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In the Matter of Fact Finding Between
Royal Oak Board of Education
-and-
Royal Oak Education Association
Case Number D77 H-2291

LABOR AND INDUSTRIAL
RELATIONS DIVISION

BACKGROUND

the BOARD OF EDUCATION, CITY OF ROYAL OAK
filed a petition for fact finding with the Employ-
ment Relations Commission on August 29, 1977. On
August 30, the Royal Oak Education Association filed
its petition relating to the same dispute. The appli-
cations of both parties were appropriately reviewed by
the Commission and on September 12, the State named the
undersigned as its Hearings Officer and agent to conduct
a fact finding hearing pursuant to Section 25 of Act 176
of the Public Acts of 1939, as amended, and pursuant to
the Commission's Regulations.

Having met with the parties on September 27, and
having reviewed all relevant documents pertaining to
the single issue in dispute, the fact finder issues the
following findings and recommendation.

STIPULATION

Present contract language reads:

Article XVI, Section 3. Junior high teacher
load.

All junior high teachers shall have five
(5) class assignments, one (1) planning

Royal Oak Board of Education

period and (1) "J" period. For purposes of this agreement, the "J" period shall be a class hour that is not scheduled as a class assignment, and the function of the "J" period shall be worked out cooperatively between the building principal and the teacher involved. The "J" period shall not be used as an additional personal planning period.

During the 1976-77 school year a committee shall be formed to study the functions of the "J" period. The committee shall consist of two (2) administrators, two (2) citizens chosen by the Board, two (2) citizens chosen by the Association and one (1) additional citizen chosen by the citizen members of the committee. The committee may recommend changes in the "J" period function including its expiration. The parties shall use the committee's recommendations as a basis for renegotiations on Article XVI, Section 3 for the 1977-78 school year.

2. Royal Oak Education Association proposal reads:

All junior high schools shall be scheduled on a six (6) period day.

Each period shall be fifty-five (55) minutes in length.

All junior high school teachers shall be assigned no more than five (5) class assignments and one (1) personal planning period.

3. Royal Oak Board of Education proposal reads:

Article XVI - Section 3

A junior high school teacher day shall include seven (7) periods. One of the periods shall be

designated as a preparation and planning period. Five periods shall be assigned at the discretion of the building principal.

The building principal and the teacher shall attempt to agree upon the duties to be performed during the remaining period. In the event agreement cannot be reached, the principal shall have the right to assign the duties to be performed. There shall be no additional layoffs during the 1977-78 school year, as a result of any scheduled use of this remaining period.

PROCEDURE

The hearing was convened at 9:45 a.m. on September 27, 1977 in the offices of the Michigan Employment Relations Commission. The Board of Education was represented by Richard Mosher, Esq. who outlined the Board's position on the issue in dispute. Walter Rogowski represented the Royal Oak Education Association and outlined their case before the fact finder. Two witnesses appeared for the Board, Dr. Gene Thieleke and Mr. Daniel Welch. The Education Association called no witnesses. The hearing closed at 1:00 p.m. The parties agreed to exchange briefs prior to October 27 and to send the briefs to the fact finder post marked no later than October 27. This was done. However at the time the briefs were submitted both parties requested the fact finder to hold his award until at least November 27. The request for delay of award was granted. Subsequently the parties informed the fact finder to release his recommendation. They were informed that pending a full review of the briefs, exhibits, record and depositions, the recommendation would be forthcoming.

PRESENTATIONS BY THE ASSOCIATION

The Association proceeded arguendo and through presentation of Exhibits 1-15. In its brief it argued that the junior high school teacher load has been defined in Master Agreements between the parties since 1970. Such language has remained virtually unchanged (see Exhibits 3-8 and Joint Exhibit 1). The present dispute and the present contract language are both traceable to a strike which occurred in 1969, the Association argues. That strike resulted from several factors. One involved a requirement that junior high teachers who, in the fifties taught five periods and had one preparation period, should temporarily increase their work load. The increase in work load was agreed to the Association points out. The agreement to increase work load was prompted by a millage failure. The increase in work load, however, tended to become permanent rather than temporary as originally proposed. This led to some unhappiness among junior high school teachers who tended to compare themselves and their work loads with senior high school teachers and their work loads. Unlike the junior high school teachers, teachers in senior high schools were not affected by the millage failure. North Central requirements enabled them to maintain essentially the same working conditions. So for ten years junior high school teachers had a greater work load than senior high school teachers. It was partly to alter this situation that the teachers went on strike in 1969 (see Transcript, pp. 10,11).

