

STATE EMPLOYMENT
RELATIONS BOARD

OCT 7 10 58 AM 1996

IN THE MATTER
OF
FACTFINDING
BETWEEN
MIAMI EAST EDUCATION ASSOCIATION
AND
MIAMI EAST LOCAL SCHOOLS

Hearing: September 25, 1996
SERB Case Nos.: 96-MED-03-0204
Date of Report: October 4, 1996
Issue: Factfinding

Union Representative:

Jim Romick
Ohio Education Association
251 South Mulberry Street, Box 511
Troy, Ohio 45373

Board Representative:

Richard Holzer, Esq.
124 East Third Street
Dayton, Ohio 45402

REPORT AND RECOMMENDATIONS

Michael Paolucci
Factfinder

Administration

By letter dated May 31, 1996, from the Ohio State Employment Relations Board, the undersigned was informed of his designation to serve as factfinder for the Parties. On September 25, 1996, 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 on September 25, 1996, and is now ready for a factfinding report.

Factual Background

The Board is responsible for providing public education to children in and around the eastern portion of Miami County, Ohio in grades K through 12. Two (2) separate groups of employees are both represented by this Union. Although the Union represents both certified staff and hourly employees, only the certificated teaching staff is pertinent to this report. In this unit there are approximately eighty (80) employees. However only approximately fifty (50) are Union members. The exact number could not be determined since the Board only showed forty seven (47) employees having a dues check off while the Union claimed that it had fifty four (54) members. The Union contended that the difference represents those employees who pay cash instead of having dues deducted directly from their paycheck.

The parties have engaged in extensive negotiations including having met with SERB mediator Craig Young. Although the Parties themselves have engaged in negotiating for a substantial period, they were not represented by either counsel or a professional union staff representative until late in the process. A factfinding hearing was originally scheduled on August 22, 1996. However, the Parties reached a tentative agreement on that date and this factfinder left without having conducted

a hearing. Following the tentative agreement the Union membership met and voted to reject the agreement.

Thereafter a hearing date was reset for September 25, 1996. At the hearing the Board presented uncontested facts that the Union voted twenty eight (28) to twenty two (22) for rejection of the tentative agreement. The Board presented uncontested allegations that one (1) member of the Union's negotiating team actually argued against the tentative agreement and encouraged the membership to vote against ratification.

At the factfinding hearing on September 25, 1996, five (5) issues were presented. They are as follows:

1. New Language - Fair Share Fee;
2. Article VI - Salary and Fringe Benefits - C. Severance Pay;
3. Article VII - Leaves - C. Personal Leave;
4. Addendum A - Salary Schedule (including both a base wage increase and increased number of steps in the wage scale);
5. Article XV - Duration (Retroactivity).

Each will be addressed separately. Following the factfinding hearing, the Factfinder set the date of October 4, 1996, for the issuance of this report.

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)

The issues will be addressed separately giving consideration to all of the required factors.

Also important to note is the overall effect of the Parties tentative agreement. Based on the axiom that the Parties are best left to settle disputes themselves and that a third party outsider will always be less appreciative of the history of the relationship, then great weight must be placed on what the Parties already agreed to. However, it is also important to recognize that that effort failed and consideration must be given to the objectives that the Parties attempted to reach without necessarily using the exact same methods.

NEW ARTICLE - FAIR SHARE FEE

The Union proposed adding traditional fair share language that would permit it to require those employees who are in the unit but who are not members of the Union to have to pay the "fair share" of membership dues. However, in order to make the acceptance go more smoothly, the Union

offered to grandfather non-members who are currently employed so that they would never have to pay the dues. Only new employees and those who are currently members but who may later want to quit would be affected by the Union's proposal.

UNION POSITION

The Union argues that employees in the unit who are not members receive the benefits of the Union's work, but pay nothing for that benefit. It argues that since it is duty bound to represent those employees regardless of whether or not they are members, then they should have to pay a fair share fee to the Union for the work it does. It argues that its grandfather proposal would allay the concerns the Board has with regard to current employees who are adamant in their opposition to the Union. It contends that the external comparables show that most other districts have fair share language and those that do not are not represented by OEA. Since only new employees would be affected, the Union contends that its proposal is reasonable and should be recommended.

