

MEMORANDUM OF AGREEMENT

The BOARD OF EDUCATION, HUNTINGTON UNION FREE SCHOOL DISTRICT (“District”) and the UNITED PUBLIC SERVICE EMPLOYEES UNION, CLERICAL UNIT (“Union”) (collectively “the parties”) enter into this Memorandum of Agreement dated this ____ day of _____, 2016.

WHEREAS, the District is a member of the New York State Health Insurance Program (“NYSHIP”) and on May 15, 2012, the Department of Civil Service issued Policy Memo 122r3 prohibiting employees from receiving health insurance buyout payments under a collective bargaining agreement, unless the employee demonstrated alternate health insurance coverage other than through NYSHIP; and

WHEREAS, the District and the Union are parties to a collective bargaining agreement (“CBA”) which refers to the New York State Department of Civil Service’s Memorandum of May 15, 2012, Number 122r3 in Article IV, Paragraph E; and

WHEREAS, on January 10, 2014, the New York State Supreme Court, Albany County, in *Roslyn Teachers Association, et al. v. New York State Health Insurance Plan, et al.* (Index No. 3409-2013), declared Policy Memo 122r3 void for the reasons set forth in the Court’s decision; and

WHEREAS, on November 25, 2015, without determining the legality of Policy Memo 122r3 the Appellate Division, Third Department, reversed the lower court’s ruling in *Matter of Plainview-Old Bethpage Congress of Teachers, et al. v. N.Y.S. Health Ins. Plan, et al.*, (Docket No. 519991), and *Matter of Roslyn Teachers Association, et al. v. N.Y.S. Health Ins. Plan, et al.*, (Docket No. 519995), by holding that the lawsuits were untimely; and

WHEREAS, on January 11, 2016, the plaintiffs in the above-captioned lawsuits filed motions seeking leave to reargue in the Appellate Division, Third Department and leave to appeal in the New York State Court of Appeals; and

WHEREAS, between January 1, 2014 and December 31, 2015 (“Buyout Payment Period”), the District did not enforce the provisions of Article IV, Paragraph E in that health insurance buyout payments (“buyout payments”) were continued; and

WHEREAS, on June 9, 2016, the Appellate Division, Third Department reversed its earlier ruling and affirmed the lower court’s decision in *Matter of Plainview-Old Bethpage Congress of Teachers, et al. v. N.Y.S. Health Ins. Plan, et al.*, (Docket No. 519991), and *Matter of Roslyn Teachers Association, et al. v. N.Y.S. Health Ins. Plan, et al.*, (Docket No. 519995), and declared Policy Memo 122r3 void.

NOW, THEREFORE, based upon the mutual promises and undertakings contained herein, it is agreed as follows:

1. Delete unnumbered paragraphs 7, 8, and 9 under Paragraph E of Article IV of the CBA in their entirety and substitute with:

The New York State Department of Civil Service's Memorandum of May 15, 2012, Number 122r3 ("Policy Memo 122r3"), purports to limit health insurance buy outs (receiving a payment for dropping health insurance coverage) to only those employees who have other employer sponsored health insurance coverage (meaning coverage other than through NYSHIP).

The District recognizes that on June 18, 2013, Administrative Law Judge Doerr of the New York State Public Employee Relations Board issued a declaratory ruling in *Plainview-Old Bethpage Central School District* (DR-130 and DR-131) finding that a health insurance buyout program is a mandatory subject of negotiations.

The District also recognizes that a lawsuit has been filed in State Supreme Court, Albany County (Index No. 6860-12) to declare Policy Memo 122r3 unlawful and for related relief. On June 9, 2016, the Appellate Division, Third Department reversed its earlier ruling and affirmed the lower court's decision in *Matter of Plainview-Old Bethpage Congress of Teachers, et al. v. N.Y.S. Health Ins. Plan, et al.*, (Docket No. 519991), and *Matter of Roslyn Teachers Association, et al. v. N.Y.S. Health Ins. Plan, et al.*, (Docket No. 519995), and declared Policy Memo 122r3 null and void. Therefore, effective January 1, 2014, pending resolution of that litigation, the District shall not enforce Policy Memo 122r3.

In the event that Policy Memo 122r3 is ultimately declared to be valid and enforceable by the court of the highest jurisdiction in the above-referenced litigation or other litigation and/or legislative action, the District shall implement Policy Memo 122r3 as of the effective date of such decision and/or legislative action and this provision shall be deemed amended so as to be consistent with the court's decision and/or legislative action.

2. Except as necessary to enforce this Agreement, the Union hereby releases the District (including its past and current officers, employees and agents) from any and all grievances, improper practice charges, causes of action, judgments, damages and/or claims of any kind or nature arising out of or in connection with the specific facts of this Agreement which arose prior to, or as of the effective date of, this Agreement and hereby agrees to withdraw, with prejudice, any such outstanding claims concerning this Agreement should the same so exist.
3. Except as specifically set forth herein, it is agreed that the provisions of this Agreement shall be non-precedential, shall not constitute a practice or a policy on the part of the District or Union, and shall not be construed as modifying any of the terms of the existing CBA except Article IV, Paragraph E or any practices that may exist between the District and the Union.

4. The District waives any and all claims to recoup allegedly unauthorized buyout payments as against the Union and all of its members who received buyout payments as to the period January 1, 2014 through December 31, 2015, notwithstanding the provisions of Article IV, Paragraph E.
5. This Agreement shall not be utilized by the District or Union in any grievance, arbitration, charge or claim of any kind, except as necessary to enforce the terms of this Agreement.
6. This Agreement shall not constitute an acknowledgement by either Union or the District regarding any of the allegations/denials that constituted the positions of the respective parties.
7. This Agreement is the complete and exclusive statement of the Agreement between the parties, and supersedes all prior or contemporaneous, oral or written: agreements, proposals, understandings, representations, conditions or covenants between the parties relating to the subject matter of the Agreement.
8. This Agreement may not be amended or modified orally; this Agreement can only be amended or modified by written agreement, signed by authorized representatives of both parties.
9. This Agreement is subject to and contingent upon approval by the Board of Education of the Huntington Union Free School District.

BOARD OF EDUCATION,
HUNTINGTON UNION FREE
SCHOOL DISTRICT

UNITED PUBLIC SERVICE
EMPLOYEES UNION,
CLERICAL UNIT

Thomas DiGiacomo
President, Board of Education

By:

Date

Date

HUNTINGTON UNION FREE
SCHOOL DISTRICT

James Polansky
Superintendent of Schools

Date
80-20-296543