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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BYRON AREA SCHOOLS

Byron, Michigan

-and

BYRON EDUCATION ASSOCIATION

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

On September 12, 1969, the undersigned, Leon J. Herman, was appointed by the Employment Relations Commission as its hearing officer and agent to conduct a fact finding hearing relevant to the matters in dispute between the above parties, pursuant to Section 25 of Act 176 of Public Acts of 1939 as amended, and the Commission's regulations. Accordingly, and upon due notice, hearings were scheduled and held on September 25 and 29, 1969 at Byron High School, Byron, Michigan.

Charles W. Pelham, Superintendent; C. J. Melancon, Administrative Assistant; John Sill, Board President and Leslie Parker, Board Secretary, represented the Board of Education.

Bill Parker, Michigan Education Association Representative; Max W. Carter, Chief Negotiator; Carol Chrisinski, Secretary and David L. Mitchell, President, appeared on behalf of the Association.

Byron Area Schools

This is a Class D school with 41 teachers and 1,056 students scheduled during the current year. The teachers have been working since the opening of the school year without a contract. Negotiations have proceeded to the point where all issues were resolved except the four which were presented in fact finding.

A. Binding Arbitration

The Association proposes binding arbitration as the terminal step in the grievance procedure. The Board has proposed that if a grievance remains unresolved after mediation, that resort to the courts should be the terminal step. The Board takes the position that agreement to arbitrate would take from the elective representatives of the school district the right to make the final decision.

The Board's position, of course, is based upon a wrong premise. There is no attempt to take from the board by arbitration the right to final decision. The only purpose of arbitration is to protect a teacher from an act by the Board which would be or is in contravention of the contract that the Board has executed. It takes no rights from the Board but merely insures that the Board will in its actions conform to the contract that it has already agreed by its signature to honor. This is not taking from the representatives of the district any rights that they may have; it merely confirms that their acts will be in accordance with their express agreement.

After a private discussion with the Board, it was indicated that an arbitration procedure would be acceptable. The Board

presented a proposed arbitration clause which in a number of respects is too restrictive to be viable and too limited to effectuate the purposes for which it should be designed. The teachers proposed some modifications and I have proposed others, which are incorporated in the proposed arbitration clause attached hereto.

I recommend that the attached arbitration agreement be adopted by both parties as fair and reasonable. It will aid in carrying out the intent of the contract without in any way limiting the Board in a manner which previously had been unrestricted.

B. Salary

The Board's last proposal was for a salary schedule of \$7100 to \$10,460 for Bachelors; \$7242 to \$10,669 for Bachelors plus 18 credit hours; and \$7455 to \$10,983 to those teachers holding Master's degrees; all in ten steps.

The latest Association proposal was for a Bachelor's schedule of \$7200 to \$10,608; a Bachelor plus 15 hours of \$7344 to \$10,820; a Bachelor plus 30 hours of \$7560 to \$11,138; and a Master's schedule of \$7920 to \$11,669; also in ten steps.

In connection with the Bachelor plus 18 schedule, the Board insists that a teacher must be on an approved Master's program before qualifying for that rate of salary. The Association insists that the teachers should be remunerated for any college work that improves the teacher in his field of teaching, whether or not it be on a Master's program.

The Bachelor plus 18 hour program is designed to conform to the new State ruling that to obtain a permanent certificate, a teacher

must in 1970 have 18 hours of graduate work to his credit. This does not go into effect until the 1970-71 school year. There is no point in suddenly dropping a number of teachers from the Bachelor plus 15 schedule because of a ruling which will not be in effect for another school year. I therefore recommend that the second column of the Board's proposal remain at Bachelor plus 15 hours and that in the following year it be increased to Bachelor plus 18 hours to conform to the new requirement.

The Board's insistence that the graduate hours be confined to a Master's program results from several instances in which the Board felt it was not fairly recompensed for the money it had expended in the stepped up salaries in the second column. One teacher took courses to qualify her for special education, and did actually teach special education courses in the school system for two years, but has now refused to teach those courses any longer. This has compelled the Board to seek a special education instructor. It is facing considerable difficulty in finding one who is qualified for the work. Another teacher who has majored in mathematics, and teaches mathematics in this school, has been taking courses leading to a Master's degree in guidance and counseling. He has already indicated that once he completes his studies he will leave this system and seek work elsewhere at a higher rate of pay.