BOARD POSITION

The Board contends that if this is included in the recommendations the report will be rejected regardless of what the remainder of the report contains. It asserts that the Union's number regarding the comparables neglect the fact that the other schools already have membership in the 90% range and the fair share language really gives nothing. It contends that the low number of members in the unit shows that the Union does not have a large amount of support and as a result it argues that the Union should get its membership from organizing, not from fair share. It recognizes that this issue is very emotional for both sides and asserts that the settlement in the tentative agreement where the

sides agreed to meet and discuss the issue was a sensible resolution. Based on the Union's action following the tentative agreement, it contends that it has no choice but to ask that the proposal be rejected.

RECOMMENDATION

It is recommended that the Union's proposal not be adopted. Fair share is an emotional issue in almost every school district where it has yet to be adopted. This district is no exception. Moreover, the circumstances surrounding the tentative agreement and its ultimate rejection make the Parties current relationship strained. In such a situation the best resolution that a factfinder can make is one that does not cause the already divisive relationship to widen. In addition, fair share is best included in an Agreement when both Parties are ready for such language. Since such does not exist, and to prevent a further widening in the Parties relationship, it is recommended that fair share not be adopted.

ARTICLE VI(C) - SALARY AND FRINGE BENEFITS

SEVERANCE PAY

The Union proposes including language that would make an employee's accumulated sick leave payable to that employee's heirs in the event the employee dies while still employed by the Board.

UNION POSITION

The Union contends that of all the external comparables, only one other district does not have

this benefit. It argues that the benefit would be otherwise payable to the employee and represents a considerable amount that the employee will lose if they happen to die while still employed. It argues that since the benefit is common and local districts have it, then it is reasonable for it to receive the same benefit.

BOARD POSITION

The Board argues that since it already agreed to language that pays these employees the highest severance package in the entire County, then this additional benefit is unreasonable. It argues that the employees already have a life insurance benefit paid for by the Board and thus they should not be permitted to double up here. It points out that the tentative agreement contained no death benefit and the classified unit, also represented by OEA, does not have this benefit. Thus, the internal comparable does not even support the Union's proposal.

RECOMMENDATION

It is recommended that the Union's proposal not be adopted. Based on the already generous severance package, the internal comparables, and the already adequate life insurance benefit, this benefit would be excessive. Indeed, whatever death benefits the employees want should be obtained more directly through the life insurance portion of the Agreement. Therefore, the Union's proposal cannot be recommended.

ARTICLE VII(C) - PERSONAL LEAVE

The Board proposes changing the language from the current system that allows unused

personal leave to accumulate to a maximum of five (5) days to a system where unused personal leave days are paid at the end of the year at the rate of \$110.00 for three (3) unused days; \$55.00 for two (2) unused days; and no payment for one (1) or less unused days.

BOARD POSITION

The Board argues that since the certified staff do not have this benefit, and since this is the only district where teachers get the benefit, then neither the internal nor the external comparables support the status quo. It argues that this benefit was given to teachers at a time when the school district's financial situation was weak and creative methods of compensation were needed. Since it is able to financially pay the teachers, then the original intent of the benefit no longer exists. It notes that the only issue in which the Union does not cite what other districts are doing is this issue. Thus, it asks that the language be changed in accordance with its proposal.

UNION POSITION

The Union argues that no evidence was introduced showing that this benefit caused a problem or was being abused. It argues that the Board's initial bargaining position did not include this demand. It is strongly opposed to changing the status quo and asserts that the money offered in exchange by the Board would be better used in the wage increase. Thus, it asks that the status quo be maintained by rejecting the Board's proposal.

RECOMMENDATION

It is recommended that the Board's proposal not be adopted. Although the Board makes a

persuasive argument in the original intent of the language and the comparables, it failed to show either that a problem existed or that a change was financially necessary. In fact, a comparison of the maximum five (5) days of accumulation versus paying money at the end of every year shows that the Board may end up paying more financially under its proposal than it would otherwise. Therefore, since the benefit was not shown to have caused any managerial problems and since it is important to the employees, then it is recommended that the status quo be maintained.

ADDENDUM A - SALARY SCHEDULE

BASE:

The Union proposed an increase of 4%, 4%, and 4% of the base wage in each of the three (3) years of a contract. The Board proposed 3%, 3%, and 4%.

