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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard to the Matter of The Fact-Finding Between:

| | | |
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| CLEVELAND CITY SCHOOLS |) | 97-MED-08-0800 |
| |) | |
| -AND- |) | |
| |) | |
| CLEVELAND TEACHERS UNION |) | |
| LOCAL NUMBER 279 |) | |

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For The Board

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 BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND

The Employer, The Cleveland City School District operates a kindergarten through twelfth grade educational system for some 74,000 students resident in the City of Cleveland and the Village of Bratenahl. In terms of pupil enrollment it ranks as the largest school district in the state and the thirty-sixth largest in the United States.

The District's present complement of 4,500-5,000 certificated personnel including Teachers, School Nurses, Regular Substitute Teachers, Paraprofessionals, Tutors, Social Workers, Psychologists, Driver Training Road Work Instructors, Work-Study Teacher Consultants, Educational Aides, Instructional Aides, Instructional Assistants, Instructional Technicians, Administrative Aids and other Federally and State funded certificated personnel form a Bargaining Unit exclusively represented by the Cleveland Teachers Union, Local No. 279, American Federation of Teachers, AFL-CIO.

The parties are signatory to a Collective Bargaining Agreement entered into as of September 1, 1996 for an initial term of three years.

In the 1990's the District ran up annual operating deficits which were initially covered by borrowing. The debt reached a point which threatened the District's ability to comply with an extant Court Desegregation Order, and, in consequence, in 1995 the State was directed to assume management of the District.

With its debt level already at \$152 million dollars, the State Auditor projected that the deficit for the 1997 fiscal year would approach \$100 million dollars. In consequence, on October 25, 1996, the Auditor declared a fiscal emergency, and control of the District was assumed by a Financial Planning and Supervision Commission.

It was in the midst of these difficult financial circumstances that the 1996 Contract was negotiated. The Contract provided for a two-year moratorium on wage increases and a 3% increase in the third year of the Contract. In addition, the Union granted concessions valued at over \$10 million dollars in the form of increased monthly member contributions towards the cost of health insurance and the elimination of certain professional development days.

Article 31 of the Contract provided for the automatic reopening of negotiations for salaries and fringe benefits upon the happening of any one of four specified conditions:

"Section 1. Negotiations

"A. The granting of any increase in fringe benefits or wages to any employee group during the duration of this agreement shall automatically serve to reopen negotiations with the CTU for those items.

"B. Negotiations with the CTU for salaries and fringe benefits shall automatically reopen upon the availability of new monies from the following sources:

"1) Passage of any new regular or emergency school levy or the passage of any income tax earmarked for the District.

"2) Increase in county tax collection.

"3) Additional money realized by the District because of action of the State Legislature."

An additional 13.5 mill real estate tax levy was voted upon and passed on November 5, 1996, and the additional revenue began to become available to the District after January 1, 1997.

With the passage of the November 5, 1996 levy, the Union notified the Board that it wished to reopen Contract negotiations pursuant to Article 31, Section 1(B)(1).

However, in campaigning for the levy the District had pledged to spend the proceeds of the levy for fourteen specified purposes, none of which involved an increase in compensation for members of the Bargaining Unit.

Negotiations under the reopener began on March 4, 1997, but impasse was reached when the District took the position that the Bargaining Unit was not entitled to any of the proceeds of the levy.

The Union's proposals were carried to Fact-Finding. Its demands included: additional professional days; an early retirement buy-out incentive and the equilibration of severance pay to that available to retiring Administrators; increased District "pick-up" of pension contributions; enhanced dental insurance coverage; increased life insurance coverage; increased reimbursement for eye glasses, and a salary bonus of \$1,000.00 for Teachers who earn a National Board of Professional Teaching Standards Certification.

While the fact-finding process was in progress House Bills 215 and 650 were enacted increasing State funding. As a result a second and separate reopener based on Article 31, Section 1 (B)(3) was triggered.

The District received an additional \$24 million dollars from the State on July 1, 1997 and will receive an equal amount on July 1, 1998.

Although the parties continued negotiations on the first reopener the undersigned was appointed Fact-Finder for the second reopener by the State Employment Relations Board effective on September 17, 1997. However, the parties extended the time for commencement of the second fact-finding process while proceedings on the initial reopener continued.

A Fact-Finding Report was issued on the initial reopener on February 17, 1998. The Fact-Finder, noting that the \$65 million dollars in new money resulting from the levy was "substantial," nevertheless found that the Board had pledged to use "the proceeds to address some of the District's most pressing needs," other than teacher compensation, and that fact, plus the ten year schedule of annual repayments of the \$152 million dollar debt precluded use of the tax revenues for teacher compensation.

Accordingly, the Fact-Finder rejected most of the Union's demands. He did recommend that the Board grant two additional voluntary District-wide Professional Days beginning in the 1998-1999 School Year, offer the opportunity for direct deposit of members' payroll checks, permit members to purchase

State Teachers Retirement System credit through tax-deferred payroll deduction, and waive the \$1.00 per month fee for processing annuities.

Negotiations resumed under the second reopener, and the parties met on several occasions during the month of April and May, 1998. In the course of the negotiations the parties agreed to expand the scope of the reopener beyond "salaries and fringe benefits" in an effort to reach a "global" settlement, and to consider extending the term of the Contract for an additional year.

Those negotiations, however, collapsed, and at the direction of the parties a Fact-Finding hearing was scheduled for May 26, 1998.

In advance of the session, the parties timely provided the Fact-Finder with the written statements required by Ohio Revised Code Section 4117.14(C)(3)(a), and Ohio Administrative Code 4117-9-05(F).

