STATE OF MICHIGAN

Before Richard I. Bloch, Esq., Fact Finder Appointed
by the Michigan Employment Relations Commission

In the Matter of the Petition of

OSCODA EDUCATION ASSOCIATION
affiliated with the NATIONAL
EDUCATION ASSOCIATION

Involving Employees of

BOARD OF EDUCATION, OSCODA AREA
SCHOOLS, OSCODA, MICHIGAN

Oscoda Area Schools Board of Education

PRELIMINARY STATEMENT

This fact finding proceeding arises out of an impasse in negotiations between the Oscoda Education Association, herein referred to as the Association, and the Board of Education of the Oscoda Township School District, herein called the Board of Education. The Association is the sole bargaining representative for the teachers in the district, numbering approximately 200.

The parties having failed to agree on major issues, the Association filed a petition for fact finding on August 5, 1970. On August 19, 1970, the Employment Relations Commission, finding that the conditions precedent to fact finding existed and that fact finding should be initiated, appointed the undersigned Fact Finder to proceed with the hearing pursuant to Section 25 of the Labor Mediation Act (Mich. Stat. Ann. 17.454 (27); Mich. Comp. Law 423.25 and Part 3 of the Board's General Rules and Regulations.

A public hearing was held by the Fact Finder on August 28 and August 29 at the Oscoda Area High School in Oscoda, Michigan. The Association was represented by Mr. Harry Bishop, Mr. Duane D. Hayes, Mr. Donald J. Holmes, Mr. Paul E. Renner, and Mrs. Lois J. Roach. The Board of Education appeared by its representatives, Mr. Merle W. Grover and Mr. Robert Hodges. Also rep-

resenting the Board were Mr. Peter Hervey and Mr. Harold Sabin. At the hearing, each party submitted written briefs and exhibits, and gave testimony regarding the issues. The Fact Finder has carefully considered the testimony put into evidence as well as the many exhibits and on the basis of these, has prepared the following findings of fact and recommendations for solution of the disputes.

FINDINGS OF FACT

Issues in Dispute

1. The following Association demands were presented and contested at the hearing;

   a. That class size be lowered in accordance with maximums recommended in the "Oscoda Education Proposal, 1970," listed as Association Exhibit No. 2. It was further suggested by the Association that teachers who are assigned classes exceeding the maximum standards should receive additional compensation at the rate of $400 per pupil annually for each pupil in excess of the stated maximum.

   b. That a leave of absence up to two years shall be granted to any teacher, upon application, for the purpose of participating in exchange teaching programs in other school districts, states, territories, or countries; foreign or military teaching programs; the Peace Corps, Teachers Corps, or Job Corps, as a full-time participant in such programs; or a cultural travel or work program related to his professional responsibilities; provided said teacher states his intentions to return to the school system. This demand would have also granted a leave of absence, upon application, to any teacher leaving for studies at college or for a military leave of absence.

c. That a "personal leave" of two days length be granted any teacher upon notification to a representative of the school administration. Article XXII of the 1968-70 Master Contract provides for just such personal leave, but the issue arises both as to the necessity of "requesting" (as opposed to "notifying") as well as to the definition of a "personal business day."

d. That the allotted sick leave days be increased from 12 to 15 per teacher, and that these days accumulate without limitation. However, the Association requests that no sick days be charged a teacher when the absence is due to mumps, scarlet fever, measles, or chicken pox. Further, the Association requests that unlimited sick days be allotted a teacher in the case of sickness within the immediate family. The Association also requests that absence due to injury or illness "incurred in the course of the teacher's employment shall not be charged against the teacher's sick leave days, provided that the Board shall pay to such teacher the difference between his salary and benefits received under the Michigan Workman's Compensation Act for the duration of such absence." The Association also requests that the contribution of each teacher to the Sick Leave Bank be three days from the sick leave allowance instead of one as previously provided for. Finally, the Association demands the right to have full control of the administration of the central Sick Leave Bank,

e. That the Board provide an increased insurance package having the following features:

1. $10,000 term life insurance policy.

2. Prepaid dental care.

3. An option for each teacher to choose other than the existent Blue Cross-Blue Shield Medical Coverage.

f. That extra-curricular coaching activities receive pay increments

as determined by a Percentage Schedule appended to Association Exhibit No. 2.

g. That non-athletic extra-curricular activities be similarly compensated at a percentage increment as determined by the Schedule appended to Association Exhibit No. 2.

h. That the base salary for a teacher at the B.A. level be $8,100; at the M.A. level, $8,500; and at the Educational Specialist level, $8,900.

