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Concurrent and Dissent on Fact Finder's Report – July 18, 2012

CTU Vice President Jesse Sharkey, Chicago Teachers Union appointed member

Introduction:

The fact-finding process was written into statute by SB 7, a "collaboration" which began with the threat of completely removing collective bargaining rights for teachers in Illinois.¹ The fact that everyone accepted the final bill owed to the following deal for Chicago: the district was allowed to impose a longer day and year, and the union preserved the right to strike, provided we reached 75% strike authorization.

Of course, this is the first time Chicago has negotiated a contract under the new strictures, and there has been much gnashing and crying (The union has voted too early! The fact finder must take 'fiscal reality into account! Etc!) which amounts to this: some of the champions of this new law had clearly hoped that it would simply allow them to impose their will—and do away with the tiresome business of negotiating in good faith with the people who actually make the schools work.² But reality has a nasty habit of interfering with plans—the teachers, PSRP's and clinicians of the Chicago Public Schools have rallied, voted, and otherwise proven that we will have a say in what happens to our schools.

Now we arrive at this report—a look at the issues by an experienced labor arbitrator—a neutral party—who has the power to tell us what we don't want to hear, but only if we listen.

As Benn lays out in his conclusion, "The short but difficult solution to this dispute is that the Board cannot unilaterally restructure the Union's contract and further expect employees to work 20% more for free or without fair compensation..." And Benn goes on to calculate fair compensation as 14.85% in the first year. Benn also points out that "the Board can reduce its costs by correspondingly reducing the length of the school day and year."

If that were the sum total of the issues on the table the Union could accept the report, remind the Board that in early June CEO Brizard wrote, "teachers deserve a raise and will receive one that is fair. How much that raise should be is in the hands of an independent fact finder" and move on.³ But the question of compensation—however important—does not trump our concerns about class size, a better day, and job security.

Ultimately, the fact finding process will leave these and other many unsettled issues for the bargaining table, but will serve a useful role if it helps to encourage both parties to move from their currently held positions.

¹ The original education reform legislation in Illinois, called "Performance Counts" was introduced just prior to the negotiations that produced SB7. Performance Counts would have replaced collective bargaining with a system in which the employer could impose their final offer in the event of an impasse. Unions could only strike with the employers permission.

http://www.iasaedu.org/images/stories/Performance%20Counts%20Act%20of%202010_final%281%29.pdf

² See Jonah Edelman at the Aspen Institute <http://www.youtube.com/watch?v=ddtd0vt6oYE>

³ Brizard, JC. June 5, 2012. http://www.cps.edu/News/Announcements/Pages/06_05_2012_A1.aspx

Dissent/Concurring Discussion

1. Duration.

I respectfully dissent. The Union proposed a 2-year agreement and cannot accept Fact-Finder Chairman Edwin Benn's proposed 4-year agreement, despite his recommendation that wages and benefits can be reopened in the third and fourth years.

Though Mr. Benn recommended a re-opener of health insurance and wage issues at the request of either party for the third and fourth years of the proposed agreement, he recommends that any dispute be submitted to binding arbitration, and the Union could not agree to defer these important issues to arbitration. It would prefer to negotiate its own agreed solution.

2. General wage increases.

I concur, for all salaried employees including teachers, clinicians, and PSRP's listed in Appendix A and subject to the two-year limit on duration.

3. Health Insurance.

I respectfully dissent. I cannot agree that the entire burden of increased health care costs be placed on families. Also, I cannot agree to an increase in Emergency Room co-pays without conditions. Many CPS staff use emergency rooms for after-hours medical care because of the scarcity of night and weekend urgent care facilities in Chicago, and because the demands of teaching make it difficult to schedule medical appointments during office hours. This problem must be addressed as part of the health insurance package. Finally, the Union has proposed that the parties establish a meaningful Labor-Management Cooperation Committee with authority to make agreed changes in health care providers, plan design and employee cost. Without such a committee, there is no agreed mechanism for providing the highest quality health care at the lowest possible cost.

4. Compensation for longer school day and year

I concur, for all salaried employees including teachers, clinicians, and PSRP's listed in Appendix A.

Fact-Finder Benn has rightly recognized what nearly every Chicagoan who follows this dispute recognizes:

"Breaking this dispute down to its simplest terms, the Board has exercised its authority to impose a sea change driven by the substantial lengthening of the school day and year, with the expectation that the employees will work those additional hours (approximately 20% more) for free or without fair compensation for the additional work. The employees will not do that and should not be expected to do that. (Sec. IX at 59)"

Fact-Finder Benn proposes a first year total increase 14.85%, plus maintaining existing steps and lanes. It is very significant how he calculated it.

