

**STATE OF CONNECTICUT
STATE DEPARTMENT OF EDUCATION**

IN THE MATTER OF THE
INTEREST ARBITRATION
BETWEEN:

NORWALK BOARD OF EDUCATION :

-AND- :

NORWALK FEDERATION OF
TEACHERS, LOCAL 1723, AFT,
AFL-CIO : OCTOBER 19, 2012

**Before Arbitration Panel:
Richard Kosinski, Esq., Chairperson
John Gesmonde, Esq.
John Romanow, Esq.**

**MEMORANDUM IN SUPPORT OF THE LAST BEST OFFERS
OF THE NORWALK FEDERATION OF TEACHERS**

I. STATEMENT OF PROCEEDINGS:

The negotiations between the Norwalk Federation of Teachers, Local 1723, AFT, AFL-CIO, (hereinafter referred to as “Federation”) and the Board of Education of the City of Norwalk, (hereinafter referred to as “Board”), which are the subject matter of this binding interest arbitration pursuant to Connecticut General Statute §10-153 et seq. commenced in July of 2012. The parties met three times for direct negotiations. Thereafter, the parties met with

mutually agreed mediator J. Larry Foy on two occasions but failed to resolve any outstanding issues.

Thereafter, pursuant to statute, a hearing panel was appointed consisting of Richard Kosinski, Chairperson, John Gesmonde, Esq., representing the interest of the employees and John Romanow, Esq., representing the interest of the Board. Hearings were held before this panel on October 12, 13 and 14, 2012. During the pendency of these proceedings, the parties presented witnesses, evidence and argument concerning each outstanding issue. At the conclusions of the hearings on October 14, 2012, the parties agreed to submit post-hearing briefs dated on or before October 19, 2012.

II. ISSUES IN DISPUTE:

The parties presented 65 issues to the arbitration panel for resolution. During the pendency of these proceedings, the parties have resolved a few issues which are contained in the agreed-to-language. The parties remain in dispute over a wide range of issues that include duration with the Board seeking a one-year agreement and the Federation a three-year agreement, salaries, class size, medical benefits and a number of Board last best offers which diminish and/or eliminate provisions concerning working conditions for the Norwalk Teachers, including, but not limited to, changes with regard to professional meetings, early retirement incentive, in-service credit, transfer and assignments.

The Board during these proceedings has attempted to rewrite the parties' Collective Bargaining Agreement and undermine and eliminate over 60 years of collective bargaining between the parties. As was noted during the pendency of these proceedings, the parties prior to this negotiation had previously agreed on every collective bargaining agreement mutually, without the aid of a State Arbitration Panel.

At the outset of these proceedings, the Board presented proposals (see history of negotiations) which attempt to eliminate or diminish protections for teachers with regard to most major terms and conditions of employment contained in the Norwalk Federation of Teachers' Collective Bargaining Agreement. Additionally, the Board is seeking in these proceedings significant changes in the parties' medical plan and the elimination of health insurance for employees post-retirement. The Union on the other hand, has made only two substantive proposals for changes in the Collective Bargaining Agreement. One is a no-cost item regarding an election by teachers age 50 or over to take less life insurance than they are contractually entitled to for the purpose of avoiding an imputed tax liability. This provision provides no cost to the Board and may, as will be pointed infra in this brief, actually save the Board of Education money, depending on the people who elect it. The second proposal made by the Union also is a no-cost item and relates only to a shift of teacher responsibilities no more than 6 times a year. This issue, 17f, concerns the right of elementary teachers to substitute Wednesday meetings

during the six-week window for elementary parent conferences (3 weeks in November and 3 weeks in March) which occur each Wednesday from the 1st of October through the end of May, for meeting purposes to provide them additional time to meet with parents during parent conference weeks. As was testified to by Federation member Jayne Sardella, a veteran elementary teacher, this would provide some relief for elementary teachers and have a positive effect, as discussed infra in the brief, of providing more time to meet with parents concerning the education of their children.

With regard to wages, the Board, as indicated supra, seeks a one-year contract with 0% GWI and no step increases for teachers during the first year of the parties' Collective Bargaining Agreement. The Board also offers a conditional offer if the Federation's three-year duration is selected by the panel, a hard freeze (no GWI or step increase) in years two and three of the parties' Collective Bargaining Agreement. The Federation, on the other hand, is offering a general wage increase freeze in the first year of the Collective Bargaining Agreement and a 2.5% increase in the second and third year of the Collective Bargaining Agreement, with steps in all years as discussed infra in the portion of the brief concerning salary.

The Federation in its last best offers is seeking modest wage increases, a health benefit plan that saves the Board considerable monies and conforms to the present benefits and coverages. The Federation has proposed modest changes in some of the Board's proposals to

meet their demands in a way that gives them more flexibility but yet preserves important teacher working conditions. Significantly, the Board is attempting to undermine and remove any protections for teachers with regard to class size. They propose guidelines as opposed to standards. Contrary to the Board's alleged concern for the educational environment in Norwalk, said Board proposals for the reasons stated infra in this brief, in the discussion of Issues 18a, b, and c, would have a significant adverse impact upon student achievement. The Board's last best offers, however, in addition to addressing their concern regarding the unproven, but alleged Norwalk inability to pay, also is utilizing these proceedings to modify, eliminate and diminish long-standing contract provisions which do not have a direct economic impact, but rather provide a benefit to Norwalk teachers with regard to a wide range of working conditions, including transfer, assignment, as well as provisions which provide "*attractors to attract and retain certify teachers in a time in which Norwalk needs to attract and retain teachers*" In deciding the issues in dispute, the panel must consider that the moving party (in this case the Board on most issues) has the burden of proof by a preponderance of the evidence.

III. ARGUMENT:

The arbitration panel's authority as stated in Connecticut General Statute §10-153f(4) is as follows:

"The parties shall submit to the arbitrators or single arbitrator their respective positions on each individual issue in dispute between them in the

form of a Last Best Offer. The arbitrators or single arbitrator shall resolve separately each individually disputed issue by accepting a Last Best Offer thereon from either of the parties, and shall incorporate in a decision each such accepted individual Last Best Offer and an explanation of how the total costs of all offers accepted was considered...”.

“The written decision shall include a narrative explaining the evaluation of the arbitrators or single arbitrator of the evidence presented for each item upon which the decision was rendered by the arbitrators or single arbitrator and shall state with particularity the basis for the decision as to each disputed issue in the manner which the factors enumerated in the subdivision were considered in arriving at such decision, including, where applicable, the specific similar groups and conditions of employment presented for comparison and accepted by the arbitrators or single arbitrator and the reasons for such acceptance”.

In accordance with Connecticut General Statute §10-153f(4), the factors to be considered by the panel in choosing the Last Best Offer are:

“In arriving at a decision the arbitrators or single arbitrator shall give priority to the public interest and the financial capability of the town or towns in the school district, including consideration of other demands on the financial capability of a town or towns in a school district. In assessing the financial capability of the town or towns there shall be an irrebuttable presumption that a budget reserve of five percent or less is not available for payment of the cost of any item subject to arbitration under this chapter. The arbitrator or single arbitrators shall further consider, in light of such financial capability, the following factors: (A) negotiations between the parties prior to arbitration, including the offers and range of discussion of the issues; (B) the interest and welfare of the employee group; (C) changes in the cost of living averaged over the preceding three years; (D) the existing conditions of employment of the employee group and those of similar groups; and (E) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market, including terms of recent contract

settlements or awards in collective bargaining for other municipal employee organizations and development in private sector wages and benefits”.

In reaching a decision on each issue in dispute, the panel must consider the public interest, the financial capability of the City of Norwalk and must further consider, in light of such financial capabilities, the factors enumerated above. A review of the evidence concerning the issues in dispute as applied to the statutory factors clearly demonstrates that the last best offers of the Federation should be awarded. In discussing the issues as applied to the factors, a general review of the evidence presented concerning each factor shall be presented followed by an analysis of the merits of each party’s position on each issue in dispute.

A. The Statutory Factors:

1. The public interest and financial capability of the City of Norwalk.

Connecticut General Statute §10-153f(4) provides that the panel should give priority to the public interest and financial capability of the town or towns in the school district including consideration of other demands on the financial capability of the town or towns in the school district. In determining the financial capability of the City of Norwalk, many objective measures can be produced in support of the financial capability of the City. The parties presented evidence from a myriad of sources, including Connecticut Policy and Economic Council (CEPC), Connecticut Business and Industry Association, Connecticut State Department of Education, Office of Policy and Management of the State of Connecticut, as well as the

Comprehensive Annual Financial Report of the City of Norwalk, the latest bond prospectus, and the Norwalk's 2012-2013 capital budget. Additionally, the City presented a document prepared by Thomas Hamilton, Director of Finance, from which he testified and was cross-examined extensively upon. (City Exhibit 185) The Federation, after a review and analysis of this raw data, which is discussed infra, avers that the City of Norwalk has the ability to pay for the modest wage increases asked for by the Federation in these proceedings.

The panel, however, should consider in making its decision on these issues in disputes, Webster Dictionary's definition of capability, which is to mean: "*the quality of being capable, ability*" and defines capable as "*the ability for*". The term capability should not be confused or interrelated with the concept of willingness. If this panel determines, based upon the objective evidence presented by the parties, that the City of Norwalk has the capability to pay increases, then the statutory factor of financial capability has been met.

There was significant evidence presented by the Board during these hearings regarding the priorities of the Board and the City with regard to expenditure of available funds. The Federation submits that this evidence goes more to the willingness of the City to make expenditures such as are embodied in the parties' respective last best offers and not the capability of the City to make those expenditures if it has the willingness. Finally with regard to financial capability, it should be noted that with regard to the wages, the Federation in the first

year has proposed no general wage increase and has proposed no general wage increase in any of the ancillary positions including coaches, class coverages, etc. The dispute centers upon two major issues, the City's rigid, unjustified demand that the panel award a one-year duration and if it does not, the Board's insistence that the panel award a three-year hard freeze which would be unprecedented in the history of collective bargaining in the State of Connecticut.

It is undeniable that a significant priority factor to be considered by the arbitration panel is the financial capability of the town or towns in the school district, including consideration of other demands on the financial capability of the town or towns in the school district. It is also undeniable that Norwalk Connecticut and the state and nation have emerged from a significant recession which undoubtedly will be overblown and characterized in the most harrowing ways by the City of Norwalk in its post-hearing brief. The record is rife with evidence that the nation and state have been victims of a recession that began in late 2008 and from which the nation is still emerging. The consensus, however, is that the worst of the recession is over and consensus economic forecast is that in most respects things are getting better. (28 straight months of economic growth and reduction in unemployment) Notably, as is indicated in Federation's Book, unemployment is below 8% (7.8%) for the first time in over 4 years. That being said, this panel must note and consider that the state and national economy are not statutory factors to be considered by the panel. Financial capability of the City is, and in that

regard the panel must accept the reality that the City of Norwalk, based upon information discussed herein, has the ability to make the modest wage increases requested by the Norwalk Teachers in their last best offers.

Contained in the Union Exhibit Binder 1 are ratings from the Moody's and Standard and Poor's rating services, which each indicate that the City of Norwalk bond rating is AAA. Thomas Hamilton, Director of Finance, in his testimony and in Board Exhibit 185, his report on the City's financial capability, tries to underplay the significant importance of the City's AAA bond rating. He refers to Norwalk as "*healthy, but not wealthy*". On cross-examination however, Hamilton testified that at most only 15 of the 169 communities in the state of Connecticut maintain a AAA bond rating. Hamilton, when asked about other communities, with AAA bond rating identified some of the more wealthy communities in lower Fairfield county as well as Avon, West Hartford, and Madison in the rest of the state.

More importantly, Moody's in its rating for the Norwalk 2012 general obligations bond issue (Union Book 1, Tab 1 of Economic Information) gives an overview of their independent analysis of the City's AAA bond rating. In its summary rating rationale, Moody's states: "*The AAA rating reflects the City's healthy financial position supported by comprehensive fiscal policies, conservative management practices, sound fund balance levels as well as manageable debt position. The rating further considers the City's strategically*

positioned local economy and stable, sizeable tax base with potential growth opportunities from ongoing redevelopment efforts.” Moody’s also states that Norwalk’s AAA rating is due in part to Moody’s determination that Norwalk has no linkages to the weakening credit profile of the U.S. Government, again, underscoring the significant distinction between the Norwalk ability to pay and the state and national economy. Moody’s goes on to state that Norwalk’s strengths include effective financial management during the economic downturn, budget reserves that continue to provide a sound cushion and a substantial tax base with above average wealth industries. In discussing the future, Moody’s states Norwalk’s financial position is expected to remain sound given the City’s comprehensive financial planning and oversight, as well as maintenance of reserves in line with targeted levels. As was testified to by Finance Director Hamilton and is included in the Moody’s analysis, under Norwalk City policies, unassigned general fund balances are to be maintained between 5 and 10% of operating revenues. Moody’s notes that in 2011, the general fund balance was at 10.4% of revenues with 9.7% unassigned. Moody’s also indicates as fiscal 2012 draws to a close, the City anticipates a slight draw down on reserves due to applications of fiscal 2011 encumbrances. However, ending total general fund balance is projected at \$30.6 million or 10.1% of revenues with \$28.7 million or 9.5% of revenues unassigned.

Moody's also discussed the issue of the four City Pension Plans which Finance Director Hamilton tried to indicate was a negative. In fact, according to Moody's, the City pension plans remain well funded. We would remind the panel that Mr. Hamilton in his presentation indicates that while the economic down turn affected Norwalk City pensions, that Norwalk was not affected as much as other municipalities, specifically, because per City Charter, 100% annual funding of the pension is required each year. The analysis by Moody's goes on to say that Norwalk's sizeable tax base remains stable and that Norwalk's debt position remains manageable.

Agreeing with Moody's is a second rating agency, Standard and Poor's which also has also assigned Norwalk a AAA long-term rating. (Federation Book 1) The AAA rating according to Standard and Poor's, reflects their view of Norwalk deep, diverse economic base and ongoing mixed use development, location near and access to regional employment centers throughout Southwest Connecticut and New York City metropolitan areas, strong income levels and an extremely strong property base, strong financial position afforded primarily reliable property taxes (with no applicable funding interdependence with the Federal Government), coupled with strong management policies and practices. And, finally and significantly, a moderate and low debt burden net of self-supporting enterprise funds. Standard and Poor's goes

on to say the City is reporting an overall fund balance of \$30.5 million or roughly 10% of expenditures which it considers strong.