However, at the outset of the hearing, both parties objected to the proceedings on the ground that copies of these written statements had not been timely served upon their representatives as required by Ohio Administrative Code Section 4117-9-05(F). The District argued that it had not received the Union's statement until the day of the hearing, and the Union, in its turn claimed that the District had not made a valid service upon its Chief Negotiator, its only authorized agent.

However, several days previous to the hearing the District had received a written statement of the unresolved issues and the Union's position on them, and had even attached a copy of the Union's statement to its pre-hearing brief. The Fact-Finder ruled that this submission satisfied the requirement of the Ohio Administrative Code.

The Fact-Finder also found that the District had no reason to know that the attorney to whom it had delivered its pre-hearing statement was not authorized by the Union to receive it, and concluded that the service upon the Union's attorney provided appropriate notice.

The Fact-Finder therefore overruled both sets of objections, and proceeded to attempt to mediate the dispute. In the course of the mediation, the parties withdrew their objections.

The mediation resulted in the parties' abandoning several of their initial proposals, and they have not been considered by the Fact-Finder. He declares that any proposals of the parties not referred to in this Report are not found to be appropriate and are not recommended.

As a result of the mediation, the parties agreed that Article 8, Section 1, clause B be amended by the addition of the following paragraph:

"1. However, and notwithstanding any other provision of this Agreement, reasonable additional mandatory professional development, payable at the in-service rate, may be required for teachers who have received a "substandard" year end

Principal's Composite Evaluation. A professional improvement plan will be mutually designed between the individual and the principal and any resulting professional development shall be paid at the in-service rate."

The parties further agreed that Article 18 be amended by adding a new Section 6 to read as follows:

"Section 6.

"A. The District is bound by the Consent Decree entered in Reed v. Rhodes. For purposes of this Agreement and notwithstanding any of the provisions of this Agreement, the parties agree to utilize the procedure for intervention and Reconstitution entitled "Schools Requiring Intervention."

The parties also agreed that the Fact-Finder might consider issues beyond the scope of the reopener and make recommendations on the following proposals:

1. Extension of the Contract to August 31, 2000 and elimination of the reopener provisions of Article 31, Sections 1(A), 1(B), 1(D)(3).
2. Wage increases for the current and future Contract years.
3. Increase of parent representation on School Governance Councils pursuant to Article 5, Section 1(A), and modification of the conflict of interest policy set forth in Article 5, Section 1(B).
4. Establishment of policies with respect to Schools Requiring Intervention.
5. Establishment of policies dealing with school reconstitution.

6. Calculation of severance pay entitlements according to the same formula used for calculating the severance pay available to Administrators.

7. Reduction of the amount of Bargaining Unit members' share of health insurance premiums.

8. Provision of an option to receive compensation in twenty installments rather than the current twenty-six.

But the Fact-Finder was not successful in resolving any of these issues, and held an evidentiary hearing.

At the Fact-Finding hearing the parties presented helpful briefs with supporting budgetary and comparative data.

At the conclusion of the submission of the documentary evidence, the Fact-Finder declared the Fact-Finding proceeding closed, and agreed to submit his Report on June 1, 1998.

In making his recommendations on all the unresolved issues the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e), and Ohio Administrative Code, Section 4117-9-05(K) namely:

"(a) Past collectively bargained agreements, if any, between the parties;

"(b) Comparison of the unresolved issues 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;

"(c) 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;

"(d) The lawful authority of the public employer;

"(e) The stipulations of the parties; and

"(f) Such other factors, 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 procedures in the public service or in private employment."

UNRESOLVED ISSUES

1. Extension of Contract for an additional year.

Article 31, Section 3 provides that the current Agreement became effective on September 1, 1996 and will expire on August 31, 1999.

THE DISTRICT'S POSITION

The District proposes to extend the term of the current Contract for an additional year, and, as set forth below, to provide additional compensation to Bargaining Unit Members in that year. It conditions its proposal, however, upon the elimination from the Contract of the automatic reopener provision of Section 1(A) and 1(B), and the third paragraph of Section 1(D).

THE UNION'S POSITION

The Union would prefer to retain the current language which allows for future negotiations over salaries and fringe benefits should the District receive additional funds by reason of an increase in County tax collection, or State appropriations, or the passage of a tax levy.

FINDINGS AND RECOMMENDATIONS

In the expectation of the receipt by the District of additional revenues within the purview of Article 31, the Union has given notice of its intent to file for additional reopenings of negotiations once the present fact-finding proceedings have been concluded.

The School District is expected to shortly come under the control of the Mayor of the City of Cleveland and the direction of a Chief Executive Officer. It is important not only for the parties, but for the entire Cleveland community, that there be a period of stability after the new governance structure is put in place so that Management may have the opportunity to assess the manifold and manifest problems of the School system, review current policies and take appropriate remedial action.

The transition process and the ability of the new executive team to address the operational problems would be significantly hindered if the new Officers of the District were required immediately to become embroiled in negotiations over the proposed reopeners, and, shortly thereafter, in bargaining over a new Contract.

The Fact-Finder believes that the opportunities for reopening negotiations over wages and benefits may be relinquished by the Union for the term of the present Contract and the proposed one year extension without prejudice to Bargaining Unit Members provided that adequate compensation

adjustments are made in accordance with the recommendations of the Fact-Finder which are set forth below.

The Fact-Finder therefore finds appropriate and recommends the deletion of Section 1, clauses A, B and the third paragraph of clause D from Article 31 and the renumbering of the remaining provisions as follows:

"A. The District shall make available to the CTU upon its reasonable request, any and all available information, statistics and records relevant to negotiations or necessary for the implementation of the terms of this agreement.