Fact-Finder Benn recognizes that CPS is increasing work day/year by 19.4%, and he bases his calculation in part on the premise that teachers' pay should be increased proportionately. But Mr. Benn also gives CPS a credit for past raises that exceeded the cost of living for the entire 2007-12 contract. Thus, while 2007-12 contract rates increased 17% (compounded), Benn gave CPS a

credit against the next contract for all increases over cost of living—which he calculates at 10.3% for the same period. He deducts this difference (6.7%) from the 19.4%, then adds in this year’s cost of living, settling at 14.85%

So CPS cannot claim that Mr. Benn’s recommendation somehow overpays teachers because of raises teachers received in the past. CPS cannot claim that the last contract already paid teachers enough for next year’s wages, because Mr. Benn proposes 14.85% even after deducting the prior years’ increases that exceeded the cost of living. Notably, if wages in the 2007-12 contract were suppressed to be cost of living only, it would have significantly lowered Chicago teachers’ pay relative to other major cities.

In the end, Mr. Benn is saying that even if teachers only received cost of living increases from 2007 through the end of the next contract, they should still be paid 14.85% this coming year.

Note that the recommendation states that *if* CPS reduces length of work day/year, the reduction in compensation “will be proportionate.”

Fact-Finder Benn later suggests Union should compromise here due to its receipt of unexpected benefits in the 2007-12 contract that was negotiated before the onset of the current recession. He also suggests that the Union should “put aside the rage caused by the Board’s withholding the 4% increase for 2011-12.” (p. 59)

In the end, though the Union concurs with the total amount of wage increases recommended by Mr. Benn, its reasons are not the same. The Union’s position on a salary increase is based on the undeniable facts that a promised salary increase was revoked, that educators at CPS will be working much harder, must grapple with enormous changes to be imposed in curriculum and teacher evaluation, and are already working close to 60 hours per week, as documented in a 2012 University of Illinois study. Without delineating all of the factors individually and in detail, the Union nevertheless concurs that the pay recommendation in Mr. Benn’s report would settle the issue of a raise, including the 2.25% for the second year.

5. Sick leave and short-term disability leave.

I respectfully dissent. Fact-Finder Benn declines to take sufficiently into account that compensation for unused sick days has been negotiated over decades into the labor contract, in exchange for wage increases. His adoption of a use-it-or-lose-it proposal on unused sick leave is unnecessarily restrictive. The Union has proposed that employees be compensated for unused sick leave.

6. Job Security/Reassignment

I respectfully dissent.

CPS in recent years has laid off thousands of teachers for reasons that have nothing to do with teaching abilities or job performance, but rather to balance its budget or to close schools. Unlike almost any other employees with collective bargaining rights, these teachers currently have no right to be recalled to employment. They are fired – CPS’s term for it is “honorably dismissed.” If these teachers hope to find employment, they must line up like any other new applicant and are given literally no credit for their years of service.

Unfortunately, these layoffs have become a fact of life in Chicago, with almost 1,300 teachers and hundreds of PSRPs laid off in 2010, hundreds more in 2011, and we expect more than a 1,000 layoffs this year. The Board’s stated policy of school closures combined with a stated goal of

opening 60 more charter schools within 5 years ensures that layoffs will be a semi-permanent feature of life in the Chicago Public Schools for the foreseeable future.⁴ No union seeking to ensure the viability of public school teaching as a career could afford to ignore this issue.

Mr. Benn acknowledges that “perhaps the current system is in need of repair and is not functioning well,” but he declines to recommend any changes to permit recall rights to teachers.

7. and 8. Other issues

I respectfully dissent.

Mr. Benn has declined to address, and categorically rejected, any other changes to the labor contract. Regrettably, he doesn’t recognize the other “sea changes” (p.58) imposed by CPS that require modifications to the labor contract such as a new evaluation system and the Common Core standards. The new contract must address evaluations of teachers. In addition, many of the union’s proposals that concerned day-to-day workplace concerns, such as language on heat and air conditioning, language on paperwork reduction, rules on teaching assignments, and others were intended to offer some relief to educators who are struggling under the weight of constantly rising expectations.

Conclusion

There is no doubt that this report has the potential to help the Chicago Teachers Union and the Chicago Board of Education climb down from the high wire on which we are grappling. By offering his straightforward analysis of the Longer Day and compensation, Arbitrator Benn has injected some rationality into the discussion about what scale of reforms CPS is able afford in an era of fiscal restraint.

There is no doubt that CPS will complain bitterly about this award, claiming that Mr. Benn misinterpreted the law and had no right to make such a finding. But in making this complaint, CPS runs the risk of ignoring what Arbitrator Benn calls The Realities: “This is a highly charged, volatile labor dispute with profound implications as up to 25,000 teachers and other staff and employees are poised to strike putting 400,000 children out of school.”

Finally, Arbitrator Benn said that “this [fact finding] process is not a substitute for the give and take across the bargaining table.” The Union couldn’t agree more, and has every intention of working as hard as possible to negotiate a reasonable settlement to this dispute.

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⁴ http://articles.chicagotribune.com/2012-05-16/news/ct-met-cps-charter-growth-20120517_1_charter-schools-charter-movement-cps-plans