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STATE OF MICHIGAN

DEPARTMENT OF LABOR

EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Fact Finding between

Lincoln Consolidated Schools

-and-

Lincoln Education Association

RECEIVED
APR 2 - 1970
STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
MEDIATION DIVISION
DETROIT OFFICE

Lincoln Consolidated Schools

REPORT OF FACT FINDER

Pursuant to petition for fact finding dated January 26, 1970, filed by the Lincoln Education Association, hereinafter called the Association, and answer dated February 12, 1970, of the Lincoln Consolidated Schools, hereinafter call the Board, the undersigned was appointed Fact Findings Hearings Officer by letter of the Employment Relations Commission dated February 13, 1970. Pursuant to notice duly given, a hearing was held March 3, 1970, pursuant to Section 25, Act 176 of Public Acts, 1939, as amended, and the regulations of the Commission.

In the course of the hearing, each of the parties presented its respective position in regard to a number of unresolved collective bargaining issues. This report will review each issue separately, followed by a recommendation thereon.

AGENCY SHOP

Position of the Association

The Association seeks the inclusion of a so-called agency shop provision under which all members of the bargaining unit who

Alan Walt

are not members of the Association will be required to pay a sum equal to membership dues in the Association. Inclusion of such provision in collective bargaining contracts in the public sector has been steadily increasing and may be found in contracts of many school districts in this region. It has been upheld by all courts having the opportunity to pass on it as well as by the Tenure and Employment Relations Commissions and has been repeatedly recommended by fact finders.

Under the law, the Association has an obligation to bargain for all those in the unit -- whether members of the Association or not -- and fairness requires that all persons in the unit pay their fair share of these negotiations. To recommend otherwise would accord the non-member a "free ride" since he derives the benefits of the agreement without sharing in its costs. Furthermore, if collective bargaining is to work between these two parties, it is essential that both be strong throughout negotiations. Clearly, no costs or other economic consequences are involved in this provision.

Position of the Board

Schools exist solely to provide education for children. In order to do so they must attract and retain the best possible teaching talent. Any contractual provision which would remove a single good teacher from the system is, therefore, violative of this purpose and must be opposed.

The Board does not dispute the legality of the agency shop here; however, the provision exists solely to obtain "dues" for the Association. The fact that other districts may have adopted the agency shop does not present a persuasive argument why this district should.

Findings

There are approximately 116 teachers in the district, 106 of whom are members of the Association. Although the contractual provision in question would affect about 10 members, it is recognized that important and fundamental principles are involved. On the one hand there is the individual teacher's right vis-a-vis the Association; if he chooses not to join, an agency shop provision would require payment to the Association of a sum equivalent to membership dues. If the teacher determines not to pay the equivalent, the provision requires that his services be terminated by the Board.

On the other hand, there is the Association's need to be and remain an effective bargaining instrumentality in order to obtain for its members, as well as all other persons in the bargaining unit, the greatest benefits possible, under the relationship existing between these particular parties.

The agency shop concept is now too well recognized not to be included in the collective bargaining agreement. In reviewing the arguments of the Board, I am compelled to the conclusion that it seeks to assume a position for which it really has no responsibility. In its present posture, the Board chooses to afford "legal" protection to any teacher refusing to pay a sum equivalent to membership dues to the Association. But why should it do so? It is the particular teacher's election and should realistically remain so. The only way that the Board will lose a teacher is if that teacher refuses the payment required under the agency shop provision. It misleads itself -- and the residents of this district -- if it continues to operate under an ill-founded assumption that opposition to the agency shop provision is the factor which will cause it to

lose good teachers. It is not; rather, it is the teacher's decision not to pay a proportionate share of the costs of collective bargaining which causes his separation. By opposing the agency shop, the Board actually interjects itself into what may, realistically, be designated as a dispute between a teacher electing not to pay the equivalent of dues and the Association, and in so doing, places its weight with those few teachers. Viewed in this light, I believe the Board can see that it is really placing itself in opposition to the vast majority of its teachers, and I sincerely hope it realizes this is a highly unwise thing to do.

I do not know what motivating factors are involved in any teacher arriving at a conclusion that he or she will refuse to pay an equivalent amount to the Association dues. It may be that the particular teacher does not believe the collective bargaining agreement has brought any increased benefits. This I cannot believe; one only has to look to agreements reached in surrounding areas. Rather, I think most teachers feel that individual rights or liberties are involved. If this is the reason for the teacher's action, then I think he or she should be allowed to freely take it and accept its consequences without the support - or opposition - of either party to the collective bargaining agreement.

Recommendations

It is recommended that the parties adopt an agency shop provision so that effective collective bargaining can and will continue between these parties.

