

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

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In the Matter of Fact-Finding

between

FORT LEE BOARD OF EDUCATION,

Docket No. FF-2017-016

-Employer-

***FINDINGS OF FACT
AND RECOMMENDED
TERMS OF SETTLEMENT***

and

FORT LEE EDUCATION ASSOCIATION,

Issued: October 27, 2017

-Association -

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Fact Finder: Joseph Licata, Esq.

Date of Meetings: January 26, 2017 and April 20, 2017

Time of Meetings: 4:00 p.m.

Location of Meetings: Fort Lee Board of Education
Administrative Offices

APPEARANCES:

For The Board of Education

Anthony Sciarrillo, Esq.

Dennis McKeever, Esq.

Sciarrillo, Cornell, Merlino, McKeever & Osborne, LLC

For The Association

Richard E. Loccke, NJEA UniServ Field Representative

Leigh Smargiassi, NJEA Representative

Michael DeOrio, NJEA Consultant

INTRODUCTION

The Fort Lee Board of Education (“Board”) and Fort Lee Education Association (“Association”) are parties to a collective negotiations agreement (“Agreement”) that was in effect from July 1, 2013 through June 30, 2016. The Agreement covers, among others, all certificated, non-supervisory personnel as well as non-certificated classroom instructional aides, part-time and full-time Teaching Assistants (including both 10-month and 12-month TAs).¹ The Board and Association met for negotiations on several occasions prior to reaching impasse. On March 24, 2016, the parties filed a petition to initiate impasse procedures pursuant to the rules and regulations of the New Jersey Public Employment Relations Commission (“PERC”). PERC assigned a mediator. With the impasse still unresolved, the mediator referred the matter to Fact Finding.

Subsequently, the Director of Conciliation & Arbitration informed the parties that the undersigned had been appointed as Fact Finder, pursuant to N.J.A.C. 19:12-4.3. On January 26, 2017, I met with the parties in a mediation capacity. Although some progress was made, the parties remained at impasse over, among other items, percentage salary increases, the length of the work year, health benefits and language referencing New Jersey State Statutes concerning tuition reimbursement.

The open items were formally addressed by the parties’ representatives on April 20, 2017. NJEA representatives Richard Loccke, Leigh Smargiassi and Michael DeOrio presented the position of the Association. The Association also introduced voluminous

¹ A listing of titles more specifically covered is set forth under Article I, “Recognition” (p. 2) of the Agreement.

documentary evidence contained in an exhibit binder divided into eight (8) sections (Exhibits A1-A8), as supplemented by six (6) additional Exhibits (A9-A14). Anthony Sciarrillo, Esq. and Dennis McKeever, Esq. of Sciarrillo, Cornell, Merlino, McKeever & Osborne presented the Board's position. The Board introduced thirty-six (36) exhibits.

The parties' representatives elected to close the record by way of post-hearing briefs. Briefs were received on or about June 30, 2017.

Finally, the within Report and Recommendations is issued in accordance with the PERC rules and regulations governing Fact-Finding as a means to resolve public sector negotiations impasses in the State of New Jersey.

THE PROPOSALS OF THE PARTIES

The Association

Proposals

For the Period July 1, 2016 to June 30, 2017 and July 1, 2017 through June 30, 2019

DURATION:

- 1-year contract (2016-2017) and
- 2-year contract (2017-2019)

SALARY:

- 1-year contract (2016-2017)
 - 3.5%, inclusive of the cost of increment
- 2-year contract (2017-2019)
 - 3% in each year, inclusive of the cost of increment
 - Full salary retroactivity to 7/1/2016

- No adjustment of prior Chapter 78 contributions retroactively, regardless of any salary change.

WORK YEAR:

- Amend Article XXIII.1 to read as follows:

ARTICLE XXIII TEACHER WORK YEAR

1. In-school Work Year

a. Ten (10) Month Personnel. The in-school work year for veteran teachers employed on a ten (10) month basis shall not exceed one hundred eighty-four (184) days. Specifically, no more than 180 teaching instructional days, a maximum of three (3) days of orientation held in September at the beginning of each school year, and one (1) wind-up day at the end of each school year, for maximum of one hundred eight-four days of work.

b. New Teachers are required to attend three (3) additional days of new teacher orientation prior to the commencement of the school year. The maximum in school work year for new teachers will not exceed one hundred and eighty seven (187) days. The Union will be afforded a (½) day to provide Union orientation to the new teachers during their orientation.

c. The In-school work year for Guidance Counselors, Learning Disabilities Specialists and Social Workers shall not exceed one hundred eighty eight (188) days. Guidance Counselors shall report for work the three (3) working days immediately preceding Orientation Day and a total of two (2) wrap up days after the last teaching instructional day. An additional exception, Psychologists shall serve under a ten (10) month contract extending from September 1 to June 30 of the school year.

d. Inclement Weather. Teacher attendance shall not be required when students' attendance is not required due to inclement weather.

HEALTH BENEFITS:

- The Chapter 78 tier is removed. Certified staff will full family coverage pay no more than 6.5% of base salary towards health insurance; Member/dependent pay no more than 4.5% of base salary towards health insurance; Single pays no more than 3% of base salary. All non-

certificated staff pay no more than 3% of base salary towards health insurance.

- No retroactive collection of Chapter 78 contributions from members.

TUITION REIMBURSEMENT:

- No proposal.

The Board

Proposals

For the Period July 1, 2016 to June 30, 2019

DURATION:

- 3 Years (2016-2019)

SALARY:

- 2%, inclusive of increment in each of the three years.
- Salary Guide Adjustment Bonus:

Year 1: For those employees with family coverage, a non-pensionable stipend of \$600. For those employees with member/dependent coverage, a non-pensionable stipend of \$400. For those employees with single coverage, a non-pensionable stipend of \$200.

Year 2: For those employees with family coverage, a non-pensionable stipend of \$300. For those employees with member/dependent coverage, a non-pensionable stipend of \$200. For those employees with single coverage, a non-pensionable stipend of \$100.

Year 3: Stipend Expires.

WORK YEAR:

- 183 instructional days, 4 professional development days and 1 wind-up day. Professional development days scheduled at the discretion of the superintendent.

HEALTH BENEFITS:

- All employees move to Direct 15. If more expensive to the employee, Board will pay the difference.

TUITION REIMBURSEMENT:

- All courses must be a part of a matriculated degree consistent with N.J.S.A 18A:6-8.5 with the prior approval of the Superintendent.

FINDINGS

Fort Lee Demographics

As measured by the decennial census, Fort Lee's population decreased from 35,461 residents in 2000 to 35,345 residents in 2010. Based on a 2015 average residential property value of \$523,500, Fort Lee residents pay \$10,303 in property taxes. In 2012, the average tax bill was \$9,594; 2013 - \$9,896; and 2014 - \$10,092. In 2015, Fort Lee's tax increase (2.09%) ranked 323 out of 565 municipalities, or in the lower half of all tax increases in New Jersey.

Fort Lee residents are ranked relatively high in terms of income. Median household income is \$72,341; mean household income is \$96,097; median non-family income is \$53,297; mean non-family income is \$67,256. Per capita income is \$44,996. Fort Lee ranks 142 out of 560 New Jersey municipalities in per capita income.

The Fort Lee School District

The Fort Lee School District ("District") is comprised of six (6) schools: four (4) elementary schools (#1-4); Lewis F. Cole Middle School; and Fort Lee High School. The District employs 329 teachers and 80 aides to educate approximately 3,800 students and

475 special education students. Out of 337 public high schools in New Jersey, Fort Lee ranked 84th in 2016 and 86th in 2017. With respect to the 2015-2016 school year, it is noted that 99% of Fort Lee High School students graduated and 96% went on to pursue a higher education. More than 3.8 million dollars in scholarships were awarded to the graduating class of 2016.

In the Report Card narrative concerning Lewis F. Cole Middle School, 8th grade teachers are lauded for facilitating the integration of Algebra I into 8th grade Mathematics for the first time. These teachers have aligned the Algebra I curriculum with State Standards. As it worked out, 8th grade students scored 50 points higher than the state average for Algebra I on the annual PARCC tests. The 50 point-spread also applied to the comparison of Fort Lee 8th grade students with New Jersey high school students who took the Algebra I PARCC test. As Principal Robert Daniello commented, “This is a strong testament of the power of our teachers and the commitment they have made towards the academic success and advancement of our students.”

The New Jersey Department of Education Certified Staff Report Summary compares the median years of experience among local teachers (Fort Lee), teachers in Bergen County as a whole, and teachers in New Jersey, as a whole. With respect to the 2011-2012 school year, the median years of experience of teaching in Fort Lee was 9 years. The median level of experience in teaching in the County and State was 10 years. As of the 2015-2016 school year, however, the median years of experience of a Fort Lee teacher is reported at 8 years. County experience remained at 10 years and the statewide

statistics increased from 10 years to 10-11 years.

With respect to teachers having 25 or more years of service, for the 2011-2012 school year, 12.5% of Fort Lee met that benchmark; 10.4% of teachers in the County met that benchmark; and 11.4% of teachers statewide met that benchmark. However, for the 2015-2016 school year, only 6% of Fort Lee teachers maintained 25 years or more of service. It is noted that the County statistics dropped from 10.4% to 7.8% and the statewide average dropped from 11.4% to 8%. It may be inferred from these statistics that experienced teachers have more frequently retired upon reaching retirement eligibility.

Both parties acknowledge that, since at least 2000, the Fort Lee School District has a DFG ranking of “FG”.

