

IN THE MATTER

OF

FACTFINDING

BETWEEN

BUTLER COUNTY HEAD START

AND

SERVICE EMPLOYEES INTERNATIONAL UNION,
DISTRICT 925

STATE EMPLOYMENT
RELATIONS BOARD

2001 MAY -1 A 10: 11

Hearings: April 25, 2001
SERB Case Nos.: 00-MED-05-0633
Date of Report: April 30, 2001
Issue: Factfinding

Union Representative:

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REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

Administration

By letter dated April 5, 2001, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On April 25, 2001, a hearing was held in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing on April 25, 2001, and is now ready for a factfinding report.

Factual Background

The Employer is in charge of administering the Head Start program for Butler County, Ohio; its part- and full-time regular employees are represented by the Union and number approximately 130. The negotiations in this matter involve the first collective bargaining agreement between the parties.

Prior to the beginning of the hearing, mediation was attempted by the factfinder, but was unsuccessful. Discussions took place during the mediation where it was agreed that the most significant issue was over the inclusion of fair share fee language. While ten (10) other issues were submitted for report and recommendations, they were not argued. The only verbal presentation was over the issue of fair share fees.

Section 4117-9-05 of SERB's administrative rules addresses the issues that a factfinder must consider when making recommendations. That section, in pertinent part, reads as follows:

(K) The fact-finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:

(1) Past collectively bargained agreements, if any, between the parties;

- (2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment. (emphasis added)

Each issue will be addressed giving consideration to all of the required factors.

The eleven issues were as follows:

1. Fair Share Fee;
2. Wages;
3. Family Service Worker Stipend;
4. Holiday;
5. Emergency Closing;
6. Discrimination;
7. Damage to Vehicle Fund;
8. Short-term Disability;
9. Vision Plan;
10. Life Insurance;
11. Temporary Transfers.

ARTICLE 4 - UNION RIGHTS

The Union proposes the inclusion of language that would mandate an automatic dues deduction from every employee who is qualified to be a bargaining unit member. The deduction would begin with the 60th day of employment and would be automatic even if the employee did not

agree to become a union member.

The County counters with an Article 4 that would have no such mandate.

UNION POSITION

The Union contends that it has worked long and hard on this first agreement and worries that its work could go for naught if employees are not required to contribute to the cost of representation. Since it is obligated by law to represent all employees regardless of their membership status, then it contends that those employees that choose not to join should at least pay their fair share of the cost of the benefits they receive.

The Union argues that fair share fee is permitted by law; that it is only fair that employees who receive a benefit pay something for that benefit; that the language is required to provide security to the Union; that contrary to the County's position, fair share fee language is common in first contracts; that if it is not so included it often becomes impossible to include in subsequent agreements; that the true motivation of management is to insure a weaker union; and that this County is used to the concept since many of its other bargaining units have some version of fair share. It contends that it has kept a 75% membership rate among its member since it was first certified as a Union and maintains that such is a particularly difficult rate to maintain since it has taken over a year to settle this contract. Since the County and the school districts within it have fair share provisions in other collective bargaining units, and since this Union deserves some stability and protection, then it argues that it is reasonable to include fair share fee language in this first Agreement.

COUNTY POSITION

The County argues that fair share language is not historically included in first contracts for educational bargaining units. Indeed, it contends that fair share language, when included, is usually not until after several contracts have been negotiated. Since such language turns the employer into a collection agency for the Union, then it argues that an employer should not be so burdened absent a showing of need. Since the Union did not make such a showing here, then it contends that the proposal is unjustified. It contends that rather than the County being responsible for the collection of dues, the Union should prove to its potential members that it is providing a benefit worth paying for. It argues that if the Union demonstrates to the employees that it is a good representative, then it should have no trouble maintaining membership and collecting dues.

RECOMMENDATION

It is recommended that the fair share language not be included in this first Agreement. This is based on the fact that the Union has yet to prove its worth to its members and potential members. Rather than rely on automatic dues deduction, the Union must first prove its worth. This proof of worth becomes unnecessary if, in the first agreement, the Union is successful in obtaining fair share fee language. Rather than have this automatic benefit to the Union, it is felt that the Union should first earn the right to collect dues.

This holding must stand even though the Union persuasively argued that it has worked hard and long on this difficult, first contract. While accepting that as true, such has not been established in the minds of those employees it has worked long and hard for. The relationship between an organization and its members should not be first about forced inclusion. It is reasonable to first

allow potential members to make a decision for themselves. Such not only is reasonable from the members perspective, but it is logical to find that it will eventually be a source of strength to the Union. If the Union must first convince members to join voluntarily, then loyalty will be stronger, the reasons for joining will be based on rational decision making, and the Union will more likely benefit in the long run. If, instead, members who are undecided are forced to contribute, then it is logical to expect their loyalties to be weaker since it is based on the imposition of membership rather than a choice. For this reason, it must be found as a long term benefit to the Union to not have fair share in its first agreement and it is recommended that it not be included.

REMAINING ISSUES

The sole impediment to an agreement being reached was the fair share fee language. Indeed, the record shows that the Parties reached tentative agreement on all remaining issues and the County's positions on each of the remaining issues was the tentative agreement language. Based on the principle that the Parties are best suited to determine the best language; and since the fair share language should not hold up agreement on the remaining issues; then it must be recommended that the tentative agreement reached on each issue be adopted. Thus, it is recommended that the County's position statement (assuming it is consistent with the Tentative Agreement) be adopted in total. Wherever an inconsistency exists between the County's position in this case and the Parties Tentative Agreement, the Tentative Agreement should control.

Based on all the foregoing, it must be recommended that the fair share language not be included and that the remaining open issues be adopted consistent with the Parties Tentative Agreement.

April 30, 2001
Cincinnati, Ohio

A handwritten signature in black ink, appearing to read "M. Paolucci", written over a horizontal line.

Michael Paolucci