STATE DEPARTMENT OF EDUCATION

In the Matter of Section 10-153f (c)
Binding Arbitration Proceedings between the

NORWALK BOARD OF EDUCATION	:	
	:	
-and-	:	
	:	
NORWALK FEDERATION OF TEACHERS	:	October 19, 2012

Before:
Richard H. Kosinski Esq., Arbitration Panel Chairperson
John M. Romanow, Esq., Arbitrator Appointed by the Board
John Gesmonde, Esq. Arbitrator Appointed by the Federation

POST-HEARING BRIEF OF THE NORWALK BOARD OF EDUCATION

I. INTRODUCTION:

tri·age
noun, adjective, verb,**tri·aged, tri·ag·ing.**
noun

* * *

2.
the determination of priorities for action in an emergency.

The Norwalk Board of Education (the Board) oversees a school district in crisis. As a school district with one of the lowest levels of student achievement in the state, it must make significant changes to meet the needs of its student population. However, it faces a host of conflicting demands: the needs of its students for supplies, curriculum and support, the City's demand that the Board do more with less, ever-escalating increases in insurance and other costs, and the salary demands of teachers. As with other crises, the Board (and now this Panel) must triage and allocate scarce resources appropriately. For the coming year, the available funds should be allocated to meet the needs of students, not to increase teacher salaries. Once the necessary and appropriate hard freeze occurs, the parties will have an opportunity to negotiate meaningfully over necessary work rule changes and a comprehensive economic settlement of salary and insurance issues. Accordingly, the overarching priority for the Board is the hard freeze and a one-year contract. As the Board will elaborate in the following, those provisions are imperative and are fully justified by the current crisis in Norwalk.

II. PROCEDURAL HISTORY:

The Board and the Federation are parties to a collective bargaining agreement (the Agreement) for the period from September 1, 2010 through August 31, 2013. In their negotiations for a successor collective bargaining agreement, the parties exchanged proposals on July 19, 2012. (Board Book 1, Ex. 6). In further negotiations, however, the Federation never modified its salary demand for increases of 2.5% each year plus step in three years, for a proposed total increase of over 11%.[1] Even after mediation on August 8, 2012, the parties remained at impasse, and arbitration commenced on October 12, 2012.

Hearings were held from October 12, 2012 through October 14, 2012, before Attorney Richard H. Kosinski, Chairperson of the Panel; Attorney John Romanow, Arbitrator appointed by the Board; and Attorney John Gesmonde, Arbitrator appointed by the Federation. At the arbitration hearings, the Board and the Federation presented evidence and arguments regarding the disputed issues. Some additional issues were resolved, but a large number of issues are presented to this Panel for decision.

[1]The step movement in each year was calculated to be 1.73% in year one, 1.43% in year 2 and .98% in year three based on the FTE Distribution in 2011-2012. (Board Book 1, Ex. 3).

III. STATUTORY CRITERIA:

The Teacher Negotiation Act (the TNA) guides the Panel in its decision here by setting forth two priority considerations:

> In arriving at a decision, the arbitrators or the single arbitrator shall give priority to the public interest and the financial capability of the city or cities in the school district, including consideration of other demands on the financial capability of the city or cities in the school district. In assessing the financial capability of the city or cities, there shall be an irrebuttable presumption that a budget reserve of five per cent or less is not available for payment of the cost of any item subject to arbitration under this chapter.

Conn. Gen. Stat. § 10-153f (c) (4). The TNA also directs the Panel to consider the following additional criteria in light of these two priority factors:

> (A) The negotiations between the parties prior to arbitration, including the offers and the range of discussion of the issues; (B) the interests 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 the terms of recent contract settlements or awards in collective bargaining for other municipal employee organizations and developments in private sector wages and benefits.
>
> Conn. Gen. Stat. § 10-153f (c) (4).

IV. ARGUMENT:

A. <u>A One-Year Contract is Necessary.</u>

A perfect storm of countervailing forces prevented the Board this year from negotiating successfully for the changes necessary to improve education in Norwalk. The parties confronted a unique confluence of economic hardship, the need for a hard freeze, a crisis in the insurance reserve, compelling student learning needs, and a "new normal" of financial constraints. As described below, it is necessary to put the hard freeze behind the parties and clear the way for meaningful negotiations over the necessary changes to the collective bargaining agreement.

1. The Imperative for Change.

The current collective bargaining agreement in Norwalk is a relic of an earlier day. The Federation will undoubtedly point with pride to the fact that many of the contract provisions in question have been around for twenty, thirty or even forty years. That provenance is of little comfort to the parents of students whose performance reflects, indeed is, the achievement gap. Given the public interest in improving student performance, and given the costs and burdens of the current contract language, contract change is imperative.

The specific contract provisions in dispute are discussed under each of the various issues. However, underlying each of the Board's proposals for contract change is the public interest in improving the educational experience for Norwalk students. Interim Superintendent Anthony Daddona testified regarding the unique challenges the Norwalk Public Schools face in terms of student population, low performance, the achievement gap, and limited funds.[2] Change is imperative.

The needs of Norwalk students, as Mr. Daddona testified, are evident in Norwalk's Strategic School Profile, compiled by the State of Connecticut Department of Education. (Board Book 2, Ex. 214, pg. 1). The Profile shows that 43.2% of Norwalk Public School students qualify for free or reduced price school lunches as compared to the state average of only 34.1% (Id.), and that 12.5% of Norwalk students are not fluent in English as compared with the state average of 5.6%. (Id.) In addition, 35.9% of Norwalk students come from non-English speaking homes. (Id., pg. 2). Black students

[2]The transcript of the hearing was not yet available at the time this brief was written.

make up 21.5% of the Norwalk student population, while 36.4% of the student population is of Hispanic origin.

In terms of achievement, Norwalk students fell far below state averages in every subject but one throughout grades 3-8 on the Connecticut Mastery Test. (Id., pg. 3). Norwalk high school students fell strikingly below state averages on the CAPT achievement test. In reading, only 39.6% of Norwalk students met proficiency, while 44.7% of students statewide made goal (the higher state standard). In writing, 51.1% of Norwalk high school students met proficiency, while statewide 61.2% of students met goal. In math, an alarming 34.7% of students met proficiency, while 49.5% of students statewide met goal. Norwalk students fared no better in science, where only 32.5% of students met proficiency as opposed to 47% of students statewide. On SATs, Norwalk students scored lower than the state averages on math, critical reading and writing. Only 22.9% of school districts in the state scored lower than Norwalk on the math portion of the SAT, only 19.8% of districts fared worse in critical reading, and only 24.4% of school districts had worse scores on the writing portion of the test. (Id.)

The State of Connecticut has the worst achievement gap in the country and Norwalk has been categorized as one of the low-performing school districts in the state, as measured by student achievement. (Board Book 2, Ex. 214B). Fifty percent of Norwalk's third-graders are not reading at grade level. (Board Book 2, Ex. 214F). The Brookings Institution identified the Bridgeport-Stamford-Norwalk area with the stigma of having the largest achievement gap in all metropolitan areas studied in terms of test scores. (Board Book 2, Ex. 214I).

Given the impact of the achievement gap on the futures of affected students, remedial efforts have been initiated at the state level. Governor Malloy's statewide education reform plan is designed to address the achievement gap and specifically includes Norwalk. (Board Book 2, Ex. 214D). As a part of Governor Malloy's plan, Norwalk has been classified as an Alliance District, meaning that it is one of the thirty lowest-achieving school districts in the state. (Board Book 2, Ex. 214B).

The needs of Norwalk students are also evident in how the State Department of Education has grouped Norwalk with school districts with similar challenges. Norwalk is in the State Department of Education District Reference Group (DRG) H. (Board Book 2, Ex. 213). The State Department of Education uses seven data indicators in order to properly classify districts, including socioeconomic status (median family income, parental education, parental occupation), three indicators of need (percentage of children living in families with a single parent, percentage of public school children eligible to receive free or reduced-price meals and percentage of children whose families speak a language other than English at home) and enrollment (the number of students attending schools in that district). (Id., pg. 2). The DRG list begins with the most affluent and low-need districts, which are grouped in DRG A. The poorest and highest need districts are in DRG I. Therefore, DRG H, in which Norwalk is placed, is the second-lowest group of Connecticut towns and cities ranked by socioeconomic status. This grouping is further illustration of Norwalk's significant challenges in dealing with a student population in need. (Id.)

As part of statewide education reform, Connecticut is adopting the Common Core State Standards curriculum. (Board Book 2, Ex. 214E). Standardized testing in line with the Common Core State Standards curriculum will begin in 2014. As Mr. Daddona testified, Norwalk is not yet prepared for this massive change in curriculum, and it will need to allocate significant resources to this effort. As Mr. Daddona testified, the school district will need to replace all of its books, and it will need to plan professional development around the Common Core and develop new curricula.

The consequences of not preparing for the switch to the Common Core State Standards would be devastating. Without proper implementation, students would be left to fail the upcoming standardized tests, jeopardizing their ability to apply to college. Because student achievement on standardized tests is used as a barometer of the success of the public schools, Norwalk property values could further plummet as a result of poor test results and the reputation of the school district would be further diminished in the state and beyond.

Thus, in addition to the challenges of a diverse student population, low student achievement and a nearly insurmountable achievement gap, Norwalk must imminently update its curriculum. Updating the curriculum will be time intensive and expensive, with cost estimates of approximately $8 million over three years. (Board Book 2, Ex. 215). Alarmingly, as Mr. Daddona testified, Norwalk is already one year behind in its implementation plan for the switch to the Common Core State Standards, meaning that its financial obligations will actually fall squarely on next year's budget in an estimated amount of $4 million.

Mr. Daddona also testified regarding the massive budget cuts that the district already made last year. (Board Book 1, Ex. 211). In prior years, central office staff was slashed to the point that there is no one else there to cut. The district already lacks central office leadership in all but three core subject areas, leaving gaping holes in curriculum development and management at all grade levels. (Id.)

The necessary cuts this last year directly affected the classroom. Ultimately, some 32 teaching positions were eliminated. Libraries have been closed due to lack of librarians and the number of library aides was halved and their hours cut. Assistant and vice principals saw their hours reduced. Six literacy specialists were eliminated. (Id.) As a result, instructional support to teachers is now extremely limited, which directly impacts student learning and, thus, student achievement.

2. The Need for a Hard Freeze.

a. Ability to pay.

The financial challenges in Norwalk are manifestly clear. Norwalk is a middle class city in the middle of affluent Fairfield County. Real estate values have escalated artificially with the rest of Fairfield County, but the residents of Norwalk are largely lower-middle class. Median family income in Norwalk is, and has long been, the fourth lowest in Fairfield County. (Board Book 2, Exs. 164, 165, 166 and 167). The escalating real estate values in Norwalk do not give its taxpayers any disposable income with which to pay taxes, but rather impose higher burdens in terms of mortgage and rental costs.

The profound problems confronting us at the state and national level are well-known to all. The staggering debt load carried at both levels precludes any expectation that meaningful help for Norwalk will come from either the state or federal government. Indeed, the likelihood is that the burden of repaying the massive debt and funding huge liabilities for pensions and other obligations will further burden taxpayers in Norwalk and throughout the state and country. In the interest of providing the Panel with all relevant information, the Board discussion about the state and federal problems is set forth in the Appendix A to this Post-Hearing Brief. However, the immediate focus here is on the City of Norwalk and its Board of Education.

i. The City of Norwalk.

In 2008, Norwalk was hit hard by the collapse of the financial industry and the persistent recession that followed. Indeed, the residents of Norwalk actually saw their income decline during a time when Norwalk teachers received significant raises. Furthermore, there are intractable budget problems at the state and federal level. As the state and federal legislatures attempt to dig out of the morass of debt accumulated in recent years, state and federal aid is declining. State taxes have increased dramatically already, and increases at the federal level are imperative to deal with the debt crisis. Accordingly, in reviewing financial capability here, the Panel must consider the problems with the state and national economies more generally as well as the severe issues faced by Norwalk specifically.

