

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

JAN 13 9 51 AM '97

IN THE MATTER OF FACT FINDING

between

SERB

Case No. 96-MED-10-0931

CINCINNATI FEDERATION OF TEACHERS,

Employee Organization

and

CINCINNATI CITY SCHOOL DISTRICT,

Public Employer

FACT FINDING REPORT

Mitchell B. Goldberg

Appointed Fact-Finder

I. INTRODUCTION

The undersigned, Mitchell B. Goldberg, was appointed as the Fact Finder for the subject case pursuant to the regulations of the Ohio State Employment Relations Board on November 29, 1996. The parties agreed to hearing dates and hearings were conducted on December 18, 1996 and December 19, 1996. The parties, thereafter, entered into an agreement to extend the time line for fact finding and for negotiating the collective bargaining agreement. The Fact Finder's report was required to be issued no later than January 10, 1997 and the parties agreed to extend the term of the current collective bargaining agreement until January 31, 1997.

Each of the parties had numerous representatives at the hearings. The principal representatives for each of the parties are Donald J. Mooney, Jr., Esq. for the Federation and Mark J. Stepaniak for the Cincinnati Public Schools ("CPS") or ("District").

Prior to the hearings, each of the parties submitted pre-hearing statements pursuant to Section 4117-9-05 of the rules of the State Employment Relations Board.

The parties submitted to the Fact Finder a general description of the function of the employer and a general description of the employees in the bargaining unit. Negotiations had taken place on various dates before the hearing.

II. MEDIATION

The first day of hearings was consumed with the presentation by each of the parties of numerous and inter-related issues that remained outstanding which were relative to the implementation of the district's strategic plan entitled "Students First" which included various educational reform proposals. The parties had reached agreement on many of these issues prior to the hearing and it was apparent from the presentation of evidence that the parties are for the most part

in agreement in principal on many of the issues which were outstanding and which could not be resolved prior to the hearing.

When the outstanding issues related to school reform were presented, discussed and analyzed at the hearing, it was recognized by the parties and the Fact Finder that the outstanding issues could be better addressed by the Fact Finder if the issues were grouped together as a package for recommended implementation. The parties, therefore, agreed to accept the Fact Finder's mediated suggestion that each of the parties submit to the Fact Finder their respective positions as to the entire group of outstanding reform issues and the Fact Finder would make a recommendation to accept one of the parties package proposals on the outstanding inter-related issues. Thereafter, after the conclusion of the hearings and prior to the submission of package proposals to the Fact Finder, some of the issues became resolved when one party decided to accept the proposal of the other and when the parties actually negotiated an agreement on an outstanding material issue which removed the matter from consideration by the Fact Finder. Therefore it is reasonable to conclude, given the number of outstanding issues that were presented to the Fact Finder, that the mediation met with a limited degree of success. The Fact Finder was then left to decide which group of inter-related outstanding school reform issues would be recommended and the Fact Finder was relegated to consider and issue recommendations on the remaining outstanding collective bargaining issues which are in dispute between the parties unrelated to the school reform matters.

III. UNRESOLVED ISSUES

The remaining body of this report will deal with all of the unresolved issues presented to the Fact Finder by each of the parties. There are an abundance of issues which concern language changes to the existing collective bargaining agreement as well as economic issues involving wages and fringe

benefits. The following recommendations, therefore, have taken into consideration the following criteria in accordance with SERB law and regulations:

1. A comparison of 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.
2. The interest in welfare of the public and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustment on the normal standard of public service.
3. The lawful authority of the public employers.
4. Stipulations of the parties.
5. 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.

There are certain other specific principals which have influenced the undersigned Fact Finder in making the following recommendations. When there are many issues on the table, of the type and quantity presented in this case, it is presumed that the process of collective bargaining has not as yet run its full course. This Fact Finder believes that the parties should be able to resolve many of the outstanding issues between themselves through the process of collective bargaining and negotiations wherein each of the parties will concede one or more of the outstanding points or issues in order to obtain a concession from the other party or to obtain an agreement on points or issues which the moving party believes to be of higher priority. Accordingly, this Fact Finder is not inclined to usurp

the process of collective bargaining by issuing recommendations which could change the status quo of the existing collective bargaining agreement on a wholesale basis. Recommended changes will only be suggested by the Fact Finder when the parties are relatively close on their prospective proposals, when there is a clear and compelling reason to recommend a change in the existing contract language or to accept one parties substantive proposal over the other, or when there is a compelling need to make a recommendation which the parties have not agreed to recognize.