In effect, by virtue of the higher salary scale for Bachelor plus 15 hours, the Board is contributing to the cost of the teacher's higher education. It is entitled to reimbursement for such higher cost by utilization of higher teaching skills. It is not to be expected that the Board should pay for courses which the teacher either will not use to the advantage of this

school system or will use to obtain a position elsewhere at a higher salary to the detriment of this school system. In fairness the Board should be protected in such cases.

I therefore recommend that the Board be required to consider, in paying the Bachelor plus 15 scale this year and the Bachelor plus 18 scale next year, only the courses that are taken by the teacher in a Master's program in his specific field of study. It is not intended by this recommendation that teachers presently on the Bachelor plus 15 schedule should be removed. Such teachers should be grandfathered so that they are not affected by this restriction. It should be limited only to teachers who have not yet obtained the Bachelor plus 15 rating. I make no recommendation on a Bachelor plus 30 schedule. Any teacher who had 30 hours should by that time have received a Master's degree. If the additional hours are not aimed toward a Master's degree, then they should not be compensated. Exception should be made for other graduate courses if taken with the superintendent's prior approval.

In connection with salaries, the Association has presented graphs to show that the Byron schools pay an average of \$272 below the State median for the Bachelor's minimum and \$420 below the State median for the minimum Master's salaries. It insists that, as shown by Form B, Byron falls below the State average in instructional salaries. Of the schools selected by the Association, Byron stands fourth in SEV per child, second in the grouping at the Bachelor's minimum, ninth at the Bachelor's maximum, second at the Master's minimum and tenth at the Master's maximum. Other statistics were presented designed to show that the Board's proposal is lower than the scale throughout the State.

The Board has presented a schedule of salary settlements in Clinton and Shiawassee Counties. It shows that of eleven schools Byron ranks third on the proposed Bachelor minimum as against schools already settled, with only Durand and Owosso \$50 and \$100 higher per year. It stands third on the proposed Bachelor maximum as against the schools already settled. On the Master's minimum, Byron again ranks third and in the maximum it ranks fourth among the same schools. From the discussions had, I am satisfied that the teachers feel that the Bachelor schedule and the Bachelor plus 15 schedule are acceptable. The Association insists that the Master's schedule should be raised. There is only one teacher on the Master's schedule at the present time. The salaries offered by the Board appear to be very much in line with and at about the average of those in the surrounding districts, both as to minimums and maximums. I recommend that the Board's proposal be accepted in the form offered, but modified by a minor adjustment in the Master's index to satisfy the Association as to the one teacher with a Master's degree.

C. Fringe Benefits

The Association asks that the Board pay full family health insurance and that employees not wishing to avail themselves of the health insurance receive \$20 per month for certain available options such as annuities. The Board has proposed a flat \$20 per month premium payment.

The Board also finds that its bookkeeping problems are compounded by the fact that the teachers presently take insurance either through MEA, Blue Cross or Washington National Insurance Company. The Board prefers that the number of insurance companies be limited, so that its bookkeeping problems will be simplified.

The trend today in the school systems is toward full family insurance and I believe the Board can, without too much cost, follow the trend. The Association estimates that the full family and the \$20 contribution would cost the Board \$11,275.80. The Board's offer would cost only \$1,675.80 less.

I recommend that the Board pay full family health insurance for all employees except those teachers who are already covered for such insurance by their spouses, and that such teachers receive a maximum of \$20 per month for any insurance they desire, provided, however, that all insurance shall be limited to such programs as are offered by Blue Cross or Michigan Education Association and by no other insurance carrier.

D. Extra Pay for Extra Duties

The Association proposes that the coaches and the band director be paid on a percentage basis, while the Board prefers a flat sum. The Association computes the difference in extra pay for extra duties would cost about \$100 more than the Board's proposal.

I find this \$100 difference somewhat misleading in view of the fact that the increase for the band leader alone would be \$184 more than the last proposal made by the Board, and the baseball coach would get \$257 more than the Board's proposal.

Some of the extra duty payments which have been in effect are on a percentage basis already, while others are on a flat rate. The Board is willing to continue the percentage rate already existing' and I recommend that it do so. Its objection to the baseball coach receiving an increase is that the whole term of coaching lasts a bare six weeks. It had offered the band director \$700 but when that was not accepted, it rescinded the offer and now insists that the amount to be paid should be last year's \$550.

