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Board

Proceedings

FACT FINDING

CHASSELL TOWNSHIP SCHOOLS

AND

COPPER COUNTRY EDUCATION ASSOCIATION

MAY 27, 1977

FACT FINDER

PROF. CARMEN L. DELLIQUADRI

HOUGHTON, MICH.

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LAST NON-ECONOMICAL PROPOSALS

INTRODUCTION TO NON-ECONOMIC ISSUES

There are two classes of non-economic issues remaining to be settled by negotiation between the parties.

Class I issues are those that are closely related to the arbitration demand of the Copper Country Education Association (CCEA). It should be pointed out that previous labor contracts between the Chassell Teachers Association and the Chassell Board of Education did not provide for arbitration as a means of settling disputes of contract language.

CLASS I non-economic issues are listed as follows:

- A. Grievance Procedure
- B. Teacher Protection
- C. Miscellaneous Provisions
- D. Arbitration

Class II non-economic issues, although subject to arbitration if provided in the final contract, are not viewed by the Board to be directly affected by the inclusion of arbitration as a feature in this dispute.

CLASS II non-economic issues are listed as follows:

- A. Maternity Leave
- B. No Strike Clause
- C. Agency Shop

CLASS I-A

GRIEVANCE PROCEDURE

BOARD PROPOSAL

The Board position on the two disputed issues of the grievance procedure remains as it was in the previous contract.

The Board will not allow restricted access to the grievance procedure for probationary teacher termination or for extracurricular termination. ①

The Board is also standing by the 1975-76 collective bargaining agreement that a grievance must be filed within 10 days of the occurrence. ②

Exhibit I-A is the Board's last proposal on the grievance procedure.

ASSOCIATION PROPOSAL

The Association seeks a new feature which would allow restricted access to the grievance procedure for probationary teacher termination and for extracurricular termination.

The Association also proposes that a grievance be filed within 10 school days of the occurrence or the discovery thereof. (Emphasis added.)

RATIONALE FOR BOARD PROPOSAL - EXCLUSION OF PROBATIONARY TEACHERS

The Board maintains that a probationary period is a period of critical examination and evaluation of a new employee and that the Board has the sole responsibility to determine whether or not a new

teacher meets the Board's standards. When a recommendation is made to the Board to terminate a probationary teacher, that recommendation is thoroughly scrutinized and the final decision is made with great care. The Board maintains that no arbitrator has the right to substitute his judgment of a probationary teacher's performance during this trial period in place of the judgment of experienced administrators.

The Association would have the factfinder believe that school administrators and the Board engage in arbitrary and/or capricious action on a daily basis. This is not true. A Board is prohibited from engaging in arbitrary or capricious actions by the due process requirements of Article I, Section 17 of the Michigan State Constitution.

In addition, a probationary teacher is protected from arbitrary and capricious action by the Board by the Michigan Teacher Tenure Act. On May 6, 1975, in the case Morse v. Wozniak, (Posen School District), the United States District Court for the Eastern District of Michigan N.P., ruled that under the law a probationary teacher has the following rights:

1. A teacher was employed as a probationary teacher in the fall of 1968, and taught during the 1968-69 and 1969-70 school years. The superintendent on March 16, 1970, wrote the teacher that he had been denied tenure and that his position would cease at the end of the school year. However, the teacher at no time received a written statement, as required by the Teacher Tenure Act, concerning whether his work was satisfactory or not. Therefore, the teacher achieved tenure by reason of the board's failure to comply with Michigan statutory requirements.

2. That Michigan Tenure Act placed a dual obligation upon the board of education with respect to notice which must be provided to a probationary teacher at least 60 days before the close of each school year. Under the Act, a teacher must be provided with a definite written statement as to whether or not his work has been satisfactory, and if the teacher is not to be re-employed for the ensuing school year, the board must notify the teacher that his services will be discontinued.

3. Where a probationary teacher failed to receive the statutory 60-day notice of dismissal, but remained a probationary teacher at least for those 60 days, the Michigan Tenure Commission could not hear his claim.

4. Where the Michigan Tenure Commission dismissed the teacher's appeal because of his failure to timely file and did not address substantive issues, principles of res judicata did not bar consideration of such issues in federal district court.

5. Though the teacher's claim was basically a state claim arising under the Michigan Teacher Tenure Act, the federal district court had pendent jurisdiction where his complaint alleged that he had been fired for exercising his right to express political and social views.