Thomas Hamilton, the Director of Finance for the City of Norwalk, described in great detail the myriad financial challenges facing the City of Norwalk. These challenges limit the ability of the City to pay higher employee wages and forces the City to offset the rising costs of providing insurance benefits to its employees. Thousands of residents of Connecticut and Norwalk have lost their jobs since 2008. (Board Book 2, Ex. 185 pg. 2). It is universally understood that the higher the unemployment rate, the less the state receives in income tax revenues, and that is exactly what has occurred in Connecticut. (Board Book 1, Ex. 92). The problems in Norwalk have made it increasingly difficult for the City to maintain even the current level of services. (Id.). For these reasons, it is becoming increasingly likely that budget increases allocated to the Norwalk Board of Education will be extremely modest in the coming years.

The City of Norwalk is a relatively expensive place to live. U.S. Census data indicates that Norwalk's median monthly owner cost (with mortgage) is $2,728/month compared to the statewide average of $2,068/month. (Board Book 2, Ex. 185 pg. 4). This figure represents 32% more per month than the state average. (Id.) Median household income in Norwalk, however, is only 6.0% higher than the statewide median household income. (Board Book 2, Ex. 185 pg. 3). This is in large part due to the high real estate values that Norwalk enjoys due to its proximity to New York, although as will be discussed in Appendix A, home prices in Norwalk and the surrounding area have declined drastically in recent years. Additionally, Norwalk homeowners are carrying disproportionately higher costs to live in Norwalk, while income levels remain largely consistent with the state average. As is discussed in Appendix A, however, income levels statewide have dropped by large margins.

High property values have historically had an affect on the amount of the State Education Cost Sharing (ECS) aid received by the City. The "Net Equalized Grand List Per Capita" is a major determinant of ECS aid, which is driven in large part by property values. (Board Book 2, Ex. 185 pg. 13). The underlying assumption in the ECS formula is that homeowners with high property values can afford to pay higher taxes and those tax dollars will appropriately be applied to the school system. Norwalk's relatively high property values, however, have little to do with the ability of its taxpayers to pay higher taxes, as demonstrated by its low ranking in median household income as well as dramatic losses in median household income statewide.

As demonstrated below, the relatively high property values cause a reduction in ECS aid to a fraction of what most other communities similar to Norwalk receive.

[3]Table 10 – ECS Aid Comparison

	FY 2012 ECS Aid	Population (2010 census)	Student Enrollment (10/2009)	Per Capita ECS Aid	ECS Aid per Student
Norwalk	**$10,095,131**	**85,603**	**10,856**	**$118**	**$930**
Ansonia	$15,031,668	19,249	2,725	$781	$5,516
Danbury	$22,857,956	80,893	10,175	$283	$2,246
Derby	$6,865,689	12,902	1,449	$532	$4,738
East Hartford	$41,710,817	51,252	7,242	$814	$5,760
Meriden	$53,783,711	60,868	8,361	$884	$6,433
Norwich	$32,316,543	40,493	3,871	$798	$8,348
Stamford	$7,978,877	122,643	15,036	$65	$531
West Haven	$41,399,303	55,564	6,234	$745	$6,641

(Id.). Even when Norwalk is compared with wealthier towns with far less poverty, Norwalk's ECS Aid is still a fraction of the amount these communities receive on a per capita or per student basis.

[4]Table 11 – ECS Aid Comparison with Selected Wealthier Communities

	FY 2012 ECS Aid	Median Household Income	10/2009 Student Enrollment	Per Capita ECS Aid	ECS Aid per Student
Norwalk	**$10,095,131**	**$77,327**	**10,856**	**$118**	**$930**
Cheshire	$9,298,837	$111,416	4,947	$320	$1,880
Milford	$10,728,519	$78,738	7,129	$192	$1,505
Southington	$19,839,108	$79,840	6,797	$470	$2,919
West Hartford	$16,076,120	$82,412	10,184	$254	$1,579

[3]Connecticut Department of Education website, Bureau of Grants Management

[4]Connecticut Department of Education website, Bureau of Grants Management CT Economic Resource Center Inc, Town Profile 2012.

(Board Book 2, Ex. 185, pg. 14). Thus, the lack of adequate ECS funding in Norwalk causes property taxpayers to assume a disproportionate share of the cost of education compared to similarly situated communities. A full 93% of Norwalk's education budget is funded from local Norwalk taxpayers, while other District Reference Group (DRG) H communities contribute, on average, 74% of the cost of public education in their respective communities. (Id.). The 74% figure is skewed in large part due to Norwalk and Stamford, because three of the communities in DRG H contribute less than 50% of the cost of education through taxes. (Board Book 2, Ex. 185, pgs. 14-15).

Even the home values that Norwalk homeowners typically enjoy have begun to decline. "The June, 2012 Zillow Home Value Index indicates that for the 12 months ending June 2012, Norwalk home values declined by 11.7% . . . . This 11.7% decline was the worst reported in Fairfield County, and out of Connecticut's 169 municipalities, it was the 13th worst performance statewide." (Board Book 2, Ex. 185, pg. 5). Similarly, commercial property values have also continued to decline. For example, the commercial property at 535 Connecticut Avenue, Norwalk, CT, sold for $25,600,000 in 2006 and sold for just $11,000,000 in January of this year. (Board Book 2, Ex. 185C, pg. 2). These types of losses have become far too common in the City of Norwalk.

Thus, there has been a demonstrable decline in sources of city revenue. During fiscal year 2005-06, the City collected over $6.5 million from real estate conveyance taxes. (Board Book 2, Ex. 185, pg. 11). Collections last year were only $2.2 million, a drop of 66%. (Board Book 2, Ex. 185, pg. 11). The City has lost 18% in annual taxes due to assessment losses after tax appeals between 2011 and 2012. (Board Book 2, Ex. 185C, pg. 1). Town Clerk recording fees have also been affected. In the past six years, recording fees declined 49% and interest income declined 81% in the past five years. (Board Book 2, Ex. 185, pg. 11). Intergovernmental revenues have similarly declined, dropping from 15% of total city revenues in 1991, to just 5.6% in 2012. (Board Book 2, Ex. 185, pg. 12).

As a result, the City has been forced to raise property taxes to try to make up some of these revenue shortfalls. The significant recent tax increases are set forth in Mr. Hamilton's report. (Id., pg. 16.). These tax increases build upon an equalized mill rate in Norwalk that historically has been high. The most recent data on the website of the Department of Economic and Community shows that even before the Great Recession, the equalized mill rate in Norwalk of 13.24 was far higher than that of its neighbors (*e.g.* Darien at 7.05, New Canaan at 7.51). Salaries in Norwalk are high (*see* discussion below), and per pupil spending is already a high percentage of household income. (Board Book 2, Ex. 185, at p. 9). Given the already high effort in Norwalk to support education, it is not reasonably possible to continue raising taxes as has been the case in the past. (Board Book 2, Ex. 185, pg. 16).

Accordingly, to offset the impact of declining State and local revenues, the City has been forced to take drastic steps to contain its spending. The City eliminated 24 full-time, non-public safety positions, representing 7% of its civilian workforce. (Board Book 2, Ex. 185, pg. 17). In 2010-2011, all City employees took a wage freeze, with many bargaining groups reopening their contracts in order to do so. (Id.) The City has reached a point where it is not possible for it to further reduce staff without a drastic reduction in services. (Id.)

The City of Norwalk must also provide for new expenditure burdens that it confronts. The first, but not the least of which, is an increase in required pension contributions. For the first time in many years, Norwalk pensions are underfunded and currently the City has an unfunded liability of $35.9 million. (Board Book 2, Ex. 185, pg. 20). Pension contributions continue to rise and it is projected that, over a five-year period, Norwalk's Annual Required Contribution will have increased by $8.1 million, or 387%. (Board Book 2, Ex. 185, pg. 21).

The City is also faced with other costs, such as implementing accounting rules for Other Post-Employment Benefits (OPEB), which include retiree medical insurance, the cost of active employee health benefits and deferred capital maintenance relative to City facilities and infrastructure. (Board Book 2, Ex. 185 pgs. 22-24). Norwalk will continue to incur these costs in the years to come.

Norwalk has nearly $100 million in pension fund losses that must be made up through increased employer contributions, and unfunded OPEB liabilities of $213.5 million, which will require the City to contribute approximately $18.5 million per year in order to properly fund them. (Board Book 2, Ex. 185 pg. 29). Even with a nearly flat operating budget of 0.4% for the FY 2012-2013, it was still necessary to raise taxes by 3.0% on Norwalk's homeowners. The tolerance for tax increases, however, has reached its limit. In 2012, the Director of Finance proposed a 4.1% tax levy increase and a 3.8% mill rate increase to fund the City and education budgets, both of which were decisively rejected by the Norwalk Common Council as too expensive for strapped taxpayers, in a bipartisan vote. (Id.) The rejection of these new taxes, designed to alleviate some of the City's many financial problems, resulted in many painful cuts. Further cuts can be avoided by reducing the budget needs of the Norwalk Board of Education. This can be achieved only by limiting teacher salary increases and applying cost containment measures.

ii. The Board of Education.

These pressures on the City of Norwalk have limited the appropriations to the Board, and there is no reason to believe that funds will be more plentiful in the coming years. The Board's budget in fiscal year 2009-2010 reflected a mere 2.0% increase over its budget in 2008-2009. (Board Book 2, Ex. 185, pg 17). Things then got worse, and the increase for 2010-2011 actually reflected a <u>decrease</u> of 0.95% under the prior year's appropriated budget. (Board Book 2, Ex. 185, pg. 17). For the 2011-2012 school year, the increase was 3.4%. (Board Book 2, Ex. 185, pg. 17). For the current school year, 2012-2013, the district received a 0.4% increase in the budget, resulting in a total budget increase over four years of merely 4.85% at a time when salaries for Norwalk teachers increased by 7.58%. (Board Book 2, Ex. 258). During that timeframe, every other bargaining unit, with the exception of the nurses (*contract currently in negotiations*), took a salary freeze or effective salary freeze during at least one contract year.[5] (Board Book 2, Ex. 258).

The budget that was initially proposed by the Superintendent of Schools was $166,917,766, reflecting an increase of 7.83%, which was believed to be necessary in order to effectively operate the school district. (Board Book 2, Ex. 210, pg 10). Most of that increase would have continued to go toward teacher salaries and benefits. (Board

[5] The administrators took a deferred salary increase in 2011-2012 school year which resulted in no increased cost to the Board that year.

Book 2, Ex. 210 pg 10). The City rejected this request and recommended a budget of approximately $159,000,000, which was adjusted to account for a serious insurance deficit, and reduced to $155,494,990, or a 0.4% increase. (Board Book 2, Ex. 185, pg. 17). There has been a total shortfall of $16,997,300 in the past three years between the Board's determination of its needs to effectively run the district and what has been finally approved by the City. (Board Book 2, Ex. 212B). The lower approvals have forced the Board to find ways to make up the difference.

The cuts that have resulted from these modest budget increases, coupled with the Board's disproportionate obligation to pay much higher than average teacher salaries, have been devastating to the Norwalk Public Schools. The reductions in personnel alone demonstrate the extreme impact. Interim Superintendent Daddona testified that in years prior to the 2012-2013 school year, the Board has been forced to make cuts to central office in order to limit the immediate negative effect on the students of Norwalk. Central office has been depleted and continues to operate with limited resources. These cuts have finally begun to affect services and programs that the administration offers its students.

The "Superintendent's Budget Reconciliation Plan" sets forth the reductions necessary for the Board to make to remain within its City-approved appropriation for 2012-2013. (Board Book 2, Ex. 211, pg. 1). The dramatically low increase appropriated by the City required painful cuts. Twelve library aides were cut down to six working at reduced hours of only 27.5 hours a week. (Board Book 2, Ex. 211, pg. 1). These six part-time library aides are tasked with serving twelve elementary schools, which causes libraries to be closed (or open for an unreasonably short period of time) during the school day. The elementary schools further experienced reductions, which included twelve utility aides, six Intervention Aides and four teacher assistants. (Board Book 2, Ex. 211, pg. 1). Two assistant principals, four Intervention aides, 2.8 security guards and two library aides were cut in the middle schools, (Board Book 2, Ex. 211, pg. 1), 7.4 cuts were made in central office, and 32.5[6] teachers were cut from various other schools. (Board Book 2, Ex. 211, pg. 2). The total number of FTE cuts in the 2012-2013 school year totaled 86.2, an unprecedented level in Norwalk. (Board Book 2, Ex. 211, pg. 2).