Issue No. 1 - School Reform Issues

The existing collective bargaining agreement evidences the cooperation which has occurred between the parties to initiate and implement mutually beneficial school reform and reorganization policies. The problems in the past were recognized by both of the parties and, as a result, a wide range of school reform policies have already been implemented and put in place by the District. The parties continue to recognize that further reforms are necessary and that it is unlikely that the mutual objectives of the parties will be obtained without support for the reforms coming from the teachers and other bargaining unit members and the elected bargaining unit representative.

The Fact Finder has reviewed and considered the proposals by each of the parties relative to the school reform issues and has decided to accept and recommend the proposal package submitted by the District for the following reasons. The District's proposal addressed many of the concerns raised by the Federation and brings the parties substantially closer to an agreement on the outstanding issues. Specifically, with respect to the issues of which schools will be selected to become team-based schools and what training will be provided to the team-based schools, the District's proposal now includes additional incentives for schools to apply to become team-based models. These incentives include eight early release days for training plus the creation of additional team leader or

lead teacher positions with salary stipends of \$3,000 to \$5,500 added to base pay. The number of lead teachers positions will increase from 167 to approximately 550. The District is further willing to include an obligation to work with the EIP and parents to recruit additional schools. The District further has attempted to address the Federation's concern that the team-based model will be implemented too quickly and now proposes an outside evaluation program with an oversight committee of parents, community members, administrators, teachers and CFT representatives to monitor the implementation process and revise the number of schools to be converted in the third year, if necessary. The District also attempts to deal to address the Federation's concern for proper training and paid training time by guaranteeing early release days and pay for training time.

In-so-far as the interim and permanent membership of the instructional leadership teams (ILT) are concerned, the District has accepted the proposal of the Federation that the building representative be included on both the interim and final ILT's. The Federation seeks to require the inclusion of teacher's specialists on the teams while the Board wants the majority of the teachers on the interim ILT to be academic teachers. This does not seem unreasonable considering the overall objectives and goals of the District are to improve the academic performance of students.

The parties are still very far apart on the budget allocation process for team-based schools. The Board proposes to allocate funds to the team-based school which would include sufficient funding for non-academic positions. The ILT would then decide how to spend the funds and may decide to pay for certain non-academic positions and not pay for others. The Federation, however, wants to insure that the positions of librarians, counselors and school social workers are protected and that the District honor what the Federation believes was the promise to the public and the taxpayers that these positions will be retained and protected now that funding is available. While the

District's position does not necessarily guarantee the preservation of these non-teaching positions, it cannot be said that it is not recognizing the need for these positions in particular circumstances as determined by the ILT's at each of the schools. The District is proposing to permit the ILT to take a faculty vote for the purpose of allocating resources to the non-teaching positions but feels that flexibility is required in order to prevent the wasting of funds, which would happen if funds were required to be spent for non-teaching positions that the ILT believed were unnecessary in particular circumstances. The Fact Finder urges the parties to continue to negotiate on these issues in order to resolve these outstanding points relative to funding for various non-teaching positions.

The parties reached an agreement after the hearings on the language related to Section 240.5 as to the District's funding of schools. This was an important issue relative to the school reform package and it was better suited to a resolution between the parties than to submit the issue to the Fact Finder, considering that both parties have far more expertise in these educational matters concerning the reorganization of the delivery of educational services to the students and to the community.