6. In view of strong public policy toward protection of teacher rights as favored by the Michigan Supreme Court, the general rule that all overruling decisions are operative retroactively, as well as prospectively, would be applied to resolution of a teacher's

claim arising from dismissal.

7. Dismissed teacher's argument that he had acquired legitimate claim of entitlement to reemployment, expanded state claim of wrongful dismissal into federal civil rights claim.

As can be seen above, the State Constitution and the Teacher Tenure Act protect a probationary teacher from arbitrary and capricious action by the Board. It is the position of the Board that when the Board, in the exercise of its rights and responsibilities, is alleged to have violated the law regarding probationary teachers, the charge should be adjudicated in the proper state or federal court for a final definitive ruling on the lawfulness of the Board's actions.

CLASS I-B

PROTECTION OF TEACHERS

BOARD PROPOSAL

"No teacher shall be reprimanded or in any other way disciplined without just cause."

Add to compensation portion of the contract: "During the term of this agreement no teacher shall suffer a loss of compensation."

ASSOCIATION PROPOSAL

"No teacher shall be disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage (emphasis added) without just cause."

RATIONALE FOR BOARD POSITION

The Association expressed a desire to the Board for a clause in the collective bargaining agreement which would protect its members from being reprimanded or disciplined in an arbitrary manner. The Board recognized the Association's desire for security and wrote the above proposal which, it felt, provided the protection the Association wanted. However, the Association is demanding that the phrase "professional advantage" be included in the clause. The Board is willing to negotiate over the inclusion of the phrase "professional advantage" as long as the precise definition of "professional advantage" is negotiated and included in the clause. The Association insists on leaving "professional advantage" undefined.

The Board maintains it has the right to have its obligation

clearly spelled out in a performance contract such as this collective bargaining agreement. When disputes go to binding arbitration, it should be because there were two logical viewpoints involving the interpretation of an agreement that were not mutually explored during negotiations. Professional advantage is a "sleeper clause". In the course of negotiations it would be impossible to explore the total ramifications of this term as applied to the "profession" of teaching.

Arbitrators agree that the term "professional advantage" is unclear. In Leland Board of Education and Leland Education Association, December 26, 1974, Arbitrator James R. McCormick, in commenting on the Board's failure to reassign an extracurricular duty, said: "Neither, in my opinion, has there been a deprivation of a 'professional advantage', as that nebulous term is used in Article XIV C (discipline clause). Few cases have construed the meaning of that phrase. Whatever it means, it certainly does not apply to extracurricular reassignments."

In another viewpoint, Arbitrator Richard L. Kanner, in discussing a transfer, said in Michigan Education Association and Byron Area Schools, Case No. 54 39 0021 76: "The Association argues that the transfer of grievant to half-time as an English teacher is a '(deprivation) of professional advantage.' The thrust and intent of the above provision (discipline clause) is in connection with discipline of teachers, not transfer. The phrase 'deprived of professional advantage' is rather an amorphous concept at best. It has been definitely defined by Arbitrators usually as applying to a dismissal or discipline case. However, the subject Arbitrator is persuaded that it cannot apply to a

case, as here, where grievant was transferred to a teaching position wherein she has a teaching certificate."

In discharge and discipline cases, arbitrators have broadened the intent of the discipline clause more than Boards expected. In Yale Board of Education, 57 LA 657, Arbitrator George T. Roumel stated: "Regardless of Munroe's interpretation of whether the refusal to continue a probationary teacher is a 'discharge' or regardless of whether Article XVI, Section E (discipline clause), does not use the word 'discharge', it is quite clear that the failure to continue Miss B--- in the employment of the Yale Board of Education for a second probationary year deprived her of a 'professional advantage!'"

In Carman Education Association and the Board of Education of the Carman School District, AAA No. 5430 0818 68, Arbitrator Howard A. Cole, also commenting on the non-renewal of a probationary contract, said: "Further, it is clear to the arbitrator that she was deprived of 'professional advantage' and was the subject of 'adverse evaluation of teacher performance asserted by the Board'"

From the above cases, it is clear that arbitrators are using the term "professional advantage" as a justification for reviewing non-renewal of probationary teachers' contracts under the grievance system. For the Board to allow "professional advantage" in the discipline clause would be for the Board to concede to the Association's proposal to allow probationary teachers restricted access to the grievance procedure in termination cases. But what is even more important -- the Association's true purpose in trying to incorporate the phrase "professional advantage" into the contract, is to foist language ambiguities upon the school board in a premeditated attempt to win through arbitration that which they could not win through negotiations.