As indicated above, the City in support of its inability to fund the modest increase requested by the Federation in these proceedings, presented testimony and written report of Thomas Hamilton, Director of Finance. Director Hamilton on cross-examination admitted that the report (Exhibit 185) was created specifically for these proceedings. Significantly, however, Director Hamilton indicated that as Finance Director, he creates and publishes on behalf of the City of Norwalk, a Comprehensive Annual Financial Report, the latest one being fiscal year ending July 30, 2011 (on the Board of Education and Federation's CDs). As reviewed herein, the 2011 Comprehensive Annual Financial Report of the City of Norwalk provides a profile of the financial status of the City of Norwalk. This report, which is the official report of the City of Norwalk, paints a picture which should provide this panel insight into the ability of Norwalk to pay. According to Hamilton in the CAFR, Norwalk per capita income remains among the highest in the nation. The City is a significant commercial industrial and service center. The City has developed a tourist market centered on its outstanding Harbor Islands, National Registry Mansions, museums and a maritime aquarium comprised of nautical museums, aquarium, and I-Max Theatre. Hamilton states that Norwalk has not been immune to the impact of the recession of 2008; however since property tax revenues comprise about 90% of Norwalk's

total revenues and property re-evaluation takes place only once every five years in Connecticut, Norwalk has been better insulated from the most detrimental impacts of the recession.

Significantly, the CAFR references the significant development initiatives and growth in that area. Norwalk has several large projects currently underway or recently completed, including the 33,000 square foot innovation center for Pepperidge Farm Corporation. In addition to the innovation center, Pepperidge Farm's 100,000 square foot corporate headquarters bring valuable new research and development facilities to the City. The City also began collecting tax on 597 Westport Avenue, a newly-constructed 235 unit luxury housing development completed in 2010. Also well underway is Avalon Connecticut, a 311 unit of multi-family housing and 15,000 square feet of new retail space, Summerview Square a new 45 unit multi-family development located at Jeffers and Main Street has completed two of its four phases and they are ready to break ground on its last phase of an additional 32 units. The development has transformed this neighborhood of older historic homes with new vitality and is expected to be completed this summer. The CAFR also indicates construction on Norwalk Hospital's new 628 space parking garage is complete and the Hospital is currently in the process of developing a 92,600 square foot addition to add a new state of the arts out-patient facility on the hospital campus. Construction is also underway at Maplewood at Strawberry Hill a project

to convert the former Fitch School on Strawberry, a tax-exempt property, into a taxable 84 unit congregate housing facility.

In addition to the above, there is ongoing development of I-Park, the former Perkin Elmer site at Main Avenue, owned by National R. E. Sources. LA Fitness received approval for a 12,000 square foot addition to its 48,000 square foot health club and plans to break ground early next year. The City has expedited permitting while ensuring that infrastructure improvements needed to accommodate new development mitigated any inverse, adverse impacts to this development. A second health club facility, a new CRUNCH health club recently opened on 770 Connecticut Avenue and also in development is the proposed 180 child day-care center, which is expected to open next year.

This recent growth is not a one-time deal; according to the redevelopment agency contained in Federation Book 1, behind Tab, Economic Information, are three documents published by the City of Norwalk concerning major development projects for 2012, some of which are referred to in the CAFR, some of which are not. According to the redevelopment agency, as of June of 2012, the following new development is in process at Way Point a 1.3 million square foot mixed use development, 20 North Water, a 170 multi-family unit dwelling unit, 99 Washington Street, a mixed use development with 52 dwelling units, 3200 square foot restaurant and 47 square foot office plans; Chestnut Street mixed use rehab, a 24,740 square foot

mixed use development, Wall Street Place, 66,275 square foot retail and restaurant plus residential units, the Berkley, 150,000 square foot mixed use development with office retail and residential, District 95-7 with multiple phases that include 1.4 million square foot mixed use development, Hillside Plaza LLC, conversion of a current plaza to mixed use retail, restaurant and multi-family, construction of which was completed in the Spring of 2012. With regard to retail and service development in the City of Norwalk, the Norwalk Inn and Conference Center was completed in the Summer of 2012, a third-floor addition with 37 new rooms and 7 additional rooms and adjoining structure, Hotel Zero, a new 96-room hotel with a 4,000 square foot restaurant, CVS, construction to start in the Fall of 2012, I-Park conversion from office to medical offices in a 48,000 square foot LA Fitness Center mentioned above, Stew Leonard's a 20,000 square foot addition to the retail store, Dolci Norwalk Center, expanded use of the conference center to allow celebratory events, that construction completed in 2010, SoNo Hotel, new 121-room hotel, SoNo Field House, new 51,000 square foot indoor commercial recreational facility, Georgetown Subaru, construction completed and taxing underway, SoNo Ice House, re-use of existing building for ice-skating rink.

With regard to office and manufacturing, in addition to the Pepperidge Farm cited above, there is a new conversion at 46 Main Street of a 30,000 square foot building to become a medical office, American Cancer Society, new 13,000 square foot office building,

Norden Park previously mentioned, Richards Avenue, a 17,000 square foot office addition to existing buildings, Norwalk Colt Marina, a new 11,000 square foot high-bay boat storage building, Triden of America, new 45,000 square foot warehouse, 24 East Avenue, new 11,000 square medical office with residential units, Merritt River Partners, new 82,700 square foot office building, King Industries, new 27,000 square foot office lab and research building.

In housing development, the redevelopment agency reports significant development highlighted by the Maple Ridge at Strawberry Hill, 84 unit housing conversion, the Avelon Bay community as mentioned above, Pepperidge Farms mentioned above, Summer View Place, a 63 multi-family unit construction completed on first phases and final phase began in Spring, 2012, Avalon East Norwalk, 244 multi-family units, 349 Main Street, 6 additional residential units as well as 4,000 square foot retail, 1 West Avenue mentioned above, 25 Bolton Street, 12 unit multi-family development, Silver Mine Homes, 10 unit conservation development, began in Spring of 2010, 22 Oakwood Avenue, 11 multi-family units, Oyster Bend/Greyhound Company, Grey Rock Companies, 36 units with a marina, construction completion scheduled for Fall of 2012.

Additionally, schools, museums and community facilities have been upgraded, Norwalk Hospital mentioned above, also the Winston Trek Clover Hill School, a new 12,000 square foot building at a private high school, Stepping Stones Museum for Children

addition, Elder House addition to existing structure, Connecticut Friends School a private K-8 school construction began Fall of 2011, St. George's Greek Church, 21,000 square foot community center and Shore Haven Golf Course, a maintenance facility expansion construction completed Fall of 2012.

Additionally, as is noted by the redevelopment agency in the CAFR and testimony by Finance Director Hamilton, there is a new 32,000 square foot fire station and headquarters, the waste water treatment plant was expanded and upgraded, construction currently underway, North Water Street, extension to West Avenue was completed in 2010, the Norwalk River Valley Linear Trail phase 3 is currently underway and Route 7 Merritt Parkway Interchange construction is also underway.

Finally with regard to development contained in the Union Economic Information is the zoning approval trends. According to the City of Norwalk's own documents (contained in the Union's Economic Information Book 1), the Norwalk Planning and Zoning Department's zoning approval trends has increased dramatically in 2012. Comparing a six-month period in 2009, 2010 and 2011 against the first six months of 2012, there has been an increase in zoning applications and approvals of 29% this year, clearly indicating that Norwalk as it claims, is a city on the rise. Underscoring this is the Norwalk Planning and Zoning Department zoning approval trends 2008-2012. This indicates that there has been a 17.5%

increase in Norwalk building permits for the fiscal year 2011-2012 as compared to the average number of building permits between 2008 and 2011. Since development and redevelopment translates into additional tax revenues and fees, the City can hardly argue that its grand list is static when the evidence is that both building and permitting are on the rise. This information militates strongly in favor of the Union's last best offers that provide modest wage increases for the teachers of Norwalk.

In the 2011 CAFR authored by Finance Director Hamilton, he states, "*Continued steady growth is expected in 2012*". The CAFR also reviews the financial status of the City. On page 3, under the financial highlights, the CAFR states, "*The City's net assets increased by \$16.6 million or 4.8%. The government net assets increased by \$9.2 million or 3.4% and business type net assets increased by \$7.4 million or 9.8%.*" This section of the CAFR also states, "*The general fund (the primary operating fund), reflected on a current financial resource basis an increase of \$1.4 million or 4.8%.*" On page 7 of the CAFR, Finance Director Hamilton, the author, ironically in light of the Board's position in these proceedings, states under expenses, "*Salary increases (cost of living, merit and market adjustment), the ability to attract and retain new and intellectual resources required the City to scribe to approach a competitive salary range position in the marketplace.*" The Federation would note that the Board's position of a three-year wage freeze hardly comports with this important concept.

With regard to the general fund, the CAFR notes that the general fund has \$1.6 million more in actual revenues than expenditures and that there has been an increase in investment income due to increased interest rates. The CAFR notes that the general fund had no significant revenue or expenditure variances, that the Water Pollution Control Authority, an independent authority created by the City, reported net fund assets of \$63.3 million which is 13.7% more than the beginning of the year. This, the CAFR notes, was the result of a successful year of collecting sewer charges as well as controlling costs. The Parking Authority reported net fund assets were basically flat, but still maintained in the positive at \$19.7 million. Again, the CAFR indicates that this positive result was the basis of successful year of collecting sewer charges as well as controlling costs.

According to Hamilton's report on the City financial capability (page 10) the City of Norwalk unemployment rate of 6.7% (table 7) is significantly below the State of Connecticut at 8.1% or the United States at 8.2% as of June, 2012 and is even below that of the rest of Fairfield County as noted in the Bridgeport/Stamford LMA at 7.8%. Again, a positive economic factor with regard to the number of taxpayers in the City of Norwalk as opposed to the comparable groups. This is underscored by the CAFR statement included on economic factors that Norwalk's income stream is stable because it relies mainly on property taxes and has a diverse tax base.

In the notes on financial statements, the CAFR discusses the legal debt limit of the City of Norwalk. The City's indebtedness, net of principal reimbursements expected from the State, do not exceed the legal debt limits as required by the Connecticut General Statutes. According to the CAFR, the total overall statutory debt limit of the City is equal to seven times the annual receipts from taxation, or \$1.8 billion, significantly more than Norwalk currently utilizes. On general purposes, the debt limit is \$579 million. Norwalk's indebtedness is only \$148 million. On pensions, there is no indebtedness, therefore the City of Norwalk has \$772 million available for borrowing, if needed. On schools, the debt limit provides for one billion, one hundred fifty-nine million dollar debt limit. The City has used approximately one-tenth of that leaving over a billion dollars available if necessary. With regard to sewers, the debt limit is \$965 million. The City has only borrowed \$64 million, leaving over \$900 million available. On urban renewal the debt limit is \$837 million, the indebtedness is only \$20 million, leaving over \$816 million available. Finally, the City in its CAFR indicates that based on latest estimates of costs to complete capital projects, the City does not anticipate the necessity to increase related authorizations. These figures are referenced by the Bond Rating Agencies as one of many reasons Norwalk enjoys a AAA rating.

During the pendency of these proceedings in testimony of Mr. Hamilton and in the CAFR, the OPEB obligations of the City of Norwalk were discussed. Finance

Director Hamilton testified with regard to the implementation of GASB 45, which is a reporting requirement that provides that post-employment benefits, principally retiree medical benefits for various employees of the City of Norwalk, must be put on the Norwalk Financial Statement and that the City has created an OPEB Trust Fund which will in the future fund these obligations, however, there is no legal requirement that Norwalk so fund. That being said, however, Mr. Hamilton testified that these unfunded liabilities are being addressed and, according to the CAFR, recognition of the liability accumulated from prior years will be phased in over 30 years commencing with the 2008 liability.

Finally with regard to the City's ability to pay, is the Fund Balance of the City of Norwalk. As stated at the outset of this discussion on Norwalk's financial capability, the Director of Finance, Hamilton, tried to underplay the Fund Balance. He did testify, however, that Norwalk at over 10% total fund balance and at a 9.5% unassigned fund balance, is at the very highest levels of fund balance and is almost double that portion of fund balance that according to the Teacher Negotiations Act cannot be considered by the panel.

Clearly, in light of the fund balance, the AAA ratings and the incredible growth demonstrated by the evidence presented by the Federation, the City of Norwalk has the ability to pay for the modest wage increases requested by the Union in these proceedings. As is discussed in detail infra with regard to our economic proposals, the Union has proposed \$2.8

million in modifications and savings to the Board over three years in its health medical plan, the Union has proposed a freeze or no general wage increase in year one and has proposed modest increases in year two and three, much of which is revenue neutral to the City as there are substantial savings from the medical plans during these same years. The City, on the other hand, is asking for a one-year hard freeze while significantly increasing the cost of medical benefits for the Union in that one year or, alternatively, if the Union's duration is selected, a three-year hard freeze where teachers on step would be frozen for three years and no teacher would receive a general wage increase or step increase while incurring significant increases in cost for their medical benefits by increases in the deductibles on the HSA, increase in cost share and diminution in benefits. This while eliminating post-employment medical benefits for retirees, which no other Norwalk employee group has been required to accept.

The other factor which is given priority pursuant to Connecticut General Statute §10-153(f)(4) is the public interest. This priority factor is not easily measured by graphs or tables, but rather, is a function of the effect the decisions this panel makes will have upon the Norwalk Public School System and the public which it serves. It is the position of the Federation that the public interest demands a teaching staff in Norwalk that is stable, that has a high morale and enjoys working conditions and support necessary to provide quality education to the school system and the school children under its care. Public interest, the Federation submits, requires an

educational system in which teachers are properly compensated and have working conditions conducive to providing effective public education to students. Clearly a decimation to the parties' Collective Bargaining Agreement, a three-year hard freeze on wages and a corollary increase in the cost for medical benefits including significant cost share increases and in the elimination of post-retiree medical benefits as well as significant changes to class size, transfer and assignment language and restrictions on the meetings, all changes and diminishment in working conditions to teachers, hardly comports with attracting and maintaining teachers and/or positively affecting their morale. Throughout this brief in response to the specific positions of the parties on each issue in dispute, the Federation shall further review the public interest considerations.

2. The negotiations between the parties prior to arbitration including the offers and range of discussions of the issues.