LUNCH PERIOD DUTY

ISSUE

The following proposal has been made by the Association:

> It is expressly understood that the lunch periods for teachers shall correspond with the lunch periods for students and each teacher shall have a duty free, uninterrupted lunch period.

The Board's proposal adds the following language to the quoted provision:

> "except with the consent of the teacher involved."

Position of the Association

In the past, this district was affiliated with Eastern Michigan University in a relationship wherein many teachers were carried on the rolls of university. While that relationship has been severed, this being the second year of separation, there are still some questions concerning the tenure status of certain teachers previously carried by the university. This is one of the chief reasons the Association opposes any provision whereby the administration may be able to "request" the consent of a teacher. Such teachers are more prone to acquiesce in the request of a principal, for example, who asks that the lunch period be utilized for certain specific undertakings.

Furthermore, from a professional point of view, teachers are entitled to a duty free lunch period. They should not be placed in a position where the administration can request that they undertake certain duties in this period.

Position of the Board

As proposed by the Association, a teacher is barred from any duties during her lunch hour and even prevented from preparing for the afternoon's work or correcting tests, should that teacher

desire to do so.

Furthermore, it is essential that a principal be able to speak directly with individual teachers concerning work and work assignments. He should not have to look to the Association's representatives as a spokesman for the teacher in these areas.

Teachers should be able to give make-up tests or tutor a student having difficulties at any time, and the Board believes a principal should be able to request a teacher undertake such acts as watching a sick child in the lunch period.

Findings

The Board should not ask its professional teaching staff to take on noon-time duties, and should direct the administration to refrain from making such requests. There can be no question that this places additional burdens on the teachers and may seriously affect both physical and mental well being. Noon-time duties are not of a professional nature; the teacher is deprived of time for rest and the opportunity to take care of any personal requirements.

In reviewing the arguments of the parties, I do not find that either desires to prevent the teacher from undertaking preparation for afternoon classes, the opportunity for personal contact with pupils or any other matters that the teacher may desire to do in the professional area. I disagree with the Board's contention that the contractual language as submitted by the Association would have this effect. However, if such interpretation is possible, I am certain the parties can work out acceptable language to leave this choice entirely with the teacher. To clarify, there should be no opposition from the Association to any teacher who desires to use her lunch hour for appropriate professional teaching

purposes such as reviewing tests, work preparation, tutoring a child, etc., but the administration should not request a teacher to undertake any activity in this area. The reason is not to discourage discourse or communication between members of the administration and the individual teachers -- which is, of course, highly desireable and to be sought -- but rather to insure the teacher of a duty free lunch period.

Recommendation

It is recommended that the Association's proposal in regard to duty free lunch periods be adopted so that the teacher may freely enjoy and utilize that time for his or her own purposes.

TEACHING IN EXCESS OF NORMAL WORKING LOAD

ISSUE

The Association submits the following proposal:

> In the event any teacher shall teach more than the normal working load that is set forth in this Article, he shall receive additional compensation at one and one-half times his hourly rate for each teaching period in excess of such norms. The hourly rate shall be determined by dividing the number of hours normally taught per year into the actual salary. No teacher shall be required to teach more than the normal teaching load without his consent.

The Board submits the following provision:

> In the event a teacher shall regularly teach in excess of his normal daily teaching load, he shall receive one-sixth of his daily rate of pay in addition. The daily rate of pay shall be computed as 1/184 of his annual teaching salary as shown in Schedule A.

Position of the Association

If the Board expects a teacher to undertake additional teaching duties beyond the normal load, then it must compensate therefor. Overtime should be computed at time and one-half of the regular hourly rate computed as set forth in the Association's proposal.

At the high school level the normal teaching load is 5 classes a day. At the elementary school level the teaching day includes the full 6 hours although the regular teacher may have available recess time or time when a specialist has the class, in which to do planning or preparation. Unless the Board is willing to compensate in this fashion for additional teaching loads, the teacher should not be forced to undertake additional duties.

Concerning the consent of the involved teacher, except in the emergency situation, a teacher should not be required to undertake additional teaching duties. The right to refuse to undertake such duties should rest with the teacher, barring emergencies.

Position of the Board

Although the Board is of the opinion that this proposal properly falls within the economic area and agreement on economic issues has previously been reached (except in regard to the nurse's salary) it is willing to authorize payment for additional teaching duties at one-sixth of the daily rate computed as shown in the Board's proposal. There is no basis for payment at time and one-half; the teacher remains in the school for the six hour teaching day and is not required to stay thereafter when extra teaching duties are assumed. This situation cannot be likened to private industry and overtime payments therein.

