

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

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

**:  
: CASE NO. 2014-MED-05-0739**

**ALLEN EAST EDUCATION  
ASSOCIATION**

**:  
:  
: FACT FINDING REPORT  
: Submitted by John F. Lenehan,  
: Fact Finder, January 4, 2016  
: (Via Email)**

**Employee Organization,**

**and**

**ALLEN EAST LOCAL SCHOOL  
DISTRICT BOARD OF EDUCATION**

**:  
:  
:  
:  
:  
:  
:**

**Employer.**

**Association Representative:**

**Employer Representatives:**

**Patricia A. Johnson  
Labor Relations Consultant  
Ohio Education Association  
25568 Elliott Road  
Defiance, Ohio 43512  
Phone: (419) 784-9588, (800) 942-1634  
Email: [johnson@ohea.org](mailto:johnson@ohea.org)**

**Gregory B. Scott (0020248)  
Elizabeth A. Braverman (0088454)  
Scott Scriven LLP  
250 East Broad Street, Suite 900  
Columbus, Ohio 43215  
Phone: (614) 222-8686  
Fax: (614) 222-8688  
Email:  
[gregory@scottscrivenlaw.com](mailto:gregory@scottscrivenlaw.com)  
[elizabeth@scottscrivenlaw.com](mailto:elizabeth@scottscrivenlaw.com)**

**SERB:**

**Email:  
[Mary.Laurent@serb.state.oh.us](mailto:Mary.Laurent@serb.state.oh.us),  
[med@serb.state.oh.us](mailto:med@serb.state.oh.us)**

## **FINDING AND RECOMMENDATION**

### **I BACKGROUND**

On November 3, 2015, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of Allen East Education Association and Allen East Local School District (Case No. 2014-MED-05-0739). A Fact Finding Hearing was held on December 7, 2015, 9:30 a.m., at the Harrod Ohio Community Center, 9520 Harrod Road, Harrod, Ohio 45850. The Allen East Education Association (“Association”, “Union”, or “Employee Organization”) was representative by Patricia A. Johnson, Labor Relations Consultant, Ohio Education Association. The Allen East Local School District Board of Education (“Employer”, “Board” or “School District”) was represented by Gregory B. Scott and Elizabeth A. Braverman, Attorneys, Scott Scriven LLP. In attendance on behalf of the Association were: Matt Whitman, OEA Research Department; Clay Casey, Science Teacher; Melany Knippen, French Teacher; and, Mike Esmonde, Fifth Grade Teacher. Also, in attendance on behalf of the Employer were: Mel Rentschler, Superintendent; Rhonda Zimmerly, Treasurer; Russell King, Board Member; and, Kevin Dues, Board Member.

Although the possibility of mediating and settling the outstanding issues was discussed, the parties decided that it would be more productive to proceed with the hearing. At the conclusion of the hearing, the parties agreed that the Fact Finding Report would be issued via email to the parties’ representatives and SERB on January 4, 2016. The following report is the Finding and Recommendation of the Fact Finder regarding the outstanding issues.

#### **A. Description of the Parties and Bargaining Unit**

The parties are the Allen East Education Association, affiliated with the Ohio Education Association and the National Education Association, and the Allen East Local School District Board of Education. The Association is a deemed certified unit and the sole and exclusive bargaining representative for all professional, non-supervisory licensed personnel, both full-time and regular part-time employed by the Board.

The Allen East Local School District Board of Education is the governing body for the Allen East Local School District established and operating under the provisions of the Ohio Revised Code. The school district is located in eastern Allen County, Ohio, abutting Ada Exempted Village and Upper Scioto Valley school districts. Based upon information contained in the Ohio

Department of Education's F2014 District Profile Report, the district covers seventy-three (73) square miles, and its average daily pupil membership is one thousand fifty-two (1,052).

## **B. History of Bargaining**

The parties last negotiated agreement covered the period from July 1, 2011 through June 30, 2014. In April and May 2014, the parties discussed arrangements and scheduling for the negotiation of a successor agreement and held the first negotiation session on June 24, 2014, at which they exchanged proposals. After two more negotiation sessions, the parties proceeded to mediation under the "MAD" provided in their Agreement, using FMCS commissioner Kevin Moyer from Toledo. They met with the Federal Mediator two times in the fall of 2014. Subsequently, they attempted negotiations two more times without the mediator, and reached tentative agreements on all items except salaries and the duration of the agreement.

