

VASSAR PUBLIC SCHOOLS

-and-

TRI-COUNTY BARGAINING ASSN.

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

Case No: D79 F1649

Walter Nussbaum

The writer was assigned to the Vassar Fact Finding on Thursday, October 25, 1979. At the outset, he was advised that multiple issues were at stake and proposals were made by each side which were unacceptable to the other side. The teachers raised issues relating to the following subject matters:

1. Professional Dues and Payroll Deductions

- a) Authority for P.A.C. Funds, and
- b) Agency Shop

2. Teaching Hours

- a) Elementary prep time with a request that there be an additional period of one half (1/2) hour a week or more assigned to preparation time of elementary school teachers, and

- b) That recess duty be entirely voluntary or be eliminated for teachers.

3. Issues were also raised by teachers relating to teaching quality, assignments and conditions including references to class size, emergency overload and clerical assistance. Serious consideration was given to problems relating to leaves of absence, apparent facial discrimination, based upon sex, and the

WALTER S. NUSSBAUM, J.D.

ARBITRATOR & FACT FINDER

SOUTHFIELD, MICHIGAN

Vassar Public Schools

administration of the leave of absence policies, sexual discrimination relating to long term disability, maternity leave, and a desire that provisions relating to medical leave be upgraded and that there be modifications to both the health insurance and guaranteed right to return to provisions.

4. The Union also raised issues with reference to the scope and nature of insurance protection to be furnished at the Board's expense and requested improvements in the second and third year in the dental program and additional programs relating to optical care.

Substantial differences existed between the parties as to professional compensation, more particularly the pay schedule found in Appendix A, as well as Appendix B which had to do with extra duty performance by the teachers and both sides were ambivalent on matters relating to the duration of the contract.

The Board requested numerous modifications in the working relationship between the parties and suggested the following:

1. That there be a one year contract.
2. That the teachers obligated time of performance be, in some respects, extended to meet contingencies relating to snow emergencies and other matters relating to potential interruptions in the educational process which are not excusable in terms of application of State Aid formula. The Board expressed strong views in opposition to matters relating to both Agency Shop and Political Activity Contributions and requested modifications in the Grievance Procedure to limit the choice of

WALTER S. NUSSBAUM, J.D.

ARBITRATOR & FACT FINDER

SOUTHFIELD, MICHIGAN

forum, by agreement. The Board also made requests with reference to restrictions on the use of sick days, requirements to add provisions for a doctor's report and matters of like import. The Fact Finder finds the following:

1. That a contract with an operative period of less than three years would be a non-economic exercise in futility considering what the parties have already spent, upwards of five months in negotiation, and have employed the services of a Fact Finder for the past seven (7) days and have had a work stoppage beginning on Monday, the 15th of October, 1979, which has not yet terminated as of the date of the drafting of this report.

Recommendations

The Fact Finder recommends that the duration of the contract be for a period of three (3) years.

Union Security

The Fact Finder finds that as a matter of fact, the Union presently represents all but seven (7) employees of the teaching staff of the Board of Education at Vassar, Michigan. The Fact Finder further finds that the union has been assiduous in pursuing improvements in wages, hours and working conditions and that none of the persons who are not currently paying union dues or service fees have ever refused to accept an improvement in wages, hours and working conditions or fringe benefits by reason of some moral compulsion.

WALTER S. NUSSBAUM, J.D.

ARBITRATOR & FACT FINDER

SOUTHFIELD, MICHIGAN

The Fact Finder further finds that no benefit or detriment will be incurred by the children of the school district as a result of the Union having the benefit of a Union Security clause in the nature of an Agency Shop. The Fact Finder further finds that there is in existence, a statute of the State of Michigan which deals with the public policy that the payment of the expenses of collective bargaining shall be shared by those who enjoy the benefits of collective bargaining, without exception.

The Fact Finder further finds that the union, for some time, has tolerated a small group of individuals not paying union dues or service fees but instead making contributions to a jointly operated scholarship fund within the school district.

In spite of the fact that there is a strong public policy concept within the organic law of this State, that those that benefit by a service should pay for the service, the union's willingness to tolerate this small deviation, mitigates against the Fact Finder, finding unequivocally that Agency Shop should be included in the collective bargaining agreement. The Fact Finder therefore, recommends as follows:

1. That an Agency Shop provision containing the provisions provided by law be incorporated in the Collective Bargaining Agreement. Act 25, PA 1973 Immediately effective, June 14, 1973 CEBA Ex. 2.