Furthermore, if the individual teacher has the right of consent to an overtime assignment, it can cause havock and completely undermine the school system. If a teacher is absent, that class still requires supervision and an effective teacher. If another teacher is directed to supervise the class during a free hour, that individual should not have the right to refuse the assignment.

Findings

In viewing the proposals of the parties, it is my belief that teachers undertaking additional duties should be paid for this time. The Board does not dispute this fact but restricts its offer to payment of one-sixth of the daily rate for such overtime.

Recognizing that the parties have previously agreed to an economic package and that there are clearly economic consequences to the present proposals, it is my recommendation that overtime payment for additional teaching duties be limited to one-sixth of the daily rate for that teacher. In the event any teacher shall undertake more than one such additional teaching duty in a given day each such period shall be compensated for at one-sixth the daily rate.

It is my opinion that it is properly within the prerogative of the administration to assign teachers extra teaching duty whenever such assignments are necessary. For this reason, I do not believe the teacher should have the right to refuse such assignment. However, fairness to individual teachers is always a consideration, and the administration should not be authorized to repeatedly assign the same individual extra duties if that person does not desire to accept them unless no other qualified teacher is available or can be obtained (such as a substitute). What is contemplated is the situa-

tion where the administration can, in its sole discretion, assign teachers for both emergency and occasional extra teaching loads but without abuse of this authority.

Recommendations

It is recommended that when a teacher is required to undertake additional teaching on an occasional or emergency basis, compensation be afforded at one-sixth of the daily rate for each additional teaching duty undertaken in a given day. It is further recommended that the Board shall have the right to assign teachers additional teaching duties in its discretion, provided that such discretion be fairly exercised so that such duties are not unfairly imposed in this manner.

REQUIRED ATTENDANCE AT MEETINGS

Position of the Association

Although the Board is proposing that teachers be required to attend no more than six hours a month of meetings, it is the Association's position that this requires attendance at too many unnecessary meetings. Although this district is no longer controlled by Eastern Michigan University there are still many student teachers assigned to classrooms, making it necessary for regular teachers to confer regularly with University supervisors as well as with the student teachers.

For these reasons, the Association now proposes that no more than two additional hours of meetings be mandatory per month, or, in the alternative, to include the number of hours spent with student teachers and their supervisors in the six meeting hours.

Many unnecessary staff meetings have been called in the past

when, in many instances, a letter or memo to all teachers would have been sufficient. The Association will also accept a provision limiting the number of meetings to "a reasonable number".

Position of the Board

A specified number of hours of meetings per month is essential to avoid disputes, and even the filing of grievances, concerning the interpretation of "a reasonable number".

It should be noted that teachers are now compensated for the number of student teachers in their class and such compensation contemplates that extra supervision and meetings may be required. However, there is no contractual requirement for any such meetings.

The administration should be able to call regular staff meetings relative to any pertinent school matter.

Findings

It is easy to understand why the Association opposes the scheduling of an unusually large amount of staff meetings with administration representatives. These meetings occur after regular school hours and impinge of the teacher's own time, whether used for personal matters or classroom planning. Nevertheless, it is apparent that these meetings will be required from time to time. The danger, I believe, is such meetings may be routinely set when no matters are necessary of review or discussion. I am certain that an alert administration will seek to avoid this and will, wherever possible, resort to memoranda, letters or other written notices or directives.

It would seem appropriate that the contractual provision provide for one staff meeting a week unless a previously unforeseeable

subject requires the scheduling of an additional meeting, provided that the administration acknowledge its intent to avoid scheduling of any such additional meetings unless absolutely necessary.

Recommendations

It is recommended that, in addition to those meetings previously agreed to by the parties, the collective bargaining agreement provide for the scheduling of weekly staff meetings but also voice the Board's determination that additional meetings will only be held when there are matters necessitating their scheduling.

PERSONNEL FILES

Position of the Association

The Board takes the position that teachers should not have the right to review or examine their personnel files. The Association submits that that right should be incorporated into the contract, that a representative of the Association should be authorized to accompany the teacher in that review, and that the file should contain certain required items and no other items unless signed by both parties. The teacher should also have a right to submit a written statement in regard to any material in the file with which he disagrees and this right should also extend to the Association.

Teachers should be able to correct errors in documents contained in their personnel file and should also be able to object to errors, ommissions and other improper matters contained therein. It must be recognized that materials in these files may be used before other agencies, such as the State Tenure Commission and in the courts, and teachers should not be taken by surprise by infor-

mation which he or she contends is false.

Position of the Board

Personnel files are exclusively within the area of the Board's authority and responsibility. They contain those business matters which relate to the teacher and are not public documents.

Where materials in the personnel file relate to evaluation, discipline or commendation, the teacher will always know the content. In regard to evaluations, the teacher now has the right to disagree on the form and this becomes part of the record. Beyond that, however, personnel files should not be opened.

