STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT- FINDING TRIBUNAL

IN THE MATTER OF FACT- FINDING BETWEEN: LOUDONVILLE-PERRYSVILLE BOARD OF EDUCATION AND LOUDONVILLE-PERRYSVILLE EDUCATION ASSOCIATION	SERB CASE NO. 98-MED-04-0452

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

DATES OF HEARING: February 12, 1999, and March 2, 1999

PLACE OF HEARING: Ohio Education Association Office, Lexington, Ohio

FACT FINDER: CHARLES W. KOHLER

APPEARANCES:

FOR THE ASSOCIATION:

Linda S. Lindsey, Labor Relations Consultant
Carol Hardy, President, Loudonville-Perrysville Education Association
Steve Kick, Negotiation Team Member
Gayle Huffman, Negotiation Team Member
John Thompson, OEA Research
Gregg Gascon, OEA Research-Insurance Specialist

FOR THE BOARD:

Kenneth Switzer, Management Development Specialist
Pat Mowery, Treasurer
Tom Lavinder, Superintendent
Pat Coen, Retired Treasurer

PROCEDURAL BACKGROUND

This matter came before Charles W. Kohler, appointed as fact finder by the State Employment Relations Board (SERB) pursuant to Rule 4117-9-05(D) of the Ohio Administrative Code. The fact finder was appointed on May 29, 1998, by means of a letter from the SERB.

This matter involves the negotiation of a collective bargaining agreement between the Loudonville-Perrysville Education Association (hereinafter referred to as "Association") and the Loudonville-Perrysville Board of Education (hereinafter referred to as "Board"). The bargaining unit consists of 93 certificated employees, most of whom are employed as teachers. In May 1998, the parties began negotiations for a new agreement to replace a three year agreement expiring on June 30, 1998. The parties agreed to wait to begin negotiations after the May 4, 1998, election. The school district had a tax issue on the ballot, and both parties were concerned about the impact of labor negotiations on the election. Several negotiating sessions were held following the election. On June 12, 1988, impasse was declared. The parties met with mediators from the SERB on August 7, 1998, and November 5, 1998, but no agreement was reached.

The fact finder conducted hearings on February 12, 1999, and March 2, 1999, at the offices of the Ohio Education Association in Lexington, Ohio. During the first hearing on February 12, 1999, the parties agreed that mediation might be helpful in resolving some or all of the outstanding issues. Therefore, the fact finder acted as a mediator, initially meeting with both parties together and then meeting with each party in separate caucuses. The parties did not reach an agreement, and a second fact finding hearing was held on March 2, 1999. At that hearing, both parties had a full opportunity to present evidence and arguments to the fact finder. By the mutual agreement of the parties pursuant to Ohio Revised Code Section 4117.14(C)(5), the Report and Recommendations of the fact finder are to be served upon the parties no later than March 16, 1999.

STATUTORY CRITERIA

The following recommendations relative to the collective bargaining agreement of the parties were arrived at pursuant to their mutual interests and concerns. Consideration was given to the following statutory criteria as set forth in Ohio Revised Code Section 4117.14 (C)(4) and Rule 4117-9-05 (K) of the State Employment Relations Board:

1. Past collectively bargained agreements, if any, between the parties;

2. Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

4. The lawful authority of the public employer;

5. Any stipulations of the parties;

6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

FINDINGS OF FACT AND RECOMMENDATIONS

I.

All matters to be included in the collective bargaining agreement have been mutually agreed to by the parties, except for the items discussed herein. Those items mutually agreed to are hereby incorporated by reference into this report as recommendations of the fact finder.

II.

Based on the discussions with the parties during mediation and the presentations at the fact finding hearing, the fact finder believes that there is no substantial disagreement between the parties on certain issues. The differences which exist between the parties on these issues are relatively minor in nature, and the fact finder has resolved the differences based upon available information. The following recommendations are submitted to the parties:

1. Article VII, Section (C)(1):

   The current health insurance program will be continued with the addition of a mutually approved PPO option to begin on January 1, 1999. This program will include:

   Vison Program
   90%-10% co-pay, not 80%-20%
   $10.00 office co-pay, in lieu of deductibles for doctor visits
   Prescription drug card
   No UCR
   No balance billing
   Effective January 1, 1999, for those who select PPO option
   Dental

2. Article VII, Section (C)(1)(d):

   d. An employee shall have the option of not enrolling in the heath insurance plan. If the employee is eligible for single coverage, the employee will receive an annual payment of $300.00. If the employee is eligible for family coverage, the employee shall receive an annual payment of $500.00. The Board shall establish a written policy to implement the procedure for selection of this option and for the payment to the employee.