2. The following Board demands were presented and contested before the Fact Finder:[1]

a. That Article III of the 1968-70 Master Contract, "Rights of the Board," be superseded by a clause contained in Joint Exhibit No. 3, "Proposed Administrative Agreements." The Board maintains that the new clause is necessary to establish a residual rights concept, thereby insuring the sanctity of the contract.

b. That a "No-Strike" clause be appended to the new collective bargaining agreement.

c. That Article XIX, "Maintenance of Standards," be denied inclusion in the new agreement.

d. That Article XIV of the 1968-70 Master Contract be changed to clearly provide that probationary teachers not have access to the grievance procedure over questions relating to their dismissal.

e. That the Grievance Procedure within the school system be closed to any teacher who might seek an adequate remedy before another forum, such as an administrative agency or a court or law.

f. That the Grievance Procedure be modified so as to eliminate the

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[1] It is, of course, to be assumed that the Board was in disagreement with the Association demands presented. The following is a list of additional points brought up by the Board which apparently contributed to the impasse.

appeal to the Board of Education as one of the steps in the grievance process.

g. That Article XXI of the 1968-70 Master Contract, Paragraph G, be altered so as to insure the fact that an arbitrator will interpret, and not construct, the collective bargaining agreement.

h. That Article IV of the 1968-70 Master Contract be amended so as to clarify the Board's desire that their be no duty to compensate employees for time spent at arbitration hearings.

General Background Facts and Recommendations

Class Size

Facts: Oscoda Area Schools are overcrowded. Thus, this school system is plagued with the same affliction as all too many of today's school systems. Testimony by both parties indicates that even with the addition of relocatable classrooms, there is evidence of overcrowding on all levels of the system. Article VIII of the 1968-70 Master Contract provides recommended maximums in the various school classes. For example, at the secondary school level, English, Social Studies, General Education, Mathematics, Language, and Business Classes all have a recommended maximum of thirty pupils. In that agreement, the parties further attempted to remedy overcrowding problems by providing for the attempt to obtain additional professional staff or available classroom space to alleviate the overburdened teacher. Moreover, if such alternatives are unavailable, the agreement provides that, "one teacher's aide will be employed for use" among a group of teachers. Testimony was introduced by the Association to the effect that the teacher aides were, in general, unavailable and that the overcrowding situation was not being reduced as had been hoped. In its Proposal for 1970, the Association makes two changes regarding Teaching Conditions. First, it recommends lowering the classroom maximums. For example, using the same classes as mentioned above, the recommended

maximum class size per teacher would be 18 pupils. In general, the Association recommends a class size reduction amounting to approximately 40%. In addition, the Association demands that, "teachers who are assigned classes which exceed the maximum standards shall receive additional compensation at the rate of $400 per pupil annually for each pupil in excess of the...stated maximum."

That classes are overcrowded is undisputed. Yet, this is surely an example of a problem which cannot be contracted out of existence. Specifying reduced class maximum sizes does not satisfy the necessity of placing all of the students in some classroom. Additional class space in the community is needed, but Association suggestions which touch on such matters as thirty-year bonds and half-day sessions are at this time untenable.

Moreover, the recommendation of a $400 per student "penalty" does not remedy the problem. Imposition of such a tariff on the Board would, of course, work directly against the desired goal of having more money to spend on classrooms. Furthermore, it is not entirely clear that a teacher who received $400 per extra pupil would be motivated to teach a smaller class.

Decision:

A. That there be no contractually mandated change in class size. Thus, Article VII of the 1968-70 Master Contract, "Teaching Conditions," shall remain unchanged, with one exception. In its proposed Administrative Agreement, the Board suggests a change in the maximum class size for science classes. At Page 13 of that document, the Board provides a maximum of 30 pupils in non-laboratory classes and 24 pupils in laboratory classes. Insofar as this recommendation is in accord with the expressed desire of the Association to lower class sizes, the change is recommended.

B. That no additional compensation be granted teachers whose class size exceeds the recommended maximum.

Unpaid Leaves of Absence

Facts: No clear policy exists in the 1968-70 Master Contract in regards to this issue. Testimony by the teachers indicates that no firm policy was established by the Board in its consideration of such leaves in the past contract term. The Association here requests, in effect, that unpaid leaves of absence be available simply upon request.

It is the general rule that, except as restricted by the collective bargaining agreement, granting or denying leaves of absence is a managerial prerogative. Normally, the judgment of management will not be disturbed (for example, in an arbitration hearing) so long as the action taken is not unreasonable or discriminatory. Here, no testimony has been presented to the effect that the Board has arbitrarily or unfairly denied or granted any leaves of absence, and absent such a showing or some showing of strong custom or procedure in this area, this prerogative will not be denied.

Decision: That there be no change in the present policy regarding unpaid leaves of absence. The Oscoda Board of Education shall retain full discretionary powers insofar as the granting of such leaves is concerned.