Findings

I have great difficulty in determining the basis for the Board's position that personnel records must be closely guarded and should not be opened to the teacher. I am at a loss to know which of its "management rights" would be violated by an examination of the file by the teacher. While private industry may take such stand -- I am not sure it does in all cases -- a public employer, especially one employing professionals, has no basis to do so. Even the military provides for periodic review of matters in the personnel file of the effected party.

Certainly the items set forth in the Association's proposal should be part of the personnel file. There may be other matters which the parties did not discuss which properly belong in the files as well. No comment will be made here about additional documents. While I do not believe the Board should be limited in inserting what may normally be classified as personnel material, I do think it should be precluded from inserting matters in other areas,

such as unsupported or unfounded charges against the teacher. In this regard, if any disciplinary action is ever taken against a teacher, the final action imposed should be the only document remaining in the file. For example, a teacher who is discharged and subsequently reinstated with a finding that there was no basis for the discharge should have all documents removed from the file which indicate the claimed or alleged basis for the separation.

With the foregoing limitations, I can see no reason that the teacher sign any matter placed in the file. However, if a teacher should find a document in the file that does not fall within the categories enumerated or within the general area of personnel material, I believe the grievance procedure is the avenue to be pursued by the teacher. This provides a much better resolution than to allow the teacher to fill his personnel file with written documents each time a disagreement is found with any matter contained therein.

I can see no reason to permit either the teacher or the Association to insert any other matters in the file, and I do not believe the Association should have the right to review or examine the file without the involved teacher so authorizing it and being present when the examination is made.

Recommendations

It is recommended that the parties deliniate the documentation to be included in the personnel file, that only such matters be contained therein, and that the teacher periodically (once a semester) have the right to review the file. The foregoing contemplates, however, that any disagreement in teacher evaluation may be set forth by the teacher on the evaluation form or in a separate document, and that the grievance machinery is available in other areas of dispute.

JOINT INSTRUCTIONAL POLICIES COUNCIL

Position of the Association

The Association proposes creation of a joint instructional policy council for the purpose of considering and recommending resolution of certain policy questions, such as curiculum development and other matters affecting the entire system, where agreement was not or could not be reached in the contract.

This committee should consist of three members appointed by the Association and three members appointed by the Board. The Board should have no control over the members appointed by the Association. Individual members of the council should have the right to initiate matters for consideration and the council should be able to appoint subcommittees to study particular areas under consideration by the council.

Although the reports of the council, including minority reports will be submitted to the superintendent of schools, these recommendations should also be filed with the Board, where provided by contract or upon request of 50% of the council members. The recommendations of the council should be advisory only and not binding on the superintendent or the Board.

It is believed that a council with these functions and responsibilities will be viable and helpful in resolving problems which were not or could not be anticipated in contract negotiations.

Position of the Board

The Board also advocates appointment of the instructional policy council, but would limit its areas of concern to items specifically designated by contract or referred by the superintendent.

In this manner, the council will not become an organ of the Association or be used to second guess or undermine the Board's or the superintendent's policy determinations. To provide a forum for the Association in this fashion, would be to undermine the entire school system.

For these same reasons, the Board should have the right to approve the three Association appointees to insure the council will be used for constructive purposes.

Furthermore, there should be no "appeal" to the Board after the council's report and recommendations are filed with the superintendent. A minority report should be a sufficient voicing of opinion.

Findings

These parties have never before had a collective bargaining agreement. This may be one reason they are floundering on the shoals of what most other districts now find to be routine or ordinary matters (I recognize that three years ago such was not the case). However, the proposal for a joint instructional policies council, to which both parties agree in principle, seems an excellent instrumentality through which to review and investigate new policy matters in the instructional area and to make recommendations thereon. The parties recognize that all matters in this area cannot be perceived during contract negotiations and, in the adoption of the council, afford themselves an instrumentality for on-going policy development.

With this in mind, then, the specific composure and scope of reference of the council should be examined. Recognizing that the council as well as the collective bargaining agreement are or will be new when finally adopted, I believe the parties -- at least for this

first contract -- should clearly specify the areas in which the council should operate. It should not be given carte blanche authority to take up any matters it feels are directly or indirectly part of its concern. The parties have already designated certain areas in which the council will operate. Unless they can agree to others at this time, let the council's initial operations be so confined.

I believe the Board seeks to interject between the Association and its members by saving to itself the right of approval of the three members selected by the Association. This is a very paternalistic approach and ill-befits a Board which also argues that it does not want the Association to "second guess" the superintendent through use of the council. I am sure the Board can see the hostility and anger this position can and will cause, and I can find no reason to require consent or approval by the Board over the Association's appointees. Other than subcommittees composed of council members, no other persons should be designated as members of a subcommittee or to untake any research or reports without the approval of the superintendent. The council will thereby retain all matters before it unless there is agreement with the administration to obtain outside expertise.

