

OHIO STATE EMPLOYMENT RELATIONS BOARD

2004 MAY 21 A 10: 50

In the matter of Fact Finding between:)
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CINCINNATI PUBLIC SCHOOLS)
)
and)
)
CINCINNATI FEDERATION OF)
TEACHERS, LOCAL 1520)
)

03
Case No. ~~04~~-MED-10-1217

FACT FINDING REPORT

Date of Report:
May 19, 2004

Appearances:

Mitchell B. Goldberg, Appointed Fact Finder

For the Union:

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I. Introduction and Background.

SERB appointed the undersigned, Mitchell B. Goldberg, as a Fact Finder of this public employment dispute on April 5, 2004. The collective bargaining agreement (“CBA”) was extended between the parties to facilitate negotiations until February 29, 2004. The parties agreed to the date of May 6, 2004 as the hearing date for fact finding. Testimonial evidence and documentary exhibits were received as submissions into evidence. The parties agreed that this Fact Finding Report would be issued on May 19, 2004.

The parties submitted position statements in accordance with SERB rules and guidelines. The bargaining unit consists of over 3,000 classroom teachers and specialists. The Union has represented the unit since the 1970’s. The unit is a deemed certified unit. The functions of the public employer and the employees in the bargaining unit were described.

For purposes of this Report, all unchanged or unopened articles, and all articles agreed upon, or tentatively agreed upon except for the unresolved issues set forth below are adopted, included, and incorporated into this Report and made a part hereof. The parties engaged in 33 bargaining sessions from late December through March. They engaged the services of a facilitator to assist them in the bargaining process. They adopted ground rules for bargaining and described their process as a collaborative process. A 16 page document referred to as a “CPS/CFT Master Summary of Tentative Agreements (“TA”) was agreed upon on March 9. The Union members voted on the

terms set forth in the TA on March 19 and 20 and overwhelmingly ratified it. The Board, however, voted four members to three against the TA. According to the Board's Pre-hearing statement and presentation at the hearing, there were 11 issues that remained as obstacles to an agreement. Two of those issues were either mediated or resolved between the parties at the hearing. The issue of ILT/EIP authority under the Accountability and Governance Issues was resolved by an agreement between the parties to leave the existing contract language in Section 150 a. unchanged. The Pay for Performance issue was resolved by the parties agreeing to the terms of a side letter not to be included in the CBA. The following nine issues remain unresolved: (1) The Step 27, 3% increase, (2) The Schedule E increase, (3) Class sizes, (4) Hiring additional specialists/ Elementary music services, (5) Severance incentive program, (6) Career-in-teaching Program Facilitator, (7) Redesign Committee Authority, (8) Collaboration, and (9) Teacher Evaluation System (TES). The matter proceeded to hearing on May 6, 2004 at the Board's offices in Cincinnati, Ohio. The following recommendations take into consideration all of the criteria set forth in R.C. 4117.14 (G) (7) (a) to (f) and SERB Rule 4117-9-05 (J).

II. Unresolved Issues.

A. Economic Issues.

The five- year forecast prepared by Treasurer/CFO Michael Geoghegan shows a decline in revenues from 2004 through 2008. The actual revenue in '03 was \$415, 301, 178. The projected revenue steadily declines through 2006 and evens out through 2007 and 2008, with a projected revenue in '08 of \$410, 079,229. Property tax revenues will

increase from an expected reappraisal in '05, but will be rolled back or reduced because of HB 920. The forecast assumes the passage of an emergency levy generating \$47.7 million per year in real estate taxes. This will increase the revenues in '06, '07 and '08.

The District will lose revenue because of the State mandated reductions in the inventory tax in '04 and '05 amounting to 48% of the total tangible personal property tax revenue. From '06 through '08 the reduction amounts to \$1.5 million per year. The improved economic climate may eventually improve this revenue stream. The forecast assumes that the emergency levy will generate \$17.7 million in personal property taxes.

State funding is in flux because of the required examination of the school funding system. Basic aid is projected to decline from approximately \$143 million in '03 to \$135.5 million in '08.