Negotiations between the parties prior to this arbitration commenced on July 16, 2012. (Federation Book 1, History of Negotiations) This was a short meeting to exchange proposals during which there was a review of the proposals by each party but no substantive discussion of the issues. The parties met for a second time on July 25, 2012 at which meeting the Federation modified its original proposals which were not significant to begin with and deleted a number of proposals and accepted a number of proposals of the Board. (Federation Book 1, History of Negotiations) The final negotiating session between the parties was limited

to a presentation by the Board's insurance consultant, Bob Lindburg, after which the parties agreed to use the remaining negotiating session for mediation in an attempt to bridge the wide gap between the parties in terms of proposals. Thereafter, the parties met twice with mutually selected mediator J. Larry Foy without success leading us to this present arbitration and the sixty plus remaining issues in dispute, most of which are proposals by the Board of Education to modify long-standing provisions in the parties' Collective Bargaining Agreement, which were mutually reached through direct negotiations, not through an award by an arbitration panel. As of August 16, 2012, the Federation in an attempt to narrow the issues and to reach agreement had withdrawn from the negotiations twenty-three separate proposals.

3. Interests and Welfare of the Employee Group

The interest and welfare of Norwalk teachers is best served by a Collective Bargaining Agreement which provides equitable wages and working conditions for Norwalk teachers. As the evidence demonstrated, Norwalk teachers, as compared to the other comparable groups, DRG-H, Urban and Lower Fairfield County, have lower lifetime earnings than those groups. The Board in these proceedings is offering the lowest economic offer of any board of education this year, 0% GWI and no step for three years. Additionally, as is discussed infra with regard to the economic issues, the Board's last best offer with regard to wages would

significantly disadvantage Norwalk teachers based upon the comparable groups based upon a three-year hard freeze.

The Board in its presentation, has attempted to make a comparison between the Federation and other groups in the City claiming that most of the City groups took a freeze, many of them hard, in the 2010-2011 year. The Federation, as is indicated in its evidence book in 2010 in lieu of a hard freeze, designed and proposed an HSA health insurance plan, agreed to implement the HSA Plan eight months earlier than they had to on 1/1/10 instead of 9/1/10. The plan generated over \$7 million dollars in savings over the three years and eight months it was implemented resulting in a “*revenue neutral*” cost for the current Collective Bargaining Agreement. In the words of current Board member Michael Lyons (Federation Book 1, Tab - Interests and Welfare of the Employee Group) the Norwalk contract had “*an extremely good outcome. There will be a 1.35% general wage increase in year one, a 1.36% increase in year two and a 1.37% increase in year three but the switch over from the PPO to the HSA will take effect in January (nine months prior to the contract beginning date and will save \$2.2 million dollars a year for each of the first of the three years of the contract in addition to having the potential to save close to \$1 million in the nine months prior to the contract’s initiation which will be in that year’s budget.*” It should be noted that Mr. Lyons, at the time that he made

those statements, was on the Norwalk Board of Estimate and Taxation while he now sits as a member of the Board of Education.

In summary, the Board can hardly argue that the Union did not step up in 2010-2011 when any increases it received, which were modest compared to other groups negotiating at the same time, was offset when, as the City's Board of Estimate and Taxation indicated, that the three-year contract was revenue neutral and the Union had given back over \$7 million dollars to the City during this period of time. The Federation would suggest that this was more than any other Norwalk group did during this same three-year period. The Federation gave first and gave most, unlike other groups which will be discussed infra in the salary portion of this brief, the Federation is being asked to take a hard freeze again.

The Union, as is noted in our brief, again to assist the Board and the City, is offering to take a soft freeze for the first year of the collective bargaining agreement, meaning that teachers will not receive a general wage increase or general wage increases in all the ancillary positions which they occupy, but under the Federation's last best offers those teachers on step or on step in the ancillary positions, will receive those steps. This contrasts to the highly compensated Administrators Union which recently settled a three-year deal which provides a 2% general wage increase in the second and third years and steps in each of the three years. (Board Exhibits 260a and 260b) As is reviewed supra, the economic conditions in Norwalk are at the

higher echelon of communities in the State of Connecticut. There are significant surpluses in the funds and fund balances.

The Board, however, in light of this significant ability to pay is making the most sub-par economic offer this scribe has ever encountered. Exacerbating this economic devastation to Norwalk teachers, the Board is attempting to remove a significant number of long-standing conditions of employment which will make the job less attractive than currently and contrary to the Board's stated purpose will have a negative effect on the education of Norwalk's children. As the evidence presented by the Federation demonstrates, Norwalk is a healthy community with significant ability to pay. Both parties agree that Norwalk is a diverse community with all the attendant issues concerning this diversity including as Superintendent Daddona discussed increased workload for Norwalk teachers based on this diversity.

These facts demonstrate that Norwalk School System, like all school systems, needs to attract and retain highly qualified teachers. While the dedicated teaching staff of the Norwalk Public Schools does not come to Norwalk solely on the basis of money, Norwalk teachers do, however, have families and expenses and are cognizant of the wages and working conditions of fellow teachers in the State of Connecticut. The Board in these proceedings, however, is not cognizant of these facts and, in fact, tries to cloud the issue by arguing that the average teacher in Norwalk is at the higher echelon of salaries in the State. While this is a bogus

argument because this high average is derived from experience and educational attainment of Norwalk teachers and does not reflect the actual lifetime earnings of individual teachers which will be discussed in detail in the salary portion of the brief. The Federation would point out, however, with regard to the interest and welfare of teachers as cited in our Books and as will be discussed supra, Norwalk teachers, based upon lifetime earnings, are not among the more highly compensated educators in Connecticut in terms of Southern Fairfield County, DRG-H, or Urban, the three comparison groups presented by the Federation pursuant to the statutory factors. The Board in these proceedings, on the basis of its last best offers is not cognizant or disregards the adverse effect its proposals will have on Norwalk teachers. The Board, by totally disregarding this adverse effect, which removes significant attractors and/or favorable working conditions for Norwalk teachers will negatively impact the morale of present teachers and adversely affects its ability to attract and retain teachers in the future.

The interest and welfare of the employee group requires the modest wage improvements proposed by the Federation. The interest and welfare of the employee group requires that this panel reject the Norwalk Board of Education's attempt to gut the parties' Collective Bargaining Agreement with regard to significant working conditions. Finally, the interest and welfare of the employee group requires the panel award the last best offer of the Federation in each issue in dispute. The Federation is not seeking to break new ground with

regard to working conditions, it is only seeking to preserve the current working conditions, many of which as is discussed infra in this brief, have been in effect for decades.

4. Changes in the Cost of Living Averages Over the Preceding 3 Years

The Consumer Price Index (CPI) is the government's measure of change in retail prices over time for a fixed array of goods and services, the "*market basket*" of the average American. As an indicator of inflation, the CPI is based on prices of food, clothing, shelter, fuel, prescriptions, transportation fares, medical fees and other goods and services that people buy for day-to-day living. This factor is traditionally used in determining cost of living adjustment. Both the Federation and the Board have placed in their booklets exhibits concerning Consumer Price Index. (Union Book 1 under the Economic Information Section; Board Book 2, Exhibits 217 and 218 entitled Consumer Price Index) According to the Board which used the CPI for all urban consumers, the changes in cost of living in 2010 represented 1.5% increase, in 2011 a 3% increase and in year 2012 to date a 2.5% increase, for a total increase compounded of 7% over three years. The Federation presented CPI related to northeast urban, which indicates that between January of 2010 and August 2012, the inflation increased approximately 14 points which relates on an uncompounded basis to over 6% in the northeast for this 2 ½ year period. Applying this standard and this standard alone, as measured against the hard three-year freeze proposed by the Board and the modest increase 2.5% general wage increases in year 2 and 3 of

the Collective Bargaining Agreement proposed by the Union clearly militates in favor of the Federation's last best offer on all the wage increases in these proceedings, especially in light of the additional factors regarding proposed changes in medical plan offered by the Union which would provide economic relief to the Board for medical benefits on the order of \$2.8 million dollars. (Union Exhibit 5)

In summary, the Consumer Price Index, all urban consumers' average for the past three calendar years is 2.33% per annum.

5. The Existing Conditions of Employment of the Employee Group and those of similar groups.

The Federation Book 1 contains on CD the collective bargaining agreements of the most similar groups of employees to compare with the Norwalk Federation of Teachers. In this regard, the Norwalk Federation of Teachers booklets contain information concerning Southern Fairfield County, DRG-H and urban school districts. The comparison between Norwalk teachers and the teachers in these towns and in the state generally will be discussed with regard to each issue in dispute. The Norwalk teachers will also be discussing the most similar group of Norwalk employees, that is the Administrators who are employed by the same Board of Education as the Norwalk teachers and it should be noted here, as will be discussed on individual issues, that the Administrators recently received a three-year collective bargaining agreement which contains soft freeze (no GWI) in year one and 2% wage increases

for the second and third years and contains step increases for all the Administrators in each of the three years and, most importantly, is a three-year collective bargaining agreement. (Board Exhibits 260a and 260b) Under this agreement the working conditions for those Administrators largely remain unchanged. A review of the wealth comparison among this comparison group is discussed in detail infra in the issues relating to economic improvement. It is clear from that detailed review that Norwalk has a significant ability to pay and the Federation has workable, long-standing working conditions which there is no substantial reason to change.

6. Salary, fringe benefits and other conditions of employment prevailing in the State labor market including the terms of recent contract settlements or awards in collective bargaining for other municipal employee organizations and development in the private sector wages and benefits:

In support of its position on the issue of wage increases, medical benefits and general working conditions, the Federation has submitted the above-referenced collective bargaining agreements as well as information concerning changes in wages for teachers in the state which will be reviewed specifically in the appropriate sections.

B. Issues in Dispute:

1. Issue 25, Article XXIV: Duration

The Federation's last best offer concerning duration is that the agreement shall be binding and effective as of September 1, 2013 and shall remain in full force and effect through August 31, 2016. The Board's last best offer is that the agreement shall be binding

effective as of September 1, 2013 and shall remain in full force and effect through August 31, 2014, thus the difference between the two offers is that the Board is asking the panel to award a one-year contract as opposed to the Federation which is asking for a collective bargaining agreement with a three-year duration. The parties are currently in the last year of a contract which was three years in duration and have previously worked under multiple year contracts for many, many years. (See Federation Exhibit Book 3 for previous Norwalk CBA's)

Contained in the Federation's Book 3, under Tab 25, are the contract durations of the Union's comparison group. In Southern Fairfield County, 13 out of 13 districts have three-year contracts. In the urban comparison group, 8 out of 9 districts have three-year contracts. Only 1 district has a two-year contract and in DRG-H 8 out of 9 have a three-year contract and 1 district has a two-year contract. Also in the Federation Book 1 are the specific contracts in Southern Fairfield County which have three-year contracts and DRG-H which have three-year contracts and the urban contracts which have three-year duration. As has been noted supra in this brief, all complete contracts referenced are on a compact disk. The Board of Education in its Book 2, provides the duration for all of Fairfield County and according to the Board's own evidence (Exhibit 238) out of 23 towns in Fairfield County 22 are for a three-year period and 1 is for a two-year period. In fact, in all the comparison groups submitted by both parties, there is no evidence of a one-year collective bargaining agreement.

Finally with regard to comparison groups, the panel should note that the most comparable group of employees to the Norwalk Federation of Teachers are the Norwalk Association of School Administrators who recently completed a collective bargaining agreement which is in full force and effect from the contract years 2012 through 2015, again a three-year collective bargaining agreement entered into voluntarily by the Board for its highly compensated Administrators' group. Therefore, the Union respectfully requests, based upon the statutory factors including working conditions for similar groups of employees, that the Federation's last best offer be awarded.

2. Medical Benefits:

The Federation in its brief, for ease of explanation and convenience of the panel will address the 17 issues concerning medical benefits under this one heading, which include:

Issue 3a-Plan Design

Issue 3b-Eligibility

Issue 4-Premium Cost Sharing 2013-2014

Issue 4a-Premium Cost Sharing 2014-2015

Issue 4b-Premium Cost Sharing 2015-2016

Article X, Section 6-Change of Carrier

Issue 32a, Appendix A4-Plan Design

Issue 32b, Appendix A4-Non-Standard Benefits

Issue 33a, Appendix A4-Deductible Amount

Issue 33b, Deductible Amount

Issue 33c, Deductible Amount

Issue 34-Out of Network Co-Insurance Percentage

Issue 35-Co-Insurance Maximum

Issue 35a, Appendix A4-Co-Insurance Maximum Effective January 1, 2016

Issue 36a-Board Contribution to Deductible Amount 2013-2014

Issue 36b-Board Contribution to Deductible Amount 2014-2015

Issue 36c-Board Contribution to Deductible Amount 2015-2016

Before addressing the individual last best offers of the Federation with regard to the above-referenced issues, the Federation would make some general statements concerning our position on the matter of the High Deductible Health Savings Account. Many districts in Fairfield County, urban and DRG-H have more expensive PPO or POS Health Plans. The Federation in these proceedings has made a significant number of last best offers concerning changes to the medical plan. These changes were testified to and explained by our insurance consultant, Dr. Joseph Fields at the hearing that took place on Friday, October 13, 2012 and are

contained in Union Exhibit 5. The total amount of savings proposed by the Federation approximates \$2,852,365.80 over the three-year collective bargaining agreement proposed. The plan as designed provides over \$2 million dollars in specific, delineated changes to the medical plan. As is outlined in Union Exhibit 5, the Union had originally proposed to the Board that it had been willing to make changes prior to the Collective Bargaining Agreement, that is at the next plan year beginning on January 1, 2013, however, since there had to be voluntary agreement by both parties, that did not occur.

The Federation's last best offers reflect the following changes and the dates when they occurred. The panel should note that the High Deductible Health Savings Account plan in effect has an annual duration beginning January 1st and ending on December 31st each year. The Federation, therefore, in its last best offers, could make no substantive changes to the plan until January, 2014. On January 1, 2014, Federation proposes increasing employee cost share by 1% for a savings to the Board or a cost shifting to the Federation members of \$176,362. The Federation also proposes on January 1, 2014 (Issue 36b) that the Board contribution to the deductible amount will be reduced to 65%, a 10% cost shift from the Board to the individual employees in the HD HSA, for a savings of \$228,450. Additionally on January 1, 2014, the Federation is proposing to increase the out-of-pocket payment limits which are currently \$2,400/individual, \$4,800/family to \$3,000/individual, \$6,000/family for an additional savings of

\$35,272.40. On January 1, 2015 (Union Exhibit 5), the Federation is proposing an additional 1% increase in cost share for an additional savings of \$176,362. Also on January 1, 2015, the Federation is proposing to drop the Board contribution to the deductible amount from 65% to 60% or shifting another 5% of the cost of the deductible to the Federation members for an additional savings for the Board of \$114,225. Finally on January 1, 2016, the Federation is proposing an increase to the HSA deductibles from \$1,500/\$3,000 to \$2,000/\$4,000 for a savings of \$881,810. It should be noted that by going to a \$2,000/\$4,000 the OOP maximum out-of-pocket will go from \$4,000 an individual to \$8,000 an individual. These are the specific design and substantial changes proposed by the Federation during this round of negotiations and all provide significant savings to the Board.