I believe that the council should have the right to place on its own agenda any matter within the contractually-defined scope of its authority which any member may submit. It then should be up to a majority of the council to determine if that matter will be taken up. Furthermore, I believe the superintendent should have authority to submit topics within the contractually-designated areas and that these shall be taken up by the council provided, however, the council may determine the order in which matters submitted by the superintendent will be taken up in relation to other items then on its agenda.

The present proposals of both parties provide that a majority and minority report be submitted to the superintendent. It is my

belief that at the same time the council's report to the superintendent, there should be a separate submission to the Board, including any minority report. The Board then has knowledge of the report or reports and can always require that the superintendent report thereon or take further action. If the Board chooses to receive and file all reports, I do not believe that the council or the Association should have any greater right than to request the Board place the matter on its agenda and take it up. The Board's representative at the hearing indicated that it has always done so when requested by teachers or the Association in the past. Suffice it to say that by authorizing the council to file directly with the Board, it becomes a matter of public record that the Board is in receipt of the report and has or has not taken action thereon.

Recommendation

It is recommended that the instructional policies council agreed to by the parties be implemented in the present contract with specifically designated areas of jurisdiction, that its members consist of three selected by the Association and three by the Board with no control or consent by either of the parties to the designees of the other, that all matters submitted by any of the council members or the superintendent be placed on the council's agenda subject to the limitations set forth above, that upon completion of any report including a minority report, it shall be referred to both the superintendent's office and the Board separately, and that such recommendations be advisory only.

GRIEVANCE PROCEDURES INCLUDING ARBITRATION

Position of the Association

It is the position of the Association that a grievance can be filed whenever there is a claimed violation of written Board policy as well as for a claimed contractual breach. Although the Board originally indicated its assent to this, it now asks that, in the area of written Board policy, grievances be limited to those items involving wages, hours and working conditions.

The Association also asks that grievances be allowed when the dismissal of a probationary teacher also involves a contractual violation.

Finally and most importantly, the Board completely refuses the inclusion of grievance arbitration. It is the Association's position that arbitration is an essential last step in the grievance procedure and is the only way in which a final and salutary resolution of grievances may be had. Without arbitration, the teacher and Association are left with the final action of the Board which, while composed of honorable men, often merely rubber-stamps administrative decisions. Furthermore, when both sides know that arbitration is a possible last step, it serves to make more effective the lower or earlier steps in the grievance procedure. In other words, both sides are more ameanable to a reasonable resolution of the grievance if they know that it eventually may be submitted to binding arbitration. The Board's argument that court action is always available to either side is just not so; court action is extremely expensive and, as a practical matter, is not available to the parties.

Position of the Board

The Board believes that grievances on its written policies should be limited to those which concern wages, hours, and working

conditions and no other. Furthermore, there should be no grievances authorized on probationary teachers; under the Teacher Tenure Act, the Board has the right to separate these teachers and the law contemplates no restraint in that area.

The Board is convinced that arbitration is not necessary to the maintenance of schools and, while it does not intend to violate the contract, resort to court action provides an adequate remedy.

The Board must always answer to the public for its decisions and, other than this, desires to make court action the only outside avenue of appeal. While the Board did agree to go to arbitration on the question of tenure when the district split off from Eastern Michigan University, it saw the need to do so in that case. It may still agree to arbitration but does not desire to authorize its use in every case, thereby delegating authority which the electorate has placed in its hands.

Findings

It is not clear as to the nature of written policy matters in areas other than wages, hours and working conditions. Neither of the parties submitted any examples to the fact finder. However, if we are dealing with written policies controlling on the teachers and these policies are unilaterally drafted, then the Association should be able to grieve thereon at least to the extent that any such written policy is alleged to be violative of some contractual provision. To eliminate from the grievance procedure all written policies other than wages, hours and working conditions, is to provide an excellent avenue of contractual avoidance.

I find myself in complete agreement with the Board that

grievances should not be authorized concerning the discharge or separation of probationary employees, regardless of whether any other contractual issue is claimed to be involved.

As to binding arbitration, over the years in which employers and unions have seen fit to agree thereto in private industry, this method of grievance resolution has proved highly beneficial. It has provided a prompt method for the disposition of grievances, thereby permitting both of the parties to get on with other tasks involved in the union-management relationship without having old grievances remain as festering sores.

