

IN THE MATTER

OF

FACTFINDING

BETWEEN

CINCINNATI ASSOCIATION OF
ADMINISTRATORS AND SUPERVISORS

AND

CINCINNATI PUBLIC SCHOOLS

STATE OF OHIO
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MAR 13 11 31 AM '95

Hearing: March 8, 1995
SERB Case No.: 95-MED-01-0033
Date of Report: March 10, 1995

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FACTFINDING REPORT

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Administration

By letter of February 17, 1995, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On March 8, 1995, a hearing went forward in which the Parties presented arguments and documentary evidence in support of positions taken. The record was closed at the end of the hearing and is now ready for a factfinding report.

Factual Background

The Board of Education is in Cincinnati, Ohio; the Union represents between two-hundred thirty (230) and two-hundred forty (240) administrative and supervisory personnel. The Union was recognized by the Board on April 25, 1977, and has held the status of a "deemed-certified unit" since that time. The Board recognized this unit in exchange for its support during a teachers' strike that occurred immediately before the Board recognized the unit. The relationship between the Parties has historically been exceptionally good; many of its past Agreements being completed through informal discussions and without the assistance of counsel or representation.

The Parties have collectively bargained since 1977 and their most current Collective Bargaining Agreement, dated June 27, 1991, was originally set to expire on December 30, 1993, but was extended by agreement to February 28, 1995. Negotiations for a new contract have been ongoing with the last meeting resulting in impasse on March 2, 1995. Prior to reaching impasse, the Parties agreed to a 2.5% wage increase for the school year 1994, as well as a \$750.00 stipend to settle an outstanding issue regarding compensation.

The impasse that was reached on March 2, 1995, represents the first time the Parties have ever been unable to easily reach an Agreement. Though due to many factors, a significant cause for

the impasse are outside pressures that have been exerted on the Board. The outside influence began on September 5, 1991, when a task force issued a report regarding the quality of the public school system in Cincinnati, Ohio. The task force was chaired by Clement L. Buenger, and was organized by the Cincinnati Business Committee. The nature of the task force, as well as that of the Cincinnati Business Committee, is best explained by the introduction contained in the report:

In March, 1990, the Board of Education of the Cincinnati Public Schools (CPS) approved a request by School Superintendent Dr. Lee Etta Powell asking the local business community to evaluate the operation of the city's public schools and recommend possible improvements.

Over the past 16 months, a task force of more than 200 volunteers, drawn from the ranks of dozens of local corporations and professional organizations, spent more than 10,000 volunteer hours examining in detail virtually every facet of the management of the city's public school system. Hundreds of current CPS employees were interviewed, including classroom teachers, principals and administrators, along with parents, education experts and current members of the Cincinnati School Board.

The task force was created by the Cincinnati Business Committee, with Clement L. Buenger, Chairman of the Board of Fifth Third Bancorp, as Chairman. Work was divided into seven committees, each directed by two co-chairpersons (each a C.E.O.), and each with a specific assignment: revenue sources and finance; research and development; demographics; facilities, technical, and logistics; human resources; executive structure; and grass roots. The conclusions and recommendations of the Buenger Commission are outlined in the following report.

This report is commonly referred to as the Buenger Report, named after its Chairman. The Buenger Report concluded that the Cincinnati Public School system was in dismal condition and made numerous recommendations to correct the problem. The current Superintendent, Michael Brandt, had been appointed to his position one (1) month prior to the release of the report.

After the Buenger report was issued, the Board and the Superintendent were both informed that in order for the Business Community to continue to support the public school system, the report would have to be implemented. Five (5) days following the issuance of the report, the Cincinnati

Board of Education, through "Action Motion 88," directed the Superintendent to "review, analyze and implement the Buenger Commission Report." Pertinent here, the Buenger Report criticized the current Agreement with this Union as a factor that "undermined" the Superintendent's authority and stated that it was a "labor contract which contain(s) detailed procedural language that limits day-to-day operating flexibility." It went further by making two (2) recommendations that are relevant here: (1) that the Board establish organizational performance goals using "management by objectives" principles and, (2) that the Board adopt performance-oriented incentive plans to create a relationship between pay and job performance.

On December 3, 1993, the Buenger Commission issued an Interim Report on the state of reforms that had been recommended in the Buenger Report. The Interim Report made several recommendations that directly affected the Union. Those sections read as follows:

CENTRAL OFFICE/ADMINISTRATION

* * *

CPS has not addressed reforms designed to infuse quality management principles within the District. In fact, a number of positions continue to be held by entrenched bureaucrats who, armed with high-paying contracts, have assiduously battled to preserve the *status quo*. Many of these career employees are members of the Cincinnati Association of Administrators and Supervisors (CAAS) -- in effect, a union for management personnel.

The presence of CAAS creates a fundamental conflict with efforts to implement management accountability standards within CPS. In the District's new budget for 1993-94, for example, a number of management-level jobs have been retained, with substantial salaries and benefits, despite the fact that the duties of the positions have been reduced.

