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Michigan State University  
LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

REPORT  
and  
RECOMMENDATIONS

For the Public Employer

Charles Samuel Robinson

James Scheu  
Executive Director  
Ann Arbor Education Association  
Leonard Solomon  
Chelsea Education Association  
Patrick Wade  
Chelsea Education Association  
Mary K. Weber  
Chelsea Education Association  
Don Young  
Chelsea Education Association

## INTRODUCTION

William Gould

Subsequent to the close of hearings on October 10, the Fact-Finder was advised that the schools were not operating and that teachers were refusing to perform services because of the unresolved issues referred to above. On October 16, 1969, I therefore issued an interim Report and Recommendations which read in pertinent part as follows:

1. The Board of Education should, upon request, state the reasons for failure to renew the contract of a probationary teacher. Upon request, the Board should provide a full hearing for the dismissed teacher, providing the teacher with the opportunity to present evidences and witnesses, and to cross-examine Board witnesses. I reject all other Association proposals inconsistent with this.
2. The duration of the Agreement on non-economic issues should be two years.
3. The parties should agree to accept the Association proposals on academic freedom.
4. I recommend that there be no contractual provision dealing with reduction in personnel.
5. Since the Board's September 16 Answer to the Petition for fact-finding states that "tentative agreement" was reached on all other issues, I recommend that the tentative agreement be adopted by the parties.

In accordance with my letter of October 16, it is therefore the purpose of this Report and Recommendations to deal with the four areas of unresolved issues.

#### 1. PROBATIONARY TEACHERS AND ARBITRATION

I cannot recommend, as the Association requests, that probationary teachers be permitted to utilize grievance-arbitration machinery to determine whether their dismissals or the refusal to renew a contract is improper. While I am advised that there are instances where boards of education have entered into collective bargaining agreements providing for arbitration in the case of probationary teachers, I do not believe that the evidence before me reflects a considerable amount of acceptance of such a proposal. More important, however, my rationale is the fact that probationary employees are generally not provided the same protection through arbitration as is the case with permanent employees. Usually the employer in private industry is not saddled with the complications of having to justify the refusal to retain an untried, inexperienced probationary worker.

The principal problem in public education is that the probationary period constitutes a much longer period of time than in private industry. Further, in this particular community, there appears to be a good deal of dispute and confusion regarding several refusals to renew contracts by the District.

In my October 16 letter, I recommended that the Board provide a dismissed probationary teacher with a full hearing before the Board and disclose the reasons behind the refusal to renew the contract. This seems perfectly reasonable inasmuch as the Board's refusal to renew the contract of a probationary teacher is the subject of judicial review as a governmental act in any event. See Caddell v. Ecorse Board of Education, 17 Mich. App. 632 (1969). Since the District is called upon to explain its actions in a judicial proceeding, I see no serious burden in requiring it to do so in a hearing conducted by itself prior to the expense of a law suit. I recommend that the District provide such a hearing in the case of a probationary teacher whose contract is not being renewed.

As the same time, I recommend that the parties adopt a grievance-arbitration machinery in the case of disputes concerning the express terms of the Agreement including dismissals of tenured teachers. Where the Tenure Act prescribes a procedure, the grievant who utilizes that procedure may not use the arbitration procedure established in the collective bargaining agreement. As the District has suggested, I believe that the grievance should be signed by the grievant or grievants, it should be specific, and contain a synopsis of facts as well as citing the specific provisions of the contract which are alleged to have been violated. Moreover, I believe that, wherever possible, the date of the alleged violation should be set forth.

It hardly needs to be pointed out that, in the absence of some type of binding arbitration, the District would be the final arbiter of any dispute involving the manner in which the Agreement should be construed. Requiring the parties to go into court every time there is a dispute would seem to me to be a time consuming, costly and inconvenient manner of resolving disputes peaceably. I am of the view that the parties ought to incorporate an arbitration clause in their contract which, of course, would not apply to disputes involving probationary teachers as well as a refusal to renew the contracts of such probationary teachers.

## 2. ACADEMIC FREEDOM

The Association has proposed the following:

Freedom of individual expression will be encouraged and fair procedures will be developed to safeguard the legitimate interests of the schools and to exhibit by appropriate examples the basic objectives of a democratic society.

This proposal, along with the Association's assertion that the teacher's personal life ought not concern the District unless it interferes with the teacher's professional discharge of his professional responsibilities, seems perfectly proper and I recommend both. However, it should be pointed out that the Board's proposal also avoids undue interference with the teacher's personal life. There is practically no difference between the parties' respective positions and it is therefore my belief that they will adhere to these recommendations with no difficulty.

## 3. DURATION OF AGREEMENT ON NON-ECONOMIC ISSUES

Because the parties have been confronted with an inordinate number of non-economic issues about which to bargain during the past few years, I am convinced that a two-year contract on non-economic items as a "breather" is not burdensome for the Association. The Association will, under my Recommendation, be permitted to reopen on salary matters during the coming year. But it should have no great need to revise the Agreement. Most differences that arise under it insofar as tenured teachers are concerned would be submitted to arbitration.

Perhaps, at the end of the two-year period, the parties will permit their relationship to become a more mature one, thus laying the groundwork for future collective bargaining. I therefore recommend that the parties enter into an Agreement which is of two years duration on non-economic items.

## 4. REDUCTION IN PERSONNEL

The Association has proposed the following clause:

Should substantial and unforeseen changes in student population or other conditions make necessary a general reduction in the number of teachers employed by the Board, the Board will retain, as nearly as possible, those teachers with permanent teaching certificates having the longest service in the district. The Board will further use their best efforts to assist all teachers terminated for lack of duty to secure employment in adjacent school districts upon terms and conditions as

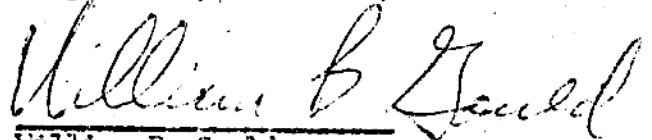
nearly comparable as possible. Nothing herein shall relieve the Board from fulfilling the terms of the contract with the teacher.

Other proposals were put forward by the Association providing, in part, for seniority as an "orderly and logical means of staff reduction".

The parties have not included a provision on reduction in personnel in their contract in the past, and, in my judgment, there is not sufficient evidence in the record to warrant a change at this time. I therefore recommend that the Association's proposals on this matter be rejected.

As indicated in my October 16 letter, all issues on which "tentative agreement" have been reached should be resolved in the manner in which the "tentative agreement" prescribed.

Respectfully submitted,

A handwritten signature in cursive script, reading "William B. Gould". The signature is written in dark ink and is positioned above the printed name and title.

William B. Gould

Professor of Law

Wayne State University Law School.

Detroit, Michigan  
October 28, 1969

STATE OF MICHIGAN)  
                          ) SS.:  
COUNTY OF WAYNE )

On the 28th day of October, 1969, before me personally came and appeared  
WILLIAM B. GOULD, to be known and known to be the individual described in and  
who executed the foregoing instrument and he acknowledged to me that he  
executed the same.

Richard J. Donah  
Notary Public  
RICHARD J. DONAH  
Notary Public, Wayne County, Mich.  
My Commission Expires May 17, 1970