



**A Time of Reckoning:  
Crisis in the Buffalo Public School System (Abridged)  
Epilogue**

**Thompson Decides**

With the Buffalo public schools teetering on the brink of a teachers' strike, Superintendent Albert Thompson decided to accept a proposal by Phil Rumore, president of the Buffalo Teachers Federation. Under the terms of this proposal, the BTF would be allowed to pursue its legal case against the school district if efforts to raise \$90 million for retroactive pay failed. Thompson's action cleared the way for agreement on the school district's latest contract offer, which would award teachers raises of 20 percent and six percent in 1994-95 and 1995-96, respectively. For Thompson, who wanted a settlement that was "within our means," this was the best alternative in a set of poor choices. "Our position was," he says, "that without that agreement [on the court case], there would have been no [contract settlement], and I believe teachers would have struck again."

But Thompson faced a hard sell with some members of the board. These included Marlies Wesolowski, who was first informed of the possible deal with the teachers' union at 2:00 in the morning. "I was in bed asleep," she recalls. "The phone rang, and my husband answered it. [Thompson] said, 'Marlies, it looks like we might have a possible solution. Can I get your support?'" After hearing the details, Wesolowski's initial response was, she says, "Absolutely not." A few days later, the board debated the proposed settlement in what Wesolowski remembers as a "very ugly discussion behind closed doors." Members were almost evenly divided between those, like Wesolowski, who feared the consequences if the union's lawsuit were to succeed, and others, like Donald Van Every, then president of the school board, who believed the agreement was necessary for the BTF's "political purposes," but would have no ill effects on the district. The "negotiating team," he explains, "was convinced that they needed to give it to Rumore so he could sell this [contract] to his membership. ... I felt there would be no [negative] consequence at the Court of Appeals level, and that's why I acquiesced." In the end, most members followed suit, accepting the argument of Thompson and the board's attorney, Karl Kristoff, that, as Wesolowski puts it, "the likelihood of [the union] being successful was almost nil to non-existent."

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Still, the board's attorneys did take some precautions. They had penciled into the agreement additional language intended to protect the district in the event of a BTF victory in court. If the union "ultimately prevails," the agreement stated, and the district were required to implement the 1990 contract, the district's obligations under that agreement would be reduced "by an amount that is equal to two-thirds of the cost of any increase in the salary schedules that is negotiated by the Board and BTF for the 1994-95 school year." The added provision—usually called the "limitation clause" or the "two-thirds offset"—was couched in what would prove to be sufficiently ambiguous language to allow for very different interpretations of its meaning. In any event, with the addition of the safeguard provided by the limitation clause, board members for the most part put aside their reservations about the agreement. On September 14, 1990, they met to vote on two separate documents. One was the contract itself, which the board approved by a vote of 8-1. The other, called the "settlement agreement," contained Rumore's proposal, with the limitation clause added in; members passed it on a 7-2 vote. The two dissenters were John Doyle and James Comerford, the only holdovers from the "Griffin gang" era.<sup>1</sup> A few days later, Buffalo school teachers, still disgruntled over the lack of back pay provisions, unenthusiastically ratified the contract. Their disappointment was tempered, many said, only by the prospect of recourse to the courts.<sup>2</sup>

**Reaction.** When the terms of the agreement were made public, Thompson and the board of education withstood a barrage of criticism from city hall and the press. Some of this was directed at the contract itself, which the mayor and his staff considered both a misuse of scarce resources and an expense the school system could not afford; city officials predicted a shortfall of at least \$5 million of the almost \$80 million needed to pay for the salary raises. But the harshest words were reserved for the settlement agreement. It was "unconscionable," an angry Mayor Anthony Masiello declared, for the board to allow the court case to continue. "What are they trying to do," he asked, "bankrupt the city and drive everyone out?" Masiello made it clear that the city would not be the one to bond for the \$90 million for retroactive pay. "I'm not going to put that on the backs of the city's taxpayers," he warned. "There will be no money forthcoming. They're dreaming."<sup>3</sup> More distanced observers agreed that the district had taken a surprising step in permitting the lawsuit to go forward. "You don't like to leave loose ends" in a contract settlement, one attorney told the *Buffalo News*. "A loose end of this magnitude is very unusual."