Expenditures in the forecast are expected to rise from \$417,444,821 in '03 to \$482,080,087 in '08. Accordingly, the ending cash balance is projected into the red by '07 with a negative balance of \$98,776,350 in '08.

Other factors affecting the budget and finances include the steady decline in enrollment due to the increase in Charter School enrollment, suburban flight and other economic factors. Employment positions, however, have remained constant throughout the declining enrollment. Of the \$33,982,396 spent by the District to Charter Schools in

'04, only \$13,307,482 is paid by the State. Local property tax revenues in the District's General Fund will pay the balance.

The Board estimates the cost of the Union's proposed contract at \$81 million over the three-year term. The estimate does not fully take into consideration all of the costs associated with all of the Union's proposals and does not include any funds for extra planning days, which would add \$4.7 million over the term if two additional planning days were provided. Therefore, the unresolved economic issues must be revisited to bring costs more into line, with a view toward dealing with the projected budget deficits.

The Union believes that the economic issues were already bargained across the table with the former Board bargaining team over 33 separate sessions. The Union accepted a 3.2% increase in year one, a 3% increase in year two, and a 2.7% increase in year three together with the other economic benefits included in the issues the Board now considers unresolved. The Board bargaining team accepted the TAs that included the entire economic package and presumably recommended the package to the Board. The Union compromised on many of its economic proposals to reach the TAs. For example, the Union agreed to reduce the accumulation of sick day benefits for new hires, and it agreed to uncompensated professional development time outside of the school day. It believes the across the board increases finally agreed upon are less than those provided for in other comparable school districts. Accordingly, a recommendation that further erodes the economic benefits already negotiated and agreed upon, after the Union already compromised its positions is inherently unfair and unreasonable.

Issue 1 – The Step 27 35 Increase.

The TA provides for a 3% increase at the 27th step, meaning after 27 years of service. The current increase at step 27 for a teacher with a B.A. is approximately 2.8%. The preceding step is at 22 years of experience. Therefore, the increase after year 22 will be 5.8% at the 27th year. This item is an insignificant economic issue, considering that it affects only a few members. It is not an unreasonable step raise compared to other districts and it was arrived at through the “horse trading” of other issues.

The parties are trying to recruit and retain teachers. CPS is competitive at the beginning and at the higher end of the schedules. The raise at Step 27 addresses the retention issue. The percentage increase was out of whack because it is less than 3%. Other urban districts have pay schedules that contain more steps. The TA permits teachers with experience to enjoy the same type of percentage increases as teachers with less experience. The benefit is particularly beneficial to experienced teachers because their retirement benefits will increase under the STRS formula that bases benefits upon the three highest salary years of employment.

The Board believes that the increase is too costly. CPS teachers make more money at Step 27 than other districts pay at Step 30. The Board believes that the step increase affects approximately 425 employees. The increase totals 5.8% for a cost of approximately \$700,000.

The most persuasive argument propounded by the Board at the hearing is that the TAs reflect only agreed upon concepts that do not include the details necessary to put a final agreement in place. This was the result of the collaborative type of bargaining that occurred. A facilitator was used to promote communication between the parties, and to help the parties focus on the issues, but the particular details of each item in question were never completely appreciated or understood by the Board until afterwards.

This position is less persuasive when it comes to an analysis of the economic issues. These issues are relatively straightforward in terms of the impact upon the budget. The Board, throughout the lengthy bargaining process, had the benefit of the financial and economic expertise of its CFO. It seems clear from the evidence that each of the disputed economic issues, with the exception of the severance pay issue, involved matters that were easily discernible by the Board. The Board team was well aware of the economic impact of the items when it agreed to the TAs. Accordingly, with the exception noted above, those issues will be decided in favor of the Union, and in accordance with the TAs.

Recommendation.

The Step 27 increase shall be granted in accordance with item 1 of the TA.

Issue 2 – The Schedule E Increase.

The TA provides for increases for supplemental contracts under Schedule E. The Union wants to provide an increase in these contracts because no raises have been issued since 1997. Across the board increases were always applied to supplemental contracts

until the last contract. CPS is behind other districts in terms of pay for academic coaches. The cost of this item for the Board is inconsequential -- \$125, 000 in '05, and \$130,000 in '06. The cost is only \$380,000 over the life of the contract.

