

1694

FF 9/3/68

98

STATE OF MICHIGAN  
STATE LABOR MEDIATION BOARD

MICHIGAN STATE UNIVERSITY  
LABOR AND INDUSTRIAL  
RELATIONS LIBRARY

\*\*\*\*\*

IN THE MATTER OF,  
TRAVERSE CITY EDUCATION ASSOCIATION,

REPORT OF FACT FINDER  
AND RECOMMENDATION

and

In Re: RODNEY L. CUMBERWORTH

SCHOOL DISTRICT FOR THE CITY OF  
TRAVERSE CITY.

*Willard Carpenter*

\*\*\*\*\*

This proceeding was held pursuant to the provisions of Section 24 of the Labor Mediation Act, and Part III of the Board's General Rules and Regulations, whereby the facts of the matter in dispute between the parties involved shall be determined and publicly known.

In conformity with Section 2 and 3 of Rule 34 of the General Rules and Regulations of the Board, a hearing was held at Traverse City, Michigan, beginning at 9:00 A.M. and terminating shortly after 5:00 P.M., on Monday, August 26, 1968, in the Circuit Court Room in the County Building located in that city, at which time the representatives of both of the parties were present and a full and complete presentation was made of the respective positions of the parties with regard to the Grievances as filed in behalf of Rodney L. Cumberworth, after which the representative of Traverse City Education Association requested the right to file a post hearing brief and it was agreed that such brief would be filed with the Fact Finder on or before September 3, 1968. The representative of the School District for the City of Traverse City filed a brief or summary of the facts with the Fact Finder at the conclusion of said hearing.

*Traverse City School District for the City of*

The following appearances were noted in the record of the proceedings:

For the School District of  
the City of Traverse City:

Harry T. Running, Attorney

Patrick J. Wilson, Attorney  
Both of the firm of Running, Wise and Wilson

For the Traverse City Education Association:

Fitch R. Williams, Attorney  
Of the firm of Williams, Coulter and Forster

#### STATEMENT OF ISSUES

The issues presented to this Fact Finder for consideration are best recited in the Grievances as filed by the Association with the School Board under date of May 6, 1968, the same being as follows:

##### Grievance No. 5

1. Nature of grievance Rodney Cumberworth, junior high band instructor, has not requested and does not desire reassignment as a full-time elementary band teacher. In the past teachers have willingly accepted reassignment when the matter has been discussed with them and a specific situation made transfer necessary. In this instance, Mr. Cumberworth has never discussed with the department head the existence of such a situation. In the Master Contract between the Traverse City Board of Education and the Traverse City Education Association for 1967-68 on page 8, Article VI, Section D, Part 3, appears this language: "The parties recognize that changes in grade assignments in the elementary schools, changes in subject assignments in the secondary school grades, and transfers between schools will be necessary. While the right of determination to assign or transfer a teacher is vested in the board, the board will not, in any case, assign or transfer a teacher without prior discussion with said teacher. Such transfers and changes of assignments shall be on a voluntary basis whenever possible. In making involuntary assignments and transfers, the convenience and wishes of the individual teacher will be honored to the extent that these considerations do not conflict with the instructional requirements and best interests of the school system and the pupils."

The instructional requirements and best interests of the school system and students are best met when a teacher is working in his chosen position, unless there is a good reason for his filling another position. If such a reason exists, Mr. Cumberworth has not been made aware of it.

2. Remedy sought: Retain Rodney Cumberworth as junior high band instructor, his present position.

**Grievance No. 6 (filed May 6, 1968)**

1. Nature of grievance Thad Hagerberg, who is not designated as an evaluator, evaluated Rodney Cumberworth on December 8, 1967. The Master Contract between the Traverse City Board of Education and the Traverse City Education Association for 1967-68, states on page 20 of Addendum, on Tenure Policy, Article III, Section C, Part 3: "Visits of tenure teacher classrooms will be made at the discretion of the principal, curriculum coordinator or department head." Mr. Hagerberg is the band instructor for the senior high.

2. Remedy sought: The removal of any evaluations made by Mr. Hagerberg from the personnel file of Mr. Cumberworth and the return of all copies of Mr. Hagerberg's evaluations to the Traverse City Education Association grievance committee.

**FINDING OF FACTS**

A voluminous amount of testimony was taken from 14 witnesses produced by both of the parties and a number of documents were presented by the parties to the Fact Finder in support of their respective positions.

**Grievance No. 5**

**I**

That Rodney L. Cumberworth is an employee of the School District for the City of Traverse City, and is subject to the provisions of the Collective Bargaining Agreement executed by the Traverse City Education Association and the School District for the City of Traverse City and presently existing between the parties.

