

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF FACT-FINDING)
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 NORTON CITY SCHOOL DISTRICT)
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 and)
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 NORTON CLASSROOM TEACHERS)
 ASSOCIATION (OEA/NEA))

Case No. 02-MED-03-0170

William C. Pepple, Esq., for the District
 Karen Gee, for the Association
 Before Matthew M. Franckiewicz, Fact-finder

FACT-FINDER'S REPORT AND RECOMMENDATIONS

This proceeding involves negotiations for a successor agreement to the 2001-2002 agreement between the parties. Pursuant to the provisions of section 4117 of the Ohio Revised Code, the undersigned fact-finder was appointed on June 24, 2002. By mutual agreement, the parties postponed the due date for the fact-finding report until August 15, 2002.

The hearing was held on July 31, 2002 at Norton, Ohio. Both parties were afforded a complete opportunity to bring to the fact-finder's attention all the facts and arguments which they desired to present. In addition, I met informally with representatives of both parties on July 15 and August 5, 2002.

Prior to my involvement, the parties reached certain tentative agreements, and during the fact-finding process the parties reached tentative agreement with respect to Sections 5.06, 6.11, 6.16, 7.01, 11.06 and 11.08. I recommend that all tentative agreements be incorporated in the new collective bargaining agreement.

There remain 19 contract sections on which the parties are in disagreement. In some instances, a single contract section can be considered as involving several disagreements. For example, in a three year contract, salaries (Section 11.01) for each year of the agreement could be regarded as one disagreement or three. Tabulated in this more specific manner, the total of individual areas of disagreement would number approximately 50.

Background

Pursuant to the rules promulgated by the State Employment Relations Board, the fact-finder is to take into account the following factors:

1. Past collective bargaining agreements between the parties;
2. Comparison of the issues with those issues involving other public and private employees doing comparable work, with consideration of factors peculiar to the area and classification involved;
3. The public interest and welfare, the ability of the employer to finance and administer the items involved, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the employer;
5. Any stipulations of the parties;
6. Such other factors which are normally or traditionally considered in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in public service or in private employment.

In the preparation of this report, I have been guided by the factors listed above. In view of the large number of outstanding issues, and the time constraints for the issuance of this report, my supporting rationale for the specific recommendations set forth below will be terse.

Analysis and Recommendations

1. Section 5.02 (Contractual Status)

The District proposes deletion of the provision requiring written reasons (upon request) when a one-year contract is issued to a teacher eligible for a multi-year contract (that is, a teacher with over three years of service). In addition, the District would replace the entire subsection B(2) (Extended Limited Contract) with a reference to the Ohio Revised Code. It would add a new provision that would supersede the provisions of Ohio Revised Code Sections 3319.11 and 3319.111 with respect to teachers with less than three years service who are non-renewed. Essentially this provision would call for the non-renewed teacher to be given advance notice and an opportunity to address the Board in executive session. Current teachers, however, would be "grandfathered."

The Association, by contrast would require the District to issue three and five year contracts to all teachers with more than three years service. It would accept the District's proposal with respect to non-renewal of probationary teachers with some minor modifications, but in exchange would require the District to meet the "just cause" standard in order to non-renew a teacher with over three years of service.

The evidence does not suggest that the language currently in effect has generated significant difficulties for either teachers or the District. I see no compelling reason to modify the current language, and I recommend no change with respect to Section 5.02.

2. Section 6.01 (School Year)

The District would add five professional development days per year to the school calendar.

The Association would change one inservice day to a second semester records day. It would also provide for two voluntary inservice days, to be paid at the individual per diem rate. (The Association would also modify the activities that qualify for inservice, but this is treated under Section 6.13.)