Budget challenges will likely continue in the future for the Norwalk Board of Education even if the Panel awards the hard freeze for next year. With increased cost stressors for the Board of Education, the future looks grim unless other money is found to make up for the lost ground. As testified to by Elio Longo, the Chief Operating Officer of the Norwalk Public Schools, the district carries an insurance deficit with the City in the amount of $3.1 million, which must be repaid in three years. When this deficit is added to the shortfall between what the Board asked from the town and its actual appropriation from the City, the total equals about $9.9 million.

b. A Hard Freeze on Teacher Salaries is Justified.

Given the financial constraints and competing demands for scarce resources, the Board necessarily proposed a salary freeze. That proposal (now last best offers) is fully justified by (1) the economic circumstances, (2) current salary levels of Norwalk teachers, (3) settlements reached over the last three years by other teacher groups, and (4) settlements reached by other City and Board of Education bargaining groups.

The current salary levels in Norwalk impose a significant burden on the Board, and there is no justification for further increasing that burden in 2013. Salaries in

[6] Exhibit 211 reflects a 37.5 reduction in Teacher FTEs, however, it was clarified during the hearing that 5 of those FTEs have since been restored.

Norwalk are appreciably higher than the City's ability to pay, irrespective of how one describes it.

First, there are various ways to compare teacher salaries in Norwalk to other Fairfield County towns. If we ignore the significant longevity steps in the contract, Norwalk salaries at the maximum admittedly do not compare favorably in Fairfield County. (Board Book 2, Exhibits 240-246). However, Norwalk teachers receive a significant longevity benefit that adds over $10,000 to the salary of each teacher after 32 years (so that the teacher has the highest salary during the last three years of employment, increasing his or her pension benefits for the rest of his or her life). (Board Book 2, Ex. 247, Agreed Language, Salary Schedule, Steps L-1, L-2, L-3 and L-4). When that longevity amount is added in, we see a very different story, with Norwalk near the top of Fairfield County in maximum salaries at the Masters and Sixth Year tracks. Board Exhibits 249 and 250. Looking at the Fairfield County teacher contracts, set forth on Board Exhibit 10 (CD), we see that even if we add the longevity provisions from all the contracts, Norwalk salaries are far higher than its relative ability to pay. *See* Appendix B. The proof of that is seen in the fact that, while it is 39th on the 2012-2013 AENGLC wealth ranking (Board Book 2, Ex. 175), teacher salaries in Norwalk are 5th in the state. (Board Book 2, Ex. 251).

A hard freeze for the highly-paid Norwalk teachers is also justified by a review of teacher settlements over the last three years, a period when Norwalk teachers received a raise every year. Board Exhibit 256 shows the salary settlement history in Norwalk as compared to the other towns negotiating in that year. The increases provided in the current contract were reported for each year of the contract at 2.85%, 2.86% and 2.87%, for a total increase (ignoring compounding) of 8.58%, as compared to 0.75%, 2.79% and 3.10 percent for a total of 6.64% or almost 2% less over the life of the contract. Similarly, in 2009-2010, there were 42 hard freezes (Board Book 2, Ex. 254), in 2010-2011 there were 37 hard freezes (Board Book 2, Ex. 255), and in 2011-2012, there were 26 hard freezes (Board Book, Ex. 253). It is high time for the Norwalk teachers to accept a hard freeze.

The Federation claimed at the hearing that its demand for step movement is reasonable in light of the fact that the Board granted step movement to the Norwalk Association of School Administrators. The Federation's argument is without merit. First, step cost for administrators is much lower than for teachers. Step movement for Norwalk teachers would cost $1,350,331. (Board Book 1, Bargaining Unit Data).

Second, and more important, the Federation is comparing apples and oranges. As the Board Exhibits 260A and 260B show, unlike the Federation, NASA agreed voluntarily make salary concessions in light of the financial crisis. Specifically, it agreed to defer a previously-negotiated raise of 3.5% until retirement, a deferral for some that could be a decade or more. (Board Book 2, Ex. 260A). Moreover, NASA agreed to renegotiate and extend its contract, accepting a zero in the first year and a 2% general wage increase in the second and third years. (Board Book 2, Ex. 260B). Thus, NASA accepted a lower general wage increase in the second and third years than the Federation is demanding here (in the unlikely event a three-year contract is awarded) while making salary concessions that the Federation eschewed.

The hard freeze is also justified when we look at other Board and City bargaining units. Board Exhibit 258 shows that all the other Board units took at least one zero increase (except for nurses, who are currently negotiating). Board Exhibit 259 shows that all of the City units (again except nurses) took a zero settlement in one of the years. Board Exhibit 8 shows that the one arbitrated settlement (with Public Works employees) includes one year of step freeze (in 2010-2011). On page 22 of the Award in Case No. 2010-MBA-203 (City of Norwalk DPW and Local 2405 of Council 4, AFSMCE, AFL-CIO) (Board Book 1, Ex. 8), the Arbitration Panel noted that these employees "did not receive any wage increase or step advancement for the year commencing July 1, 2010." There, the Panel awarded step movement for the following year to avoid having these employees frozen on step for two years. Here, Norwalk teachers have received step every year of the Great Recession, and the Board's Last Best Offer of no step movement in 2013-2014 for teachers is justified by the step freezes taken by the other groups such as DPW employees.

The hard freeze proposed by the Board is also justified by the other priority consideration, the public interest. Moderation in salary increases is essential to promote student learning, and the $1,350,331 in issue here will make a significant difference in the lives of students. If the Board were required to spend those funds in the coming year, it would impede the Board's effort to maintain staffing levels and a supportive educational environment. The financial limitations that the City of Norwalk confronts are clear. Therefore, an unwarranted increase in teacher salaries directly conflicts with the public interest, as every dollar allocated for teacher salary increases will not be available to address other pressing needs of the district and the student population as outlined above. If step movement for 2013-2014 is imposed through these arbitration proceedings, the district will fall further behind in allocating funds for more justified expenditures, including, but not limited to, supporting the curriculum changes necessitated by the transition to the Common Core State Standards.

Finally, the Federation has recently claimed that its salary demands are justified by the fact that the change in insurance plan three years ago reduced Board costs. (Board Book 1, Ex. 9). How much has changed since then! Moreover, the Federation is now singing a very different tune than it did when the parties agreed on the current contract. In January 2010, following ratification of the current agreement, Federation President Mellion stated:

> This is no longer the case for Norwalk teachers who have one of the highest average teacher salaries in the state, clearly the best health insurance both while actively teacher and in retirement, and outstanding contract language.

(Board Book 2, Ex. 260). The Federation's sad song of sacrifice three years ago is nonsense, and, given the need for triage here, a hard salary freeze is fully justified.

3. <u>The History of Negotiations.</u>

A key factor supporting the Board's Last Best Offer is the failure of the Federation to negotiate meaningfully over necessary changes. To be sure, the need for a hard freeze cast a dark shadow over the negotiations, and it was hard to engage the Federation in negotiations when the Board had no ability to offer a salary increase. But the Federation engaged in very little negotiations and attempted to ambush the Board in arbitration over significant insurance changes that it did not even mention in negotiations.

That the Federation shut down in these negotiations and failed to negotiate meaningfully is evident in the Federation's own exhibits on the bargaining history. Under the History of Negotiations Tab in Volume 1 of the Federation exhibits, we find the unofficial Federation minutes of negotiations. (*See also* Bargaining History, Board

Book 1, Exhibits 5 through 11.) Despite the evident need for change in light of significant student needs, the Federation clung to outmoded contract language, defending contract provisions with history rather than logic. Despite the fact that the other bargaining units for both the City and the Board of Education almost all took hard freezes, the Federation maintained its demands for salary increases throughout the negotiations, and it moderated its position on the record only in its last best offer made in these proceedings.[7] Despite the high cost of insurance and the related crisis over underfunding health care costs,[8] the Federation did not make a single insurance counterproposal during negotiations.

The Federation's refusal to engage in meaningful discussions was evident throughout the negotiations. The Federation minutes of the first negotiations session on July 16, 2012 reflect the fact that the undersigned "asked for 20-30 minutes to highlight the BOE proposals, explain their rationale, after which [the Federation] could caucus." The Federation went on to describe the response as follows: "JF tells Mooney he thinks we are getting off on the wrong foot and to just give us the proposals."

There were two additional negotiation sessions, on July 25 and August 1. As reflected in the unofficial Federation minutes, at the July 25 meeting, the Board accepted the Federation's suggestion that the Board set priorities, and those priorities were provided to the Federation for the next meeting. (Board Book 1, Ex. 10). In that meeting, Mr. Ferguson stated:

[7]As was testified to at the hearing over the objection of the Board, prior to these proceedings, the Federation's offer not to insist on a general wage increase was limited to informal discussions in which the Federation's willingness to forego a salary increase was tied to other conditions.

[8]The Board concedes that this problem, though very real, was not related to any actions by the Federation, but rather was the product of miscalculation over how health insurance costs should be funded.

> We're going to fight tooth and nail. We are not going to give them to you. We will listen to you, but we won't sit here for two hours and listen to your tale of woe. Oh, when we made our offer, the last thing that was said is "are you going to respond to a hard freeze?" Either the BOE doesn't listen or it doesn't respect us. We won't waste our time on a kabouki dance. (Federation Vol. 1, History of Negotiation Tab).

At the next meeting on August 1, 2012, Mr. Lindberg presented the Board's insurance proposal. When he was finished, he asked if there were any questions. There were none. Significantly, the Federation did not make or even mention any counterproposals on insurance. As to the other issues, the undersigned expressed the Board's wish to meet the following Monday. On behalf of the Federation, Mr. Ferguson stated:

> We are a very experienced team. We understand your proposals. We won't sit here and be lectured to by you. Either you think we are incapable of understanding your English or your rationale. Many of your proposals are in many of the contracts you've negotiated. Beating a dead horse. I don't think it's in my best interests.

(Id., Unofficial Federation minutes of August 1, 2012 negotiations session.).

Given the Federation's refusal to engage in meaningful discussion, the Board agreed with the Federation to replace the previously-scheduled negotiation session on August 6, 2012 with a mediation session. However, as is evident, mediation was not successful.

Now that the parties are in arbitration, a centerpiece of the Federation's position is a new insurance plan. As testified to by both Robert Lindberg, the Board's insurance consultant, and Joseph Fields, the Federation's insurance consultant, the Federation never presented the proposal to change carriers in negotiations, and the Board first saw the new proposal on the day before the first hearing in these proceedings. The actions of the Federation as regards insurance, by themselves, justify a one-year contract here.

By its actions, the Federation denied the Board the opportunity to negotiate over the plan it now proposes. Arbitration by ambush is inconsistent with the statutory duty to bargain in good faith and conflicts with the statutory criterion: "(A) The negotiations between the parties prior to arbitration, including the offers and the range of discussion of the issues." By springing this new insurance plan on the Board literally on the eve of arbitration, the Federation deprived the Board of information and of the opportunity to discuss this plan across the bargaining table as should have happened. The Federation's approach on this key issue is inconsistent with the statute and cannot be tolerated. A one-year contract would give the parties an appropriate opportunity to negotiate over this important benefit.

The dearth of documentation is a second, equally important factor in favor of rejecting the Federation's last best offers on health care. The Federation claims that moving the current insurance plan to a new carrier and moving current PPO participants into the HD-HSA will reduce costs by $1,239,884. (Federation Exhibits Volume 1, last Tab "Union Positions on Open Issues/Support Doc."). What is the proof of that assertion? Clearly, this claim was never discussed in negotiations. In arbitration, the Federation presented four volumes of evidence to the Panel, as well as a compact disc as well as a number of supplementary exhibits presented on Sunday morning. Of the mountains of information presented, on this crucial issue of insurance, the Federation submitted two sheets of paper, both prepared by its insurance consultant.

The first is a cost estimate prepared shortly before the arbitration hearings by the Federation's insurance consultant. However, this estimate is fundamentally flawed. The Agreed Language includes the current provision permitting teachers ineligible for the

HD-HSA plan to participate in the PPO plan, and there is no provision in the Agreed Language for moving teachers out of the PPO. (Appendix A-4.) However, the cost estimates of the Federation's consultant include purported cost reductions by "moving the PPO members into an HSA."