The Association contends that the Board's proposal

is an attempt to increase, once again, the junior high school teacher's work load. Furthermore the Association argues that an increase through the contract is unnecessary. In the event of a true emergency, the Board can already accomplish what it claims it needs without new contract language argues the Association. In support of this claim it points out that Article SVII, Sec. 10 (a) permits the Board some latitude in assigning teachers additional teaching responsibility. That article reads:

If a high school or junior high school teacher assumes an additional period of teaching responsibility on a regular basis [e.g., for twenty (20) consecutive days or more], he shall receive extra compensation at the rate of one sixth ($1/6$) or one seventh ($1/7$) of his daily salary rate respectively.

Mindful of the Board's claims that a special Citizens' Committee recommended that the principal of each junior high school be vested with the authority to determine the contents of the "J" period, following a review of the problem, the Association's argument, to some extent, is that the Board's commentary on the report, particularly through the deposition of Charles Randau (Chairperson of the committee) does not always take into account the distinction between Randau's description of his own perceptions and the perceptions of the total Citizens' Committee as perceived by Randau.¹

¹ See Association Brief pp. 2,3. Also see Deposition by Randau, pp. 12, 14. In addition see Transcript P. 5.

In further support of its case, the Association argued that the Board's own exhibits tended to show that students are receiving the intended instructional opportunities that the "J" period is designed to provide. There are approximately 1,889 junior high students in the Royal Oak Schools (see p. 39, Board Exhibit). Of this number, 835 received individual help during the first semester of the 1976-77 school year. Four hundred fifty nine students were helped on a regular basis, the Association further argues. Some teachers used the "J" period for team and unit planning. Others worked directly with students. At the Barton School and at the Keller School, for example, the Association gave a detailed breakdown of teacher usage of the "J" period (see Association Brief, p. 4).

The Association argues finally that the Board is proposing a "rollback." It points out that only thirteen of twenty-seven school districts listed in the Board's exhibit (p. 37) have a six period instructional day. It argues that the "J" period should be terminated but it proposes as an alternative a six period day. Teachers, under the Association's proposal will teach five periods a day and have one period for planning. Periods would be fifty-five (55) minutes long.¹

¹ Presently Royal Oak has a seven (7) period day. Periods are forty-five (45) minutes long and teachers are assigned instruction two hundred twenty-five (225) minutes of the school day. Of the remaining periods, one is for planning. The other is, of course, the "J" period.

ARGUMENTS BY THE BOARD OF EDUCATION

The Board of Education argues that it has the right under Article II, Section 1(e):

to determine class schedules after considering the needs of the teachers and the program, to determine hours of instruction, and the duties, responsibilities and assignments of teachers subject to the express provisions of this Agreement.

The only limitation placed upon the Principal as the Board sees the matter is that if he assigns regular class assignments, the teachers must be paid at a contractually established rate. This being the case, the Board argues, the "J" Period is and always has been working time. The Board seeks the contractual right to assign classroom duties during the "J" Period where Mutual Agreement cannot be reached. It desires a clarification of its authority inasmuch as it does not wish to incur an obligation to compensate teachers for assigning them duties during "J" Period as it must do when teachers are assigned duties during their Planning Periods. In the latter case the Board acknowledges that a teacher must then plan on his or her own time. However, argues the Board, a teacher who is assigned students during the "J" Period is simply substituting one set of "J" Period duties for another, therefore no additional pay should be required.

