

KITTATINNY REGIONAL BOARD OF EDUCATION

FACT FINDER'S REPORT – PUBLIC STATEMENT

On Friday, August 31, 2018, the Kittatinny Regional Board of Education received the Fact-Finding Report from the independent, State-appointed fact-finder regarding the on-going Teacher negotiations.

While the details of the report cannot be released publicly for ten (10) days, the Board's Negotiating Committee has reviewed the report and is recommending that the Board accept the independent fact-finder's report.

We believe that the report provides for a fair settlement and we ask that the Kittatinny Regional Education Association also approve and accept the fact-finder's Report, so we can settle the negotiations and move forward.

The fact-finder's Report was based on the data and evidence presented by both sides at a fact-finding hearing in June 27, 2018 and legal briefs filed in July, 2018.

The independent fact-finder's job is to evaluate the data and provide a recommendation for a fair settlement. The independent fact-finder was approved by both the Board and the Teachers' Association before the process started.

On September 13, 2018, or after 10 days, after the issuance of the report, the fact-finding report will be made public.

If both parties accept the report, the contract will be settled. If either party does not accept the report within twenty (20) days of its issuance, the Public Employment Relations Commission will appoint a super-conciliator to further assist the parties.

There is no set time limit to reach an agreement in super-conciliation.

Again, to bring closure to these negotiations and to settle the Teachers' contract, the Board is recommending the acceptance of the fact-finder's report and encourages the Teachers' Association to do the same.

Respectfully,

Kittatinny Regional Board of Education

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

In the Matter of the Arbitration Between:

**KITTATINNY REGIONAL
BOARD OF EDUCATION**

Docket No. FF-2018-033

and

**FACTFINDER'S
RECOMMENDATIONS FOR
SETTLEMENT**

KITTATINNY EDUCATION ASSOCIATION

Fact Finder:

Edmund Gerber, Arbitrator

Date of Meetings: May 29, 2018 and June 27, 2018

Place of Meetings: Kittatinny Regional High School

Appearances:

For the Kittatinny Regional Board of Education:

Matthew J. Giacobbe, Esq.

Cleary, Giacobbe, Alfieri, Jacobs, LLC

For the Kittatinny Education Association

John Ropars, Field Representative

New Jersey Education Association

The Kittatinny Regional Board of Education (Board or District) and the Kittatinny Education Association (Association) are parties to a Collective Negotiations Agreement (Agreement) which was in effect from July 1, 2015 through June 30, 2017. The parties were unable to reach a successor agreement and a petition was filed with the New Jersey Public Employment Relations Commission (PERC) to initiate impasse procedures. A mediator was assigned who met with the parties but the impasse could not be resolved and the mediator referred the matter to Fact Finding. I was then appointed Fact-Finder pursuant to N.J.A.C. 19:12-4.3. I met with the parties in a mediation capacity on May 29, 2019 but the parties could not reach an agreement and,

accordingly, a Fact Finding was held on June 27, 2018. The Association was represented by NJEA Representative John Ropars who made oral argument and introduced supporting documents. Matthew Giacobbe, Esq. representing the Board sides made argument and presented some 138 exhibits in two large loose leaf binders. The parties filed post-hearing briefs on July 27, 2018 and the Association submitted a response to the Board's brief on August 14, 2018.

The core issues as argued by the parties are longevity pay and health insurance contributions. This report and recommendations was issued in accordance with the PERC rules and regulations governing Fact Finding as means to resolve public sector impasses in the State of New Jersey.

ARGUMENTS OF THE PARTIES

THE UNION ARGUES that as of the May 29, 2018, mediation session with the Fact Finder the parties had had reached agreement on all issues except one – longevity for employees hired after July 1, 2018. This one issue could not be resolved that evening.

Prior to May 29, the parties reached an agreement on a number of issues (Attachment A.) The parties also agreed upon modifications of the employees' contributions to health insurance. That agreement is expressed as a chart (Attachment B.) Notably, this agreement regarding employee contributions towards health insurance programs significantly represents an increase in the employees' contributions over the most recent contract. The employees were formerly covered under School Employee Health Insurance Plan Direct 10. The new Agreement provides for employees to move to the Direct 15 Plan, reducing the District's cost for insurance. The parties further agreed to freeze employees' medical contributions with the 2015-2016 school year dollar amount, respectively. In the two years since that agreement, the cost of health insurance has risen by 8.4% and 13.3%, respectively. Those costs were paid by the District. In the current round of negotiations, the parties agreed to change the employees' insurance contributions, eliminating the freeze at the dollar amount with employees paying a percentage of the annual premium. This represented a concession by the Association, and a substantial savings for the District going forward.

An additional item was resolved by the parties during negotiations which is not included in the list of settled issues (Attachment 2). It was agreed that employees would be permitted to use up to 20 days of their personal sick leave during a period that they are out on either New Jersey or Federal family leave. Additionally, both parties agreed that longevity for extracurricular activities and coaching positions would be frozen at the current levels effective July 1, 2018.

The Association tentatively agreed to the District's final salary offer of 2.5% for the 2017-2018 school year, retroactive to July 1, 2017 with an additional \$25,000 for guide adjustments for paraprofessionals and 2.7% effective July 1, 2018 and 2.7%

effective July 1, 2019 provided it is coupled with the Health Insurance contribution schedule of Attachment B.