An opportunity to address this problem arises in the negotiations on a new contract between the District and CAAS, which have just gotten underway. These discussions should include a full discussion of ways in which the Superintendent's Office and CAAS can demonstrate the leadership required to implement modern management techniques and accountability throughout the school system.

STATUS OF RECOMMENDATIONS

* * *

Administrative Policies

(5) **Establish organizational performance goals using "management by objectives" principles.** No action. The Buenger Commission envisioned a decision-making structure for CPS that would utilize "mbo" concepts. No action has been taken.

(6) **Adopt performance-oriented incentive plans throughout CPS.** No action.

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CONTRACT NEGOTIATIONS: A WINDOW OF OPPORTUNITY

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But in other important areas, especially recommendations that would build public confidence in the schools by linking pay with better student performance, progress has stalled. In addition, neither the CAAS nor CFT have had to confront, up to now, the difficult but essential necessity of cost reductions in such expensive areas as health care benefits, leave policies, pay for performance standards -- especially for management employees -- and compensation in line with overall inflation. Since these costs make up in aggregate more than 80% of CPS's total budget, reductions are urgently required.

It was the Superintendent's testimony that the presence of the Union was seen as a fundamental problem by the Buenger Commission.

Since early 1992 the Parties have been discussing implementing a pay-for-performance salary schedule. In 1993, development of the plan was made a higher priority and on March 28, 1994, the Board resolved to support the pay-for-performance plan. Throughout 1994, the plan continued to develop and in January 1995, the aspects of the plan were released to both the Union and the Board. On January 17, 1995, the plan was distributed to the Union members. However, not until February 13, 1995, were the specifics of the plan released to Union leaders, and not until March

2, and March 3, 1995 were individual members notified of where in the schedule they would fall. As designed, employees would receive a base wage rate plus an incentive rate based on the performance of the students under their care.

On March 2, 1995, the last negotiating session was held and impasse was reached. Thereafter, a factfinding hearing was held on March 8, 1995, where seven (7) issues were presented.

They are as follows:

1. The Recognition Agreement;
2. Pay and Performance;
3. Fringe Benefits;
4. Administrative Issues Board (AIB);
5. Posting of Vacancies;
6. Dues Deduction;
7. District-wide Committees.

Each will be addressed separately.

1. **THE RECOGNITION AGREEMENT**

The Board proposes changing the entire structure of the Agreement. It proposes changing the Agreement to a "Memorandum of Understanding" by shrinking the current twenty-five (25) page listing of benefits down to an approximately three (3) to four (4) page document that would provide a more general statement of the Parties relationship. It asks that the strict language currently contained in the Agreement be made a part of Board Policy and Procedure instead of including it as part of the Agreement.

BOARD POSITION

The Board asserts that based on current law regarding "deemed certified units," it is under no legal obligation to continue to recognize CAAS. That fact notwithstanding, it is willing to continue to recognize the Union as the sole representative of the administrators and supervisors; to continue to incorporate, by reference, the original 1977 recognition agreement; to dissolve the previously entered into Agreement; and, in all other aspects, use precatory language to require certain minimum benefits be maintained. It cites the Buenger Report as support for its position that the Agreement with Union is interfering with its ability to manage. It argues that the public school system is in a desperate situation and it must be able to take drastic action in order to correct the problem. It contends that its proposal is as enforceable as a Collective Bargaining Agreement; that it provides adequate protection for Union employees; and, that it addresses all concern of the Union.

UNION POSITION

The Union argues that the Board's proposal would effectively eliminate its existence. All previously bargained for benefits would become Board Policy and Procedure and, as such, could be unilaterally modified. Consequently, it argues that the Board's proposal threatens its very existence. It contends that since it is a Union, it has bargaining rights over terms and conditions of employment and, since the Board's proposal would effectively remove all rights to bargain, it is unrealistic.

RECOMMENDATION

With certain exceptions, the Board's proposal cannot be recommended. It is too drastic a change in the bargaining relationship. Its argument that it no longer is required to recognize the

Union is not an issue properly resolved in this forum. Its proposal does not provide adequate minimum protection for Union employees and as such, would result in a major change in the Parties relationship that would be inappropriate to achieve through factfinding.

However, the Board persuasively argued that outside pressures have placed the Superintendent in an untenable position. In an effort to make a first step toward relieving same, it is recommended that the Parties change the title of the document that represents their relationship from an "Administrative Team Agreement" to a "Memorandum of Understanding." Recognizing that this recommendation is superficial, it is intended to be a first step in allowing the Parties to modify the status of their relationship that is undergoing obvious change.

2.

PAY AND PERFORMANCE

The Board has proposed changing the method of payment from a flat rate to an incentive rate referenced as a "pay-for-performance" schedule. The Union offered a 3% across-the-board increase for both 1995 and 1996.

BOARD POSITION

The Board argues that it has been developing a pay-for-performance program with the Union's knowledge since late 1992. It cites the Buenger Report as support for its argument that this style of compensation is "urgently required." It argues that no employee will lose pay since those unable to advance under the plan will be "redlined" or frozen at their current rate. However, employees who excel under the plan will be paid in accordance with their success.