The Cost of the Negotiations Unit (Guide and Increment)

The guides applicable to this matter are set forth below:

Teachers

**BASE YEAR
2015-16 Fort Lee Teachers**

Salary Guide										
Step	BA	BA+10	BA+20	MA	MA+10	MA+20	MA+30	MA+40	MA+50	MA+60
1	56,030	57,030	58,030	59,530	60,530	61,530	62,530	63,530	64,530	65,530
2	56,530	57,530	58,530	59,930	60,930	61,930	62,930	63,930	64,930	65,930
3	56,930	57,930	58,930	60,330	61,330	62,330	63,330	64,330	65,330	66,320
4	58,230	59,230	60,230	61,630	62,630	63,630	64,630	66,630	66,630	67,630
5	60,230	61,230	62,230	63,730	64,730	65,730	66,730	67,730	66,730	69,730
6	62,730	63,730	64,730	68,230	67,230	68,230	69,230	70,230	71,230	72,230
7	65,230	66,230	67,230	68,730	69,730	70,730	71,730	72,730	73,730	74,730
8	67,830	68,830	69,830	71,430	72,430	73,430	74,430	75,430	76,430	77,430
9	70,730	71,730	72,730	74,230	75,230	75,230	77,230	78,230	79,230	80,230
10	73,930	74,950	75,930	78,230	79,230	80,230	81,230	82,230	83,230	84,230
11	77,230	78,230	79,230	80,730	81,720	82,730	83,720	84,730	85,730	86,730
12	80,530	81,530	82,530	84,030	88,030	86,030	87,030	88,030	89,030	90,030

13	84,230	85,230	86,230	88,230	89,230	90,230	91,230	92,230	93,230	94,230
14	88,230	89,230	90,230	92,230	93,230	94,230	96,230	96,230	97,230	98,230
15	91,980	92,980	93,980	95,980	96,990	97,980	98,980	99,980	100,980	101,990
16	95,730	97,730	96,730	100,730	101,730	102,730	103,730	104,730	105,730	106,730
	99,475	101,239	102,879	104,529	108,209	107,888	109,565	110,666	111,943	113,152

According to the March 16, 2016 agreed upon cost outs, the teacher salary guide consists of 17 steps, including “max” and 10 columns across (denoting distinct education levels achieved for purposes of horizontal salary guide movement). 22.42% of the teacher unit possessed a bachelor’s degree; 29.35% possessed a master’s degree; and 12.74% possessed a master’s degree plus 60 credits toward a doctorate. In 2015-2016, the average salaries of unit members were: \$76,803 (teachers); \$51,076 (secretaries); and \$28,417 (aides). The total cost of the teacher salary guide as of base year 2015-2016 is \$25,314,119; 1% of that cost is \$253,141. The average teacher salary is \$76,803.

The increment cost of moving through the 2015-2016 base year salary guide amounts to \$671,883, or 2.65%. The percentage costs of increment movement over the course of the proposed three (3) year agreement are as follows: 2016-2017 (2.75%); 2017-2018 (2.9%); and 2018-2019 (2.88%). Obviously, as teachers move through the guide, absent countervailing levels of attrition, the overall cost of the guide increases. In this matter, the percentage increases in the costs of the teacher salary guide over the course of the proposed three year agreement are: 2016-2017 (2.66%); 2017-2018 (2.75%); and 2018-2019 (2.90%).

Secretaries

**BASE YEAR
2015-16 Fort Lee Secretaries**

Salary Guide Step	12 Mths	10 Mths	BKPR
1	38,939	32,448	42,039
2	40,539	33,781	44,039
3	43,039	35,864	48,039
4	45,539	37,948	51,039
5	47,539	39,614	53,039
6	50,539	42,114	56,039
7	53,789	44,822	59,039
8	59,160	49,298	60,475

With respect to the 2015-2016 school year, the cost of the 8-step salary guide for secretaries is \$970,445 (based on a total of 19 secretaries). The average secretary salary is \$51,076; and 1% of the total cost of the unit in the base year amounts to \$9,704. During the 2015-2016 base year, the cost of increment movement amounted to \$24,700, or 2.55% of base. The percentage cost of moving secretaries through the established guide in 2016-2017 is 2.86%. That percentage increases to 3.66% in 2017-2018 and then drops to 1.46% in 2018-2019, the final year of the proposed agreement. Finally, the added costs of the secretarial guide resulting from increment movement are: 2.55% in 2016-2017; 2.86% in 2017-2018; and 3.66% in 2018-2019.

Paraprofessionals (Aides)

BASE YEAR

2015-16 Fort Lee Paraprofessionals

Salary Guide

Step	Non Degree	Degree
1	21,388	25,324
2	22,846	26,393
3	25,089	29,060
OG	42,764	

In the 2015-2016 base year, the total paraprofessional salary cost amounted to \$2,207,079. The average cost is \$27,520; and 1% of the total unit cost amounts to \$22,071. The cost of increment movement during base year 2015-2016 is 2.48%; and 2.79% for 2016-2017.² The paraprofessional salary guide increases in cost as follows: 2.48% in 2016-2017; 2.79% in 2017-2018; and 0% in 2018-2019.

Custodians

BASE YEAR

2015-16 Fort Lee Custodians

Salary Guide

Step	Cust	EL/NHHS	HMS	HHS	GRNDS	MAINT
1	37,814	42,064	45,064	50,064	40,064	48,064
2	39,014	43,164	46,164	51,164	41,164	49,164
3	40,214	44,214	47,214	52,214	42,214	50,214
4	41,414	45,314	48,314	53,314	43,314	51,314
5	42,914	46,514	49,514	54,514	44,514	52,514
6	44,414	47,920	50,920	56,920	45,920	53,920

² It appears that as of 2017-2108, the second year of the proposed agreement, all but 5% of the paraprofessional unit are at Step 3 (max) and the rest are Off-Guide ("OG").

7	45,914	49,164	52,164	57,164	47,164	55,164
8	47,414	50,514	53,514	58,514	48,514	56,514
9	48,914	52,814	55,814	60,814	50,814	58,814
10	50,414	54,914	57,914	62,914	52,914	60,914
11	51,914	57,014	60,014	65,014	55,014	63,014
12	53,414	59,014	62,014	67,014	57,014	65,014
13	54,914	60,914	63,914	68,914	58,914	66,914
14	56,414	62,515	65,514	70,514	60,514	68,514
15	57,914	63,914	66,914	71,914	61,914	69,914
16	59,414	65,414	68,414	72,414	62,414	72,414
17	60,614	67,414	69,414	73,414	63,914	73,414
18	63,247	67,998	70,825	74,975	65,147	73,672

Fort Lee custodians have an 18-step salary guide and a six-column differential guide, depending upon operational area of assignment. In the 2015-2016 base year, the total unit cost is \$1,112,217, yielding an average salary of \$60,120. A 1% increase to the guide amounts to \$11,122. The cost of increment is 1.2% in base year 2015-2016; 1.06% in 2016-2017; 1.06% in 2017-2018; and 0.69% in 2018-2019. As a result of incremental enhancements to the custodian salary guide, I note that the cost of the guide increases by 1.2% in 2016-2017; 1.06% in 2017-2018; and 0.94% in 2018-2019.

Total Unit Cost.

The increase in total costs of the bargaining unit as a whole over the proposed term of the new agreement is as follows:

Title	Base Year	Year 1 (2016-2017)	Cost	Year 2 (2017-2018)	Cost	Year 3 (2018-2019)	Cost
Teachers	\$25,263,508	\$25,935,485	2.66%	\$26,647,436	2.75%	\$27,420,614	2.9%
Secretaries	\$970,445	\$995,145	2.55%	\$1,023,645	2.86%	\$1,061,129	3.66%
Custodians	\$1,112,217	\$1,125,575	1.2%	\$1,137,458	1.06%	\$1,148,191	0.94%
Paras	\$2,207,079	\$2,261,861	2.48%	\$2,325,069	2.79%	\$2,325,069	0%
TOTAL	\$29,553,249	\$30,318,066	2.59%	\$31,133,608	2.69%	\$31,955,003	2.64%

The Prior Memorandum of Agreement (7/1/13 – 6/30/16)

Although the term of the prior agreement was for three years, July 1, 2013 to June 30, 2016, the parties agreed upon two salary increases – each one spanning 18 months. Effective February 1, 2014, the base year salary guide was improved by 4%, inclusive of increment. Effective February 1, 2015, the base year salary guide was improved by 3.8%, inclusive of increment. Presumably, the cost of increment each year factored into the allocation of the agreed upon salary increase percentages. No other economic increases were included in the MOA. However, the Association agreed to withdraw Grievance No. 2-2014 regarding high school work schedules.

Budgetary Factors

The average tax bill in Fort Lee has increased from 9,594 in 2012 to \$10,303 in 2015. In 2014, the tax bill increased from \$9,896 to \$10,092 or 1.98%. In 2015, the tax bill increased from \$10,092 to \$10,303, a 2.09% increase. The local tax levy grew as follows: \$52,275,777, or by 2% (2012-2013); \$53,321,293, or by 2% (2013-2014); \$55,438,424, or by 3.97% (2014-2015); \$57,177,129, or by 3.14% (2015-2016); and \$58,320,672, or by 2% (2016-2017).

The District 's total operating budget from 2014-2015 shows the District budgeting more funds than that revealed as necessary in the corresponding audits, as follows: \$60,497,317 vs. \$59,998,540 (-1.81%) in 2014-2015; \$60,374,226 vs. \$59,747,265 in 2015-2016 (-0.42%); and \$63,135,352 vs. unknown, but a 4.57% increase in operating budget over 2015-2016.

In examining state aid, the following table illustrates a decreased overall level of state aid before and after 2010-2011:

STATE AID			
<u>YEAR</u>	<u>AMOUNT</u>	<u>DIFFERENCE</u> <u>(\$)</u>	<u>DIFFERENCE</u> <u>(%)</u>
2007-2008	\$3,180,969		
2008-2009	\$3,212,086	\$31,117	0.98%
2009-2010	\$3,212,086	\$0	0.00%
2010-2011	\$385,683	(\$2,826,403)	(87.99%)
2011-2012	\$951,643	\$565,960	146.74%
2012-2013	\$1,946,449	\$994,806	104.54%
2013-2014	\$1,946,449	\$0	0.00%
2014-2015	\$2,046,454	\$100,005	5.14%
2015-2016	\$2,045,454	(\$1,000)	(0.05%)
2016-2017	\$2,101,283	\$55,829	2.73%

As detailed and illustrated above, state aid was cut in 2010-2011 by over \$2.8 Million, which was approximately 88% of the total state aid received by the Board. While the District has experienced incremental increases in state aid since this major cut, the District has not been able to make back the difference between the state aid amounts it currently receives (\$2,101,283) and the amounts it received prior to the cut (\$3,212,086). Perhaps as a coping mechanism, the Board has anticipated in its budgeting practices less state aid than what was actually received -- by \$642,329 in 2012-2013; by \$538,926 in 2013-2014; by \$36,890 in 2014-2015; and by \$554,616 in 2015-2016. A significant

portion of the difference, however, is comprised of additional extraordinary aid funds, which is typically dedicated to funding special education.