The Federation also proposes (Issue 3a) that effective January 1, 2014 the Board shall provide all individual employees and family coverage in a split-funded or insured Aetna High Deductible/Health Savings Account. Under this change, according to the testimony of Dr. Fields and as indicated in Union Exhibit 5, the Board will save an additional \$818,028.24. It should also be noted that by including the word all, all employees and family coverage effective January 1, 2014, the Board under the Federation's last best offer on Issue 3a, if awarded, would save the Board an additional \$421,856.16 because all remaining PPO members would, by the addition of that language, be required to be in the High Deductible HSA.

The Board on the other hand with regard to its proposal on overall plan design proposes again a one-year deal with the parties remaining in the Anthem Blue Cross/Blue Shield Plan, thus the Board under their last best offers will receive no savings from change of carrier (Federation last best offer saves the parties \$818,024 per year beginning January 1, 2014) and since they have not proposed remaining PPO members going to the HSA, they would also forgo \$421,856 each year which they would save under the Federation's last best offers beginning on January 1, 2014.

With regard to cost sharing, the Board is proposing to go to 13% effective on September 1, 2013, the first day of the contract. The Union respectfully avers that it believes that cost share change that occurred during a current plan year are problematic. The plan year in effect has already started and is actually two-thirds of the way through at the start of the Collective Bargaining Agreement. By changing the cost share the arrangement may be inconsistent with market conduct requirements under CUIPA (Connecticut Unfair Insurance Practices Act) because the individual members will not be provided notification of the fixed costs associated with the plan at the outset of the plan year. This change midstream also could adversely affect open enrollment periods. The proper time to change cost shares or to make any change in benefits and coverages for a IRS qualified plan is at the plan year date. (January 1st) The Federation, therefore, proposes a 1% increase in cost share to 13% effective on January 1,

2014, the first day of the plan year. (Issue 4a) The same problem exists with regard to the Board's offer on 4a, wherein they propose a 2% increase over the total premium cost share in effect in 2013, but again, it would start under their offer in the middle of the benefit year under the HD HSA, which for the reasons stated above is problematic. Additionally, with regard to Issue 4b, Premium Cost Sharing in 2015-2016, the Federation is proposing another 1% increase at the beginning of the January 1, 2015 benefit year. Finally, the Board is proposing another 2% increase in cost share at the beginning of the contract year which is September 1, 2015 in the middle of a plan benefit year, which we believe is also problematic for the reasons stated above. During the pendency of these proceedings, Dr. Joseph Fields on behalf of the Federation and Mr. Robert Lindburg on behalf of the Board, testified concerning the various changes to the plans presented by both parties and with regard to premium cost shares both gentlemen agreed that the norm was an increase of 1% per year. The Board of Education in these proceedings is seeking a 5% increase while significantly shifting cost to the teachers.

Dr. Fields testified, and Mr. Lindburg concurred, that generally when one party is seeking a hard freeze there is no benefit changes during that year of the Collective Bargaining Agreement. The Board of Education in its last best offers is making significant changes and diminishment in benefits for the members of the Federation in the one year that it is seeking to implement, that is, contract year September 1, 2013 through August 31, 2014. The

Board in Issue 33a is proposing to increase the deductible amount effective January 1, 2014 from \$1,500/\$3,000 to \$2,000/\$4,000, which Dr. Fields testified would add an additional \$1,700 cost for each family participant in the plan. This is in the same year that the Board is seeking a hard zero. It should be noted that the Federation is also proposing to go to \$2,000/\$4,000 deductible but holds off until January 1, 2016 because this change will not be as drastic for the members of the Federation in a year in which, hopefully, they will receive a general wage increase. The Board on Issue 34 is also seeking to change the out-of-network co-insurance from 80/20 to 70/30. Importantly, a review of other plans indicates that most plans currently are at the 80/20 level. Secondly and importantly, Dr. Fields testified on this issue, which relates to out-of-network co-insurance, that in Fairfield County there is an issue regarding certain fields including mental health where the panels of in-network doctors is not as plentiful as in other parts of the state. Secondly, 80/20 is not 80/20 of the cost of the benefit but rather 80% of the allowable amount, which according to Dr. Fields' uncontested testimony, is often much less than 80%. So according to the Board's last best offer, this would also be implemented in the one-year collective bargaining agreement that they are seeking and would have a potentially significant adverse impact on the members of the Federation.

Finally with regard to the Board and the Federation offers is Issue 35 which concerns maximum co-insurance OOP. The Federation's last best offer is to maintain

maximum OOP at \$900/\$1800 until January 1, 2014, when it would propose a maximum OOP be \$1,500/\$3,000. For the edification of the panel, OOP is the sum of the deductible and co-insurance and equals the out-of-pocket which currently is \$2,400 individual/\$4,800 family. The Union in its last best offer on Issue 35 proposes a maximum co-insurance of \$1,500/\$3,000 which translates to a total out-of-pocket for each individual or family of \$3,000/\$6,000. The Board's last best offer on co-insurance maximum is \$3,000/\$6,000 which translates into a total out-of-pocket (sum of deductible and co-insurance) of \$5,000/\$10,000. What this means is that members of the Federation under the last best offer of the Board of Education on Issue 35 would have a potential for 100% increase in maximum out-of-pocket on January 1, 2014, in reality, totally limiting access to out-of-network doctors (making them cost prohibitive).

Also in dispute between the parties are two other issues relating to medical benefits, Issues 3b concerning HSA eligibility and Issue 6 concerning change of carrier.

Issue 3b, HSA Eligibility – According to Board's insurance expert Robert Lindburg, the Norwalk Board of Education has for over 30 years provided health insurance coverage to an ex-spouse of an employee when the divorce decree requires such health insurance coverage. The Board, in its proposal on Issue 3b is proposing that *“Any practice of providing ex-spouses with insurance coverage at Board expense shall terminate effective September 1, 2013. However, to the extent such may be required by divorce decree in full force and effect*

prior to September 1, 2013 the employee may cover said ex-spouse by paying for the same at the applicable COBRA rate.” The Federation’s last best offer on Issue 3b provides as follows. *“An ex-spouse shall be covered with the health insurance coverage when the divorce decree requires such health insurance coverage. Employees currently receiving this benefit shall be grandfathered. Effective September 1, 2013 this eligibility shall not apply to other bargaining unit members not grandfathered.”* The difference between the two last best offers, each of which extinguishes the benefit effective September 1, 2013 the eligibility for all employees going forward but in the case of the Board’s last best offer those currently receiving this benefit, which according to Mr. Lindburg is somewhere between 5 and 10 employees, would effectively be cut off from the benefit on September 1, 2013. The Federation’s last best offer eliminates the benefit for all employees as of September 1, 2013, but grandfathers those 5 to 10 employees currently receiving the benefit as the result of a divorce decree. The Federation avers that its approach to this matter extinguishes the benefit but does it in a humane and rational manner that does not adversely affect current divorce decrees and/or require additional payment for employees who have been afforded this benefit through no fault of their own by the Board for these many years. The Federation believes that it is meeting the Board’s needs by extinguishing the benefit but it is doing it in a humane way that protects the 5 to 10 individuals who are currently enjoying this benefit without providing an extension of the benefit into the future.

For these reasons and in conformance with the statutory factors, the Federation requests that its offer on Issue 3b be awarded.

Issue 6-Change of Carrier – During the pendency of these proceedings, the Board of Education has complained that the current re-opener language on change of carrier is overly restrictive and does not provide the Board with the authority to change a carrier or third party administrators. The Board’s last best offer on Issue 6 provides, “*Change of Carrier/Third Party Administrator. The Board reserves the right to change the carrier/third party administrator for the benefits described in this article and Appendix A4 if the level of benefits and coverages substantially equal to the current benefits. The Board agrees to provide the Federation a copy of any RFP it makes and it shall additionally provide the Federation with all written responses. The Federation shall have fourteen days to comment on the responses before the Board makes a decision of whether to change the carrier/third party administrator. The network shall be considered substantially equivalent if the disruption rate (of doctors comparing the networks) is 10% or less.*” The Federation’s last best offer on Change of Carrier also makes modification in the current language and substantially provides what the Board the relief it is seeking states as follows: “*Change of Carrier/Third Party Administrator. The Board reserves the right to change the carrier/third party administrator for the benefits described in this article and Appendix A4 if the level of benefits and coverages are substantially equal to the current*

benefits and coverages. The Board agrees to provide the Federation with a copy of any RFP it makes and it shall additionally provide with all written responses. Sixty days prior to the implementation of the proposed change, the Board of Education shall provide the Federation information concerning access which shall not be less than 92.5% network match and that all plan documents shall be provided to the Union for review. If the Union objects based upon the requirements contained herein, the Union shall have the right to arbitrate the issue prior to implementation.”

Under either last best offer, the Board, as long as the level of benefits and coverages are substantially equal to the current benefits and coverages shall have the right to change carriers. The Federation has no problem with that because under this provision no beneficiary of the medical plan would be adversely affected. The problem, however, with the Board’s last best offer is that it provides the Federation with only 14 days to comment on the responses before the it makes a decision on whether to change carrier/third party administrator. Fourteen days is not nearly enough time for the Federation to digest and review a change of carrier/third party administrator for plans which generally run in excess of 100 pages. Secondly and importantly, the Board’s language goes on to say that network shall be considered substantially equivalent if the disruption rate is 10% or less. This is below the standard of 92.5% network match which was testified to by Dr. Fields during the pendency of these proceedings.

Secondly and importantly, the change of carrier language proposed by the Board presents no meaningful right for the Union to dispute and arbitrate the issue where there is a dispute regarding benefits and coverages. After 14 days, under the Board's last best offer, the Board would have the right to implement the changes leaving the Federation with a change of carrier which may be significantly in violation of the parties' agreement and leave both parties in the unenviable position of back filling and re-establishing a former plan after the new plan was created. This is not the proper way to do this. The Federation should have adequate time to review and digest the changes in plan and an opportunity to properly point out discrepancies or mistakes and/or omissions in the plan put forth by the proposed carrier or third party beneficiary.

In Union Book 3 behind Tab 6, the Federation has presented the panel with language from comparable groups. In Fairfield County, 10 out of the 13 contracts have equal to or better language requiring the Board of Education on change of carrier to provide equal to or better benefits and coverages. The urban comparison 8 of 9 have equal to or better benefits and coverages and in DRG-H 8 of 9 have equal to or better benefits and coverage language. Additionally, a number of contracts provide for significant notice prior to the change, including Greenwich with a 60-day notice, Trumbull with a 30-day notice, Westport with a 30-day notice, opportunity to meet and discuss and the right to go to arbitration. Additionally, Danbury has the right to go to arbitration. Hartford has substantially equal to or better with 60

days to review prior to implementation. New Haven has a prohibition except that the Board may request a re-opener and in Ansonia the notice is 90 days and is subject to binding arbitration. In Derby, the decision of whether it is substantially equivalent or better goes to arbitration. In Norwich the Union shall be provided 60 days prior notice and it shall be subject to arbitration and in West Haven the Federation shall have 45 days to review before implementation on the issue of equal to or better. The Board of Education's last best offer falls short on all of these criteria.

For the reasons stated herein and in conformity with the statutory factors, the Federation's last best offers on its issues should properly be awarded. The Federation's last best offers on Health Insurance provide significant savings to the Board and while shifting cost to Federation members do so in a responsible manner by meting them out over 3 years. The Federation also provides over an additional \$1.2 million dollars by changing carriers and eliminating the PPO option.

3. Issues relating to Compensation.

This section of the brief deals with the issues relating to compensation including general wage increases, step movement and payments for ancillary positions over the course of the Collective Bargaining Agreement awarded by the panel. At the outset it should be noted that the Federation, with regard to issues on compensation, has agreed to Issue 26 –

General Wage Increase in the first year of the Collective Bargaining Agreement which is the same as proposed by the Board of Education. The Federation accepts the last best offer of the Board of Education on Issue 9, which is Article XII, Paragraph 5, Coverage Stipend 2013-2014. The Federation accepts the last best offer of the Board of Education on Issue 19a, Article XX(9) Elementary Building Supervision Stipend 2013-2014. The Federation accepts the last best of the Board of Education on Issue 22a Long-Term Substitute Salary 2013-2014. The Federation accepts the last best offer of the Board of Education on Issue 26 which concerns salary schedule for 2013-2014. The Norwalk Federation of Teachers accepts the last best offer of the Norwalk Board of Education on Issue 37a Miscellaneous Rates 2013-2014. The Federation of Teachers accepts the last best offer of the Board of Education on Issue 38a Extra Compensatory Schedule A-7 (2013-2014 rates). Finally, the Norwalk Federation of Teachers accepts the last best offer of the Norwalk Board of Education on Issue 39a Extra Compensatory Schedule A-10 (2013-2014 rates). By accepting these issues the Federation is in effect accepting a soft freeze on the salary schedule and all extra compensatory wage components of the parties' Collective Bargaining Agreement for the year 2013-2014.

Among remaining issues between the parties concern step movement for teachers on step in 2013-2014 (Issue 27), step movement for teachers on step in 2014-2015 (Issue 29) and step movement for teachers on step in 2015-2016 (Issue 31). On these three

issues the Federation requests that the panel award step movement for each teacher on step in all three years of the Collective Bargaining Agreement. The Board of Education, on the other hand, is seeking that teachers on step receive no step movement, if there is a one-year duration, and no step movement for three years if the panel awards the Federation's duration of three years. The Federation believes that step movement in all 3 years is imperative since steps unlike general wage increases are based upon an ongoing structure agreement between the parties that start teachers at salary levels below market level for the position and require teachers to wait 10 years before realizing the market level for their position. By freezing steps this structure is forever broken and will adversely affect teachers on step for the remainder of their careers.