On November 19, 2014, the Board gave the Association its last, best and final offer, which was rejected by the Association. The Board then, at its special meeting held on December 8, 2014, unilaterally implemented its final offer and made a 1% increase in base salary and a one-time lump sum stipend to 25 teachers, who were not receiving a step increase for experience, retroactive to the beginning of the 2014-15 school year.

In response to the Employer's unilateral action, the Association filed an unfair labor practice charge with SERB on February 7, 2015, asserting that the parties had not been at ultimate impasse and therefore the Employer's implementation was premature. The parties negotiated a settlement of the charge in June, 2015, which SERB approved in an Order. Relevant to this Fact Finding is paragraph 6 of that settlement agreement, which provided:

"No AEEA bargaining unit member will lose compensation that he/she was paid for in 2014-15 school year as a result of this settlement. In the interest of fairness, and without altering the *status quo* for the bargaining as set forth in paragraph 1, *supra*, the unilaterally implemented increases for the 2015-2016 school year will continue until a successor agreement is negotiated in accordance with R.C. Chapter 4117. "

The parties returned to the bargaining table using an agreed upon mediator. In the fall of 2015, the parties met with Mediator Brian Eastman twice without reaching agreement, but agreed to submit the unresolved issues to fact-finding pursuant to Section 4117.14 (C) of the Ohio Revised Code.

\

**C. Agreed to or Resolved Issues**

Based upon the Settlement Agreement in SERB Case No. 2915 –ULP-02-0036 and the representation of the parties all outstanding language issues have been resolved and the only remaining issues are wages and the duration of the agreement.

Therefore, it is the finding and recommendation of the Fact Finder that all the tentative agreements are to be incorporated in this Fact Finding Report, and made a part of the parties' successor agreement.

**D. Unresolved Issues**

1. Professional Compensation- Article VI.
2. Supplemental Contracts- Article VIII.
3. Duration- Article XII E.

**II CRITERIA**

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;
- 3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

### **III ISSUES**

#### **ARTICLE VI**

#### **PROFESSIONAL COMPENSATION**

##### **Association's Position**

Since the bargaining unit employees under the Employer's unilaterally implemented collective bargaining agreement have received a 1% increase on base for the 2014-15 school year and those members who would receive no step increase for the 2014-15 school year received a lump sum payment of a \$1000, the Association is not requesting any change in the compensation paid during the 2014-15 school year. However, it is asking for a minimum of a 2% base increase for 2015-16 and 2016-17 school years, with a retroactive 2% increase effective July 1, 2015.

In support of its proposal, the Association argues that based upon the financial data set forth in the exhibits submitted into evidence at the hearing, its requests for a pay increase are well within base increases granted to public school districts across the state and in the area. In addition, the evidence demonstrates that the district has the ability to pay the increases it proposed.

##### **Employer's Position**

The Employer would agree with the Union's position that there is no change in the compensation paid during the 2014-15 school year. It, however has proposed a 1% increase in the base salary on the regular teacher salary schedule, to the initial Bachelor's Degree step being \$34,533 in 2015-16, \$34,879 in 2016-17 and \$35, 228 in 2017-18. In addition, it proposes to pay one-time lump sum stipends to specified individuals who will not get "step increases" annually in the amount of \$1,000 each. (See Employer's Exhibits, Appendix, Tab 5, page 58 proposed Negotiated Agreement to be effective July 1, 2015 through June 30, 2018.)

The employer argues that all the factors that Ohio Law requires a fact-finder to consider, as set forth in the foregoing criteria, favor the Board's position regarding compensation. As to past agreements, it states that despite the base salary freeze for the years 2011-12 through 2013-14, the bargaining unit members have had competitive and comparable raises over the short term, mid-term and long term. The increases at the beginning, mid-career, and late career salaries have increased strikingly over the last 15 and 30 years.

As to comparables, the employer claims that as a small and rural non-affluent school district, its existing salaries ( with the Board's 1% increase last year and 1% this year are competitive with the school districts most like it, both in Allen County, in its athletic conference and in the Ohio Department of Education's comparable group. However, the Board recognizes and concedes, that the district does not compare as well among those school districts with respect to high pay experience teachers, especially those with more graduate hours than Masters plus 15 hours. The solution, according to the Employer, would be to add another longevity y step and/or training column, e.g., Masters plus 30 hours, but the Association did not propose that approach and does not advocate that position at this time.