The District's initial longevity proposal was to eliminate longevity entitlement retroactively to employees hired after July 1, 2017. The proposal was later modified to eliminate longevity for employees hired after July 1, 2018. The final longevity proposal was to reduce longevity for teachers hired after July 1, 2018 to \$1,000 after fifteen (15) years of service with no increases, paraprofessional after 15 years \$500 with no increases, secretaries and custodians after 15 years \$750 with no increases. The Association was willing to accept the Board's salary offer conditioned on the longevity provisions of the contract remaining unchanged, specifically rejecting the concept of no longevity for future hires. The Association made its final longevity proposal effective July 1, 2018 as:

Teachers	\$1,500 after 15 years (last day of 15 th year) \$1,750 after 20 years \$2,000 after 25 years \$2,250 after 30 years \$2,500 after 35 years
Paraprofessionals	\$500 after 15 years (last day of 15 th year) \$600 after 20 years \$700 after 25 years \$800 after 30 years \$900 after 35 years
Secretaries and Custodians	\$750 after 15 years (last day of 15 th year) \$950 after 20 years \$1,150 after 25 years \$1,350 after 30 years \$1,500 after 35 years

The Board proposal submitted at the fact-finding hearing differed from the final offer presented to the Association in mediation. The Board now proposes that employees contribute towards the health insurance at the full P.L. 2011, Chapter 78 rates. This is a repudiation of the tentative agreement reached during earlier stages of bargaining and is not an act of good faith or fair dealings. The Association agreed to a specific change and stands by its commitment. We expect the Board will stand by the agreement that it reached on this and all other items previously agreed to by the parties.

Longevity is a supplement that recognizes an extended period of service by an employee to a school district and serves as a reward to that continuous service. Longevity has become particularly important in recent years as negotiated increases have become smaller. Accordingly, senior employees at the top of the salary guide receive annual salary increases of only a few hundred dollars. Senior, higher paid, employees have the highest costs of insurance premiums and effectively have suffered reductions in their take home pay for more than five years. Even the addition of

longevity is not sufficient to overcome the increase in healthcare costs. Longevity simply provides to mitigate that loss to a limited degree. In Sussex County, all eight (8) high school districts and twenty-one (21) of twenty seven (27) public school districts provide longevity payments. An examination of the longevity schedules at each of the high schools in Sussex County show the following:

- All Sussex County high school districts include longevity as part of its compensation package.
- The earliest start of longevity is 10 years of service and the latest start of longevity is 20 years of service. The average starting point is at 13.9 years of service.
- The starting amounts for longevity vary significantly. The lowest first step for longevity is \$300 and the highest starting point is Kittatinny is \$2,350.
- The County average for longevity is \$1,097.
- The highest longevity varies from \$1,000 to \$4,900.
- Longevity at Kittatinny after 30 years of service is \$3,850 with the average top longevity step of \$2,794.

The Board's proposal is contrary to what is happening in every other high school district in the County. The proposed starting longevity amount from the Board would represent a 57% reduction in the current longevity schedule. The failure to include any further increases in that amount is a sharp departure from every other district in the county. Adopting the Board's proposal would have the effect of placing the District at a competitive disadvantage in recruiting and training employees. The Association demonstrated a willingness to find a compromise position that would retain the basic structure of the current longevity system while constraining longevity costs long into the future.

The Board's final proposal to reduce the longevity schedule for newly hired employees is not reasonable or reasonably related to any savings that could be achieved by such a proposal since it would not produce any savings to the District for at least fifteen (15) years. It reflects an ideological position and nothing practical or pragmatic. The Association's proposal is an attempt to find some reasonable compromise position as demonstrated by the agreement on health insurance contributions and their willingness to freeze longevity for coaches and extracurricular positions.

The Association's willingness to increase employee health insurance contributions and freeze longevity amounts for extracurricular and coaching positions has demonstrated that the Association has extended itself much further than the Board has been willing to do. The District claimed during its presentation that "almost every district

is maintaining Tier IV insurance contributions.” That statement is factually incorrect. Currently, of the twenty-seven (27) public school districts in Sussex County nine (9), or 33.3%, have negotiated some manner of Chapter 78 modification. That represents a higher rate of change than statewide where 128 districts have Chapter 78 modifications out of 600 school districts, or 21%. Given that the Association has demonstrated a willingness to reach compromise on issues important to the Board which offered the Board immediate savings, we believe the Association’s position on longevity is most reasonable and in keeping with the standards that exist throughout the high school districts in Sussex County.

In its August 14, 2018 response to the Board’s brief the Association reiterates that at the final stage of mediation the only remaining issue was longevity for new hires. All other issues had been resolved by the parties including salaries, and an insurance contribution schedule. It claims that the issue of tuition reimbursement was first raised in its final proposal submitted to the Association on May 29 and it seeks a three year payback, not the five year included in the Board’s brief. This proposal was never agreed to by the Association. While such provisions are occasionally included in contracts, they are usually included for one year, include various protections for employees and only apply to voluntary separations of employment. It urges that, as written, the proposal should be dismissed.

The only remaining issue is longevity. The final positions of the parties were exchanged after the fact finding mediation session and before the fact finding hearing. While neither the final proposals of the Association or the Board resulted in an agreement it accurately represents the final offer of the Board of Education.

THE BOARD ARGUES that throughout negotiations it has articulated a very direct and simple goal: to execute a contract that is fair to the teachers, taxpayers and students.

It diligently and earnestly worked to adapt a mutually acceptable agreement with the Association and the parties tentatively agreed upon various items, most of which benefit the Association, not the Board. Unfortunately, the parties were unable to reach an agreement and petitioned PERC for assignment of a fact-finder. The Board has submitted a myriad of documentary evidence on issues such as salary, longevity, tuition reimbursement repayment and health benefit contributions that remain in dispute.