I believe that voluntary grievance arbitration has also proved salutary in the public sector. It is my opinion that arbitration should be in the hands of persons or panels possessing experience in the resolution of disputes under collective bargaining agreements, whether in the private or public sector. The need for specialized knowledge and experience is the reason why the Employment Relations Commission and the American Arbitration Association maintain panels composed of experienced arbitrators.

It seems to me that the Board need not fear the hand of "outside" authority in agreeing to grievance arbitration. First of all, the standard arbitration clause may be used to limit the scope of the arbitrator's authority to the four corners of the agreement, with express limitations that he not modify, alter, expand or in any way change the agreement. With such limitations, the arbitrator does not make policy, does not create new contractual obligations, and does not assume the authority of the Board. He merely interprets the contract to which the parties themselves have agreed. It is at this point that the Board's contention that the courts are available would

would come into play; if the arbitrator goes beyond his prescribed authority, the parties then can look to the courts to set aside the award. Otherwise, the parties have resolved through arbitration, quickly and inexpensively, a matter which could give difficulty for years.

The Board must further recognize that teachers are prohibited by law from looking to the strike as leverage in the collective bargaining process. If the Board expects its teachers to live by the law, it should agree to provide them an effective means of dispute resolution. In our society, the grievance process has assumed this role; resort to the courts involves high costs and a great deal of time. I feel certain that neither of these parties has available to it the type of funds necessary for lengthy court disputes, and honestly doubt that the public would knowingly elect litigation over arbitration of grievances.

Recommendations

It is recommended that all written Board policies be subject to the grievance procedure but that the separation of probationary teachers be excluded therefrom.

The parties should have voluntary binding grievance arbitration incorporated into the contract as the last step in the grievance procedure. This process assures a fair and even-handed treatment by the Board in all grievance matters and indicates to the Association and its teachers that it not only intends to live by the contract but must do so.

STIPULATED DAMAGES IN EVENT OF STRIKE, AND PROHIBITION OF UNFAIR PRACTICES

ISSUE

"The Board demands a punitive damage provision in the continuity of services clause which the Association refuses and likewise the Board refuses to agree not to directly or indirectly engage in or assist in any unfair labor practice as defined in section 10 of the Public Employment Relations Act."

Position of the Association

The collective bargaining agreement should contain an express statement by the Board that it will not engage, directly or indirectly, in any unfair labor practice.

On the other hand, the Association is opposed to the Board's demand that the contract contain a no-strike clause coupled with a provision for punitive damages in the event of the strike. There is no need for inclusion of any such provision penalizing one of the parties to the collective bargaining agreement. The Association will agree to the inclusion of a no-strike clause; however, if the Board is insistent on the inclusion of a monetary penalty coupled with the no-strike provision, then the Association will likewise demand that punitive damages be paid by the Board each time it commits an unfair labor practice as determined by the Employment Relations Commission.

Position of the Board

It is the Board's position that the only way it can protect itself in the event of an illegal strike is for the Association to be required to pay certain agreed upon or stipulated damages. This is a recognition that the schools lose 1/90 of state aid for every day short of the full school year.

There is no analogy between strikes and unfair labor

practices. A remedy does exist through the Employment Relations Commission any time the Association desires to press a charge of an unfair labor practice. However, such remedy does not exist against the Association or its members in the event of a strike; even the courts are hesitant to move in the latter area. The Board's position is that a stipulated damage figure of 1/45 of current state aid should be paid for each day of strike and that the Association officers should be required to publicly denounce the strike.

Findings

I believe that the position taken by each of the parties here is an example of a certain degree of obstinacy in their collective bargaining demeanor. In reality, there is no need for either of the proposals submitted by the parties.

As to the Association's demand for a contractual statement that the Board will not engage in unfair labor practices as defined in state legislation, that legislation speaks for itself and relief is readily available through the Employment Relations Commission. Although there is nothing improper about the Association's position in this regard, such a clause is merely boiler plate and completely unnecessary.

The same may be said for the no-strike clause. Strikes are outlawed by state legislation and are patently illegal. It adds nothing to include the same statement in the contract. If the Board believes that the courts have failed to enforce the law containing, as it does, a clear statement of public policy, there is no reason to believe that the courts will act any differently in regard to a similar contractual statement.

The Board's demand for a stipulated damage clause must be characterized as a penalty. The figure suggested by the Board -- 1/45 -- of current state aid for each day of the strike bears no relationship to monies actually lost by the schools. Furthermore, there is no way of knowing whether the schools will actually lose any state aid in the event of an illegal strike; in at least one district where such a strike has occurred, state aid was not lost.

Since the legislature has annunciated a public policy declaring strikes by teachers to be illegal, any penalization for such action should also be legislatively determined, or imposed by the courts.