Van Every defended the settlement agreement, stressing his conviction that the union's court case would prove fruitless in the end. The chances of a BTF victory in court, he told the *Buffalo News*, were "very, very, very, very, very limited." But the paper was skeptical. In an editorial published a few days after the contract terms were announced, it called the settlement agreement "a major blunder," and worried about the possibly "ruinous" effect on the district and the city if the union triumphed in court. "By keeping alive the possibility that Judge Rath's ruling could be reversed," the paper wrote, "the board is rolling very heavy dice."

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<sup>1</sup> Doyle was the lone dissenting voice on the contract vote.

<sup>2</sup> *Buffalo News*, September 18, 1994.

<sup>3</sup> *Buffalo News*, September 15, 1994, p. 7A.

*Further Proceedings.* But, the die having been cast, the contract turmoil in Buffalo’s schools subsided, at least outwardly. Talk of a strike abated, and the school year proceeded without further labor strife. As expected, the \$90 million for retroactive pay did not turn up, and the BTF renewed its legal efforts, appealing its case to the next rung up in the New York State court system, the Appellate Division of the Supreme Court. On November 15, 1995, the court issued its ruling, upholding Judge Rath’s decision. The Appellate Division’s action seemed to vindicate Thompson and the board in their decision to okay the settlement agreement. With two court defeats behind it, the union was down to its last chance—the Court of Appeals, New York’s highest court.

## **Bombshell**

On December 19, 1996, the Court of Appeals handed down its decision. In a unanimous opinion, it reversed the two lower courts’ ruling. Essentially, the appeals court justices dismissed the board’s assertion of legislative power to approve or disapprove separately the funding provisions of a contract it had already ordered “executed,” or signed. In accordance with its findings, the court ordered the district to implement the 1990 agreement and remanded the case back to the lower court for final disposition.

As word of the ruling spread across the city, stunned officials reeled at the implications of the judgment against the district. In the days immediately following the court decision, speculation on the actual cost of the disputed contract produced staggeringly high estimates, ranging from a low of \$150 million to a high of \$200 million. The question of how much would have to be paid to teachers—a question made more complicated by ambiguities in the limitation clause—as well as who would share in the paying raised complicated legal and political issues that would elude easy answers. Months would stretch into years of negotiations, as both sides sought a resolution that would satisfy one party without ruining the other.

Meanwhile, in the finger-pointing that followed news of the court ruling, blame was laid at many doors, including the appeals court itself, but Thompson and the board came in for the lion’s share of it. “The chickens of ineptitude,” wrote commentator Donn Esmonde, “came home to roost this week.” He lambasted the district’s leadership for its “major stroke of idiocy” in allowing the union to continue its lawsuit in the first place when the 1994 contract was negotiated.<sup>4</sup> In a letter to the *Buffalo News* written a month later, Van Every acknowledged what he now considered to be the truth of this criticism. “I regret the decision we made,” he wrote, “which now haunts our city.” Thompson, too, expressed regret as he looked back on his 1994 recommendation to the board. He had sought, he reiterates, to forge a deal the district could afford and avoid a strike. “[With] hindsight,” he reflects, “you can say that was a mistake. [With] hindsight, I would say it was a mistake. ... If my choice is a strike in 1994 or a completely non-understandable court decision in [1996], I would take a strike—because it would only take four or five years to get over the effects of a strike.”

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<sup>4</sup> *Buffalo News*, December 21, 1996, p. 1B.

By this time, Thompson had left the Buffalo school system. At the end of June 1996, he retired, after a 41-year career in the city's public schools. At a banquet to honor him, almost 900 people came to wish him well, including sometime adversaries like Mayor Masiello, who applauded Thompson as one who "disagreed but was never, ever disagreeable."<sup>5</sup> In a July 1 editorial, the *Buffalo News* praised his "personal demeanor, professionalism and sense of integrity," which made him a "role model for other public officials." In an interview with the *Buffalo News* shortly before his retirement, Thompson added his own assessment of his tenure. "Fiscally," he maintained, "my time was the worst time to be superintendent." In only one of his six years in office, he pointed out, was there "a reasonable increase in school aid." Otherwise, Thompson continued, "we've had one trauma after another." Looking back on his accomplishments and frustrations as superintendent, he wanted to be remembered, he told the paper, "as somebody who did the best he could."<sup>6</sup>

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<sup>5</sup> *Buffalo News*, June 7, 1996, p. 5B.

<sup>6</sup> *Buffalo News*, June 28, 1996, p. 1A.