

**IN THE MATTER OF THE FACTFINDING BETWEEN**

**MILL RIVER UNIFIED UNION SCHOOL DISTRICT**

**AND**

**MILL RIVER UNIFIED EDUCATION ASSOCIATION  
TEACHER UNIT**

**FACTFINDER’S REPORT AND RECOMMENDATIONS**

**INTRODUCTION**

The Mill River Unified Union School District (“District”) was formed on July 1, 2016, as a result of consolidating the individual school districts of Clarendon, Shrewsbury, Tinmouth, Wallingford, and Mill River Union High School. All these districts were previously part of the Rutland South Supervisory Union and had two different collective bargaining agreements – one for the four elementary schools and one for the high school. Further complicating the situation was the fact that, until recently, the high school was affiliated with the American Federation of Teachers while the elementary schools were represented by the Vermont-NEA/NEA. In early 2017, the teachers at the high school voted to affiliate solely with the Vermont-NEA/NEA.

Both the elementary and the high school had contracts that expired June 30, 2017. The parties did positive work in trying to consolidate the two contracts, despite some very significant differences in approaches to labor relations and general working conditions. After negotiating for a period of time, despite their best efforts, the parties realized a settlement could not be reached and declared impasse. The parties agreed to appoint the undersigned as mediator for the collective bargaining impasse. The mediation session was conducted on June 13, 2017, and the

parties were unable to reach an agreement at that time. Subsequent to the mediation, the parties agreed to ask the undersigned to serve as Factfinder, pursuant to Vermont Statutes (16 V.S.A. Chapter 57, §1731).

In lieu of a factfinding hearing, the parties submitted briefs on or about September 29, 2017. In addition, after the hearing, there were informal telephone conversations with representatives of both sides. A draft of the language sections of the Report and Recommendations was distributed before the final Report was issued.

The District was represented by Adrienne Raymond, Chief Negotiator for the District, and David Younce, Superintendent. The Association was represented by Sean Leach, UniServ Director, Vermont-NEA.

Factfinding is a statutorily mandated proceeding that should be considered an extension of the collective bargaining process. When the parties fail to reach agreement, factfinding is a recognized process whereby a mutually agreed upon neutral delivers a written report recommending a reasonable basis for the settlement of the outstanding issues (16 V.S.A. § 2007). The teachers' statute does not have specific language regarding guidelines upon which the recommendation should be based; however, the law covering municipal employees (21 V.S.A. §1732), the law covering state employees (3 V.S.A. §925), and the law relating to binding interest arbitration (16 V.S.A. §2025) require factfinders and arbitrators to give weight to specific factors. All three have very similar criteria; the municipal guidelines are as follows:

1. The legal authority of the municipal employer;
2. Stipulations of the parties;
3. The interest and welfare of the public and the financial ability of the municipal employer to pay for increased costs of public services including the

cost of labor;

4. Comparisons of the wages, hours and conditions of employment of the employees involved in the dispute with the wages, hours and conditions of employment of other employees performing similar services in public employment in comparable communities or in private employment in comparable communities;
5. The average consumer prices for goods and services commonly known as the cost of living;
6. The overall compensation presently received by employees including direct wages, fringe benefits, and continuity conditions and stability of employment, and all other benefits received.
7. Prior negotiations and existing conditions of other school and municipal employees.

Factfinders in negotiations involving teachers normally adhere to these criteria. In developing recommendations, it is unusual for factfinders to introduce novel or unusual concepts into the collective bargaining relationship. These principles have guided me in making the recommendations that follow.

This report is an effort to resolve the entire collective bargaining dispute and to strike a fair and workable balance among the outstanding issues. Therefore, my recommendations should be viewed as a whole and issues are dependent upon each other.

## **BACKGROUND**

The Mill River Unified Union School District is located just south of Rutland, Vermont. As noted in the preliminary paragraphs, the District has been consolidated into a unified school district composed of one high school and four elementary schools. It now operates as a single, unified district, requiring a single collective bargaining agreement.

There are approximately 74 teachers in the four elementary schools and 45 teachers at the

high school. The elementary schools, which used to bargain as a combined entity, and the high school had very different approaches to a number of issues in the contract, some of which relate to the differing philosophies between the NEA and the AFT. For example, in the grievance section, there is a mandatory mediation step in the high school contract (AFT) and no such step in the elementary school contract (NEA). Regarding salary, the elementary schools have an indexed system (steps calculated as a percentage of the base) while the high school has an increment system (the same dollar amount for each step which changes only during negotiations). The result has been that wage increases at the high school have varied between percentage and dollar increases. Wage increases at the elementary schools have almost always been calculated in percentage terms; at various times, in order to accommodate the percentage wage increase, teachers at the elementary schools did not move on step. This difference in approach can be seen as one of the reasons elementary teachers have a lower starting and higher top salary than teachers at the high school.

As noted above, prior to mediation and factfinding, the parties met numerous times and made considerable progress in reaching agreement to consolidate the two contracts. Tentative agreements were reached on numerous items and these tentative agreements should remain a part of the overall settlement whenever it is reached.

The outstanding items, the position of the parties, discussion of the merits of both parties' positions, and my recommendations are discussed below. There will be no comment on proposed changes by both sides that simply clean-up existing language, such as names of parties and dates.

## **OUTSTANDING ISSUES**

### **1. Section VII, Grievance Procedure**

The only disagreement in the grievance procedure is the District's insistence on retaining a mediation process in Step IV. The District seeks to continue the language currently contained in the high school contract. The Association seeks to delete this language and add a sentence in the arbitration section that states: "Prior to the arbitration hearing commencing, the arbitrator shall first seek to mediate the grievance."

**Discussion.** The provision contained in the high school contract has worked well on numerous occasions. On at least one occasion, the undersigned was selected as the grievance mediator and was successful in helping the parties reach a settlement, saving both sides the time and expense of an arbitration hearing.

Some grievances may not be susceptible to settlement; inclusion of a mandatory mediation step could unnecessarily delay the process. Further, both sides should prepare for mediation in a manner similar to an arbitration proceeding. Accordingly, there would not be significant savings for the parties trying to mediate before arbitrating.

Many arbitrators routinely ask at the beginning of the hearing whether or not settlement should be explored. Inclusion of a sentence requiring such question would provide the opportunity for possible settlement discussions and not unnecessarily delay the process.

**Recommendation.** The mediation step should be deleted from the contract. A sentence should be added to the arbitration section that states:

Prior to the commencement of the arbitration hearing, the arbitrator shall ask the parties if they would like to engage in settlement discussions.

## **2. Article VIII, Teacher Evaluation**

There is agreement on most of this article. One of the two differences in the language is the Association's proposal to include the following sentence in Section 8.5: "The teacher's signature shall not necessarily indicate agreement with its content."

The other difference is the inclusion of a proposal by the Association for new language in Section 8.6. An existing provision in the high school contract establishes a standing committee on evaluations that makes recommendations to the school board. The District proposed deleting this section. The Association proposed to modify and replace the existing high school language with the following:

As the need arises, either party may request the formation of a side committee, consisting of equal numbers of Board members and Association representatives. This committee will consider proposed changes to the MRUUSD "Plan of Evaluation and Supervision of Professional Educators." The proposed changes will be developed through consensus by member of the committee. These changes may not take effect unless there is mutual agreement and ratification by both the MRUUSD Board and the Association membership. If the proposed changes fail to be ratified by both parties, the committee will reconvene within thirty (30) calendar days to reconsider the proposed changes. If the committee agrees on a modified proposal through consensus, then the modified proposal will be presented to the MRUUSD Board and members of the Association for ratification. If the modified proposal fails to be ratified by both parties, then the committee will be disbanded and the following Agreement year, if requested by either party, a new committee will be formed. Negotiations to reach consensus on proposed changes to the MRUUSD "Plan of Evaluation and Supervision of Professional Educators" will be limited to that document, provided no other part of the Contract may be reopened for negotiation, unless specifically provided for in this Agreement.