Personal Leave

Facts: Two issues arise here. The first concerns use of the word, "notification," and whether a teacher need apply for use of the personal leave as opposed to merely notifying a proper authority. The second issue concerns interpretation of the term, "Personal Business Day." An understanding of the latter terminology will help dispose of the former issue. A personal business day shall not be interpreted to mean a vacation day, nor should it be conceived as allowing an employee to attend meetings or conferences of a professional nature. Here, it should be pointed out that such 'professional' days are provided for in the 1968-70 Master Contract (and assumedly agreed upon for inclusion in the new contract) in various sections such as Article IV, stating that executives and committee members, "shall be released for the purpose of

attending association meetings [not to exceed two school days per year] at no loss in pay." This is in addition to the two regularly scheduled Michigan Education Association Regional Conference days. Moreover, in Article XVI of the old agreement, the Board agrees to provide upon application, when approved by the Administration, funds necessary for teachers desiring to attend "select professional conferences" and meetings. Such funds include coverage of travel, meals, lodging, and registration fees. Thus, the term, "personal business day" bears a most restrictive connotation. Such a day exists for occurrences of such high personal relevance and of so immediate and urgent a nature as to stand neither rescheduling nor omission. If the employee studiously adheres to this restrictive definition of personal business, then notification of the impending date so as to expedite administrative changes to cover the absence should be all that is required. This is not to say that a teacher need not report the nature of the business, if requested. On the other hand, accommodation on the part of the administration should not be unreasonably withheld.

Sick Leave and Sick Leave Bank

Facts: In its presentation, the Association requests:

1. That the allotted sick leave days be increased from 12 to 15.
2. That the unused portion of such allowance shall accumulate from year to year without limitation.
3. That a teacher absent from work because of mumps, scarlet fever, measles, or chicken pox shall suffer no diminution of compensation and shall not be charged with loss of personal sick leave.
4. That absence due to illness within the teacher's immediate family will give rise to unlimited sick days instead of the one day provided for in the 1968-70 Master Contract.
5. That "absence due to injury or illness incurred in the course of the teacher's employment shall not be charged against the teacher's

sick leave days, provided that the Board shall pay to such teacher the difference between his salary and benefits received under the Michigan Workman's Compensation Act for the duration of such absence."

6. That the contributions on the part of each teacher to the bank of sick leave days (provided for teachers who have exhausted their accumulative personal sick leave allowances) be increased to three days from the present provision of one.

7. That the administration of the Sick Leave Bank be delegated to the Association, as opposed to the present committee, composed equally of administrators and teachers.

At present, teachers accrue sick leave at the rate of 12 days per school year, or 1.25 days per month. The 1968-70 agreement provides that these days may be accumulated to a limit of 120. No testimony was presented at the hearing of such nature as to convince the Fact Finder that the present amount of stipulated sick days was insufficient. It was not evident that teachers had exceeded their allotment, whether the source of the days be from the individual grants or the Sick Leave Bank. Nor was there testimony which would show, for example, that a gap existed between the sick leave days provided for in the contract and the coverage by the existent group insurance plan. Thus, there appears no compelling need to expand the boundaries of the sick leave provision and the first three requests of the Association should be denied. With regard to illness in the immediate family, the present contract does provide some degree of flexibility. Article X, Part C states that sick leave may be used, "when a member of a teacher's immediate family is afflicted and requires care and attendance by the teacher, until such time as should be required to provide other care for the sick or injured person." The contract provides that, "[I]f this should amount to more than one day, permission for use of another day shall be requested from the superintendent or the assistant superintendent of schools." There has been no showing that such permission has been requested and unreasonably

denied, and under the circumstances, it is reasonable that there should be some dialogue maintained between teacher and administration in cases falling under this provision. Part 5 of the Association's requests relates to Article X, Paragraph D of the 1968-70 Master Contract. That clause reads:

> Injuries incurred on the job are covered under Workman's Compensation. This includes medical bills and compensation for time lost on the job, as well as death benefits. Upon completion of the accident report form, and after the employee has been out of work seven (7) consecutive days, compensation is paid. The employee shall report the amount of his compensation check to the Board of Education. He will then receive the difference between his regular pay and the compensation check, until his accumulative sick leave time is used...Thereafter he will receive only compensation pay.

The Association's request would change the above paragraph to provide that absence due to injury or illness incurred in the course of the teacher's employment, "shall not be charged against the teacher's sick leave days, provided that the Board shall pay to such teacher the difference between his salary and benefits received under the Michigan Workman's Compensation Act for the duration of such absence." Again, it was not made evident at the hearings that the prior provision was in any way deficient in covering lost time and salary. Thus, there appears no immediate need to alter the provision in question. As concerns the Sick Leave Bank, since it is recommended that there be no increase in the sick leave day allotment, it is also recommended that there be no increase in the Sick Leave Bank.

The language of Article XI, "Sick Leave Bank," indicates that the parties are well aware of the possibilities of abuse in the Sick Leave area, and the provision for a committee composed of both administrators and teachers to administer the Bank seems both reasonable and beneficial to all parties concerned. Particularly in the case where a question of abuse might arise, necessitating disciplinary action, the concept of a mixed panel should not

appear totally unattractive to the Association.