The second sheet under this tab is even more damning to the Federation's position. The author of the document is not identified. It purports to show cost reductions, but certainly the Panel cannot rely on a mystery document to presume accuracy of cost calculations, or to conclude that Aetna would honor this quotation, if that is what it is. Most important, we see printed on this document "Updated 8/28/12." Why on earth was this document not shared with the Board of Education until the arbitration hearing on October 12, 2012? The Panel should award the Board's Last Best Offer on duration to give the parties the opportunity to negotiate on this important issue. To impose significant insurance changes on the Board based on the late and inadequate information presented by the Federation would be irresponsible.

4. The justification for a one-year contract.

The Board acknowledges that three-year contracts are the norm. (*See* Board Book 2, Ex. 238). However, desperate times require dramatic measures, and when the circumstances justify it, it is appropriate to award an offer for a one-year contract. That was the situation in Danbury in 2010 (Board Book 2, Ex. 239), and that is the situation in Norwalk now.

It was necessary to require a hard freeze here, for all the reasons discussed above. In the face of that necessity, the Federation was either unwilling or unable to negotiate meaningfully, despite the compelling need to address insurance and contract language issues. The Federation's failure to negotiate is most evident in its last-minute and poorly-documented proposal to change the insurance plan (Issue # 3A) without any negotiations at all. The need for meaningful negotiation after the freeze is imposed, especially in light of significant student needs and extreme budget pressures, requires that this Panel award the Board's Last Best Offer on duration.

B. The Board's Last Best Offers on the Other Issues are the More Reasonable and Should Be Awarded.

As is evident, the Board's first priorities are a hard freeze and a one-year contract. The other issues are significant, however, and if a multi-year contract is awarded, contract changes and relief on insurance costs is imperative. The Board's last best offers on the various other issues in dispute, therefore, are the more reasonable and should be awarded.

Issue 1: Subsidy for Federation President.

Norwalk's Board of Education should no longer be responsible for financing the Federation's leadership. Currently, the Federation must only reimburse the Board of Education for 60% of the President's salary, despite the fact that the President is on full-release. The current contract language also requires the Board of Education to pay full benefits to the Federation President. Strikingly, the President has the right to elect to release the President from all teaching duties, yet under current language, the Federation is only required to reimburse the Board for 60% of the President's salary. Their Last Best Offer increases this rate to only 65%.

By its Last Best Offer, the Federation concedes that change in this provision is appropriate. Under that Last Best Offer, the Federation would reimburse the Board for 65% rather than 60%. However, any subsidy of the Federation President is not appropriately the financial responsibility of the Board of Education. The Board is willing to allow the President to continue to be able to elect to be released from all teaching duties, but the Board believes it is more than fair in that event that the Federation is responsible for paying the entire cost of the President's salary and benefits. It is common sense that a person who works full time for the Federation should not receive any salary or benefits from the Board of Education.

The Federation collects dues from its hundreds of members for the cost of union representation, the very work that Mr. Mellion describes in the Federation's exhibit on this issue. Those dues, not public funds, should go to pay the Federation President his benefits and salary. As a point of comparison, of the 24 towns in Fairfield County, only one other town subsidizes its union leadership from Board of Education funds. The Board's Last Best Offer makes sense, and accepting the Board's Last Best Offer here is fair and reasonable.

Issue 2: Family Illness and Sick Leave.

The current teachers' contract allows Norwalk teachers to be absent from school up to a maximum of 180 days when a family member is suffering from a critical or serious illness. This benefit is clearly excessive, and the Federation has acknowledged the need for change here through its Last Best Offer. The Last Best Offer of the Board, however, is the more reasonable and should be adopted.

The Board's Last Best Offer of family illness days would actually place it at the high end of such days offered in all of Fairfield County, especially considering that the average amount of this type of paid leave in Fairfield County is only 4.9 days. Under the Board's Last Best Offer, teachers would first be able to use any personal leave time, a substantial number of days because of the ability of teachers to carry over as many as five personal days from one year to the next. Then, they would be able to use up to as many as five sick days for this purpose. Given that teachers can accrue up to a total of 10 personal days, the Board's Last Best Offer would permit teachers to use as many as 15 days to be used by a teacher if a family member becomes seriously or critically ill. A teacher may take further leave beyond those 15 days on an unpaid basis but with benefits in accordance with the Family and Medical Leave Act.

Because both the Federation and the Board are requesting a change in the language of this contract clause, there is no presumption in favor of the prior language. The Board's Last Best Offer is more reasonable and closer to the language provided in other Fairfield County districts. The Board respectfully urges the Panel to accept its Last Best Offer on this issue.

Issues 3A and 32A: Health Insurance Plan Design.

The Norwalk Board of Education seeks to make modest changes to the existing insurance plan that will give it the best chance to offset annual insurance rate increases, while simultaneously limiting the increased burden on teachers. The Federation President has acknowledged that the teachers of Norwalk have "clearly the best health insurance both while actively teaching and in retirement." (Board Book 2, Ex. 262). The Board cannot afford to continue to provide its teachers this great level of health insurance without continuing to cut staff and student programs. The cost-sharing insurance gap between the teachers of Norwalk and market standards must be narrowed. As described below, the evidence shows that the Board's last best offers on insurance will conform Norwalk's HD-HSA Plan to many of the plans offered to teachers in the surrounding communities of Fairfield County. The evidence further shows that the Federation's Last Best Offer is not supported by any official documentation produced by the Aetna, which the Panel would need to accurately assess whether any cost savings will actually occur if awarded.

The Board's Last Best Offer is to continue in the Anthem Blue Cross/Blue Shield HD-HSA Plan. The Federation's Last Best Offer is to switch to an Aetna split-funded HD-HSA on January 1, 2014. While the Federation claims that this change would save over $2 million dollars over the life of the contract, there is no reliable evidence in the record to support this assertion.

On August 1, 2012, the Board of Education brought its insurance consultant, Robert Lindberg, to negotiations to explain the Board's initial proposals with respect to insurance changes. (Federation Vol. 1, History of Negotiations Tab, "Aug. 1, 2012 Negotiations Minutes"). He explained that the changes "would offset the 10% [trend] increase while being cognizant of the cost to members for 2012, 2015, and 2016 . . . in anticipation of health insurance reform." (Id.). After he finished his explanation of the Board's proposal, neither the Federation's representative nor any of the members of the Federation's negotiation committee had any questions for Mr. Lindberg. (Id.). It was clear that the Federation was not interested in a productive discussion regarding health insurance. This was not bargaining.

The Federation's first counter offer on insurance came only one day before the start of the interest arbitration. The Federation offered a one page document prepared by the Federation's insurance consultant, Dr. Joseph Fields, to the Board's insurance consultant, Mr. Lindberg. Dr. Fields testified that he was not even asked by the

Federation to draft any insurance proposal until the week of the arbitration hearing. The one page document prepared by Dr. Fields, rather than Aetna itself, was entered into evidence during the hearing as a stand-alone document, and the Board did not have any reasonable time to evaluate the offer. The Board has made a Last Best Offer on Issue 6 to add change of carrier language that would give it the ability to (1) assess whether the Aetna insurance plan will be substantially equal to current benefits and coverage offered under Anthem, (2) assess the potential for cost savings and (3) make a determination as to whether such a change would be beneficial to the Board and the teachers of Norwalk. For the foregoing reasons, it is imperative that the panel award the Board's Last Best Offer on Issues 3A and 32A.

Issue 3B: Health Insurance Eligibility.

The current practice in Norwalk allowing ex-spouses to remain on the employees' insurance plans at Board expense is simply bizarre, as the Federation conceded at the hearings. The Board's Last Best Offer on Issue 3B is to discontinue any practice of providing employees' ex-spouses with insurance coverage at Board expense, while allowing those payments that are required by a divorce decree to continue if the employee funds it at the applicable COBRA rate. The Federation asks the Panel to grandfather the benefit for existing employees. Mr. Lindberg, who has been an insurance consultant for nearly 30 years, testified that he had never seen this benefit in his many years of practice. Dr. Fields, the Federation's insurance expert, admitted during his testimony that the provision was rare. Indeed, no other contract in Fairfield County offers such a benefit to its employees. (Board Book 2, Ex 221).

Spouse is defined in the plan document to include ex-spouses. (Board Book 2, Ex. 222). Under the Federation's offer, the Board would continue to fund the insurance coverage of an employee's ex-spouse. The Board's Last Best Offer is more reasonable because, rather than removing the privilege entirely, ex-spouses may remain on the plan at the employee's expense. Because the definition of spouse includes ex-spouses, one might even claim that the plan document language permits children of ex-spouses, who are not related to the Norwalk teacher, to be covered under the plan. Page 22 of the plan document provides that benefits can also be provided to "[t]he Dependent child under the age of 25 of the Covered Person or spouse . . . ." (Board Book 2, Ex. 222) (emphasis added). This benefit could result in extremely high costs for the Board which it can ill afford at this time. The Panel should grant the Board's Last Best Offer on Issue #3B.

Issues #4, 4A and 4B: Premium Cost Sharing of the HSA.

Under the Board's Last Best Offer, teachers will contribute 13% of the premium cost of the HD-HSA plan in 2013-2014, and should the panel refuse to grant a one year contract, the Board proposes to increase the employee's contribution by 2 percentage points in each of the next two years of the new contract. The Federation's Last Best Offer is no increase in the first year with a modest 1% increase in each of the next two years of the contract. The Federation's own data shows that, for the current fiscal year, the average HD-HSA premium share in Southern Fairfield county is 14.125% in the current plan year and 15.16% in 2013-2014. (Federation Vol. 3, Tab 4, pg. 2). Other urban districts are 13.75% for the current plan year and 12.5% in 2013-2014. (Id.)

The Federation is below the industry average in all comparison groups except the DRG, which, arguably, is not the best comparison group for Norwalk. The Board's Last

Best Offers would save the Board just under $1.5 million in the first year. (Board Book 2, Ex. 264). The Federation's offer of no increase ignores both the Federation's own data showing that Norwalk is far below the average of the market and today's reality of rising insurance costs. Should the Panel reject the Board's Last Best Offer of a one year contract, it will be essential for the Board to receive the 2% increases in each of the following two years to ensure that the Board can withstand these anticipated insurance increases.

Finally, as a courtesy, Attorney Ferguson informed the Board that the Federation is raising a technical issue concerning the implementation of Board Last Best Offers on premium cost-sharing, the claim apparently being that premium shares cannot change in the middle of a plan year. The Board disputes that claim, and it is not aware of any authority for that proposition. Indeed, review of the Fairfield County contracts (on the CD, Board Exhibit 10) shows any number of contracts wherein premium contributions change on July 1 irrespective of the plan year.

Issue 32B: Non-Standard Benefits.

Mr. Lindberg also testified about the high cost of non-standard benefits and insisted that benefits surrounding non-surgical temporomandibular joints (TMJ) be removed as an option to the plan. The Board's Last Best Offer sunsets this benefit on January 1, 2014. The teachers receive the benefit of almost every non-standard insurance option offered by Anthem. (Board Book 2, Ex. 263 pgs. 2-3). The Federation has provided no evidence demonstrating the need to continue an expensive benefit like non-surgical TMJ. The Federation already enjoys a host of non-standard insurance benefits. Non-surgical TMJ coverage must be discontinued, and private duty nursing care is also not a standard benefit, and thus imposes unnecessary costs on the Board. Accordingly, the Board's Last Best Offer should be awarded on this issue.

<u>Issues 33A, 33B, 33C, 34, 35, 35A, 36A, 36B, 36C: Other Plan Design Elements.</u>

Similar to premium cost shares, Norwalk's teachers have also lagged behind in other aspects of the HD-HSA insurance plan. The Board's Last Best Offer provides for an HD-HSA deductible of $2,000 for individuals and $4,000 for families with the Board covering 50% of the employees' deductible in each year of the contract and an out-of-network coinsurance percentage of 70/30% with a maximum of $3,000/6,000. The Federation has offered no change in the coming year from the current plan, which carries a $1,500 deductible for individuals and a $3,000 deductible for families. It asks the Board to continue to cover 75% of that deductible, while maintaining an 80/20% split of the out-of-network coinsurance percentage and a coinsurance maximum of only $900/1800.