Additional training can be of benefit to both teachers and students. At the same time, additional required days reduce a teacher's free time, and deserve additional compensation. I shall recommend that there be up to 3 professional development days per year, at the District's option, each such day to be compensated at the per diem rate for step 0 of the appropriate salary column based on the individual teacher's educational attainment (bachelor, bachelor + 150, master, master + 15). This permits the District to decide, based on financial and other considerations, whether the educational benefit justifies the additional expenditure. Specifically, I recommend that the following paragraph be added to Section 6.01 (C) (2):

- g. Professional development days . . . up to 3, at the option of the Board
Each such day to be compensated at the per diem rate for step 0 of the affected teacher's column on the Salary Schedule (Bachelor, Bachelor + 150, Master, Master + 15).

I doubt that voluntary inservice days would be a workable concept. Therefore, except as specified above, I recommend no change to Section 6.01.

3. Section 6.02 (School Day)

The District would increase the work day by 15 minutes to 7.5 hours. It would also establish a student minimum contact time of 7 hours for kindergarten through fifth grade, and 7 1/4 hours for sixth through twelfth grades.

The Association would increase the work day in the high school (but not elementary or middle) to 7 1/3 hours. It would retain the current Norton 21 waiver. It would also provide a specific schedule for each building.

The District proposal would amount to an increase by nearly 3.5 percent to the work day of most teachers. Such an increase in the work day would call for an increase in compensation, which would result in salary increases substantially higher than I have recommended below. In my judgment, salary increases of that magnitude would be unrealistic at this time. Accordingly, I recommend no change in Section 6.02.

4. Section 6.06 (Class Size)

The District would delete Subsection B, dealing with special service personnel.

The Association would set maximum class size limits of 21 in kindergarten and first grade, 23 in second and third grades, and 25 in fourth through twelfth grades. The Association proposal includes exceptions

or modifications in some instances (High School Language Arts, Intervention/At Risk, Physical Education, Band and Choral Music), addresses how various categories of special students are to be treated, and provides for the treatment of situations involving changed circumstances that affect the ratio.

Ohio law addresses the teacher/pupil, ratio, although not necessarily on an individual class basis. Class size necessarily has an economic dimension, since if the District is required to spend additional money to hire additional teachers, less is available for increases in salary. I feel that any additional expenditures should be allocated to salary increases rather than mandated new hires. I recommend no change in Section 6.06.

5. Section 6.12 (Small Group/Individual Instructors)

The District proposes what it regards as a clarification specifically identifying special education teachers and academic tutors as "Small group/individual instructors."

The Association proposes that Small group/individual instructors be eligible for continuing contracts after five years service. It would also provide these individuals with certain contractual benefits they currently do not receive (such as with respect to school year, preparation time, personal leave, and method of pay), and it would make Articles VII (dealing with vacancy, transfer and assignment) and VIII (dealing with reduction in force) applicable to these individuals.

The evidence fails to convince me that a fairly lengthy history of affording different benefits to these individuals than to other teachers should be modified at this time. I recommend no change in Section 6.12.

6. Proposed New Section 6.13 (Inservice)

The Association would add a section providing teachers the option of obtaining their inservice instruction through District programs, NEOEA seminars, or other "outside" inservice.

Inasmuch as the District pays for the inservice time, I believe the District should have the right to determine the inservice curriculum. I recommend against the proposed new section

7. Proposed New Section 6.14 (Job Sharing)

The Association proposes incorporating job sharing arrangements, which have been adopted on an individual case basis, into the collective bargaining agreement.

The parties have had some, although not extensive, experience in employee job sharing. While it may well be appropriate to add a provision to a future collective bargaining agreement in this respect, I consider that greater experience is called for before a specific system is locked into the collective bargaining agreement. I recommend against the proposed new section at this time.

8. Proposed New Section 6.15 (Internet Usage)

The Association desires to add a new section defining a teacher's privacy, usage, and disciplinary rights with respect to computer use.

The current Board policy seems acceptable to both parties. I regard it as desirable, however, to gain additional experience under that policy before it is cemented into the collective bargaining agreement. I therefore recommend against the proposed new section.