In the Unrestricted Miscellaneous Revenues account, the District realized in excess of what was budgeted by \$441,232 in 2013-2014 (\$126,100 vs. \$567,332); by \$273,093 in 2014-2015 (\$88,730 vs. \$361,823); and by \$72,210 in 2015-2016 (\$81,300 vs. \$153,510). The District budgeted only \$56,032 for 2016-2017.

In terms of actual revenues in relationship to expenditures, the District was “in the black” by \$151,235 in 2012-2013; \$1,088,847 in 2013-2014; \$833,388 in 2014-2015; and \$722,944 in 2015-2016. The difference between actual revenues and expenditures shows that the District spent \$511,591, on average less than what realized in revenues.

The District’s Budgeted Fund Balance or surplus account shows that the District did not have available surplus in 2015-2016. With respect to unanticipated surplus, i.e., above and beyond what was anticipated in the budget, it is noted that unanticipated surplus amounted to \$1,308,830 in 2012-2013; \$1,144,139 in 2013-2014; \$543,235 in 2014-2015; and, most significantly, \$1,069,241 in 2015-2016.

According to the Association’s data, revenue available in the 2015-2016 budget as a potential funding source for the first year of the Agreement between the parties, i.e., 2016-2017 amounts to \$2,610,499 (excluding extraordinary aid and including the difference between budgeted health benefit contributions from members to actual health benefit contributions from members), or 8.83% of total base salaries. When factoring in

additional health benefit contributions in 2016-2017, an additional \$300,000 is realized, for a total of \$2,910,499, or 9.85% of the total unit base in 2015-2016.

However, the Board opines that its conservative budgeting strategy has become part of its ability to fund unanticipated and anticipated future financial pressures. It is not designed to shore up additional monies for teachers beyond what is budgeted or beyond the 2% levy cap. For example, approximately 25% of the District's budget must encompass the cost of meeting the increasing costs of providing special education programming. In 2016-2017, special education costs exceeded the previously anticipated and budgeted amount by 12%. The Board has increased the in-District inclusion models, such as integrated preschool classroom, enhanced in-District related services, and implemented collaborative special education teaching models – all aimed at bringing back in-District classified students to the least restrictive – and usually more physically responsible – placement. The Board seeks flexibility in budgeting to accommodate future, unplanned increases and mandatory special education expenditures, with due regard for the limitations imposed by the 2% tax levy cap.

The Board further observes that it has increased budgetary responsibilities to fund capital improvement projects. The Board had estimated that on June 30, 2016, the capital reserve account balance would be \$2,541,706. However, by June 30, 2017, the capital reserve account balance was depleted to \$889,756 as payments were made to fund capital improvement projects due to the substantial increase in the District's enrollment. The

District must build more classroom spaces, renovate buildings and pay for all the projects necessary in addressing the growing enrollment of students.

Salary Guide Comparable Salary Statistics

Bergen County (2015-2016)

The current salary guide encompasses 17 steps. According to the Association's data, a 17-step guide ranks 26th out of 56, the average being 17 steps. The minimum salary of a Fort Lee teacher with a BA is \$56,030, which ranks 1st out of Bergen County's 56 school districts. The average minimum BA teacher salary in Bergen County is reported as \$49,781. Fort Lee teachers' BA maximum salary of \$99,475 ranks 1st out of 56 Bergen County school districts. The average teacher BA maximum salary in Bergen County is reported as \$85,223.

Fort Lee's minimum MA salary is reported at \$59,530, which ranks 7th out of 56 school districts. The average MA minimum salary in Bergen County is reported as \$49,781. Fort Lee teachers earn a maximum MA salary of \$104,529, which ranks 3rd out of 56 school districts in Bergen County. The average maximum MA salary in Bergen County is reported as \$85,223.

Fort Lee's MA+30 minimum salary is \$62,560, which ranks 12th out of 55 measured school districts in Bergen County. The average MA+30 minimum teacher salary in Bergen County for 2015-2016 is \$59,171. The MA+30 maximum salary in Fort Lee is \$109,565, which ranks 6th out of 55 school districts in Bergen County. The average MA+30 maximum salary in Bergen County is \$101,141.

District Factor Grouping (DFG-FG)

Fort Lee's 17-step salary guide ranks 42nd out of 75 DFG-FG schools reporting, the average being 16 steps.

The Fort Lee minimum BA teachers' salary, \$56,030 ranks 1st out of all New Jersey DFG-FG school districts. The average DFG-FG salary is \$50,535. Fort Lee's maximum BA salary of \$99,475 ranks 2nd out of all BA maximum salaries reported in DFG-FG school districts, the average being \$80,533.

Fort Lee's MA minimum salary, \$59,530 ranks 3rd out of all DFG-FG districts, the average being \$54,354. Fort Lee's MA maximum salary, \$104,529 ranks 1st out of all DFG-FG school districts, the average being \$85,054.

Fort Lee's MA+30 minimum salary, \$62,560 ranks 5th out of all DFG-FG school districts, the average being \$57,079. Fort Lee's MA+30 maximum salary, \$109,565 ranks 1st out of all DFG-FG school districts, the average being \$88,704.

Comparable Salary Settlements (2016-2017, 2017-2018 & 2018-2019).

Bergen County

Trend Setter NJEA Research, promulgated on February 23, 2017, reports settlements reached during 2016-2017 averaging 2.84% in Bergen County. Bergen County settlements addressing 2016-2017 reveal an average salary settlement of 2.75%.

The aforementioned 2.84% average settlement exceeds the cost of increment (based on the same school districts) by 0.62%. The 2.75% figure exceeds the cost of increment by 0.55%.

The average 2017-2018 teachers' salary settlement in Bergen County is 2.76% (\$2,185 in dollar terms). The Northvale School District reported the highest percentage increase (3.1%), whereas Ridgefield Park yielded the highest dollar increase, \$3,020.

According to the New Jersey School Boards Association, the average Bergen County settlements for 2016-2017, 2017-2018 and 2018-2019 are 2.73%, 2.74% and 2.79%, respectively. The Board points out the average Bergen County dollar distribution 2016-2017 is \$2,096. Also, 35 of the 53 Bergen County districts reported some form of concession which translated into a monetary savings. Most of the concessions dealt with additional time, including additional professional development days, meetings and/or parent/teacher conferences. Five Bergen County school districts achieved concessions with regard to health benefits.

DFG-FG

For 2016-2017 and 2017-2018, the average of the comparable DFG-FG school districts reported by NJSBA is 2.77% in each year.³ Only two DFG-FG districts reported settlements for 2018-2019 (at an average of 3.05%).

³ The Board relied upon NJSBA data encompassing nine (9) DFG-FG school districts, including Burlington Township (Burlington County), Nutley (Essex County), Hamilton Township (Mercer County), North Brunswick (Middlesex County), Old Bridge (Middlesex County), South Plainfield (Middlesex County), Matawan-Aberdeen Regional (Monmouth County), Ocean Township (Monmouth County) and Vernon Township (Sussex County).

DFG-FG – Bergen County

The Board presents data showing lower average settlements for DFG-FG Bergen County school districts showing Fort Lee’s relative standing in that group.

District	Ave. %	Ave. \$
New Milford	2.6% (2016-2017)	\$1712
Northvale	2.4% (2015-2016)	\$1689
Rochelle Park	2.4% (2015-2016)	\$1786
Woodridge	2.36% (2015-16) 2.47% (2016-17)	\$1811 \$1940
Fort Lee	2.6% (2013-16)	\$2132

Internal Comparability

The Association introduces the agreement governing school administrators, the business administrator, the assistant business administrator, the director of human resources services, the salary contract of the director of curriculum instruction and the Agreement between the Borough of Fort Lee and Fort Lee PBA Local 245 (2016-2020). I do not accord as much weight to these comparators as I do to Bergen County and DFG-FG school district comparators.

Private Sector Wage Comparisons

The Association introduces data from the Economic Policy Institute purporting to establish an occupational link between various private sector occupations and school teachers. I do not accord as much weight to these comparators as I do to Bergen County and DFG-FG school district comparators.

Cost of Living (CPI – NY/NJ Metropolitan)

Cost of Living data taken from the United States Labor/BLS CPI-W (New York-Northern New Jersey-Long Island) measured 257.15 in May of 2016 and 262.825 in May of 2017. This translates into a CPI of 1.98% for 2017.

Historically speaking, however, the Association points out that enhancement to the salary guide since 1997-1998 has not kept pace with the cost-of-living. In 1997, for example, the average teachers' salary in Fort Lee was reported at \$67,315. Adjusted for CPI, the average teachers' salary presently should be \$107,661, instead of \$76,653 a 23% relative loss in earning power. Using the same CPI analysis, the Association notes that BA teachers' salary presently should be \$101,000, instead of \$99,000. The teachers' salary at the MA level should have increased from \$77,000 (in 1997) to \$115,000 (presently). Instead, the MA maximum salary is reported at \$104,000, a 9.3% loss in earning power.

Duration of Agreement (Article XXVIII)

Both parties seek, in the aggregate, a three-year contract spanning July 1, 2016 through June 30, 2019. However, the Association seeks to divide the total term into two separate agreements, i.e., a one-year agreement, followed by a two-year agreement in order to facilitate a lawful modification to the Tier 4, Chapter 78 contributions formula. The Board proposes one (1) three-year agreement. Approximately 48 out of 53 (or 90.6%) of Bergen County districts reporting settlement data for 2016-2017 involve a single, three-year agreement.