Additionally, still before the panel is the salary schedule for 2014-2015 (Issue 28). The Federation's last best offer on Issue 28 is that, "*On September 1, 2014 increase all salaries on each line of the salary schedule in effect on August 31, 2014 by two and one-half percent (2.5%).*" The Board's last best offer, if there is a multi-year Collective Bargaining Agreement, on Issue 28 is, "*The salary schedule shall be carried over from 2013-2014 without change.*" The second issue with regard to a general wage increase still before the panel is Issue 30, Appendix A3 Salary Schedule 2015-2016. The Federation's last best offer with regard to Issue 30 is, "*On September 1, 2015 increase all salaries on each lane of the salary schedule in effect on August 31, 2015 by two and one-half percent (2.5%).*" The Board's last best offer on

salary schedule Issue 30 which concerns the salary schedule is as follows: *“The parties shall negotiate over Appendix A Salary Schedule 2015-2016 through a re-opener negotiations in accordance with the statute. Article XXXIII Longevity shall also be subject to negotiations in such re-opener negotiations.”*

The final set of issues relating to wage increases, Issue 10 Stipend Increase for Class Coverage 2014-2015, Issue 11 Stipend Increase for Class Coverage 2015-2016, Issue 19b Substitute Stipend 2014-2015 relating to administrative coverage, Issue 19c Substitute Stipend 2015-2016 relating to administrative coverage, Issue 22b Long-Term Substitute Salary 2014-2015, Issue 22c Long-Term Substitute Salary 2015-2016, Issue 37b Appendix A6 Salary Schedule 2014-2015, Issue 37c Appendix A6 Salary Schedule 2015-2016, Issue 37d Appendix A6 Step Movement 2013-2014, Issue 38b Extra Compensatory Stipend Schedule 2014-2015, Issue 38c Extra Compensatory Stipend Schedule Appendix A7 2015-2016, Issue 39b Extra Compensatory Stipend Schedule Appendix A10 2014-2015, Issue 39c Extra Compensatory Stipend Schedule (A-10) 2015-2016, Issue 38d Step Movement Appendix A7 2013-2014, Issue 39d Appendix A10 Extra Compensatory Movement 2013-2014. For each of this set of issues, the Federation, after accepting a freeze in the first year of the Collective Bargaining Agreement on these issues, is seeking a 2% increase for each position in 2014-2015 and a 2% increase for every position or schedule in 2015-2016. Additionally, as is reflected in

the Board's last best offer, they are seeking no increase for any ancillary position for 2014-2015 and 2015-2016. The only other issues with regard to ancillary positions is whether or not there will be step movement in 2013-2014 the first year of the contract. The Federation says 'yes', the Board of Education says 'no'.

In considering the individual last best offers on the issues relating to wages or steps, including steps and wages on the ancillary positions, the Federation requests that the panel keep in mind some important facts which have been mentioned previously in this brief but bear restating. The Board of Education is seeking an unprecedented three-year hard freeze during these proceedings, no increase in wages at all or steps for the years 2013 through August 31, 2016. There is no precedent in the State of Connecticut for an award of such a collective bargaining agreement. Secondly and importantly, the Board will undoubtedly argue that many of the bargaining units in Norwalk and throughout the State in the last round of negotiation took a one-year soft or hard freeze. The Federation, as is cited in our exhibit books and referred to earlier in this brief, in lieu of a hard zero took a Collective Bargaining Agreement which the Norwalk Board of Estimate and Taxation deemed to be revenue neutral. That Collective Bargaining Agreement contained over \$7 million dollars in cost savings to the City over three years for a change in a health benefit plan from a traditional PPO to a High Deductible Health Savings Account. At the same time, other Norwalk bargaining units were gaining 2 ½% to 3

½% wage increases annually. In addition to the \$7 million dollar savings offered by the Federation, the Federation accepted wage increases of approximately 1.3% general wage increase in each year of a Collective Bargaining Agreement. As the Federation has stated previously, the Federation gave first and gave more to the City of Norwalk. No other bargaining unit has been asked to come back and give another zero let alone three zeroes, which is what the last best offers of the Board of Education are in these proceedings. In fact, the Norwalk Administrators and Supervisors Association recently agreed to a collective bargaining agreement, as outlined in Board Exhibit 260b dated June 10, 2011: *“1. The Board and NASA hereby agree to extend the current agreement by three additional contract years 2012-2013, 2013-2014 and 2014-2015.”* According to the agreement, the employees shall receive a zero GWI in the first year but will receive step advancement in increments if applicable and appropriate. This is exactly the same as was proposed by the Federation in these proceedings for the first year of the Federation’s Collective Bargaining Agreement. In the second and third years, 2013-2014 and 2014-2015 the Board agreed to provide Administrators a 2% general wage increase and step advancement, whereas for the same period of time, if the Federation’s last best offer on duration is accepted, the Board’s offer is zero, no step increase in 2013-2014, zero, no step increase in 2014-2015. Clearly, the Board of Education has the ability and the willingness to enter into multi-year contracts for the Administrators and to provide general wage increases

for that group. Finally with regard to the Administrators, in addition to the wages, they also agreed to roll over all other covenants from the 2009-2012 Collective Bargaining Agreement with an exception for a health insurance re-opener.

The comparisons made by the Board of Education in Exhibit 244 Masters Degree maximums 2012-2013 are instructive with regard to the comparison between Norwalk and all the other teacher bargaining units in Fairfield County. Norwalk teachers are near the bottom in Masters Degree maximum salary. Norwalk teachers are 4th from the bottom in 2012-2013 Maximum Sixth-Year Degree salary (Board Exhibit 246). In order to make Norwalk teachers' salaries appear to be competitive, the Norwalk Board of Education in Exhibit 249 includes the longevity step 4 to the Norwalk salary schedule to make Norwalk 6th from the top. It should be noted by this panel as a review of the parties' Collective Bargaining Agreement will demonstrate that L4 is only for teachers who have worked in the system 33 years. Again the Board presents the Sixth-Year Degree Maximum in 2012-2013 (Board Exhibit 250) and adjusts the Norwalk teachers' salary schedule by adding L4 to that maximum which makes Norwalk 8th from the top. Again, the L4 is after 33 years in the system.

The Board of Education, also during the pendency of these proceedings, has argued that Norwalk's average teacher salary is near the top in the state. While this is true, the Federation as it stated orally during the pendency of these proceedings, reiterates that average

teacher salary is a bogus comparison because in each district teachers have different levels of experience and educational attainment. If a group of teachers, like Norwalk, have more experienced teachers in the measurement, as well as more teachers with higher educational attainment, a group, like Norwalk, would obviously have higher average teachers' salaries. Such data does not measure the actual salary earned by a teacher over his or her working life as a teacher. For a more realistic and accurate comparison of teacher salaries, the Federation offers the comparison of teachers in Southern Fairfield County based upon lifetime earnings. In Federation, Volume 2, Tab 10, the Federation provides a comparison of 13 lower Southern Fairfield County lifetime earnings statistics, Masters and Sixth Year. Most teachers spend the bulk of their career and reach educational attainments of Masters Degree and/or Sixth Year. In lifetime earnings, Norwalk ranks 10th out of 13 districts in Southern Fairfield County. A teacher working in Norwalk for 35 years on an MA column would make \$472,854 less in a lifetime than a Greenwich teacher, and \$148,126 less in a lifetime than a Stamford teacher. The Norwalk teacher, by the measure of lifetime earnings, earns less than Greenwich, Weston, New Canaan, Darien, Stamford, Wilton, Westport, Fairfield and Trumbull. Only Monroe and Stratford, which are slightly below Norwalk and Bridgeport, which is approximately \$300,000 earn less in their lifetime than a Norwalk teacher. A teacher working in Norwalk for 35 years with a Masters Degree, would make \$105,183 less in a lifetime or 4% less than the lifetime earnings as

measured against all the districts in Southern Fairfield County. This important and realistic disparity will be significantly exacerbated if this panel were to determine to provide Norwalk teachers with the draconian last best offers of the Board of Education in these proceedings.

Also instructive are the lifetime earnings 35 years for teachers on the Sixth Year educational attainment in Southern Fairfield County. In lifetime earnings, Norwalk ranks 11 out of 13 among Southern Fairfield County districts. A teacher working in Norwalk for 35 years on the Sixth Year column would make \$504,012 less in a lifetime than a Greenwich teacher and \$175,714 less in a lifetime than a Stamford teacher. On the Sixth Year column in Fairfield County, Greenwich, Wilton, Weston, New Canaan, Stamford, Fairfield, Westport, Monroe, Darien and Trumbull teachers all earn more in a 35-year career than does a Norwalk teacher. A teacher working in Norwalk for 35 years on the Sixth Year column would make approximately \$100,000 or 3% less in a lifetime than the average earnings of all districts in Southern Fairfield County. As is pointed out with regard to the Masters Degree, if the Board's wage proposals are accepted by the panel in this arbitration, the lifetime earnings of Norwalk teachers will be diminished even further. This measure of lifetime earnings is not an average. It reflects the actual earnings of individual teachers over their dedicated career. A three-year hard freeze, which is unprecedented in the State of Connecticut, would significantly lower the lifetime earnings of all teachers in Norwalk.

Behind Tab 11, Federation Book Volume 2, the Federation also demonstrates where Norwalk teachers on an individual basis, are with regard to actual salaries. In this comparison, Norwalk teachers on the Masters max earn \$81,184 whereas 11 districts from Monroe to Greenwich earn more. Greenwich, Darien, New Canaan, Westport, Weston, Trumbull, Fairfield and Wilton all earn on an annual basis \$10,000 more than Norwalk. The Board of Education tries to compare apples to oranges by including longevity steps for Norwalk teachers. Even considering longevity steps which only go into effect in the latter stages of a teacher's career, Norwalk teachers, including the longevity received, starting at year 33 of a career, still are \$6,000 behind Greenwich and over \$2,000 behind Weston, Westport, New Canaan, Darien and Greenwich. These disparities will only increase if the Board's last best offers on wages are awarded by the panel.

Also behind Tab 11, are the actual annual salaries of Norwalk teachers with Six Year Degrees. Norwalk, on this measurement is 12th out of 13 in Southern Fairfield County. Norwalk teachers on the Six Year earn \$87,700 per year as compared to Greenwich whose teachers earned \$108,960 per year, or \$21,000 per year more than Norwalk teachers. Teachers in Stamford, Fairfield, Trumbull, Darien, Westport, Weston, New Canaan and Wilton each earn over \$12,000 more annually than Norwalk teachers. Even if you add longevity steps for teachers, which again as pointed out above, are only paid to Norwalk teachers in the latter

part of their career, teachers in Norwalk still remain behind Darien, Westport, Weston, New Canaan, Wilton and Greenwich. This comparison will only be exacerbated if this panel awards the Board's last best offer with regard to wages in this arbitration.

The Federation also believes the arbitration panel should properly consider changes in cost of living, which the Federation referred to earlier in this brief. Obviously measured based upon the last three years according to the Board's statistics, cost of living has increased 7% on compounded over the last three years. Under the Board's last best offer teachers will not receive any cost of living increase because the Board is offering zero. The Federation is proposing a GWI of 2.5% in the second year and 2.5% in the third year with a zero GWI in the first year of a three-year Collective Bargaining Agreement. This is significantly less than the increase in the cost of living. Under the Board's last best offers on GWI this would reflect at least a 7% salary decrease during a three-year Collective Bargaining Agreement.

Finally with regard to wages, the Federation requests that the panel look at the recent settlements with regard to teacher agreements, all of which provide for wage increases. None provide for a three-year hard freeze.

For the reasons stated herein and in conformance with the statutory criteria including the financial capability of Norwalk, public interest, wages paid to similar

groups of employees and the best interest of the employee group, the last best offers of the Federation should be awarded on the wage issues in dispute.

4. Issue 23, Article XXX Early Retirement Incentive.

The Federation's last best offer on Issue 23 is a proposal to continue language that has been in the parties' Collective Bargaining Agreement for a number of years. The early retirement article in the parties' Collective Bargaining Agreement has been in effect since September 1, 1978. It provides any teacher whose current age plus number of years' experience total at least 80 and has been employed by the Board for at least 15 years and is eligible for retirement as defined in Connecticut General Statutes and who is at least 55 years of age at the time of retirement may elect to retire under the following conditions. Said employee under paragraph 2 of Article XXX shall receive individual health insurance coverage afforded other members of the bargaining unit by whom the retiree was represented from the time of retirement to age 65. The retiree has the choice of continued dependent coverage under the Board group rates at no cost to the Board. The Board's last best offer states, "*This provision shall be applicable to teachers who submit their irrevocable letter of resignation effective with the end of the 2013-2014 school year and no later than June 30, 2014, after which this provision shall terminate.*"

The Board's last best offer on this issue is problematic for a number of reasons. Number one, the Board is eliminating a long-standing benefit for Norwalk teachers which is contained in literally every other collective bargaining agreement between the City of Norwalk and its employees. The Municipal Employees Association contract (U6), the Norwalk Police Union contract (U7), the AFSCME Local 2405 contract (U8), the IAFF Local 830 contract (U9), the Norwalk Assistants and Supervisors Association contract (U10), and the Norwalk Federation of Educational Personnel contract (U17) all have a post-employment health benefit. In many of those contracts, the benefit is richer and more extensive than the Federation's benefits.

The Federation member who retires and qualifies based upon the provisions of Article XXX can, at most, receive an individual benefit for 10 years and it is only 10 years if the person qualifies by meeting the minimum standard set forth in Article XXX. Many of the other bargaining units' beneficiaries receive member plus a portion of spousal coverage. Norwalk teachers who have been employed for a long period of time rely upon this benefit and the Federation avers that if the Board's last best offer on this issue is awarded that there will be an exodus of any teacher who can avail themselves of this benefit, said teachers will leave at the end of the 2013-2014 academic year. Additionally, many veteran teachers who are

currently employed and who anticipated this benefit will be cut off. Normally when a Board of Education proposes to eliminate a benefit they do it by grandfathering current employees.

Secondly and importantly, the early retirement provision as proposed by the Federation provides in Section 1c that any employee furnishing documented evidence of permanent physical disability but does not qualify under the provisions of this article may individually request the Board to be afforded all benefits of the early retirement plan. Each case will be individually considered by the Board. If the Board's offer on this issue is selected, then these permanently physically disabled teachers will no longer have this benefit.

Finally with regard to medical benefits for retirees, in addition to Norwalk, even Monroe, Stamford, Waterbury and Weston have early retirement insurance equal to or better than what is provided to Norwalk teachers. (U15)

Normally, as stated above, when an employer wishes to eliminate a benefit for employees like the post-employment medical benefits, they grandfather existing employees who have relied upon or may be close to attaining the benefit and take it away for future employees hired after the contract begins. The Board of Education not only is eliminating the benefit, it is eliminating it for many veteran teachers in Norwalk who will now have the Hobson's choice of staying on until age 65, which would be a considerable cost factor to the Board (since they will have to wait up to 10 years before replacing these teachers who are

hanging on solely for the purpose of protecting their health insurance) when they could replace said teacher with a younger teacher who is a less cost to the Board of Education. The Federation submits that this is false economy and another overreach in a series of overreaches as demonstrated by the last best offers by the Board in these proceedings.