**Discussion.** Both proposed changes must be discussed. The first change, adding the language relating to the teacher's signature, is unnecessary. It is implicit in the signature of any document that such signature acknowledges receipt of such document, not agreement with the content. In fact, many documents requiring a signature have a sentence on the document stating that the

signature simply acknowledges receipt of the document. Furthermore, the next sentence in the existing contract, referencing a teacher's right to write a response, is a further indication that the signature does not indicate agreement with the content. Inclusion of such a sentence in the contract could have uncertain meaning for a situation in which a teacher refuses to sign a document. Accordingly, the addition of such a sentence cannot be recommended.

The paragraph proposed by the Association relating to the side committee on evaluations is also unnecessary, as is the current existing language. Final authority in the development of any evaluation system rests with the employer. Employers are usually well advised to include employees and union representatives in the development of an evaluation system. This insures that all parties are in agreement regarding the operation of such a system. Making it part of the agreement may make the system overly formal, creating unintended consequences.

An employer must be able to implement an evaluation system when appropriate, including the ability to make unilateral changes. Despite the advantages of seeking input from an Association, an employer should not give up the right to make a final decision on the evaluation system in a timely manner. Examining the Association's language carefully, the Association could impede the implementation of any changes in an evaluation system. This is not appropriate. Accordingly, the entire section cannot be recommended.

Furthermore, based on the above discussion of "best practices," there is no need to include the existing language. The District's language eliminates the standing committee contained in the high school contract, but encourages input from the Association, as set forth in Section 8.6.

**Recommendation.** The language proposed by the Board should be adopted. (See Appendix A)

### **3. Article IX, Work Year**

The parties had to deal with differences in the contracts of the elementary schools and the high school regarding the number of days in the school year and the number of student contact days. It appears the parties have agreed on a 185 day school year with 177 teaching day, five (5) days as directed by the Administration, two (2) days for parent conferences, and one (1) day before the beginning of the first day of student attendance in order for teachers to prepare for the start of the year.

**Recommendation.** The language proposed by the Board should be adopted (See Appendix B)

### **4. Article X, Work Day**

A review of the language proposed by both sides indicates agreement on most areas of the section. Most of the language changes involved cleanup and updates of existing language. The only significant difference between the two proposals is the Association's suggestion to include "continuous" in describing the amount of planning time.

Both sides have agreed that "continuous" planning time is the current practice. The current language states "planning time averaging at least 40 minutes." If adding the word "continuous" was recommended, the word "averaging" would have to be deleted. The words "averaging" implies that there may be circumstances where the teacher receives less than average and some circumstances where the teacher receives more than average. Given the current practice and the unknown consequences of eliminating the words "averaging," the language should remain the same, without the addition of the word "continuous.

**Recommendation.** The language proposed by the Board should be adopted. (See Appendix C)



## **5. Article 11, Substitutes**

There was little if any discussion on this issue at the bargaining table. The District's language is consistent with the language contained in the current contracts, updated to coordinate with the realities of a single, unified school district. The language proposed by the District should be adopted.

**Recommendation.** The language proposed by the Board should be adopted. (See Appendix D)

## **6. Article XII, Teacher Assignments and Reassignments**

A review of the language proposed by both sides indicates slight variations from the current language and the proposals from both sides.

The Association proposal appears to follow the elementary school contract with the following changes: an added sentence in Section 12.3 describing what would happen if there is a change in governance of the schools; and the addition of language taken from the high school contract relating to reassignments.

The District proposal also mirrored the elementary school language with the following changes: posting of all vacancies by email; and deletion of language currently contained in the high school contract relating to reassignments.

**Discussion.** Regarding the addition of language relating to a change in governmental structure, there is no need to include this language at this time. School governmental structures just changed in the area; it is unlikely there will be further changes in the near future. Further, the legislature will have to address some of these bureaucratic issues raised by the Association in their proposal. There is no need to add this language at this time; its addition could have unintended consequences.

Regarding the exclusive use of email for the posting of vacancies, this issue needs further discussion by the parties. In some workforces, there are too many employees who do not routinely check email for items such as vacancies. Providing posting exclusively by email could preclude some employees from seeing a posting and possibly prevent qualified candidates from applying. In other workforces, all employees routinely look at emails and would be aware of any posted vacancy. Much of this is related to the culture of the workforce, something a factfinder cannot know. The parties should discuss this item to evaluate which method (or both) will insure that these notices are read by all interested employees.

The final issue is the Association's proposal to include a paragraph contained in the high school contract relating to reassignments. This section mandates notifying employees of possible vacancies and giving them the opportunity to be interviewed. This is simply a good human resource practice and should be adopted.

**Recommendation.** The language proposed by the Association should be adopted. (See Appendix E) The second sentence of 12.3 has been omitted. The parties must also discuss 12.7 to consider which form(s) of posting will be most effective, with careful consideration to the practical technological realities.

## **7. Article XIII, Leaves**

The current contracts at both the elementary schools and the high school are very similar. Both provide seventeen (17) days for sick and personal leave. There is no mention of bereavement leave in either contract; it must be assumed it is part of the seventeen (17) days provided for sick and personal leave. The elementary school contract contains a detailed sick bank provision; the high school sick bank provisions are contained in an addendum. Both contracts have provisions

regarding unpaid leave, family leave, and extended leave. The high school contains a provision regarding jury duty.

The Association has proposed maintaining, in large part, the language in the elementary schools contract, with cleanup (dates, names of school, etc.) language where necessary and the addition of the jury duty language found in the high school contract.

The District has proposed language more similar to that found in most teacher contracts in the State: 13 sick days, four personal days, and a separate bereavement leave section.

**Discussion.** Most contracts in the State, and elsewhere, have provisions similar to that contained in the District's proposal: a separate entitlement for personal, sick, and bereavement leave. Both contracts currently use the approach of combining all three of these leaves into seventeen days. There are advantages and disadvantages to both approaches. The District's proposal is more traditional and allows an individual employee to have a separate entitlement for bereavement. A teacher with several deaths in a year could use all his/her leave for bereavement. The current contract and the teacher's proposal allow more flexibility, with more possibility of abuse.

Without knowing the history of how the "combined" leave evolved, there is reluctance to change the current contract, especially in the absence of evidence of any abuses by the teachers. Accordingly, the current language, as contained at the elementary schools, should be used for the combined contract; the only changes should be updating the language as required.

There should be no change in the sick leave bank until the parties have some experience relating to the needs of the combined high school and elementary staff. Without knowledge of the current usage, it would be inappropriate to increase the number of days in the bank.

Changing “pregnancy” leave to “personal/family” leave is consistent with current law and practices. Adding jury duty, as contained in the high school contract, is also appropriate.

**Recommendation.** The language contained in the elementary school contract should be continued in this new combined contract, with cleanup language, as necessary. The only significant change should be changing the title of “pregnancy” leave to “personal/family” leave and the inclusion of jury duty, as contained in the high school contract.

## **8. Article XV, Extracurricular Activities**

The proposals from the parties are similar but have some important differences. The Association’s proposal used the current language contained in the elementary school contract and applied it to the entire unit.

This provision contained in the elementary school contract has no similar provision in the high school contract. The District proposal deleted the funding guidelines in section 15.2, replacing it with an “ad hoc stipend committee” that will review “stipend allocations and responsibilities and recommending a structure to govern stipend allocations.”

**Discussion.** This provision is contained only in the elementary school contract. There are no similar provisions at the high school. In many districts, extracurricular activities are treated differently in elementary schools than in high schools. Sports, for example, usually take up considerably more time at the high schools than in elementary schools. Academic clubs usually involve different time commitments. Even though the two contracts are being combined, there are certain sections in which the differences between the elementary schools and the high schools should continue. This is one of these sections.

Additionally, since this should be only applicable to the elementary school teachers, there

would be no need for an “ad hoc stipend committee.” Current extracurricular activities should be paid in the same manner as paid previously. Periodic reviews can be done on an *ad hoc* basis.

This is one of the few contracts in the State without an extra-curricular salary grid for coaches and club advisors. This is normally applicable to the high school programs. The parties may want to discuss whether an extra-curricular schedule should be added to the master agreement.

**Recommendation.** The language contained in the current elementary school contract should be used with a clear indication the language is applicable only for the elementary schools.

## **9. Article XVII, Professional Development**

This article is detailed and has a number of different parts.

In Section 17.1, the language proposed by both sides is identical except for the District’s proposed elimination of tuition reimbursement for part time employees which is currently contained in the elementary schools contract.