CLASS I-C

MISCELLANEOUS PROVISIONS

BOARD PROPOSAL

The Board's last position appears in Paragraph C of Exhibit I-C.

ASSOCIATION PROPOSAL

The CCEA's last proposal was to include in Paragraph C the following language:

"It is understood by the parties that the establishment of new positions in the defined bargaining unit of the district, and modifications to working conditions shall be subject to negotiation between the parties." //

RATIONALE FOR BOARD POSITION

There are no features in the previous contract between the parties that would require the Board to "negotiate modifications in working conditions".

The Board recognizes its obligation to negotiate with the Association any changes in working conditions negotiated and described in the labor contract. However, the Board maintains that those working conditions not described in the labor agreement between the parties remain within the exclusive control of the Board.

CLASS I-D

ARBITRATION

BOARD PROPOSAL

The Board has agreed to subject contract disputes to arbitration using the proposed language appearing as Exhibit I-D.

ASSOCIATION PROPOSAL

The CCEA has demanded binding arbitration be made a feature of this contract with a minimum of restriction upon the arbitrator.

RATIONALE FOR BOARD POSITION

Previous contracts with the Teachers did not provide for third party resolution of contract language disputes. The Board has agreed to provide this new feature in the contract providing the following language conditions be met in other Articles presently in dispute.

1. Termination of probationary teachers is not subject to the grievance procedure. ✓
2. Grievances must be filed within 10 days of their occurrence. ✓
3. Paragraph F of Protection of Teachers not included in the contract in the form proposed by the Association. ✓
4. The Board's proposal in Paragraph 3 of Miscellaneous be included in the contract. ✓

The Board's arguments for these conditions have been presented in the previous arguments in the issues.

CLASS II-A

MATERNITY LEAVE

BOARD PROPOSAL

The Board proposed the Maternity Leave Policy shown in Exhibit II-A and has attempted to negotiate acceptable language.

ASSOCIATION PROPOSAL

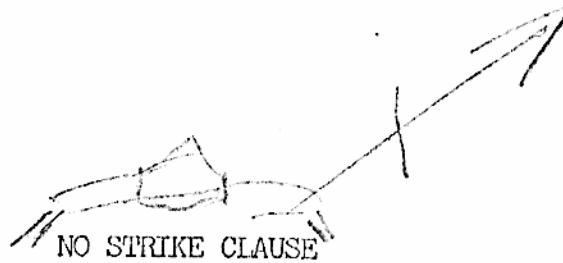
The CCEA proposed a radical change to the old Maternity Leave Policy by introducing the concept of Child Care Leave in place of Maternity Leave.

RATIONALE FOR THE BOARD 'S POSITION

The past three years have witnessed a number of court cases dealing with the issues relating to maternity leave. The Board feels it would not be acting in a responsible manner by agreeing to the radical changes proposed by the Association.

The Board's proposal preserves the features of the maternity leave contained in the previous contract.

CLASS II-B



BOARD PROPOSAL

The Board proposed this clause in its original contract proposal to the CCEA and has on many occasions in bargaining reminded the CCEA of its intent to include no strike language in the contract.

Exhibit II-B contains the proposed article dealing with this issue.

ASSOCIATION PROPOSAL

The CCEA has not noted this non-economical issue in its petition of Fact Finding.

CLASS II-C

AGENCY SHOP

The Chassell Education Association was granted agency shop in its last agreement with the Board.

The Board has refused to support agency shop for the new regional bargaining agent. The Board is aware that one Chassell teacher who refused to support the Chassell Teachers Association by paying dues was subjected to legal action by the Union. It is the Board's opinion that this had a disruptive effect on the performance of an excellent teacher and on the school system in general. The Board is not sure what support the new regional bargaining agent will receive from the Chassell teachers.

The Board of Education cannot insist that each employee sign a written statement requiring that as a condition of employment he or she not join a union or engage in union activities, so the CCEA should not be able to demand as a condition of employment that each teacher join the CCEA or pay to the union a service fee equal to the union dues. The first condition was made unlawful by the passage of labor laws, and rightfully so, because it violates a worker's right of freedom of choice. For the same reason, the Chassell Board feels that an agency shop provision should not be incorporated in this agreement. The Board feels that the new regional bargaining agent should be required to draw voluntary support from its potential members based on what it can do for each individual and each school district participating in

regional bargaining. An individual should not be threatened with termination because he or she is not persuaded that the CCEA is an organization worthy of support.