"B. It is hereby agreed that the Cleveland City School District and the Cleveland Teachers Union shall jointly explore, and encourage the receipt of, new sources of District revenue. This will be accomplished through the auspices of the conceptually agreed upon "Joint Committee on Lobbying," and with the inclusion of other interested parties (e.g., members of other employee groups, including CCAS, parent representatives, District Representatives and business/community representatives).

"Multiple sources of funding shall be explored by the representative lobbying team, using a formulated and agreed upon strategy, and seeking increased funds from such sources as the following:

"1. State Basic Aid (Within the Existing Formula);

"2. State DPIA Allocations;

"3. State Unit (Vocational and Special Education) Funding;

"4. Kindergarten and Early Childhood Program Funding;

"5. Funding for Other State-Mandated Programs Initiatives, such as S.B. 140.

"6. Securing Funds to Offset Special Education Mainstreaming Costs;

"7. Alteration/Improvement/or Development of a More Equitable Funding Formula;

"8. Regular Operating Property or Income Tax Levies (as distinct from the "educational improvement" levy);

"9. Agreements on the Limitations of Tax Abatements and Tax Increment Financing (TIF); and

"10. Federal Allocations.

"C. Alternative Dispute Resolution. The procedure set forth in Ohio Revised Code Section 4117.14 will be followed, except that the fact-finding process must be scheduled such that the fact-finder's report is required to be submitted to the parties no earlier than the third Monday in May, 2000, and no later than the first Monday in June, 2000. Bargaining unit members will be considered eligible to vote on the fact-finder's report provided they have: Paid their Union dues during that calendar year; and are on the CBOE payroll in the month of May, 2000. Nothing in this Agreement shall preclude the parties from agreeing to an alternative dispute resolution procedure different from that specified above.

"D. In the event that negotiations between the District and the CTU reaches a point of impasse, federal mediation may be employed, if requested by either party. The request to implement this mediation process shall be made no later than fifteen (15) calendar days prior to the expiration date of the contract.

"E. There shall be no reprisals."

The Fact-Finder also finds appropriate and recommends revision of Article 31, Section 3 to read as follows:

"Section 3. Duration

"The duration of this Agreement shall be extended through August 31, 2000."

The parties had agreed that if the term of the Contract is extended for a year as recommended by the Fact-Finder, that except for the Articles which the parties have agreed to amend, and those dealing with the disputed issues set forth below, all other terms of the present Contract are to be carried forward and retained for the additional year, mutatis mutandis.

2. Compensation.

As noted earlier in this Report, the Cleveland Teachers Union agreed in the 1996 Contract to make financial sacrifices, including a two year salary freeze with only a 3% across-the-board salary increase in the third year of the Contract.

THE DISTRICT'S POSITION

The District offers to provide a lump-sum payment of three quarters of one percent (.75%) to all Bargaining Unit Members which sum is not to be included in the base wage. The wage proposal, however, is to be funded by the elimination and reallocation of the present premium paid to Teachers with class sizes exceeding twenty-five pupils.

Article 10, Section 1 of the Contract provides inter alia, that if an elementary school Teacher is assigned students beyond the limit of twenty-five, and if students are not reassigned or an additional classroom Teacher is not provided, the Teacher must be paid \$5.00 a day for each student above twenty-five.

Presently, some two hundred and fifty (250) Bargaining Unit Members conduct oversized classes and share in the premium pay so generated. The District argues the reallocation represents a more equitable distribution of compensation to Bargaining Unit Members.

The District insists that it is unable to provide any additional compensation despite the increase in State Foundation Aid received pursuant to House Bill 215 and the likelihood of the receipt of additional monies through passage of House Bill 650 because none of these monies go directly into the General Fund in a manner which allows their use purely for employee wage increases. It points out that House Bill 412 and Senate Bill 55 mandate certain programs, and, to the extent that House Bill 650 provides insufficient funds for program implementation, the deficit must be made up by the allocation of existing District resources.

Further, the District labors under a debt of approximately \$152 million dollars which must be serviced through the year 2008.

THE UNION'S POSITION

The Union proposes an immediate two percent (2%) lump-sum payment to all Bargaining Unit Members which will not be included in their base wage rates.

Further, the Union seeks a four percent (4%) "across-the-board" increase in base wage rate compensation for all Bargaining Unit Members retroactive to the beginning of the 1997 Contract year.

Finally, the Union asks that the already negotiated three percent (3%) increase effective for the 1998-1999 school year be retained.

The Union argues that at the beginning of this decade the compensation paid Cleveland Teachers ranked in the upper ten percent (10%) of the salaries paid by the School Districts in Cuyahoga County. At the present time, their salaries rank among the lowest of all wages paid by the School Districts in the County. Given the likelihood that the proceeds from the 1996 13.5 mills operating levy will provide the District with \$65 million dollars annually, and the increased State funding will add \$28 million dollars each year, the Union points out that the District's revenues will rise by more than twenty percent (20%).

The increase in State funding will free-up other monies received by the District for the purpose of increasing the salary and benefits for Bargaining Unit Members.

The Union draws this Fact-Finder's attention to the Fact-Finding Report issued with respect to the earlier reopener:

"The factfinder feels that the union has a much stronger claim for a significant adjustment in its compensation based on the increased state aid. The \$65 million that the board began collecting on January 1, 1997 helps the board meet some of the most pressing educational needs. It also provides some of the means to begin reducing the debt accumulated due to the fact that the board passed only one operating levy in 25 years. With these priorities being addressed, more money is available to begin to restore teacher salaries to their previous rank in the county. The fact that

there were approximately 179 unfilled teacher positions in the district as of November 24, 1997 makes improving salaries a priority of the board as well as the union."