In Section 17.2.a, the first part of the language proposed by both sides is identical. The District proposed eliminating the second portion of this clause which stated:

...or it relates to the teacher’s Professional Development Plan (PDP) or Professional Effectiveness Plan (PEP) and supports his or her current or future assignment or supports initiatives of the Vermont Agency of Education and can be shown to be beneficial to the District.

The Association proposed leaving this clause in the contract with a language adjustment for the various programs offered (Supervision and Evaluation Plan replacing PDP)

The District proposed eliminating Section 17.2.b which deals with the approval process for the District. There is no difference in the proposals for the remainder of Section 17.2

Both sides have the same proposal for Section 17.3. In Section 17.4, the District proposed eliminating the following two sentences from the middle of the paragraph:

All professional development activities will be jointly planned by administrators and staff committees, and approved by the Superintendent. Both the planning of and the activities themselves will be held during the teacher workday. In instances where this is not possible, teachers may choose whether to participate and may be compensated on a pro-rated basis of their salary at the discretion of the Administration whose decision is final.

The Association also proposed the addition of two provisions currently contained in the high school contract. Its proposed Section 17.5 is identical to Section 16.1.d of the high school contract and states:

Teachers may apply, through a mini-grant process, for stipends to support professional development, professional collaboration, curriculum development, and/or other projects that are related to school goals. Approval of funds, up to an amount equaling 6 credit hours, will be determined by the Board.

Its proposed Section 17.6 is taken from Article 12 of the high school contract and states:

The Board shall provide in-service programs. The Association shall be involved in the selection and scheduling of these in-service programs and its recommendations shall be incorporated in proposals made to the Board by the administration. The costs of these programs shall be paid by the school district. The final determination regarding the selection and scheduling of workshops shall be a decision of the Board.

The District proposal did not to include either of these sections in the new contract.

**Discussion.** Each of the above sections of this article will be addressed separately.

The only difference in the Association's and District's proposal in section 17.1 concerns whether part-time employees should be eligible for tuition reimbursement, as currently allowed in the elementary school contract. Part-time teachers often have a long term relationship with the District and should have access to professional development in the same way any full time teacher would have. There is no justification for changing this section.

Section 17.2.a in the elementary school contract contains language that is extremely detailed and may be no longer applicable, since the program(s) listed in the contract may no longer exist. Requirements and/or programs for professional development are constantly changing. The language proposed by the District should be comprehensive enough to include most possibilities without referring to any specific program. The language proposed by the District should be adopted.

Section 17.2.b specifies that the building principal should be the one to approve professional development requests. Every school district has different protocols for processing professional development requests. The collective bargaining agreement should not dictate to management how these requests should be processed. It is up to the District to develop a proper protocol so that such requests can be handled in a timely manner. Depending on the district, the point person in the approval process may be the superintendent, the building principal, a department head, or a team leader. The only concern an Association should have in this regard is to ensure the decision on the approval is processed in a timely manner. Accordingly, the proposed deletion of this section will be recommended.

In section 17.4, the District proposed deleting three sentences in the middle of the paragraph that mandated cooperation and joint planning on certain professional development activities. While such joint efforts are an extremely important part of any meaningful collective bargaining relationship, there is a question whether such cooperative endeavors can be mandated by contract. A problem arises when one side does not believe the other side has fully engaged in these efforts and a dispute can arise regarding whether the terms of the cooperative efforts have been followed, defeating the entire purpose of the cooperative endeavors. Experience indicates

that clauses such as this should not be included in an agreement; however, both sides should be constantly reminded of the value of informal cooperative efforts on subjects such as professional development and in-service training. This means that the Association's proposal to include Article XII from the high school contract is being rejected.

The Association proposed adding section 16.1.d from the high school contract. This section provides an opportunity for teachers to utilize "independent study" for approaches that address school goals." Since the Board has final approval on these applications, there is no downside in including this proposal in the contract.

Section 17.6 requires the development of in-service training, with input from the Association but final decision by the District. This concept should be implicit in making in-service programs as effective as possible. However, there is no need to make contractual requirements for matters that are inherently good practice. Inclusion could have unintended consequences. Accordingly, inclusion of this section in the contract will not be recommended.

**Recommendation.** The entire language of this section should read be as follows.

Section 17.1 – as contained in the current language of the elementary school contract

Section 17.2 – as proposed by the District

Section 17.3 – as proposed by both parties

Section 17.4 – as proposed by the District

Section 17.5 – as proposed by the Association, taken from Section 16.1.d of the high school contract

## **10. Article XVIII, Severance Pay**

The difference between the two proposals concerns the status of severance pay for teachers at the



high school hired on or after July 1, 2017.

**Discussion.** Both proposals grandfathered teachers hired before a specific date. Teachers at both the high school and elementary schools will receive a more generous severance/retirement benefit than teachers hired after the specific date. In the last round of negotiations at the elementary schools, the Association and the Districts agreed to the language contained in the District's proposal. The only open issue is whether this language should apply to high school teachers.

Since all of the teachers are now part of the same supervisory union, there is no justification for the teachers at the high school to be treated any differently from the teachers at the elementary schools. Accordingly, the new severance package should apply to the high school, using the date of July 1, 2017, in order to provide ample notice for all employees.

**Recommendation.** The language proposed by the Board should be adopted. (See Appendix F)

## **11. Article XIX, Individual Contracts and Renewals**

Both sides have made proposals very similar to the current language. In section 19.3, the Association has proposed the addition of the following language:

Failure to sign and return a contract within the time specified in this article may be accepted at the option of the Board, as conclusive evidence of non-acceptance of the offered contract. In such an event, the job shall be considered vacant.

In this section, the District proposed language declaring that a letter of intent shall act as a "temporary but binding agreement."

Another difference is a proposal by the Association to add in Section 19.5 that a teacher hired to fill the vacancy of a teacher who resigned after July 1 will not be covered by provisions of the contract relating to contract renewal, termination, lay-off or recall.

The final difference in the two proposals concerns section 19.7. This relates to payments in the event a teacher asks to be released from his/her contract after July 15. The District has proposed increasing the penalty to \$1,000. The Association proposed some substantial changes in the language.

**Discussion.** Regarding section 19.3, the Association proposed an addition that clarifies what may happen if a teacher does not return a contract as required. This proposal makes sense from a legal standpoint, letting everyone know up front that the contract offer may be nullified. The District's proposal may add confusion to the current situation since it tries to make a binding contract out of a letter of intent. While the goal of the proposal is clearly understandable, the section may be unenforceable if this language was added.

The Association proposal in Section 19.5 may give the District some options if it has to hire a teacher quickly when a contracted staff member leaves unexpectedly. This may be a useful addition to the language.

The District's proposal in Section 19.7 is simply an attempt to make the monetary penalty for breaking a contract more realistic. The Association's proposal allows an unconditional release if the teacher pays \$1,000. Releases from teacher contracts should not be a given and should not depend on whether the teacher can "buy out" the District. The District's proposal should be adopted.

**Recommendations.** The language of the contract in dispute should be as follows:

Section 19.3 - as proposed by the Association

Section 19.5 – as proposed by the Association

Section 19.7 – as proposed by the District

Identical language was proposed by the parties in all other portions of this Article.

## **12. Article XX, Staff Levels**

The District proposal uses the language contained in the elementary school contract for the first five paragraphs of this section. (There is no analogous language in the high school contract.)

The District also adds another eleven paragraphs dealing with various aspects of seniority and leaves of absence. The Association proposal also contains a very involved and comprehensive approach to seniority and staffing.

**Discussion.** Contract language relating to seniority and staffing levels is a difficult subject for any neutral. It is a subject that must be thoroughly discussed by the parties so that all aspects of application of any language suggested can be explored. This takes a great deal of time, effort and discussion. It would be inappropriate for a neutral to make recommendations on a subject such as this. Accordingly, since this contract will probably expire no later than June 30, 2019, I will recommend stop gap language for the remainder of this contract and encourage the parties to set down and evaluate the various approaches that can be used for seniority/staff levels.

My recommendation is to use the language currently contained in the elementary school contract until such time as new language can be developed. Both sides agree the current language needs additional clarification. Limiting my recommendation to the current elementary school language should force the parties to intelligently and comprehensively deal directly with each other on this issue.