The Chassell Board is neutral as to whether an employee does or does not join the CCEA. Based on its limited experience with this provision in the last contract, it does not feel that it is in the best interest of the community and students to penalize a capable teacher for no valid educational reason by taking away a job because the teacher does not choose to affiliate with the CCEA.

GRIEVANCE PROCEDURE

A. A grievance shall be an alleged violation, misinterpretation or misapplication of the expressed terms of this contract.

It is expressly agreed that 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.

B. All preparation, filing, presentation or consideration of grievances shall be held at time other than when a teacher of Chassell District is to be at their assigned duty stations. The Chassell District shall designate one representative to assist with grievances when requested by the grievant. The Board hereby designates the Principal 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. If the particular grievance is a "class" grievance affecting teachers in more than one building, the grievance shall be processed directly at Level Two and shall be subject to the same time limitations and other requirements as set forth for the institution of grievances at Level One.

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

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;
3. It shall cite the section or subsection of this contract alleged to have been violated;
4. It shall contain the date of the alleged violation;
5. It shall specify the relief requested.

Any written grievance not in accordance with the above requirements may be rejected as improper. Such a rejection shall not extend the limitations hereinafter set forth.

E. 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, all further proceedings on the grievance shall be barred. Time limits may be extended by mutual consent.

F. The CCEA shall have the right to initiate a grievance involving the right of a teacher or group of teachers in the Chassell District providing that individual grievance shall be signed by the individual involved and group grievances are signed by all grieving teachers.

LEVEL ONE

A teacher alleging a violation of the express provisions of this agreement shall, within ten days of its alleged occurrence, orally

discuss the grievance with the building principal in an attempt to resolve same. If no resolution is obtained within five days after the oral discussion with the principal, the teacher shall within five days of such oral discussion reduce the grievance to writing and deliver it to the principal. If the written answer is unacceptable, the teacher shall, within ten days of the date on which the written grievance was submitted to the principal, file his grievance at Level Two. If no written response is made by the administration within ten days, the grievance shall be awarded to the grievant. A copy of the written decision of the principal shall be forwarded to the Superintendent of Schools for permanent filing in a file other than the personnel file.

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 District. Within ten days of receipt of the grievance, the Superintendent or his designated agent shall arrange a meeting with the grievant and/or the designated district representative, at the option of the grievant, to discuss the grievance. Within ten 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 Chassell District secretary, the building principal in which the grievance arose, and place of copy of same in a permanent file, other than the personnel file, in his office. If no written response is made by the administration within ten days, the grievance shall be awarded to the grievant. If

the decision is unsatisfactory to the grievant and the District, the grievant shall, within ten days thereafter appeal same to the Board of Education by filing the written grievance along with the decision of the Superintendent with the secretary of the Board, with a copy sent to the Superintendent of Schools. The date on which the above copy is received by the Superintendent of Schools shall be determinative in establishing the effective filing date.

LEVEL THREE

Within twenty-five days from the receipt of a grievance, the Board shall pass upon the grievance. The Board may hold a hearing thereon, may designate one or more of its members to investigate the grievance, or prescribe such procedure as it may deem appropriate for consideration of the grievance, provided, however, that in no event except with express written consent of the Chassell District, shall final determination of the grievance be made by the Board not more than twenty-five days after its submission to the Board.

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 Chassell District.

MISCELLANEOUS PROVISIONS OF THE GRIEVANCE PROCEDURE

1. Any party of interest may be represented at all meetings and hearings at any level of the grievance procedure by another teacher or another person, provided, however, that any teacher may, in no event, be represented by an officer, agent or other representative of any

organization other than the Association.

2. Nothing contained herein shall be construed to prevent any individual teacher from presenting a grievance in having the grievance adjusted without intervention of the association if the adjustment is not inconsistent with the terms of this agreement, provided that the Association has been given opportunity to be present at such adjustment.

Tentatively Agreed

Dated: _____

MISCELLANEOUS PROVISIONS

A. This agreement shall supersede any rules, regulations or practices of the Board which shall be contrary to or inconsistent with its terms. It shall likewise supersede any contrary or inconsistent terms contained in any individual teacher contracts heretofore in effect.

All future individual teacher contracts shall be made expressly subject to the terms of this agreement. The provisions of this agreement shall be the established policies and procedures of the Chassell Township Schools for the tenure of the agreement.

B. Twenty-five copies of this agreement shall be printed at the expense of the Board and presented to the Copper Country Education Association.

C. It is understood by the parties that the establishment of new positions in the defined bargaining unit of the Chassell District shall be subject to negotiation between the parties.

