity increases that took place in 2006 and 2007. The Arbitration Board awards those proposals.

Other Proposals

The union initially submitted other proposals when collective bargaining negotiations commenced. An exhibit was introduced by the union at the hearing listing those proposals but no

testimony regarding those proposals was presented at the hearing and they were not briefed by the union. Those proposals are rejected by the Arbitration Board.

Conclusion and Award

The individual components which are awarded in this Decision are listed below with annualized monetary values. Those values are based on calculations submitted by the School Department, to which this Arbitration Board deferred in assigning monetary values.

10 days – no pay	\$98,240.00
Health insurance	\$77,488.00
Step freeze	\$11,579.00
Longevity moratorium	\$34,000.00
Sick leave modifications	<u>Long term savings</u>

The total value of the award on an annualized basis for fiscal year 2013-2014 is \$221,307.00 + long term savings.

John J. Harrington, Esq., Neutral Arbitrator

Benjamin Scungio, Esq., School Committee Arbitrator

J. Michael Downey Union Arbitrator

**CRANSTON PUBLIC SCHOOLS
 FISCAL IMPACT STATEMENT
 SECRETARIES
 ARBITRATION AWARD
 2013 - 2014**

<u>CATEGORY</u>		<u>2013-2014</u>
RAISE	(A)	0
STEP FREEZE		(11,579)
LONGEVITY		(34,000)
REDUCTION OF DAYS (10)	(B)	(98,240)
PLAN DESIGN CHANGES	(C)	<u>(77,488)</u>
	TOTALS	<u><u>(221,307)</u></u>

ASSUMPTIONS

- (A) - RAISE
 2013-2014 = 0%

- (B) - REDUCTION OF 10 DAYS (5 HOLIDAYS & 5 NORMAL WORK DAYS)
 (SALARY/FRINGE BENEFITS)

- (C) - PLAN DESIGN CHANGES
 OFFICE CO-PAYS
 DEDUCTIBLE PLAN (\$500)
 PERScription DRUG CO-PAYS