

STATE-EMPLOYMENT
RELATIONS BOARD

AUG 11 10 35 AM '95

ALAN M. WOLK
ARBITRATOR

STATE EMPLOYMENT RELATIONS BOARD

IN THE MATTER BETWEEN

APOLLO EDUCATION ASSOCIATION

UNION

and

APOLLO JOINT VOCATIONAL
SCHOOL DISTRICT
BOARD OF EDUCATION

)
) NO. 95-MED-03-0144
)
) FACT FINDING
) REPORT AND
) RECOMMENDATION
)
)
)

APPEARANCES

FOR THE UNION:

ANN FIELD, OHIO EDUCATION ASSOCIATION; DENNIS H. COUGHLAN,
LABOR RELATIONS CONSULTANT

FOR THE SCHOOL BOARD:

GREGORY B. SCOTT, ESQ. OF SCOTT, SCRIVEN & WAHOFF

SUBMISSION

FACT FINDING REGARDING AGREEMENT
WITH APOLLO EDUCATION ASSOCIATION

The undersigned was selected by the parties through the STATE EMPLOYMENT RELATIONS BOARD to serve as fact-finder pursuant to Ohio Revised Code Section 4117.14(c)(3)(a) and Ohio Administrative Code Rule 4117-9-05(F).

By agreement of the parties, hearings were held (7/24/95) Apollo Joint Vocational School District ("JVSD") 3325 Shawnee Road, Lima (ALLEN County), Ohio, during which time the parties were afforded a full opportunity to present opening statements; to submit and to cross-examine evidence, as well as to offer exhibits or documents, and to argue the merits of their respective positions as to all issues orally, the submission of briefs being waived by both parties.

All stipulations, all exhibits submitted, and the testimony, affidavits, objections and briefs have been duly received and given such weight as deemed appropriate by the Fact Finder.

The parties understood that the Fact Finder's Report would be due as of August 11, 1995.

Pre-Hearing Information [Ohio Adm Code: 4117-9-05(F)]

1. Parties

UNION:

The Apollo Education Association. The principal representative is ANN FIELD, Ohio Education Association 1225 North Cole Street, Suite A. Lima, Ohio 45801 (1-800-686-2413; 1-419-228-1789).

EMPLOYER:

Apollo Joint Vocational School District Board of Education, Shawnee Township, Ohio,, with 102 employees, (phone: 1-419-998-2910), J. Chris Pfister, Superintendent; the Board is represented by: GREGORY B. SCOTT, ESQ. OF SCOTT, SCRIVEN & WAHOFF, 2500 Le-Veque Tower, 50 West Broad Street, Columbus, Ohio 43215 (1-614-222-8686). This Board is an umbrella for eleven (11) K-12 public School Districts in four counties making up a Vocational Education Planning District [VEPD] which has a separate Board of Education. (The City of Lima is excluded).

2. Bargaining Unit

The bargaining unit consists of approximately 69 salaried certificated teachers and other professional staff; excluding cafeteria and maintenance, secretaries, hourly teachers, teaching assistants, administrators and supervisors.

3. Certification or Recognition date

2/24/95

4. Current collective bargaining agreement, if any.

This is the parties first collective bargaining agreement; the 90 day statutory bargaining period began 3/2/95 R.C. 4117.14(c)(2)

5. Description of employer and employee functions

The employer is a Joint Vocational School District serving a Vocational Educational Planning District consisting of 11 school districts providing customary high school and adult vocational school services to the public within its boundaries in Allen County and parts of Hardin, Auglaize, Putman, Hancock counties.

6. List dates of meetings

6/2/95; 6/6/95; 6/21/95; 6/29/95.

7. Statement of unresolved issues

There were 23 issues involving 17 Articles at the start of the hearing. (Recognition; Interim Bargaining; Grievance Procedure; Management's Rights/Agency Fee; Employee Evaluation; Reduction in Force; Just Cause; Seniority; Group Insurance; Compensation; Severance Pay; Personal Professional Records; Tuition Reimbursement; Working Conditions; Health and Safety; Contract Maintenance).

Criteria Applied

The fact finder, in making recommendations, considers all reliable information relevant to the issues, including, but not limited to:

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of unresolved issues related to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties; and
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Proceedings

Without a collective bargaining agreement, the Board functions under school law, particularly R.C. 3319. Now that this bargaining unit has been certified, the parties are also subject to R.C. 4117. Some issues are the subject of mandatory bargaining, and some are permissive as delineated under 4117.08.