Subsequent to the fact-finding hearing, Senate Bill No. 2 (P.L. 2018, Ch. 67) has become law. The bill adjusts State aid received by school districts based upon enrollment. Notably, the District’s State aid has been reduced. It is now to be \$5,874,492, a decrease of 1.5% from the 2017-2018 school year.

Although acknowledging that the statutory criteria found in N.J.S.A. 34:13A-16(g) are regarding police and fire interest arbitration, many of the criteria parallel the factors

a fact-finder should consider when rendering a fact-finding opinion. These relevant factors are:

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C. 40A:4-5.1 et seq.).
- (2) Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally;
 - a. In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - b. In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
 - c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C. 34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (5) The lawful authority of the employer. The Fact-Finder may consider the limitations imposed on the employer by P.L. 1976 c. 68 (C. 40A:4-45.1 et seq.).
- (7) The cost of living.
- (8) The continuity and stability of employment, including seniority rights and other such factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

The Board argues that an analysis of the evidence as applied to these criteria support the conclusion that the Fact Finder's decision should issue in favor of the Board's position given the documentary evidence and the current economic climate in New Jersey, as well as the Board's fiscal constraints.

The Board's final offer is:

Wage increases: for 2017-2018 of 2.5% plus \$25,000 for paraprofessional salary guide development for 2018-2019, 2.5% and for 2019-2020, 2.5%. Employees returning to the District shall be credited no less than one step on the salary guide for two years of service.

Longevity: Longevity shall be eliminated for employees hired after July 1, 2018. Longevity shall be frozen for all employees in the co-curricular guide and the coaching guide as current 2017 level. Longevity eliminated for any coach or advisor hired after July 1, 2018.

Tuition Reimbursement Repayment: All employees receiving reimbursement for tuition shall be required to repay the tuition reimbursement if separation is less than five years after the last reimbursement. Reimbursement shall only be required for tuition paid out during the previous five years.

Health Insurance Contributions: All employees shall contribute to their health insurance in accordance with the Tier IV rates set forth in Chapter 78, P. L. 2011.

The Board asserts that the Association's last offer is:

Salary increases: 2017- 2018: 2.5% plus \$25,000 for Para Guide Improvement.
2018-2019: 2.7% & 2019-2010: 2.7%

Longevity: Teachers and allied professionals ~~\$15,000~~ ^{\$1,500 - (CTIPD)} after fifteen (15) years with increase of \$250 after every 5 years thereafter. Secretaries, clerk typists and maintenance employees: \$750 after 15 years with \$150 increments every 5 years thereafter. Paraprofessional and Aquatics Directors: \$500 after 15 years with \$100 increments every 5 years thereafter. Longevity would be frozen on the extracurricular and coaching guides effective July 1, 2019.

Tuition Reimbursement Repayment: although the Association does not address the Board's proposal regarding repayment of tuition reimbursement in its final offer, in Association Exhibit 2, the Association asserts erroneously that the parties agreed upon "repayment of tuition reimbursement if separation is less than three years after last repayment only applicable for tuition paid out during the previous 4 years." Despite the Association's assertion, the Board did not agree to limit the required tuition reimbursement to three years.

Health care: in accordance with Attachment A.

The Board and the Association have also tentatively agreed on a number of items pursuant to Attachment B.

The Board's final offer is more reasonable when compared to the benefits of union members at other school districts. Its offer will achieve economic and fiscal stability for the District in light of the 2% hard tax levy cap imposed in 2011, the fiscal and economic crisis recovery efforts in the State of New Jersey, increasing health benefit costs, and the decreases in State aid. Its proposal is more reasonable when compared to public employment in general. In the Matter of Interest Arbitration between the Township of Fairfield and West Essex PBA Local 81, IA-2010-090 Arbitrator Robert M. Glasson detailed the economic issues faced by New Jersey municipalities. Specifically, the current state of the economy must be taken into consideration when issuing an opinion. The Arbitrator noted that "it is undisputed that a public employer's ability to maintain revenue levels in 2010 and beyond has been severely diminished" and cited the 2% tax levy cap, the appropriations cap, etc., He goes on to say that in prior years the economy was much stronger than it is currently and refers to the recent recession and the fallout from that recession resulting in employees being laid off and municipalities experiencing a record number of tax appeals.

Arbitrator Glasson's findings are still representative of conditions that the Board operates under today. The economy is improving but is still emerging from a deep recession and continues to be marked by the effects of continued high unemployment, low inflation, a depressed housing market and reduced non-tax revenues. New Jersey taxpayers are financially stressed and more concerned than ever with the Board's delivery of quality public education at a reasonable cost. Association members are well compensated when compared to employees at other Sussex County school districts, starting salaries are far greater than the County average and maximum salaries generally fall within the County average. Significantly, Association members reach the top of the guide well before their county counter-parts and similarly situated educators in neighboring New Jersey District Factor Group (DFG) cohort. Similarly the Board's starting step salaries exceed those of the County DFG cohort.

The Board acknowledges that the Association's salary proposal is the same as the Board's and is reflective of average Sussex County settlements which average 2.45% for 2017-2018, 2.59% for 2018-2019 and 2.63% for 2019-2020. The Board argues however that the District falls within the "FG" district factor group The Board's starting and maximum salaries for 2016-2017 exceeded the average salaries for DFG employees for 2017-2018. For 2017-2018, the average FG district factor Group starting salaries were \$51,865' for Kittatinny for 2016-2017 it was \$55,840. For BA max, the average was \$81,859 while Kittatinny was \$82,240 and MA minimums were average \$55,854 while Kittatinny's was \$60,540. For MA maximum, the average was \$86,522 while Kittatinny for 2016-2017 was \$86,940.