On the issue of team stability, the Federation is concerned with teachers being transferred from teams on an involuntary basis. It wants to insure that a mechanism is in place where team members may be released from a team when there are working relationship problems. The Federation further believes that the District should make a commitment not to disrupt teams after plans for the following school year have been made. The District, however, believes that it needs flexibility to transfer and surplus teachers based upon changes in enrollment at particular schools. The District's present proposal has narrowed the gap somewhat with respect to the parties respective positions. The District has accepted the Federation's proposal to allow the team by a two-thirds vote to release

a team member from his or her commitment and language is added to address the Federation's interest in not surplus teachers after the last day of school. The parties disagreed at the hearing as to which issues must be submitted to a majority vote of the faculty in addition to being submitted to the ILT for approval. The Federation's proposal was much more expansive and requires a majority vote of the faculty for issues related to supervisory duty, lesson plans, duties for instructor assistance, distribution of materials, supplies, funds, personal leave, extra-curricular activities, and other such issues. The District has now proposed to accept the Federation's position on these issues.

Bloom, Porter & Taft Schools are presently using a site-based model. Both parties agree that these schools should eventually be converted to the new team model but the parties disagree as to the specifics of the transition. The District's present proposal attempts to address the concerns of the Federation and it appears that the parties are not very far apart on this issue.

The District has adjusted its proposals with respect to teaching schedules and preparation time in order to narrow the gap of disagreement between the parties. The District now accepts the Federation's proposal to require that ILT's schedule common preparation time for teams, to require 225 minutes of preparation time be scheduled within the student's day for middle and high school teachers and to allow high schools to adopt schedules different from the options listed in the contract.

The Federation does not accept the proposal of the District to add a new section for "staff selection" which would govern how teams select applicants from other schools to fill vacancies on the team. It is hopeful that the parties will continue to negotiate over this issue in order to address the Federation's concerns that the District's changes are unnecessary and unrelated to the stated goal of establishing team-based schools. The Federation wants to consider seniority in terms of these assignments and transfers. The District, however, has moved somewhat from its proposals and now

accepts the Federations's proposal that a teacher teaching in the same subject area as the vacancy shall be appointed to the selection panel, that a minimum of three teachers and the principal comprise the selection panel, and the District accepts the Federation's language on the selection of non-team teachers in the school.

Probably the most controversial District proposal involves the implementation of an incentive based award system for schools who meet certain goals. The Federation believes that there are many complex issues to resolve relative to this proposal. The District insists upon going forward with its proposal because an incentive compensation plan is believed to be necessary to achieve the desired student performance objectives which are sought. It appears that much work needs to be done in this area and that the parties should continue to negotiate to achieve a plan that they can both live with. Nevertheless, considering the package reform proposals submitted by the parties as a whole, the District's recommended proposal with respect to incentive compensation is recommended. The specific proposals of the District relative to the reform package are attached hereto and made a part hereof, marked Exhibit A.

Issue No. 2 - Wages

The Fact Finder has received voluminous economic information in the form of testimony and exhibits concerning the costs to the District for each of the economic proposals submitted by the parties and the comparative wages and benefits with other similarly situated school districts. It is recognized that the District has received considerable revenue as a result of the passing of the tax levy and considerable expenses have already been reduced from the District's budget over the years in order to deal with what was perceived to be an economic crisis which developed with respect to the operation of the Cincinnati Public Schools. The District still finds it necessary to borrow considerable

funds from the State Loan Fund and this fact together with other economic evidence presented to the Fact Finder by the District witnesses has convinced the Fact Finder that a conservative approach must be taken with respect to any proposed increase in the operational expenses of the District.

In terms of the proposed wage increases over a three year contract term, the parties do not appear to be very far apart. The Federation proposes a 3% increase for each year of the three year contract beginning January 1, 1997 and each anniversary thereafter. The District proposes a 2% across the board increase over the same three year contract period. Based upon the economic evidence presented, this Fact Finder will recommend that the parties accept the Union proposal of a 3% across the board increase for each year of a three year contract, but each of the other economic proposals submitted by the Federation will be as scrutinized to insure that the economic impact to the District will not increase expenses substantially beyond the 3% across the board per year wage increase. To the extent that the Federation believes that certain proposals should be accepted, which in turn would increase the expenses to the District, the Federation should be in a position to adjust it's proposed across the board wage increase demands in order to accommodate its priorities.