**Recommendation.** Article XX of the elementary school contract should be agreed to, as a stop gap measure until a more comprehensive agreement on this issue can be reached.

### **13. Article XXI, Notification**

The only difference in this section is the District's proposal to include electronic notification of formal notices.

**Discussion.** As mentioned in the section on teacher assignments and reassignments, the recommendation for the use of email should depend on the "practices" in the District. The parties should discuss this section directly. There is not sufficient information to provide a responsible recommendation.

**Recommendation.** Parties must discuss this section.

### **14. Article XXIII, Savings Clause**

Both sides have proposed the same language. Accordingly, no recommendation is needed.

### **15. Article XXIV, Duration**

The District proposed the same language with the appropriate change in dates. The Association proposed changing language relating to the continuation of the contract after expiration. The current contract states that the contract shall continue "from year to year thereafter unless written notice of desire to terminate or modify this Agreement is given by either party to the other on or before October 1 of the final year of the Agreement above or any subsequent year." The Association's proposed language would replace existing language that indicates the contract would continue "from year to year thereafter unless a successor agreement is negotiated by the parties."

**Discussion.** The current language and the language proposed by the Association may have an impact on the District's responsibilities once a contract has expired and a new contract has not

been negotiated. There is no reason to change the current obligations of both parties regarding notification to begin negotiations and the legal obligations once a contract has expired. There should be no change in the current language.

**Recommendation.** The current language, using the proper dates, should be used.

## 16. Section XVI, Insurances

Currently the District pays 85% of the premium cost of the VEHI Dual Option Health Insurance Plan for all teachers except those at Clarendon, Shrewsbury and Wallingford; in these locations, the District pays 87% of the premium. The total cost of the VEHI Dual Option plan is currently \$9,029 for a single plan, \$17,748 for a two person and \$23,792 for a family.

For those paying 15%, this means the cost of a single plan is \$7,675 for the District and \$1,354 for the teacher; the cost of a two person plan is \$15,086 for the District and \$2,662 for the employee; and the cost for a family plan is \$20,223 for the District and \$3,569 for the employee. For teachers at Clarendon, Shrewsbury and Wallingford, this means the cost of a single plan is \$7,855 for the District and \$1,174 for an employee; the cost of a two person plan is \$15,441 for the District and \$2,307 for the employee; and the cost of a family plan is \$20,699 for the District and \$3,093 for the employee.

Effective January 1, 2018, the VEHI Dual Option Plan will no longer exist. Instead, there will be four health insurance options for employees, all with reduced premiums. This means if the percentage contribution were to remain the same, the cost to both the District and the employee would be reduced. The legislation passed by the Vermont Legislature (Act 85) in June, 2017, promotes use of the Gold CDHP . While an employee will have a choice among the four different plans, all with different costs, deductibles, and out-of-pocket expenses, the

legislature clearly gives a preference to the utilization of the Gold CDHP program, using the term “default” program.

The cost of the Gold CDHP plan is as follows: is \$6,279 for a single plan; \$11,793 for a parent/child(ren) plan; \$9,708 for a 2-person plan; and \$17,394 for a family plan. The parties must negotiate the appropriate premium contribution for the new plans, which will become effective January 1, 2018.

The Gold CDHP plan is defined as a high deductible plan with deductibles of \$2,500/\$5,000 of out-of-pocket (OOP) expenses. Accordingly, in addition to negotiating the premium contribution, the parties have to negotiate the manner in which a teacher will pay for these OOP expenses. These out of pocket expenses are normally paid through either a Health Reimbursement Account (“HRA”) and/or a Health Savings Account (“HSA”). Both have advantages and disadvantages.<sup>1</sup> Depending on the program used (HRA or HSA), the parties must decide who pays for the administration of the program and the number of days allowed for submission of health care receipts after the close of the plan year (the run-out).

Also included in the insurance section of both contracts are provisions relating to the health insurance buyout (for those not taking health insurance), life insurance, and dental insurance. Currently, at the elementary schools, there is a health insurance buyout of \$2,000, a \$50,000 life insurance program, and a fully paid dental program. At the high school, the buyout

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<sup>1</sup> It is important to describe the difference between an HRA and HSA. Both can be funded by a combination of employer and employee contributions, using pre-tax dollars. In an HRA, the employer owns the account and any unused money is kept by the employer (other than that contributed by the employee); in an HSA, the employee owns the account and any unused money may be rolled over into the following year, taken by the employee if he/she moves to a different employer, used by the employee for non-health related expenses (with a penalty,) or rolled over into a retirement account. There are also differences in the health care expenses that can be used for the HRA and the HSA. For example, prescription drugs are treated differently by the two programs as are protection for non-dependent children under age 26. Finally, there are differences in the programs for people who are on Medicare.

varies from \$2,000 to \$4,000, depending on which plan the person is eligible for. There is also a \$50,000 life insurance program and a dental program 100% paid by the District.

**Position of the District.** The District's proposal focused on changes effective January 1, 2018, when the new plans must become operational. For the period between July 1, 2017 and December 31, 2017, the District proposed continuing the current contract. Effective January 1, 2018, the District proposed that it pay 80% of the premium and that teachers pay 20% of the premium cost of the VEHI Gold CDHP Plan.

The District also proposed that each teacher will have the choice of whether to participate in either a HSA or HRA. For the HRA account, the teacher will be responsible for the first \$250 and last \$250 of the maximum of \$2,500 in expenses for a Gold CDHP single plan; the teacher will be responsible for the first \$500 and last \$500 of the maximum of \$5,000 in expenses for a Gold CDHP 2-person, parent/child[ren] or family plan. For an HSA plan, the District will contribute \$2,000 for a single plan and \$4,000 for a 2/person, parent/child, or family plan.

In addition to the health insurance proposal, the District proposed making a \$2000 health insurance buyout, mirroring the provision contained in the elementary school contract. The District proposed no changes in the life or dental insurance.

**Position of the Association.** For the period from July 1, 2017 to December 31, 2017, the Association proposed no change in the current contract. On January 1, 2018, the Association proposed that the District should pay 83% of the premium of the Gold CDHP Plan. In addition, it proposed all teachers will have access only to an integrated HRA with a debit card and the teacher paying the first \$50 and last \$50 of out of pocket expenses for a single plan and the first and last \$100 for the 2-person, parent/child, and family plans. The Association also proposed a

90 day run-out period and payment of administrative fees by the District. The HSA would not be available for members of the bargaining unit under the Association's proposal.

In addition, the Association proposed a \$4,000 buyout for those teachers who elect not to enroll in a health insurance plan. For those who are eligible to elect a family plan but instead elect a two person plan, the buyout will be \$2,000. For those who are eligible for a family plan but instead elect an individual plan, the buyout will be \$3,000. For those eligible for a two person plan but instead elect a single plan, the buyout will be \$2,000. This mirrors the language currently contained in the high school agreement.

The Association proposed adding language to the life insurance provision that would continue until age 70 and then be reduced to \$25,000. The Association proposed no change in the dental program.

The Association also suggested the addition of a disability program in which the District would be 25% of the cost not to exceed \$1,600 per contract year. Individual faculty members would be obligated to pay the remaining 75% of the cost. It was not clear whether this program would be mandatory for all teachers.

**Discussion.** In any negotiations, health insurance is often one of the most contentious items addressed. It is extremely complicated to analyze the pros and cons of any change. The subject can be extremely emotional and has significant economic ramifications for both sides.

Employers see an increasing cost that is rising much faster than any of its other costs, with little or no control. Teachers see any increase in the percentage paid for their health insurance premium adversely impacting their income; further, a higher percentage means the actual dollar contribution will rise more quickly than the dollar premium with a lower percentage.



Emotions regarding health insurance and the payment of premium and OOP expenses are real and understandable in normal circumstances. In this contract cycle, a change in the health insurance program is **required** for each insured employee in the State. On January 1, 2018, the VEHI Dual Option, a plan that has been the program utilized in most school districts in the State for many years, will no longer exist. All of the four plans offered have radically different approaches to the payment of medical bills. Each of the plans has advantages and disadvantages; each employee can choose any one of the four plans.