Finally, six of the nine comparable DFG-FG districts report following a single three-year agreement duration.

Health Benefits (Article IX)

Chapter 78 requires unit members to contribute to the cost of premiums over a four-year phase-in of ¼, ½, ¾, and 100%, commencing with the beginning of the first contract following the passage of the law in 2011, as follows:

Salary Range	Year 1	Year 2	Year 3	Year 4
less than 25,000	0.75%	1.50%	2.25%	3.00%
25,000-29,999.99	1.00%	2.00%	3.00%	4.00%
30,000-34,999.99	1.25%	2.50%	3.75%	5.00%
35,000-39,999.99	1.50%	3.00%	4.50%	6.00%
40,000-44,999.99	1.75%	3.50%	5.25%	7.00%
45,000-49,999.99	2.25%	4.50%	6.75%	9.00%
50,000-54,999.99	3.00%	6.00%	9.00%	12.00%
55,000-59,999.99	3.50%	7.00%	10.50%	14.00%
60,000-64,999.99	4.25%	8.50%	12.75%	17.00%
65,000-69,999.99	4.75%	9.50%	14.25%	19.00%
70,000-74,999.99	5.50%	11.00%	16.50%	22.00%
75,000-79,999.99	5.75%	11.50%	17.25%	23.00%
80,000-84,999.99	6.00%	12.00%	18.00%	24.00%
85,000-89,999.99	6.50%	13.00%	19.50%	26.00%
90,000-94,999.99	7.00%	14.00%	21.00%	28.00%
95,000-99,999.99	7.25%	14.50%	21.75%	29.00%
100,000-109,999.99	8.00%	16.00%	24.00%	32.00%
110,000 and over	8.75%	17.50%	26.25%	35.00%

Fort Lee teachers commenced Tier 4 on July 1, 2016 and completed same on June 30, 2017. The first year of the new agreement(s), 2016-2017 encompasses the

completion of Tier 4 by unit members. The statutory formula sunsets after completion of Tier 4, but only may be negotiated in the contract next succeeding the one encompassing the completion of Tier 4. N.J.S.A. 18A:16-17.2; Clementon Board of Education, PERC No. 2016-10, Docket No. SN-2015-041.⁴

Under the predecessor 1.5% of base salary formula established in 2010, a teacher earning \$99,475 (top step BA 2015-2016 guide), would contribute \$1,492.13 toward the cost of family coverage with prescription benefits under the Direct 10 plan. However, after completion of Tier 4 of Chapter 78 (as of June 30, 2017), that same teacher contributed approximately 28% of the total premium costs associated with family health care benefits under the Direct 10 plan, or \$8,894.86. Of course, the District is responsible for the other 72% of the premium cost for that teacher, or \$23,106.

In 2016-2017, total premiums for the District's health benefits plans (Direct 10, Direct 15, Direct 15/25 and ETNA HMO) amounted to \$7,150,553, \$1,481,162 paid for by employee Tier 4 contributions and the remaining \$5,669,391 absorbed by the District. Tier 4 employee contributions for medical and prescription benefits combined in 2016-2017 totaled \$1,892,617 in relationship to a total cost of \$9,091,788. The remaining \$7,199,170 was absorbed by the District.

In 2017-2018, Tier 4 medical and prescription Chapter 78 contributions will amount to \$2,081,879. Total premiums will cost \$10,009,675. The District will absorb the remaining \$7,927,796. In 2018-2019, Tier 4 Chapter 78 medical and prescription

⁴ For this reason, the Association proposes the adoption of two separate contracts, the first addressing 2016-2017, and the second addressing 2017-2018.

contributions combined will cost \$2,290,067 in relationship to total premiums of \$11,001,064, \$8,710,997 of which will be absorbed by the District.

The Association submits that the average percent of premiums paid by unit members is 20.82%, taking the information which was provided by the Board. The Board estimated the average percent at 15%.⁵

The Association proposes the removal of the Chapter 78 Tier structure and replacing it with the following contribution levels for its members: certificated staff/6.5% of family coverage; 4.5% of base salary for member/dependent; and 3% base salary for single coverage. All non-certificated staff pay no more than 3% of base salary toward health insurance. Using the family coverage certificated rate of 6.5%, and, for illustrative purposes, using the salary of BA maximum for 2015-2016, \$99,475, the Association's proposal, if implemented, means that a teacher would contribute \$5,969.00 toward the premium costs of his/her health and prescription plans, or approximately \$2,925.86 less than he or she does currently. Implicit in the Association's proposal is that the Board would have to pay the difference.

The Association presents data showing that 44 New Jersey school districts have negotiated modifications to Tier 4 in varying ways in order to provide some way of relief to the requisite Tier 4 health benefits contributions from teachers. The Association also included settlements from several Bergen County school districts where Tier 4 had been modified.

⁵ One possible explanation for the difference is that the Association recognizes that not all members elect to take medical benefits from the District, e.g., instead relying on a spouse's medical plan.

Ridgewood Board of Education

Fact Finder Weisblatt recommended lump sum payments to “defray some portion of the effects of the continued Tier 4 contribution level”; specifically, \$500 to those remaining at the top step of the teachers’ guide in 2015-2016; \$250 to those remaining at the top step of the secretaries’ guide in 2015-2016; \$1,000 to those remaining at the top step of the teachers’ guide in 2016-2017; \$500 to secretaries remaining at top step for 2016-2017; \$1,500 to those remaining at the top step of the teachers’ guide for 2017-2018; and \$750 to those remaining at the top step of the secretaries’ guide in 2017-2018. In addition, Fact Finder Weisblatt separately recommended that the board pay salary increases of 2.2%, inclusive of increment (2015-2016); 2.8% increase, inclusive of increment (2016-2017); and 2.8% increase, inclusive of increment (2017-2018).

The Ridgewood Board of Education and Ridgewood Education Association subsequently entered into a MOA where they agreed that the Direct 15 plan, or its equivalent, would be the base plan for new employees hired on or after September 12, 2016, until they reach tenure, upon which they may select a richer available plan. The parties also agreed that, effective January 1, 2017, the Tier 4 percentages shall be capped at 26% for teachers and 14% for secretaries. Finally, the parties agreed upon salary increases of 1% (2015-2016); 2.7% (2016-2017); and 2.7% (2017-2018).

Fair Lawn Board of Education

The MOA between the Fair Lawn Board of Education and the Fair Lawn Education Association covers the timeframe July 1, 2015 through June 30, 2019. Salary

increases for each of the four years of the agreement included increment movement only for 2015-2016; 2.7%, inclusive of increment for 2016-2017; 2.7%, inclusive of increment for 2017-2018; and 2.7%, inclusive of increment for 2018-2019. Also, effective 2016-2017, the parties agreed that Tier 4 health insurance contributions for the bargaining unit would be calculated at the Chapter 78 Tier 4 level, but then reduced unit wide by a total of \$320,000. Similar reductions were agreed upon for 2017-2018 (\$335,000) and 2018-2019 (\$345,000).

Park Ridge Board of Education

The MOA between the Park Ridge Board of Education and the Park Ridge Education Association reflects agreement to roll back Tier 4 premium contributions to Tier 3 (after employees reach Tier 4). In order to facilitate a lawful change, the parties negotiated two memoranda – a two (2) year agreement followed by a one year agreement covering 2016-2017 (during which the change from Tier 4 to Tier 3 is reflected).

Waldwick Board of Education

The Waldwick Board of Education and the Waldwick Education Association also negotiated two separate agreements in order to effectuate a lawful modification to Tier 4. During the first agreement (covering 2016-2017), the parties were not legally able to negotiate a reduction in Tier 4 so, instead, they agreed upon a 2.96% increase in salary, inclusive of increment. In the second agreement (encompassing 2017-2019), a 2.9% increase in salary, inclusive of increment was agreed upon together with a reduction in the Tier 4 formula (no member would pay more than 26% of the premium costs).

The Association contends that the hardship on its members and comparable settlement data warrants a reduction in Tier 4 in this matter.

Conversely, the Board seeks to maintain the Tier 4 status quo. Based on data from the New Jersey School Boards Association, the Board observes that less than 5% of the districts throughout the State of New Jersey have agreed to reduce Chapter 78 contributions and those that did gained other concessions. For example, the Alpine Board of Education and the Alpine Education Association agreed to a Tier 3 rate of contributions for those who choose the Direct 20/30 and to a partial reduction for those employees who choose a plan in between the Direct 10 and the Direct 20/30. In Midland Park, the parties agreed in their 2016-2017 contract negotiations to increase parent/teacher contact time, to increase evening assignments, and to additional compensation when courses are combined. In exchange, effective 2017-2018, the contributions for employees were reduced to 95% of their Tier 4 calculation; in 2018-2019, to 90%; and in 2019-2020, to 85%.

Similarly, school districts outside of Bergen County gained concessions in exchange for partial Tier 4 relief. Many settlements involve major givebacks, for example, 15 more minutes of student instructional time each day (Lakehurst); movement to the school employees' health benefits program (Shrewsbury); and additional meeting time for teachers in combination with the adoption of a board-paid prescription plan (Monmouth Regional High School). In Monmouth Regional, additionally, employees were required to remain on Tier 4 of Chapter 78 formula for an additional period of one

(1) year after the phase-in period. At that point, Tier 3 would apply in the final year of the contract.