2. That those seven (7) persons who are presently not paying either union dues or a service fee, be excluded from the provisions of the union security clause (Agency Shop) but

WALTER S. NUSSBAUM, J.D.

ARBITRATOR & FACT FINDER

SOUTHFIELD, MICHIGAN

that all new hires on and after the effective date of the Collective Bargaining Agreement be required to comply with the appropriate Agency Shop provision.

Teaching Hours

a) The Fact Finder finds that due to a scheduling anomaly, teachers do not get sufficient release time to provide thirty (30) minutes of preparation within each teaching day. This specifically and directly relates to recess duty, call back requirements relating to the library, and other matters of similar import.

b) The parties have discussed a revision of the scheduling of the art program so as to provide an additional period of fifteen (15) minutes per week in release time. It is the view of the Fact Finder that the problem in this case is not so much a difference of opinion for the need for the additional time but a problem relating to the niceties of scheduling. The Fact Finder therefore recommends that the parties agree, by separate letter, to consider scheduling that would provide for a division of the art periods in such fashion as to provide for a forty-five (45) minute art period one week and a thirty (30) minute art period the second week, beginning with the second semester of the 1979-1980 school year at the elementary grades.

Class Size

The Fact Finder has reviewed the considerations and presentations of both parties with regard to reduction in class size and finds that substantial arguments have been made both in favor and opposed to reduction in class size. The arguments ranging from budgetary considerations and lack of a conviction that reduction in class size automatically provides better educational opportunities, to the submission of works of learned authors who would indicate that the history and experience dictates that a reduction in class size provides the teacher with greater opportunities to meet the needs of individuals.

The Arbitrator is convinced that there is some need to give elementary school teachers a greater opportunity to meet special situations and special learning problems within the classroom, and that there are many potential methods by which such needs can be met. The Fact Finder, therefore, recommends that although there be no immediate reduction in class size, the following language be incorporated in a contract:

"The Board agrees that other possible solutions to class size problems might be the employment of aides and increased use of resource materials. The Board further agrees that consideration shall be given to the expanded use of clerical personnel and facilities to aid elementary teachers in preparing and delivering substantial supplemental classroom programs."

In reviewing the evidence submitted by the parties in this area, the Fact Finder is impressed with the fact that students who have been tested, especially on the Michigan fourth and seventh grade assessment tests have, through the efforts of the dedicated staff, performed at a uniformly high level and have shown consistent improvements through the past two (2) testing periods. This is not to say that further improvement cannot be found, but finding the methods of improving performance should not solely be the responsibility of the teaching staff and its efforts, but should include diligent efforts by the Board of Education to employ additional facilities and personnel to supplement the teaching programs.

The Fact Finder was benefited by concession by the parties that the language existing in the present contract did not meet either the School Board's need for consistent non-sexist policy nor the Union's need for consistent, concise and clear cut language that assured the parties that at least facially there was no breakdown in the duty affair representation. The parties therefore, have recommended jointly to the Fact Finder that it consider language revising Article 15, which language is attached to this Opinion as Appendix A and is recommended to be included in the contract as being fair and reasonable.

Medical Insurance

The Fact Finder has reviewed the medical insurance available and the proposals made by each of the parties and finds that in some respects the medical insurance presently held by the employees at the expense of the Board fails to meet a standard prevalent in the community. The Fact Finder therefore, recommends as follows:

a) Employees be granted MESSA Super Med I, and that the Super Med I Plan be placed in the full force and effect for the three years of the contract.

b) The Fact Finder further recommends that the employer contribution to the dental program be at the rate of Fifteen Dollars Ninety Six (\$15.96) Cents per month for the benefits presently available at that rate.

If, in order to keep such benefits in effect additional sums are required to be paid by the employer, the employer shall provide the additional sums which are so required to keep the benefit provisions, presently in effect under that plan, in full force and effect for the entire three years.

Professional Compensation

The Fact Finder recommends that the general plan and scheme of payments for a professional compensation which was in effect in the recently expired contract be retained subject to the following provisos:

a) In each contract year, beginning with the 1979-80 contract year, teachers shall receive a salary increase

WALTER S. NUSSBAUM, J.D.