The median salary for Association members is the sixth highest among its enrollment group statewide. The Association in its Exhibit 6, has compared the Kittatinny salaries with other Sussex County high schools. However the only high schools in its enrollment group are Highpoint, Lenape Valley and Wallkill Valley. Notwithstanding, the Association also includes Hopatcong, Newton, Sparta, Sussex Tech and Vernon within its analysis. These high schools are not Kittatinny's enrollment group or district factor group and should be regarded as immaterial. The proposed salary increases are in accordance with settlement data for school districts throughout Sussex County and comparable school districts throughout the State. The proposed salary increments are extremely generous in light of the high salaries of Association members, the significant decreases in State aid to the District and the significant increases in employee health insurance costs.

The Board's offer is more reasonable when compared to public employment in the same or similar jurisdictions. Association members' starting salaries are among the highest in Sussex County and their salaries reach the maximum step in only 12 years as compared to the surveyed County average of 18 years. The Board's maximum salary steps falls significantly below the County high of 28 steps that are found in both Hamburg and Hampton. The Board's starting base salaries for staff members with a BA, BA+15, MA, MA+15, MA+30 and MA+60 fall within the higher range of starting salaries for all surveyed Sussex County school districts for school year 2016-2017. The BA starting salary in Kittatinny was \$55,840 - the Sussex County average was \$53,024. BA+15 starting salary in Kittatinny was \$57,340, Sussex County - \$54,528. For an MA starting salary in Sussex County - \$57,313, Kittatinny - \$60,540. An MA+15 starting salary in Sussex County was \$58,644 - Kittatinny \$62,340. An MA+30 in Sussex County was \$60,615 - Kittatinny, 64,240 and an MA+60 for Sussex County was \$64,836, Kittatinny - \$66,240.

Notably, the number of steps needed to reach the maximum step falls well below the county average. The maximum salary steps in Kittatinny are 12 while the County average is 18. Notwithstanding, the Board's maximum salaries fall within the average range for surveyed Sussex County school districts for 2016-2017. For a BA in Sussex County the average was \$83,012 - Kittatinny, \$83,240. For BA+15 the County average was \$85,105 - Kittatinny, 84,370. For MA the Sussex County average was \$88,120 - Kittatinny, \$86,940. For MA+15 the Sussex County average was 89,682 - Kittatinny, \$88,740. For MA+30 the Sussex County average was \$91,951 - Kittatinny \$90,640 and for MA+60 the Sussex County average was 98,069 - Kittatinny \$92,640.

Among Sussex County school districts in the FG District Factor Group, the Board's starting base salary for staff members are the highest starting salary in all instances with exception of MA+60. Association member starting base salaries are well above Sussex County FG District Factor Group averages in every instance for 2016-2017. For Sussex County DFG "FG", for BA it was \$52,384 - Kittatinny \$55,840. For BA+15 starting salary for Sussex County DFG "FG" \$53,997; in Kittatinny was \$57,340. For MA, Sussex County DFG "FG" it was \$56,813; in Kittatinny, \$60,540. For MA+15, Sussex County DFG "FG", \$59,216. For Kittatinny, \$62,340. MA+30 for Sussex County

DFG "FG", \$59,711. For Kittatinny, \$64,240. For MA+60 for Sussex County DFG "FG", \$65,091. For Kittatinny, \$66,240.

Admittedly, the Board's maximum step salaries fall within the average to lower range for surveyed county school districts within the District FG factor group. However, Association members, on average, reach maximum salaries in a far shorter period of time than do their Sussex County cohorts. Once again, the steps needed to reach the maximum fall well below the average for Sussex County school districts in the FG Factor Group. Notably, other than Kittatinny, Hopatcong and Vernon have the fewest number of salary steps at 15. Association members reach the top step in the salary guide three years before any similarly situated Sussex County employees in the FG Factor Group, six years before the average Sussex County employees in the FG District Factor Group. The slightly lower max salary for Association members is nominal in light of the fewer number of salary steps which allows Association members to achieve the maximum salary step six years before the average Sussex County teacher. The Board's 2016-2017 starting and maximum salaries are greater than the statewide FG District Factor Group salary guide averages for the year 2017-2018. Even without any increase in salary, Association members starting and maximum salaries would exceed the average among their District Factor Group statewide. The Board's evidence demonstrates that the overall compensation and benefits provided to members of the Association is greater than the average of other school districts in Sussex County as well as similarly situated employees within the Board's Sussex County DFG cohort.

Tuition Reimbursement. The Board currently does not require repayment of tuition reimbursement if the employee leaves the district shortly after being reimbursed for tuition. The Board proposes requiring repayment of tuition reimbursement if the employee leaves the District within five years of receiving reimbursement. A majority of the school districts in Sussex County require repayment of tuition reimbursement if the teacher leaves the school district within one year. 57% of Sussex County school districts require repayment in the first year. 36% require repayment of tuition reimbursement if the teacher leave the district within two years and 11% require repayment of reimbursement of tuition if a teacher leaves the District within three years. Among Sussex County school districts in the FG District Factor Group, 75% require repayment of tuition reimbursement if the teacher leaves the school district within one year. 50% require reimbursement if the teacher leaves within 2 years and 13% require repayment if the teacher leave the school district within 3 years. Accordingly, the exhibits support the Board's demand to implement a repayment requirement if the Association member leaves the District within five years.