Recommendation

It is recommended that a 3% across the board wage increase be instituted for each year of a three year contract beginning with January 1, 1997.

Issue No. 3 - Federation Proposal for an Additional Increment for Teachers at Step 27.

The Federation proposal involves granting a \$2,000 pay increase to approximately 300 members with the placing of an additional Step 27 on the compensation schedule. The District objects to this proposal based upon projected costs. Both parties estimate that the cost of this proposal would be \$650,000 during year one of the contract, \$700,000 for year two of the contract

and \$750,000 for year three of the contract. This Fact Finder does not feel compelled to grant this proposal considering the material costs to the District in light of the economic evidence presented and considering the above mentioned across the board pay increase which is being recommended.

Recommendation - No change.

Issue No. 4 - Sick Leave Conversion

Both parties have recommended proposals changing the sick leave conversion features under the existing collective bargaining agreement. The District wants to grandfather the current benefits and restrict the future payments for new employees. The Federation is willing to consider changes by proposing three options which would permit the early trade-in of sick days either for cash compensation or for a higher step on the salary schedule. The Federation's proposal, however, would not substantially reduce the expenses to the District in any material fashion. It appears that further negotiations and compromises would be appropriate relative to this issue. Accordingly, there is no compelling reason to change the existing contract language based upon the proposals from either one of the parties.

Recommendation - No change.

Issue No. 5 - Purchase of Health Benefits by Substitute Teachers

The Federation proposes to allow substitute teachers who work 85 days during the school year and who are not otherwise covered by the District's medical plan to purchase health insurance at full cost through the District for the following school year. The Federation believes that this feature would not add additional costs for the District. The District, however, estimates that this proposal would cost the District approximately \$11,000 a year and the District is concerned that there will be an uncertain actuarial effect on the existing premiums based on the addition of new

participants. Because the parties have not negotiated through this issue, the financial impact upon the District is somewhat uncertain. The Federation's proposal therefore is not accepted.

Recommendation - No change.

Issue No. 6 - Term Life Insurance

The Federation proposes an increase in the term life insurance from \$30,000 per year to \$50,000 per year in order to have their bargaining unit members receive the same benefit as that received by administrators. The Federation projects its cost to be approximately \$52,500 per year. The District, however, projects this cost to be approximately \$171,475.20 per year. Any increase in this item should be collectively bargained between the parties at this point as there is no compelling reason to award this economic benefit to the Federation and increase the costs to the District.

Recommendation - No change.

Issue No. 7 - Extension of Benefits to Domestic Partners

The Federation proposes to change the contract to permit same sex domestic partners to participate in employee benefits as if the partners were married. The Federation presented considerable evidence that this is a growing trend throughout public and private employment in the United States. The District believes that the timing for this proposal is inappropriate considering the financial circumstances of the District. This proposal could dramatically increase the costs of insurance but the exact increase in costs is uncertain. This Fact Finder does not feel compelled to accept this proposed change in the contract given the uncertain effect upon premium costs.

Recommendation - No change.

Issue No. 8 - Medical and Dental Coverages

In May 1995, the parties executed an extensive modification of the health benefits in the

contract. These provisions are part of a reopener provision which is off cycle with the duration of the collective bargaining agreement. Both parties have proposed a reopener to deal with increased health care premiums which may come about. The District proposes to raise premium contributions for the employees by a small increment and will absorb the first 3% in increases thereafter, with employees absorbing the next 3% and the parties dividing equally any increase above that amount, unless the plan is rebid or redesigned. The Federation proposes that the status quo be maintained but that the District be given the right to reopen negotiations in August 1997 on health care if bids show an increase of 5% or more from current cost. This Fact Finder, after considering the proposals of the parties, does not feel that a change in the current contract language is required at this point. The parties can deal with this issue when the reopener comes into play and when the exact facts are known at that time with respect to any increase costs.