**II**

That subparagraph C of Article VI, entitled Employment and Assignment, reads as follows: 3-

#### Assignment and Transfer

1. A teacher shall be subject to assignment and transfer at the discretion of the superintendent.

2. A teacher who wishes to transfer to another position shall submit a written request to his immediate superior and a copy of the request to the superintendent. Within 10 days the superintendent shall reply in writing to the teacher.

3. The parties recognize that changes in grade assignments in the elementary schools, changes in subject assignments in the secondary school grades, and transfers between schools will be necessary. While the right of determination to transfer a teacher is vested in the board, the board will not, in any case, assign or transfer a teacher without prior discussion with said teacher. Such transfers and changes of assignments shall be on a voluntary basis whenever possible. In making involuntary assignments and transfers, the convenience and wishes of the individual teacher will be honored to the extent that these considerations do not conflict with the instructional requirements and best interests of the school system and the pupils.

4. Any teacher transferred to a supervisory or executive position and later returned to a teacher status, shall be entitled to retain such rights as he may have had under this agreement prior to such transfer to supervisory or executive status.

and that the convenience and wishes of the individual teacher are to be honored if there is no conflict with the instructional requirements and the best interests of the school system and the pupils.

### III

That the Board of Education for the City of Traverse City is by law vested with what might be considered as managerial powers and the Collective Bargaining Agreement confirms the prerogative of the Board of Education to establish the instructional requirements of said School District and to further do and perform what is rightfully considered in the best interests of the School District.

#### IV

That the transfer of Rodney L. Cumberworth from junior high school band instructor to elementary band instructor was made in accordance with the provisions of the Collective Bargaining Agreement entered into between the parties and that in effect due notice was given the Grievant prior to his transfer and a prior discussion was had with him on the part of the school administration, with respect to such transfer.

#### V

That from the testimony presented there appears to be no personal animosity on the part of anyone concerned with the transfer of the Grievant and that the same was made on the basis of and as a result of an evaluation by certain Administrators in the School District who had the professional ability to perform such a duty.

#### VI

That no undue influence existed nor exists with reference to the transfer of the Grievant and the transfer is not a demotion and does not result in any loss of pay to Rodney L. Cumberworth.

#### VII

That the testimony as presented clearly established the fact that Rodney L. Cumberworth is a very competent teacher, but lacks the ability to organize his activities as a band director and further is lacking in those personal qualities which create the ability to control students during band practice and at the time of their performances and that for these reasons and others

the Superintendent recommended to and the Board of Education for the City of Traverse City saw fit to transfer Rodney L. Cumberworth from the position of Junior High band instructor to that of elementary band teacher.

#### VIII

That the performances of the Junior High band are of excellent quality, which evidences the musical ability of Rodney L. Cumberworth.

#### IX

That the Grievant is somewhat of an introvert and fails to meet the standards or qualifications which appear to be a prerequisite to functioning in the capacity of a Junior High band instructor.

#### X

That most of the deficiencies found by the evaluators to exist in the person of Rodney L. Cumberworth could be corrected or cured. That closer communication should be had as between the Grievant and his Supervisors.

#### RECOMMENDATION

It is the recommendation of this Fact Finder because of the musical ability and long experience of Rodney L. Cumberworth that he be reinstated in the position of Junior High band instructor on a definite trial basis that his deficiencies be reduced to writing by the Superintendent of Schools and that he be given a reasonable opportunity to correct or cure such deficiencies, with the proviso, that his failure to reach necessary standards, as established by the Board of Education would result in the confirmation of such transfer.

Grievance No. 6

I

The pertinent provisions of the Collective Bargaining Agreement read as follows to-wit:

VIII TEACHER EVALUATION

A. All observation of the work performance of a teacher will be conducted with the full knowledge of the teacher. Teachers will be given a copy of any evaluation report prepared by their supervisors and have the right to discuss such reports with their supervisors.

B. Each teacher shall have the right upon request to review the contents of his own personnel file. Privileged information, such as confidential credentials and related personal references normally sought at the time of employment, are specifically exempted from review.

A representative of the Association may, at the teacher's request and with prior notification of the administrative personnel involved, accompany the teacher in this review.

III TENURE POLICY Professional Staff Selection and Evaluation

4F. No evaluation report shall be included in the teacher's evaluation file unless it has been signed by the individual teacher.

In conformity with the provisions of the Collective Bargaining Agreement the evaluation reports cannot become part of the evaluation file of Rodney L. Cumberworth unless he signs the same.

The Grievant did not sign the evaluation reports and they therefore cannot become part of his personnel file.

RECOMMENDATION

It is recommended that Grievance No. 6 be dismissed as being without basis in fact.

I wish to commend both Mr. Williams and Mr. Running who presented the proofs for the respective parties. They were very helpful to this Fact Finder in the presentation of the evidence in

an efficient manner.

  
\_\_\_\_\_  
J. WILLARD CARPENTER  
Fact Finder

Dated at Detroit, Michigan

This 3<sup>rd</sup> day of September, 1968.