Health Benefit Contributions. The current budget can no longer sustain the rapidly increasing cost of health benefits. The Board's projected cost for health benefits is \$3,500,175 in the 2018-2019 school year. Net of projected employee contributions pursuant to Chapter 78, P.L. 2011. This is a 20% increase from the 2017-2018 year. Accordingly, the Board proposes requiring health benefit contributions from all employees in accordance with the Tier IV rates set forth in Chapter 78, P.L. 2011. Further, it should be noted that Chapter 78 employee contributions only offset the cost

of health benefits. Such funds are applied directly against the benefit expenditure and are not accounted for as revenue. Although at the fact-finding hearing, the Association asserted that 2015-2017 agreement froze association members' Chapter 78 contributions at the 2015-2016 dollar amounts, the Agreement only requires that contributions be froze at the 2015-2016 dollar amount for year two of the contract, 2016-2017 only. After which time the plain language of Chapter 78, Association members are required to contribute at the Tier IV rates. Accordingly, the fact-finder should afford the Association's argument no weight. 20 of the 23 surveyed Sussex County school districts require employees to contribute towards the costs of health benefits in accordance with the rates set forth in Chapter 78, P.L. 2011. Similarly, of the Sussex County school districts in FG District Factor Group, 6 of the 8 surveyed school districts require Chapter 78 contributions. Chapter 78 contributions are clearly considered the norm among Sussex county board of education agreements. The cost of health benefits in compensatory exhibits supports the Board's proposal to require employee contributions set forth in the Tier IV rates in Chapter 78, P.L. 2011.

Longevity. The Board's budget can no longer contain the cost of longevity afforded to Association members. Accordingly, the Board seeks to eliminate longevity pay for all Board employees hired after July 1, 2018, including coaches and advisors and freeze longevity for all employees in the co-curricular guide and coaching guide at its current 2017 level. The Board's current longevity schedule is well above the average of the surveyed Sussex County school districts. Notably, only Montague's longevity pay exceeds the Board's in all comparable years and among Sussex County school districts in the FG District Factor Group, the Board offers longevity pay above that offered by any other school district. Only half of the Sussex County districts offer longevity pay. The Board's proposal simply attempts to equate its longevity pay to those offered by similarly situated neighboring school districts.

The Board's final offer is more reasonable in terms of financial impact to the District. The Board faces fiscal constraints as a result of the statutory 2% tax levy cap, reductions in State aid and increases in the cost of health benefits. The Board has seen a significant decrease in State aid since 2008-2009. At that time, the Board received \$6,386,877 in categorical State aid. For 2018-2019, the Board is scheduled to receive just \$5,874,492 in State aid. Thus the board is scheduled to receive \$512,395 less in 2019 than it did in 2009, a decrease of 8% of State aid received ten years before. Similarly, the Board is scheduled to receive \$960,129 less in 2019 than it did in the 2010-2011 school year, a decrease of approximately 14.1% of State aid received 9 years before and now is projected to receive \$201,680 less in categorical State aid than it received in 2016-2017 school year. Once again, in 2019, the Board is scheduled to receive \$90,153 less than the \$5,964,645 received in the 2017-2018 school year, a decrease in state aid of 1.5%.

The cost of employee health benefits continues to increase at a significant rate. These costs are out of the Board's control. The Board is projected to spend approximately \$3,500,175 in health benefits in the 2018-2019 year due to significant increases in premiums, a 20% increase from the prior year and is net of projected

employee contributions pursuant to Chapter 78, P.L. 2011. The Association's proposal can only be construed as financially harmful to the Board by ignoring economic reality of increased health benefit costs along with significant reductions in State aid. The Fact-Finder should disregard the Association's assertion at the fact-finding hearing that the contributions required by Chapter 78, P.L. 2011 justify the Board's excessive longevity pay schedule. Contrary to the Association's position, the statutory premium sharing contributions were intended to offset the ever burgeoning increases in health care, not to fund a continuation of an exorbitant longevity pay schedule for Association members. The Association's submitted final proposal similarly ignores the impending consequences of the "Cadillac Tax" provision of the Affordable Care Act. (See 26 U.S.C. paragraph 49801). The Cadillac Tax is an excise tax on annual insurance expenses that in 2020, exceed \$10,200 for single coverage and \$27,500 for family coverage. These threshold apply to total costs and it is irrelevant what percentage is paid by the employee and the employer. The New Jersey School Board's Association reports that:

Fifty-five percent of New Jersey school districts participate in the School Employee Health Benefits Program. The vast majority of school employees participating in the program choose the richest plan offering NJ Direct 10. For the 2016 plan year, NJ Direct 10 single coverage costs \$10,747 while family coverage is \$30,736. Since 2011, the average rate of growth in the SEHBP premiums for active employees has been 9.21%. Assuming that the rate continues, premiums will rise over the next three years and the 2617 of each premium and 9158 of the family plan would be over the threshold and subject to the Cadillac tax. (See Patrick Duncan "Bargaining over healthcare coverage is more complex than ever", New Jersey School Board's Association, September/October 2015).

The increasing costs associated with the contracted health benefits and the impending impact of the Cadillac Tax is not considered by the Association's final proposal. The Board's proposed settlement both addresses this significant area of fiscal constraint and allows the Board to responsibly provide the Association with competitive salary increases.

Employee Salaries. Association members enjoy an extremely competitive salary and benefits package. Starting salaries are well above the average for all Sussex County school districts and is among the highest among Sussex county schools in the FG District Factor Group. Further, Association members' maximum salaries are within the average range for all Sussex County school districts. Any slight difference in maximum salary is normal when considered in light of the Board's minimal number of salary steps. The cumulative earnings of a dedicated teacher over his or her career would place them in the higher range as compared to other schools in Sussex County and among its Sussex County DFG cohorts.