Recommendation

It is recommended, however, that until the parties reach an agreement relative to the reopener and the features and premium costs for the new plan, and during any impass period that may transpire, the District should provide to the bargaining unit members the same coverage, under the same terms and conditions as that offered to the administrative personnel in the District. The parties should otherwise continue to negotiate this issue as facts become available, which may not be even until August 1997.

Issue No. 9 - Annuities

The Federation's proposal seeks to provide for the expansion of annuity providers to members after the Federation and the District agree on specific criteria applicable to all providers. The District objects to this proposal because it believes that there may be additional costs to include additional or

unlimited providers.

It is doubtful to this Fact Finder that expanding the list of providers for tax sheltered annuities would materially increase the costs to the District. However, it appears that this item applies to the administrative personnel as well as to bargaining unit members and the administrative representatives should have an input into this matter. It would be more appropriate to begin discussions among bargaining unit representatives and administrative personnel representatives to negotiate and agree upon the criteria which would be applicable to new providers. Perhaps the parties could agree to employ an expert consultant for this purpose. This approach seems more preferable than inserting new language in the collective bargaining agreement which merely instructs the parties to come to some agreement in the future.

Recommendation - No change.

Issue No. 10 - Amendments to Schedule E - Extracurricular Funding

The Federation seeks to include two new categories of extracurricular activities for which employees may be compensated; (1) "Visual Aids"; and, (2) "Booknet Coordinator." The Federation argues that each of these positions require extra work and deserve more compensation. The District argues that the functions provided for these positions should be included within the original job category for which the members are paid their salary. The District objects to the additional cost.

Both parties stipulate that the language changes proposed by the Federation relative to this issue will provide no cost increases to the District. There will merely be additional choices to compensate these categories at the school level. Nevertheless, it appears to this Fact Finder that the Federation is seeking to change the scope of job duties and responsibilities for existing members to include compensation for duties which are presently being performed for no extra compensation. This

should be a matter for negotiation between the parties. This Fact Finder is not persuaded that the change in compensated job categories is called for at this time absent a negotiated agreement between the parties on this issue.

Recommendation - No change.

Issue No. 11 - Dial-A-Teacher

The Federation wants to maintain the Dial-A-Teacher Program which provides assistance to students and parents with homework during the course of the school year. Teachers are paid for the services they provide relative to this program, however, the funding sources for the program are irregular. The Federation wants to insert contract language requiring the District and the Federation to annually negotiate funding for this program. The District no longer believes that this program is important or useful and would prefer to use available funds for other purposes.

Because this seems to be a policy consideration within the realm of the administration and management of the District, this Fact Finder does not believe it is appropriate to mandate funding for a program which the District no longer has confidence in.

Recommendation - No change.

Issue No. 12 - Contracting Out

The Federation proposes to add contract language prohibiting the District from contracting out services which are provided by bargaining unit members. The District does not wish to give up what it believes to be its management rights to exercise discretion and flexibility in the purchasing of services for the efficient management of its budget.

The right to sub-contract is a valuable right of management which ordinarily would not be limited without some form of compromise or concession coming from the union or Federation in

return. This Fact Finder has not been able to observe any substantial negotiations over this issue with any definable concessions or compromises offered by the Federation in return for obtaining this limitation. Accordingly, the status quo should remain.

Recommendation - No change.

Issue No. 13 - Certification Requirements

The Federation proposes a language change to the contract which would provide proper certification for individuals employed as “health and wellness unclassified staff”, “substance/drug abuse coordinators”, “case managers” at programs such as Project Succeed, and “vocational job training coordinators.” The Federation is concerned that the District has been hiring individuals for the above positions without requiring appropriate training and certification, or including them in the bargaining unit. The Federation believes, for example, that substance abuse coordinators and health and wellness staff should be certified school counselors. The District, however, believes that it has been acting within its rights and that the Federation’s proposal is merely an attempt to add additional bargaining unit positions which are unnecessary.