Under the current Master Agreement, the parties determined that a committee would be formed to study the functions of the "J" Period, the Board points out. The committee was authorized to recommend changes in the "J" Period function including termination of the "J" Period under the revised current contract. Subsequently such a

committee was appointed with Charles Randau as its chairperson, Randau reported by deposition that the information received by the committee revealed that some of the junior high school teachers were making beneficial use of the "J" Period but it was his opinion that too many of the teachers were not making sufficient instructional use of the "J" Period. He believes that the principal should have the right to assign instructional duties during the "J" Period or its equivalent. (See Deposition, p. 6) The Citizens' Committee concurred with him, stating that

. . . . it is the recommendation of the citizen members of the "J" Period that the "J" Period be terminated. . . . the Committee urges both the Administration and the Union to enter into an agreement whereby the principal of each Junior High School is accorded the right to authorize to one or more members of his teaching staff the use of a class hour in addition to a personal planning period where the principal, in his judgment, believes that under the circumstances such an additional class hour is necessary and appropriate.

The Committee, the Board points out, went on to state that ". . . to the extent that the "J" Period had been beneficial it should be retained (Board Brief, p. 7.) (Randau's interpretation, Deposition pp. 27, 28.)

The Board points out that only 45% of 1901 students were being seen on a regular basis, at least twice a week, during the "J" Period (Board Exhibit 1, pp. 30-33.) Only 925 received any teacher contact during the "J" Period of the Fall Semester of the 1976-77 school year. The Citizens' Committee believed that more students should be seen on a regular basis by Royal Oak teachers. Furthermore, the Board argues, while the length of the junior high teacher day in Royal Oak is comparable to other districts

in Oakland County, the number of minutes of classroom instruction performed by Royal Oak Junior High teachers is the lowest in the County (Board Exhibit, pp. 34, 35). Also, argues the Board, Royal Oak Junior High teachers when compared to junior high teachers in districts adjacent to or of comparable size with Royal Oak, have the lowest total assigned minutes per day of any of the adjacent comparable districts. While the teacher/pupil ratio in Royal Oak junior high schools is the second lowest when compared to comparable or adjacent districts, the Board argues, the actual and recommended junior high class sizes are substantially higher than necessary. The use of the "J" Period for regularly assigned instruction could reduce average class size while maintaining the present pupil/teacher ratio, the Board further argues.

Finally, the Board contends, junior high teachers in Royal Oak have less student contact time than do senior high or elementary teachers in the District (Board Exhibit, p. 39). All in all the Board concludes that the "J" Period denies students educational opportunities and that junior high teachers are not using the working day optimally to benefit students.

The Association's final proposal reads:

All Junior High Schools shall be scheduled scheduled on a six (6) period day.

Each period shall be fifty-five (55) minutes in length.

All Junior High School teachers shall be assigned no more than five (5) class assignments and one (1) personal planning period.

The Board's final proposal reads:

A junior high school teacher day shall include seven (7) periods. One of the periods shall be designated as a preparation and planning period. Five periods shall be assigned at the discretion of the building principal.

The building principal and the teacher shall attempt to agree upon the duties to be performed during the remaining period. In the event agreement cannot be reached, the principal shall have the right to assign the duties to be performed. There shall be no additional layoffs during the 1977-78 school year, as a result of any scheduled use of this remaining period.

DISCUSSION AND FINDINGS

The proposals raise several questions which, given the character of the proceeding, could not be raised directly with the parties. Among the most critical is whether a situation has evolved in which the Royal Oak School District has a lower Pupil Teacher Ratio than comparable adjacent districts and a higher average class size than those same districts? This is implied in the Employer's brief (p. 9) though the language used is ". . . substantially higher than necessary." The Employer also states that some junior high teachers are not using the working day to benefit students optimally. This conclusion is supported by the recommendation of the Citizens' Committee and by the statistical data referred to by both the employer and the Union. These data show when the Union's figures are used 42.2% of Royal Oak's junior high school students received individual help during the full semester of the 1976-77 school year. Only 24.3% were helped on a regular basis. The assumption implicit in the Board's stance on this issue is that more students were in need of help but that the principals of the junior high schools were not in a position to assign such help.