Tentatively Agreed

Date: _____

ARBITRATION

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 days after the decision of the Board refer the matter for arbitration to the American Arbitration Association, in writing, and request the appointment of an arbitrator to hear the grievance. If the parties cannot agree upon an arbitrator, he shall be selected in accordance with the rules of the American Arbitration Association, 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. Each party shall submit to the other party not less than three days prior to the hearing a prehearing statement alleging facts, grounds and defenses which will be proven at the hearing and hold a conference at that time in an attempt to settle the grievance.

3. The decision of the arbitrator shall be final and conclusive and binding upon employees, the Board and the Association. Subject to the right of the Board or the Association to judicial review, 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 decide any question which, under this agreement, is within the responsibility of the management to decide. 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.

(d) He shall not hear any grievance previously barred from the scope of the grievance procedure.

(e) If either party disputes the arbitrability of any grievance under the terms of this agreement, the arbitrator shall have no jurisdiction to act until the matter has been determined by a court of competent jurisdiction. In the event that a case is appealed to the arbitrator on which he has no power to rule, it shall be referred back to the parties without decision or recommendation on its merits.

(f) More than one grievance may not be considered by the arbitrator at the same time except upon expressed written mutual consent and then only if they are of similar nature.

(g) Where no wage 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.

(h) Arbitration awards or grievance settlements will not be made retroactive beyond the date of the occurrence or non-occurrence of

the event upon which the grievance is based. In no event, however, shall the settlement be earlier than thirty days prior to the date on which the grievance is filed.

The fees and expenses of the arbitrator shall be shared at the rate of fifty percent (²⁵50%) for the Association and fifty percent (²⁵50%) for the Board. ↓ ↓

Tentatively Agreed

Date: _____

MATERNITY LEAVE

A Maternity Leave for a maximum of one year for teachers shall be granted without pay. A teacher may continue teaching prior to delivery as long as her doctor certifies that she is capable of performing her teaching responsibilities. Prior to the commencement of the leave, a teacher may either elect to return as soon following termination of pregnancy as her doctor certifies she is physically capable of performing her teaching responsibilities, or at the beginning of a subsequent semester, not to exceed the one year duration. Although the Board would endeavor to re-employ her at mid year, if requested, it would not be required to do so except at the beginning of the fall semester, provided that there is a position open for which she is certified. Upon re-employment, an effort would be made to return the teacher to a similar position and be placed at the same step on the salary schedule as she was when maternity leave commenced. During a maternity leave, the teacher shall be given the opportunity of paying her own hospital insurance at a group rate through the school business office, provided approval is given by the carrier of the insurance program.

ARTICLE XV
NO STRIKE CLAUSESection 1

The Chassell District agrees that it or the employees shall not authorize, sanction, condone, engage in or acquiesce in any strike as defined in Michigan Public Act 336, as amended. Strike shall also be defined to include slowdowns, stoppages, sit-ins, picketing, boycotts, work stoppage of any kind, the concerted failure to report for duty, the willful absence from one's position, the stoppage of work or abstinence in whole or in part from the full, faithful and proper performance of one's assigned duties, or the improper influencing or coercing of a change in the conditions, compensation, or the rights, privileges or obligations of employment; and any other connected or concerted activities having the effect of interrupting work or interference of any kind whatsoever with the operation of any of the facilities of the District.

Section 2

Any violation of this Article shall mean that Chassell District and/or employees involved may be held liable for any and all damages, injuries, or expenses incurred or suffered by the District. Further, any employees involved may be subject to disciplinary action without recourse to the grievance procedure.

Section 3

No employee shall willfully absent himself from his position, abstain from the faithful performance of his duties, interfere with the rights and the privileges or obligations of employment nor resort

to a strike, tie-up or slowdown as set forth in this Article above.

Section 4

The Chassell Board of Education shall have the right to take whatever disciplinary action it may deem necessary toward any employees for taking part in any violation of this Article with no recourse to the grievance procedure.

Section 5

The Chassell District agrees that it will neither take nor threaten to take any reprisals, directly or indirectly, against any supervisory or administrative personnel or board members of the District regarding the administration of this contract or any grievance filed thereunder.

Section 6

Violation of this Article by any employee or group of employees will constitute cause for the imposition of discipline or other penalties deemed appropriate by the Board. The Board of Education, in the event of violation of this Article, will have the right in addition to the foregoing and any other remedies available at law to demand injunctive relief and damages against the Chassell District. Further, any employees involved may be subject to disciplinary action without recourse to the grievance procedure.