The Board also implies that granting an unreasonable settlement as proposed by the Association would not be in the public interest. The teachers earn considerably higher salaries than the average or median resident of the District. The District is not destitute or the poorest in Ohio. Its residents are generally hard-working middle class people with incomes and property values below average in the county, area and the state. For this reason, the Board's and teacher's image and reputation cannot tolerate an unreasonable settlement in the minds of the residents and voters. According to the Board all three members of the Allen East Board of Education who ran for reelection last month were unopposed, despite the publicity the union had generated for the impasse and ULP dispute over the last year, demonstrating widespread public support for the Board's position. With comparable districts settling in the 1%-1.5% range for each school year at issue, it would be absurd to settle at a higher percentage just because the District looks able to afford it for the short-run.

### **Finding and Opinion**

Both the Association and the Employer have done a superb job in presenting their positions. Based upon the Position Statements, the evidence and arguments submitted at the hearing, and the criteria set forth for fact finders in making a recommendation, the following has been established.

First, the Employer has the ability to pay the increase proposed by the Association. The Five Year Forecast for the Allen East Local School District and the notes thereto submitted as exhibits by both parties indicate the availability of sufficient reserves to meet the wage increases proposed by the Association. The long range forecast through Fiscal Year 2020 shows a positive balance throughout the forecast. However, this could change depending upon a

number of variables such as state funding, new legislation that could increase costs, negotiations and other variables. The conclusion set forth in the notes to the Five Year Forecast is optimistic and relevant to the Employer's ability to pay the increase proposed by the Association. It reads as follows:

“The Allen East Local Schools are very fortunate to have received more funding for FY16 and FY17 from the state budget. Since approximately 67% of the funding for the district is from state dollars any increase is very beneficial to the overall operations for the education of our students.

The district administration will be able to plan for the future needs of our students with the financial stability obtained with the current state budget. But they will also need to be mindful that here are many risks and uncertainties that will need to be considered in the future planning as there are two new state budgets in the time period from FY18-20.

As you read through the notes and review the forecast, remember the forecast is based upon information that is known at the time that it is prepared.”

Second, the evidence submitted regarding external comparables does not make a strong case for either party's position. It is the Fact Finder's opinion that in this matter greater weight should be given to external comparables than internal comparables or other criteria. Although the Fact Finder concurs with the Employer that wages paid to its teachers are generally competitive with other comparable districts, except at the top of the salary scale, the evidence does not give strong support to the 1% increases proposed by the Employer. Nor does the evidence give strong support to the 2% increases proposed by the Association. An examination of the exhibits submitted by the parties, particularly the Employer, is informative. Employers' Exhibits 12 A through 12 E are a detailed and thorough analysis of recent salary settlements in comparable school districts.

Exhibit 12 A sets forth the recent settlements in Allen and contiguous counties. The average salary settlement is 1.35% on base for the 2015 -2016 school year, and for the years 2014 through 2017 the average salary settlement is 1.19%.

Exhibit 12 B sets forth the recent settlements in the Northwest Conference. The average salary settlement on base is 1.31% for the 2015-2016 school year, and for the years 2014 through 2017 the average salary settlement is 1.32%.

Exhibit 12 C sets forth the recent settlements in the ODE Comparison Group. The average salary settlement on base is 1.88% for the 2015-2016 school year, and for the years 2014 through 2017 the average salary settlement is 1.60%.

Exhibit 12 D sets forth the recent settlements for All Comparable Districts. The average salary settlement on base is 1.53% for the 2015-2016 school year, and for the years 2014 through 2017 the average salary settlement is 1.45%.

Exhibit 12 E sets forth the recent settlements for the Closest Comparable Districts. The average salary settlement on base is 1.50% for the 2015-2016 school year, and for the years 2014 through 2017 the average salary settlement is 1.20%.

Third, there is a paucity of evidence that granting a 2% increase and paying higher salaries than that earned by a majority of the District's population would be contrary to the public interest. In view of the current financial standing of the District, greater weight should be given the salary increases in other districts as being more relevant and material to the public interest.

In summary, based upon the Employer's ability to pay, the settlement of the ULP, that there had been no increase in base wages under the prior agreement, and that the external comparables show average wage settlements to be above 1% and less than 2%, it is the finding and opinion of the Fact Finder that the following salary increases be incorporated into Article VI of the successor CBA: 2014-2015 School Year – 1% effective beginning of the School Year ; 2015- 2016 School Year -1% effective beginning of School Year; ½ % effective the first full pay in January, 2016; 2016-2017 School Year 1.5% effective beginning of School Year.