3. Article VII, Section (C)(7):

   The Board will offer a Section 125 Flexible Spending Account plan for health care reimbursement and for dependent assistance. The plan shall meet all requirements of the Internal Revenue Code. The parties will mutually agree on an outside coordinator and other specific provisions. The plan shall be implemented as soon as practicable.

4. Article VII, Section (D)(1):

   The proposal of the Association for a buy-out option with the Board paying 90% and the employee paying 10% of a two year buy out will be included in the agreement. An employee choosing this option will forfeit his/her 40 days of severance pay.

5. Article VII, Section (B) (7):

   The following changes shall be made to the Extra-Curricular Salary Schedule:

   1. Delete Odyssey of the Mind
   2. Add one Assistant Track Coach
   3. Increase pay rate to Junior High School Yearbook Advisor to:
      1st Year - 3.0
      2nd Year -3.8
      3rd Year - 4.6
   4. Increase pay rate to Homecoming Chair to:
      1st Year - 1.9
      2nd Year -3.0
      3rd Year - 4.0

III.

The parties could not reach an agreement on the following issues, and the fact finder therefore issues findings of fact and recommendations on those issues, as follows:

1. Salary

<u>Position of the Board</u>

The Board has proposed that the base salary remain at the 1997-1998 level for the current (1998-1999) school year and for the 1999-2000 school year. The Board proposes that the agreement be reopened in the summer of 2000 for salary negotiations for the 2000-2001 school year.

The Board states that its salary proposal is identical to the terms agreed to by the classified staff on December 7, 1998, in a three year collective bargaining agreement. The Board notes that it has frozen the salaries of the administrative staff until January 1, 2000. The Board argues that it does not have the financial ability to provide any increase to the base salary at this time. The current budget shows a balance of zero on June 30, 1999, which is the end of the 1999 fiscal year (FY1999).

The Board is attempting to raise additional funds by placing an income tax increase of three-fourths of one percent (3/4%) on the May 1999 ballot. If the income tax increase is approved by the voters, revenues would increase by approximately $650,000 per year. However, state law provides that collection of the income tax cannot begin until the calendar year after passage, and the tax revenues are phased in, so that the full effect of the additional income tax will not be realized until July of 2001. The Board contends that, even if the income tax issue is approved, the district will still have a deficit of $222,556 on June 30, 2000. Approval of the increase in the income tax is uncertain, as new property tax issues were rejected by voters in May and August of 1998, and an increase in the income tax was rejected in November 1998.

The Board points out that an existing emergency property tax levy will expire in December 1999, and the renewal of that levy will also be on the ballot in May 1999. This levy currently generates about $290,000 per year. In preparing the budgets for future years, state law does not allow school districts to include anticipated revenues from levies which are scheduled to expire. For the fiscal year ending June 30, 2000 (FY2000), only one-half of the amount of the emergency levy may be considered, and no revenue from the expiring levy may be included for subsequent years.

For the fiscal year ending June 30, 1999, the district expects to receive about 3.082 million dollars from the State of Ohio under the "foundation formula." The Board projects that this source of revenue will increase to 3.137 million dollars in the year ending June 30, 2000, and to 3.2 million dollars in the fiscal year ending June 30, 2001 (FY2001).

The Board contends that the amount of money available for salaries and wages is reduced by Substitute House Bill 412 (HB 412). This legislation requires the set-aside of funds for the purchase of textbooks and instructional materials, and for maintenance and capital improvements, beginning in FY1999. HB412 also requires school districts to maintain a budget reserve fund, and requires districts to submit a five year budget to the Ohio Department of Education. The set-asides require the designation of four percent of revenue for the textbook and instructional materials fund, and an additional four percent for the maintenance and capital improvements fund. The amount of the set-asides is to be phased in, beginning in FY1999, when a two percent contribution will be required. Three percent will be required in FY2000, and four percent in FY2001 and all subsequent years.

The budget reserve set-aside requires that a reserve fund be established for FY1999 of at least one percent of revenues for current expenditures, if the district's receipts grow by three percent or more. Districts are required to contribute an additional one percent of revenue each fiscal year in which receipts grow by at least three percent, until the budget reserves equals five percent of revenue. Money in the budget reserve fund may only be spent for certain specific purposes and districts must obtain permission from the State Superintendent of Public Instruction in order to spend the funds.