This issue involves an analysis as to whether or not the services being performed by persons in these positions are being done satisfactorily and whether they are accomplishing the desired objectives relative to the students, or whether the services being performed are deficient because the persons performing the services are not qualified or otherwise competent. It appears that these issues need to be resolved on a case by case basis. It very well may be that the District is obtaining competent services from persons who are not otherwise certified and that the services are being obtained at a lower cost than otherwise would be the case. If, in fact, however, these employees are actually performing services that should be performed by a professional in any particular instance, this

could be remedied through the filing of a grievance in which the particular circumstances are examined in depth by an arbitrator. It is unclear to this Fact Finder, at this point, that abuses are occurring on a general basis such that a restraint on the flexibility of the District to employ persons who are not professionals at a lower cost should be disturbed.

Recommendation - No change.

Issue No. 14 - Access for Electronic Network and Data

The Federation proposes new language which would permit it to obtain access to the District's electronic network and to public information which is maintained by the District electronically. The contract already permits the Federation to access the District's information and communications media. This new proposed language merely takes into account the new form of information which is being disseminated through the electronic network. The District objects to language that would permit the Federation to be hooked up to its computers on an unrestricted basis because of the inability to maintain security.

In order to insure that the Federation does not inadvertently receive information from the District which it is not otherwise entitled to receive, the Fact Finder suggests the following amendment to the Federation's proposal which would insure that the District provide to the Federation all of the information which the Federation is presently receiving provided that the Federation pays the District for all costs related to the provision of this type of information.

Recommendation

Section 130 (1) (m) shall be added to the contract and provide as follows:

The District shall provide to the Federation all of the types of information it is presently receiving from the District on a computerized or electronic basis provided

that the Federation compensate the District in full for all costs related to the new information delivery services which are being provided.

Issue No. 15 - Right of Teachers to Access and Respond to Administrator Comments on Teacher Performance

The current contract gives teachers the right to access and respond to comments from administrators concerning their performance which are placed in their respective personnel files. The Federation proposes an amendment to Section 140 (3) which would guarantee the teachers the right of access, response and challenge to any comments from administrators relative to performance if the comments are disseminated to other administrators, regardless of whether or not the document is placed in a personnel file or another file within the District. The District objects to this language change.

It appears to this Fact Finder that the Federation's proposal could unnecessarily restrict the free flow of information and the freedom of expression among administrators and staff relative to matters that may indirectly refer to matters of teacher performance. So long as these communications cannot officially be used against teachers because they are not being placed in official files for purposes of evaluations and discipline, the materials should have no material adverse impact upon the teachers. Once the comments rise to the official level, the teachers should be able to protect their interests. A clear distinction should be made between official documentation and unofficial but necessary communications and freedom of expression within the administrative staff.

Recommendation - No Change.

Issue No. 16 - Adequate Funds for Instructional Supplies

The Federation alleges that teachers have suffered professionally and financially because they have not been provided with sufficient instructional supplies to be used in the classroom. Funding

from the District has been irregular and teachers have been required to spend their own resources for such supplies. The Federation, therefore, proposes a contractual requirement in which the District is required to provide adequate funding for supplies. The proposal takes into consideration the cost increases for supplies and the Federation proposes similar language to require an annual per pupil allocation for library materials. The District opposes the Federation's proposal because the issue will be resolved in the future through the decentralization process when each school will allocate specific funds for needed materials and supplies.

It is hoped that this issue will work itself out on a school by school basis through the implementation of the decentralization process, therefore, it is inappropriate to make the proposed change in the contract language at this time.

Recommendation - No Change.

Issue No. 17 - Access to Worksite

The Federation seeks language which would guarantee the teachers the right to have reasonable access to the classrooms or other work sites during non-working time in order that they can better prepare for instruction. The District is concerned that permitting teachers to enter the buildings during non-school hours will present a security risk at some of the schools.

It appears to this Fact Finder that this issue could be resolved between the parties through more study and analysis. It would seem that the District would welcome the opportunity for teachers to devote more time to their profession during non-working hours in order to enhance the performance of students. The security concern could be addressed in a number of ways at a minimal cost to the District. There is no recommendation for a language at this point however because the security issues need to be examined in more detail.

Recommendation - No Change.