With high deductible plans, premiums are significantly lower, particularly for the Gold and Silver CDHP plans. However, the employees' out of pocket expenses may be significantly higher depending on the usage of health care by the employees and his/her dependents. Depending on the plan and the agreement of the parties, employees may have access to either an HSA or HRA, a portion of which may be paid by the employer. For both programs, the parties must negotiate the amount paid by the employer for OOP expenses. For an HRA, the parties must decide whether the employee pays the first and/or last of these OOP expenses, who pays the administrative costs, and the length of the runout period.

In this collective bargaining cycle, almost every school contract in the State (both teachers and support staff) expired on June 30, 2017. Only a relatively small percentage of these open contracts settled before Act 85 was passed and signed into law. Those contracts settled before the law was passed typically kept the percentage premium contribution approximately the same as it was under the VEHI Dual Option.

Since the law was passed, most of the contract settlements have established a 80%-20% employer-employee split for the premium contribution. Almost all programs use an HRA

exclusively, with no choice for the employee. Many of the programs call for the employee to pay the first \$400 of out of pocket expenses (OOP) for a single plan and the first \$800 for all other plans. The employer pays the administrative costs and there is typically a 90 day run-out.

All of these contracts have the premium contribution tied to the CDHP Gold. In other words, the premium percentage is based on the Gold CDHP plan; if the employee chooses a different program, the employer's obligation is the dollar amount paid to the Gold CDHP plan. Similarly, OOP expenses are linked to the Gold CDHP. If an employee chooses a different plan, the employer's financial obligation would be linked to the amount it contributed to the HRA or HSA under the Gold CDHP program.

Based on the above, the discussion of the health insurance issues must be divided into a number of sub-issues, all of which must be discussed in some detail.

**a. Period between July 1, 2017 and December 31, 2017**

The question is whether the current contract should change at all during this period. In this case, neither side has proposed a change until the new plans come into effect on January 1, 2018. Accordingly, the contract regarding health insurance should remain the same until December 31, 2017

**b. Premium Contribution on January 1, 2018 and beyond**

The District in this case has continually proposed contribution equivalent to 80% of the Gold CDHP premium. This means that the cost sharing under their proposal will be as follows:

<b>Plan</b>	<b>Total Cost</b>	<b>District Cost</b>	<b>Employee Cost</b>
Single	\$6,279	\$5,023	\$1,256
2-Person	\$11,793	\$9,434	\$2,359
Parent/Child	\$9,708	\$7,766	\$1,941
Family	\$17,394	\$13,915	\$3,479

The District cost for the Gold CDHP versus the VEHI Dual Option decreases significantly in each of above categories, often by several thousand dollars. Similarly, the cost for the employee decreases by \$98 for a single plan, decreases by either \$303 or \$72 for a 2-person plan (depending on whether it is 2-person or parent-child), and decreases by \$90 for a family plan.<sup>2</sup> Such premium reduction is offset by the increased potential for out-of-pocket expenses.

The Association has proposed reducing the percentage premium contribution to 13% throughout the supervisory union, the same percentage that currently exists in Clarendon, Shrewsbury and Wallingford. This would give both the District and the enrolled teachers significant savings on premium contribution.

Teacher contracts throughout the State have an average contribution for the teacher between 15 and 20%. A review of the contracts settled since the passage of Act 85 shows almost all contracts have settled with a premium contribution of 80%-20%, regardless of the percentage contained in the contracts that expired June 30, 2017. This appears to be even more accurate in Addison and Rutland Counties than in other locations in the State. Given these settlements in comparable districts, there is no justification to deviate from this pattern. Accordingly, my recommendation on the premium split in all Districts will be 80%-20%. It is understood that this is an added costs to the teachers at Clarendon, Shrewsbury and Wallingford.

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<sup>2</sup> There are no employees' savings are for those teachers in Clarendon, Shrewsbury and Wallingford, where their premium contribution is only 13%. The additional cost will range from \$80 for a single plan to almost \$400 for a family plan.

However, these costs will be offset by the recommended wage increase. Furthermore, teachers in these schools have had the benefit of lower than “comparable” health insurance premium payments for a number of years.

Any possible reluctance in making this recommendation was eliminated by an examination of the law passed by the Vermont Legislature in June, 2017. During the week of June 26, the Governor signed into law legislation suggesting an 80% contribution tied to the Gold CDHP plan. (H. 542, Act 85) The legislation indicates there will be diminished State aid if this “suggestion” is not met.

The legislation is not clear on exactly how and how much State aid will be reduced. The Association maintains it will be *de minimis*; information developed since the law was passed indicates that the impact may be less than ½% on the District’s finances. The Association argues the parties should not be bound by the Statehouse’s mandate and the legislation is an intolerable infringement on collective bargaining.

The District, on the other hand, maintains that it could not politically agree to anything other than an 80% contribution. Any agreement that could potentially force it to give up funding could make future budgets difficult to pass.

Without commenting on the wisdom of this legislation, it is impossible for me to avoid acknowledging the legislation’s existence. This acknowledgement removes any possible question regarding a recommendation that the premium split should be 80%-20% tied to the Gold-CDHP plan.

**c. HRA versus HSA.**

As noted above, there are advantages and disadvantages to both of these

programs, both in terms of ownership of the program and the benefits it may cover. The District wants to give each employee a choice between the two programs; the Association is adamantly opposed to giving the employees such a choice.

Further analysis of the two programs is required. The HSA gives a flat dollar amount to each employee, costing the District the same amount for each employee. Depending on one's health, an employee could receive extra income if the HSA funds go unused; the District has a fixed cost for funding its share of the program. For an HRA, analysis of OOP costs shows that it may cost the District less money than an HSA, since a large percentage of employees will not use the entire OOP costs. In an HSA, a healthy employee will receive more income (through unused HSA contributions) than an unhealthy employee. For the Association, such a result raises question of fairness for all members of its unit.

Regardless of the arguments pro and con for each program, it is clear an HRA has been agreed to as the exclusive offering in the vast majority of settlements reached thus far in the State and in all contracts settled in Addison and Rutland Counties. There is no reason to deviate from the pattern reached in these settlements. In most contracts, the employee pays the first dollar responsibility for these out-of-pocket expenses, usually \$400 for a single plan and \$800 for 2-person and family plans. My recommendation would normally be consistent with the other settlements in the State.

However, the District proposed paying the first and last \$250 of out of pocket expenses for a single plan and the first and last \$500 for a 2-person, parent-child, and family. The Association proposed a similar first and last dollar payment with fewer

dollars contributed by the employee. While this proposal is clearly different from the typical settlement of the employee paying the first \$400-\$800 of out of pocket expenses, there can be disagreement on whether this is better or worse than the OOP recommendations contained in the new legislation and agreed to in a majority of contracts settled thus far. Clearly, for an employee with few OOP expenses, this approach is more desirable; for another employee with a large amount of OOP expenses, the cost will be greater.

Since it could be argued that the District's proposal is comparable to the amounts suggested in the legislation, the District's proposal will be recommended. The Association's proposal cannot be considered since it is significantly less than the legislation by any accounting system.

**d. Payment of administrative fees.**

The cost of administration is a relatively nominal figure. In all contracts settled thus far, it has been paid by the employer.

**e. Run-out**

Most of the settlements thus far have had run-outs of 90 days. There was little discussion by either side on this matter. There is justification to recommend this "standard" practice.

**f. Buyout for employees not taking health insurance**

Both contracts provide a payment for those employees who can be covered by another plan and choose not to enroll in health insurance with the District. There are also provide two different benefits; the benefit at the high school is more advantageous

than that at the elementary schools.

The District has proposed reducing the benefit to the one currently in place at the elementary schools. The Association is seeking to increase the benefit to the one in place at the high school.

This type of clause was included in many contract or employee manuals at a time when employers were paying 100% of premium. Employers became upset when both spouses took plans for very little, if any, additional benefit, simply because there was no cost for the additional coverage. Employers saw this as a total waste of money. Buyout payments to incentivize not taking health insurance became a mechanism to discourage such “double” coverage. With the advent of employee contribution to health insurance coverage, the parties believed a benefit of this type could encourage some employees to take coverage with one’s spouse and greatly reduce the employer’s expense. The new offerings of 2 person and person/child/ren could incentivize employees to take the best coverage, splitting spouses into two different employer plans, allowing children to be covered under the plan of one spouse, without the use of buyouts.