Other Expenses. In addition to employee salary and health benefit costs, the Board is faced with significant pension expenses, increased cost of special education

and increased for student transportation services. Further, as a result of the 2% tax levy cap, the Board's capital outlay is not sufficient to maintain its facilities and despite the Board's increased costs, the Board's enrollment has seen a reduction in the last several years which has resulted in multiple layoffs. As a result of all the board's expenses, in the fiscal year ending in 2017, the Board's expenses exceeded its revenues by \$945,822.

Tax Levy. The Board's total governmental activities revenues, including State and Federal grants, were \$14,289,820 or 48.9% for the fiscal year ending June 30, 2017. Property taxes in the amount of \$14,149,681 were 48.4% of revenues. The Board's total revenue for the year ending June 30, 2017, was \$29,237,304. The total cost of all activities, programs and services was \$30,183,126 for fiscal year ending June 30, 2017. Instructional costs were \$17,922,355 or 59.4% of the Board's total expenses. Notably, instruction costs for 2016 were \$16,061,518. Thus, instructional costs in 2017 increased approximately 11.5% from 2016. As previously noted, in the fiscal year ending June 30, 2017, the Board's expenses exceeded its revenues by \$945,822.

Accordingly, it is clear that the Association's proposal will result in financial harm to the district and be unreasonable in light of the financial challenges faced by the Board. The Board's offer is a reasonable compromise that enjoys fiscal stability and financial accountability with other Sussex County school districts. The Board's final offer is more reasonable in terms of cost of living. The current consumer price index (CPI) reveals that there is a modest increase of 0.2% on goods and services on a seasonally adjusted basis. Furthermore, the CPI increased 2.8% over the last 12 months. Accordingly, the Association will not suffer any detriment to their standard of living. District teachers are already highly compensated compared to their peers and the Board's offer will continue to in the best interest of the average Sussex county consumer, the district and its students. It will enable the District to maintain fiscal stability and maintain sufficient funds to account for increases in the cost of employee benefits as well as increased benefits related to student services. Moreover, the Board will have additional funds to increase its capital reserve account for facility expenses and technology upgrades. The Association will continue to enjoy its competitive edge with the Board's final offer. The Board's proposal take the best interest of its staff into account and the Fact-Finder should adopt the Board's offer.

The Board's final offer is more reasonable in terms of the lawful authority of the District. Pursuant to N.J.S.A. 34:13A-16(g)(5), the Fact-Finder may consider the "Lawful authority of the employer". The statute references N.J.S.A. 40A:4-45.1 et seq. which provides that "it is hereby declared to be the policy of the legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to maintain their homesteads." When applying the lawful authority of the employer criterion, the fact-finder should address the Board's budgetary cap situation as well as the statutory requirement that the board prepare a balanced budget each year. Given the existing 2% tax levy, the fact-finder recommends the Association's offer, the Board will be unable to generate the operating funding necessary without taking drastic measures to comply with the 2.0% hard tax levy. The

Association's offer is neither fair, equitable nor realistic under the statutory restrictions imposed by the local budget law and must be rejected in favor of the Board's proposal. The Board's final offer is more reasonable in terms of the overall compensation, including all economic benefits received. The Fact-Finder should consider the overall compensation received by members of the Association as discussed above, along with their base salaries.

Members of the Association are afforded a plethora of lucrative fringe benefits. Further, the parties tentatively agreed upon various items, the vast majority of which further benefit Association members. Teachers receive comprehensive medical and dental insurance, sick leave, personal leave, bereavement leave and tuition reimbursement. Kittatinny teachers who possess a national board certification receive \$1,000 in annual pensionable salary above their regular salary for the life of the certificate and employment with the Board. Association members receive three personal days annually. Any unused personal days are accumulated as unused sick leave and are entitled to carry over that accumulated unused sick leave from year to year. Eligible Association members are entitled to supplemental compensation for unused accumulated sick days for a maximum of 100 per day at retirement. Additionally, Association members receive up to 4 days absence with pay for the death of an immediate family member. They are also eligible to receive tuition reimbursement for approved courses up to the amount equivalent to the cost of 12 semester hours per school year at the tuition level set by New Jersey State Colleges. This is at a time when most school districts have severely curtailed those benefits. The Board provides a demonstrably competitive fair employment package to its teachers.

The Fact-Finder should adopt the Board's final offer as it is more reasonable in terms of the continuity and stability of employment. The Fact-Finder should consider not such factors as: the stability and continuity of employment, including tenure rights and other factors, employer's overall salary structure, the general unemployment level in the area, and the history of layoffs or other reductions in force in the subject bargaining unit. Over the last several years school districts have been experiencing layoffs, job cuts, furloughs and salary freezes. Private employers have instituted large scale job cuts that frequently make headlines. If the Association's final offer is accepted, the Board may have no choice but to reduce staff and/or eliminate student programs. In order to prevent such reductions and the potential elimination of educational programs, the Fact-finder should adopt the Board's offer.

DISCUSSION

N.J.A.C. 19:12-4.3 sets forth the responsibilities of a fact finder in presiding over a negotiation's impasse between a public employer and public employee organization. Subsection (d) states: "If the impasse is not resolved, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible." Subsection (e) states: "Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties and the Director of Conciliation." Subsection (g) states, "The parties shall meet within five (5)

days after receipt of the fact-finder's finding of fact and recommended terms of settlement to exchange statements of position, and try to reach an agreement. In the event of continuing impasse, the Commission or the Director of Conciliation may take whatever steps are deemed expedient to effect a voluntary settlement of the impasse, including the appointment of a super-conciliator."