Only five out of the fifteen communities that offer an HD-HSA in Fairfield County provide a $1,500/$3,000 deductible. (Board Book 2, Ex. 261). Districts are beginning to move away from this low deductible in order to reap the benefits of offering an HD-HSA plan. (Board Book 2, Ex. 261). With the exception of Norwalk, every district in Fairfield County contributes less than 75% towards their employees' deductibles, with ten of the fifteen funding only 50%. (Board Book 2, Ex. 261). The coinsurance changes in the Board's Last Best Offer allow for even more savings. While the Board was able to offer to fund deductibles and carry more of the financial burden 3 years ago, when the HD-HSA was first being implemented, times have changed and insurance rates have continued to climb. The savings that should come from switching to the HD-HSA are being swallowed up through rising insurance rates, low deductibles and expensive Board contributions to those deductibles. As Mr. Lindberg described in his testimony, the Board's Last Best Offers would offset the 10% expected annual rise in insurance costs.

In evaluating the parties' positions on the deductibles, the funding of the deducible and the premium contribution levels of the HD-HSA, it is important to bear in mind that the purpose of implementing an HD-HSA is to reduce costs, while continuing to provide a very attractive health plan for employees. Given the purpose of achieving significant savings, every dollar given back to the teachers in the form of a deductible contribution by the Board erodes the potential savings for the HD-HSA plan. Thus, the Board's Last Best Offers should be awarded on each of the insurance issues.

Issue 5: Imputed Income Avoidance.

The Federation seeks to allow employees to decrease their term life insurance coverage to fifty thousand dollars in order to avoid the imputed income tax. The Board rejects any such new language. This language would be unique to Norwalk. Mr. Lindberg testified that he was not familiar with any similar contract language that would give employees the right to decline life insurance. Indeed, the Board's research of Fairfield County teacher contracts uncovered no other contract in which an employee has the right to decline life insurance. (Board Book 2, Ex. 224). In fact, some towns even specify a minimum level of life insurance. (Id.) Mr. Lindberg also testified that this change would cause an unnecessary administrative burden to the District. For the foregoing reasons, the public interest necessitates that this panel award the Board's Last Best Offer on Issue 5.

Issue 6: Change of Carrier.

Both the Federation and the Board are offering to add change of carrier language. These types of provisions are very common in collective bargaining agreements in Connecticut—Fairfield County included. The difference between the Federation's Last Best Offer and the Board's Last Best Offer is that the Federation attempts to impose an unreasonable 60 day notice period and the duty to arbitrate before implementation of the change. Additionally, the Federation asks that the Panel require the Board to provide evidence that access is not less than 92.5%. Dr. Fields stated in his testimony that 90% network coverage would be considered substantially equal coverage. There is no evidence that 92.5% is substantially equal and 90% is not. The Board should not be forced to ignore a potential qualified carrier based on such a minor difference. The Board's Last Best Offer also gives the Federation a reasonable fourteen days to comment on responses to RFPs before the Board makes a change of carrier determination. It also provides appropriate protection to teachers by imposing a "substantially equal" standard, which permits grievance and arbitration review, complete with remedies if need be.

The comparables show that Bethel, Brookfield, Easton and Ridgefield are the only communities in Fairfield County that have tried to define substantially equal by disruption percentage. None of these towns were over 90%. (Board Book 2, Ex. 225). This comparison demonstrates that the Board's Last Best Offer here is the more reasonable and should be adopted.

The data also show that most contracts only provide that the union will be consulted or informed about the possible change in carrier, but the ultimate decision rests with the Board. (Board Book 2, Ex. 225). Only Sherman and Greenwich require a notice of 60 days or more. (Board Book 2, Ex. 225). The data also suggests that it is rare that unions are given a contractual right to arbitrate over a dispute in change in carrier language. Only Greenwich, Newtown, Sherman, Stamford, Stratford, and Westport provide language regarding the ability to arbitrate over a change of carrier, representing 6 out of the 24 communities of Fairfield County.

In light of the Federation's Last Best Offer on insurance, it is particularly important that the Board be given the flexibility to implement a change in carrier without the burden of arbitration. The Federation purports to know of a plan offered by an alternate vendor that would save the Board money. The Board's change of carrier language would allow it the ability to properly evaluate the plan documents from this vendor, after putting out an RFP and informing the Federation of its decision. As described above, the Board and the City are currently in a tough financial bind. In the upcoming year, it will be important for the Board to weigh all options that will have an effect on its budget.

Issue 7: Assignments language in Article XII (1).

The current teachers' contract language regarding assignments restricts the Board's ability properly to manage its school district. Building principals and District administrators should be able to assign teachers based on quality, background and experience, not based solely on teacher preference. If there is a ballooning third grade, and an additional class is necessary due to enrollment changes, the principal should be able to move a second-grade teacher with great third-grade experience up to teach third-grade in order to accommodate all students. If that second-grade teacher would prefer to stay in second-grade, the building principal is in a bind under the current contract language. The principal could even face a grievance if the Panel were to adopt the Federation's Last Best Offer. The Federation's proposal requires that the administration must make every reasonable effort to consider the teacher's preference in making such an assignment. What is "every reasonable effort"? This language as proposed by the Federation is unclear and leaves room for many potential grievances. Building principals require clarity in the contract so that they may act in the best interests of students and teachers in their buildings without fearing that any assignment pursuant to the terms of the teacher contract will result in an immediate grievance. By contrast, the Board's Last Best Offer on this assignment language appropriately provides that the administration will consider the requests and preferences of the teacher, but that assignments will ultimately be made in the best interest of the school system.

Issue 8: Assignments language in XII (3).

The current contract language regarding voluntary assignments restricts the Board's ability to properly manage personnel in the District and gives the Board no breathing room in determining how to manage schools down to the grade level. The Federation proposes to leave this restrictive language unchanged. The Board's Last Best Offer on this language, however, would alleviate the difficulties that the Board and Superintendent have had in organizing the grade levels at each school. The Board proposes to eliminate the language "shall be voluntary, and in any case" from the current contract language so that the contract would read: "To the extent possible, changes in grade assignment in elementary schools, and in subject assignments in secondary schools shall not be effected or announced without a prior personal conference at the commencement of which the reason(s) for the proposed change shall be provided to the individual teacher(s) involved. . . .”

The Board’s Last Best Offer here allows the administration to consider the preferences and requests of certificated personnel in making assignments (see Issue 7 above), but provides the administration with increased flexibility to make those assignments. The Board’s proposed language aligns with almost every other contract in Fairfield County, all of which provide that changes in assignments may be made without first seeking volunteers. The comparable contract provisions recognize that, where possible, teachers will be able to provide their preferences and requests. However, they do not require that the administration first seek volunteers before it can change an assignment.

Although the administration always has, and plans to continue to, consider the preferences and request of teachers, it is not always possible for the Board to accommodate such preferences and requests, and on occasion, the administration might have no choice but to involuntarily assign a teacher. The administration should not have its hands tied unnecessarily by the current restrictive contract language, which impedes the administration’s ability to (1) appropriately meet the needs of students at every grade level, (2) run its school buildings efficiently and effectively, and (3) engender the best possible school environment. The Board’s Last Best Offer should be accepted by the Panel so that the Norwalk teachers’ contract parallels the other teacher contracts in Fairfield County, almost all of which allow teacher assignments without first seeking volunteers.

Issues 9, 10, 11, 19A, 19B, 19C, 22A, 22B, 22C, 38A-D, 39A-D: Stipends.

The Board's Last Best Offers will provide no increase on any stipends over the duration of the contract. The Board recognizes the amount of time and energy teachers expend in taking on some of these additional responsibilities within the schools. However, in the necessary allocation of scare resources, increases in stipend amounts cannot be a priority. Moreover, the future remains far too uncertain to justify any increase in stipends at this time, let alone the increase of 7% over the next three years as proposed by the Federation.

By way of example, the stipends in Norwalk for a football coach at the maximum step is already the highest in Fairfield County. (Union Vol. 3, Head Football Tab). Norwalk teachers at the maximum level can be paid over $9,300 a year above and beyond their (already high) regular salary. (Id.).

Similarly, the current provisions paid to building supervisors, long term substitutes, and extracompensatory positions are more than competitive. By contrast, the Federation failed to present any evidence at all on this issue. Why should these stipend amounts be increased by nearly 2% in each year? No teacher can claim that his or her Stipend is not competitive with industry standards. So what would justify such an increase?

The Panel must reject the "business-as-usual" approach of the Federation. The fiscal challenges of the City of Norwalk and its Board of Education have been discussed at length. Any funds available must be used to tackle other rising cost stressors that are essential to the daily activities of the school system. They should not be used to further enhance stipends that are equal to or higher than the other Fairfield County school districts. (Id.) In light of its ability to pay and the public interest, the Last Best Offers of the Board on Issues 19A, 19B, 19C, 22A, 22B, 22C, 38A-D, and 39A-D should be awarded.

Issue 14: Standard for Transfers.

Just as in the standard for assignments (*see above*, Issue 7), the current contract language in the standard for transfers is unacceptably restrictive. The Federation has conceded that the current language is restrictive and offers an alternative closer to the Board's Last Best Offer on the issue. The Board respectfully requests that the Panel accept the Board's Last Best Offer over the Federation's Last Best Offer. The Board's language is clearer, and it leaves less room for confusion and dispute, while reducing the possibility of future grievances down the road. As previously stated with regard to Issue 7, the Federation's proposal begs the question of what constitutes "every reasonable effort." As proposed by the Federation, a teacher could file a grievance any time he or she is not happy with a transfer because the question as to whether "every reasonable effort" has been made is always an arguable one. Even the threat of a grievance could discourage administrators from making necessary changes. In these times of increased accountability, school administrators require flexibility in making transfer decisions, just as they do in assignments, to ensure that the best interests of the District and its students are met as a whole. The Board asks that the Panel accept its Last Best Offer to eliminate the restrictive language of the contract and to replace it with the clear, unambiguous language proffered by the Board.

Issue 15: Transfers After the Beginning of the School Year.

The current language in the Norwalk teachers' contract states that transfers of teachers made necessary by changes in enrollment shall be effective no later than fifteen school days following the opening of school. The Federation, recognizing how confining this language is to the administration, has conceded that the transfer limit should be 20 days rather than 15. The reality, however, is that any timing restrictions should be removed from the contract in order to facilitate appropriate class size adjustments and better serve the students of Norwalk.

Contract language that limits teacher transfers to facilitate class size adjustments to only the very beginning of the school year is illogical, outmoded and impractical. For example, Mr. Daddona cited a situation in Naramake Elementary School in which first grade classes are artificially low due to enrollment changes, but he is not permitted to make logical and necessary adjustments because of this restrictive contract language.

Norwalk's increasingly diverse student population makes this language particularly egregious. As Interim Superintendent Daddona testified, many Norwalk students do not show up to school until well after Labor Day, leaving class size and ratios to be determined long past the first fifteen days of the school year. Moreover, a lower income population is more transient, and enrollment changes can occur at any time during the year. The current language inappropriately puts administrators between a rock and a hard place, causing misallocation of resources as the district struggles to meet student needs.

The Federation has acknowledged that the current language must be changed. But its short extension of the restrictive language is a band-aid when surgery is required. Not a single other town in Fairfield County has language circumscribing an administrator's ability to run his or her school with regard to the timing of teacher transfers. (Board Book 2, Exhibit 229). The fact that no other district has agreed to such arbitrary restrictions on teacher transfer speaks volumes. The current language must be deleted, and the Board respectfully requests that the Panel accept its Last Best Offer on this issue. That action will give the Board some additional appropriate flexibility in serving the needs of the students of Norwalk.

Issue 16: Appointment to Vacancies.

The current contract language states that "The transfer list is active for positions that are vacant between June 15 and August 1. At all other times, vacancies are filled from the candidates who have applied for the positions." The Federation presented no testimony as to how this odd language operates, but it appears that teachers who file a written statement of their desire to transfer to a different grade or school no later than June 15 have a right to that position if it becomes vacant between June 15 and August 1. Moreover, at other times, the candidates who apply have first claim to the position. There is no reference to the important process of matching the training, skills and experience of individual candidates to the positions that are vacant. Once again, the interests of employees are promoted without regard to the impact on the quality of education provided to Norwalk students.

