

CRITERIA IN FACTFINDING ON ECONOMIC ISSUES

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I DEFINE FACTFINDING as a procedure designed to settle negotiation impasses in the public sector WITHOUT THE NEED TO RESORT TO A STRIKE OR A LOCKOUT. Consequently, this device must be more than a procedural formality; rather it must be an effective substitute for those alternatives.

WHAT IS THE THEORY OF FACTFINDING? Basically it is that the resolution of a public employee dispute is as much a political decision process as an economic decision, in contrast to the private sector where raw economic power will dominate resolution process.

If this premise is correct, then a system of dispute settlement based on the political process of using REASON AND PERSUASION ought to be, indeed must be, an effective substitute for the strike weapon. The rationale is that, if the issues in dispute and the recommendations for their resolution are clearly set forth and well reasoned, then the recommendations will be persuasive upon the public employer and the public employee organization.

In essence, SUCCESSFUL FACTFINDING DEPENDS UPON THE POWER OF PERSUASION RATHER THAN THE PERSUASION OF POWER.

That is, the factfinder, after reviewing the pertinent facts in the light of appropriate criteria, must look towards persuasion, voluntary agreement and acceptability rather than judicial adjudication as the primary means of settlement. In the ultimate, if the CRITERION OF ACCEPTABILITY is not met in the annual rounds of negotiations between public employees and

the school district or local jurisdiction as the primary basis for settlement, then the outcome will be harmful to the achievement of the public employer's goals.

Thus a process which appraises both parties of the possible and reasonable terms of settlement should make those parties more receptive to the recommended terms.

THIS IS REALLY WHAT FACTFINDING IS ALL ABOUT.

RECOMMENDATIONS

The product of the factfinding hearing is a report containing the factfinders recommendations. The factfinder will attempt to make these as understandable as possible to the public as well as the parties, given that the report will ultimately be made public if agreement is not reached. Further, given the ongoing relationship of the parties, the factfinder will attempt to be as educative as possible about the issues that were put to him at that time, seeing that these will tend to reoccur in the following years.

CRITERIA

I would like now to identify and elaborate on the CRITERIA that factfinders will use in developing recommendations on COMPENSATION issues. The individual circumstances will of course dictate the type and kind of evidence that should be presented in a given case and will also determine the weights that are to be given to the different criteria.

In relation to the Compensation issue, FACTFINDERS WILL TAKE THE FOLLOWING CRITERIA INTO ACCOUNT, and hence expect to receive evidence in relation to them.

1. Comparability
2. Labor market
3. Cost of living
4. The public interest
5. Previous bargaining history
6. Ability to pay

Let me deal with these in turn.

COMPARABILITY

This focusses largely on comparative salary data for employees performing the same work in other school districts. The compelling force underlying this criterion is the notion of EQUITY and FAIRNESS. The key question here is which group of other school districts is the appropriate one to use.

The reality is that there are good arguments to support the use of several different sets of comparison districts. Hence, rather than impose one or two such groups, factfinders will generally allow the parties to put forward the comparison group or groups that they feel are appropriate, and will possibly ask for additional information if some obvious comparison groups have not been provided. Some factfinders have been known to determine the 'best' or most 'relevant' comparison group from those provided. Others, including myself, tend to derive impressions and guidance rather than exact

or specific differences from this form of data and weigh this with the outcome of other criteria.

It goes without saying that comparability is important to both parties. The school district, for example, is keenly interested in ensuring that it is able to offer an overall salary schedule attractive to obtaining and retaining a quality personnel. From the employee perspective the equity arguments of comparison are powerful and go to the heart of the motivation and morale of the existing teacher force.

LABOR MARKET

The public employer needs to attract and retain the best qualified employees possible. The relative ease or difficulty of doing so will be an important indicator to the factfinder as to whether the employer is able to do this with the existing and proposed salary schedules. Key information here includes turnover rates among the employees involved by level of experience and qualifications.

If the employer can demonstrate that it has little if any difficulty attracting qualified applicants and that its turnover rate is relatively low at the various levels of qualifications and experience, this would constitute an important guide to the factfinder that the existing level of compensation is not out of line.

COST OF LIVING

Virtually all factfinders consider changes in the cost of living in

determining what the proper wage adjustment should be. There are strong equity arguments favoring the adjustment of salaries in line with changes in the cost of living and this notion is strongly ingrained in our system.

PUBLIC INTEREST

In this category, the factfinder looks at the general environment in which the factfinding is proceeding. This could embrace, for example, the economic environment; Kansas is currently in a period of economic difficulty and some regions of the state have been particularly hard hit. Putting it succinctly, it is difficult to justify significant pay increases in a context of rapidly declining income levels in the general community due to the farm crisis.