Recommendation

It is my opinion that these two proposals would add nothing to the contract not now contained in the law and in fact hinder and deter the parties from reaching agreement. Both should immediately abandon these positions and get about the business of achieving contractual agreement. However, if their worst fears should materialize during the term of this contract, they can return to a consideration of these proposals in negotiations on future agreements.

NURSE'S SALARY

Position of the Association

The district has employed a single nurse for 16 years. During the period of affiliation with Eastern Michigan University, this nurse had instructor's status. Her responsibilities are in the areas of dental, hearing and vision screening, health education, administering rebella shots, and conducting programs for mothers and daughters. In addition, she assists medically deprived families

in the area by checking on the general health of these children.

When the nurse was first employed in the district, the school population was 700 students; it is now approximately 3 times that figure.

It is the Association's position that the nurse should be placed on the salary schedule in an instructor's position with certain minor variations because she is not actually teaching a class. Her pay should be fixed at $10,600 a year.

Position of the Board

It is the Board's position that the nurse should receive $8,100 under this contract. She was paid $7,900 for the 1968-69 year.

While she is a registered nurse, she does not hold a BA or MA degree and should not be placed on salary charts devised for teachers holding such degrees. A check of nurse's salaries in surrounding areas, both for schools and hospitals, indicates that the salary offered the nurse is both comparable and competitive. It must be remembered that the salary of nurses working at hospitals is computed for a twelve month year whereas the school nurse is only employed for a ten month year.

Findings

On the basis of information submitted by the parties, the following findings are made in regard to nurse's salaries in other districts and areas:

SCHOOL DISTRICTS	BA MINIMUM	BA MAXIMUM	NURSE'S PRESENT SALARY
Ann Arbor	$7,000	$11,000	$11,900
Van Buren	7,300	12,100	11,300
Ypsilanti	7,000	11,200	11,200
Lincoln	7,100	11,060	

In regard to the Ann Arbor district it is indicated that some of the twelve nurses in the district have Master's degrees and are paid from MA minimum of $7,630 to MA maximum of $12,600. It is also indicated that in the Ypsilanti district a second teacher salary schedule is also utilized for nurses, ranging from $7,630 to $13,000. In these two districts all nurses have either a BA or a MA. However, one of the nurses in the Van Buren district does not have a degree but is registered.

In two hospitals in the area, nurses receive the following annual (twelve month) salaries:

Beyer Hospital
Resigtered: $8,100 to $8,820
With BA: $8,340 to $9,060

University Hospital
Registered: $7,800 to $10,580

It is clear that the duties of the nurse in this district encompass many areas of responsibility since she alone is responsible for the health needs and the general health education requirements of the district. Furthermore, when the district was affiliated with Eastern Michigan University, the nurse occupied an instructor's slot for pay purposes and her pay was determined on the Bachelor's scale. With 16 years of experience, her pay status should not be reduced because she does not have a BA degree. As a registered nurse she is fully qualified and licensed to administer in her professional field. While the parties may desire to establish a pay scale for other or future nurses which will recognize a difference between the salary of a registered nurse and one holding a degree, it would be manifestly unfair to do so at this time.

Although the immediate pay increase for the nurse may be substantial by placing her on the Bachelor's pay scale, I believe

that she is entitled to receive that pay and that there is no inequity by bringing her into such position under the present contract.

Recommendations

It is recommended that the nurse's salary be fixed at the same annual rate as a teacher holding a Bachelor's degree with full credit given for tenure, subject to any necessary adjustments for those holding non-teaching positions.

OUTSIDE SERVICE

Position of the Association

In the past recognition was given for up to seven years of outside service, that is, teaching experience outside of the district. At that time, however, there were seven pay steps in the salary scale. Under the economic package now approved, there are 10 steps (11 pay grades) in the schedule and, it is submitted, outside teaching service should now be given full credit up to the top of the salary scale so that a teacher with 10 years teaching experience in another district will be placed in the 10th step.

The Association opposes the contention that the superintendent shall have the sole authority to evaluate outside teaching experience for the purpose of according less than full credit for outside service which a teacher may have.

Position of the Board

The Association's proposal in this area also has economic consequences and it must be realized that the parties have previously agreed to the economic package. The Board has indicated its willingness to give credit for up to seven years outside teaching experience

but insists that the superintendent have the right to evaluate this experience. Teachers may come from non-accredited districts, from out of the state, or even from another country, and a given number of years experience in such other school systems may not be equivalent to the same number of years of teaching experience in this district.

Furthermore, it must be recognized that this proposal has an effect on the teachers presently in the district who have more outside experience than heretofore credited. Adoption of the Association's proposal could require that such teachers automatically be placed at higher levels on the salary scale.