The Board's Last Best Offer will eliminate such language entirely. The administration must be free to select the most qualified and appropriate candidate for a vacancy. It should be the administration's prerogative to determine which teacher is best qualified for which vacancy, not the choice of each individual teacher. Vacancies should be filled by the most qualified applicant, irrespective of whether that teacher is found in District or out-of-district, at the discretion of the Superintendent of schools.

No other town in Fairfield County has language mandating that a teacher who desires a transfer to a specific vacant position is entitled to that position. (Board Book 2, Ex. 229). Every town in Fairfield County leaves such decisions to the discretion of the Board or the Superintendent. While some towns, like Darien, provide that in-district teachers desiring a transfer should be considered first, and other districts, like Greenwich, provide that current employment in the Greenwich School System shall be a factor considered in the hiring process, and still others require that in-district candidates be granted an interview; there is nothing like the provision found in the Norwalk contract in any other Fairfield County teacher contract. Each contract in Fairfield County allows the Board to fill vacancies on the basis of qualifications, certification and experience. In fact, the only language close to the Norwalk contract language on this issue can be found in the Stamford contract, however, that contract has language explicitly denoting that "[n]othing in this Article shall be construed to prevent the Board from considering other candidates for a position." Moreover, in Stamford the Superintendent can make exceptions, and his/her decision is final. (Id.)

Norwalk administrators are struggling to meet their students' needs with limited resources. They should have the same right to select the best candidate for the job when filling an open position as do their colleagues in other towns. Therefore, the Board's Last Best Offer should be accepted by the Panel so that the current restrictive and difficult to understand language in Norwalk's vacancy provision will be eliminated.

Issues 17A, 17B, 17C, 17D, 17F: Professional Meetings.

The current teacher contract contains myriad restrictions on professional meetings. The current contract language imposes severe limitations on when meetings can be held and for how long. The number of unique challenges and problems faced in the Norwalk school system require that the administration schedule meetings from time to time. As Mr. Daddona testified, significant factors in the quality of education include the training of teachers, collaboration among teachers, review of data, and differentiation of instruction, all of which require regular meetings. The meetings regulated through these provisions are a critically important way to help teachers meet student needs, and these restrictions should be eliminated.

The Board's Last Best Offers remove a number of restrictions currently found in the contract including: no meetings may be held on Monday and Tuesday more than once a month (17A), limiting meetings to two a month with a maximum time of 45 minutes to one hour (17B), limiting the number of in-service meetings which can be called for by administration (17C), and limits on mini-faculty and mini-curriculum meetings (17D). The Board would also like to add data team meetings from time to time. The Federation's Last Best Offer retains these restrictions in the contract. They also go one step further by adding a new limitation on Wednesday morning meetings (17F), which would prevent Wednesday morning meetings during the weeks when elementary conferencing occurs.

The documentation that the Federation has provided to support its argument for keeping the current professional meeting language merely demonstrates that these provisions have been in the contract for a number of years. (Federation Vol. 3, Issue 17 tab). The circumstances in Norwalk, however, have clearly changed throughout the years. The strategic school profile shows that demographics, for one, have changed and student needs in Norwalk have increased. As discussed in the public interest section above, there are a large number of ELL students and special education students in Norwalk. The administration requires the flexibility necessary to hold meetings to ensure that there is a collective effort made to handle some of these issues. The Board would like to ensure that every teacher is on the same page, and the most effective mechanism for achieving this goal is through the use of professional staff meetings. The archaic encumbrances in the current teacher contract have negatively affected the students of Norwalk. The District requires more flexibility with regard to holding professional meetings. Therefore, the Board's Last Best Offer on issues 17a-f should be awarded.

Issues 18A, 18B, 18C and 21: Class Size and ratios.

> No topic in education has received the public and professional attention that class size has received. . . . Calls for reductions in class sizes are a rallying point for parents, teachers, and administrators across the nation, and politicians have rushed to claim credit for introducing policies aimed at reducing class sizes. The pupil-teacher ratio in a district is frequently used as the fundamental metric for quality, and comparisons across districts become indices of equity. ***Yet, the surprising fact is that the enormous amount of research devoted to studying class size has failed to make a very convincing case that reducing class size is likely to improve student performance. It will increase costs, but performance is another matter.***
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> -Eric A. Hanushek, Professor of Economics and Public Policy and Director, W. Allen Wallis Institute of Political Economy, University of Rochester in "The Evidence on Class Size" (Emphasis added; Board Book 3, Ex. 3, p. 1).

Despite common belief that smaller class sizes improve student learning, most scientific studies do not bear this out.[9] As Interim Superintendent Daddona testified, class size is more of a classroom management issue than a student performance issue. Mr. Daddona spoke eloquently on the point that in order to maximize student

[9] "Of the total of 377 available econometric studies of the determinants of student performance, 277 consider teacher-pupil ratios … fully 85% of [those] studies suggest either that *fewer* teachers per student are better (i.e., yield negative estimates) or that there is less confidence than usually required that there is any relationship at all (i.e., are statistically significant)." (Emphasis added, Board Book 3, Ex. 3, p. 21-22).

performance, teacher quality is key. According to Mr. Daddona, adult actions are what really maximize student learning. Adult actions include positive teacher attitude in the classroom, good teaching strategies, such as differentiated and tiered instruction, and an insider's knowledge of each student's unique learning style. All of these adult actions add up to a quality teacher who achieves high student performance. The teacher also has a responsibility to use data to inform his or her instruction. According to Mr. Daddona, a good teacher is constantly performing common formative assessments on his or her students to ensure that the students understand the lesson. Mr. Daddona would like to be able to increase technology in the classroom to encourage teachers to receive and utilize immediate student feedback to improve teaching on the spot, but thus far has lacked staffing and funding to implement these important programs. Mr. Daddona, who was himself a classroom teacher for many years, testified that, to him, class size never mattered, what mattered was how he, as a teacher, addressed the individual needs of each of his students.

The research on class size supports Mr. Daddona's testimony. Professor Eric Hanushek of the University of Rochester put together one of the first scientific survey studies of class size, looking at the evidence put forth in the aggregate. Professor Hanushek determined, based on all of the available scientific data, that there is no evidence that class size has or has ever had an effect on student performance. (Board Book 3, Ex. 3, pg. 25). According to Professor Hanushek: "The econometric evidence is clear. There is little reason to believe that smaller class sizes systematically yield higher student achievement." (Id.) In addition to looking at the scientific data gathered in the United States, Hanushek examined class size and test score relationships internationally, noting that in Japan, for instance, class sizes are much larger than the U.S., but Japanese students uniformly perform better on standardized tests as compared with their U.S. counterparts. (Board Ex. 3, p. 19).

Overall, Hanushek's results align with what Mr. Daddona already knew and testified to before the Panel. Hanushek documented the following: "It appears that the ultimate effect of any large-scale program to reduce class size will depend much more importantly on the quality of new teachers hired than on the effects of class size reductions per se. Variations in teacher quality have been shown to be extraordinarily important for student achievement, and the econometric studies providing such results indicate that these variations completely dominate any effects of altered class size." (Board Book 3, Ex. 3, pg. 35).

The research and testimony thus support the Board's Last Best Offers with regard to class size and school ratios. Although counter-intuitive, scientific research shows that they are not key factors in increasing student performance.[10] Therefore, the Board's position is that class size and school ratios should not be an absolute budget priority. While the Board strives to reduce class size and lower school ratios in order to reduce the teaching burden on Norwalk's teachers, in creating the District's budget, the Board does not have the luxury of spending money on non-priority items that do not impact student achievement. This is especially true in a difficult and painful budget year in which there will be many cuts, including to student services and programs, as the District deals with recovery from a financial crisis.

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[10]In fact, the only published study of the effects of class size on student performance <u>specifically in Connecticut</u> showed no impact of class size changes between 15 and 30 students, to a level of precision of <u>3/100ths of a standard deviation</u>. *The Effects of Class Size and Composition on Student Achievement – New Evidence from Natural Population Variation,* Caroline Hoxby, Department of Economics, Harvard University. (Emphasis added; Board Book 3, Ex. 4, pg. 1).

With regard to Issues 18A, 18B and 21, the Board's Last Best Offers should be accepted by the Panel because these changes will allow the Board increased flexibility in planning school schedules and class sizes throughout the District in a difficult budget year. The Board is not proposing anything dramatic here. Indeed, the dramatic thing here is how very restrictive the current class size language is compared to other towns in Fairfield County. By contrast, a hallmark of class size provisions throughout the county is flexibility and the right to consider other factors. (Board Book 2, Exhibit 232). In many towns, there is no class size language at all (CES, Darien, Easton, New Canaan, Redding, Region 9). Where language does exist, we repeatedly see phrases like:

- "whenever feasible and subject to the circumstances which exist regarding staff and facilities, strive for . . ." (Bethel);
- "it is the desire of the Board to maintain, wherever possible, classes of a size that will preserve the best teaching-learning conditions, dependent upon such factors as available personnel, physical facilities, financial abilities, etc.," (Brookfield);
- "The Board shall make every reasonable effort, prior to the start of the year, to maintain class sizes . . ." (Monroe);
- "Whenever practicable, the Board shall maintain . . ." (New Fairfield);
- "Subject to the availability of funds and facilities, class sizes for the duration of this contract will be planned in accordance with this Article 8." (Newtown);
- "Class sizes shall show general adherence to these standards, with allowance made for normal enrollment growth during the forthcoming school year." (Ridgefield);

- "Every reasonable attempt will be made to keep a regular class size to no more than thirty (30) pupils." (Shelton);
- "The Board of Education, through their agent, the Superintendent of Schools, shall endeavor, under normal circumstances, to maintain class sizes as follows:" (Stamford);
- "the following goals are to be strived for . . ." (Trumbull);
- "The establishment of individual class size is a matter of Board policy." (Weston); *see also* Westport and Wilton.

By contrast, the current language in Norwalk has prescriptive elements, and is inflexible. Given the financial pressures Norwalk confronts and the various competing claims on the Board's limited resources, it is imperative that the Board have the modest flexibility that the Board's Last Best Offers will afford it.

Consistent with its Last Best Offers on this subject (and with most other contracts), the Board will apply the class size language as a guideline that takes into account other factors, including resources. As stated above, however, because class size and low school-ratios are not proven to influence student achievement, the Board may need to fund more pressing budget items, items that do have a major impact on student performance. The Board should have the flexibility to focus its spending on areas of the budget that are in the best interests of Norwalk students and should not be restricted in its ability to direct its dollars to the most urgent student needs by outdated contract language that is no longer in line with the most current education research.

The Board also seeks to remove odd language that provides that teachers have the "prerogative" to consult with the principal to resolve class size problems at the building level. The contract language also requires that the Superintendent write a class size report, which the Board can then "accept, reject or modify." No other contract in Fairfield County has such provisions. These administrative burdens are inappropriate and unnecessary.

As Mr. Daddona testified and as Professor Hanushek's research proves, teacher quality, not class size, is the most important factor in student performance. In this challenging budget year, class size and school ratios should not be an absolute budget priority because there are more critical issues that the Board must tackle. This outdated contract language straitjackets the Board on a subject of little relevance to the ultimate goal of improving student achievement. Therefore, the Board respectfully urges the Panel to accept its Last Best Offers regarding class size and student-teacher ratios.

Issues 19A, 19B and 19C: Elementary building supervision stipends.

Please refer to section regarding stipends above.

Issue 20: Preparation Time at the Secondary Level.

The Federation proposes no change to the current preparation time language, which provides that high school personnel will use their preparation period in "any fashion that the teacher deems necessary." By contrast, the Board's Last Best Offer permits more effective use of such time. The Board's Last Best Offer will allow the school to designate preparation time to provide for professional activities that will better prepare for instruction while allowing for collaborative preparation time to encourage teachers to share best practices. As Mr. Daddona testified, time for such professional activities is crucially important.