Decision: That there shall be no change in the conditions expressed in Article X, "Sick Leave," and Article XI, "Sick Leave Bank," of the 1968-70 Master Agreement.

No-Strike Clause

Facts: In Article XV of its "Proposed Administrative Agreement," the Board suggest the following clause:

> The Association and the Board recognizes that strikes and other forms of work stoppages by teachers are contrary to law and public policy. The Association and the Board subscribe to the principle that differences shall be resolved by peaceful and appropriate means without interruption of the school program. The Association therefore agrees that its officers, representatives, and members shall not authorize, instigate, cause, aid, encourage, ratify or condone, nor shall any teacher take part in any strike, slowdown, or stoppage of work, boycott, picketing, or other interruption of activities in the school system. Failure or refusal on the part of any teacher to comply with a provision of this Article shall be cause for whatever disciplinary action is deemed necessary by the Board.

This clause raises several interesting issues, particularly since strikes by public employees are unlawful in the State of Michigan. In spite of the fact that picketing (one of the prohibitions in the proposed clause) has traditionally been recognized as an indice of free speech under the First Amendment, there is, of course, no reason why this right could not be contracted away through agreement of the parties. Indeed, a no-strike, no-interruption clause in return for a binding arbitration provision may well be the direction in which public employee unionism is headed. Moreover, such a clause could conceivably add to the remedies to which the Board might look in the case of a strike. That is, insofar as there is as yet no unfettered right to obtain an injunction against a striking school teacher group in

Michigan it is conceivable that a clause such as suggested by the Board might give rise to just such an equitable remedy.

However, as pointed out by the Association, Article XVII of the 1968-70 Agreement, "Continuity of Operations," expresses the desire of both parties to obtain "continuous and uninterrupted operation" of the school program and to avoid disputes "which threaten to interfere with such operations". Moreover, in that same article, the parties recognized the existence of a "comprehensive grievance procedure," including binding arbitration, and the Association agrees that, "it will not, during the period of this Agreement, directly or indirectly, engage in or assist in any strike, as defined by Section 1 of the Public Employment Relations Act." The provision suggested, by the Board, does not significantly expand the "Continuity of Operations" Clause. It is unclear whether the proposed clause would provide any remedies to the Board, which it does not already possess, and it should be noted, of course, that the clause is one of the items which led to the impasse. There appears to be no compelling reason to append this clause to the new contract.

Decision: That Article XVII, "Continuity of Operations," remain unchanged in new collective bargaining agreements. Therefore, no further no-strike clause shall be appended to the contract.

Maintenance of Standards Clause

Facts: The 1968-70 Master Agreement contains the following clause:

> Maintenance of Standards: All conditions of employment, including teaching hours, extra compensation for duties outside regular teaching hours, relief periods, leaves, and general teaching conditions, shall be maintained at no less than the highest minimum standards in effect in the district at the time this Agreement is signed, provided that such conditions shall be improved for the benefit of teachers as required by the express provisions of this Agreement. This Agreement shall not be interpreted or applied to deprived teachers of basic contract advantages heretofor enjoyed This does not imply that cut-backs in various areas in

case of lack of funds cannot be introduced by the Board of Education.

Before indulging in an analysis of this question, it should be noted that examination of this clause is more properly considered when taken in conjunction with Article III of the "Proposed Administrative Agreement," entitled, "Rights of the Board," That provision is as follows:

> A. Subject to provisions of this Agreement, the Board, on its own behalf and on the behalf of the electors of the district, reserves unto itself full rights, authority and discretion in the discharge of their duties and responsibilities to control, supervise and manage the Oscoda Area Schools, and its professional staff under the laws and the constitutions of the State of Michigan and the United States.
>
> B. The exercise of the foregoing rights, authority and discretion, shall be limited only by the terms of this Agreement and then only to the extent such terms hereof are in conformance with the Constitution and Laws of the State of Michigan and the Constitution and Laws of the United States.
>
> C. The parties agree that this contract incorporates their full and complete understanding and that any prior oral agreements or practices are superseded by the terms of this agreement. The parties further agree that no such oral understandings or practices will be recognized in the future unless committed to writing and signed by the parties as supplement to this Agreement.

The former clause sometimes known as a Protection of Conditions or Highest Minimum Standards Clause is not unusual in a labor agreement. However, from many aspects, it may be viewed as an objectionable clause, particularly where, as here, it has created an impasse at the bargaining stage. It is a broad and sweeping provision, and the disagreement it causes in the initial negotiations is perhaps but a harbinger of what to expect in the future relationship of the parties. It is objectionable insofar as the Assocation may well be interested in preserving beneficial working conditions for employees, just as is the Board. There is some merit, however, to dis-

cussing in detail those conditions of employment which the parties might wish to preserve. The Fact Finder does not consider it his job to write the contracts for the parties, but insofar as this rather ambiguous clause has apparently led to a total impasse situation, it is recommended that is be stricken from the contract.