Instead of modifying Tier 4 with the Direct 10 intact as the base plan, the Board proposal here seeks to induce members to reduce premium costs by switching from the Direct 10 to the Direct 15 plan. The Board submits the following charts to illustrate the substantial similarities between the Direct 10 and Direct 15 plans:

	<u>Direct 10</u>	<u>Direct 15</u>
Primary Copay	\$10	\$15
Specialist Copay	\$10	\$15
Emergency Room Copay	\$25	\$50
In-Network Deductible	N/A	N/A
OON Deductible	\$100/\$250	\$100/\$250
In-Network Coinsurance	10%	10%
OON Coinsurance	20%	30%
Retail Rx Generic Copay	10%	10%
Mail 90-day Rx Copay	10%	10%

Both plans are Preferred Provider Plan (“PPO”) options that have an identical network of physicians. PPO plans do not require the selection of a Primary Care Physician or a referral in order to see a specialist. Additionally, both plans require copays for Primary Care Physician and specialist visits. However, if, for some reason a member needs out-of-network services, the plans do differ, as follows:

Annual In-Network Out-of-Pocket Maximum

The Annual In-Network Out-of-Pocket maximum is the annual limit on the amount of cost-sharing individuals or families are required to pay for covered in network health care expenses. In-network copayments,

coinsurance and the NJ DIRECT2035 in-network deductible apply toward the annual in-network out-of-pocket maximum.

Local Education and Local Government Employees

Annual In-Network Out-of-Pocket Maximum:

NJ DIRECT Plan Option	Individual In-network Maximum Out-of-Pocket	Family In-network Maximum Out-of-Pocket
NJ DIRECT10	\$400	\$1,000
NJ DIRECT15 NJ DIRECT1525 NJ DIRECT2030 NJ DIRECT2035	\$5,480	\$10,960

Retirees Annual In-Network Out-of-Pocket Maximum

NJ DIRECT Plan Option Retiree	Individual In-Network Maximum Out-of-Pocket	Family In-Network Maximum Out-of-Pocket
NJ DIRECT10	\$400	\$1,000
NJ DIRECT15 NJ DIRECT1525 NJ DIRECT2030	SHBP Retirees: \$5,499	SHBP Retirees: \$10,998
NJ DIRECT15 NJ DIRECT1525 NJ DIRECT2030	SEHBP Retirees: \$5,317	SEHBP Retirees: \$10,634

Out-of-Network Coinsurance

NJ DIRECT will pay a percentage of the reasonable and customary allowance for eligible out-of-network charges. You are required to pay the remaining percentage of the reasonable and customary allowance (coinsurance) as well as the difference between the allowance and the provider's charges. As shown below, the coinsurance level varies by plan

option. The out-of-network coinsurance is applied toward the out-of-network, out-of-pocket maximum.

NJ DIRECT Plan Option	Out-of-Network Coinsurance
NJ DIRECT10	20%
NJ DIRECT15, 1525 & 2030	30%
NJ DIRECT2035	40%

The aforementioned data pertaining to out-of-pocket costs for active and retired employees may be adjusted upward to reflect the most recent plan summary costs in effect from January 1, 2017 through December 31, 2017.⁶

The Board submits the following cost-savings analysis associated with a switch from the Direct 10 to the Direct 15 plan. The analysis details the annual employee payment made in the year since expiration of the Agreement that Direct 10 has been maintained. The table focuses on the cost for each category of coverage over three different salary levels (Step 1, Step 8, and Max,) representing teachers in various years of service, and two different scales (Bachelors and Masters), as well as the cost to the average teacher.

<u>2015-2016 (Base Year)</u>				
<i>Direct 10- Tier 4</i>				
	Single	P/C	E/S	Family
BA S. 1	\$2,020.55	\$2,697.59	\$2,986.95	\$3,451.45
BA S. 8	\$2,547.66	\$3,649.69	\$4,041.16	\$4,684.11

⁶ See, www.state.nj.us/treasury/pensions/health-benefits.shtml.

BA Max	\$3,074.76	\$4,760.46	\$5,271.08	\$7,149.43
MA S. 1	\$2,020.55	\$2,697.59	\$2,986.95	\$3,451.45
MA S. 8	\$2,811.21	\$4,125.73	\$4,568.27	\$5,423.71
MA Max	\$3,074.76	\$5,553.87	\$6,149.60	\$7,889.03
Average	\$2,591.58	\$3,914.16	\$4,334.00	\$5,341.53

<i>Direct 10- Tier 4</i>				
	Single	P/C	E/S	Family
BA S. 1	\$2,235.38	\$3,073.16	\$3,304.47	\$3,891.50
BA S. 8	\$2,818.52	\$4,157.80	\$4,470.76	\$5,281.32
BA Max	\$3,401.66	\$6,327.09	\$6,803.33	\$8,894.86
MA S. 1	\$2,624.14	\$3,796.25	\$4,082.00	\$4,725.39
MA S. 8	\$3,110.09	\$4,700.12	\$5,053.90	\$6,115.22
MA Max	\$3,401.66	\$6,327.09	\$6,803.33	\$8,894.86
Average	\$2,931.91	\$4,730.25	\$5,086.30	\$6,300.53

<u>2017-2018</u>				
<i>Direct 15- Tier 4</i>				
	Single	P/C	E/S	Family
BA S. 1	\$2,340.82	\$3,218.12	\$3,460.34	\$4,075.06
BA S.8	\$2,951.46	\$4,353.93	\$4,681.63	\$5,530.44
BA	\$3,562.11	\$6,625.54	\$7,124.22	\$9,314.43

Max				
MA S. 1	\$2,747.92	\$3,975.33	\$4,274.53	\$4,948.29
MA S. 8	\$3,256.79	\$4,921.83	\$5,292.28	\$6,403.67
MA Max	\$3,562.11	\$6,625.54	\$7,124.22	\$9,314.43
Average	\$3,070.20	\$4,953.38	\$5,326.21	\$6,597.72

<u>\$ Increase in Take-home pay</u>				
	Single	P/C	E/S	Family
BA S. 1	\$118.10	\$162.35	\$174.58	\$205.59
BA S. 7	\$148.91	\$219.65	\$236.20	\$279.01
BA Max	\$179.72	\$334.26	\$359.44	\$469.92
MA S. 1	\$138.64	\$200.55	\$215.66	\$249.65
MA S. 7	\$164.31	\$248.31	\$267.01	\$323.07
MA Max	\$179.72	\$334.26	\$359.44	\$469.92
Average	\$154.90	\$249.90	\$268.72	\$332.86

<u>% Increase in Take-home pay</u>				
	Single	P/C	E/S	Family
BA S. 1	0.21%	0.28%	0.31%	0.36%
BA S. 7	0.22%	0.32%	0.34%	0.40%
BA Max	0.18%	0.33%	0.35%	0.46%
MA S. 1	0.23%	0.33%	0.36%	0.41%
MA S. 7	0.23%	0.34%	0.37%	0.44%

MA Max	0.17%	0.31%	0.34%	0.44%
Average	0.21%	0.28%	0.31%	0.36%

In support of requesting a change in plan from the Direct 10 to the Direct 15, the Board observes that, similar to Ridgewood Board of Education, its compensation proposal includes monies to be used by employees to offset the rising cost of their share of health benefits. For 2016-2017, the Board proposes a non-pensionable stipend of \$600 for employees having family coverage; a \$400 non-pensionable stipend for employees having member/dependent coverage; and a \$200 non-pensionable stipend for employees having single coverage. The percentage value of the stipend is .5% in 2016-2017, or approximately \$147,766 of the 2015-2016 total unit cost of \$29,553,249.

For 2017-2018, the Board’s stipend proposal is reduced to \$300, \$200 and \$100, respectively. The percentage value of the stipend is .35% in 2017-2018, or approximately \$103,436.37 of the 2015-2016 total unit base of \$29,553,249.

Finally, effective June 30, 2018, the stipend expires.

The School Work Year (Article XXIII)

The Association proposes a 184-day school work year comprised of 180 instructional days, with no more than three (3) days of orientation and one (1) “wind-up” day at the end of the school year. The Board proposes 183 instructional days, four (4) professional development days, and one (1) “wind-up” day for a total of 188 days.

As to the length of the school work year, out of 34 Bergen County contracts reporting, the average maximum work year is 185.41 days. Only two (2) of the 34

districts reporting have a school work year of 188 days and only five (5) had 187 days. In the DFG-FG districts studied, the NJEA reports an average of 185 work days. No district included in the study imposed a work year of 188 days, and only six (6) of the districts reported 187 days. Out of the three DFG-FG Bergen County districts reporting, Hasbrouck Heights reports a work year of 184 days; Maywood reports a work year of 186 days; and Wood-Ridge reports a work year at 183 days.

In this setting, following an Arbitration Award issued by Arbitrator Frank Cocuzza, the Superintendent has been obligated to seek the consent of the Association regarding the scheduling of professional development days (typically in lieu of orientation days). Notwithstanding the absence of contractually required professional development days, Fort Lee teachers are involved in professional development activities. For example, teachers work together in teams, i.e., professional learning communities to work on curriculum development, and grade level or department teams collaborate to share their experiences toward the development of an instructional model based on research and best practices. The Board seeks, among other things, the right of the Superintendent to convene four (4) professional development days within a proposed school work year of 188 days.

Tuition Reimbursement (Article XIX 7m)

The Association makes no proposal concerning tuition reimbursement. The Board seeks to clarify the existing contract in light of exiting law: “All courses must be a part of a matriculated degree consistent with N.J.S.A. 18A:6-8.5 with the prior approval of the

Superintendent. Article 19, Section 7, entitled, “Tuition Reimbursement Plan” conditions tuition reimbursement only “for courses approved by the Superintendent of schools” but, Section 7m states: “Courses offered for tuition reimbursement must be job related and approved by the Superintendent of schools.”