Issue No. 18 - Requirement of Heating and Air Conditioning

The Federation proposes language which would require schools that are opened on a year round basis to have heating and air conditioning. The performance of teachers and students would be enhanced if they could work in an air conditioned environment in the summer months. The District states that the cost of providing air conditioning in some of the older school buildings is quite expensive and it is not willing to make a commitment at this time because of the unknown expense.

There is no question that the District should strive to provide an air conditioned environment if it intends have schools open on a year round basis. This would be beneficial to not only the students and teachers but also to the administrative staff. This decision, however, must be a management call in terms of operating the capital budget. For example, it makes no sense to spend money to air condition an old building that is planned to be shut down or replaced. One would hope that the District would have air conditioned buildings within its plans in order to enhance the student performance, which is the District's most formidable goal.

Recommendation - No change.

Issue No. 19 - Student Discipline

The Federation proposes a side agreement requiring the District to restore the K-6 student behavior code that was in place for the 1994-1995 school year in order to maintain sufficient discipline in the schools to allow for an adequate instructional program. The Federation had proposed other language relative to discipline but has withdrawn that request. The District is considering the Federation's proposal, but it is currently conducting an overall study of student discipline. It may decide to restore the prior code after completion of the study or it may decide to

amend the code in other respects.

It is clear to this Fact Finder that both parties have an interest in protecting the teachers and maintaining proper student discipline. There can be no question that student discipline relates directly to student performance, which is the District's prime objective. This Fact Finder, however, will take the District at its word that it is studying the issue and that it will propose the changes which will protect the teachers, in a form acceptable to the teachers within the next year.

Recommendation - No change.

Issue No. 20 - Class Size For Special Education Students

This issue was settled between the parties during the second day of hearings.

Issue No. 21 - Case Coordinators for Special Education

The Federation proposes that case coordinators become lead teacher positions and that case coordinators should receive stipends of \$3,000 to \$5,000 depending on their case loads, as determined jointly by the parties. The District is not willing to pay the increased costs and wants to keep the status quo.

The evidence presented at the hearing has convinced this Fact Finder that the case coordinators and special education personnel are particularly over loaded with work because of the demands placed upon them by federal and state regulations. A serious analysis must be made of their work load and the District must recognize that additional compensation is necessary given the change in the scope and demands of the duties involved with this position. However, from an economic standpoint and from a collective bargaining standpoint, the parties should negotiate an increase which takes into consideration the across the board increase which is being recommended in accordance with the Federation's proposal. The Federation estimates that the cost of increasing the

compensation of case coordinators will be \$371,200 per year for a three year contract. This is a considerable cost which requires further negotiation between the parties and possibly an adjustment to the across the board increase. The parties should negotiate over where the available dollars ought to be placed. This issue, however, bears considerable attention.

Recommendation - No change.

Issue No. 22 - SLD Tutors

The Federation wants to appoint SLD tutors as regular contract teachers under the salary schedule because SLD tutors are full-time certificated teachers and should be recognized as such by the contract. The Federation estimates that the cost of this proposal will be \$176,851 for the first year, \$182,156 for the second year and \$187,621 for the third year. The District's cost estimate is identical.

Because of the financial constraints upon the District and the specific nature of this proposal, the parties should negotiate further if the Federation wishes to pursue this additional compensation for a group of its members. The Federation should consider altering one of its other economic proposals in order for the District to make this accommodation. For the present time, however, it is not reasonable to increase the budget for this item.

Recommendation - No change.

Issue No. 23 - Substitute Assignments

The Federation proposes new language to require the District to assign at least one building substitute to each secondary school and to each elementary school on at least a half-time basis, if requested by the ILT. The Federation wants to assure the availability of substitutes in order to maintain the educational program. The District opposes this proposal for economic reasons and for

flexibility reasons.

It seems to this Fact Finder that it would be unwise at this juncture, considering the decentralization plan, to make permanent assignments of substitutes. The District may be able to utilize the substitutes more efficiently by having them be mobile and to be available as the need arises at the various schools. The District should have this flexibility.

Recommendation - No change.