ARBITRATOR & FACT FINDER

SOUTHFIELD, MICHIGAN

to be measured by the true percentage cost of living increase as it has heretofore been computed, provided, that the 1979-80 year, the minimum adjustment shall be four (4%) percent and the maximum adjustment shall be eight (8%) percent.

b) That in the second fiscal year a minimum four (4%) percent adjustment shall be made and if the true cost percentage increase of the cost of living shall be eight (8%) percent or more, the Board's additional liability shall be limited to eight (8%) percent.

c) In the third year the same method shall be used to compute the increase, provided, however, that although the increase shall be computed in the scale, for and in consideration of the Board's undertaking to save the teachers harmless from increases due to any increase in rates for medical or dental programs as currently in effect, the first Seventy Three Dollars and Sixty Cents (\$73.60) of increase, to each teacher, shall not in fact be paid, although the salary scale and rate shall be computed as though the full sum were being paid.

Schedule B Adjustments

A document which has heretofore been colloquially referred to as Schedule B has historically been a schedule of additional payments paid to teachers to perform duties outside of ordinary teaching. For example, coaching, advising, sponsoring of special events.

In this area, the Fact Finder finds that the scales previously used are well below those in common use in the area, and in some respects, may involve arbitrary formulas which may inadvertently have an impact which is prohibited as being discriminatory because of the weighting that the parties have heretofore agreed upon in establishing these formulas. I am, therefore, recommending:

1) That the total number of dollars last used in this package of wages be increased by eight (8%) percent and supplemented by an additional Two Thousand (\$2,000.00) Dollars in the first year.

2) That in the second year, it again be increased by eight (8%) percent and supplemented by the additional sum of Two Thousand (\$2,000.00) Dollars, and

3) That in the third year there be an increase by eight (8%) percent. I am further recommending that to the extent that it may be necessary to remove hostile impact based upon sex or other factors unrelated to performance, that internally the programs be adjusted by the parties to provide equal wages for equal work.

In no event shall a weighted formula be applied, that has not been validated in accordance with the provisions of Title 7 of the Civil Rights Act of 1964, as amended in 1972 and amplified by the EEOC Guidelines on Testing.

The Fact Finder has given very serious consideration

to the potential of hostile impact on the School Board's budget and current problems relating to the business cycle and feels that it would be unjust and unreasonable for him to make a recommendation for the improvement of compensation at the levels which he has discussed, including health care improvements which are also in the cost of living adjustment formula, without providing for the possibility that some non-paid items within that formula should be born on a protected basis. Therefore, in the third year of the contract, the first Seventy-Three and 50/100 (\$73.50) Dollars of the cost of living adjustment shall be included in the gross compensation schedule but shall not be required to be paid by the Vassar Board of Education, as heretofore noted.

The Fact Finder finds the fact to be, based upon the stipulation of the School Board Bargaining Representatives, that ability to pay is not an issue. The Fact Finder further finds that the School Board has been successful over the past several years in operating a budget which has permitted an increase in reserved funding, as well as substantial capital expenditures. The mere fact that the School Board has prudently managed the district's revenues should not be used as an excuse for outrageous economic awards. However, the Fact Finder is constrained to take into consideration the fact that there has been sufficient money to permit the Board to make the expenditures which it has made and to accumulate surplus in making his determinations.

The Fact Finder must deal with the Board's ability to pay, the sums paid in surrounding areas, the teachers' demands, and all other factors which could impact the pay scale and it is these factors, in addition to the various tables and schedules that have been admitted in evidence, that the fact finder has indeed considered in arriving at the economic conclusions of this award.

With regard to the Board of Education's requests, the Fact Finder finds that the Board of Education has been disadvantaged and may be potentially disadvantaged by a employee seeking inconsistent remedies based upon the same set of facts.

The Fact Finder, therefore, recommends that language be included in the contract to provide that in the event, an employee shall use any other forum or procedure than provided in the grievance process to attempt to adjust a grievance or complaint against the Board of Education or his supervisor, the grievance process shall be abated during such period as the alternate remedy is being pursued, and the final result of that alternate remedy shall be the final result of the grievance process and the grievance shall be closed, based upon the final determination made in the alternate remedy. With regard to the Board of Education's request for an adjustment relating to potential interruptions in the educational process due to snow emergencies, it is the view of the Fact Finder

the no compelling reason has been shown to transfer the economic burden and social burden of a snow emergency which does not represent an economic liability to the teachers and, therefore, would recommend no change in these provisions.