Furthermore the Board states that the number of minutes of classroom instruction performed by Royal Oak junior high school teachers is the lowest in Oakland County (Board Exhibit, pp. 34, 35). Pages 34, 35 of the Board's Exhibit show that junior high school teachers in Royal Oak teach 225 minutes per day. This amounts to a 3 hour, 45 minute teaching day. One other district has a comparable teaching day while 22 others have longer teaching days. Holly and Huron Valley have irregular period lengths, but other Oakland County Districts have the following teaching time requirements:

Oakland County Junior High School Teaching Day
Teaching Day Length

	<u>District</u>	<u>Hrs. & Min.</u>		<u>Total Min.</u>
Under 4 hrs.	Birmingham	3	50	230
	Oak Park	3	45	225
	Royal Oak	3	45	225
Under 5 hrs.	Clarenceville	4	20	260
	Lake Orion	4	18	258
	Southfield	4	10	250
	Avondale	4	35	275
	Berkley	4	30	270
	Bloomfield Hills	4	30	270
	Brandon	4	30	270
	Clawson	4	35	275
	Ferndale	4	30	270
	Hazel Park	4	36	276
	Lamphere	4	42	282
	Madison	4	30	270
	Novi	4	30	270
	Oxford	4	30	270
	Pontiac	4	35	275
	Rochester	4	35	275
	South Lyon	4	42	282
	Troy	4	35	275
	Walled Lake	4	30	270
	Waterford	4	35	275
Under 6 Hrs.	Clarkston	5	0	300
	Walled Lake	5	30	330

*Farmington, Holly and Huron Valley have variable period lengths. (See School Exhibit p. 35).

The Chart on page 11 shows the County range in terms of junior high school lengths of teaching day. They range from a low of three hours and forty-five minutes in Oak Park and Royal Oak to a high of five hours and thirty minutes in Walled Lake. The modal length is approximately four hours and thirty minutes, a length which the factfinder notes fits within the Association's proposal. The Board acknowledges that the Union has proposed a teaching day of four hours and thirty-five minutes but a limit of five classes or assignments. The factfinder further notes that the Union in its brief points out its objections to six classes or six assignments. It makes no objection to teaching time length. The factfinder notes in addition that less than one half, or 48.1% of the districts in the Board's Exhibit are scheduled to teach six periods while 51.9% are scheduled to teach a five period day. For the most part the factfinder dismisses length of day as an issue, finding it irrelevant to this discussion based on the above observations. He likewise dismisses retention of the "J" Period as such, inasmuch as neither proposal includes it and the Citizen's Committee recommended its termination.

Having reviewed all of the evidence, the factfinder is of the opinion that the School Board is the accountable party for the quality of teaching service that is to be delivered and evaluated. At the same time the Union's main complaint seems to be a six-way split in the assignment schedule. It would replace the "J" Period with five 55-minute teaching periods and one planning period for each teacher. In teaching time it requires five minutes or more, under its proposal than is required under the Board's proposal. The proposals are essentially identical in terms of the time issue.

AWARD AND RECOMMENDATION

It appears to the factfinder that the major concern relating to the six period day can be addressed if the number of preparations required can be held at present limits. With this in mind he recommends the Board's proposal. No teacher, as a result of its implementation, however, shall have a greater number of preparations than he or she normally had prior to the change. To determine the "normal" number of preparations the factfinder proposes that the number of preparations which each teacher had over the three semesters preceding this award be used as a guide. What was "usual" for most teachers in specific classifications or assignments shall be "usual" for those classifications and assignments under the Board's proposed language. In summary the recommendation is that the parties include in the Agreement presently under discussion the following language:

Article XVI - Section 3

A junior high school teacher day shall include seven (7) periods. One of the periods shall be designated as a preparation and planning period. Five periods shall be assigned at the discretion of the building principal.

The building principal and the teacher shall attempt to agree upon the duties to be performed during the remaining period. In the event agreement cannot be reached, the principal shall have the right to assign the duties to be performed. There shall be no additional layoffs during the 1977-78 school year, as a result of any scheduled use of this remaining period.

It is further stipulated by the factfinder that as a result of implementing the above language it is understood by the parties that the number of preparations which teachers are required to make shall not be increased.

January 9, 1978

Fact Finder