PREVIOUS BARGAINING HISTORY

Most factfinders will be keenly interested in the previous bargaining history. In particular they will focus on such factors as

- a) the nature of salary adjustments in the past,
- b) the history of effort on the part of the school district,
- c) reasonable demands on the part of the association,
- d) constructive and consistent attempts to solve a district's particular salary problem,
- e) budget history of the district,
- f) the nature of priorities, and
- g) the consequence of this for the teacher force.

ABILITY TO PAY

I intend to elaborate more on this criteria because of its importance in determining the factfinder's final decision. Certainly ability to pay is a complex factor, and the bold assertion of an 'inability to pay' by an employer will be inadequate in itself. Economic pressures on the school district or other public employer are bound to have a substantial impact, not only upon the content of negotiations, but also upon the attitudes and arguments of the parties involved.

From the perspective of the school district the criterion "ability to pay" means a multitude of things:

- 1) Has the community the financial position/resources to pay?
- 2) Has the community the accrued funds to enable it to pay?
- 3) Has the community the willingness to make the expenditure? and
- 4) Has the community already set the limit on its expenditure in establishing its budget and made arrangements to have the funds available in establishing its budget?

If the funds in question are built into the budget, ability to pay may not be an obstacle, although willingness to pay would still be of relevance. If the funds are not specifically provided for in the budget, they might be camouflaged somewhere in a reserve or surplus fund, or under some other

budget items. But if the employer has not budgeted the money, then the question becomes more complex. Is the community's failure to put available funds into the budget an unwillingness to pay, or an inability to pay? Is the failure to tax residents at a higher rate or reassess property so as to make more funds available an inability to pay or an unwillingness to pay? The FACTFINDER needs answers to these questions.

Anyone who has been involved in such issues recognizes that districts often argue inability to pay as a mask to cover the more realistic stance of unwillingness to pay. Despite the economic pressures on the district, it is generally true that the funds can be made available to pay for a settlement of an imminent negotiation, although the consequence may well be:

- a) depletion of needed reserves for unanticipated contingencies
- b) a failure to undertake new planned services, such as hiring more teachers
- c) the curtailment of some existing services

The factfinder will probe to determine the specific situation in relation to each impasse.

In reviewing a district's ability to pay argument, a factfinder may look at the following factors in determining the actual financial status of the district:

- 1) Budget priorities - the impact on the district budget of a recommendation in excess of a particular level should be clearly identified to the factfinder. The district should explain how the budget would need to

be realigned, that is, the impact of an award on the established priorities of the district, if adjustments of this nature would be necessary.

2) Budget limitations - the factfinder must completely understand the budgetary limitations imposed upon the district by the legislature.

3) Previous budget - the factfinder should be provided with copies of budgets from the previous year or so, as well as the current budget. These documents can establish the consistency of budgetary practices as well as outline the necessity of maintaining continuity in providing education services at reasonable costs to the taxpayers.

4) Budget component funded from the property tax - the factfinder should be provided with clear information on the impact of the past, current and anticipated property tax levy on the community to fund the school district. This should include comparisons with other school districts so that the factfinder can gauge both the tax burden as it presently exists as well as the effort that has been made by the citizens of the community. Information such as income levels in the community and the trends over time will allow the factfinder to judge the relative ability of the community to absorb any further property tax levy.

I have gone into greater detail on the ability to pay criterion, because I have found in my factfinding experience a tendency for school districts and public employers to rely on their ultimate unilateral power to impose their solution on the employees, rather than make the time and effort to document this criterion. Similarly, employee organizations often

cavalierly assert an ability to pay without clearly identifying where that funding might be and the consequences of shifting it to the salaries line in the budget.

CONCLUSION

MANY FACTORS INFLUENCE the quality of education services for our Kansas children and the quality of public services in our communities. One of the most important must surely be the QUALITY, MORALE & MOTIVATION of the employee work force.

That QUALITY, MORALE, AND MOTIVATION is clearly a function of several factors, of which the most important must be their COMPENSATION AND WORKING CONDITIONS. Hence, there is a high premium in having these determined in a manner that is

- ACCEPTABLE & AFFORDABLE
- CONDUCIVE TO QUALITY PERFORMANCE
- OBJECTIVE & UNDERSTANDABLE

FACTFINDING PLAYS A CRITICAL ROLE IN THIS PROCESS. Thus, the criteria used by the factfinder in determining his or her final recommendations are of great importance. The set that I have suggested to you provide the basis for recommendations that can be persuasive and acceptable to the parties. This is the ultimate objective of factfinding.