5. Issue 5, Article X, Life Insurance Imputed Income.

The Federation in these proceedings is proposing to add a new section to Article X concerning life insurance as follows: *e.(4) Employees, age 50 or over, may elect to decrease their term life insurance coverage to Fifty Thousand Dollars (\$50,000) (or the indexed amount) IRS Standard for tax-advantaged coverage.*” The Board’s last offer on Issue 5 is: “*No such language.*” Currently and continuing in the agreed-to-language in these proceedings is Article X, Section e. Life Insurance 1, which states, “*The Board shall provide 100% premium for \$150,000 term life insurance for each employee.*” The Federation, by its offer on Issue 5, seeks to allow employees at their election when attaining the age of 50 or over to decrease their term life insurance from \$150,000 annually to \$50,000. The purpose of this election is to allow employees, again at their option, to avoid paying Federal taxes on the advantage coverage which currently is \$50,000. The Federation’s offer would have no cost to the Board because they would be purchasing a much lower amount for those employees who elect the reduced coverage. The Board made an oral argument at the hearing, through the testimony of its insurance

consultant Robert Lindburg, that said reduction may have an slight administrative cost to the Board for administering this benefit. The Federation avers that this slight administrative cost is more than adequately offset by the fact that they would be purchasing \$100,000 less of life insurance for those people who elect this benefit. This is one of only two proposals made by the Federation in these proceedings to change the Collective Bargaining Agreement and does not in any way seriously, adversely, economically impact the Board. The panel should also consider that if the Federation's last best offers on the health insurance are awarded the Board will receive, as has been pointed out numerous times in this brief, in excess of \$2.8 million dollars in savings. Based upon the equity of this proposal and the statutory criteria the Federation requests that its last best offer on Issue 5 be awarded.

6. Issue 18a, Article XX (1) Class Size.

The Board of Education has made three proposals to modify the language currently in the parties' Collective Bargaining Agreement. Issues 18a, 18b and 18c will be discussed together since they all relate to class size. The parties' Collective Bargaining Agreement concerning class size has been in the parties' Collective Bargaining Agreement since the 1967-1969 contract. The Federation in its last best offers on Issues 18a, 18b and 18c is proposing to maintain current contract language. The Board of Education is attempting to modify the parties' current Collective Bargaining Agreement. Issue 18a concerns the number of

students in the classroom. The Federation's last best offer states: *"The Federation and Board shall continue to consult to eliminate as rapidly as possible full instructional classes of heterogeneously grouped children in excess of twenty-two (22) students per class in grades 1, 2 and 3; twenty-four (24) in grades 3, 4 and 5; and twenty-eight (28) students per class in the secondary level. These class size provisions shall not be applicable to the magnet school."* The Board of Education's last best offer is to modify this to state: *"The following guidelines shall prevail whenever feasible subject to the circumstances which exist regarding facilities and funding:*

.Twenty-two (22) students per class in grades K1 and 2;

.Twenty-four (24) students per class in grades 3, 4 and 5;

.Twenty-eight (28) students per class at the secondary level.

These class guidelines shall not be applicable to magnet schools." The difference between the last best offer of the Federation which provides for actual class sizes and the Board's proposal which dilutes the class size by attaching to it significant caveats that the class sizes are only guidelines and they shall only prevail when feasible and are subject to the circumstances which exist regarding facilities and funding.

The Board of Education, by its last best offers, would eliminate in any meaningful way, class sizes in the Norwalk Public Schools. The Board could simply crowd the

classroom with excess kids and say it is not feasible to continue with 22 in the lower elementary levels, 24 in the higher elementary levels or 28 in the secondary levels or that they do not have the facilities or funding to accommodate those class sizes. The Board of Education, as has been typical in these proceedings, is speaking with a forked tongue. They say on one hand that they are concerned about the education of Norwalk students, yet on the other hand they want to eliminate class size. Superintendent Anthony Daddona's testimony was instructive with regard to this issue. He testified about closing the achievement gap in the Norwalk Public Schools. He talked about the need to implement the core curriculum. He talked about the diversity of the Norwalk Public Schools, all of which militate in favor of maintaining the current class sizes. With the diverse student population, with the increased number of students with special needs including autism, with the necessity of teachers to engage in differentiated learning which requires individual instruction for a class; class size matters. The Board's last best offers on class size are inconsistent with Superintendent Daddona's testimony and the stated position of most schools in the field. Contained in the Federation's booklet are a number of studies regarding class size, including the famous Tennessee Study. Finally, Superintendent Daddona, with regard to class size, testified that individual student achievement in the classroom will be part of the new pilot teacher evaluation process, all of which are inextricably entwined with the concept of class size.

As is stated in the various studies contained in the Federation's booklet, Volume 3, Tab 18a, for many parents, educators and policy makers, smaller classes are an apparent full-proof prescription for improving student performance. Fewer students mean more individual attention from the teacher, calmer classrooms and consequently higher test scores. The nation-wide trend toward smaller classes was prompted by a class-size reduction experiment in Tennessee called the "*Student/Teacher Achievement Ratio*" or "*STAR Study*". The STAR study compared smaller classes of 13 to 17 students in the elementary level relative to regular size classes of 22-26 students and the STAR data indicated that smaller classes led to statistically significant improvements in reading, mathematics and that the benefits were greatest for students who started in small classes early. The Board of Education, while professing to be concerned about student achievement and closing the achievement gap, seems by its last best offer to be going the other way. Currently, Norwalk is at the high side of the STAR equation but the Board of Education by removing language from the contract with regard to class size, which again has been in effect for many years, is going the other way. The Federation avers that the current system works, is not broken and inures to the benefit not only of the teachers but, more significantly to the students.

The comparison of class size among the comparison group is also instructive with regard to the importance of class size. In Southern Fairfield County, 11 out of

13 districts have elementary class size student limitations in the contract. Eight out of 9 of the urban group have class-size student limitations and in DRG-H all 9 have class-size student limitations in the elementary schools. In the secondary schools in Southern Fairfield County, 11 out of 13 have class-size student limitations in the contract. Eight out of 9 of the urban districts have class-size student limitations in the contract and in DRG-H, 8 out of 9 have secondary class-size student limitations in the contract. The language of those contracts is clear and unambiguous and is not based upon easily avoided guidelines which relate to feasibility, facilities and funding. The Board of Education under its last best offer could say to parents and teachers, sorry, we have to have more than 22 students in a K1, 2 or 3 class or 24 students in a grade 3, 4 or 5 class or 28 students per class in grade 6-12 because we cannot afford it. This does not comport with good educational practices, is a significant modification in the workload of teachers and what the Superintendent professes to be a priority of the school district in closing the achievement gap.

Issue 18b concerns the ratios. Ratios are defined in the current contract language which has been in the parties' agreement for many years. Under paragraph 2 of Article XX, the current language which is the Federation's last best offer on Issue 18b states, "*The Board intends to maintain a pupil/teacher ratio of 24.0 to 1 at the elementary schools and 21.3 to 1 at the secondary schools, exclusive of team teaching during lunch in this agreement.*" The

Board's last best offer contains the same language but prefaced by the following clause: "*Subject to available funds.*" Again, as was discussed with regard to Issue 18a, this undermines and basically eliminates any requirement that the Board maintain teacher/student ratios in the elementary or secondary schools. All the Board has to do to avoid its responsibility is say, we don't have the available funds. There is no standard to that or no obligation to demonstrate what available funds means. The importance of class size was discussed above. The Federation requests that the panel read the information provided in our booklets with regard to various studies including the STAR study from Tennessee to underscore the importance of class size to the teachers and the students.

Teachers, in order to adequately provide the educational services for which they were employed, must have working conditions that allow for success, especially in light of the fact that the new teacher evaluation procedures will include a significant portion related to class achievement. With differentiated education and all the attendant requirements that teachers are faced with today as well as the diversity of students in the heterogeneously grouped classes in the Norwalk Public Schools, increased class size is not an option. It is not educationally sound, it is not in the best interest of either students or teachers. The Federation, in the most emphatic way, implores the panel to continue the current language with regard to class

size and class size ratios. Do not let the Board of Education undermine and eliminate these protections for students and teachers as is occasioned in 18a and 18b.

Issue 18c, paragraph 4 of Article XX, concerns the procedure to be used in resolving class size problems at the building level. Under the language of the contract, teachers consult with their principal about the class size problem at the building level and, if that does not work, the administration after consulting with the Federation twice a year, October and February, will submit to the Board a plan to reduce excessively large classes recognizing the distribution of enrollment, programs offered, ages of children and utilization of personnel. Regarding Federation Exhibit U14, which is the class-size study for the first semester of the 2012-2013 school year. Superintendent Daddona testified that he participated in this process along with Elio Longo, COO of the Norwalk Public Schools, and NFT President Bruce L. Mellion. The three concurred and as happens every year in this process, a report is drafted (U14) and said report is passed on to the Board of Education to be adopted. This process works well. It protects the interest of the Board and the individual teachers represented by the Federation and should not be eliminated as is proposed by the last best offer of the Board of Education.

In summary, the Federation requests that the class-size language in the current contract language as embodied in the Federation's last best offer, be continued into the

new contract. For the reasons stated herein and in conformance with the statutory factors, the Federation requests that its last best offers on 18a, b and c be awarded.

7. Issue 1, Article IV, Section 6 Release Time.

The Norwalk Board of Education and the Norwalk Federation of Teachers have agreed to provide subsidized release time for the President of the Norwalk Federation of Teachers since 1981. During that time, as is reviewed in Volume 2, Tab 1, of the Union's evidence books, this release time has evolved. During that time it has gone from release time from extra duties in 1981 to the point where the Federation currently enjoys two options, a half-time release time in which the Board pays 100% of the fringe benefits and 50% cost for a president on partial release time or the option each year of the Federation to elect to release the president from all his or her teaching duties and other assignments. In that event, currently the Union pays 60% of the cost for the full release and 60% of the cost of the medical benefits for the released president.

In these proceedings, the Federation is proposing to increase the Federation's portion for partial release to 65% wages, while retaining 100% of health benefits for the released Federation president in the event that the Federation does not elect full release. The Board is proposing to decrease the amount of a partial release to a 50/50 split. With regard to the full release option, the Board of Education is proposing to eliminate any subsidy for the fully

released president, requiring the Federation to pay 100% of the president's salary and fringe benefits at the group rate. The Federation's last best offer on full release is to increase the portion paid by the Federation to 65% of salary and fringe benefits in 2013-2014 (Issue 1) and for September 1, 2014 increase the Federation portion to 70% and on September 1, 2015 increase the Federation portion for salary and benefits to 75% (Issue 1a). The Board's last best offer on Issue 1a is that no such language shall appear in the parties' Collective Bargaining Agreement.

At first blush the panel might ask the question why should the Board of Education pay anything for the release of the Federation President. As has been testified to in these proceedings, Norwalk is a large, complex and diverse school system with a myriad of issues attended to such a school system. As is also indicated behind Tab 1 in Book 1 of the Union's evidence book relating to this issue, many large districts in the State of Connecticut, especially urban districts who we compare with, also provide release time to the president. Hartford for example, provides significantly more release time and New Haven provides equivalent release time. The Board will undoubtedly argue that a large number of districts do not provide release time but the Federation avers that those districts are not large districts with the number of teachers that the urban districts (such as Norwalk) have.

What does the Board of Education receive for its release of the president? The Federation avers that there are important benefits to the Board of Education by having a

Union representative, in this case the president, available during the regular work day. Norwalk enjoys the ability to have a Union representative available Monday through Friday, 8:00 a.m. to 4:00 p.m. to meet with representatives of the administration regarding grievances, unfair labor practices, or other problems attendant to running a school district, rather than having to wait until later in the day and incur additional costs for having staff members available after hours because the Union representative is not available, but rather is teaching. Therefore, with released time, the Board can conduct a lot of business during the school day that would otherwise not be able to do.

Secondly and importantly, President Mellion (see Union Book 1, Tab 1) has utilized this time in a way beneficial to the Norwalk Board of Education. By being available during the workday, the president has been allowed to engage and interact, not only with representatives of the administration, but also to be available to meet with Blue Cross/Blue Shield, and the record demonstrates that he was instrumental in helping to create and design the High Deductible Health Savings Account which went in effect during the present contract which generated over \$7 million dollars in savings to the Board of Education.

Additionally, during the 2011-2012 year, President Mellion, by meeting with Anthem Blue Cross, demonstrated that an additional \$235,000 could be extracted from the cost of medical plans saving that amount of money for the Board of Education. With regard to a

request from the Board of Education to save money in 2011-2012, Mr. Mellion during his release time designed and implemented an early retirement plan which saved \$132,000. During that same year, 2011-2012, Mr. Mellion personally worked with the DALIO Foundation to issue a grant totaling \$175,000 for five elementary schools and one middle school. During that year, the release time allowed the Federation President to create savings to the Board of Education on the order of \$550,000. Additionally, the Federation President during his release time, was a major force in reconstituting Briggs High School with the goal of creating a magnet career high school by 2017 and sooner. In summary, the Federation President is involved in virtually every aspect of the Norwalk Public Schools for the betterment of 11,000 public school students in a diverse community. (See Federation Book 3, Tab 1)

An example of the commitment of the Norwalk Federation of Teachers to the system is the significant involvement of the Federation President in the annual class-size committee, much of whose work goes on during the school day. Each Fall and Spring, the Federation President, pursuant to the Collective Bargaining Agreement, engages with the COO and the Superintendent to ensure that there are no grievances or other disputes concerning class sizes and that class sizes remain within the contractual limits which inures to the benefits of all the students in the school district. (Union Exhibit 14) This is just an example of the types of activities which the president engages in.

The Federation in its last best offer on this issue recognizes the importance to this release time and that this release time is a benefit to the teachers and the Union. It is, however, a corollary benefit to the school board which, for a minor cost of under the Federation's proposal, 35% to 25% of the cost of one teaching assignment, receives an inordinate benefit as outlined above. The Federation's last best offer on Issues 1 and 1a is the more reasonable and should not be eliminated as it would be by the Board's last best offer on this issue.

For this reason and in accordance with the statutory factors, the Federation requests that the last best offer on Issues 1 and 1a be awarded.

8. Issue 20, Article XX, Paragraph 14, Preparation Time at the Secondary Level.

The parties' current Collective Bargaining Agreement has language which has been in effect since 1969. (Union Evidence Book, Volume 3, Tab 20) The Federation proposes to continue in this contract, language that is in the current contract as follows: *"All middle and high school certificated personnel below the rank of Assistant Principal, who have had a preparation period shall continue to have one and each teacher may utilize this period in a fashion he/she deems necessary. No such teacher shall be deprived of a preparation period without his or her consent except temporarily in an emergency. No emergency, however, shall be deemed to exist as a result of a financial difficulty experienced by the Board."* The Board of

Education in its last best offer proposes to eliminate this language and substitute it with generic language which states: *“Time shall be set aside each day for unit members assigned to middle and high school levels to engage in professional activities to prepare for instruction including team and individual planning time.”* The Board’s last best offer on this issue eliminates the guarantee of a one-period per day unrestricted preparation period. Under the Board’s last best offer, the amount of time each day is not delineated. Under the Board’s last best offer, a teacher could be provided, consistent with their language, five minutes, and that would not be in any way grievable. Secondly and importantly, the Board’s last best offer includes restrictions that could be imposed upon teachers during this necessary time including team meetings. So, in fact, under the Board’s proposal, teachers could be denied this valuable time.