I agree with the Board that the baseball coach shall receive \$350 for this coming year and I so recommend. I do not agree with the Board that an offer once made should be rescinded, although it may be a useful technical ploy in the course of negotiations. I therefore recommend that the band director receive \$700.

It must be remembered in connection with both recommendations that these extra duties are optional with the teacher. If he is not satisfied with the proposed salary schedule, he does not have to accept the extra duty.

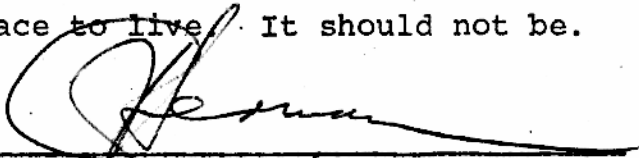
Other changes in compensation were mentioned during the course of the hearing but since they are not included in the petition filed with the Commission, they are not considered here.

It is obvious that a small change in the Master's schedule would satisfy the instructors in their salary requirements. The arbitration clause is a major factor with the Association. It has been recommended in a form that I believe is acceptable to both parties. The other matters in dispute are of such picayune proportions that it is almost incomprehensible that this agreement was not settled before a fact finder came into the picture. An obvious roadblock preventing a settlement is the presence on the Association's negotiating committee of the band director of last year. Apparently the Association will not agree to the conclusion of a contract unless he receives his own personal increase for extra duty. For another thing, the Board has asked for a two year contract with a reopening after the first year for renegotiation of salaries. The Association refuses to concede this point unless it is given something else in exchange. It seems to me that the negotiating committee does not grasp the proper function of

contract negotiations. A contract should be signed, not to satisfy in full the desires of either side, but to arrive at a viable document under which both parties can carry out their obligations without undue burden. Every concession does not require a quid pro quo. Each should concede what is fair to the other if it can do so without detriment to its own membership. Both sides have to live with this agreement. The agreement should therefore be formulated in such a manner that the needs as well as the rights of both sides are respected.

It is unconscionable that no contract has been concluded between the parties after all this time. I would recommend that the parties put their efforts into arriving at an understanding and a closing of a contract, rather than to squeezing the last drop of blood from the other side. I also urge the members of the committee to consider their personal advancement as less important than the benefit of the other 40 teachers in the school system. A contract is not made to favor one committee member, but to bring the greatest benefit to the greatest number.

I strongly recommend that the parties enter into a two year contract, with a reopening after one year for renegotiation of salaries, and that the contract be concluded without further bickering and personal prejudice. This school is a place where the teachers have to earn their livelihood. By fostering malice and resentment, by pushing their personal aggrandizement, they are making it an unpleasant place to live. It should not be.


Fact Finder

Dated: Southfield, Michigan
October 6, 1969

BYRON AREA SCHOOLS BOARD OF EDUCATION GRIEVANCE PROCEDURE
PROPOSAL
(Including Binding Arbitration as last step of Grievance Procedure)

Paragraph A: A grievance shall be an alleged violation of the expressed terms of this contract.

The following matters shall not be the basis of any grievance filed under the procedure outlined in this Article:

(a) The termination of services of or failure to re-employ any probationary teacher.

(b) The placing of a non-tenure teacher on a third year of probation.

(c) The termination of services or failure to re-employ any teacher to a position on the extra-curricular schedule.

(d) Any matter involving teacher evaluation.

Except that the Association may grieve any such act (except "C") if capricious, arbitrary or unreasonable, or if the evaluation report is unsatisfactory.

It is expressly understood that the grievance procedure shall not apply to those areas in which the Tenure Act prescribes a procedure or authorizes a remedy (discharge and/or demotion).

Paragraph B: The Association shall designate the Building Representative and an alternate per building to handle grievances when requested by the grievant. The Board hereby designates the principal of each building to act as its representative at Level One as hereinafter described and the superintendent or his designated representative to act at Level Two as hereinafter described.

Paragraph C: The term "days" as used herein shall mean days in which school is in session.

Paragraph D: Written grievances as required herein shall contain the following:

1. It shall be signed by the grievant or grievants;
2. It shall be specific in so far as possible;
3. It shall contain a synopsis of the facts giving rise to the alleged violation;
4. It shall cite the section or subsections of this contract alleged to have been violated;
5. It shall contain the date of the alleged violation to the best of grievant's knowledge;
6. It shall specify the relief requested.