The Board also believes that this effective use of preparation time will assist teachers by reducing the amount of time they may currently need to either stay late or take work home. Collaboration allows teachers to share effective strategies in the classroom. Many districts in the state are beginning to move towards identifying permissible uses of preparation time. (Board Book 2, Ex. 233). For example, the collective bargaining agreement in Redding provides that "one such preparation period per week may be used for collaborative/team planning." (Board Book 2, Ex. 233 pg. 4). The preparation time language in Brookfield provides that the Board will be allowed "to engage in experimental programs which may involve, on a team, grade, or school basis, variations in the preparation periods set forth above after prior approval of the teachers affected, which approval shall not be unreasonably withheld." (Board Book 2, Ex. 233 pg. 1-2).

The days in which teachers could simply be allowed to use the preparation period in "any fashion that he/she deems necessary" are over. Connecticut's students are falling behind, and Norwalk is no exception. It is very important to address the significant needs of the students of Norwalk effectively. To achieve this goal, the Board must ensure that teachers are getting the best possible support. Effective use of preparation time will be very important as we strive to close the large achievement gap in this state. For these reasons the Panel should award the Board's Last Best Offer on issue 20.

Issue 21: Exceptions to the ratio.

Please refer to section regarding class size above.

Issues 22A, 22B and 22C: Long term substitute salary.

Please refer to section IV(A)(2)(b), regarding the need for a salary freeze above.

Issue 23: Early Retirement.

Early retirement clauses typically offer an incentive in order to induce staff who would normally be retiring early to do so. By offering an early retirement package, the district incurs an expense in providing the incentive, but it also receives a benefit because the teachers vacate positions at the highest salary levels earlier than they might otherwise do. In order to be effective, however, early retirement offers and clauses must be limited in time. If there is no time limit on the offer, there is no incentive for teachers to agree to retire early and, therefore, no savings to the district.

In Norwalk, the early retirement clause in the teachers' contract offers no incentive at all for teachers to retire. This one-sided provision allows teachers to elect full medical care coverage at Board expense, while offering nothing in return to the Board. There is no time limit on the program, and teachers can simply retire whenever they would like, receiving full benefits under the clause, without any concomitant benefit to the Board. This expensive retirement benefit is always there waiting for teachers to take when they wish to do so.

The Board's proposed language makes the early retirement clause a true incentive program. As framed by the Board, this provision will be beneficial to both the Board and to the unit members. In its Last Best Offer, the Board gives Norwalk teachers an additional year to elect this benefit. By offering the early retirement program only through the end of the 2013-2014 school year, the program will operate as such plans are intended, truly incentivizing early retirement. The Panel should accept the Board's Last Best Offer in order to allow this provision to act as a true and effective incentive.

Issue 24: In-Service Credit.

Norwalk's in-service credit provision is outdated in that it is centered around CEU credit, which has been abolished under Governor Malloy's education reforms. See Public Act No. 12-116, Sec. 39. (Board Book 2, Ex. 237, p. 2-3). As a result, the nature of continuing education for teachers has dramatically changed. The Norwalk teachers' contract, therefore, refers to a type of continuing education that no longer exists. The education reform statutes refocus teacher development and continuing education by placing an emphasis on small group and individualized training in contrast to the workshop and credit-oriented system of the past. See Public Act No. 12-116, Sec. 39. (Board Book 2, Ex. 237, p. 2).

Norwalk's in-service credit program, thus, no longer makes sense in the new world of education reform in this state. In fact, only two other Fairfield County towns even mention in-service CEU credit, Ridgefield and Westport, but both of these contracts were negotiated prior to Governor Malloy's education reform plan and prior to the elimination of CEU credit as we know it. The Board's proposal regarding in-service credit is, therefore, extremely generous in that it will grandfather those teachers who have already received in-service credit on the salary scale, but eliminate the credit going forward. Indeed, it is unclear which credits, if any, will remain valid in the wake of these massive, groundbreaking changes made by the Governor's education reform initiatives.

In addition to the fact that CEU credit is no longer relevant in today's world of education reform, the District can ill afford to allow teachers to use these credits to advance on the salary scale. As stated previously, Norwalk teachers are handsomely paid. Continuing education is desirable for teachers, but the Board should not be expected to pay them for their normal work plus an additional amount for in-service credit. There are already mechanisms in place to advance teachers on the salary scale and the Board is not in a position to continue to advance teachers based on continuing education, especially in light of the new statutory changes effectively eliminating CEU credit.

Issue 25: Duration.

Please refer to section IV(A)(4), above, regarding duration.

Also, in the unlikely event that the Panel awards a three-year contract, it will consider a demand by the Federation for a general wage increase of 2.5% as against the Board's Last Best Offer for a reopener. It is manifestly clear that the Board's Last Best Offer should be adopted if the Panel addresses this issue.

On the one hand, despite the uncertainties, the Federation asks this Panel to impose upon the Board an additional obligation to increase already oppressive salary obligations by almost 4% (2.5% plus step cost of 1.43% [presuming the hard freeze in 2013-2014]). Given the myriad challenges and profound uncertainties that the Board confronts, the Panel should certainly not impose those new salary burdens on the Board.

On the other hand, the Board's Last Best Offer here will give the parties the opportunity to have a meaningful discussion over a current salary structure that can only be described as bizarre. The relative few steps in the schedule, the low "maximum" salaries and the huge longevity bumps are very different from the more rational salary structures that the Panel will uniformly note in the other comparison contracts. It is hard to "fix" salary schedules, but a reopener will give the parties that opportunity to do so by isolating the issue from the myriad of other contract concerns.

Issues 26, 27, 28, 29, 30, 31: Salary issues.

Please refer to section IV(A)(2)(b), regarding the need for a salary freeze above.

<u>Issues 32A, 32B, 33A, 33B, 33C, 34, 35, 35A, 36A, 36B, 36C: Insurance.</u>

Please refer to section regarding Insurance above.

<u>Issues 37A, 37B, 37C and 37D: Salary Schedule and Step Movement.</u>

Please refer to section IV(A)(2)(b), regarding the need for a salary freeze above.

<u>Issues 38A, 38B, 38C, 38D, 39A, 39B, 39C and 39D: Extracompensatory stipends.</u>

Please refer to section regarding stipends above.

III. CONCLUSION:

A perfect storm of challenges confronts the parties here. Change is required, and true negotiations are the best way to achieve that change. The Board's Last Best Offers on salary and duration should be awarded so that the parties can meaningfully discuss necessary change in the coming year after a hard freeze is imposed for the reasons recited at length in the foregoing.

Of course, the Board has addressed the possibility of a longer contract term. While the evidence decisively favors a one-year contract, the Panel could award a three-year term. If such were awarded by this Panel, virtually all of the Board's Last Best Offers on the other issues should be awarded. For the reasons set forth in Section B of this Post-Hearing Brief, change is needed to support necessary efforts to improve student learning in Norwalk. A three-year contract with minimal work rule changes would perpetuate the misallocation of resources in Norwalk and impede reform efforts to address the significant learning needs of Norwalk students. The Board implores the Panel not to impose that result upon it and upon the Norwalk educational community.

Respectfully submitted,

NORWALK BOARD OF EDUCATION

By /s/

Thomas B. Mooney
Anthony R. Shannon
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Its Attorneys

CERTIFICATION OF SERVICE

This is to certify that a copy of the forgoing Post-Hearing Brief of the Norwalk Board of Education was hand-delivered to Chairman Richard H. Kosinski and was also sent via electronic mail on this 19th day of October, 2012, to the members of the Panel, Arbitrators Richard H. Kosinski, John Romanow, and John Gesmonde, and to the Norwalk Federation of Teachers, through Attorney James Ferguson, 35 Marshall Road, Rocky Hill, CT. Hard copies will be mailed to these persons on October 19, 2012.

/s/

Thomas B. Mooney

APPENDIX A: THE NATIONAL AND STATE ECONOMIES

I. Connecticut's Eroding Economy

The well-documented economic crisis at the national level has pummeled the State of Connecticut and continues to have a lasting effect. In fact, Connecticut's recession was actually more severe than previously thought. (Board Book 1, Ex. 65, pg. 1). Connecticut is in a budget crisis. (Board Book 1, Ex.66). Its general revenue declined by 14.94%; (Id.); and there was a $3.6 billion budget deficit projected for 2012. (Board Book 1, Ex.75, pg. 3). Moody's downgraded Connecticut's credit due to its high debt this year as Governor Malloy gave Connecticut its biggest tax hike in the state's history. (Board Book 1, Ex. 81; Board Book 1, Ex. 87, pg. 1). Despite this tax hike, the state's deficit remains at approximately $146.3 million as of September, 2012. (Board Book 1, Ex. 98, pg. 1).

Connecticut also had unfunded pension plans, including the Teachers Retirement System, to the tune of $33.8 billion as of 2008. (Board Book 1, Ex. 101, pg. 4). As of 2010, that number rose to over $71 billion. (Board Book 1, Ex. 102). Connecticut paid its full annual pension contribution just three times from 2005 to 2010 and the state has fallen short by $48 billion in setting aside money for paying these pensions. The Pew Center on the States ranks Connecticut's management of its long-term liabilities for pensions and retiree health care as "cause for serious concern" (Id.); placing us among the "worst of the worst" in the United States. (Board Book 1, Ex. 105, pg. 1; Board Book 1, Ex. 103, pg. 1). Strikingly, Connecticut's combined debt and unfunded pension liabilities represent 17.1% of our gross state product. (Board Book 1, Ex. 104, pg. 1).

Economists project that the next 18 months will be dismal for Connecticut's economy in another period of so-called "un-recovery." (Board Book 1, Ex. 74, pg. 1). The future of Connecticut's economy, they state, is bleak. (Board Book 1, Ex. 80, pg. 1). The State Comptroller, Kevin Lembo, echoed the concerns of these economists. In a letter to Governor Malloy, Lembo stated that the state will have a deficit for fiscal year 2013 of $26.9 million on a budgetary accounting basis. (Board Book 1, Ex. 92, pg. 1). Lembo also noted early weakness in sales tax and casino gaming payments. (Id.) Lembo was "especially concerned with the sales tax trend in light of slower personal income growth in the state." (Id.) He lamented that the state's income growth ranking fell from thirteenth to thirty-fourth in the nation. (Id.) Lembo also shared another area of "concern" in the potential sequestration of federal funds and the expiration of tax reductions beginning in January 2013, which he complained will "exacerbate an already historically slow national recovery." (Id., p. 2). In the face of these striking numbers for the 2013 fiscal year, the state is already anticipating a $423 million budget shortfall in 2014. (Board Book 1, Ex. 96, pg. 4).

Compounding these figures, the state's unemployment rate hit 9% in August 2012, the most recent month for which data is available. (Board Book 1, Ex. 67, pg. 9; Ex. 63, pg. 1). Connecticut's unemployment rate is therefore 0.9% higher than the national unemployment rate of 8.1% (Board Book 1, Ex. 63, pg. 2) and 1.7% higher than Connecticut's unemployment rate was in January 2009, directly after the crash. (Board Book 1, Ex. 71, pg. 9). Fewer jobs mean that the resulting demographic trajectory holds serious threats to the state's long-term fiscal health. (Board Book 1, Ex. 65, pg. 1). University of Connecticut economist Steve Lanza has stated that he expects

Connecticut's job growth to be "agonizingly slow" as a result. (Board Book 1, Ex. 76, pg. 1).

Correspondingly, median household income in the state dropped dangerously by 6.1% from 2009-2010. (Board Book 1, Ex. 62A). This reflects Connecticut's status as the state with second-largest drop in median household income in the nation, behind only Nevada. (Board Book 1, Ex. 85, pg. 1). Not surprisingly, nearly 28,000 Connecticut residents fell into poverty in 2011 according to the United States Census Bureau, representing a "dramatic and disconcerting" increase in the number of homeless residents in the state from 10.1% to 10.9%, an increase that is considered statistically significant. (Board Book 1, Ex. 89, p. 1-2; Board Book 1, Ex. 90, pg. 1). In fact, the child poverty rate rose to 14.9% in 2011 from 12.8% in 2010, the fifth sharpest increase of any state. (Board Book 1, Ex. 90, pg. 1).