With this background, the parties are in the process of creating their initial contract. They reported agreement on many issues after bargaining in good faith, however, fact finding is necessary to resolve points of impasse.

This report attempts to identify the gravamen of each dispute and to consider the focus, weight and relevancy of the evidence, the logic of the arguments and the impact on each party. Statutory law has been relied on where neither position is persuasive.

Contract Document

For convenience references to Article numbers are to the draft agreement included in Management's presentation. The numbers on Articles may be changed by agreement of the parties.

Funding

The Board is not insolvent, however, its limited resources are static or trending lower. The Board's funding comes from local taxes (47% real estate and personal property taxes), state aid (mostly for categorical "units"). There are about 550 predominantly rural high school students. Fees for adult education classes for about 7500 are substantially self sustaining. Real estate can increase via raises in millage and/or valuation, however, some efforts at increased millage have been defeated. Property re-evaluation increases average one (1%) percent per year. Since 1993 the Board has eliminated 15 teaching positions, two administrators and one non-teaching position. State aid increases were 1.0% in 1993 and 1.95% in 1994. During this period the Consumer Price Index (CPI) has ranged between 2.7% and 3.2% annually.

Comparables

The Board contends contiguous and nearby comparable Joint Vocational School Districts are: Vantage (Van Wert); Pickaway-Ross (Chillicothe); Mid-East Ohio (Zanesville); Eastland (Fairfield County); Central Ohio (Madison County); and Springfield-Clark County (Springfield). The Board also submitted as comparable, agreements within the 11 VEPD's. (The weight and relevance of the VEPDs with K-12 classes with respect to JVSDs is limited).

The Union relies on comparable information from western Ohio e.g. Grand Lake Service Council (Auglaize County, Celina, Coldwater, Fort Recovery, Marion, Minster, New Bremen, Parkway, St. Henry, St Mary's); Allen Service Council (Allen East, Bath, Bluffton, Del-

phos, Elida, Lima, Marimor, Perry, Shawnee, and Spencerville); Putnam County Service Council (Columbus Grove, Continental, Fort Jennings, Kalida, Leipsic, Miller City, Ottawa Glandorf, Ottonville, and Pandora).

Except for Lucas County, all comparables are rural.

The Board takes the position that any collective bargaining agreement requires approval of the Apollo JVSD Board AND the representatives of the VEPD (although the latter may participate in planning functions, often as consumers, they seem to lack significant legal direct funding and contract involvement).

ISSUES IN DISPUTE AND RECOMMENDATIONS

1 Recognition

Articles 1.01, 1.02 and 1.03 are agreed.

Union proposes:

1.04 All work currently performed by bargaining unit members, as well as future work of similar nature, shall be deemed bargaining unit work.

The purpose is to restrict opportunity to contract out and limit arbitrary, capricious or unjustified removal of work from bargaining unit.

Board position:

Opposes. While the Board is not seeking the right to subcontract, it acknowledges its duty to bargain about the effects of any future decision to remove work from the bargaining unit. It needs maximum flexibility and only one member of VEPD and no neighboring JVSD has any such language.

Recommendation:

Sections 1.01, 1.02 and 1.03 protect the Board in administering very well. However, it is reasonable to limit the Board with respect to subcontracting, otherwise the integrity of the bargaining unit could be dissipated. 1.04 as offered by the Union is too broad. The Shawnee agreement is a reasonable approach and satisfactorily limits subcontracting when and if it eliminates an employee's job.

Therefore, I recommend:

"1.04 Subcontracting

No outside contractor, supervisor, managerial employee, substitute, temporary or casual employee or other employee outside of the bargaining unit may be used to eliminate an employee's job.

"This provision shall not be construed to apply to supplemental contracts awarded in accordance with ORC 3313.53, nor shall it be construed to prohibit the use by the school district of unpaid volunteers.

"The Board may elect not to fill a position or create new positions, but the compensation for any new position for certificated teachers and or professional staff shall be the subject of bargaining."

2 Negotiations procedure: Interim Bargaining

Article 2 is agreed by the parties except for 2.09 where the issue is interim or in term or mid term bargaining.

Union proposes:

The Article should require bargaining in "good faith." It also objects to the provision that interim bargaining requires majority vote of the Association members unless the Board agrees to interim binding last best offer interest arbitration. It does not want failure to bargain to constitute a waiver of the Board's obligation to bargain such subjects.