9. Section 8.03 (Notification of Anticipated RIF)

The District would extend the current dates by which it is required to provide RIF notices, and would delete subsection D (requiring Board action on RIFs by June 1 in most cases).

The District proposal would provide it with additional flexibility in making RIF decisions, but this flexibility would be at the expense of disadvantaging the employment prospects of RIF'd employees with other districts. I recommend against adoption of the proposed changes.

10. Section 9.02 (Sick Leave)

The Association would remove the current 250 day limit on sick leave accumulation.

This proposal is one of three Association proposals that can be regarded as attendance incentives. Attendance incentives can provide a mutual benefit: the District gains by avoiding the costs of utilizing a substitute, as well as by the continuity of having the regular teacher present in the classroom, and the teacher gains through a financial incentive to report for work despite minor infirmities, rather than succumbing to the "use-it-or-lose-it" mentality. Nonetheless, I conclude that the best way to implement this notion is through a change in Section 12.02 rather than Section 9.02. Accordingly I recommend no change to Section 9.02.

11. Section 9.11 (Subpoenaed Witnesses)

The District would delete the current provision permitting a teacher to apply sick leave toward an absence occasioned by a subpoena for testimony.

The current provision has minimal impact on both the District and the employees. I see no compelling reason for its modification. I recommend no change with respect to Section 9.11.

12. Section 10.01 (Coverage)

The District would modify the current medical insurance, by removing the current \$30/month cap on the employee's share (6 percent) of premium costs, by increasing the deductible from the current \$75/\$125

(single/family) to \$200/\$400, and by increasing the employee's prescription co-pay to \$7/\$12/\$20 (generic/brand/brand selected) from the current (0/\$2/\$5).

The Association would add a vision care benefit.

The District is self-funded for health insurance, which, in view of its size, may not be the most cost-effective system. Some public employers and employee organizations have had success with joint health care cost containment committees, usually composed of equal numbers of management and bargaining unit members. I commend this approach to the parties for their consideration, although it is unnecessary to include language in the collective bargaining agreement in this regard, and the parties need not make a decision on whether to establish a health care cost containment committee in order to accept or reject my recommendations.

I recommend modest changes with respect to medical coverage. Specifically, I recommend that the deductibles in Section 10.01 (A) (5) be increased to \$100 (single) and \$200 (family). I also recommend an increase in the prescription co-pay to \$5.00 (generic) and \$10.00 (brand), regardless of whether a generic is also available. Specifically, I recommend that Section 10.01 (A) (6) be modified to read as follows:

Employees who use the prescription drug coverage shall be subject to a \$5.00 (generic), and a \$10.00 (brand name) co-pay. Maintenance drug users will have the option of mail order drug purchases with no deductible.

In all other respects I recommend no change in Section 10.01.

13. Section 11.01 (Salary)

The District proposes salary increases of 2.5 percent in the first year of the agreement, 2.0 percent in the second year, and 2.0 percent in the third year.

The Association proposes increases of 5.0 percent, 4.75 percent, and 4.5 percent.

I will not attempt to compute an entire salary schedule, but will state my recommendation in percentage terms, as the parties did throughout the process. I recommend the following increases in the salary schedule:

Effective July 1, 2002	3.0 percent
Effective July 1, 2003	3.6 percent
Effective July 1, 2004	3.9 percent

14. Section 11.09 (Spot Substitution)

The District would increase the compensation for spot substitution by \$1.00 in each year of the agreement, to \$13.00 in the first year, \$14.00 in the second, and \$15.00 in the third.

The Association would increase the spot substitution rate to \$15.00 in the first year of the agreement. It would also provide compensation of \$25 per student for "absorption."

I adopt the Association's proposal with respect to spot substitution, but not with respect to absorption. Accordingly, I recommend that the words "twelve dollars (\$12.00)" be replaced by "fifteen dollars (\$15.00)". In all other respects, I recommend no change to Section 11.09.