The Board wants to keep the status quo for these payments. It believes that the present rates are competitive with other districts, and that efforts must be made to cut cost wherever feasible to address the pending deficits.

Recommendation.

The Schedule E salaries should be raised by the across the board increases as set forth in item 3 of the TA for the reasons set forth above.

Issue 3 -- Class Size Proposals.

Class size limits have a direct impact upon personnel costs, the largest expense item in the budget. The TA changes the current contract that contains class size limits of no more than 18 students per teacher in K-3, and 30 students per teacher in grades 4-12, with certain adjustments when Instructional Assistants (IA) are used. Under the TA, reduced class sizes are permitted in grades 4-8 (28 per teacher), and increased limits are permitted in K-3 with the use of IAs.

The Board wants no change to the current agreement. The Board, however, could easily estimate its increased personnel costs imposed by the new class size restrictions. It agreed to the changes with full knowledge of the economic impact upon the budget.

Recommendation.

The new class size restrictions set forth in item 8 of the TA should be adopted.

Issue 4 – Hiring Additional Specialists/Elementary Music Services.

Item 14 of the TA states that all students should have access to specialists such as art and music teachers, librarians, social workers, and counselors. Four additional FTEs were agreed upon for hiring by the third year of the contract. These hires could be floaters. The goal is to restore librarian services by '07-'08, and to provide access to a social worker, counselor, or lead SSW for each school. Items 15 and 16 provide for a Technical Coordinator for technology services, and more elementary instrumental music teachers.

The Union is concerned that a number of schools do not presently have specialists, and only 22 of 61 schools have libraries. It believes that the District is not in compliance with applicable standards. Children are being neglected and teachers are spending their own money for library materials in their classrooms to provide necessary services.

The Board wants to maintain the status quo because of cost. The projected cost of these items is \$1.6 million over the contract. These expenses cannot be afforded. The Board believes it is operating in compliance with applicable standards relative to librarians and support services. Libraries are not required in each school, only the provision of library services. This is accomplished with floaters and library services

access through computers. Moreover, fixing number limits for these services conflicts with ILT and LSDMC provisions, which provide for the school committees to decide upon the allocation of resources. Those committees might prefer to spend their monies for items other than for the above specialists.

The Union contends that elementary instrumental music services are vital for young children. It is widely recognized that instrumental instruction helps children with math skills. The District has received grant money for instruments, but now there an excess of instruments and not enough teachers.

The first bargaining team understood the implications of this issue and the cost impact on the budget. The state testing requirements, the new federal legislation, and the existing demands of special education laws and regulations requires more resources to be directed to these areas. The Board recognized these facts and attempted to address the issues during the negotiations by accepting these additional costs. Items 14, 15 and 16 of the TA are clear in terms of the additional services that are needed. The additional cost now objected to must have been known to the Board team at the time these items were agreed upon.

Recommendation.

Items 14, 15, and 16 of the TA should be adopted.

Issue 5 – Severance Incentive Program.

The Board objects to the inclusion of Item 20 of the TA in any final agreement. The severance plan, which the Board brought up during negotiations, was merely an idea for discussion as a way to reduce its personnel costs. The idea requires further study to determine the precise impact upon the budget. Too many variables are in play, including whether properly certified replacement teachers can be obtained to replace the retirees. The Board could face disastrous consequences if it is required to hire back retired teachers to fill needed vacancies, or if it is required to pay more than market wages for replacements.

The Union is perplexed over the Board's position. The Severance plan was a Board proposal presumably based upon its calculation that the plan would save money by reducing the number of higher paid teachers with lower cost replacements.

Treasurer Geoghegan testified that the plan that was discussed as a shared interest during negotiations. It was never intended by the Board to be included in the final CBA without further analysis. The feasibility study purchased by the Board was never shared during negotiations. Treasurer Geoghegan does not want the option available each year. Instead, he would prefer a window concept with possibly two exit dates. The Board, notwithstanding the decline in enrollment, must maintain a certain level of qualified teachers to stay in compliance with state and federal laws and regulations. Presently, there is a shortage of special education teachers in the market.