In considering the above recommendation, though, it is the opinion of the Fact Finder that to implement both the Board's proposed "Article III" and remove the "Maintenance of Standards," clause would be tipping the scales too far. Paragraph C of Article III, it might be argued, would remove from the consideration of an arbitrator all indications of custom and past practice. Of course, arbitral consideration of customary practices may be eliminated if the contract language is strong enough. However, in the hope of providing a reasonable settlement, the Fact Finder does not deem it equitable to both remove the "Maintenance of Standards" clause and eliminate all vestiges of custom and past practice insofar as the ability of those two factors to influence the decision of a later arbiter is concerned.

Decision: That Article XIX, "Maintenance of Standards" shall be stricken from the new agreement. (Article XIX refers to the appellation of the 1968-70 Master Contract.)

That Article III of the 1968-70 Master Contract, "Rights of the Board," shall remain unchanged. Specifically, the Board's suggested replacement for this article (P. 5 of the proposed Administrative Agreement) is not recommended.

Teacher Evaluation

Facts: At the time of the hearing, some agreement in this area had been reached by the parties. The primary dispute was whether a probationary teacher, having been released, should have access to the grievance procedure to raise the question of whether the discharge was justified. The Board submitted that it need not show incompetence or any specific lack in the pro-

bationary teacher to justify his discharge. In response, the Association claimed that denial of any access to the grievance procedure on the question of discharge might well create within the probationary teacher a reticence to employ the established dispute settlement procedures when other grievances arose.

Generally, in agreements where new employees are not to have seniority rights until completion of a probationary period, and where the contract is otherwise silent as to management rights with respect to new employees, they may, with some exceptions, be discharged at will. In holding that probationary teachers have the right to proceed through the grievance-arbitration process, the Fact Finder restricts the Board's right of action only insofar as it is found to be arbitrary, capricious, or discriminatory. Thus, the employee will have the right to be present at such a hearing, but the question will be only as to the good faith of the Board, and not to the merits of its conclusion.

Decision: That Article XIV of the 1968-70 Master Contract remain unchanged insofar as it allows all teachers, probationary or otherwise, the right to process a grievance through that dispute settlement procedure established by the Contract. Such right shall include disagreements arising over discharge of probationary employees.

Existence of Alternative Forums--Right to Arbitration

Facts: The Board proposes that a teacher be denied access to the grievance procedure where a remedy would be available to the aggrieved teacher in an outside forum, such as an administrative agency or a court of law. Thus, a teacher entitled to a hearing in front of, say, the Tenure Commission, would not have the right to bring the same matter before an arbitrator.

The Board maintains that allowing an employee to proceed to arbitration in spite of the fact that he can also bring his grievance before an

administrative agency or court gives that employee "two bites at the apple." This is true. The interplay between public law and private arbitration raises serious procedural questions. A brief view of the law in this area might, therefore, be helpful. For example, the question has been asked whether the employee makes an election of remedies by utilizing grievance-arbitration machinery, and thereby waives his rights to a remedy through the courts. In response to this issue, courts have divided. The strict approach is exemplified by the court in Bowe v. Colgate-Palmolive Company, 272 F. Supp. 332 (S.D. Ind. 1967). Here, the court opined that it would be "inequitable and unconscionable" to require the company to defend itself in two different forums. The Fact Finder does not adopt the "strict approach." The situation suggested by the Board in this case is somewhat the reverse, in that it would deny the employee his right to the arbitration forum if an outside remedy existed. However, considering the national policy in favor of arbitration, the attempt must be to implement the philosophy underlying the Supreme Court's decision in Textile Workers Union of America v. Lincoln Mills of Alabama, and the Steelworkers trilogy of strengthening collective bargaining by giving full play to the private adjustment machinery established by the parties. Indeed, the philosophy of the several cases holding that an individual employee must exhaust grievance-arbitration procedures for the redress of contract grievances before entering the court, is a further indication of the preference towards internal remedies. (See Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965), Vaca v. Sipes, 386 U.S. 171 (1967).)

In the recent case of Dewey v. Reynolds Metal Company, 291 F. Supp. 786 (W.D. Mich. 1968), the court considered the question of whether an arbitration award should estop a plaintiff from seeking a remedy in a court of law. It should be noted that this was a case of religious discrimination, and the reasoning may not be per se applicable to other disputes, but the language in the case is nevertheless important to our consideration.

> [T]he arbitration award should not preclude an action in this court based upon a statute rather than the collective bargaining

> agreement. To hold otherwise would be to require the employee to have come to this court without attempting a settlement through the contractual processes, as preferred by the National Labor Law. Plaintiff would also have been required to choose between two different remedies when both remedies are provided to ensure that plaintiff's contractual, statutory, and constitutional rights are protected. When rights of this type are involved, they outweigh the interest of the company-defendant in avoiding the inconvenience and expense of multiple actions. (At 789.)