DISCUSSION AND RECOMMENDATIONS

N.J.A.C. 19:12-4.3 sets forth the scope of responsibilities for a Fact Finder in presiding over a negotiation’s impasse between a public employer and public employee organization. Subsection (d) states: “If the impasse is not resolved, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible.” Subsection (e) states: “Any findings of fact and recommended terms of settlement shall be submitted simultaneously in writing to the parties and the Director of Conciliation.” Subsection (g) states: “*The parties shall meet within five (5) days after receipt of the fact-finder’s findings of fact and recommended terms of settlement to exchange statements of position, and try to reach an agreement. In the event of continuing impasse, the Commission or the Director of Conciliation may take whatever steps are deemed expedient to effect a voluntary settlement of the impasse, including the appointment of a super-conciliator.*”

I take notice that the criteria set forth under N.J.S.A. 34:13A-14 et seq. and N.J.A.C. 19:16-1.1 et seq. (New Jersey’s Interest Arbitration criteria for resolving impasses involving police officers or firefighters) provides a general analytical framework for the purpose of the instant proceeding:

1. The interest and welfare of the public;
2. Internal and external wage or salary comparability;
3. The overall level of compensation and benefits provided to the employees in question;
4. The stipulations of the parties;
5. The lawful authority of the employer, including CAP restrictions under N.J.S.A. 40A:4-45.1 et seq.;
6. The financial impact on the governing unit, its residents, and taxpayers;
7. The cost of living;
8. The continuity and stability of employment regarding factors ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment from collective bargaining between the parties and the public services, and any private employment; and
9. Statutory restrictions on the Employer, e.g., cap limitations.

Having said this, however, the goal of interest arbitration is to issue a binding declaration of what will be the parties' new agreement. Conversely, fact-finding is a non-binding declaration of what the parties' new agreement should be, give or take minor post-recommendation adjustments. The goal here is to persuade the parties' to mutually adopt the undersigned's recommendations or, alternatively, to provide a substantial foundation upon which the parties can rely in reaching a modified accord themselves. As explained in Town of Kearny, Appellant, and Kearny Firemen's Mutual Benevolent Association, Local No. 18, 36 NJPER ¶ 160, "arriving at an economic award is not a precise mathematical process", but rather an exercise of judgment based on a given

analytical framework. In fact-finding the fact-finder has the added benefit of working with the parties in mediation. The mediation experience provides useful insight regarding the mutual acceptability of any subsequent recommendation made by the fact finder.

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

Here, the parties' representatives presented comprehensive oral and written evidence and argument at the formal hearing. I have carefully considered the voluminous record evidence that was developed in that proceeding as well as the parties' post-hearing briefs. I also commend the parties for working diligent during the informal mediation phase of this proceeding. Based on the helpful input and assistance of the parties, I am reasonably confident that the recommendations made herein sufficiently capture and advance the "public interest" in terms of establishing the terms of a successor agreement with due regard for the taxpaying public, the working morale of teachers, and the quality of education provided throughout the Fort Lee School District.

As will be discussed in greater detail below, I do not believe that the subject of health benefits can be fairly addressed in this, as contrasted with the next, agreement. Therefore, I will recommend the adoption of a single, three year agreement that contains no modification to Chapter 78 and no switch of plans from NJ Direct 10 to NJ Direct 15 **(PART I)**.

Instead, I will recommend reasonable salary adjustments with the various prongs of the public interest criterion foremost in mind **(PART II)**.

I will also recommend a modification to the existing school work year provision that enables the Superintendent of Schools to schedule, during the school work year, two professional development days, in lieu of orientation days, for both new and existing staff. I recommend no change in the overall length of the school work year **(PART III)**.

Finally, I will recommend the Board's proposed language change to the tuition reimbursement provision based on existing statutes and case law **(PART IV)**.

PART I **HEALTH BENEFITS (ARTICLE IX):**

The Association's Proposal:

The Chapter 78 tier is removed. Certified staff will full family coverage pay no more than 6.5% of base salary towards health insurance; Member/dependent pay no more than 4.5% of base salary towards health insurance; Single pays no more than 3% of base salary. All non-certificated staff pay no more than 3% of base salary towards health insurance.

The Board's Proposal:

All employees move to Direct 15. If more expensive to the employee, Board will pay the difference.

Fact Finder's Recommendation:

No change.

In deferring the subject of health benefits to the successor round of negotiations, I first point out that it is fair not to disturb the status quo concerning health benefits until the Chapter 78 statutory mandate fully runs its course. This means rejecting the Association's proposal for a one year agreement followed by a two year agreement in order to enable teachers to revert back to a less costly (to them) contributions' formula, which is tied to base salary.

It is clear from existing law that the statutory formula (which sunsets after completion of Tier 4 and leaves Tier 4 as the status quo) only may be negotiated in the contract next succeeding the one encompassing the completion of Tier 4. See, N.J.S.A. 18A:16-17.2; and, Clementon Board of Education, PERC No. 2016-10, Docket No. SN-2015-041. Here, Tier 4 will not be completed until June 30, 2017 (the end of the first year of the new Agreement). As such, I must conclude that the Board has reasonably asserted a right to experience the full benefit of the law prior to assuming an obligation to once again negotiate over the formula for employee premium contributions.

I also believe that it is not the province of a Fact Finder to recommend an unorthodox duration clause requiring the establishment of two agreements in order to give one party a strategic advantage over another, i.e., in order to create a loophole to the existing legal framework. Nor is such an action supported by the comparability evidence introduced by the Association. While it is true that several Bergen County districts and

approximately other outside districts have mutually agreed to make such changes, I have been presented with little, if any evidence that a Fact Finder recommended what the Association seeks in this proceeding.

For these reasons, I must first reject recommending the adoption of the Association's proposed establishment of separate agreements in order to facilitate its requested health benefits change. Having said this, however, until such negotiations lawfully take place, I believe that both parties should remain in the same boat together. That is, I will not recommend a change in the Direct 10 Plan as the base plan as requested by the Board.

School districts have understandably welcomed the legislative relief provided by Chapter 78, especially given the inflationary nature of the costs involved and the decrease in state aid in 2010-2011. Indeed, premiums have risen at a rate of approximately 10% annually for many years. In fact, the cost of health and prescription benefits for this unit in 2016-2017 is approximately 9 million dollars. This sum is equivalent to over 30% of the unit's total base salary. Given the costs involved, Chapter 78 has undoubtedly provided welcomed relief to school districts that they were unable to achieve in the past via negotiations. The "savings" realized by the District has become part of the District's budgetary fabric since 2011 and, like savings in other line items, has helped the District offset increases in costs/expenditures in other areas of operations, e.g., special education, construction projects, investments in classroom technology, etc.

Conversely, teachers understandably suffered economically and, by extension, in morale. As history reflects, many years ago, teacher salaries were unreasonably low and, consequently, fully-paid health benefits became the sacred cow. Even though teacher salaries have now grown to respectable levels, many teachers grew accustomed to enjoying health benefits fully paid by the District. Indeed, until the 2010 legislation (establishing the 1.5% of base salary formula), teacher groups had outlasted many other public sector employee organizations in term of holding down the fort on health benefits' contributions. Although the 2010 legislation was viewed as a shock to those expectations, the passage of Chapter 78 on June 28, 2011 imposed even higher levels of contributions.

In comparison to the preexisting 1.5% salary contribution, under Chapter 78, the 1.5% base salary contribution becomes the floor and then employees contribute according to a percentage of the premium that escalates as a function of income level with a four-year phase-in of ¼, ½, ¾, and then 100%:

Salary Range	Year 1	Year 2	Year 3	Year 4
less than 25,000	0.75%	1.50%	2.25%	3.00%
25,000-29,999.99	1.00%	2.00%	3.00%	4.00%
30,000-34,999.99	1.25%	2.50%	3.75%	5.00%
35,000-39,999.99	1.50%	3.00%	4.50%	6.00%
40,000-44,999.99	1.75%	3.50%	5.25%	7.00%
45,000-49,999.99	2.25%	4.50%	6.75%	9.00%
50,000-54,999.99	3.00%	6.00%	9.00%	12.00%
55,000-59,999.99	3.50%	7.00%	10.50%	14.00%
60,000-64,999.99	4.25%	8.50%	12.75%	17.00%

65,000-69,999.99	4.75%	9.50%	14.25%	19.00%
70,000-74,999.99	5.50%	11.00%	16.50%	22.00%
75,000-79,999.99	5.75%	11.50%	17.25%	23.00%
80,000-84,999.99	6.00%	12.00%	18.00%	24.00%
85,000-89,999.99	6.50%	13.00%	19.50%	26.00%
90,000-94,999.99	7.00%	14.00%	21.00%	28.00%
95,000-99,999.99	7.25%	14.50%	21.75%	29.00%
100,000-109,999.99	8.00%	16.00%	24.00%	32.00%
110,000 and over	8.75%	17.50%	26.25%	35.00%

To illustrate the differing impact, under the predecessor 1.5% of base salary formula established in 2010, a teacher earning \$99,475 (top step BA 2015-2016 guide), would contribute \$1,492.13 toward the cost of family coverage with prescription benefits under the Direct 10 plan. However, after completion of Tier 4 of Chapter 78 (as of June 30, 2017), that same teacher contributed approximately 28% of the total premium costs associated with family health care benefits under the Direct 10 plan, or \$8,894.86. Naturally, the financial impact experienced by teachers who were not so long ago accustomed to receiving fully paid health benefits is understandable.

Having said this, however, teachers certainly could reduce their monthly premiums by voluntarily switching to the Direct 15 Plan, and a few have, but most have insisted to remain with the Direct 10 Plan. A switch to the Direct 15 plan would translate into additional take-home pay and provide corresponding relief to the District.