FINDINGS AND RECOMMENDATIONS

The parties supplied salary information only for the Teacher classification whose members comprise the majority of the Bargaining Unit. Their concept was that this classification stands as surrogate for all of the classifications in the Bargaining Unit.

The starting salary in Cleveland for Teachers holding a Bachelor of Arts or equivalent degree is presently \$26,628.00. At the other end of the compensation spectrum, the maximum salary for Master Degree holders is \$50,969.00.

The District points to the fact that as of the current school year the State average entry level for Teachers holding a Bachelor's Degree is only \$23,057.00, some \$3,400.00 less than that provided by the Cleveland District, and the State average maximum salary paid to holders of Master's degrees is currently \$43,467.00, some \$13,000.00 below that paid by the Cleveland District. Focussing on the seven largest Districts in Ohio after Cleveland - Cincinnati, Columbus, Akron, Canton, Youngstown, Dayton and Toledo, the District asserts that the average salary of Cleveland elementary Teachers (\$40,850.00) ranks fourth, below only that paid by Cincinnati, Columbus and Akron.

Further, the average salary for a Cleveland secondary school Teacher ranks third behind only Columbus and Cincinnati.

The Union limited its comparative salary schedule review to the thirty-three School Districts in Cuyahoga County. Although their sizes and resources differ markedly from that of Cleveland, as a group they are more appropriate for comparative purposes since they are in the same labor market as the Cleveland District.

As of the current school year the starting salary for a Cleveland Teacher with a Bachelor of Arts Degree ranked twentieth among this group, and the maximum salary for Cleveland Teachers holding the Masters of Arts Degree ranked twenty-ninth.

The relatively low rank of the Cleveland District among all those in Cuyahoga County is particularly significant because of the fact that the Cleveland District currently lacks one hundred and twenty-one (121) Certified Teachers, and expects to lose more than one hundred and seventy-five (175) more through retirement. Further, there is the possibility that the District will need even more teachers as a result of House Bill 650 which requires a lower pupil-teacher ratio in kindergarten and first grade. The upshot of these circumstances is that the District may have to recruit as many as 400 or 450 Teachers by the opening of the 1998-1999 school year. The School District, of course, ought to seek out the most highly qualified and motivated Teachers. But, the other Districts in the County will also be recruiting from the same pool of applicants, and unless Cleveland offers comparable

compensation, it is unlikely that the District's campaign will be successful.

Moreover, it is clear to the Fact-Finder that as a result of financial concessions and the wage freeze in effect during the first two years of the Contract, members of the Bargaining Unit have experienced an actual loss in real income and are at a comparative disadvantage relative to Teachers in other School systems in the County.

The Union estimates its wage package will cost an additional \$17,748,000.00 in fiscal year 1998 and an additional \$12,085,000.00 in fiscal year 1999. However, because of "me too" provisions tied to increases in Teachers' compensation in Contracts between the District and unions representing other Bargaining Units, the Union estimates an additional \$6,212,000.00 will have to be paid to other employees in fiscal year 1998 and an additional \$4,209,000.00 in fiscal year 1999.

Thus, the total estimated cost of the Union's wage package demands is \$23,160,000.00 in fiscal year 1998 and \$16,294,000.00 in fiscal year 1999.

The Fact-Finder is persuaded that the additional funds available to the District make it financially possible and fiscally prudent to provide members of the Bargaining Unit with significant increases in compensation. Indeed, the budgetary and related financial data offered by the District suggests that the District can afford a four percent (4%) lump-sum "across-the-board increase" to all Bargaining Unit

Members, and a five percent (5%) increase, in the base wage rate for the 1998-1999 school year instead of the three percent (3%) increment provided in the Contract. For the additional year of the Contract, (the 1999-2000 school year), the Fact-Finder believes the District can afford an additional two percent (2%) base wage rate increase.

The Fact-Finder does not find appropriate and does not recommend the proposal of the District to eliminate and reallocate the premium paid Teachers who have more than the maximum class size. Obviously, this compensation operates as an incentive to the District to keep the number of pupils in an elementary school class to twenty-five or fewer pupils.

The maximum size policy bespeaks the belief that particularly for younger students, smaller classes provide a better educational environment. The Fact-Finder sees no benefit in removing the incentive to avoid large classes and redistributing the funds among all the members of the Bargaining Unit. The Union, as the representative of all Bargaining Unit Members, is in the best position to consider questions of internal "equity," and it has spoken on this issue.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 30, Section 2 clause B be amended by the addition of the following paragraph:

"In addition, within thirty (30) days of the date on which the Fact-Finder's Report of Findings and Recommendations has been approved by the parties, all CTU Bargaining

Unit members will receive a lump-sum payment in the amount of four percent (4%) of their then applicable base wage rate. Such lump-sum payment, however, shall not be included in the base wage rate.

He further finds appropriate and recommends that the balance of Article 30, Section 2 be amended to read as follows:

"C. - 1998-1999 All CTU Bargaining Unit members will receive a five percent (5%) across-the-board increase, and one (1) additional Professional Day will be reinstated.

"D. - 1999-2000 All CTU Bargaining Unit members will receive a two percent (2%) across-the-board increase.

"E. Members of the CTU bargaining unit shall be paid in accordance with the appropriate salary, differential, wages or other compensation schedule set forth in the Appendix.

"F. All negotiated wages will be effective for all assignments performed for the stated school year.

"G. a holder of an earned L.L.B., L.L.D. or J.D. degree shall be considered equivalent to a Master's Degree and the individual will be placed on schedule "D." A written three year future commitment to remain with the District is required prior to placement on schedule "D."

3. School Governance Council.

Article 5, Section 1 provides for a School Governance Council (SGC) in eight so-called "transformation schools" as the District moves to provide each school community with the authority and responsibility for improving student achievement.