I have carefully considered the voluminous record evidence and argument at the formal hearing. Based upon the helpful input and assistance of the parties, the recommendations made herein hopefully advance the public interest in terms of establishing the terms of a successor agreement with due regard to the taxpaying public, the working morale of teachers and the quality of education provided in the Kittatinny Regional School District.

The Board has urged my recommended settlement be guided by the criteria set forth under N.J.S.A. 34:13A-14 et. Seq. and N.J.A.C. 19:16-1.1, the statutory criteria for Interest Arbitration for police and firemen. (See *Infra*, pgs. 5 & 6). While all these criteria warrant consideration, the function of a fact finder is not the same as that of an interest arbitrator. The latter issues a binding declaration of the specific contents of the parties' new agreement. But my goal as fact finder is to provide a non-binding recommendation for an agreement that, while taking into account the public interest, should also be acceptable to both the Board and the Association. See, Town of Kearney, Appellant, and Kearney Fireman's Mutual Benevolent Association, Local No. 18, 36 NJPER 160. "Arriving at an economic award is not a precise mathematical process," but rather an exercise of judgement based upon a given analytical framework. In fact finding, the fact finder has the benefit of working with the parties in mediation. The mediation experience provides useful insights regarding the mutual acceptability of any subsequent recommendation made by the fact finder. Ultimately, the fact finder's report, if useful, will either lead to mutual adoption by the parties or, at the very least, provide the parties with a solid useful foundation from which they can close the gap themselves with relatively minor efforts.

As with any impasse determination, the party seeking to change the *status quo* of a term and condition of employment which has been in effect for a significant period of time must assume a substantial burden of proving that such a change is justifiable. Labor stability is conditioned upon, in part, consistency in the application and implementation of employment terms and conditions of employment. Accordingly, drastic changes in the contour of a particular term and condition should not be recommended lightly.

The Board and the Association remain in agreement as to salary, but with the Association's refusal to accept its last offer, the Board has withdrawn its agreement as to premium cost sharing for health insurance.

The Board of Education rightly argues that any recommendation must be one that fiscally is responsible and does not create undue fiscal pressure on the Board. In this regard, the Board itself is the best judge of what it finds economically acceptable.

Significantly, the Board and the Association were close to an agreement and tentatively agreed upon the two major financial issues in negotiations - salary and premium cost sharing for employee health insurance. The one item which caused the impasse in negotiations was longevity pay for new employees, an issue which will have no economic impact for 15 years.

At the start of these negotiations, the Board wanted to end longevity for all employees, but it eventually revised its demand to eliminate longevity for all employees and limited its demand to end longevity for new employees, those hired on or after July 1, 2018. The Association has continued to resist any change in longevity eligibility and, in an attempt to settle this matter, the Board modified its offer to pay longevity to new teachers after achieving 15 years of employment but with a limit of \$750 for teachers after fifteen years of employment with no increases for continued employment. According to the Association, after meeting with the fact finder for the first time in May 2018, the parties had a final mediation session and the Board made a final offer that employees hired after July 1, 2018 would receive longevity pay after fifteen years of service of \$1,000 for teachers and \$750 for support staff with no increases thereafter, but the Association again rejected this offer.

Only a minority of school districts in Sussex County offer cost sharing for insurance premiums so the Association stood to gain a significant benefit, yet, it was willing to risk this benefit and declare an impasse over longevity pay even though the impact of setting a salary for longevity that will not take effect for 15 years. The significance of a cut in longevity pay effective fifteen years from now is unknowable; one cannot predict what the value of that settlement would be in 15 years. I recognize that the Association does not want to sacrifice the benefits of new employees to increase benefits for existing employees. But the Association has 15 years to work with the Board to equalize longevity pay for new employees.

I recommend that the Board's final mediation offer form the basis of a new agreement. For the Board, the Agreement will keep salaries at an affordable level while providing labor stability. The contract would provide for teachers hired after July 1, 2018 be entitled to longevity of \$1,000.00 per year and support staff \$500.00 per year with no provision for any increases. The Association will gain by initiating significant cost shaving of insurance premiums for its members and although it did not gain equal longevity for new employees it has preserved the concept.

The Board proposes a 5 year period in which it can seek a refund of monies paid in tuition reimbursement for employees leaving the school district. This issue was first raised at the parties' May 29 negotiation session and the Board then sought a three year period, The Association claims an agreement was never reached on this issue. However, Attachment A, which both sides acknowledge contain the items previously agreed to, provides at item 28 "Employees re-payment of tuition reimbursement if separation is less than three years after last reimbursement only applicable for tuition paid out during the past four years." Regardless of this discrepancy, no district in Sussex County receives reimbursement for more than a three year period and in over

one half of the County districts which have reimbursement provisions, such provisions are limited to employees leaving after one year. Even assuming there was no agreement on this issue, following the County norms I recommend that the parties adopt the provision in Attachment A that the agreement include the proposal that District may seek reimbursement for the cost of tuition if an employee voluntarily before the completion of his or her third year in the district but the County may not go back more than four years to seek reimbursement

The parties have already agreed upon a large number of other issues that are included in Attachment A and I recommend that those issues also be incorporated into the agreement.

Finally, the parties agreed that employees be allowed to use up to 20 days of sick leave during periods they are out of work on either New Jersey or Federal family leave. This provision is also included in my recommendations.

Edmund Gerber Fact Finder

August 31, 2018

RECOMMENDATION FOR AGREEMENT

1.) Wage increases: for 2017-2018 of 2.5% plus \$25,000 for paraprofessional salary guide development for 2018-2019, 2.5% and for 2019-2020, 2.5%. Employees returning to the District shall be credited no less than one step on the salary guide for two years of service

2.) Longevity for any new employees hired after July1, 2018

Teacher/GST/Guidance/Athletic Trainer:

\$1,000.00 starting on day one of 16th year-no further increases

Secretaries/clerk Typists/custodians

\$750.00 starting on day one of 16th year-no further increases

Paraprofessionals/Aquatics Director

\$500.00 starting on day one of 16th year-no further increases

Longevity for extra-curricular activities and coaching positions frozen at current levels effective July 1, 2018.