Findings

It is the opinion of the fact finder that if a teacher has the requisite educational experience and is certified to teach in the state of Michigan, full credit should be given for outside service. The Board must feel that this same teacher is qualified and will be an asset to the system or it would not be interested in his or her employment.

Recognizing that there are indeed economic consequences to the extension of this provision to teachers presently in the district, equitable considerations require that such be the case, expecially since the district has already granted recognition of 7 years outside experience.

As to instances of teachers who are hired from non-accredited districts, I am sure the parties can provide either special pay scales or a grant of authority to the superintendent for the exercise of reasonable discretion in this area only. Other districts have contractually provided such exceptions.

Recommendations

Qualified and certified teachers who are hired by the district should be given full credit for outside service with the parties agreeing to exceptions such as teachers from non-accredited systems.

MILEAGE PROVISION

Positions of the Parties

The positions of each of the parties can be simply stated on this issue. The Association requests reimbursement at 12 cents to any member of the bargaining unit required to use his own vehicle in the course of employment. If the Board does not want to make this reimbursement it should not require a teacher to drive his own vehicle.

Although this issue was presented after adoption of the economic package, the Board will, nevertheless, offer vehicle expense reimbursement at 8 cents a mile, as it has done in the past.

Findings and Recommendations

I see no basis for the Association's position that the Board has not offered any mileage reimbursement. If it had not, I would be in agreement that a member of the unit should not be required to use his own vehicle without reimbursement of expenses relative to its use.

However, the offer of 8 cents per mile is most unrealistic based on today's costs and expenses. Maintenance, repair, depreciation are here involved and while I personally feel that 12 cents a mile is not out of line and will not result in "enrichment" to the user, I might mention that the state of Michigan presently authorizes a

10 cents a mile auto reimbursement. I certainly recommend an increase to at least that figure if the district desires its teachers to continue using their own cars.

LENGTH OF THE CONTRACT

Position of the Association

As previously indicated, these negotiations involve the first collective bargaining agreement undertaken by the parties. Both must be considered inexperienced in this area and problems may arise that were not anticipated.

The Association demands a one-year contract only. It made many concessions in agreeing to proposals based upon the expectation that these might be reviewed and modified or corrected at the end of one year. In fact, Board representatives kept urging adoption of proposals on the basis that changes could be made at the end of the year.

It would be extremely unwise that each of the parties be bound to a contract through the 1972 school year when they have had no prior contractual relationship upon which to draw.

Position of the Board

The Board has always taken the position that the agreement under consideration should be for a three-year term. It, too, has made concessions and entered agreements based on the expectation that both parties would be bound for three years.

These parties are in need of an agreement with which they can live. It is obvious that almost one year has expired under the contract -- even though it has not been adopted. To accept the Association's position is, in reality, to undo all agreements on

proposals previously accepted and immediately place the parties in collective bargaining negotiations for next year's contract. In other words, the requirement of a one-year contract will mean no contract for the 1969-70 school year.

The parties will never know if this contract will work unless they adopt a three-year term. Certainly, provision can and will be made for reopeners under such contract.

Findings

I believe it would be exceedingly unwise for the parties to adopt a one year contract and equally unwise to go for a three-year term. I do not have sufficient information on which to make a finding of "fault" or "blame" for these lengthy negotiations. Certainly, the failure to achieve an agreement at an earlier date has hardened the respective positions of the parties and, to some extent, has deprived them of the flexibility so necessary in collective bargaining.

Recognizing that it is clearly a compromise position, I will recommend a two year contract with appropriate reopeners. If, however, the parties find a new set of "hang-ups" on the question of reopeners, then I must advise that a one-year contract should be concluded immediately.

Recommendations

A two-year contract is recommended with reopening provisions in appropriate areas, such as wages. If the areas reopened are not susceptible of swift resolution, then the parties should revert to a one-year contract with immediate execution thereof.

CONCLUSION

As may be gleaned from some of my comments above, I believe the parties have moved into a number of untenable positions and that an unhealthy situation exists in the district as far as collective bargaining is concerned. In reviewing the areas in which disputes still exist, it is immediately apparent, however, that the problems are not the usual ones, that is, these parties have been able to satisfactorily resolve the very difficult economic issues which most commonly delay final agreement.

It is hoped that each side will seriously examine its respective positions on the open issues. I believe many of them are false issues or can be readily agreed upon -- either on the basis of my findings and recommendations or on some other basis.

If the parties will do this, I am confident that contractual agreement can be achieved in one short collective bargaining session. If, however, they remain adamant in some of the unrealistic positions as above described, agreement will continue to elude them and the parties will be doing a major disservice to the children and the electorate of their district.

DATED: April 1, 1970.

Alan Walt
Fact Findings Hearings Officer