The Federation, elicited through the testimony of Jayne Sardella and Interim Superintendent Anthony Daddona, the importance of prep time. Mr. Daddona testified that on the secondary level currently teachers receive 45 minutes of unrestricted time, which under the last best offer of the Federation, would continue. Superintendent Dadona testified that teachers need significantly more time to engage in a myriad of activities necessary to prepare for teaching than 45 minutes and conceded on cross-examination, that teachers generally prepare before school, after school and on weekends. Prep time as embodied in the Federation’s last best offer is just a small amount of time available during the school day that allows the teachers the

ability to create lesson plans, to copy materials necessary for teaching, that under the last best offer of the Board would not be available.

This preparation time is not out of the ordinary and a review of similar groups of employees in the state (Union Evidence Book 3, Tab 20) reveals that the following districts have language to the effect that teachers, during their preparation time, are free to prepare for their individual professional responsibilities. In Southern Fairfield County, 11 out of 13 districts have such language. In the urban districts, 9 out of 9 have such language. In DRG-H, 9 out of 9 districts have such language. Many of them, as is reviewed in Tab 20, have more. There is no reasonable basis, applying the statutory factors, to eliminate and restrict the language that currently is in place and has been in place for a significant period of time for Norwalk teachers.

The Board of Education, which has the burden of proof on this issue, has utterly failed to present any evidence that would require the drastic change in the Collective Bargaining Agreement proposed herein. For this reason and in conformance with the statutory factors, the Federation requests that its last best offer on Issue 20 be awarded.

9. Issue 24, Article XXXI, In-Service Credit.

This issue concerns a system in Norwalk which has been in place since 1981. Under the in-service article, the Board allows teachers to gain credit toward degree

advancement and the Board provides the opportunity for teachers to receive half the credits necessary for degree, change and/or advancement on the salary columns in the parties' Collective Bargaining Agreement. This article as is stated in the present contract, is the last best offer of the Federation. The Board of Education is proposing to eliminate this Article from the contract, providing only that teachers who have received in-service credit on the salary schedule prior to July 1, 2013 shall maintain such credit for salary schedule placement purposes. Since the Board's last best offer extinguishes this benefit during the existing Collective Bargaining Agreement which expires on August 31, 2013, the Federation believes that the Board's last best offer on Issue 24 is defective and requests that the panel award this issue to the Federation.

The Federation avers that under this long-standing system, there is no cost to the Board of Education. While controlled by the Board of Education through the supervision of the Superintendent, the plan is self-sustaining and is totally paid for through tuition of teachers who apply for and participate in the in-service program. By having this provision in the parties' Collective Bargaining Agreement, the Board of Education has no obligation to reimburse teachers for outside tuition. In most of the districts in the comparison group, Southern Fairfield County, urban and DRG-H, said comparable districts provide for reimbursement for tuition and the Board in those districts, unlike Norwalk, has an obligation to pay a portion of the tuition for teachers who seek additional educational attainment. In Southern Fairfield County, 10 out of 13

districts provide reimbursement for tuition. In the urban districts, 4 out of 9 provide reimbursement for tuition and in DRG-H, 5 out of 9 provide reimbursement for tuition. Many of the districts provide a revolving fund paid for by the Board of Education to effectuate this purpose. Darien, for example, has a fund of \$30,000 annually. Greenwich has \$190,000 available annually. Stamford has \$150,000 fund available annually. Weston has a \$65,000 fund available annually. Westport has a \$50,000 fund available annually. Other districts reimburse a portion of all credit course costs to teachers, as is reviewed extensively in Federation Evidence Book 3, behind Tab 24. Again, as is the case with many of the Board's last best offers in this arbitration, a no-cost item to the Board of Education is being eliminated, even though it helps foster professional development as well as increase the educational attainment of Norwalk teachers. In summary, the In-Service Program is controlled by the Superintendent who determines which courses qualify and what classes can and will be taught. It has no cost to the Board, therefore, it is significantly less costly than the myriad of tuition reimbursement programs that are enjoyed by similar groups of employees in Southern Fairfield County, urban groups and DRG-H.

The Board of Education who has the burden of proof for the elimination of this article, has utterly failed, based upon the statutory criteria, to demonstrate by a preponderance of the evidence that this cost free, important professional development article

should be eliminated. Therefore in conformance with statutory factors, the Federation requests that its last best offer on Issue 24 be awarded.

10. Issue 2, Article IX, Section 6 Use of Sick Leave for Family Illness.

This provision has been in the parties' Collective Bargaining Agreement since 1973. It provides a valuable mechanism whereby sick leave can be utilized by a teacher in the case of critical or serious illness to a member of the teacher's immediate family. The Federation, in its last best offer, is offering to modify the current contract language by adding a clause, "*Effective September 1, 2013 there shall be a cap of twenty (20) days per school year.*" The Board of Education is proposing to modify this provision to add, "*When a teacher is absent because of critical or serious illness of a member of the immediate family, such absence(s) will be deducted from the teacher's personal days to the extent available and then up to five (5) days shall be deducted from a teacher's sick leave and shall thereafter be unpaid.*" This is a significant change for those few teachers who are in this unenviable position.

Both the Federation and the Board are proposing a cap. The Federation believes that its modification, which limits it to a cap of 20 days per year is more reasonable than the Board's significant reduction from unlimited to a cap of available personal days, followed by up to five (5) days of sick leave usage. That being said, however, the Federation because of its limited applicability and because there are so many more significant issues in dispute between

the parties, even in light of the fact that 12 out of 30 contracts in southern Fairfield County have a provision, and 6 out of 9 contracts in DRG-H have a provision, hereby notifies the panel that it has no objection to the panel awarding the last best offer on Issue 2 to the Board.

11. Issues 7 and 8, Article XII, Sections 1 and 3 Standard for Making Assignment.

In the parties' current Collective Bargaining Agreement, which in some form or another, has been in Norwalk teachers' Collective Bargaining Agreement since 1971 (Federation Exhibit Book 3, Tab 7 and 8) states under Article XII, Assignments, as follows:

1. *The interest of the students in the educational program are paramount in the assignment and transfer of certificated personnel. Assignments shall be made after reasonable effort has been made to meet the requests and preferences of certified personnel. Assignments made would be changed only in the best interest of the school system.*

The difference between the Federation and the Board on this issue, both of whom are modifying the current contract, is that the Federation would continue to include in the contract an obligation by the Board that every reasonable effort be made with regard to this issue, whereas the Board is proposing to delete that language. Both parties have modified the word "meet" to consider. Both parties are weakening this language but the difference is that the Federation's last best offer requires that the Board continue as it has in the past, to engage in every reasonable effort prior to making assignments. By taking out that language, the Board of Education is doubly eliminating any meaning to the language of paragraph 1 by changing

“meet” to considering and deleting the language “every reasonable effort”. The parties both agree that assignments will be changed only in the best interest of the school system, but under the Board’s last best offer, no effort need be expended.

This long-standing language, or language like it, is contained in 7 out of 13 contracts in Southern Fairfield County, 5 out of 9 contracts in the urban districts and 5 out of 9 contracts in DRG-H, indicating that this language is more prevalent than not in groups of employees in the state of Connecticut as compared to the Norwalk teachers. Generally, Boards of Education agree that every reasonable effort, reasonable requests and desires, wishes, preferences of teachers will be met with regard to the issue of assignment. While the Federation is willing to modify its position in this matter, it believes there has to be some effort by the Board to at least consider the requests of teachers prior to making assignment changes. For this reason and in conformance with the statutory criteria, the Federation requests that the panel award its last best offer on Issue 7.

Also regarding assignments is Issue 8 which concerns Article XII, 3. Under the parties’ current Collective Bargaining Agreement, the contract states, “*To the extent possible, changes in grade assignments in elementary schools and in subject assignments in secondary schools shall be voluntary.*” The Board of Education is seeking to eliminate this long-standing language which has been in the parties’ Collective Bargaining Agreement since 1967 and as is

the requirement with Issue 7, changes in grade assignment in the elementary schools and subject assignment in the secondary schools will continue to be made in the best interests of the school system. The Board of Education by its last best offer will drastically change the working conditions for Norwalk teachers resulting in a situation where teachers can be ping-ponged in the elementary schools from grade to grade on a yearly basis. Under the Board's last best offer, the teacher will not have the opportunity to grow in a grade level and its last best offer does not provide consistency on the grade level. This will not only have a detrimental effect on the morale of teachers, but also will adversely affect the education of the students since grade level assignments in the elementary school level and subject assignments on the secondary school level, will not continue to have experienced teachers on a year to year basis.

The Board of Education, which has the burden of proof on this matter by a preponderance of evidence, has presented no testimonial evidence that the current Collective Bargaining Agreement has caused them undue harm or in any way, affected the running of the school system. Secondly and importantly, the Board presented no testimony or documentary evidence regarding that this language has caused problems for the school district or that there were any grievances filed or necessitated by the continued implementation of this valuable and important language.

For the reasons stated herein and in conformance with the statutory factors, the Federation requests that its last best offer on Issue 8 be awarded.

12. Issues 14, 15 and 16, Transfers.

Issues 14, 15 and 16 which all concern Article XIII, Transfers, again is an effort by the Board of Education to change long-standing CBA provisions. Issue 14 has been in the Collective Bargaining Agreement since 1967. The language in dispute over Issue 15, Article XIII, Paragraph 2, Transfers at the Beginning of the School Year, has been in the parties' Collective Bargaining Agreement since 1974 and Issue 16, Appointment to Vacancies, was placed in the contract by the parties on September 1, 2006 as a voluntary agreement between the parties because it is an assistance to both parties with regard to appointments to vacancies as will be discussed below. (Federation Book 3, Tabs 14, 15 and 16)

The parties' current language with regard to Issue 14 states:

“The best interest of students in the educational program are paramount in the assignment and transfer of certificated personnel. Transfers shall be made after every reasonable effort has been made to meet the requests and preferences of the certificated personnel. Although the Board and the Federation recognize that some transfers of certificated personnel from one school to another is unavoidable; they also recognize that frequent transfers of certificated personnel is disruptive of the educational process, and interferes with optimum teacher performance.”

The differences between the Federation and the Board on Issue 14 are two. The Board of Education would strike in the above paragraph, “*every reasonable has been made language*

before effectuating a transfer". The Federation believes that this language is necessary because it requires that the Board continue to make an effort to consider. Both parties are agreeing to change as a second modification the word "*meet*" to, and in the case of the Federation, "*consider*" and in the case of the Board of Education, "*considering*". Under the Board's last best offer they are not required to make any effort to consider and under the Federation's they are. The Federation believes that there should be some level of effort by the Board of Education before it disrupts a teacher by transferring him or her. For that reason, and that reason alone, the Federation believes that its modification to Article XIII, Standards for Transfer, is the more reasonable and should be awarded.

The second issue (Issue 15) concerns transfers after the beginning of the school year. The parties' language in the current Collective Bargaining Agreement which has been in effect since 1974, states: "*If there is a reason to believe that an involuntary transfer of a teacher after the opening of school may be required because of differences between projected and actual enrollment, the teacher shall be notified of this possibility in writing no less than ten (10) school days after the opening of school. The actual transfer, if deemed necessary, shall be effective no later than fifteen (15) school days following the opening of school.*" The Federation in its last best offer, is proposing to increase the notification period from 10 days to 15 days after the opening of school and to increase the transfer from 15 to 20 days following the opening of

school. The Board of Education, on the other hand, is proposing to delete this language from the Collective Bargaining Agreement.

This language protects not only the teachers who, in rare instances this is necessary, would be required to pick up and begin with a new class 15 days after the school year begins, but under the Federation's last best offer, up to 20 days after the beginning of the school year, different grade level and/or school. This is disruptive not only to the teacher but also to students. The Federation, although it is not a statutory factor, notes that not only would the teacher and the students be upset by such an eventuality, but suggests that the parents of the students will be outraged. While it is not the province of the Federation to necessarily be concerned about the Board of Education with regard to outraged parents, it would suggest that disrupting students 20 school days or a month after school starts is bad enough. Allowing it to occur in an unlimited basis, as it would be by the deletion of paragraph 2 as is proposed by the Board on Issue 15, could lead to significant disaster with regard to not only teachers but students and especially parents.

The minor savings that the Board could retrieve by breaking up classes in October and November is more than offset by the chaos which will be engendered by this practice. The Federation believes that it is not educationally sound to do so, not in the best interest of the students and especially the teachers. Therefore, for the reasons stated herein and

in conformance with the statutory factors, the Federation requests that the panel award the Federation's last best offer on Issue 15.

The last issue regarding transfers, Issue 16, Appointment to Vacancies, concerns language which was placed by mutual agreement in the parties' Collective Bargaining Agreement in 2006. (Federation Exhibit Book 3, Tab 16) The Federation proposes to continue language in the parties' present Collective Bargaining Agreement which states, "*The transfer list is active for positions that are vacant between June 15th and August 1st. At all other times vacancies are to be filled from the candidates who have applied for the positions.*" The Board of Education's last best offer is to delete this language from the parties' Collective Bargaining Agreement.

The purpose of the current language which the Federation proposes to continue in the parties' Collective Bargaining Agreement was to give some teeth to the transfer list and to provide a period where current teachers would have a preference over outside candidates to voluntarily transfer. This is a very short window, June 15th to August 1st and it allows current employees to move to other positions in the system. By eliminating this language, the Board would be returning to the prior practice which was to give no preference to current teachers but to hire from outside the school system. Once August 1st comes and goes, at all other times, vacancies are filled from candidates who applied for the position, meaning the Board can

hire outside candidates. This is a minor preference for current employees which was voluntarily agreed to by the Board and the Union in 2006, works well, and should not be removed from the parties' Collective Bargaining Agreement.

For the reasons stated herein and in conformance with the statutory factors, the Federation requests that its last best offer on Issue 16 be awarded.