3) Employee contribution to Health Insurance in accordance with the Attachment B schedule. (Health Insurance coverage remains SEHBP Direct 15.)

4) Employees' re-payment of tuition reimbursement if voluntary separation is less than three years in the district after last reimbursement. Such reimbursement is only applicable for tuition paid out during the previous 4 years.

5) Employees may use up to twenty (20) days of their personal sick days during a period when they are out on either New Jersey or Federal family leave.

6) Items 13 through 28 as enumerated in Attachment A.

For the Board Of Education

For the Education Association

ATTACHMENT A

Items Agreed upon by the KRSD BOE and KEA Negotiations Committees

13. Add language to Bereavement Days for the death of Grandparents-in-law, Aunt and Uncle.
14. If district in-service days begin in August, the CST/Guidance and Aquatics Director contracts will have the corresponding number of days subtracted from the June 30 contract date. Ex. In-Service days begin on August 30, 2017, the new end of the CST/Guidance contract becomes June 28, 2018.
15. Allow groups and activities that raise money through admission fees for performances or participation fees for camps/clinics to pay instructors/directors/supervisors from their activity account according to hourly rates agreed upon by the KEA and BOE and approved by the Superintendent.
16. Allow all employees participating in the Graduation Ceremony to leave school at 12:00 PM on the day of Graduation.
17. Eliminate Chaperoning requirement for any teacher coaching more than one sport and/or supervising more than one extracurricular activity (2 or more total) in a school year.
18. Paraprofessionals should receive their schedule at least two weeks before the beginning of the school year.
19. Start secretarial summer hours the day after the last teacher day.
20. Only require secretarial coverage for one office during summer hours on Fridays.
21. Maintenance/Custodial/Grounds "call-in response" requires a minimum of 2 hours pay.
22. Evaluation Procedures: Adding in the accordance with New Jersey Law
23. Combine all KEA employees into one Sick Bank
24. Article XX-Student enrollment distribution- STRIKE
25. Improvement of the Paraprofessional Guide (\$25,000) - Board's Recommendation
26. Article XVI- I Strike Teacher Stress Leave
27. Article IX A 3; 4; B- Employees returning to the district credited on the salary guide at no less than 1 step per 2 years of service
28. Employees re-payment of tuition reimbursement if separation is less than 3 years after last reimbursement only applicable for tuition paid out during the previous 4 years.

Jim Hunt
KRSD BOE
Negotiations Chair

Nick DeGennaro
KEA
Negotiations Chair

ATTACHMENT B

<u>Single Coverage</u>			<u>Member/Spouse/Partner or Parent/Child</u>			<u>Family Coverage</u>		
<u>Salary Range</u>		<u>% of Premium</u>	<u>Salary Range</u>		<u>% of Premium</u>	<u>Salary Range</u>		<u>% of Premium</u>
less than	\$20,000.00	3.69%	less than	\$25,000.00	2.82%	less than	\$25,000.00	2.38%
\$20,000.00	\$24,999.99	4.57%	\$25,000.00	\$29,999.99	3.69%	\$25,000.00	\$29,999.99	3.25%
\$25,000.00	\$29,999.99	6.32%	\$30,000.00	\$34,999.99	5.00%	\$30,000.00	\$34,999.99	4.13%
\$30,000.00	\$34,999.99	8.50%	\$35,000.00	\$39,999.99	5.88%	\$35,000.00	\$39,999.99	5.00%
\$35,000.00	\$39,999.99	9.38%	\$40,000.00	\$44,999.99	6.75%	\$40,000.00	\$44,999.99	5.88%
\$40,000.00	\$44,999.99	9.50%	\$45,000.00	\$49,999.99	7.75%	\$45,000.00	\$49,999.99	7.63%
\$45,000.00	\$49,999.99	11.25%	\$50,000.00	\$54,999.99	12.13%	\$50,000.00	\$54,999.99	9.50%
\$50,000.00	\$54,999.99	16.50%	\$55,000.00	\$59,999.99	13.88%	\$55,000.00	\$59,999.99	11.25%
\$55,000.00	\$59,999.99	19.13%	\$60,000.00	\$64,999.99	17.38%	\$60,000.00	\$64,999.99	13.88%
\$60,000.00	\$64,999.99	22.63%	\$65,000.00	\$69,999.99	19.13%	\$65,000.00	\$69,999.99	15.63%
\$65,000.00	\$69,999.99	23.63%	\$70,000.00	\$74,999.99	21.00%	\$70,000.00	\$74,999.99	18.25%
\$70,000.00	\$74,999.99	26.25%	\$75,000.00	\$79,999.99	21.88%	\$75,000.00	\$79,999.99	19.13%
\$75,000.00	\$79,999.99	27.13%	\$80,000.00	\$84,999.99	22.75%	\$80,000.00	\$84,999.99	19.25%
\$80,000.00	\$84,999.99	28.00%	\$85,000.00	\$89,999.99	24.50%	\$85,000.00	\$89,999.99	21.00%
\$95,000.00	over	28.88%	\$100,000.00	over	28.88%	\$90,000.00	\$94,999.99	22.75%
						\$95,000.00	\$99,999.99	23.63%
						\$100,000.00	\$109,999.99	26.25%
						\$110,000.00	over	28.88%