<u>\$ Increase in Take-home pay</u>				
	Single	P/C	E/S	Family

BA S. 1	\$118.10	\$162.35	\$174.58	\$205.59
BA S. 7	\$148.91	\$219.65	\$236.20	\$279.01
BA Max	\$179.72	\$334.26	\$359.44	\$469.92
MA S. 1	\$138.64	\$200.55	\$215.66	\$249.65
MA S. 7	\$164.31	\$248.31	\$267.01	\$323.07
MA Max	\$179.72	\$334.26	\$359.44	\$469.92
Average	\$154.90	\$249.90	\$268.72	\$332.86

<u>% Increase in Take-home pay</u>				
	Single	P/C	E/S	Family
BA S. 1	0.21%	0.28%	0.31%	0.36%
BA S. 7	0.22%	0.32%	0.34%	0.40%
BA Max	0.18%	0.33%	0.35%	0.46%
MA S. 1	0.23%	0.33%	0.36%	0.41%
MA S. 7	0.23%	0.34%	0.37%	0.44%
MA Max	0.17%	0.31%	0.34%	0.44%
Average	0.21%	0.28%	0.31%	0.36%

Initially, I observe, it appears to be a wise decision to switch from the NJ Direct 10 to the NJ Direct 15, at least based on the comparative data available:

	<u>Direct 10</u>	<u>Direct 15</u>
Primary Copay	\$10	\$15
Specialist Copay	\$10	\$15
Emergency Room Copay	\$25	\$50

In-Network Deductible	N/A	N/A
OON Deductible	\$100/\$250	\$100/\$250
In-Network Coinsurance	10%	10%
OON Coinsurance	20%	30%
Retail Rx Generic Copay	10%	10%
Mail 90-day Rx Copay	10%	10%

So why have Association members not voluntarily elected the Direct 15? To me, one objective reason is plan differences regarding out-of-network liability. The NJ Direct Member Handbook promulgated by the Department of the Treasury, Division of Pensions (for Plan Year 2016) reveals a more comprehensive explanation of the differences:

Annual In-Network Out-of-Pocket Maximum

The Annual In-Network Out-of-Pocket maximum is the annual limit on the amount of cost-sharing individuals or families are required to pay for covered in network health care expenses. In-network copayments, coinsurance and the NJ DIRECT2035 in-network deductible apply toward the annual in-network out-of-pocket maximum.

Local Education and Local Government Employees

Annual In-Network Out-of-Pocket Maximum:

NJ DIRECT Plan Option	Individual In-network Maximum Out-of-Pocket	Family In-network Maximum Out-of-Pocket
NJ DIRECT10	\$400	\$1,000
NJ DIRECT15 NJ DIRECT1525 NJ DIRECT2030	\$5,480	\$10,960

NJ DIRECT2035		
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Retirees Annual In-Network Out-of-Pocket Maximum

NJ DIRECT Plan Option Retiree	Individual In-Network Maximum Out-of-Pocket	Family In-Network Maximum Out-of-Pocket
NJ DIRECT10	\$400	\$1,000
NJ DIRECT15 NJ DIRECT1525 NJ DIRECT2030	SHBP Retirees: \$5,499	SHBP Retirees: \$10,998
NJ DIRECT15 NJ DIRECT1525 NJ DIRECT2030	SEHBP Retirees: \$5,317	SEHBP Retirees: \$10,634

Out-of-Network Coinsurance

NJ DIRECT will pay a percentage of the reasonable and customary allowance for eligible out-of-network charges. You are required to pay the remaining percentage of the reasonable and customary allowance (coinsurance) as well as the difference between the allowance and the provider's charges. As shown below, the coinsurance level varies by plan option. The out-of-network coinsurance is applied toward the out-of-network, out-of-pocket maximum.

NJ DIRECT Plan Option	Out-of-Network Coinsurance
NJ DIRECT10	20%
NJ DIRECT15 NJ DIRECT1525 NJ DIRECT2030	30%
NJ DIRECT2035	40%

The potential out-of-network costs of switching to the Direct 15 Plan, as noted above, provide a non-arbitrary reason for insisting upon the continuance of the Direct 10

as the base plan. However, if the network of medical providers is the same between the two plans, and that network is extensive, then it seems to me that the likelihood of a teacher experiencing significant out-of-network liability under the Direct 15 is negligible.

Another potential reason for resisting a switch to the Direct 15 could be based on “a line in the sand” philosophy. That is, whereas school districts propose a switch in plans to reduce costs for both sides, teachers instead seek modifications to the Chapter 78 contributions’ formula. Although both school districts and teachers share a common goal of cost reduction, the means by which that goal can be best achieved vastly differs between the two and Fact Finders statewide have not pushed one party or the other off their respective marks. To the extent that changes have been made in a minority of school districts, those changes were voluntarily reached via direct negotiations.

In light of the foregoing, and considering that more comprehensive negotiations over health benefits will likely -- and lawfully -- take place in successor negotiations, I recommend no change in either the Chapter 78 formula or NJ Direct 10 as the base plan.

Finally, I will recommend the adoption of a single, three year agreement, effective July 1, 2016 through June 30, 2019. It is observed that both parties desired a three year term if the Association’s proposed Chapter 78 change was not recommended.

PART II **SALARIES**

The Association’s Proposal:

- 3.5%-3.0%-3.0% (inclusive of increment)

- No adjustment of prior Chapter 78 contributions retroactively, regardless of any salary change.

The Board's Proposal:

- 2%, inclusive of increment in each of the three years.

- Salary Guide Adjustment Bonus:

Year 1: For those employees with family coverage, a non-pensionable stipend of \$600. For those employees with member/dependent coverage, a non-pensionable stipend of \$400. For those employees with single coverage, a non-pensionable stipend of \$200 (valued at .5%)

Year 2: For those employees with family coverage, a non-pensionable stipend of \$300. For those employees with member/dependent coverage, a non-pensionable stipend of \$200. For those employees with single coverage, a non-pensionable stipend of \$100 (valued at .35%).

Year 3: Stipend Expires.

Fact Finder Recommendation:

2.40% - 2.75% - 2.85%, inclusive of increment in each of the three years.

No retroactive collection of Chapter 78 monies during the term of this Agreement.

Costs Of Recommendation

The cost out below includes the percentage value of the Board's proposed stipend which amounts to .5% in 2016-2017, or approximately \$147,766, in relation to the 2015-2016 total unit base of \$29,553,249. It also includes the Board's stipend proposal amounting to .35% in 2017-2018, or approximately \$103,436.37, in relation to the 2015-2016 total unit base.⁷

⁷ The dollar value of annual percentage increases were not calculated with stipend amounts included. However, the total costs of the Board's proposal include the stipends.

TOTAL UNIT BASE 29,553,249	ASSOCIATION	BOARD	FF
2016-17	30,587,613 3.50%	30,292,080 2.00%	30,262,527 2.40%
2017-18	31,505,241 3.00%	30,850,663 2.00%	31,094,746 2.75%
2018-19	<u>32,450,398 3.00%</u>	<u>31,362,144 2.00%</u>	<u>31,980,946 2.85%</u>
Average % (non-compounded)	3.17%	2.00% 2.28% (inc. stipend)	2.67%

NET GAINS	ASSOCIATION	BOARD	FACT FINDER
2016-17	\$1,034,363	\$738,831 (inc. S)	\$709,278
2017-18	\$ 917,628	\$558,583 (inc. S)	\$832,219
2018-19	\$ 945,157	\$511,481 (N/A)	\$ 886,200
NET TOTALS	\$2,897,148	\$1,808,895 (inc. S)	\$2,427,697
TOTALS	\$32,450.397	\$31,362,114 (inc. S)	\$31,980,946
FF Difference:	-\$469,451	+\$618,832	
Average/3 years.	-\$156,483	+ \$206,277	

In reaching the above recommendation, I considered the cost of increment and the importance of having a meaningful step guide. The cost of increment is 2.75% in 2016-2017; 2.9% in 2017-2018; and 2.88% in 2018-2019. The importance of a meaningful salary step guide is somewhat obvious. A meaningful salary guide provides a career path to follow which, in turn, bolsters morale and also attracts talented teachers to employment by the Fort Lee School District, as compared to elsewhere.

However, a salary guide must be both meaningful and affordable. On this latter point, I acknowledge the Board's obligation to meet budgetary challenges other than increasing the salaries of instructional and non-instructional personnel, such as, the

increasing costs of providing special education, the costs of expansion, noting the dense population of the Borough, and with respect to the 2% levy cap, which has not changed, despite the increasing settlement averages in Bergen County. Nonetheless, the Board's proposal, in my opinion, does not strike a fair balance between saving for special education and new construction expenditures and compensating those who will teach special education inside of newly constructed or renovated school buildings.

For one thing, the Board's salary proposal lags considerably behind contemporary settlements in Bergen County and DFG-FG districts. If implemented, the Board's salary proposal would make it difficult for teachers to even move on the step guide in two out of the three years of the agreement without hurting those at top step (61 in 2016-2017 and 68 in 2017-2018). This could very well have a significant, negative impact on the morale of teachers whom are widely lauded by the public and school administrators for their skills and accomplishments.

Although the Board is understandably concerned about the increasing costs of special education, capital improvement projects, etc., I note that the comparator Bergen County settlements involve school districts having the same or similar budgetary concerns. This notwithstanding, even using NJSBA data, the average percentage increases in Bergen County teacher salaries for the term of this agreement are 2.73% (2016-2017); 2.74% (2017-2018); and 2.79% (2018-2019). These averages far exceed the Board's proposal.

However, I am persuaded by the Board's argument that percentages alone do not

tell the full story. Fort Lee teachers' salaries are in the upper echelon of salaries earned by teachers in 56 Bergen County school districts. The minimum salary of a Fort Lee teacher with a BA is \$56,030, which ranks 1st out of Bergen County's 56 school districts. The average minimum BA teacher salary in Bergen County is reported as \$49,781. Fort Lee teachers' BA maximum salary of \$99,475 ranks 1st out of 56 Bergen County school districts. The average teacher BA maximum salary in Bergen County is reported as \$85,223.

Fort Lee's minimum MA salary is reported at \$59,530, which ranks 7th out of 56 school districts. The average MA minimum salary in Bergen County is reported as \$49,781. Fort Lee teachers earn a maximum MA salary of \$104,529, which ranks 3rd out of 56 school districts in Bergen County. The average maximum MA salary in Bergen County is reported as \$85,223.

Fort Lee's MA+30 minimum salary, \$62,560, ranks 12th out of 55 measured school districts in Bergen County. The average MA+30 minimum teacher salary in Bergen County for 2015-2016 is \$59,171. The MA+30 maximum salary in Fort Lee is \$109,565, which ranks 6th out of 55 school districts in Bergen County. Finally, the average MA+30 maximum salary in Bergen County is \$101,141.