School Governance Councils are presently to be composed of one Principal, two Parents (one of whom will be the Chairperson of the SCC), the CTU Building Chairperson, three other Teachers, one non-certificated school employee, one non-parent local community representative and one representative from the School's Education partner (where applicable) and, in secondary schools, two students (one of whom shall be the President of the Student Council).

Further, Section 1 clause B provides:

"Each member of the SGC must comply with District Policy regarding conflicts of interest, and neither parent nor community representatives shall be employees of the District or Board Members, or spouses of District Employees or Board Members."

THE DISTRICT'S POSITION

The District proposes to increase the number of parent representatives on the Council from two (2) to six (6). It states that it has received many complaints from employees, and especially spouses of employees, who, although they are parents of children attending the Cleveland Schools and would like to contribute to the work of the Councils, are precluded from doing so.

In view of the considerable interest of parents in participating in the work of the Council, the District proposes to expand the number of parents on the Council and allow employees and their spouses to participate.

THE UNION'S POSITION

The Union objects to what it deems the unnecessary enlargement and "over-balancing" of the School Governance Councils with parents. It points out that the increased representation proposed by the District would give effective control of Council decisions to parents, and relegate the professional educators - the Principal and the Teachers - to a potentially ineffectual minority role.

With respect to changes in the Conflict of Interest Policy, the Union is unpersuaded that there is any special reason to eliminate the prohibition against employees or their spouses becoming eligible for appointment as parent or community representatives on the Councils.

FINDINGS AND RECOMMENDATIONS

The Fact-Finder believes that strong parent interest and participation in the Schools are desirable goals and advantage ought to be taken of the current upsurge in such interest.

On the other hand, the Union has a point that the Councils ought not to be structured so as to marginalize the professional educators.

There is an appropriate compromise.

The Fact-Finder finds appropriate and recommends that the number of parents on the School Governance Councils be increased from two representatives to four, and accordingly recommends that Article 5, Section 1, clause A be amended to read as follows:

"Section 1. School Governance Council

"A. Composition. A School Governance Council (SGC) comprised of representatives from the following groups will govern the Transformation Schools:

"1. Principal;

"2. Four parents (one of whom will be the Chairperson of the SCC);

"3. The CTU Building Chairperson;

"4. Three other teachers;

"5. One non-certificated school employee;

"6. One non-parent local community representative;

"7. One representative from the school's education partner (where applicable); and

"8. In secondary schools, two students (one of whom will be the President of the Student Council)."

The Fact-Finder does not foresee any significant conflict of interest problems arising if the present disqualifications from representation on the Councils were to be removed. Concern for the education of their children is likely to be the dominant if not sole motivation for the participation of parents one or both of whom happen to have an employment relationship with the District.

Accordingly, the Fact-Finder recommends that Article 5, Section 1 clause B, third paragraph be amended to read as follows:

"Each member of the SGC must comply with District Policy regarding conflicts of interest."

4. Schools Requiring Intervention.

When a particular School fails to demonstrate acceptable levels of performance an academic intervention team (AIT) consisting of four representatives selected by the Superintendent and four representatives selected by the CTU President, inquires into the situation, recommends whether the school is in need of intervention and identifies strategies and resources designed to improve performance. If the strategies and resources fail to produce the desired outcomes, the procedure contemplates reconstitution of the school.

The parties agree that the proposed Intervention Policy ought to be incorporated as Appendix "G" to the Contract. They further agree that the Chief Academic Officer (CAO), in accord with the Superintendent, is to provide the AIT with a list of the Schools to be reviewed for possible intervention, and, that the AIT may review for possible intervention schools not on the list provided by the CAO.

Agreement has also been reached that, consistent with the resources available, the AIT will make recommendations to the CAO for each School reviewed, along with the supporting rationale for each such recommendation. The CAO, in accord with Superintendent, will make the final determination of Schools requiring intervention from the list of Schools reviewed by the AIT.

THE DISTRICT'S POSITION

The District seeks to provide that Schools which are unable to create a safe and orderly educational environment are to be automatically designated as in need of intervention.

THE UNION'S POSITION

The Union opposes any automatic intervention criteria as being in derogation of the responsibility of the AIT.

FINDINGS AND RECOMMENDATIONS

The Fact-Finder believes that ordinarily Schools unable to provide a safe and orderly education environment would be in need of intervention. The Fact-Finder accordingly finds appropriate and recommends that there be added to the Policy statement that Schools which are unable to create a safe and orderly educational environment are presumptively in need of intervention. While, in unusual cases, the AIT may not recommend intervention, the presumption places the burden upon the AIT to provide satisfactory reasons for its failure to recommend intervention.

5. Reconstitution of Schools.

When it is necessary to reconstitute a school, a new Principal will be appointed, and that Principal, together with Parents and the School's SGC, (unless one does not exist) the SCC representatives, and a CTU representative will proceed to re-staff the School.

Ordinarily the decision to reconstitute a School belongs to the Chief Academic Officer, but his decision should not be unreasonable, arbitrary or discriminatory.

In order to avoid reconstitution the Academic Intervention Team is charged with recommending a Document of Corrective Action to supplement a School's Academic Achievement Plan (AAP). Modification of the Academic

Achievement Plan requires approval by seventy percent (70%) of the School's staff.

Reconstitution is usually a last resort after Intervention has failed.

THE DISTRICT'S POSITION

The District seeks automatic reconstitution in the event the staff fails to approve the proposed modifications to a School's AAP, and the School subsequently fails to improve performance.

THE UNION'S POSITION

The Union objects to automatic reconstitution in the event of failure to improve performance. It would allow, but not mandate, reconstitution subsequent to a failure to improve performance after rejection of proposed modification to a School's AAP.