The Board contends that, in FY1999, all revenue available for salary and fringe benefits will be spent based on current salary schedules. Thus, there are no funds available for any increase in salary or fringe benefits. The Board recognizes that addition revenue might be available in FY2001, and has proposed the reopening of salary negotiations in the summer of 2000 for the 2000-2001 school year.

Position of the Association

The Association maintains that the Board has historically underestimated revenue and overestimated expenses. The Association contends that there is a sufficient amount of revenue to increase the base salaries of the members of the bargaining unit. The Association proposes that the Board provide an increase of one percent in the State Teachers Retirement System (STRS) pickup for the 1998-1999 school year, retroactive to August of 1998. For the next two years, the Association offers two alternate proposals. One proposal would be implemented if the income tax issue on the May 1999 ballot is approved. The other proposal would be implemented if the issue is unsuccessful.

If the issue fails, there would be an additional one percent STRS pickup plus a two percent increase in the base salary for the 1999-2000 school year. For the following school year, the Association proposes that an additional one percent be added to base salaries for each $45,000.00 in additional funding received by the district, or for each increase of $45,000.00 in the unencumbered balance.

If the issue passes, the Association proposes a three percent increase in base salary, together with a one percent increase in STRS pickup for the 1999-2000 school year. For the 2000-2001 school year, the Association proposes an increase of four percent in base salary.

According to the Association, in the year ending June 30, 1997 (FY1997), the district projected a year-end cash balance of zero, and the district ended the fiscal year with a balance of $249,038. The district also predicted a zero cash balance for the year ending June 30, 1998 (FY1998), but ended the year with a balance of $345,247.00. The Association argues that the zero balance currently projected for FY1999 is not a reliable number, based on past experience.

The Association maintains that the district significantly underestimates the amount of revenue it expects to receive from the existing one-half percent income tax. In FY1998, the income tax revenue was $456,363. For FY1999, the district projects revenue from this tax of $460,000. The projection for FY2000 is $464,600. The Association estimates that the amount of income tax revenue received will be $517, 496 in FY1999, and $546,329 in FY2000.

Overall, the Association maintains that the Board will have sufficient revenue to provide salary increases to members of the bargaining unit, even considering the effects of HB412.

Discussion and Findings

The increase in the base salary during the last collective bargaining agreement lagged behind the rate of inflation. The bargaining unit received no increase in the base salary for the 1995-1996 school year; three percent for the 1996-1997 school year; and three percent for the 1997-1998 school year. During these three periods, the percentage increase in the CPI was 2.5, 3.0, and 2.15, respectively. The fact finder observes, however, that many bargaining unit members also received step increases based on years of service and level of educational attainment, which enabled them to experience a wage increase which exceeded inflation.

The Board's opposition to an increase in the base salary is predicated upon the finances of the district. The Board does not dispute the Association's contention that an increase in the base salary is necessary in order for level of compensation to remain comparable to other similar districts. The last collective bargaining agreement contained a provision that salary negotiations could be reopened if the salary level fell below third place among 13 comparable districts. Among the same 13 districts, the current base salary places the district in sixth place. An increase in the base salary is needed in order for the district to retain its competitive position among the comparable districts.

The fact finder has carefully considered the extensive financial information submitted by both parties. Significant differences exist in the forecasts of the Board and the Association relative to the future financial position of the district. In order to forecast, certain assumptions must be made. As an example, the Board assumes a very modest increase in income tax revenue of about one percent, while the Association assumes an increase of about five percent. According to the Five Year Financial Forecast (Board Brief, Appendix G), the average annual change in total revenue has been an increase of 1.32 percent. If the 1.32 percent average is used to predict future revenue, the following comparison can be made:

	FY1999	FY2000
Revenue assuming 1.32% increase:	$7,261,000	$7,357,000
Board estimate of revenue	$7,216,141	$7,170,350
Difference	$44,859	$186,350

While this comparison is an oversimplification, its purpose is to illustrate the conservative nature of the revenue estimates of the Board. The Board is rightfully concerned about the possible loss of $290,000 in annual revenue if the property tax renewal is not approved by the voters. In FY2000, the expiration of the levy will cause a loss of approximately $145,000. However, the loss will be offset by the fact that the district will have less debt repayment after June 30,1999. In FY1999, the district must repay about $282,000 of debt. In FY2000, the debt repayment is about $51,000, and is $27,000 in FY2001.