Given this history, it is difficult to recommend either position. Both sides can make compelling arguments to support their respective positions. However, the reality is that, with employees paying a significant percentage toward health insurance, the buyout incentivizes employees to making a comparison as to the size of the buyout not the cost of the health insurance.

If both the high school and the elementary schools had the same benefit, the recommendation would be to continue the benefit; recommending an increase is not

appropriate, given the history discussed above. Similarly, recommending a decrease would not be appropriate, since it would be amount to a pay cut for some employees.

Throughout this Report and Recommendations, there has been an effort to coordinate the language and benefits between the two contracts. This is one instance where this cannot logically be accomplished. Accordingly, the recommendation will be to institute a benefit of a \$2,000 buyout, along the lines of the language currently contained in the elementary schools' contract. However, those employees currently receiving a benefit greater than \$2,000 will continue to receive such benefit until such time as they avail themselves of a buyout that yields a lesser amount. If the lesser amount is \$2,000, they cannot receive a buyout greater than \$2,000 in the future. Regardless of whether the amount is \$3,000 or \$4,000, such employees will be "red-circled" at that amount until such time as the buyout will call for a lesser amount.

- g. **Life Insurance.** The District proposed continuing the current contract. The Association proposed adding a provision that the life insurance should continue to age 70 and then be reduced to \$25,000.

The proposals are very similar. Age eligibility for life insurance is normally determined by the carrier. Buying additional coverage beyond the age of 65 can be extremely expensive. Before making any recommendations in this area, the parties should examine whether additional costs are worth the added protections. Without such information and evaluation, the current provision should remain the same.

- h. **Dental Insurance.** Both proposals appear identical. Accordingly, no discussion is necessary on this subject.



- i. **Disability Insurance.** The Association has proposed a new benefit – disability insurance. The District has made no proposal on this subject.

Over the years, long term disability has been inserted into numerous contracts throughout the State, often with a reduction in sick leave accumulation. This is a subject that requires a great deal of discussion between the parties to determine whether the cost and benefits are appropriate. This discussion may include the amount of benefit, the length of the waiting period, the sharing of the cost, the impact upon the sick leave benefit, and other matters. Any conclusions should be the result of these discussions and not the result of any factfinder’s recommendation. Accordingly, there shall be no recommendation to include a long term disability program.

***Recommendations.***

- a. ***For the period from July 1, 2017, until December 31, 2017.*** There should be no change in the current contract provisions.

- b. ***Effective January 1, 2018:***

- (1) ***Premium contribution.*** The District should be obligated to pay 80% of the premium of the Gold CDHP plan for whatever coverage the employee chooses (single, 2 person, parent/child(ren), family). In the event an employee chooses a plan other than Gold CDHP, the District’s obligation shall be the same dollar amount it spends for coverage under the Gold CDHP plan. In the event the plan chosen costs less than the Gold CDHP plan, the difference in the employee contribution may be used to supplement his/her first dollar payments to the HRA.

- (2) ***Health Reimbursement Account.*** The District should offer an HRA exclusively

to all employees participating in the health insurance program. Employees should bear responsibility for out-of-pocket expenses in the amount of the first \$250 and last \$250 for a single plan and the first \$500 and last \$500 for a 2 person, 2 person/child[ren], or family plan. In the event an employee chooses a plan other than Gold CDHP, the employee should be responsible for the first dollar amount of out-of-pocket expenses as listed above; the District shall then be responsible for the same dollars, in the same order as its obligation under the Gold CDHP plan. Employees shall not have access to an HSA.

(3) Administrative costs should be paid by the District.

(4) Roll-out period should be 90 days.

(5) Buy-out – as proposed by the District, with a grandfather provision for those employees at the high school enjoying either a \$3,000 or \$4,000 benefit.

c. Life insurance and dental – in accordance with the provisions of the current contracts.

d. Disability Insurance – such a provision shall not be added to the contract.

## **17. Article XIV and Appendix A, Salaries**

The Mill River Union High School salary schedule contains increments of \$1,053 between each step and \$1,135 between each column. There are 10 steps in the bachelors column, 15 in the BA +15 column, 18 in the B +30, 19 in the B+30/MA, 20 in the B+60/MA+15, 22 in the MA+30 and 25 in the MA+45. The starting salary is \$40,621 and the top salary is \$72,703.

The contract at the elementary schools has an indexed system with .04 of base for vertical steps and .05 of base for horizontal movement. There are 5 steps in the bachelors

column, 8 in the BA +15 column, 13 in the B +30, 14 in the B+30/MA, 17 in the B+60/MA+15, and 19 in both the MA+30 and MA+45. The starting salary is \$36,804 and the top salary is \$74,344.

**Position of the District.** The District proposed a 1.5% wage increase if an indexed salary schedule was retained and a 2% increase for a non-indexed schedule. For the increment schedule, it proposed a salary schedule with a \$36,604 base, vertical increments of \$662, horizontal increments of \$1,840, and a top salary of \$80,306. There would be 50 steps in each column. (Columns are the same as currently found in both the elementary and high school contracts.)

In addition, the language for the section was taken from the current elementary school contract. The District proposed giving the Superintendent latitude in the initial placement of teachers. It also sought a provision calling for no step movement in the event a successor contract has not been agreed to.

**Position of the Association.** The Association proposed total new money of 4.25% base increase in the first year, using the 4x5 indexed salary structure currently in effect at the elementary schools. Teachers currently on the 2016-2017 indexed scheduled (those teachers in the elementary schools) would remain on their 2016-2017 step for the 2017-2018 school year. The Association would give teachers at the high school a new money wage increase of 4.25% in the first year and place them on the step and column nearest to that amount on the salary grid. In year two, there would be 4.25% total new dollars, inclusive of step movement.

The Association used the language in the elementary school contract as a base, but added components contained in the high school contract relating to teaching extra periods and serving

as team leader. It also added a section requiring step movement in the event a successor contract has not been negotiated.

**Discussion.** During the forty years I have served as a mediator, one of the most continuous debates has been the form and shape of the teacher salary schedule. One of the biggest arguments concerns whether the schedule should utilize an indexed or increment system. An indexed system normally requires more money to fund every year, depending on the placement of the teaching staff. In a 4x5 index similar to that contained in the elementary school contract, the cost of moving teachers on step can range from as little as 1% to as much as 3%. If settlements are small, the cost of step movement can be greater than a normal wage increase. Over the last 10 years, when wage increases have been relatively low, numerous districts have frozen step movement and/or manipulated the starting salary, in an effort to fund a reasonable salary increase for all members of the staff and raise the starting salary in an effort to attract and retain new teachers.

In an increment system, the cost of step movement is normally much lower than an index system. The dollar amount in the increment is often lower than .04 percent of base. Furthermore, the increment does not grow automatically with each increase in the base. Any change in the size of the increment must be negotiated; usually both side are more focused on the base increase.

In an index system, the top salary is often about twice the starting salary. In an increment system, the differential between top salary and starting salary is often less. This has an impact on the amount of money a senior teacher can make, particularly in relation to teacher with less experience. The increment system allows a district to increase the starting salary significantly.

This brief analysis makes it easy to understand why teacher unions often prefer an indexed system while school districts often favor an increment system. There clearly are advantages and disadvantages to both approaches. It is a rare occasion when the parties agree to change an existing salary structure. If it is changed, it is often after a very contentious set of negotiations that may involve a strike or threatened strike.

In most situations, a factfinder would recommend the continuation of the current salary structure. What makes the instant matter unusual is the existence of two different structures – an index system at the elementary schools and an increment system at the high school. Both sides want to have a unified structure for the entire District. Accordingly, the recommendation must address the structure of a unified salary schedule.

One of the most important criteria to determine the appropriate approach to the salary structure is an analysis of configuration in neighboring school districts and throughout Vermont. An examination of other contracts in Addison and Rutland Counties makes it clear that an indexed schedule is almost universal,<sup>3</sup> with the vertical index ranging from .03 to .045 and the horizontal index ranging from .033 to .05. None of the contracts utilize an increment system, as currently used by the high school. In almost all contracts in Addison and Rutland Counties, the spread between the beginning salary and the top salary is about 2.0. At the high school, the top salary is just under 1.8 times the beginning salary, taking 25 years to get to the top salary. None of the salary schedules have a system with anything close to the 50 steps proposed by the District.