One piece of evidence makes it clear that the precise details of the Severance Plan were not agreed upon for inclusion into the final CBA. An email from former Board counsel to Union President Taylor states that details remain undetermined and are going to be reviewed by the Board. The contents of the feasibility study are going to be considered, but “are no more than suggestions to the Treasurer, the General Counsel and the Board.” It appears that the Union might have been premature in submitting the contents of the study and the terms that were the subject of the discussion to its membership. Since there is a legitimate question as to whether there was a meeting of the minds on this subject, and the full ramifications of the proposal in its existing form were not completely understood by either of the parties, it is not recommended that Item 20 be included in the final CBA.

Recommendation.

The Severance Incentive Program contained in Item 20 of the TA shall not be included in the CBA.

Issue 6 – Career-in-teaching Program Facilitator.

Appendix D-7 in the current CBA provides that by May 22, 2000, the Superintendent and the Union President will agree on a person to administer the Teacher Quality System, PAEP and Career in Teaching Teacher Program for a three-year term, nonrenewable annually by agreement of the above persons. After three years the Superintendent and the Union President will agree on a lead teacher to serve as the

Career-in-teaching Program Facilitator for a three-year term nonrenewable annually by agreement of the above persons.

This position apparently was eliminated because of budget concerns. The position will cost approximately \$85,000 per year including fringe benefits. The Board wants to avoid the additional cost. Presently, Ms. Hiles-Meadows, an administrator, manages this program with two lead teachers as facilitators.

The Union is concerned about the credentialing of Lead Teachers. The work is not being done. The Board points out that the Union has not filed a grievance over the issue. Instead, the Union agreed to a delay in the re-credentialing of Lead Teachers. Nevertheless, the Union is concerned that there has not been accountability in this area for five years.

Recommendation.

This is a cost item that was clearly ascertainable to the Board when it agreed to the Master Summary of Tentative Agreement. The language reaffirms the language in Appendix D-7 and requires a Career-in-teaching Program Facilitator to be re-appointed. Apparently, the Union is no longer interested in delaying the re-credentialing process, and both parties believed it was important enough to be addressed. Accordingly, it is recommended that the Facilitator be selected in accordance with Appendix D-7.

B. Non-Economic Issues.

Issue 7- Redesign Committee Authority.

The Board is concerned with what it perceives is a diminished role for Superintendent when the Redesign committee must deal with a school that is placed in the “School Improvement” category. Under applicable law, a district must take steps to improve the school’s performance. In the fourth year, the District must take one of the following measures for the schools that have not met the performance standards, (1) replace the staff, (2) convert the school to a charter school, (3) contract with a private operator, or, (4) change the school’s governance. Two proposals were offered. The Board’s counsel drafted the first one. It states that the Redesign committee will recommend a change in governance, instructional program, or leadership to the Superintendent. The Superintendent will accept or modify the recommendation. If he changes the governance by eliminating the ILT, the ILT will be reinstated once the school is removed from improvement status. The second proposal merely states that language shall be included in the CBA that the Redesign committee will develop options for year 4 schools, and that the options must comply with federal and state laws and regulations. The Board considers that this second proposal contradicts the first one. It believes that the Superintendent is excluded from the development of the options.

The Union states that there was no intent to exclude the Superintendent. The first proposal, which was drafted by the Board's counsel, was agreed upon. It now believes that the Board is intending to control the issue, and proposes a status quo.

It is difficult to determine the nature of the problem preventing the parties from agreeing to a necessary change in CBA language to deal with non-performing schools. I believe that the Superintendent should be involved in the restructuring process, but I am not sure that the Board's proposal gives it more authority than necessary when it proposes language that states that the Superintendent determines the staffing of the Instructional Support Teams, Curriculum and Evaluation staff. Under this proposal, the Superintendent can control the entire process. It seems that this particular language can be resolved with further negotiations to produce a solution that both parties can live with. I see nothing wrong with the first proposal, but I suspect that the subtleties of the respective interests of the parties are beyond my knowledge or understanding relative to this issue. I am, therefore, reluctant to accept the first proposal because the Board objects to it. The second proposal is somewhat incomplete and needs more work. The Board's proposal is clearly objectionable from the Union's viewpoint. I see no reasonable alternative, other than to leave the status quo.