Issue No. 24 - Benefit Bank

This is a proposal by the District to eliminate one FTE equivalent necessary to administer the benefit bank. The District proposes to continue the benefit bank through 1997 and then to pay the benefit bank amount on behalf of the employees to the new insurance plan to defray employee's premium contribution burden. At present, an employee may not use his or her benefit bank to pay health care premiums. The District believes that elimination of the FTE position would be more efficient. The union wishes to maintain the status quo.

Based on the union's position, the members apparently prefer the benefit bank to defray the cost of unreimbursed medical and vision expenses. The cost to maintain this benefit does not appear to be substantial and, therefore, there is no reason to eliminate this benefit.

Recommendation - No change.

Issue No. 25 - Individual Contract Length

The District proposes that the extended contracts for librarians, visiting teachers, counselors and others with extended contracts be reduced to the standard 191 day contract applicable to other teachers in order to save money. The ILT could use this saved money to provide other educational services, at its discretion.

The Federation argues that the extra days of work for librarians, visiting teachers and others are necessary because of the demands of their respective jobs.

It is one thing for ILT's to determine on a school by school basis whether or not librarians or others with extended contracts are necessary for the provision of the mix of educational services for particular schools. It is another matter, however, to consider reducing the actual services provided by the persons with extended contracts. It is reasonable to conclude that if their contract days are reduced, less services will be provided, which services may be necessary. Accordingly, the District has not proven a clear justification for curbing the number of days of service for those with extended contracts.

Recommendation - No change.

Issue No. 26 - Waiver Panel

The District as part of its decentralized decision making reform plan, has proposed the creation of a waiver panel. This panel would permit a school's ILT to petition a panel composed of equal numbers of Federation and administration representatives for waiver from certain provisions of the contract in order to insure greater flexibility at the school level. The Federation opposes any idea of amending the collective bargaining agreement other than by the formal procedure set forth in the Agreement. The members of the Federation must ratify any change to the collective bargaining agreement; therefore, the District's proposal would deprive the Federation's members of their contractual rights.

The District's proposal appears to this Fact Finder as being unworkable in view of the contractual commitments in place between the Federation and its members relative to the ratification of any proposed amendment to the collective bargaining agreement.

Recommendation - No change.

Issue No. 27 - Visiting Teachers

The District proposes reducing the number of visiting teachers which are required as schools move to a team-based structure. Instead, the District wants to guarantee the money for these positions to the schools to use as they see fit. The Federation, on the other hand, wants to guarantee visiting teachers at each elementary, middle and junior high school. The money for these positions could be reallocated by a 2/3 vote of the staff.

This Fact Finder is uncertain that this issue needs to be dealt with at this time. An observation of the decentralized process should occur in order to determine whether or not there is a needed change in the contract language because there are more visiting teachers than are needed. Therefore, this issue can be dealt with at some future time.

Recommendation - No change.

Issue No. 28 - Training Increments

The Federation proposes additional compensation for additional training for teachers; \$750 for completion of 120 contract hours; and, an additional \$750 for teachers who complete 300 contract hours of instruction. The District has addressed this issue in its package proposal, which has been recommended above in the sense that it is willing to work with the Federation on this issue. This Fact Finder recommends that the District consider and pay for extra training in addition to the proposed incentive awards.

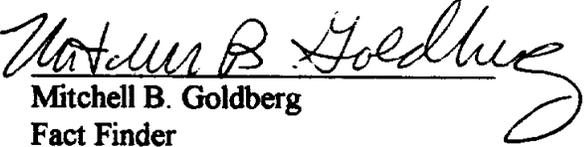
Recommendation

The Federation's proposal is deferred and not accepted at this time.

Issue No. 29 - Extra Days for Team Teachers

The Federation proposes that all teachers at team based schools be paid for an additional three days of team and school-wide planning. The District has dealt with this issue in its package proposal by guaranteeing early release days and paid training time during the summer preceding the implementation of the team systems. The District's package proposal has been recommended, as stated above.

Respectfully submitted,


Mitchell B. Goldberg
Fact Finder

Dated: January 10, 1997