



## **Introduction**

This case involves a dispute between local members of the Southern Local Education Association (SLEA) and the Southern Local School District Board of Education (hereinafter "School District"). The SLEA bargaining unit at issue in this case is comprised of all certificated employees who are under contract with the School District and who have instructed for a full school year. This unit includes guidance counselors, librarians, school nurses and head teachers, but does not include substitute teachers or full time administrative personnel. The bargaining unit has approximately 55 members. The unit is located in Meigs County and bargaining unit employees work in two school buildings with approximately 735 students.

The parties' previous collective bargaining agreement (hereinafter "Agreement") expired on June 30, 2005. Long but productive negotiations resulted in tentative agreements on all issues except for wages. The parties participated in a mediation with a SERB mediator on September 7, 2005, but were unable to reach resolution of the wage issue. The parties then requested this fact-finding, which took place on October 25, 2005 at the OEA's offices in Athens, Ohio. Before engaging in fact-finding, the fact-finder discussed with the parties whether additional mediation would be helpful to resolve the remaining issue. The parties and the fact-finder concluded that additional mediation would not be productive at this time.

The sole issue in dispute at the fact finding was the wage issue. The SLEA's position on that issue was that members of the bargaining unit receive a one percent increase to the base salary of the current salary schedule index, retroactive to July 1, 2005. The School District's position, by contrast, was that the 2004-05 salary schedule remain in place for the 2005-06 school year.

## **Criteria**

In reaching a decision following a fact-finding hearing, fact-finders must consider the criteria set forth in Ohio Revised Code § 4117.14(C)(4)(e) and Ohio Administrative Code § 4117-9-05(K). These are:

- (1) past collectively bargained agreements, if any, between the parties;
- (2) comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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) the stipulation of the parties;
- (6) such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

## **Discussion**

As noted above, the parties disagree about whether to increase unit employee wages. The School District proposes to leave the salaries the same for fiscal year 2005-06; SLEA proposes a 1% increase to the base for that same period. In resolving this dispute, there is admittedly some tension between two of the statutory factors – the School District’s purported inability to pay (see O.R.C. § 4117.14(C)(4)(e)(3)) and the evidence that SLEA employees are paid considerably less than are other similarly situated employees in comparable school districts in Ohio (see O.R.C. § 4117.14(C)(4)(e)(2)). Given the length of the fiscal emergency, however, when

combined with the comparable data the union presented, I conclude that a 1% increase to the base, which the SLEA estimates will cost the School District \$18,635, is appropriate and should be implemented retroactive to July 1, 2005 for the fiscal year 2005-06.<sup>1</sup>

**I. Although the School District is in Fiscal Emergency, a One Percent Raise is Reasonable Under the Circumstances.**

The School District Superintendent testified that the School District has been in “fiscal emergency” for the past seven years and that he does not foresee a time when the School District will no longer be in a fiscal emergency situation. According to Superintendent Grieser, when a school district is placed in a fiscal emergency, its budget is carefully overseen by a state oversight commission. The Superintendent is required to make quarterly reports to the commission and, in addition, makes frequent phone calls reporting on school district business to the commission. The Superintendent may not increase costs in the district’s budget without first obtaining approval from the oversight commission. In April 2005, before the parties began to negotiate a new Agreement, the oversight commission told the Superintendent that he could not negotiate any wage increase that would increase overall costs to the school district. With that mandate in mind, the Superintendent attempted to negotiate a wage increase that was offset by an increase in health insurance costs for SLEA members. SLEA rejected this offer. In 2003-04 and 2004-05, SLEA had accepted changes to their members’ health insurance policy in exchange for a 2% raise to the base salary for each of those fiscal years. Unfortunately, according to Ann

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<sup>1</sup> In rendering this decision, I also considered the other four statutory factors. Examination of past collective bargaining agreements demonstrated that there have been no raises in the past 3 years that were not offset by increases in health insurance costs. This result makes sense in light of the Superintendent’s belief that he could not certify a raise to the oversight commission while the district is in fiscal emergency. If anything, this factor weighs in favor of a raise for the unit employees because it shows that no additional monies have been spent on the employees in the past few years. The other three factors are either not relevant (i.e. parties’ stipulations and lawful authority of the employer) or are outweighed by the other factors.

Ohlinger, president of the SLEA, the increase to the insurance costs has had a detrimental impact on many members. As a result, SLEA did not wish to further increase health insurance costs in order to gain an offsetting wage increase.

The parties thus reached impasse on wages. The Superintendent testified that he could not certify a wage increase unless he could show that it was offset by increased savings in another part of the agreement. The Superintendent also expressed concern that any wage increase ordered by the fact-finder would have greater impact than the Union had surmised because another bargaining unit, the Ohio Association of Public School Employees (OPSE) has negotiated a collective bargaining agreement with a “me too” clause; in other words, if SLEA obtains a wage increase, this other unit will also receive a wage increase.<sup>2</sup> As a result, the Superintendent testified, the actual cost to the school district of a 1% wage increase would be between \$31,000 and \$33,000, not \$18,635.