FINDINGS AND RECOMMENDATIONS

The Fact-Finder notes that the failure of a School staff to approve proposed modifications to its Academic Achievement Plan as suggested in the Document of Corrective Action represents a repudiation of the Academic Intervention Team process. If after such refusal the School thereafter fails to improve its performance to the expected minimum level, it is entirely appropriate that it bear the risk of failure by being made subject to reconstitution without further resort to the Academic Intervention process.

Accordingly, the Fact-Finder finds appropriate and recommends that the Cleveland City School Policies and

Procedures respecting Schools requiring intervention as set forth below be adopted as Appendix "G" to the present Contract.

SCHOOLS REQUIRING INTERVENTION

School intervention in the Cleveland City School District is intended to help ensure that the District goal of improving student achievement is attained. For a variety of reasons, schools may fail to demonstrate acceptable levels of performance. Intervention is intended, first, to identify strategies and resources designed to improve performance. Should those strategies and resources fail to produce the desired outcomes, intervention provides a mechanism for reconstitution. The criteria for initiating intervention include those defined in the Consent Decree. Other indications that a school requires intervention include, but are not limited to, the indicators listed under the headings of Student Achievement, Attendance, School Climate, and Student Discipline as delineated below.

ACADEMIC INTERVENTION TEAM

The recommendation that a school is in need of intervention will be made by an Academic Intervention Team (AIT) consisting of four representatives selected by the Superintendent and four representatives selected by the CTU President. The District will inform the AIT of the resources available for intervention in troubled schools by July 1st of each school year. **The Chief Academic Officer (CAO), in accord with the Superintendent, will provide the AIT a list of schools to be reviewed for possible intervention.** In making its recommendation, the AIT will review all relevant district data, observations by administration, observations by the CTU, and other appropriate indicators of school performance, and recommend which schools merit intervention. **The AIT may review for possible intervention schools not on the list provided by the CAO.** This review shall specifically include the criteria set forth in Section 11.3, Appendix B, of the Consent Decree to address schools in the bottom quartile of academic achievement, and those exhibiting disparities by race in student expulsions or suspensions.

The AIT will make its recommendations to the Chief Academic Officer (CAO) for each school reviewed along with a supporting rationale for each such recommendation, consistent with the resources available. The CAO, in accord with the Superintendent, will make the final determination of schools requiring intervention from the list of schools reviewed by the AIT.

CRITERIA FOR INTERVENTION

The criteria for intervention include, but are not limited to:

- Designation as a bottom quartile school as delineated in the Consent Decree.
- Substantial disparity by race in student expulsions or suspensions as delineated in the Consent Decree.
- Student Achievement
 - Clear academic (content) standards, detailing what every student is expected to know and demonstrate mastery of, are essential for a school

to determine if they are fulfilling their mission of educating youngsters effectively. The Cleveland City School District's Accountability system is tied to students' achievement on Ohio's State Proficiency tests. These tests, administered during grades four, six, nine, and twelve, are designed to measure the state's modeled curriculum based on national standards. A school's course of study must be tightly aligned with the learner outcomes measured by the state's proficiency tests in order for students to demonstrate proficiency. Student achievement measures that indicate a school in need of intervention would include any one or more of the following:

- Proficiency target acquisition for grades 4, 6, 8, 11, and 12
 - Percentage of students passing less than three of five tests for the fourth, sixth, eighth (on the ninth), and twelfth grade tests
 - Significant declines in proficiency results from one year to the next
 - Trend of bottom quartile/ persistently low performing school over time.
 - Off-grade reading proficiency test results for grade 2
 - Dropout rates (as measured by Senate Bill 55 methodology)
 - Bilingual education (LEP) reclassification rates
- **Attendance (Student/Staff)**

Students are more likely to skip school if they feel unsafe or unmotivated. If students do not attend school they can not learn. Student attendance is a necessary prerequisite for student achievement. High rates of staff absenteeism are also unacceptable. Continuity and stability in instruction are essential for students to learn. The causes of absenteeism, whether student or staff, are often elements of a school's operation that are under its control. Discipline problems, low expectations for students and staff, and building safety issues often explain variance in student and staff attendance. Attendance measures that indicate a school in need of intervention would include either of the following:

 - Student attendance target acquisition
 - Teacher attendance rate (a teacher attendance rate would account for scheduled inservice training, and Family and Medical Leave Act days.)
- **School Climate (Staff Attrition)**

In order to provide schools with data concerning their school climate, the Cleveland City School District administers a survey that measures responses from staff, students, parents, and the greater community on seven attributes of effective schools. The Attributes of an Excellent School Survey (AES) measures the degree to which a school possesses the following attributes:

- Positive school climate that is safe and orderly
- Parent and community involvement
- High expectations for staff and student performance
- Frequent monitoring of student progress
- Clearly defined mission
- Continuous planning process
- Shared leadership

In addition to the attitudinal data gathered by the survey, other measures of school climate that would validate the results of the Attributes of an Excellent School survey and indicate a school with a school climate in need of intervention include:

- High rates of staff attrition through requests for transfer.
- Substantiated parental complaints.

Student Discipline

The causes of disruptive behavior and school violence are often elements of a school's operation that are under its control. Meeting the needs of students and addressing their various learning styles is a school wide effort. Developing culturally rich programs, using a variety of resources, linking with social service agencies, reaching out effectively to parents and the community, applying consistent and appropriate consequences for student violations, and holding high expectations for student behavior are all strategies that can act as deterrent to disruptive behavior. Schools that are unable to create a safe and orderly educational environment are presumptively in need of intervention. Indicators of a school requiring intervention may include any of the following:

- High levels of disruption and student discipline problems.
- High rates of staff attrition through requests for transfer.
- Substantiated parental complaints.
- School exhibits substantial disparities by race in student expulsions or suspensions.

