STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO

In the Matter of Fact Finding	)	Case No.(s): 02-MED-09-0951
	)	02-MED-09-0952
Between:	)	02-MED-09-0953
	)	
Toledo City Schools	)	**FACT FINDING REPORT**
	)	
And	)	**Mitchell B. Goldberg,**
	)	**Fact Finder**
Toledo Federation of Teachers	)	

This matter was heard on December 3, 2002 at Toledo, Ohio.

APPEARANCES:

For the Union:

Francine Lawrence, President,
Toledo Federation of Teachers
111 S. Byrne Road
Toledo, OH 43615
Telephone: 419-535-3013
Fax: 419-535-0478

For the Employer:

Timothy J. Sheeran, Esq.
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, OH 44114-1304
Telephone: 216-479-8500
Fax: 216-479-8780

I. INTRODUCTION AND BACKGROUND

The undersigned, Mitchell B.Goldberg, was appointed by the State Employment Relations Board (SERB) on November 1, 2002 to serve as Fact Finder for the purpose of issuing a report with recommendations on the unresolved issue between the parties in their negotiations pursuant to a re-opener provision in their collective bargaining agreement (CBA). There are three separate bargaining units represented by the TFT; (1) approximately 2,595 teachers; (2) approximately 425 para-professionals; and (3) approximately 301 substitutes. The units were certified on or about September 2, 1967. The parties, prior to the hearing, submitted pre-hearing statements pursuant to §4117-9-05 of the Rules of SERB. They engaged in contract negotiations on November 12, 2002 and November 13, 2002.

The only issue for resolution in each of the contracts is the wage re-opener provision.

Article LXII of the Teacher Agreement states:

> However, the basic teacher salary schedule and hourly wages, specified in this Agreement, shall expire on December 1, 2002, and they shall be reopened as per ORC 4117 on or about September 1, 2002. The parties retain all rights for this re-opener as specified in ORC 4117, including the right to strike.

Similar provisions appear in the Para-Professional contract (Article 26) and in the Substitute Teachers' contract (Article XII). All agreements reached between the parties and not specified in this Fact Finding Report pursuant to the re-opener issue shall be incorporated herein and made a part hereof. Consideration in this Report was given to all of the criteria listed in Rule 4117-9-05(J) of SERB.

II. UNRESOLVED ISSUES

Wage/Salary Re-openers in the Three Collective Bargaining Agreements.

The issue for determination is whether and/or to what extent the wages and salaries of the bargaining unit members should be adjusted for the remaining term of the collective bargaining agreements which expire at the end of the day on March 31, 2004. The parties presented evidence in the form of testimony and through documentary exhibits. The positions of each of the parties are summarized as follows:

A. Board Position

The Board contends that it is unable to pay any wage increases because of its projected budgeted deficits and unstable financial condition. Its projections show that there will be a deficit of 18.5 million dollars by FY 2004 without any increases in the wage/salary schedules. Ohio law requires the Board's budget to be balanced. Wage increases proposed by the TFT for all units would increase the deficit to more than 37 million dollars by the end of the '03-'04 school year. The present projected deficit would double by June 30, 2004.

The primary reason for the projected deficit is the increased cost of medical and health care under the Board's self insured plan. A 13% rate increase was implemented on July 1, 2002; another unexpected 13% increase was implemented on October 1, 2002; and on July 1, 2003 another 13% increase is projected. A 20% rate increase was implemented for drug insurance on July 1, 2002 and a 15% rate increase is projected for July 1, 2003. A 6% rate increase was implemented for dental insurance on July 1, 2002 and another 6% rate increase is projected for July 1, 2003.

The assumptions used for budget projections reveal other negative influences affecting the Board's ability to balance its budget through fiscal year 2004. Teachers must receive their annual step increases under the present contract. The increase is scheduled for August 1, 2003, a total of $2 ,003,595. Utility expenditures, student transportation expenses and supply and text book costs are projected to increase at 3% per year. The cost of obtaining fleet, fire and liability insurance has increased significantly.

On the revenue side, the basic state aid is projected to decrease because of decreased student enrollment and the increase in the number of students attending charter schools. There will be a decrease in the Disadvantaged Pupils Impact Aid because of a decrease in the district wide Ohio Worker First (OWF) count. There will be an increase in Parity Aid funding, but this is specialized funding and may not be used for operations or for paying salaries and benefits. Investments earnings have declined dramatically because of the current low interest rates.

The net payment for State Foundation funding will only increase by 3.27% from fiscal year 2001 to fiscal year 2003. Special education funding has increased, but the reimbursement per pupil has declined. Vocational reimbursement will increase, but Equity aid is being phased out. Equalization enhancement funds which were present in 2001 have been eliminated pursuant to HB 94. Based upon all of the accounting figures, it is projected that there will be approximately a 1.6 million dollar decrease in available state funding for fiscal year 2003.

The self insured health insurance fund shows a deficit of approximately 1.7 million dollars as of October, 2002. An audit is presently being conducted to determine the reasons for the increased payments and claims.

There are some endemic problems facing the Toledo School District. The assessed property valuation, the formula ADM of the Ohio Department of Education and the property values per pupil rank among the lowest of the big eight urban school districts in Ohio. Only Canton and Youngstown rank lower in these categories.

Any consideration of increased wages must recognize that the average teachers' salary in the district increased by almost 7.5% per year over the first two years of the contract. At the same time, the CPI-U rose annually at an average of only 2.5% nationally and 2.2% regionally from 2002, year to date. Even without an increase, over three years teachers under this contract will receive an annual increases of 5%, which are well above the increase in the CPI. Accordingly, the Board's proposal that there be no wage/salary increases for the re-opener period is justified and required under the present existing economic and financial conditions.