As to DFG-FG comparators, Fort Lee minimum BA teachers' salary, \$56,030 ranks 1st out of all New Jersey DFG-FG school districts. The average DFG-FG salary is \$50,535. Fort Lee's maximum BA salary of \$99,475 ranks 2nd out of all BA maximum salaries reported in DFG-FG school districts, the average being \$80,533. Fort Lee's MA

minimum salary, \$59,530 ranks 3rd out of all DFG-FG districts, the average being \$54,354. Fort Lee's MA maximum salary, \$104,529 ranks 1st out of all DFG-FG school districts, the average being \$85,054. Fort Lee's MA+30 minimum salary, \$62,560 ranks 5th out of all DFG-FG school districts, the average being \$57,079 and Fort Lee's MA+30 maximum salary, \$109,565 ranks 1st out of all DFG-FG school districts, the average being \$88,704.

Given the comparatively greater real dollar value of percentage increases realized by Fort Lee teachers, a three year settlement averaging 2.67% -- which is less than the County and DFG-FG three-year average of 2.75% by 0.08% -- will not result in a relative loss of standing for this group in the County and should translate into significant real dollar gains. The Fact Finder's specific salary recommendations will allow the parties to move teachers on the guide and provide reasonable increases at top step for at least two of the three years of the new agreement. It will also enable the provision of respectable salary adjustments in 2018-2019, even if guide movement in the final year will not be feasible.⁸ In fact, in order to assure that teachers move on the salary guide in each and every year of the three year agreement and in order to provide reasonable increases at top step, an increase very close to the Association's 3-5%-3.0%-3.0% proposal would be necessary. However, in my opinion, such a recommendation cannot be made due to

⁸ Depending on the allocation of the recommended salary increases to the non-instructional portion of the unit, guide movement could be realized in 2018-2019, even if it is not for a full year.

budgetary implications, the County and DFG-FG averages, and the comparatively greater dollar value of a percentage point realized by Fort Lee teachers.⁹

Additionally, the difference between the cost of the Fact Finder’s salary recommendation and that proffered by the Board is illustrated below:

BOARD	FACT FINDER
\$738,831 (inc. S)	\$709,278
\$558,583 (inc. S)	\$832,219
\$511,481 (N/A)	\$ 886,200
\$1,808,895 (inc. S)	\$2,427,697
\$31,362,114 (inc. S)	\$31,980,946
	+\$618,832 (total)
	+ \$206,277 (ave.)

In the first year of the Agreement, 2016-2017, the Board’s proposal is more costly than the Fact Finder’s recommendation by \$29,553. In the second year of the agreement, 2017-2018, the Fact Finder’s recommendation is \$273,636 greater than that proposed by the Board; and \$354,719 in the last year of the agreement, 2018-2019. The 2017-2018 difference of \$273,636 represents a mere a .0047% increase in relation to the 2016-2017 local tax levy; and a mere increase of .0043% in relation to the total operating budget for 2016-2017. With respect to 2018-2019, the \$354,719 differential represents a .0059% increase in the estimated 2017-2018 local tax levy of \$59,487,085 (increasing the levy by

⁹ Ultimately, it is up to the parties to negotiate changes in the salary guide to accommodate the cost of increment, if they desire. Experience dictates that a Fact Finder recommendation to change the increment structure by modifying steps and/or the timing of step movement and/or by increased funding is usually a futile gesture, especially when the parties themselves have not embraced such actions earlier in the process. Here, because neither party proposes a structural change in the salary guide(s), I do not venture down that road alone.

2%); and a mere .0055% of the 2017-2018 estimated total operating budget of \$64,398,059 (again, increasing the budget by 2%). The average annual salary increase per employee is approximately \$473 per year greater under the Fact Finder's recommendation in comparison to the cost of the Board's proposal (\$206,000 per year (ave.) divided by 435 unit members = \$473.56).

Also, as the Association points out, due to conservative budgeting, the District did have revenue sources remaining in the 2015-2016 budget amounting to \$2,610,499 (excluding extraordinary aid and including the difference between budgeted health benefit contributions from members to actual health benefit contributions from members), or 8.83% of total base salaries. When factoring in additional health benefit contributions in 2016-2017, an additional \$300,000 is realized, for a total of \$2,910,499, or 9.85% of the total unit base in 2015-2016. While I agree with the Board that it is not obligated to allocate these funds to teacher salaries, certainly it can allocate funds sufficient to bridge the \$206,000 per year difference between the Fact Finder's recommendation and the Board's proposal.

In conclusion, I recommend that the unit receive salary increases of 2.40%-2.75%-2.85% inclusive of increment for 2016-2017, 2017-2018 and 2018-2019, respectively. Finally, so as not to be perceived as a diminution in retroactive pay, I recommend that the Board refrain from collecting retroactive Chapter 78 contributions from those members who cross over to a higher percentage contribution level as a result of an increase in salary.

PART III
SCHOOL WORK YEAR (ARTICLE XXIII)

The Association's Proposal:

- Amend Article XXIII.1 to read as follows:

ARTICLE XXIII
TEACHER WORK YEAR

1. In-school Work Year

a. Ten (10) Month Personnel. The in-school work year for veteran teachers employed on a ten (10) month basis shall not exceed one hundred eighty-four (184) days. Specifically, no more than 180 teaching instructional days, a maximum of three (3) days of orientation held in September at the beginning of each school year, and one (1) wind-up day at the end of each school year, for maximum of one hundred eight-four days of work.

b. New Teachers are required to attend three (3) additional days of new teacher orientation prior to the commencement of the school year. The maximum in school work year for new teachers will not exceed one hundred and eighty seven (187) days. The Union will be afforded a (½) day to provide Union orientation to the new teachers during their orientation.

c. The In-school work year for Guidance Counselors, Learning Disabilities Specialists and Social Workers shall not exceed one hundred eighty eight (188) days. Guidance Counselors shall report for work the three (3) working days immediately preceding Orientation Day and a total of two (2) wrap up days after the last teaching instructional day. An additional exception, Psychologists shall serve under a ten (10) month contract extending from September 1 to June 30 of the school year.

d. Inclement Weather. Teacher attendance shall not be required when students' attendance is not required due to inclement weather.

The Board's Proposal:

- 183 instructional days, 4 professional development days and 1 wind-up day. Professional development days scheduled at the discretion of the superintendent.

Fact Finder’s Recommendation:

Teachers (eff. 9/1/18)

- Modify – The Superintendent, at his or her discretion, may schedule up to two (2) professional development days during the school year in lieu of orientation days.
- Except as necessary to implement the foregoing, all other provisions and language of Article XXIII to remain the same.

Article XXIII, “Teacher Work Year”, of the current agreement provides for a maximum of 183 instructional days, a maximum of three (3) days of orientation at the beginning of each school year, and one (1) wind-up day at the end of the school year for a maximum of 187 days of work.¹⁰ The existence of professional development days is commonplace in education settings. The Superintendent should not be limited to having to pull a teacher from class or cause a teacher to forego other pedagogical activity in order to provide for professional development. Nor should the Superintendent be held to a standard of obtaining the consent of the Association in order to hold two (2) professional development days per school year. Ultimately, it is the Superintendent’s responsibility for the quality of education provided in the District on a day-to-day basis. Lastly, the within recommendation does not require an increase in the school work year in order to accommodate the two (2) professional days in question.

¹⁰ Guidance counselors, learning disabilities specialist and social workers may work a maximum of 188 days.

In light of the foregoing, I recommend that the parties agree to a maximum substitution of two (2) professional days for orientation days to be scheduled during the school year at the Superintendent's discretion.

PART IV
TUITION REIMBURSEMENT (ARTICLE XIX (7M)):

Association Proposal:

None (assume maintenance of status quo in absence of a stipulation)

Board Proposal:

All courses must be a part of a matriculated degree consistent with N.J.S.A. 18A:6-8.5 with the prior approval of the Superintendent.

Fact Finder Recommendation:

Board Proposal.

The Board's proposal merely reflects existing law. As such, it is recommended for incorporation in the new agreement to avoid unnecessary conflict between the law and the contract. See, e.g., Hillsborough Board of Education and Hillsborough Education Ass'n 43 NJPER ¶ 96, 43 New Jersey Pub. Employee Rep. ¶ 96, 2017 WL 1089114.

RECOMMENDED TERMS OF SETTLEMENT

DURATION (ARTICLE XXVIII):

- One Agreement, effective from July 1, 2016 through June 30, 2019.

HEALTH BENEFITS (ARTICLE IX):

- The current plans and NJ Direct 10 base plan remain in effect. No modification to cost-sharing structure under Chapter 78.

SALARY:

- 2.40% - 2.75%-2.85%, inclusive of increment in each of the three years of the agreement, 2016-2017, 2017-2018 and 2018-2019, respectively.
- No retroactive collection of Chapter 78 contributions.

SCHOOL WORK YEAR (ARTICLE XXIII):

Teachers (eff. 9/1/18)

- Modify – The Superintendent may substitute up to two (2) professional development days for orientation days to be scheduled during the school work year at his or her discretion.
- Except as necessary to implement the foregoing, all other provisions and language of Article XXIII to remain the same.

TUITION REIMBURSEMENT (ARTICLE XIX (7m)):

- All courses must be a part of a matriculated degree consistent with N.J.S.A 18A:6-8.5 with the prior approval of the Superintendent.

ORDER

I hereby submit the foregoing Findings of Fact and Recommended Terms of Settlement to both the Director of Conciliation and to the parties in accordance with N.J.A.C. 19:12-4.2(e). The parties and their representatives are hereby directed to refrain from making public the within Recommended Terms of Settlement until Monday, November 6, 2017. The parties are further directed to advise the undersigned of whether or not they have reached an agreement to either accept, or accept with modification, the within Recommended Terms of Settlement by November 6, 2017, or by a mutually agreed later date.

Respectfully submitted,


Joseph Licata

Dated: October 27, 2017

State of New Jersey)
 :SS
County of Bergen)

On the 27th day of October, 2017, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.


JACQUELINE M. LICATA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 11/9/2020