The real estate market in Connecticut has also been severely affected by the economy. Connecticut is leading the nation in declining home prices. (Board Book 1, Ex. 116, pg. 1). While the national real estate market has showed some signs of recovery, Connecticut had one of the biggest declines in home prices compared with a year ago, falling a full 4% as of October 5, 2012 from the 2011 numbers. (Board Book 1, Ex. 114, pg. 1). Fairfield County fared even worse with home prices falling a breathtaking 12.9% in the second quarter, the biggest decline of all 147 metropolitan areas measured by the National Association of Realtors. (Board Book 1, Ex. 115, pg. 1). Additionally, Connecticut faces a foreclosure backlog with foreclosure filings increasing 139% in July 2012 as compared with a year earlier. (Board Book 1, Ex. 115, pg. 4).

Overall, Connecticut's economic health, which was already bad, declined even further in the second quarter of 2012, making it the worst quarter showing since the third quarter of 2011. (Board Book 1, Ex. 72, pg. 1). While other areas of the country have begun to recover, Connecticut's economy is still contracting. (Board Book 1, Ex. 65, pg. 1). Economists at UCONN note that Connecticut has an "even steeper hill to climb" in terms of economic recovery than economists previously thought, and they already believed Connecticut's economy to be in dire straits. (Id.)

II. Poor National Economic Conditions

In late 2008, the nation experienced an unprecedented financial collapse. Evidence of the collapse remains ever present in the economy today. Economic problems at the national, state and municipal levels illustrate that the nation's overall economy continues to struggle. Many Americans continue to search for signs of progress, but indications of success are too few and far between. The recession claimed nearly 40% of the wealth of Americans, with new figures showing that Americans' net worth has plunged to what it was in 1992. (Board CD, Nat'l Economy, Ex. 30, pg. 1). The U.S. economy grew at a scant 1.3% annual rate in the April- June quarter, a growth that is too weak to reduce unemployment (growth would need to be at least 2% for any meaningful recovery). (Board CD, Nat'l Economy, Ex. 19, pg. 1 & Ex. 23 pg. 1).

The World's major economies have all been slow to mend from the massive shock of the financial recession, with performance levels more anemic than were expected. (Board CD, Nat'l Economy, Ex. 13). The federal debt in the U.S. sits at a whopping $16 trillion, with $1 trillion being added in each of the past 3 years. (Board CD, Nat'l Economy, Ex. 12; Board CD, Nat'l Economy, Ex. 18). This figure represents about the same amount as our entire Gross Domestic Product (GDP). (Board CD, Nat'l Economy, Ex. 12). Even with repayment at remarkably low interest rates, this large debt carries with it $200 billion per year in interest payments, which is more than the nation spends annually on military operations in Afghanistan, or on Medicaid. (Board CD, Nat'l Economy, Ex. 12). These budget trends are unsustainable. (Board CD, Nat'l Economy, Ex. 18 pg. 1). History shows that economic growth is hobbled when the government debt is more than 90% of the annual GDP five years in a row. (Board CD, Nat'l Economy, Ex. 18 pg. 1). We have reached this limit in each of the past two years in the U.S. and we are expected to continue this trend through at least 2017. (Board CD, Nat'l Economy, Ex. 18, pg. 1).

Many economists believe that the nation is headed for a fiscal cliff at the end of the year if Congress fails to act to reduce spending and allows automatic tax increases to occur at the end of the year. (Board CD, Nat'l Economy, Ex. 14, pg. 1). What many have come to know as the "Bush tax cuts" are set to expire at the end of the year. If allowed to expire, the change could have the effect of launching the nation into another recession. (Board CD, Nat'l Economy, Ex. 14, pg. 1). If nothing is done, tax increases could reduce already anemic annual economic growth by 4 points. (Board CD, Nat'l Economy, Ex. 17, pg. 1). The changes would cause nearly all Americans to see an increase in income and payroll taxes. Credits will shrink, and levies on investment earnings will soar. (Board CD, Nat'l Economy, Ex. 14, pg. 1). Congress must agree on a way to either ease the change or extend the deadline again.

The International Monetary Fund (IMF) has reduced the global economic forecast and categorized the risk of slowdown as "alarmingly high." (Board CD, Nat'l Economy, Ex. 16, pg. 1). The chance of recession in the United States is at 15%. (Board CD, Nat'l Economy, Ex. 16, pg. 1). Some of the many causes for the reduction include financial market stress, government spending cuts, high unemployment and political uncertainty. (Board CD, Nat'l Economy, Ex. 16, pg. 1). Moody's has also warned that the U.S. may face a debt downgrade if a deal is not reached in order to address the aforementioned, fast approaching "fiscal cliff." (Board CD, Nat'l Economy, Ex. 25, pg. 1). This comes only a year after its rival, the Standard & Poor's, downgraded the United State's creditworthiness level. (Board CD, Nat'l Economy, Ex. 25, pg. 1). Therefore, allowing these tax cuts to expire could cost as many as 1 million American jobs. (Board CD, Nat'l Economy, Ex. 27, pg. 1).

As recently as May of this year, the nation's employers added the fewest jobs recorded in three years and the unemployment rate actually rose. (Board CD, Nat'l Economy, Ex. 32, pg. 1). This ended a string of three disappointing months in the area of job growth. (Board CD, Nat'l Economy, Ex. 32, pg. 1). Initial jobless claims, which had been on a slow fall since 2011, jumped 6% just in April. (Board CD, Nat'l Economy, Ex. 34, pg. 1). Although unemployment fell to 7.8% in September from 8.1% in August, growth continues to be too weak to sustain consistent improvement. (Board CD, Nat'l Economy, Ex. 13, pg. 1). The unemployment rate, however, cannot be analyzed in a vacuum, as the rate can understate the weakness of the labor market. (Board CD, Nat'l Economy, Ex. 49, pg. 1). Economists expect growth to remain slow. For instance, the St. Louis Federal Reserve Bank's Research Director, Christopher Waller, explained in no uncertain terms that "something happened in the U.S. labor market that we can't overcome . . . . No matter what we do, recovery is going to be slow." (Board CD, Nat'l

Economy, Ex. 37, pg. 1). The mixed signals and indicators about the trajectory of U.S. economic growth continue to raise the question of whether consistent job creation can persist in the current climate. (Board CD, Nat'l Economy, Ex. 45, pg. 1).

The only thing constant about the current housing market is its volatility. Home construction continues to play too small a role in the economy to provide much lift, with only 2.4% in April as compared to 6.3% in 2005. (Board CD, Nat'l Economy, Ex. 19, pg. 1). The current pace of construction spending and building activity on a national level remains below historic norms. (Board CD, Nat'l Economy, Ex. 53, pg. 1). After hitting a two year high in July, the annual pace of new home sales dipped in August. (Board CD, Nat'l Economy, Ex. 19, pg. 1). Data released this year also showed that adjusted housing prices reached a post-bubble low, meaning that the housing bust reached levels even worse than it hit during the nadir of the recession. There are also a large number of foreclosures that the housing market still needs to absorb. (Board CD, Nat'l Economy, Ex. 15, pg. 1). When it comes to the value of what many Americans consider their biggest financial asset, no certain relief seems to be in sight. (Board CD, Nat'l Economy, Ex. 55, pg. 1).

Almost every state in the U.S. has made cuts to its public employee pensions in an effort to dig out of this economic downturn. (Board CD, Nat'l Economy, Ex. 28, pg. 1). Investment losses in 2008 depleted pension assets. (Board CD, Nat'l Economy, Ex. 28, pg. 1). Many strategies have been used to try to trim the states' pension benefit burdens including: (1) cutting benefits for new hires; (2) increasing contributions by current and new employees; (3) reducing benefits to retirees by suspending cost of living adjustments (COLA); and (4) cutting benefits of current workers. (Board CD, Nat'l Economy, Ex.

28, pg. 1). The lower the expected returns on these changes, the more the pension's unfunded liabilities will continue to grow. (Board CD, Nat'l Economy, Ex. 28, pg. 1).

The economic news at the state and national levels has been so bad for so long that it can be tempting to tune it out and simply to consider it business as usual. The TNA, however, does not permit the Panel to ignore this economic reality. In assessing financial capability, the Panel must consider all relevant facts. Given the fundamental problems in our national and state economies, the taxpayers in Norwalk will be further burdened as we dig out. If Norwalk teachers were somehow undercompensated, they would have a legitimate competing claim to the limited resources available. They are not, and they do not, as described when discussing the salary issues, above.

APPENDIX B: LONGEVITY

Step 32 Plus Longevity*
MASTER'S DEGREE
2012-13

	Step Number	Salary	Longevity	Total
Greenwich	14	$99,976	$0	$99,976
New Canaan	17	$97,592	$800	$98,392
Darien	20	$97,904	$0	$97,904
Westport	18	$95,222	$0	$95,222
Weston	16	$95,076	$0	$95,076
Region 9	16	$92,959	$2,000	$94,959
Danbury	14	$86,468	$7,920	$94,388
Norwalk	**L-4**	**$93,681**	**$0**	**$93,681**
Trumbull	21	$91,902	$0	$91,902
Fairfield	22	$91,531	$0	$91,531
Wilton	13	$91,202	$0	$91,202
Stamford	13	$88,772	$1,517	$90,289
Brookfield	18	$87,006	$2,515	$89,521
Newtown	14	$83,971	$4,219	$88,190
Redding	12	$85,234	$2,350	$87,584
Easton	16	$85,319	$1,934	$87,253

Shelton	14	$86,285	$800	$87,085
Monroe	14	$83,076	$3,957	$87,033
Stratford	15	$85,158	$900	$86,058
Ridgefield	15	$84,984	$1,000	$85,984
Sherman	15	$83,482	$2,000	$85,482
CES	15	$85,202	$0	$85,202
New Beginnings	17	$84,506	$0	$84,506
New Fairfield	13	$82,145	$1,100	$83,245
Bethel	16	$78,019	$1,200	$79,219
Bridgeport	13	$76,778	$1,300	$78,078

* Salary for Norwalk is the "L" step noted. Other districts based on the step number listed and/or the maximum step for that district.

Bethel: Teachers hired after July 1, 2001 are not eligible for longevity.
Monroe: Teachers hired after the 1996-97 school year are not eligible for longevity
Region 9: Teachers hired after July 1, 2003 are not eligible for longevity.
Stratford: Teachers hired on/after July 1, 2010 are not eligible for longevity.

Step 32 Plus Longevity*
SIXTH YEAR DEGREE
2012-13

	Step Number	Salary	Longevity	Total
Greenwich	15	$108,960	$0	$108,960
New Canaan	17	$104,052	$500	$104,552
Wilton	15	$104,312	$0	$104,312
Weston	17	$102,582	$0	$102,582
Westport	19	$102,341	$0	$102,341
Region 9	16	$100,820	$1,500	$102,320
Danbury	15	$94,024	$7,922	$101,946
Darien	20	$100,890	$0	$100,890
Norwalk	**L-4**	**$100,266**	**$0**	**$100,266**
Trumbull	21	$99,727	$0	$99,727
Fairfield	22	$99,391	$0	**$99,391**
Stamford	15	$99,102	$0	$99,102
Ridgefield	15	$95,692	$300	$95,992
Redding	12	$94,435	$1,100	$95,535
Stratford	16	$94,794	$400	$95,194
Brookfield	18	$93,559	$840	$94,399
Easton	16	$92,368	$1,934	$94,302
New Beginnings	17	$92,949	$0	$92,949
Monroe	14	$92,822	$0	$92,822
Shelton	14	$91,830	$0	$91,830
Sherman	15	$90,244	$0	$90,244
CES	15	$89,870	$0	$89,870
Bethel	16	$88,760	$800	$89,560
Newtown	14	$87,327	$0	$87,327
New Fairfield	13	$86,212	$700	$86,912
Bridgeport	13	$84,567	$900	$85,467

* Salary for Norwalk is the "L" step noted. Other districts based on the step number listed and/or the maximum step for that district.

Bethel: Teachers hired after July 1, 2001 are not eligible for longevity.
Monroe: Teachers hired after the 1996-97 school year are not eligible for longevity
Region 9: Teachers hired after July 1, 2003 are not eligible for longevity.
Stratford: Teachers hired on/after July 1, 2010 are not eligible for longevity.