If one looks at most of the teacher contracts in Vermont, it would be highly unusual to

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<sup>3</sup> It appears that Rutland Southwest is moving from an increment system to an indexed system, as noted in Appendix D of their 2014-2017 CBA.

see a contract with 30 steps, let alone 50 steps. Fifty steps defeat the purpose of a salary schedule by implying through the salary structure that teachers never reach the top position on the schedule until they have 50 years of service. In most schedules, teachers get to top of scale in 17 to 23 years; normally the highest salary is about double the entry level.

Observing comparable data in both Addison and Rutland Counties and the rest of Vermont, there is no justification to recommending anything other than an indexed schedule. Since one is in place in the elementary schools, it makes no sense to deviate from this schedule. In making such a recommendation, it should be understood that the parties may wish to discuss whether changes can be made in the schedule to insure step movement is affordable within the context of an overall package. It makes no sense for the parties to agree on a schedule and then have to make adjustments to the schedule because the cost of step movement is greater than what would be a “reasonable” wage increase.<sup>4</sup>

Having made a recommendation as to the structure of the schedule, the appropriate percentage salary increase must also be discussed. The District has proposed a one year increase of 1.5% (based on an indexed salary structure). The Association has proposed a two year increase of 4.25% total new money each year. Both sides are unrealistic.

The District would argue that the consumer price index (“CPI”) is one of the criteria that the Factfinder should use in his analysis. On this basis, the District would argue that its proposal is consistent with the current CPI, which is now slightly less than 2%. Additionally, the District maintains that school district budgeting concerns in Vermont justifies a settlement in the range of

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<sup>4</sup> “Reasonable” is difficult to define. However, as an example, if step movement costs more than 10% and the average wage increase in the surrounding area is 5%, the parties may have to re-evaluate such index system. Please note that unrealistic numbers have been purposely here for illustrative purposes.

what it offered. It also notes that Rutland County lags behind the rest of the State in terms of resources and ability to pay.

The Association, on the other hand, would argue that the settlements in neighboring districts should be the principal barometer for determining the appropriate wage increase. It notes that all of the settlements in Addison and Rutland Counties have been at least 3% per year for a two year contract.<sup>5</sup> Many of these are well in excess of 3% per year. Elsewhere in the State, the wage increases appear to be in this range.

All the above statistics point to mixed messages in terms of recommending the appropriate salary increase. Depending on which criteria are used, one can get very different results. However, it is important for any district to maintain salary consistency both internally within the District and with other teachers in both surrounding Districts and throughout the State. Accordingly, settlements in other school districts become the most important variable in determining the appropriate wage increase for this community. If one compares the salary increases in both the elementary schools and the high school to CPI in recent years, the salary increases for teachers have routinely been slightly higher than the CPI.

Observing that almost all other neighboring Districts contain wage increases for 2017-2018 at 3% or higher, there is no justification for a settlement lower than 3%. Given the District's bleak view of the economy, particularly in Rutland County, there is no justification to go higher than 3%, as proposed by the Association.

In establishing the salary schedule, one must look at how the 3% wage increase should be

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<sup>5</sup> Both the teachers and support staff in Addison Rutland Supervisory Union agreed to a one year contract with a 4.5% wage increase, in part because of the need to combine school districts within the supervisory union. All other settlements listed were for two years.

applied. For the elementary schools, the parties should determine the cost of step movement and use any remaining money to increase the base. The parties may want to discuss whether the starting salary is realistic for the area. If not, it may discuss either changing the index or agreeing to hire teachers with no experience at Step 2 or 3. This may put the starting salary in line with the current starting salary at the high school.

For the high school, which currently has a dramatically different salary schedule, each teacher should receive a 3% pay increase and then be placed on the step closest to their current salary times 3%. The net result should be very close to 3%. If the total wage increase is significantly higher or lower, the parties should use a different multiplier until an average 3% wage increase is reached.

There is also a difference in the proposals concerning length of contract: the District has proposed a one year contract; the Association has proposed a two year agreement. Given the reality that it is early November and the parties should have already started negotiations for the 2018-2019 school year, it would be sensible for the parties to agree to a two year contract. My analysis of the settlements in the immediate area for 2018-2019 school year indicates a 3% settlement would be appropriate. The parties should make a determination regarding the cost of step and then increase the base by a sum to generate a total wage increase of 3%.

It must be emphasized that my recommendation considers not only comparable increases in other districts but also the consumer price index, fiscal realities of the District, and the overall compensation of the teachers in the District. These are the criteria required to be considered by factfinders in the municipal and state laws. The intent of this recommendation is to balance these criteria. While such balancing is not an exact science, this recommendation is intended to



provide a fair and acceptable agreement to both sides.

Regarding the language changes, my recommendation is to use the contract at the elementary schools as a base for this section of the new contract. The parties need to discuss whether provisions for team leader and working extra periods should be included in the contract. The parties did not provide the fact finder with enough information to make a reasoned recommendation.

Finally, under Vermont law, if a contract is not settled at the end of its term, the terms and conditions will continue unless otherwise specified. This means that teachers receive step movement at the beginning of the school year even if the contract is not settled. The Association made a proposal area that would clarify any possible ambiguity in the State law, making it very clear that step movement would be automatic. The District proposed language that would allow step movement only when the parties specifically agree to step movement in a subsequent contract.

The difference in the above approach has been hotly negotiated in numerous school districts throughout the State. Most of the time, the status quo has prevailed, meaning that step movement continues beyond the term of an expired contract. There is no justification to change the current language that exists in the elementary school contract.

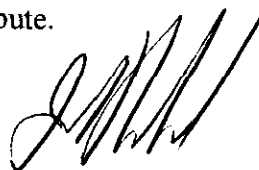
**Recommendation.** The parties should agree to 3.0% new money in the first year of the contract and 3.0% for the second year, using the current salary schedule and index at the elementary schools. This means for elementary teachers, step should be granted first; left over money will be applied to the base. At the high school, teachers should be placed on the closest step (in the correct column) to their current salary multiplied by 1.03.

No other changes should be made from the language currently contained in the elementary schools contract.

**CONCLUSION**

Throughout this Report, I have attempted to balance the interest of the employees, the School District, and the citizens of the community. It is my hope that this Report will form the basis of a settlement for the parties in this contractual dispute.

Dated this the *1<sup>st</sup>* day of November, 2017,



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Ira B. Lobel, Esq., Fact Finder  
Albany, New York

ARTICLE VIII – PROPOSED BOARD LANGUAGE  
Teacher Evaluation

8.1 MRUUSD Schools use staff evaluation to:

- Advance educational performance objectives;
- Assist teachers in pursuit of professional growth;
- Remediate and redirect teachers in need of improvement.

8.2 **Resources:** Special attention, assistance and guidance in classroom technique, shall be provided to each new teacher. All available resources, including district and administrative resources, as well as the experience and diverse abilities of all district teachers, should be utilized to help orient the new teacher.

8.3 Teachers shall participate in an annual evaluation process which shall be administered by the administration in accordance with the MRUUSD "Plan of Evaluation and Supervision of Professional Educators", which is incorporated by reference herein. This evaluation process shall provide the basis for judging the quality of a teacher's work performance.

8.4 All formal monitoring and evaluation of the work performance of a teacher shall be conducted openly and with the knowledge of the teacher by the designated Administrator and shall include written documentation in a teacher's personnel file as outlined in the Plan of Evaluation and Supervision of Professional Educators. If other personnel are involved in observation and documentation of performance, teachers will be notified in advance.

8.5 A teacher will be given a copy of any written observation or evaluation report within the parameters detailed in the Plan of Evaluation and Supervision of Professional Educators. A teacher will be entitled to attach a written response to such reports, and will be entitled to a conference to discuss said reports at the option and request of the teacher. Copies of correspondence pertaining to observations and/or evaluation reports which are given to a teacher, shall indicate whether or not material has been placed in the personnel file.

8.6 Modifications to the Plan will be distributed to each Association President for review of alignment with Master Agreements and the Association Presidents will have the opportunity to provide feedback and insight in this regard.

8.7 Any modification to be implemented, unless mutually agreed-upon for early implementation by the Superintendent and Association Presidents, will take effect in the school year following the revision decision.