However, with reference to emergencies that may arise as a result of the interruption of the educational process through vandalism or an action other than an Act of God, the Fact Finder finds that the teachers are contracting to work a total of One Hundred Eighty Five (185) days. To the extent that the district does not qualify for State Aid because of an interruption as stated above, the district may exchange non-teaching days for teaching days for the purpose of making up a number of days to total not more than one hundred eighty five (185). If additional days are required to be worked beyond one hundred eighty five (185), they shall be worked at the end of the immediate school calendar and shall be compensated by the School Board at the regular rate of pay prevailing under the contract.

In light of the School District's acquiescence to the improvement of other health factors, cost of living adjustments, and other items which are contemplated, should the Fact Finder's recommendation be accepted by both parties, then it is recommended that no additional health programs be added to the contract and that requests for a vision plan be denied for the life of the contract.

The Fact Finder concludes his report by stating that public participation in this bargaining process has, in some respects, contributed much to an atmosphere that permitted the Fact Finder great liberty in making suggestions to the parties, but once again,

WALTER S. NUSSBAUM, J.D.

ARBITRATOR & FACT FINDER

SOUTHFIELD, MICHIGAN

the fact finder is convinced that all of the bargaining process and all of the fact finding cannot take place in a public forum because the ability to arrive at a contract which is non-divisive, depends, to some extent, on the parties being free to exchange ideas which will not bind them.

The Fact Finder had the opportunity to observe that even though many of the non-participant spectators were able to view the contest between the parties as a contest of ideas, others demonstrated the kind of hostile side taking that would have made it impossible for the parties to live together, if all of the negotiation on the most sensitive points were handled publicly.

The parties started with some twenty four (24) issues between them. At Fact Finding, the number had been reduced considerably and even during the course of Fact Finding, the parties were kind enough to indicate areas to the Fact Finder where he could arrive at a synthesis and be reasonably assured of some support, even though the parties were not in total agreement with the ultimate result.

The Fact Finder recommends, not only to the parties, but to the community that they support these recommendations and that they look forward to a labor relations atmosphere within the School Board that places the objectives of the operation of the school

system first, and the political and social views of the School Board and the Union second.

Respectfully submitted,


Walter S. Nussbaum

WSN:ja Nov 3, 1979

ARTICLE XV

LEAVES OF ABSENCE (pp. 18, 19, 20)

Delete first two paragraphs of 15.1 and substitute:

A teacher absent from duty because of personal illness or injury, including disabilities caused or contributed to by pregnancy, shall receive his/her full salary for the period of such absence up to the total number of sick days accumulated by the teacher (maximum of 180 days). The twelve (12) days of annual leave . . . for that year.

Delete second paragraph on page 19.

Delete 15.6 and substitute:

15.6 Medical Leave. A medical leave of absence shall be granted under the following conditions:

- a. A teacher will be granted a leave of absence due to pregnancy or other medical disability for up to three (3) calendar years upon presentation to the Board of a written certificate from a physician stating that s/he is no longer capable of performing normal teaching duties.
- b. During this leave the Board shall provide full Group Health Insurance Coverage for up to two (2) months. Thereafter, the teacher shall continue in the plan by individually assuming the insurance premium's payment until his/her return to work.
- c. Any teacher on such leave shall not be entitled to advancement on the salary schedule.
- d. The teacher will be expected to return to work when authorized by his/her physician indicating s/he is capable of performing his/her normal teaching duties. Should the physician's statement indicate that the teacher is not capable of returning, the leave will be extended to that individual in accordance with the medical report. Also, accumulated or additional sick leave days may be used by the teacher in accordance with the medical report.
- e. Upon recovery, the teacher shall forthwith notify the Board of his/her availability to resume teaching duties. The Board will make every effort to return the teacher to his/her same position, if available, for leaves longer than three (3) school months. If there is no vacancy available said teacher shall receive the first vacancy for which s/he is certified and qualified by recent experience. Assignments will be guaranteed to those teachers going on leave for three (3) school months or less.
- f. Should the teacher fail to return to work, when capable, such failure shall be construed as a voluntary termination of employment.
- g. Should a teacher desire to take a personal leave of absence for the duration of the semester without regard to his/her ability to work following the birth or adoption of a child, such leave shall be granted without pay or monetary fringe benefits, upon receipt by the Superintendent of a written request within two (2) weeks after the birth or adoption of the child.