LONGEVITY:

The Union proposed adding a 20th step to the wage step with index figures higher than earlier steps. The Board proposed adding a 25th step to the wage step with index figures lower than the Union's proposal.

UNION POSITION

The Union argued that the Board is in good financial condition. As evidence it points to the fact that the percentage of total expenditures that comprise Salary and Fringe benefits is below 80%. It argues that the Board has managed its money well and can afford the Union's proposal and still keep the aforementioned percentage below the recommended 85%.

BOARD POSITION

The Board argues that the Union has neglected the base for years by concentrating on the longevity increases. Since new teachers look at the base and the Board needs to be able to attract new teachers, then it argues that a higher base wage is justified more than the numbers in the longevity portion of the scale. It strenuously argued that the since the Union came to the Board with the proposal that it would accept 3%, 3%, and 4%, with a twenty fifth (25th) step where the index numbers would be doubled, but then failed to have the Agreement ratified, then it was not bargaining properly. It came to the Board with a proposal that the Board then accepted and which was subsequently rejected by its members. Since it proposed something that it did not have authority to enter into, then the Board does not want to be dragged back to the original position agreed to during the tentative agreement.

RECOMMENDATION

It is recommended that the base wage be increased by 3%, 3.5%, and 4% during each year of a three (3) year contract. In addition, it is recommended that a twenty first (21st) year be added to the wage scale with the index figures as proposed by the Board.

These two (2) recommendations are based on all the factors presented. It was made difficult by the acknowledged fact from the Union that its numbers were not accurate. Further, the Parties lengthy negotiations preceding the factfinding hearing made a recommendation difficult since the numerous options that had already been explored, including the tentative agreement, were already considered and rejected. It is troublesome that the Union made an offer that was accepted by the Board, but which was then rejected by its own members. However, that valid concern did not enter

into this recommendation. This recommendation is based on an overall impression of what has transpired to this point together with the need to progress. Although the factfinding process is not a panacea for all the previous problems, it can act as a bridge to move forward. The simplest way to assist in progressing is to make recommendations most likely to be adopted by both Parties. This pragmatic objective is the primary motivator in these recommendations. Thus, based on these factors, the recommendations stated above are made.

ARTICLE XV - DURATION (RETROACTIVITY)

The Board proposes making the wage increases non-retroactive.

BOARD POSITION

The Board acknowledges that wage increases are typically made retroactive. However, it argues that in this instance, where a Union Committee member argues against adoption after reaching a tentative agreement, the Union's actions were improper and cannot be rewarded. It argues forcefully that to allow this to occur gives the Board no reason to attempt to negotiate in the future. If the Board cannot be assured that its tentative agreements are supported by the very individuals who sign off, then the negotiations become pointless. In order to correct the improper act that occurred here, it asks that the wage increases not be made retroactive.

UNION POSITION

The Union argued equally as forcefully that to recommend the Board's proposal would further drive a wedge between already divisive parties. It contends that it did not act in bad faith and thus, nothing justifies not paying the back wages. It argues that proof of its good faith bargaining was the

fact that it agreed to a different insurance plan in order to save the Board money. It asserts that this proposal is inconsistent with the Board's stated goal of wanting to improve communication and therefore, urges the factfinder to reject the Board's proposal.

RECOMMENDATION

This issue is the most difficult of all five (5) since both Parties have exceptionally persuasive arguments. The Board is right in worrying about future negotiations when the Union proposed something it did not have the authority to agree to. It is also worrisome that a Union committee member argued against adoption. It conflicts with the entire nature and purpose of collective bargaining and must be recognized by some authority as improper.

However, it is axiomatic that a factfinder should always avoid creating a wider chasm than that which already exists. The factfinding procedure is intended to be a method of reconciling a dispute and it would be inherently contradictory in achieving that aim by separating the Parties even further.

It is with both of these concerns foremost that the following recommendation is made. The Agreement, with the wages, shall be made retroactive to July 1, 1996. However the back pay calculation shall be reduced by the number of days between the date that the tentative agreement was rejected until this factfinding hearing on September 25, 1996, was held. Since the exact date of the ratification meeting was not revealed, the Parties will have to meet and agree on the number of days between the above-referenced dates. Thus, with the just mentioned limitation, it is recommended that the Agreement as well as wages be made retroactive to July 1, 1996.

October 4, 1996
Cincinnati, Ohio



Michael Paolucci