ACADEMIC INTERVENTION PROCESS

The Academic Intervention Team will assess those schools it has identified as most meriting intervention, and will recommend the method and scope of intervention (the Document of Corrective Action) within the parameters of the district's resources as allocated for that purpose. The District will provide those resources.

After the school's core planning team has met with the Academic Intervention Team, a detailed analysis of proficiency, attendance, and school climate results for the school year will be conducted. Following this analysis, which should point out changes from previous results and building strengths and weaknesses, a recommendation will be made as to whether the school's current Academic Achievement Plan (AAP) will

address the school's need for intervention. If the current plan appears sufficient to meet the school's needs, the Academic Intervention Team will commit to specified support roles in assisting the school's implementation of the plan. If the current Academic Achievement Plan is not deemed sufficient to address the school's need for intervention, a Document of Corrective Action (DCA) will be created to supplement the strategies already agreed upon in the school's Academic Achievement Plan.

The Document of Corrective Action will outline any changes in the school's Academic Achievement Plan and will specify the Intervention Team's responsibilities in assisting the school's implementation of the revised plan. The Document of Corrective Action will be created jointly by the school's core team and the Intervention Team. Approval by 70 percent of the school's staff is necessary for any proposed modifications to the AAP. Failure of a school staff to approve the proposed modifications to the AAP will not relieve that school of the expectation for improved performance and such failure to improve performance shall result in reconstitution.

Academic intervention steps that may be taken in working with a school shall include, but are not limited to, any of the following:

- a) Allocation of more academic, financial, and/or other resources;
- b) Reduced ratio of pupils to certificated classroom teachers;
- c) Amendment of the school's Academic Achievement Plan with a Document of Corrective Action;
- d) Review of the School Governance Council;
- e) Mandatory professional development as determined by the Academic Intervention Team.

TIMELINE FOR SCHOOL ACADEMIC INTERVENTION

| | |
|--|---|
| <p>Year 1 (by July 1st): Determination of schools requiring Academic Intervention</p> <p>Assignment of an Academic Intervention Team</p> <p>School implements amended AAP (DCA)</p> | <p>School demonstrates need for intervention due to student achievement, attendance, or school climate.</p> <ul style="list-style-type: none"> · Analysis of student achievement, attendance, and school climate. · Assessment of school's current Academic Achievement Plan · Creation of Document of Corrective Action (DCA) <p>Academic Intervention Team provides specific support Continuing support from District</p> |
| <p>Year 2 (by July 1st): Reassessment of school's need for Academic Intervention</p> | <ul style="list-style-type: none"> · School shows improvement, removed from Academic Intervention status · School shows positive direction, continues need for intervention, continued support from Academic Intervention Team. · School shows no improvement, decision to reconstitute school |

ACADEMIC INTERVENTION OUTCOMES

The Academic Intervention Team will recommend no earlier than June 1st and no later than July 1st of the intervention year that one of three outcomes will occur:

- The school has demonstrated improvement by valid statistical data and can move forward with implementation of their AAP. They no longer require intervention.
- The School has not demonstrated improvement by valid statistical data sufficient to move them out of Academic Intervention status, but that the school is on the right track and should be allowed to continue their school improvement efforts and continue to receive support. Professional development opportunities become mandatory for all CTU bargaining unit members.
- The school has not demonstrated improvement and should be reconstituted.

RECONSTITUTION

The decision of the Chief Academic Officer, in accord with the Superintendent to reconstitute a school will be made no earlier than June 1st of each school year, and no later than July 1st. **No such decision shall be unreasonable, arbitrary or discriminatory.**

1) In lieu of the transfer provisions of the collective bargaining agreement, the following steps shall be taken:

a) Each affected certificated CTU bargaining unit member shall be notified no later than July 1st that his/her school has been reconstituted. Included in the notification will be a list of open positions in all schools. The individual in question shall return to Personnel Services a list of five choices, in order of preference, by July 10th.

b) All CTU bargaining members and administrators will be cleared from the school. After three years, CTU bargaining unit members may utilize the voluntary transfer process to apply for any open positions in the reconstituted schools.

c) Personnel Services shall fill open positions in order of seniority, as per necessary transfer.

2) There shall be no reprisals of staff members from reconstituted schools.

3) A new principal will be appointed, and that principal, parents from the school's SGC, unless one does not exist then the SCC representatives, and a CTU representative, will restaff the school.

- 4) The first year a newly reconstituted school operates, it retains all the intervention support services of the previous year.**
- 5) The newly reconstituted school will reopen with a research-based model. Teachers will be provided necessary training and support in order to implement the model.**
- 6) Communication of the school's status and new direction to parents and students will be made a priority in order to alleviate concerns, confusion, and possible misconceptions.**

6. Health Insurance Premium Co-Payments.

Article 29, Section 2 of the subsisting Contract offers employees the opportunity to enroll in one of six medical insurance programs and obtain either single or family coverage. Depending on the plan selected, a Bargaining Unit Member choosing single coverage may pay up to \$20.00 per month, or if the employee selects either of the two highest cost plans, the difference between the premium cost of that and the lowest cost plan. For family coverage the Bargaining Unit Member will pay up to \$40.00 per month or if the member chooses either of the two highest cost plans, the difference between the cost of that plan and the lowest cost plan plus \$10.00 per month.

THE UNION'S POSITION

The Union proposes to eliminate the co-payment for insurance coverages.

THE DISTRICT'S POSITION

The District objects to any reduction in an employee's participation in the cost of health insurance, and points out that of the seven other largest Districts, only three appear to provide health insurance without cost to its employees.