Paragraph E:

Level One - A teacher believing himself wronged by an alleged violation of the express provisions of this contract shall within five (5) days after its alleged occurrence orally discuss the grievance with the building principal in an attempt to resolve same. If no resolution is obtained within three (3) days of the discussion, the teacher shall reduce the grievance to writing and proceed within five (5) days of said discussion to Level Two.

Level Two - A copy of the written grievance shall be filed with the superintendent or his designated agent as specified in Level One with the endorsement thereon of the approval or disapproval of the association. Within five (5) days of receipt of the grievance, the superintendent or his designated agent shall arrange a meeting with the grievant and/or the designated association representative at the option of the grievant to discuss the grievance. Within five (5) days of the discussion the superintendent or his designated agent shall render his decision in writing, transmitting a copy of the same to the grievant, the Association Secretary, the building principal in which the grievance arose, and place a copy of same in a permanent file in his office.

If no decision is rendered within five (5) days of the discussion, or the decision is unsatisfactory to the grievant and the association, the grievant may appeal same to the board of education by filing a written grievance along with the decision of the superintendent with the officer of the board in charge of drawing up the agenda for the board's meeting not less than five (5) days prior to the next regular board meeting scheduled at least ten (10) days after the receipt of the superintendent's answer.

Level Three - Upon proper application as specified in Level Two, the board shall allow the teacher or his association representative an opportunity to be heard at the meeting for which the grievance was scheduled. Within two (2) weeks from the hearing of the grievance, the board shall render its decision in writing. The board may hold future hearings therein, may designate one or more of its members to hold future hearings therein or otherwise investigate the grievance, provided however, that in no event except with express written consent of the association shall final determination of the grievance be made by the board more than two (2) weeks after the initial hearing.

A copy of the written decision of the board shall be forwarded to the superintendent for permanent filing, the building principal for the building in which the grievance arose, the grievant, and the secretary of the association.

Level Four: Individual teachers shall not have the right to process a grievance at Level Four.

1. If the Association is not satisfied with the disposition of the grievance at Level Three, it may, within ten (10) days after the decision of the Board, in writing, request the appointment of an arbitrator to hear the grievance. If the parties cannot agree upon an arbitrator, he shall be selected by the American Arbitration Association in accordance with its rules except each party shall have the right to peremptorily strike not more than three from the list of arbitrators.

2. Neither party may raise a new defense or ground at Level Four not previously raised or disclosed at other written levels.

3. The decision of the arbitrator shall be final and conclusive and binding upon employees, the Board and the Association; and any lawful decision of the arbitrator shall be forthwith placed into effect.

4. Powers of the arbitrator are subject to the following limitations:

a. He shall have no power to add to, subtract from, disregard, alter or modify any of the terms of this agreement.

b. He shall have no power to establish salary scales or to change any salary.

c. He shall have no power to change any practice, policy or rule of the board provided the same be reasonable and not in violation of this agreement.

d. In rendering decisions, an arbitrator shall give due regard to the responsibility of management and shall so construe the Agreement that there will be no interference with such responsibilities, except as they may be specifically conditioned by this Agreement.

e. He shall not hear any grievance previously barred from the scope of the grievance procedure.

5. No more than one grievance may be considered by the arbitrator at the same time except upon expressed written mutual consent and then only if they are of similar nature.

6. The cost of arbitration shall be borne equally by the parties except each party shall assume its own cost for representation including any expense of witnesses.

Paragraph F: Should a teacher fail to institute a grievance within the time limits specified, the grievance will not be processed. Should a teacher fail to appeal a decision within the limits specified, or leave the employ of the board, (except a claim involving a remedy directly benefitting the grievant regardless of his employment), all further proceedings on a previously instituted grievance shall be barred.

Paragraph G: The Association shall have no right to initiate a grievance involving the right of a teacher or group of teachers without his or their express approval in writing thereon, but the Association may file grievances as representative of its entire membership.

Paragraph H: All preparation, filing, presentation or consideration of grievances prior to arbitration shall be held at times other than when a teacher or a participating association representative are to be at their assigned duty stations.

Paragraph I: Where no monetary loss has been caused by the action of the Board complained of, the Board shall be under no obligation to make monetary adjustments and the arbitrator shall have no power to order one.

Paragraph J: Arbitration awards or grievance settlements will not be made retroactive beyond the date of the occurrence or nonoccurrence of the event upon which the grievance is based. In no event, however, shall the settlement be earlier than thirty (30) days prior to the date on which the grievance is filed.