Again, Dewey considers the question of whether a hearing before an arbitrator should deny the grievant a right in court, whereas the situation presented here is the reverse. However, in view of the fact that the scope of potential grievances is unlimited, including actions under Title VII of the Civil Rights Act, the policy arguments are applicable. Hopefully, the dispute can be settled at arbitration. However, the fact that the plaintiff may have a statutorally protected right to go to court later should not deny him and the parties the chance to avoid such litigation.

Decision: That the existence of a remedy through an outside forum shall not, in itself, deny the grievant access to the grievance procedure, including the right to proceed to arbitration.

Mechanics of the Grievance Procedure

Facts: The grievance procedure established by the 1968-70 Master Agreement provides for six steps. In the event of a grievance, the teacher proceeds as follows:

1. Informal discussion with the building principal.
2. Filing a formal written grievance with the superintendent of schools or his representative.
3. Meeting between "principal or superintendent" and Association representatives.
4. Second meeting between same parties if grievance is still unresolved.

5. Transmission to the Board of Education of a written copy of the decision; then a hearing by the Board.

6. Arbitration.

The Board maintains that Step Number Five, submission of the grievance to the Board of Education should be eliminated. The Board contends that since it is a policymaker, and not administrator of the school district, it should not be in the position of overriding the chief administrator, the superintendent of schools. Moreover, the Board claims that it wishes not to be in the position of being overruled by a later arbitration decision.

While the Board presents reasonable arguments supporting its wishes to be eliminated from the grievance procedure, it appears that it would be inevitably involved at the arbitration stage. It would seem, therefore, that some contact at the lower stages of the grievance procedure would be beneficial to all parties involved. This is not to say that the internal dispute settlement procedure would disintegrate absent the participation of the Board of Education at the fifth step. However, in light of the fact that no evidence has been submitted to show past or imminent damage to the Board, no immediate change appears necessary.

Decision: That an appeal to the Board of Education remain as one of the steps in the Grievance Procedure.

Jurisdiction of the Arbitrator

Facts: Article XVII of the "Proposed Administrative Agreement", Paragraph B (No. 11) contains a recommendation by the Board of a revised clause dealing with arbitral authority. The proposed provision purports to specify the constraints which would be placed, contractually, upon any arbitrator chosen by the parties. There exists, of course, a significant dispute as to the jurisdiction of an arbitrator. That is, should the arbitrator be free to construct and conform a contract to relevant rules of law and policy, or should he, in the alternative, be a creature of the contract; thus forbidden

to do anything other than interpret the intentions of the parties? With respect to the foregoing question, the parties are in agreement. Both the Association and the Board are in accord with Board Member Gerald Brown's statement in Cloverleaf Division of Adams Dairy Company, 147 NLRB 1410, 1964, that:

> ...[T]he function of the arbitrator rarely exceeds interpretation and application of a particular provision of an existing agreement to a particular dispute. (At 1422.)

Given such agreement, the only question is whether the proposed clause expresses the intent of the parties. In Article XXI, "Professional Grievance Procedure" (P. 35 of the 1968-70 Master Agreement), it is provided that, "The arbitrator shall have no power to alter, add to or subtract from the terms of this Agreement." It is the opinion of the Fact Finder that this terse statement is adequate to convey the agreed-upon position of the parties. There is some virtue in brevity, and it is unclear that the expanded provision limits a potential arbitrator any more than the original clause.

Decision: That there shall be no change from the 1968-70 Master Contract, Article XXI, Paragraph G, providing that the arbitrator "shall have no power to alter, add to or subtract from the terms of this Agreement."

Pay for Attending Arbitration Hearings

Facts: The Association claims that failure to pay employees for time spent in the grievance procedure may discourage them from presenting otherwise valid grievances. The argument from the other side of the table, is that such pay might well induce some employees to bring frivolous claims. Private sector examples abound wherein some employees in some industries are paid and others are not. Here, it is important to consider the nature of this system. It may be said that virtually every teacher in a school system is indispensable insofar as his teaching duties are concerned. When the teacher is not in front of the class, the educational process stops.

Thus, it would appear that an extra degree of care should be exercised before removing a teacher from the classroom for any reason. The existence of a justifiable grievance makes the burden of a teacher's absence no less severe. Under the circumstances, there is no evidence to indicate that pay for attending arbitration hearings would lead to misuse of the process, but neither is there any indication that teachers have been loathe to make their grievances known. Teachers have free periods during the day, and the school day normally ends relatively early in the business day. Therefore, it would seem plausible that arbitration hearings could be scheduled in these periods of "free time" or immediately after school.

Decision: That there shall be no duty to compensate employees for time spent attending arbitration hearings. It is further recommended that such hearings be scheduled at such times so as not to interfere with teaching assignments.