15. Proposed New Section 11.14 (Tuition Reimbursement)

The Association proposes that tuition paid by teachers be reimbursed, to a maximum of \$600 annually per teacher.

Continuing education benefits both the teacher and the District. Thus it seems reasonable that both parties should share in the costs of obtaining such further education. I recommend that the following new Section 11.14 be added to the collective bargaining agreement:

The Board shall reimburse unit members for one-half the tuition cost of college credit courses, to a maximum of \$300.00 per teacher per year. To be eligible for this benefit, an individual must have at least one full year of prior experience in the District. Course work must pertain to areas of certification relevant to classroom instruction, the individual's current assignment or supplemental contract, an area of certification currently held, or course work toward a new certification. To qualify for reimbursement, the individual must receive a grade of "C" or higher in graded courses, or a grade of "Pass" in pass/fail courses.

16. Proposed New Section 11.15 (Attendance Stipend)

The Association proposes that employees who are absent two days or less receive a stipend of \$200-\$300, and that employees who are absent from three to five days receive a stipend of \$100-\$200.

As noted above, I believe that a system of attendance incentives can provide mutual benefits, but I believe that the most efficient way to implement it is through a modification to Section 12.02 rather than adoption of the proposed new Section 11.15. I recommend against adoption of the proposed Section 11.15.

17. Section 12.02 (Severance Pay)

The Association seeks to delete the eight year service requirement for receipt of severance pay. In addition, it would increase the maximum severance allowance from the current 42 days to 56 days.

As indicated above, I believe that both teachers and the District can benefit from a system of incentives encouraging teachers to maximize their attendance, thereby both reducing costs to the District and minimizing the downtime that necessarily results when a substitute is present. Specifically, I recommend that Section 12.02(B) be amended to read as follows:

Each teacher who qualifies shall receive 28.38 percent of his/her accrued but unused sick leave credit up to a maximum of 180 days. Payment shall be based on the daily rate of pay at the time of retirement and shall not exceed 51 days of accrued but unused sick leave. Payment under this provision shall eliminate all sick leave credit. No teacher shall receive more than one payment.

Contrary to the Association, however, I recommend no change with respect to Section 12.02 (A).

18. Proposed New Section 12.04 (Employment of Retirees)

The District would add a new section dealing with employment of retirees. The District proposal would place such retirees between Steps 5 and 15 inclusive on the salary schedule, would limit them to one year contracts with no evaluations or notices of non-renewal necessary. It would exclude the retiree from certain contractual benefits (severance pay, insurance, seniority), and would exempt the section from the grievance procedure.

The Association would accept some, but not all features of the District proposal. It would restrict hiring of retirees to situations in which there is no internal applicant, would initially place the retiree between salary steps 7 and 15 inclusive, and would afford them with all contractual benefits (including step progression and seniority from their first day of return to work) other than severance pay.

As with Section 6.14 (dealing with job sharing) the parties have had only limited experience with the re-employment of retirees. I believe that greater experience in this regard is advisable before a specific system is calcified in the collective bargaining agreement. I recommend against adoption of the proposed new section.

19. Section 16.01 (Duration)

Both parties envision a three year agreement. The District, however, would add a zipper clause to the current language.

Inasmuch as both parties contemplate a three year agreement, I recommend that the date set forth in Section 16.01 be changed to June 30, 2004. Given that the parties have operated successfully without a zipper clause through successive contracts, and that the effects of the proposed zipper clause might be difficult to foresee, I recommend against the proposed zipper clause.

As to all contract sections for which no changes have been recommended above or with respect to which the parties have not reached tentative agreement, I recommend that these Articles be retained unchanged from the prior agreement

Issued August 15, 2002

Matthew M. Franchewitz

Certificate of Service

I certify that the above Report and Recommendations was served upon both of the above-named parties, and upon the State Employment Relations Board, in accord with SERB rules, on August 15, 2002.

Matthew M Franckewitz