FINDINGS AND RECOMMENDATIONS

The Fact-Finder finds appropriate and recommends the continuation of the present employee participation in the cost of health insurance. Such co-payments tend to provide at least an indirect incentive against over-utilization of benefits which drives up the cost of health insurance for all.

However, the Fact-Finder also finds appropriate and recommends that the parties create a jointly constituted study committee as set forth below to review employee participation in premium payments, health insurance plan options, the structure of co-payments, deductibles and co-insurance, and the equity in allocations among the contribution rates for particular plans and coverages with a view towards reducing the cost of health insurance.

7. The Twenty Paycheck Option.

Article 30, Section 5 presently provides that annual salaries are to be disbursed in twenty-six (26) biweekly installments.

THE UNION'S POSITION

The Union members of the Bargaining Unit with an option to receive their annual salaries in twenty biweekly installments.

For a number of years prior to the 1993-1996 Collective Bargaining Agreement Cleveland Teachers had the option of receiving their pay "as they earned it" in twenty paychecks ending in June, or of having it spread equally over the entire calendar year.

The Union argues that most of the larger Districts and many of the smaller Districts provide such options.

THE DISTRICT'S POSITION

The District refuses to offer the twenty paycheck option on the ground that, assuming one hundred percent participation, it will lose interest earnings of at least

\$1,155,000.00 annually as a result of the speed-up of payments.

FINDINGS AND RECOMMENDATIONS

The Fact-Finder finds appropriate and recommends that the twenty paycheck option not be adopted at the present time. The cautionary estimates submitted by the District as to the likely cost of providing this option to employees may prove to be accurate, but the data is not reliable. No survey was undertaken to determine how many of the Bargaining Unit Members are likely to choose the twenty paycheck option, and hence the Fact-Finder cannot realistically estimate the cost of the proposal. The Fact-Finder believes it appropriate and recommends that the question of the restoration of the twenty paycheck option be referred to a jointly constituted study committee, as set forth below, to undertake such a poll, determine the likely interest earnings losses based upon a then current interest rate, and the feasibility of modifying the accounting system to accommodate the two payroll method options.

8. Severance Pay.

Effective for the 1998-1999 school year, Article 26 provides a cash payment equal to the value of up to thirty percent (30%) of a retiring Bargaining Unit Member's accumulated and unused sick leave credit up to a maximum of \$30,000.00. During the first two years of the present Contract, upon timely notice a retiring employee had the option of receiving a cash-out of accumulated sick leave

credits to a maximum of \$40,000.00 or forty percent (40%) whichever was less, payable in three equal installments.

THE UNION'S POSITION

The Union seeks the same severance pay package that Administrators enjoy. Currently Administrators may receive cash payments equal to the value of up to forty percent (40%) of their accumulated and unused sick leave credit but without any limitation on the amount.

The Union argues that except for severance pay all School District employees, whether in Bargaining Units or in Administration, receive the same fringe benefits. It believes that equilibration is required in this area as well.

THE DISTRICT'S POSITION

The District points out that, of the other seven largest School Districts, only Cincinnati and Toledo provide a cash-out of a greater percentage of unused sick leave accumulations.

The District suggests that Administrators' salaries are not harmonized with those of Bargaining Unit Members, and there is no reason to single out severance pay for equalization.

FINDINGS AND RECOMMENDATIONS

Employees with a minimum of ten years retirement credit with the District can presently retire and receive up to thirty percent (30%) of their accumulated sick leave credit to a maximum of \$30,000.00 based upon their regular daily base rate of pay at the time of retirement. The Union has not

attempted to ascertain the number of eligible employees who are likely to chose the retirement option during the next two school years, and hence was unable to estimate the cost of its proposal.

The Fact-Finder is not persuaded that it is appropriate at this juncture to place an unknown additional cost upon the District. Rather, he will recommend that the issue of severance pay be submitted to a jointly constituted study committee, as set forth below, to conduct appropriate research both on the number of employees likely to accept retirement over the life of the Contract as extended, and the consequent additional cost of various levels of enhancement of the District's buy-out of accumulated and unused sick leave entitlements.

Accordingly the Fact-Finder finds appropriate and recommends the adoption of Appendix "H" to the Contract to read as follows:

"Within sixty (60) days after approval by the parties of the Fact-Finder's Report of Findings and Recommendation, the Union will appoint three (3) Bargaining Unit Members and the District will appoint three (3) Administrators to a joint committee charged with:

"1. Reviewing employee participation in premium payments, the health insurance plan options and the structure of co-payments, deductibles and co-insurance and the equity in allocations among the contribution rates for particular plans and coverages with a view towards reducing the cost of health insurance.

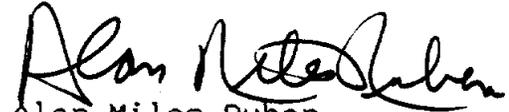
"2. Undertaking to poll members to determine how many would likely choose the twenty-paycheck option, estimating likely interest losses based upon a current interest rate and feasibility of modifying the accounting system to accommodate the two payroll method options.

"3. Conducting appropriate research on both the number of employees likely to accept retirement over the life of the Contract as extended, and the consequent additional cost of various levels of enhancement of the District's buy-out of accumulated and unused sick leave entitlements.

"The Committee shall report its findings and recommendations on these three issues to the Union and to the Administration not later than one hundred and eighty (180) days after the Committee has been constituted in accordance with the foregoing provision."

This Fact-Finding Report signed, dated and issued at
Cleveland, Ohio this 1st day of June, 1998.

Respectfully submitted,



Alan Miles Ruben
Fact-Finder

ARM:l jg