*Explanation: This contains largely the same language from the previous agreement, with necessary district names and areas of responsibility changed for accuracy.*

ARTICLE IX – PROPOSED BOARD LANGUAGE  
Teacher Work Year

- 9.1 The work year for the purpose of teacher employment shall be 185 days as follows:
- A. One hundred seventy-seven (177) teaching days.
  - B. Five storm or emergency days will be scheduled, in addition to the above 177 days, as part of the regular school year. Any unused days shall be deducted in June to maintain the above 177 days. Also, additional storm days may be added in June or other mutually agreeable times when necessary to meet the required 177 teaching days.
  - C. Eight (8) days for the purpose of parent conferences, curriculum and staff development activities, and meetings allocated as follows:
    - 1. Five (5) days as directed by the Administration.
    - 2. Two (2) full days shall be used for Parent-Teacher conferences.
    - 3. One (1) Teacher Work Day scheduled the day prior to the first day of student attendance to be utilized by staff for the purpose of preparing for start of the school year.

*Explanation: This article is modified slightly to standardize the number of teaching and non-teaching days across the district. Previously, the high school total was 186 days, as elementary total was 185. The number of student contact days also varied. This article also formalizes a "Teacher Work Day" set aside prior to the first day of student attendance.*

Draft Presented to Factfinder

ARTICLE X – PROPOSED BOARD LANGUAGE  
Work Day

10.1 Length of the regular workday for full-time teachers shall be seven and one half (7.5) hours. This time frame shall not include out-of-school preparation and planning time, or field trips and other class activities that go beyond the regular school day

10.2 Part-time Teachers shall be assigned direct teaching activities and planning time based upon a pro-rated share of a regular workday and shall share in other assigned duties.

10.3 Teachers who are assigned to more than one school in a single day will not be required to work more than a 7.5 hour workday.

10.4 Teachers will not be assigned to more than two (2) schools unless by mutual agreement between the teacher and administration. Some staff, including, but not limited to SLP, OT/PT, EEE, School Psychologist, and other District-Based roles will serve multiple schools as required in the job description of the position.

10.5 Teachers who are required to travel from one school building to another school building within a single workday shall receive mileage reimbursement for their travel. Mileage between schools will be paid at the Federal Reimbursement Rate according to a table provided by the Administration and after submission of any required forms.

10.6 Teachers will be provided with a 30-minute, duty free, lunch period daily.

10.7 Teachers shall be assigned lunch, recess, bus or other necessary duties in an equitable manner.

10.8 Each full-time teacher shall have scheduled, daily instructional planning time averaging at least 40 minutes within the normal workday. If the scheduled planning time is not available, due to lack of coverage on a given day, the Administrator will make every effort to provide each teacher with his/her 40 minute daily planning period. Administration shall take into account the needs of students in assigning caseloads and case management responsibilities in an equitable manner. Equity for this Article will be determined collaboratively between educators and administrators with any disputed decisions to be made by the Superintendent.

10.9 Meetings: The administration may schedule meetings outside the normal workday. Said meetings should be limited to one (1) time per week, except for emergencies or when changed by mutual agreement with the teachers involved. Every effort will be made on the part of the administration to limit before school meetings to forty-five (45) minutes and after school meetings to one (1) hour in length. Meetings will be scheduled in advance when possible.

10.10 Parent meetings will be scheduled by mutual agreement between teacher and parents during non-instructional time, if possible.

10.11 The goal in scheduling IEP meetings is to do so within the regular teacher workday. However, given that parent schedules must be accommodated by law and that extenuating circumstances may require a meeting to go beyond that workday, it is possible that some meetings may occur outside of this intention. Teachers may work collaboratively with administration to shift schedules in order to compensate an individual for additional time worked.

10.12 Monthly special education administrative meetings, which require the attendance of the District's teachers, will be scheduled to be completed during the regular teacher work day.

10.13 Teachers shall not be required to attend more than three (3) evening events, to include open houses and concerts, per school year as scheduled by the Administration. Other events may be scheduled as mutually agreed upon between the Association and the Administration.

10.14 Nothing in this Agreement restricts teachers from engaging in volunteer activities with student groups beyond the time frames indicated.

*Explanation: This article streamlines conflicting language in various agreements and attempts to establish standard operations for teachers in all schools. Not all teachers had a 30-minute paid lunch previously – this article provides for that.*

Board Draft Presented to Factfinder

ARTICLE XI – PROPOSED BOARD LANGUAGE  
Substitutes

11.1 The hiring or procurement of substitute teachers shall be the responsibility of the Administration. Teachers shall follow district procedures in order to initiate that process.

*Explanation – this language is the same as in the previous agreement. However, a statement about individual districts utilizing outside contracted services has been removed as this scenario will not occur under a single district structure.*

Board Draft Presented to Factfinder

ARTICLE XII  
Teacher Assignments and Reassignments

12.1 All teachers shall be given written notice of their class and/or subject assignments for the forthcoming year at the time contracts are issued.

12.2 Special Education RSSU teachers with elementary school experience will be given first consideration for assignments in MRUUSD RSSU elementary schools. Special Education RSSU teachers with middle or high school experience will be given first consideration for assignments in the MRUUSD RSSU middle and high school.

12.3 Those teachers whose employment is transferred from any individual school district within the MRUUSD RSSU to the MRUUSD RSSU School District shall retain all wages, seniority, benefits, and accumulated leaves to which he/she was entitled at the time of the change of the employer unless otherwise negotiated. ~~Should the MRUUSD RSSU cease to be the employer of said teachers, due to changes in legislation and/or governance, said teachers will be transferred back to their original employers should they exist and retain all wages, seniority, benefits, and accumulated leaves to which he/she was entitled at the time of the change of the employer.~~

12.4 RSSU Teachers shall be assigned to a school for purposes of attending faculty meetings and open house meetings.

12.5 Special education teachers: Before any change in assignments from one school building to another school building within the MRUUSD RSSU occurs, Administration will seek volunteers for said change in assignments unless the Administration deems it necessary under the circumstances to assign a special educator teacher based on a special skill set that they possess.

12.6 Should a teacher be denied a request for reassignment, the teacher shall have the right to a written explanation from the Superintendent as to the reason for denial, if requested by the teacher.

12.7 All vacancies shall be prominently posted in the school building and a copy sent to the Association President. If vacancies occur during the summer recess, the Superintendent or his/her designee will notify the President or his/her designee by certified mail.

12.8 When teachers are reassigned or their room assignment is changed after June 15, they will be compensated for a minimum of two days up to a maximum of five days for preparation and reorganization for the new assignment. This per diem shall be at the rate of 1.185% of the teacher's annual salary. Total days shall be determined by the Board.

12.9 Reassignments: The Principal, with the consent of the School Board, shall determine and implement all reassignments in level or subject matter. A teacher who wishes to be considered for a reassignment shall submit such a request in writing. Teachers involved in reassignments shall have an opportunity to discuss the pending reassignment with the Principal or the School Board at the teacher's request. All vacancies, including administrative, shall be promptly posted in the school and a copy electronically sent to the Association President(s). Members of the Association, Teachers who apply for a vacancy at Mill River Union High School and who are qualified, will be interviewed prior to candidates from outside the District system.



ARTICLE XVIII – PROPOSED BOARD LANGUAGE  
Severance Pay

18.1 Teachers employed in the district as of 12/31/15 (elementary and special education) and 12/31/16 (MRUHS) will continue to accrue severance benefits as designated in the 2014-15 Elementary Teacher Agreement and the 2014-2016 MRUHS Teacher Master Agreement. A copy of said severance benefits shall be placed in the individual employment file of affected teachers.

18.2 Elementary teachers hired on or after January 1, 2016, with one (1) full year of service or more shall receive a severance payment of \$40.00 for each day of unused, accumulated leave up to a maximum of 185 days. MRUHS teachers hired on or after July 1, 2017, with one (1) full year of service or more shall receive a severance payment of \$40.00 for each day of unused, accumulated leave up to a maximum of 185 days.

*Explanation – this article takes a shift that occurred in the last elementary agreement – to grandfather pre-existing employee severance provisions while creating new terms for new hires, and applies it to all teachers in the district.*

Second Draft Presented to Factfinder