Insurance Package

Facts: The following remarks are directed to both the life insurance program and the several questions arising over hospitalization insurance. The expired contract contains a provision in Article XXIII, "Life Insurance," wherein the Board will provide death benefits of $5,000 to the beneficiaries of currently employed Oscoda teachers. The Association requests that this benefit be increased to $10,000. Article XXIV, "Hospitalization-Surgical Insurance" provides for full coverage of "Blue Cross-Blue Shield's High Benefit Comprehensive Program Under the Semi-Private Plan." The Association requests here that employees be allowed to opt other medical plans where the the cost of such plans do not exceed that of Blue Cross. Finally, the Association requests that full prepaid dental care be provided all teachers. Testimony was introduced by the Association to the effect that the cost of heightened life insurance coverage and prepaid dental care would amount to $34,000. Moreover, the Association testified that hospitalization insurance, for example, "Super-Med" (available through the Michigan Education Association)

had been implemented in coexistence with Blue Cross-Blue Shield in other school districts.

The broadened life insurance coverage would be obtained at a cost to the Board of Education of $6,000. It cannot be said that $10,000 term insurance coverage on the individual employees is excessive, nor is the $6,000 added premium unreasonable. However, as indicated later in this Opinion, there are two glaring needs in the Oscoda School District this year. Teachers must be adequately compensated and new classroom space, thus capital expenditures, must be accounted for. Under the circumstances, these needs outweigh the insurance demands, and an expenditure of $28,000 for prepaid dental care simply cannot be rationalized. Furthermore, there has been no evidence to controvert the Board's position that administrating an option program in the hospital insurance area would be unwieldy and time-consuming. Nor has there been any indicated dissatisfaction with the Blue Cross-Blue Shield coverage.

Decision:

A. That there be no change in Article XXIII of the 1968-70 Master Contract, "Life Insurance."

B. That there be no implementation of a Prepaid Dental Care Program.

C. That there be no option to elect a plan other than the Hospitalization/Surgical Insurance Coverage previously established by Article XXIV of the 1968-70 Contract.

Compensation for Coaches

Facts: The O.E.A. Proposal includes a schedule providing for salary raises to teachers who, in addition to their teaching responsibilities, coach athletic teams. The schedule is composed of varying percentages to be applied to the base salary of any coach in question so as to determine the individual

increment. Thus, the head football coach would receive an increment of 14% of his base salary. These percentages range from a high of 14% for the head football coach down to a low of 8% for assistant coaches in various sports. Included sports are football, basketball, wrestling, swimming, baseball, track, cross-country, and golf. The estimated cost of the increases is $15,000. It is admitted that there has been no increase in coaching salary for the past three years.

The Fact Finder does not believe that the adoption of a sliding-percentage scale such as recommended by the Association is warranted. An 'indirect calculation' of salaries in this manner simply makes the already-difficult negotiations that much harder. One problem with a percentage determination is that a new teacher assuming a head coach role may well be compensated at far less than his associates on the coaching staff, in spite of a greatly heightened work burden. This is not to say that the dollar values represented by these percentages are unreasonable increments to the entire coaching staff's salaries over a three-year period.

Testimony was also introduced by the Association to the issue of non-athletic extra-curricular activities. Again, it is undisputed that leaders of these activities have received no raises in three years, and it is the opinion of the Fact Finder that this should be remedied. Again, the percentages suggested by the Association are a convenient manner of determining the dollar values, and should not be considered as precedent for later years in determining salary increments. The Fact Finder takes note of the important fact that there has been no increase in these salaries for a long time. The Association testifies that the total increase in this area would cost approximately $1050, and this does not appear to be an unreasonable burden for the Board.

Decision: That the compensation for coaches be provided for as follows: In its proposal, the Oscoda Education Association requests that the salaries of coaching personnel be raised by varied percentages of their current salaries.

It is recommended that the dollar values of these percentage figures be added to the coaching salaries this year. This should not be interpreted to mean that the Fact Finder recommends adoption of the percentage scale. These percentages are employed by the Fact Finder as representing a convenient and equitable raise for this year only.

That compensation for non-athletic extra-curricular activities be increased by the percentages listed by the O.E.A. in its Exhibit No. 20. Again, this raise is recommended with the same caveat applicable to the athletic salaries.

Salary Schedule

Facts: The parties are apparently at their greatest impasse here. The Association requests that the B.A. minimum be raised from $7,300 to $8,100, or approximately a 9.6% increase. At the upper end of the B.A. level, a teacher, according to the Association proposal, would receive $12,636, or an increase at that level of approximately 11%. The Board has proposed that no change in the salary schedule be made for the upcoming school year.

Both sides introduce numerous exhibits and testified at length regarding the strength of their various positions. The Fact Finder feels it unnecessary to comment on all the testimony, but points to several of the more important factors leading to his decision.