B. TFT Position

The TFT believes that the Board's discussion of health insurance costs is inappropriate for contract negotiations over the specific wage/salary re-opener provision. Nevertheless, the TFT has proposed a number of revisions to the plan which would lower the premium costs and the TFT would agree to the reductions if the other Unions subject to the health insurance plan would also agree. The TFT's suggestions were rejected by AFSCME and the Board did not proceed to resolve the issue with AFSCME through fact finding. Instead, the Board and AFSCME agreed to other provisions which would have fallen inequitably on the teacher bargaining unit and these agreements were rejected by the TFT.

Any attempt by the Board to negotiate revisions to the health insurance plan will require the TFT, in turn, to request an increase in severance pay for all accumulated sick leave from 60% to 100% of the employee's highest daily rate of pay during his/her employment with the Board. This is a compensation item related to wages/salaries to the same extent as fringe benefit compensation items such as health insurance benefits. The TFT's proposal is in line with severance pay paid to the Board's recently retired Treasurer.

The TFT further believes that the Board has violated and intends to violate the "Me Too" Agreements which have been reached with the three Unions. The Board takes the position that the TFT, under the terms of the Agreement, is not entitled to any increases paid to AFSCME when its contract is renegotiated at its present expiration, which is four months before the TFT expires. The TFT believes that it is entitled to receive the same percentage increases received by AFSCME for the four month period until the TFT contract expires. The Board's position is that the "Me-Too" Agreement does not apply to the third year of the TFT contract. Moreover, the TFT believes that the Board has breached the "Me-Two" Agreement by paying an additional $72,500 to administrators without paying similar increases to the TFT. This issue was arbitrated before an arbitrator and it was determined that increased longevity pay to the administrators did not violate the terms of the "Me-Too" Agreements. The arbitrator further discussed the earlier contract termination for the AFSCME unit and found that there was no violation of the "Me-Too" Agreement at that time because the Board had not agreed to pay any further increases to AFSCME and the issue would not be ripe for resolution until the AFSCME unit receives increases.

The TFT believes that the Board is not accurately stating the facts surrounding the increase in teacher salaries for the first two years of the contract. The teachers only received 3.5% increases each year; the additional payments reflect compensation for a longer work day and an increased work load.

The TFT believes that its proposal of a 5.75% increase for the re-opener is justified because the Toledo TFT units are underpaid in comparison to similarly situated employees in other school districts.

The Board's financial projections are unreliable and misleading. Past history has shown that there is a large difference between the Board's projected figures and the resulting actual figures. For example, during negotiations in 1994 the Board projected a 1.782 million dollar balance when the actual balance turned out to be $7, 635,755. The projected 7 million dollar deficit for FY 95 turned out to be +7 million. Similar miscalculations were projected for FY 92 and FY 93. Actual unencumbered balances for fiscal years have turned out to be much higher than those projected by the Board. For FY 97 the Board's actual revenue exceeded estimates by substantial amounts and actual expenditures were lower than estimates in expense categories. There was a 6.6 million dollar difference between estimates and actual figures. The Board estimate of a unencumbered fund balance of $100,000 for FY 97 actually showed a June 30 balance of 9.5 million dollars. Accordingly, the Board's present projected figures, based on past experience, should be considered substantially inflated in terms of a deficit, and the Board's argument that it is unable to pay the proposed wage increases to the TFT units for the re-opener period should be discounted by the fact finder.

The Board's inability to pay argument is further compromised by its recent financial decisions when it considered payments of increases in salary and benefits to its management personnel. One individual received a 16.3% increase which raised her salary level to $115,702. Another individual received a 31% increase raising his salary to $92,632. A third individual received a 19.1% salary increase raising his salary level to $115,684. These payments were presumably made within the present budget constraints represented by the Board.

Recommendation

After considering the respective arguments of the parties and the substantial economic evidence presented, the following recommendations are in order:

1. Teachers Contract.

   Each step of the salary schedule shall be increased by 1.2% effective February 1, 2003. Effective August 1, 2003, each step of the teachers basic salary schedule shall be increased by an additional equal dollar amount of $ 133.00 which is equivalent to 0.28% increase.

2. Para-Professionals.

   Effective February 1, 2003, each step of the wage scale shall be increased by 1.2%. Effective August 1, 2003, each step of the wage scale shall be increased by an additional 0.28%.

3. Substitute Teachers.

4. Effective February 1, 2003, each class set forth in Article VIII A of substitute compensation and the hourly rates set forth in Article VIII F(2)(3)(4) shall be increased by 1.2%. Effective August 1, 2003, each class set forth in Article VIII A of substitute compensation and the hourly rate set forth in Article VIII F(2)(3)(4) shall be increased by an additional 0.28%.

All of the above increases shall be for the duration of the existing collective bargaining agreement. Until March 31, 2004, if a greater wage or salary increase or other increased compensation of whatever kind is granted to TAAP or to the AFSCME units over and above the wage/salary increases or other increased compensation provided for and set forth in the existing collective bargaining agreements between the Board and the TAPP and AFSCME units, that identical percent or dollar increase shall also accrue and be paid to the TFT units for the same periods of time.[1]

Mitchell B. Goldberg

Mitchell B. Goldberg,
Appointed Fact Finder

Dated: December 11, 2002

[1] If AFSCME (all units) receives an increase on or before February 1, 2003, which when combined with the increase received on December 1, 2002 does not exceed 1.2%, this second paid increase (bringing the total increases up to 1.2%) shall be considered not to trigger further me-too payments to the TFT and shall be in accord with the recommendations set forth herein.