UNION POSITION

The Union agrees in general to a pay-for-performance system. However, it argues that the current proposal has several problems. It contends that the Board's proposal is unlike anything that has ever been done before, anywhere; that the Board's proposal leaves all critical aspects within the Board's discretion and not the subject of a contractual agreement; that the ranges for certain classifications are inappropriate; that the testing criteria are invalid for the purpose; and, that they have not had time to review the entire proposal. It argues that the pay-for-performance theory has been around since the 1970's, but asserts that it has been unsuccessful in every program that has attempted to implement it. It agrees that the Board's proposal is more sophisticated than most and even concurs that it bridges some gaps of previous systems; however, it argues that the system has not been jointly developed and objects to having the whole system forced upon the Union without having input.

RECOMMENDATION

It is recommended that the pay-for-performance system be delayed at least one (1) year; that a 3% wage increase be granted for 1995 only; and, that a wage re-opener be made for the 1996 year. The Union persuasively argued that certain aspects of the Board's proposal needed more review prior to implementation. Since it agreed in principle with the idea of a pay-for-performance system, and since the Board's specific proposal was only delivered one (1) week prior to the fact-finding hearing, it is recommended that the Parties review the Board's proposal for at least one (1) year prior to implementation. It must be recognized that wages are a condition of employment that must be bargained for. Any innovative system for the calculation of wages falls within the conditions of

employment and thus, must be negotiated. Therefore, this recommendation is made so that the specifics of the proposal can be review and negotiated for prior to implementation.

3.

FRINGE BENEFITS

The Union is asking for Health Coverage under the same policy that all other employees receive. The Board proposes including all fringe benefits, including health insurance, under the Board Policy and Procedure

UNION POSITION

The Union asks to be put under the same insurance as other employees and, since the Board has not objected, it believes its proposal is reasonable. It cannot agree to make it only a part of the Policy and Procedures because of the unilateral modifiability of any Board policy.

BOARD POSITION

In an effort to protect employees against a reduction in benefits, the Board has proposed that "fringe benefits will not be reduced below current levels, except for pay and performance."

RECOMMENDATION

It is recommended that the Union be placed under the same Health Plan as other employees and that such be included as part of the Agreement. Although the Board has proposed that it be included in its Policy and Procedures, it is recommended that all agreed to benefits remain specifically set forth in the Agreement so that unilateral modification can not be done.

4. ADMINISTRATIVE ISSUES BOARD (AIB)

The Board has proposed an Administrative Issues Board to handle general disputes. It has proposed that a "facilitator" chair the meetings of the AIB regarding personal Administrator's issues that would consist of six (6) individuals, three (3) appointed by both the Superintendent and by the Union. It also proposes deleting the current dispute resolution procedure that allows for disputes to be appealable to the Board. The Union proposed adding an arbitration procedure to the current grievance procedure.

BOARD POSITION

The Board argues that the AIB is a better way to resolve disputes and provides an excellent method for administrators to have their problems resolved. It maintains that since employees can appeal all personnel disputes to the Board, then there is no need for the language that currently exists. It contends that since the Union's proposal for an arbitration procedure was added at the last second, then the Union's proposal lacks merit.

UNION POSITION

The Union argues that arbitration is a proven method of resolving disputes and argues that it would be the best method to use here. It argues that the Board's removing the ability to appeal disputes to the Board hinders the employees ability to resolve issues.

RECOMMENDATION

Since testimony at the hearing showed that the Union was not in strong disagreement with the AIB as proposed, then it is recommended that the AIB be adopted. However, a provision explicitly stating that the issue may be appealed to the Board should be included. This recommendation is made since, as the Board asserted, all personnel issues are appealable to the Board anyhow. If all personnel issues can be appealed to the Board, then no harm can come from including language saying so.

5. POSTING OF VACANCIES

The Union proposes including language that requires all vacancies to be posted for at least ten (10) days to give everyone a fair opportunity to bid on them. The Board has agreed to include language that would require the Superintendent and the Union to jointly develop a procedure.

UNION POSITION

The Union argues that the Board has inconsistently posted vacancies in the past and therefore wants to make it contractually mandated.

BOARD POSITION

The Board argues that the language it has proposed is adequate by requiring the Parties to make an Agreement.

RECOMMENDATION

It is recommended that the Union's proposal be adopted. Although the Parties are close, the Union's proposal is reasonable and contains specificity that makes its implementation easier and less likely to result in a dispute regarding its application.

6. DUES DEDUCTION

The Union proposes including language that requires the Board to make dues deduction payments. The Board currently makes these deductions but language does not mandate it.

RECOMMENDATION

It is recommended that the Union's proposal be adopted. If the deductions are being made without objection and without disruption, then contractually mandating the practice provides protection from any future changes in the administration that could threaten to cease the practice.

7. DISTRICT-WIDE COMMITTEES

The Board proposes modifying the Administrative Policy so that CAAS members will be included in the decision-making process and will be considered for appointment to district-wide committees and advisory groups.

RECOMMENDATION

It is recommended that the Board's position be adopted. No discussion was made at the hearing regarding this issue and thus, it is recommended.

March 10, 1995
Cincinnati, Ohio



Michael Paolucci