As indicated above, Oscoda Area Schools need more room. And, of course, its employees must be reasonably reimbursed for their services. Testimony was introduced by the Association that Oscoda is in a unique position due to the juxtaposition of the Air Base, and this is an undeniably important factor. Changeover rates are high, and cause problems for the teaching and administration of a school. It also causes severe budget problems. Surely, the maintenance of a school district is a burden to be assumed primarily by the voters and citizens of the community. Funds from Federal Act 874 help supple-

ment the tax dollars from the community. However, the millage history of the area is unencouraging at best. The evidence indicates that a millage request for seven mills in June of 1969 was defeated, as was one for 4-1/2 mills for operating expenses and one mill for school bus purchasing in June of 1970. Further, another 5-1/2 mill package was defeated in August of 1970. The Board of Education is placed squarely in the middle in all these financing problems. On the one hand, they must provide for the citizenry the best possible education for the children of the area. On the other hand, they must answer to those same citizens for the use of the tax dollars. Unfortunately, millage issues seem to be the area where already-overtaxed voters get their revenge. Unless the Oscoda area constituents soon realize the importance of their support, their children will have no classrooms in which to learn. The burden of supporting the capital expenditures of a school system should not fall totally upon the teachers, although some restraint in wage demands is advisable. This impasse has occurred due to the fact that all parties to the continuing process of education are standing at extreme and immovable positions. The Association's request for an $8,100 minimum is untenable, as is the Board's position that no raises whatsoever will be granted. And on its part, the town has helped in no way by its demonstrated reluctance to support the educational processes in Oscoda.

When faced with the budgetary squeeze, a Board of Education has no alternative but to reduce services. To this end, the Board has submitted a list of budget cuts which it claims are necessary. These, however, are not of such a drastic nature as to lead one to the assumption that an emergency position is at hand.

Area comparisons are of questionable value. To show simply that Oscoda teachers are either very high or very low on a comparative list of Michigan teachers is to disregard the important differences between communities. Of some relevance, perhaps, is a view of the communities with which Oscoda would compete for their teaching staff, but, as indicated by the Board, these may not necessarily be in the same geographical area, and the

comparisons therefore become that much more difficult. For example, one might claim that Oscoda competes with Tawas or even Saginaw, yet if Beaverton, Clare, Farwell, and Harrison, as well as Oscoda, all look to Central Michigan University for their staffing, they too are in competition. And, if the "comparison communities" happen to be alsq negotiating their present contracts, comparisons are impossible. Only an examination of the merits of the individual situation can lead to a reasoned decision.

The Association submits that the cost of living has escalated alarmingly in recent months. So it has, and any increase in salary is unspectacular at least if it simply serves to cover the cost of living. However, it should be pointed out that the step-scale adopted by the Board of Education several years ago, and which will be applied to any recommended base figures this year as well, provides for percentage increases between the steps. There is a 4% increase (non-compounded) for the first three years of the salary schedule, a 5% increase for the next four years, and a 6% increase for the last four years. Therefore, any increase in the base salary will be reflected all along the salary schedule. Thus, a teacher moving from, say the fifth step to the sixth step, will receive not only the increment recommended by the Fact Finder for that level, but the increment of 5% dictated by the salary schedule. To use the example from the Association's proposed schedule, a teacher at the fifth step last year would have received a salary of $8,541. This year, that same teacher would be at the sixth step, and would receive an automatic 5% increase. But, that 5% would be figured on the new proposed base. Thus, the teacher this year would receive $9,882 and would receive a $1,341 raise, or a salary increment of approximately 16%.

At the hearing, there was significant disagreement as to the amount of money available to the Board for the operating expenses of the upcoming year. Various estimates ranged from $250,000 to $500,000. The parties are agreed finally, however, that approximately $260,000 exists as additional revenue for the 1970-71 budget.

According to figures submitted to the Fact Finder, approximately 20% to 25% of the teachers are at the lower end of the pay scale, whereas 75% to 80% are at the upper end. This means that the majority of teachers will be receiving the 5% to 6% increment on the step scale, as well as the basic increase. There has been presented no evidence to show that, in spite of the failure of the voters to support the school system through millage issues, that the school system has any substantial reasons to cut back on the increase in salaries. That is, the B.A. minimum increased by $500 from the 1968-69 to the 1969-70 salary schedule. It is not unreasonable for an employee to expect an increment of like nature for this year. Taking into consideration the Consumer Price Index, the exhibits submitted regarding the relative position of Oscoda teachers and the agreed-upon figures regarding availability of funds, as well as the necessity for the Board of Education to avoid deficit financing, it is the recommendation of the Fact Finder that the base salary at the B.A. level be increased by $525, thereby creating a figur of $7,825. This same increase at the M.A. level yields a figure of $8,225 and at the Educational Specialist level, one gets a figure of $8,625. Employing these figures, in the same fashion as above, a teacher moving from the fifth to sixth level will move from a salary of $8,541 to $9,155. This yields an effective raise increment of 7.2%, which considering the Consumer Price Index and all the other relevant factors is by no means unreasonable.

Decision: That the base salary at the B.A. level be $7,825. That the base salary at the M.A. level be $8,225. That the base salary at the Educational Specialist level be $8,625.

Dated: September 28, 1970

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