**Recommendation**

Therefore, it is recommended that Article VI Professional Compensation read as follows:

**ARTICLE VI  
PROFESSIONAL COMPENSATION**

**A. REGULAR TEACHING SALARIES**

1. The Board shall pay full-time teachers an annual salary as set forth in the attached salary schedules. Base salary increases are as follows:

2014-2015 School Year - 1% effective at the beginning of the School Year

2015-2016 School Year - 1% effective at beginning of schoolyear; ½ % effective first full pay in January 2016

2016-2017 School Year - 1 ½ % effective at the beginning of the school year

In addition, the Board will pay a one- time lump sum stipend to each listed teacher in the amount of \$1,000.00 listed in the attachment to the Negotiated Agreement. The payment shall be made in December of each year or soon as practical after the ratification by the parties of this Agreement.

---

## **ARTICLE VIII**

### **SUPPLEMENTAL CONTRACTS**

#### **Employer and Union's Position**

The parties agree that per the existing terms of Article VIII, the base salary increases automatically will be applied to the supplemental salary factor and that there is no addition or change to be made to Article VIII.

#### **Recommendation**

Therefore, there shall be no change to the provisions of Article VIII

## **ARTICLE XII**

### **OTHER PROVISIONS**

#### **DURATION**

#### **Union's Position**

The Union is proposing a three year agreement from July 1, 2014 through June 30, 2017

#### **Employer Position**

The Employer proposes a three year agreement from July 1, 2015 through June 30, 2018. The employer states that the by virtue of its unilateral implementation of its position in December 2014 for the 2014-15 school year, the parties' SERB agreement not to rescind the 1% increase and stipends for 2014-15, and the fact that the 2014-15 school year is long since over, the Board proposes that the three-year term of any new agreement be for the period July 1, 2015 through June 30, 2018. According to the Board, the District has a long practice of three-year

prospective agreements, with both the OEA affiliate and OAPSE, and the parties relationship would no doubt be enhanced by a three-year break from the eighteen-month impasse they have experience. Further, an agreement expiring in June 2017 would have the disadvantage of requiring the parties to bargain again in only fourteen or fifteen months from now.

### **Finding and Opinion**

The Union's position is more persuasive. The Employer contributed to the delay in negotiations for a new agreement and is now seeking to benefit by a future delay in negotiations. The Employer would benefit more from a future delay than the Association. The Union's proposal would maintain the cycle of a bargaining agreement covering three year periods.

### **Recommendation**

Therefore it is recommended that Article XII Other Provisions, E. Duration read as follows:

## **ARTICLE XII**

### **DURATION**

#### **E. DURATION**

This agreement shall be effective July 1, 2014 through the 30<sup>th</sup> day of June 2017, both dates inclusive. The contract shall continue in effect for successive one-year terms until either party shall notify the other in writing of the desire to terminate or modify this agreement in accordance with Article XI I (E) of this Agreement. Upon notification of the desire of either party to so terminate and/or modify any provision of this agreement, such provisions shall expire at the expiration of the agreement or the annual anniversary thereof. For the purpose of this Agreement, a school year shall be defined as that time between July 1 and 30, inclusive. When notice is given as provided above, the negotiations process shall begin in accordance with the provisions of this contract.

## **IV**

### **CERTIFICATION**

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted on December 7, 2015. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan  
John F. Lenehan  
Fact Finder

January 4, 2016

V

**PROOF OF SERVICE**

This fact-finding report was electronically transmitted this 4<sup>th</sup> day of January 2016 to the persons named below.

**Association Representative:**

**Patricia A. Johnson**  
**Labor Relations Consultant**  
**Ohio Education Association**  
**25568 Elliott Road**  
**Defiance, Ohio 43512**  
**Phone: (419) 784-9588, (800) 942-1634**  
**Email: [johnson@ohea.org](mailto:johnson@ohea.org)**

**Employer Representatives:**

**Gregory B. Scott (0020248)**  
**Elizabeth A. Braverman (0088454)**  
**Scott Scriven LLP**  
**250 East Broad Street, Suite 900**  
**Columbus, Ohio 43215**  
**Phone: (614) 222-8686**  
**Fax: (614) 222-8688**  
**Email:**  
**[gregory@scottscrivenlaw.com](mailto:gregory@scottscrivenlaw.com)**  
**[elizabeth@scottscrivenlaw.com](mailto:elizabeth@scottscrivenlaw.com)**

**SERB:**

**Email:**  
**[Mary.Laurent@serb.state.oh.us](mailto:Mary.Laurent@serb.state.oh.us),**  
**[med@serb.state.oh.us](mailto:med@serb.state.oh.us)**

/s/ John F. Lenehan  
John F. Lenehan  
Fact Finder

January 4, 2016