Recommendation.

No change to the existing contract language.

Issue 8 – Collaboration.

The Board objects to a proposed side letter agreement stating the purported ground rules for engaging in the collaborative bargaining process for negotiating collective bargaining agreements. The Union states that the letter evolved from the suggestions and input of the Board's counsel. It believes that the Board is unfairly

backtracking from its stated positions. The side letter costs the Board nothing and should be implemented.

The stated collaborative bargaining process has merit, but it obviously encountered difficulty during these negotiations when it did not produce an acceptance from the Board members. Accordingly, I am not inclined to recommend the ground rules for a process that does not have the full commitment of both negotiating teams and the Board itself.

Recommendation.

The ground rules for engaging in the collaborative bargaining process for contract negotiations shall not be adopted without a clear endorsement from the Union, the Board's bargaining team, and the Board members.

Issue 9 – Teacher Evaluation System (TES)

The Board believes that the Union's proposed modifications for the TES will result in lower teacher standards and accountability by reducing the number of observations. It believes that the existing system that was developed in collaboration with experts should remain in tact. The contract provisions provide for a mechanism permitting changes in the system when they are required. The existing system is successful and should not be changed, particularly in these times when the focus is upon student performance.

The Union wants the Board to commit to the interim changes it agreed to for the TES in the TA. The parties agreed that the revision work for the TES that needs to be examined and implemented is extensive and beyond the scope of the negotiations. They agreed to form a committee to examine TES and consider changes to the current system. However, the parties agreed to certain modifications.

First, for new hires, two observations will be completed with an Evidence of Reflection Form for each observation. One conference is required with a second to occur if needed, or if requested by the appraisee or the evaluator. The Teacher evaluator may provide assistance upon request or when needed. The teacher will complete a modified portfolio with completion of forms C.2, C.4, C.5, and C.7. The modified portfolio will include one set of connected lesson plans and one sample set of student work and assessment.

Second, Lead Teachers who undergo recredentialing will have four observations, one by the principal and three by a Teacher Evaluator ("TE"). The Evidence of Reflection Form must be completed for each observation. The TE and the principal each will conduct a conference, and additional conferences may occur at the teacher's request. The portfolio will require six forms, and a modified portfolio will include one set of connected lesson plans and one sample set of student work and assessment.

Third, veteran teachers beginning in '05-'06 will be evaluated once every five years with four observations, three by the TE and one by the principal. The TE and the

principal will each hold one conference, with additional conferences at the teacher's request. One observation by the TE will be announced. The teacher may request assistance, which will be provided. The formal evaluation will consist of eight of the existing sixteen standards. The Evidence of Reflection Form will be completed for each observation. The portfolio will require forms C.2, C.4, C.5, and C.7. The modified portfolio will include one set of connected lesson plans and one sample of student work and assessment. Also, a phone log will be produced showing communication with families.

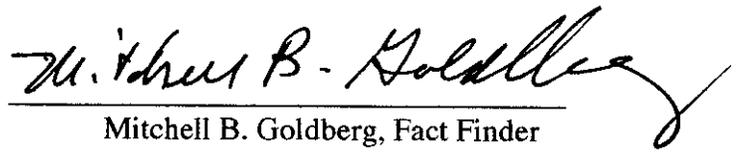
Finally, with respect to observation reports, evaluators must use rubric language when composing their reports, and there must be evidence from the class that exemplifies the rubric. Teachers must understand the reason for the outcome, and a section must be included for recommendations and suggestions.

There was much discussion at the hearing about the deficiencies of the present TES process. The recredentialing of teachers is behind schedule and the parties acknowledge that the present system is cumbersome and places a heavy load upon the teachers and lead teachers, and an administrative burden upon the evaluators.

Recommendation.

I recommend that the Interim Modifications of the Teacher Evaluation System be put in place. (Copy attached).

Date of Report May 19, 2004


Mitchell B. Goldberg, Fact Finder