The SLEA did not dispute the existence of the fiscal emergency, nor did it dispute that there is little likelihood that the emergency will end any time soon. Nevertheless, SLEA did present a May 2005 five year forecast, prepared by the School District’s treasurer at that time, Pam Carter, that painted a relatively rosy picture of the district’s financial future. Among other things, Andy Jewell, the OEA’s research consultant, testified that the May 2005 forecast showed that at the end of fiscal year 2005, the district had a cash balance of \$235,000 (4% of its total budget). At the end of fiscal year 2006, the May report indicated that the district would have an unencumbered cash balance of \$140,000.

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<sup>2</sup> I did not consider relevant that the School District would have to pay additional money to the OPSE employees if I found that SLEA employees were entitled to a wage increase. It is the School District’s obligation to consider the possibility that a fact-finder might implement a wage increase in one bargaining unit when negotiating with another unit that wishes to include a “me too” clause in their collective bargaining agreement.

The School District contested these figures. During the hearing, the School District presented its October 2005 five year forecast. This forecast was prepared by a different treasurer, interim treasurer Denny Hill. This forecast suggested a much bleaker picture. According to the new forecast, at the end of fiscal year 2006, the unencumbered cash balance would be -\$402,374, not the \$140,000 the May forecast had projected.

Jewell testified that treasurers tend to be conservative in their budget estimates and that different treasurers will come up with different forecasts. As a result, it is difficult for me to rely on either the May or October forecasts in making my determination about whether the School District has the ability to fund a one percent raise.

Without credible five-year forecasts, I must consider whether the district's fiscal emergency status means that the district is truly unable to pay for a one percent raise. This is a difficult question. On the one hand, a fiscal emergency indicates severe financial solvency problems for the School District. According to the Auditor for the State of Ohio, "[a] fiscal emergency is the last and most severe stage of a school district's financial solvency problems." School districts in fiscal emergency are overseen by a financial planning and supervision commission that is to adopt a financial recovery plan within 120 days of the emergency status declaration to eliminate the condition, balance the budget, avoid future deficits and restore the district's ability to make long-term commitments. The Auditor's web site suggests that fiscal emergencies are to be ended quickly and in a manner consistent with the district's approved recovery plan. The Auditor's web site also reveals that Southern Local School District has been in fiscal emergency over twice as long as the next school district and almost three times as long as any other district currently in fiscal emergency (there are only 10). Although in the past, other districts have been in fiscal emergency for long periods, no district that is or has been in fiscal

emergency has been in fiscal emergency as long as Southern Local School District. Moreover, all of the school districts that had been in fiscal emergency for four to five years are no longer in that status. And, importantly, Superintendent Grieser testified that he sees no end in sight to the School District's fiscal emergency status.

The question is whether SLEA employees should have to forego raises that are not offset by increases in health insurance costs until such time as the School District's fiscal emergency status is terminated. While I recognize that implementing a one percent wage increase will have an impact on the District finances, it is untenable to expect that employees are to forego any raises, much less the minimal one percent raise the union proposes here, until the District is out of fiscal emergency. The interminable fiscal emergency has certainly affected SLEA employees, and all others in the School District. While I expect that it will continue to hamper salary growth for SLEA employees, I conclude that the minimal raise proposed by the SLEA, particularly in light of the comparable data discussed below, should be implemented.

## **II. SLEA's Comparable Data Suggests that OLEA Employees are Dramatically Underpaid for Similar Work.**

ORC § 4117.14(C)(4)(e) states that a fact-finder should consider how employees in the bargaining unit are treated compared to other employees doing comparable work. My consideration of that factor weighs very heavily in favor of SLEA's position. SLEA's data from comparable school districts was very convincing. According to Jewell, who reviewed the budgets of school districts with similar enrollment size, wealth and demographics, teachers in Southern Local School District receive substantially less pay than similarly situated teachers in other school districts. According to Jewell, entry level SLEA members make \$4828 less than the average annual salary of entry level teachers in comparable districts; masters level SLEA members make \$4975 less and masters +11 years experience SLEA members make \$7328 less.

Comparisons to other Southeastern local districts revealed similar results. According to Jewell, compared to other districts in OEA region 2 (but not including Stark or Claremont counties), entry level SLEA members make \$3911 less than the average annual salary of entry level teachers; masters level SLEA members make \$4210 less; and for masters +11 years experience, SLEA members make \$7134 less than the average.

Further supporting my finding in favor of SLEA, the School District agreed at the hearing that SLEA had used appropriate comparables. Although the School District did note that Jewell had not considered whether the school districts in the comparable areas were in fiscal emergency, the District nevertheless conceded that the data Jewell presented were accurate and that, putting aside the fiscal emergency issue, the other districts were similar to the District here. Indeed, the School District expressly conceded that it was “unfortunate” that SLEA employees were among the lowest paid in the state of Ohio.

### **Conclusion**

While I recognize that the School District is in a difficult financial position, I nevertheless conclude that a one percent raise to the base should be implemented. While the District’s fiscal emergency status is relevant, it is not dispositive on the wage issue. When a district has been in emergency status as long as has Southern Local School District with no end in sight *and* the undisputed comparable data demonstrates that the bargaining unit employees are significantly underpaid, the implementation of a one percent raise to the base for the unit employees should be and is ordered.