13. Issue 17a, b, c, d and f, Professional Meetings.

The Board of Education in Issues 17a, b, c, and d, is attempting to eliminate or significantly modify the language that has been in the parties' Collective Bargaining Agreement in its present form since the mid-70s. With regard to Issue 17a the language has been in the parties' Collective Bargaining Agreement since 1967. With regard to Issue 17b the language has been in the parties' Collective Bargaining Agreement since 1974. With regard to Issue 17c the language has been in the parties' Collective Bargaining Agreement since 1974 and with regard to Issue 17d the language has been in the parties' Collective Bargaining Agreement since 1989. (Federation Exhibit Book 3, Tab 17a, b, c and d)

With regard to Issue 17a, the Federation is proposing to continue the long-standing language in the parties' Collective Bargaining Agreement which states:

“Teachers recognize that their responsibility to their students and their profession requires the performance of duties that involve time beyond the normal school day. Although Monday and Tuesday afternoons are reserved for meetings and in-service training, meetings affecting the same

teacher shall not be scheduled for both days more than once a month. Attendance at parent conference is a professional obligation. Attendance at PTA meetings by teachers shall only be required at meetings which are concerned with curriculum and/or student progress.”

The Board of Education’s last best offer on Issue 17a deletes the following language from Paragraph 1 of Article XVIII.

“Although Monday and Tuesday afternoons are reserved for meetings and in-service training sessions, meetings affecting the same teacher shall not be scheduled for both days more than once a month.”

In effect, the Board’s last best offer on Issue 17a is to allow the Board to schedule as many meetings a month on any day that it wishes. Under the Board’s last best offer, teachers outside their normal school day could be required at the unfettered discretion of the Board to work additional time.

In Federation Evidence Book 3 behind Tab 17a, is evidence that professional meetings on specific days is language contained in most contracts in the comparison groups. Specifically noted is Bridgeport, which maintains by contract Wednesday, Bristol which maintains by contract Wednesday, Danbury, Monday and Tuesday, East Hartford Tuesday, Fairfield Tuesday, New Haven Monday, Norwalk Monday and Tuesday, New Britain Wednesday, and Westport Monday. Under the Board’s proposal the meetings could be held on any day of the week and would not be limited to more than one day per week as is now the case, or more than once a month.

There is no justification to the Board's last best offer on Issue 17. It would be a significant increase in the length of the workday for the Norwalk teachers and is especially onerous in that the Board is offering to increase the workday for teachers under its proposals when it is offering a hard zero on wages. Normally when the workday is increased for teachers there is a corollary increase in wages to reflect the increased time. The Board of Education's offer does not comport with the statutory factors; is onerous and unreasonable and should not be considered by this panel.

Issue 17b, Paragraph 2. The Federation proposes as its last best offer on Issue 17b to continue the current contract language which states:

“Faculty meetings shall be limited to a maximum of two per month and shall normally be completed in 45 minutes but shall not exceed one hour. The faculty meeting shall begin 10 minutes after the dismissal of the last class of the day. City-wide department meetings shall be limited to two each semester and shall not be scheduled in the same week as other meetings involving the same teachers.”

The Board of Education's last best offer on Issue 17b is:

“Faculty meetings shall generally begin 10 minutes after the dismissal of the last class of the day. City-wide department meetings shall be limited to two each semester and shall not be scheduled in the same week as other meetings involving the teacher.”

The Board's last best offer provides that the meetings, while generally will begin 10 minutes after dismissal of the last class of the day, do not have to be, so that teachers

could have to wait a half-hour or an hour after the class of the day to begin a meeting. Secondly and importantly, under the Board's last best offer, there is no maximum per month on the number of faculty meetings because they have eliminated that restriction and the length of each meeting is unspecified while under the Federation's last best offer, the meeting would continue not to exceed one hour. This again, is another drastic change in working conditions for Norwalk teachers and a significant potential increase in the workday for all teachers in Norwalk without any corollary compensation.

Behind Tab 17b in Federation's Evidence Book, are the maximum length of teachers meetings in Southern Fairfield County, urban and DRG-H. A review of that language indicates that in Southern Fairfield County all 9 districts have a limitation on the maximum length of meetings and/or a limit of the number of meetings per month. In urban, 8 out of 9 districts have a length of meeting limit and with the exception of one district, each is an hour or less. In DRG-H, all districts in the comparison group have a limit on the maximum length of meetings, with only one group having a meeting length for faculty meetings of more than one hour. There are no reported districts in any of the groups in Southern Fairfield County, urban or DRG-H that have unlimited number of faculty meetings per month which is the proposal of the Board on Issue 17b.

In conformance with the statutory factors and in recognition that the Board of Education has not met its burden of proof by a preponderance of the evidence with regard to Issue 17b, the Federation respectfully requests that the panel award its last best offer on 17b.

Issue 17c concerns Article XVIII, Paragraph 3, Curriculum and In-Service Meetings. The Federation's last best offer on 17c, as indicated above and in its evidence book behind Tab 17c, and which is the current language in the Collective Bargaining Agreement, has been in the contract since 1974 and states: "*Curriculum in-service meetings involving the same teacher shall be limited to one (1) per month, except during those months where there are five (5) Mondays or Tuesdays, two (2) in-service meetings may be held.*" The Board of Education's last best offer is to delete this provision from the Collective Bargaining Agreement. Consistent with its offers on Issues 17a and 17b, the Board continues to reserve the right to put a lien on teachers' professional day by extending it in an unlimited way. By deleting the language of 17c, in addition to unlimited faculty meetings, under its last best offer on 17a and 17b, the Board of Education would be able to require unlimited curriculum in-service meetings for Norwalk teachers.

The Federation avers that currently Norwalk teachers engage in more meetings than any group of teachers in the comparison group. The Board's attempt to eliminate

restrictions and adversely affect Norwalk teachers extending their workday is unnecessary, unwarranted and based upon the myriad of responsibilities that teachers have with regard to preparation and parent/student contact outside the normal working day is a burden that teachers should not have. The panel should recognize that the continuation of the present language is necessary to preserve some stability in the teacher's life. Under the Board's last best offer, teachers would be required without any notice any day of the week or number of times to work outside the normal workday. The Board's proposal does not take into effect the best interest of the teachers, but instead places a significant burden upon them that the Board has failed to justify through either the testimony of witnesses or the presentation of evidence.

This is another example of an unreasonable proposal by the Board of Education which for the statutory factors involved, especially in light of the hard zero proposed by the Board of Education, should not be awarded.

Issue 17d which has been in the parties' Collective Bargaining Agreement since 1989 provides that:

“Once a month the same teachers may be asked to attend either an additional mini-faculty meeting or mini-curriculum in-service with the same restrictions as days of the week starting times and length of time as outlined in paragraphs 1 and 3 above. This meeting shall not occur on the day the bargaining unit holds its monthly general membership meeting.”

The Board of Education's last best offer on this is:

“Once a month the same teacher may be asked to attend an additional mini-faculty, a mini-curriculum in-service meeting and/or a data team meeting. Such meeting shall not occur on the day the bargaining unit holds its monthly general membership meeting.”

Whereas, under the language in the parties’ current Collective Bargaining Agreement (on Issue 17a) which is the Federation’s last best offer, teachers in addition to faculty meetings addressed in paragraphs 1, 2 and 3 are currently required to attend one additional meeting which may be a mini-faculty meeting or mini-curriculum meeting with the same time limitations as the other types of meetings. Under the Board’s last best offer on 17d, teachers may be asked to attend all three (mini-faculty meeting, mini-curriculum in-service meeting and a data team meeting). Additionally, there shall be no restrictions on the days of the week, the starting time or the length of time as outlined in paragraphs 1 and 3 above. That means that the Board of Education could start the meetings an hour or two hours after school, or require the teachers to come back at night to attend these meetings because the starting time, under the Board’s last best offer, could be any time and the amount of time that such meeting takes place, again, would be up to the Board of Education, so in effect, three times a month, every month, a teacher could be required to come back to school at 7:00 p.m. and remain until 10 or 11 o’clock to attend mini-faculty meetings, mini curriculum in-service meetings and/or a date team meeting. This is ludicrous. It does not comport with the statutory factors, is unwarranted, unnecessary and

is a lien on teachers' time which is not compensated for. Finally, the Board wants this in a year in which they are offering a hard freeze.

For the reasons stated herein and in conformance with the statutory factors, the panel should properly find that the Board has not met its burden of proof with regard to 17d and should award the last best offer of the Federation.

The last issue concerning meetings (Issue 17f) is the only issue concerning meetings brought forward by the Norwalk Federation of Teachers and concerns Article XX Paragraph 11, Professional Meetings. The Federation proposes that, "*Effective September 1, 2013, during the weeks that elementary conferencing occurs there shall be no Wednesday morning meetings. This time shall be used for elementary conferencing.*" The Board of Education proposes no such language. As is discussed supra in this brief, this is one of two proposals brought forth by the Federation in these proceedings and, as is indicated supra, this is a no-cost item. What the Federation's last best offer on Issue 17f does, is it eliminates elementary teachers' Wednesday morning meeting three times in November and three times in March to allow teachers additional time for parent teacher conferences. In light of the number of meetings the teachers attend this does not unduly restrict the Board of Education, but rather provides a meaningful relief to teachers during parent/teacher conference weeks and allows them to utilize the time for the important task of conferencing with parents about their students. This Federation

last best offer concerns an hour and one-half in the Fall and an hour and one-half in the Spring. This last best offer also allows, as was testified to by Federation witness Jayne Sardella, the opportunity to schedule more parent conferences at a time in which translators are available to deal with non-English speaking parents.

Finally with regard to this issue as Jayne Sardella also testified, parents' conferences are getting longer and more complex requiring teachers to spend not the original 10 minutes per conference, but more often 15 or 20 minutes per conference. This would allow for more time for these expanded conferences and provide additional time early in the day for parents who are not available after school or on that one evening per Fall or Spring set aside for parent conferencing.

Teachers will still continue under this last best offer to perform teacher/parent conferences outside their normal workday and outside the two hours set aside for the evening meeting in the Fall and the Spring. It will, however, have a beneficial effect on the process with little or no disruption in the meeting schedule for elementary teachers, who by the way, have more meetings than Norwalk teachers in the middle school or high school.

For the reasons stated herein and in conformance with the statutory factors, the Federation requests that its last best offer on Issue 17f be awarded.

IV. CONCLUSIONS:

Based upon the evidence presented at the hearings, and after a review of the parties' respective last best offers, the Federation avers that this arbitration panel, properly applying the statutory factors, must conclude that each and every one of the Federation's last best offers on the issues in dispute is the more reasonable and should properly be awarded by this panel. The Federation recognizes that in these proceedings it is extremely hard for a panel to award the last best offers exclusively to one party. The record, however, mandates such a result based upon the fact that the Federation's economic proposals recognizing and applying the priority factor of ability to pay, are the more reasonable. As was noted by Norwalk Finance Director Thomas Hamilton, and which is underscored and punctuated by the City of Norwalk's CAFR, Norwalk is a healthy community in terms of its ability to pay. Secondly and importantly, the Federation's economic offers recognize the fact that Norwalk, like all other communities in Connecticut is emerging from a deep recession. That being said, the Federation in its last best offers, has offered a soft zero, that is no general wage increase in the first year of the Collective Bargaining Agreement and has made offers in the second and third year which, measured against the statutory factors of change in the cost of living, is well within the range and, in fact, is economically sound as measured against changes in the cost of living. The Board's last best offer for a hard zero for three years is not reasonable; it does not comport with the statutory factors and is not warranted.

With regard to the issues in dispute regarding working conditions, which concern the bulk of the remaining issues in dispute, the Federation avers that it is largely seeking to maintain the status quo, that is existing language except in places where it has responded positively to the Board's position that some change is required. Therefore, the Federation believes that the panel should award no change with regard to meetings, class size or preparation time because the Board's last best offers on those issues are so far outside the norm as compared to similar groups of employees that they should be rejected. Finally, the Federation has proposed changes in the health plan, which are designed to phase in over the three-year period of the Collective Bargaining Agreement and actually provide significantly more savings to the Board of Education than the offers of the Board regarding this important component of the Collective Bargaining Agreement.

In arriving at its decision, the Federation requests that panel take into effect an important article written by experienced and well-respected Arbitrator J. Larry Foy which was published in the Connecticut Bar Association Labor and Employment Law Quarterly in the Spring of 2000. In that article entitled, State of Connecticut and SEBAC, January 31, 2000 Interest Arbitration Award: The Future of Negotiations and Arbitration of Domestic Partner Benefits for Local Government Employees in Connecticut. Arbitrator Foy enunciated a number of points

concerning the importance of arbitrable emphasis upon the comparison factors. In his article, Attorney Foy stated as follows:

“The two comparison factors listed under #2 and 3 [existing conditions of employment of similar groups of employees and the wages, fringe benefits, working conditions prevailing in the labor market] appear in all three Connecticut public sector labor relations statutes. These two factors have traditionally weighed heavily in the decision-making of interest arbitrators (not only in Connecticut but in most jurisdictions). These factors rely upon objective evidence and reasonable parties readily understand and accept that they constitute equitable yardsticks. According, interest arbitrators rarely (1) add a substantial new benefit which is uncommon among ‘similar groups of employees’ and/or employees ‘in the labor market’ or (2) eliminate an existing substantial benefit which is common among ‘similar groups of employees’ and/or employees ‘in the labor market’. In such circumstances substantial change ordinarily is expected to result from mutual agreement between the parties in bilateral negotiations. It has become well known, understood and accepted by experienced interest arbitrators and other labor relations professionals that interest arbitration is not the proper vehicle for frontier breaking substantial change regardless of whether the change is progressive or reactionary in nature. Important labor relations public policy considerations undergird such thinking”.

Foy also notes in this article that, *“It is similarly well known and understood that, when one party proposes to change a current contract provision, while the other party proposes no change, the party proposing the change bears the burden of proving that its proposed change is justified by the evidence and statutory factors”.* Applying these universally recognized principles, the Federation requests that the panel, after reviewing the substantial evidence, in light of Norwalk’s ability to pay, should properly award each

and every one of the Federation's last best offers in this proceedings. This scribe notes that the number and range of changes sought by the Norwalk Board of Education with regard to teacher working conditions in this case is almost unprecedented and unwarranted. The Federation, again, believes that while it is unusual that one party or the other prevails on all the issues in dispute, this is clearly an exception that is warranted based upon the record and, most importantly, application of the evidence to the statutory factors.

**RESPECTFULLY SUBMITTED,
NORWALK FEDERATION OF TEACHERS**

By /s/ James C. Ferguson

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CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing Memorandum in Support of the Last Best Offers of the Norwalk Federation of Teachers was sent electronically and via overnight mail to the following and was hand-delivered to Arbitrator Kosinski, on this 19th day of October, 2012:

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