Considering the financial picture as a whole, it is apparent that the projections of the Board for future revenue are very conservative. Conservatism in revenue estimates has some merit, in that it makes the possibility of a budget deficit less likely. However, the fact finder, in evaluating the ability of the public employer to finance salaries and benefits, cannot be either unduly conservative or overly optimistic. The Form SM-2, dated February 3, 1999, shows that the amount of year-to-date revenue from local and state sources was $136,357 more than anticipated year-to-date amount in the district's budget. On the expenditure side, the Form SM-2 shows that operating expenses (total expenditures excluding non-operating expenditures and repayment of debt) are $67,675 less than budgeted year-to-date. The amount of year-to-date revenue and expenses supports a finding that the cash balance for the current fiscal year will exceed the projection of the Board.

In this case, the evidence shows that the Board has the financial ability to provide a modest increase in the base wage for employees in the bargaining unit. The fact that a levy is expiring at the end of the calendar year, and the set-asides required by HB412 necessarily limit the amount of the increase. The fact finder will therefore recommend an increase of one percent in the base wage for the 1998-1999 school year, to be retroactive to the beginning of the school year. An additional increase of one percent will be recommended for the 1999-2000 school year. The cost of each one percent increase in the base wage is approximately $40,000. The district should have sufficient revenue to fund these increases, even considering the limitations on the use of funds and the uncertainties of future funding.

The fact finder believes that the collective bargaining agreement should provide for a wage re-opener for the 2000-2001 school year. At that time, the impact resulting from the success or failure of the various issues placed on the ballot can be better evaluated. If the issues are not approved this May, the Board will have additional opportunities to place issues before the voters prior to the reopener. In addition, by the summer of 2000, there may be a clearer picture of school funding at the state level, including the effect of the *DeRolph case*.

Recommendation

The fact finder recommends that the following language be included in Article VII, Section 1 of the collective bargaining agreement:

> 1. Effective July 1, 1998, the base salary shall be $22,823.00 which shall be applied to the index as stated in Part 3(d).
>
> 2. Effective July 1, 1999, the base salary shall be $23,051.00 which shall be applied to the index as stated in Part 3(d).
>
> 3. Prior to July 1, 2000, the parties will negotiate the salaries which will be effective as of July 1, 2000.

2. Fair Share Fee

Position of the Board

The Board is willing to accept the Association's proposal for a service fee to be paid by non-members of the Association who are in the bargaining unit. The Board asserts, however, that language should be included in the proposal to shield it from any liability incurred as a result of the deduction. The Board also takes the position that the Association should agree to a wage freeze for the first two years of the agreement, in exchange for the Fair Share Fee provision.

Position of the Association

The Association contends that non-members receive numerous benefits because of the services of the Association. These include contract negotiations, grievance processing and legal representation. Non-members should be required to pay for these services. Service fee payers are entitled to a rebate for the percentage of the fee which is spent by the Association for ideological causes or partisan political issues. The Association points out that eighty percent of those in the bargaining unit are already members of the Association. In addition, the Board has agreed to a Fair Share Fee provision in the collective bargaining agreement with the classified employees.

Discussion and Findings

The requirement that non-members can be required to pay a service fee to the collective bargaining representative is provided for in the Ohio Collective Bargaining Law [Ohio Revised Code Section 4117.09(C)]. In order to require the payment of a fee, a provision must be included in the collective bargaining agreement. Fee payers are not required to become members of the Association, and are entitled to a rebate based upon expenditures by the Association for support of partisan politics or ideological causes not germane to collective bargaining.

The fact finder agrees with the Board that language which protects the Board from liability should be included as part of a Fair Share Fee provision. However, the Board has not justified its position that the inclusion of the Fair Share Fee provision should be tied to the Association's acceptance of a two year wage freeze. Therefore, the fact finder will recommend that a Fair Share Fee provision be included in the collective bargaining agreement.

Recommendation

Article I of the collective bargaining agreement should be amended to include the May 1998 proposal of the Association, titled "Right to Fair Share Fee." In addition, the "Hold Harmless" language, included on the last page of the Board's brief to the fact finder, should also be included in the collective bargaining agreement.

Respectfully Submitted,

CHARLES W. KOHLER, FACT FINDER

Dated: March 16, 1999

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Linda S. Lindsey, Labor Relations Consultant, Ohio Education Association, 2666 Lexington Avenue, Lexington, Ohio 44904, and Tom Lavinder, Superintendent, Loudonville-Perrysville School District, 210 East Main Street, Loudonville, Ohio 44842; each by Federal Express Overnight Delivery; and upon G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid, on this 16th day of March 1999.

Charles W. Kohler, Fact Finder