The disputed language it proposes:

"In the event of an impasse in such interim bargaining, the parties agree that the impasse will be resolved by the Board of Education's election of either (a) no implementation of the proposed change(s) which precipitated the interim bargaining, or (b) the issue(s) which remain unresolved will be submitted to binding last best offer interest arbitration." [emphasis added].

Board position:

The Board does not accept binding interim last best offer interest arbitration, and agrees only to notice of proposed changes and agreeing to the Union's the right to bargain about the effects. [emphasis added].

2.09 Interim bargaining -- In bargaining about the effect of management decisions on wages, hours, terms or conditions of employment, the Superintendent, or his designee, shall give the Association President written notice of the change. The Association within thirty (30) days of receipt of the Superintendent's notice has the right to bargain about the effect(s). [emphasis added].

During the hearing the Board suggested revisions and additions to proposed 2.09, solely on the condition of acceptance by Union, however, the parties did not resolve this issue. (This proposed language has been attached as an appendix).

Comment:

All bargaining is to be in "good faith". [2.08].

The evidence does not support binding last best offer interest arbitration at this stage of the bargaining relationship. This is the initial collective bargaining agreement and the parties have no history of unilateral interim changes or lack of sufficient good faith with respect to interim bargaining. Nevertheless, see recommendations regarding Maintenance of Standards.

Recommendation:

"2.09(a) The terms and conditions of employment shall not be changed without following the procedures set forth in this Article 2.09.

If the Board proposes to change wages, hours, terms or conditions of employment of members of the bargaining unit during the term of the Agreement, the Superintendent, or his designee, shall give the Association President written notice requesting interim bargaining specifying such proposal.

(b) The Association will have thirty (30) calendar days in which to demand bargaining.

(c) Each party shall bargain in good faith. Failure to act accordingly may be the subject of an Unfair Labor Practice action.

(d) The failure of the Association to demand interim bargaining over such subject shall not be construed as a waiver of the Association's right to demand bargaining in the future over other subjects or over the same subjects as they arise, nor shall such failure be construed to relieve the Board of its obligation to bargain over mandatory subjects with respect to future changes.

(e) In the event of an impasse by forty five (45) days after the Superintendent's or designee's notice, the Board may, upon ten (10) days' written notice to the Association President, implement its last offer of the proposed change(s), and the Association may, upon ten (10) days written notice to the Superintendent and to SERB, strike."

In addition, the parties separately argued about a "zipper" clause precluding interim bargaining and maintaining minimum standards, which I reject hereinbelow.

Union proposes:

If there is a "zipper" precluding interim Bargaining the Union must have a "standards clause", otherwise the Board never has incentive to bargain.

Board position:

None of the comparables within VEPD have interim bargaining where there is a "zipper" clause coupled with a waiver of interim negotiations.

Recommendation:

"2.09 (f) The parties agree to meet classroom standards prescribed by the State of Ohio but shall retain the highest minimum standards practiced by the parties at the time of signing this Agreement. "

3 Grievance Procedure/Arbitration

Comment:

During the hearing the parties settled this issue by replacing the sixth (6th) paragraph of 3.06 beginning on page 9 and carrying over to page 10 of the Board's draft contract as follows:

"3.06 The procedures contained in this Article constitute the sole and exclusive method of considering the redressing of grievances arising during the life of this Agreement and any extensions thereof, except for disputes with respect to which SERB has exclusive jurisdiction or disputes with respect to which an individual can file a charge under federal civil rights laws."

5. Management Rights: Agency Fee

MANAGEMENT'S RIGHTS

Board

Insists on a strong management's rights clause in exchange for binding grievance arbitration similar to the six contiguous JVSDs and seven of the VEPDs. Accordingly, they have proposed 5.01 and 5.02.

Union

Grant to the Board all rights not expressly limited by law.

Recommendation

Adopt the Management's proposal 5.01 and 5.02. Although the proposal strongly protects Board action, which is partly balanced by agency shop and grievance arbitration.

AGENCY FEE

Union proposes:

Agency fee is needed because the Association is required to fairly represent all bargaining unit members regardless of their membership status.

Board position:

Because of the slim victory by the Union establishing the bargaining unit, it would be unfair to impose significant annual costs of \$400.00 when they have not yet benefited. R.C. 3319 protects these employees to some extent. Only two of the 11 VEPD's and only one of the six contiguous JVSDs have agency shop. Furthermore, the Board contends it may have vicarious liability towards a dissident teacher who complains about the agency shop procedure.

Comment:

The size of the victory is not an issue before the Fact Finder and it is not relevant to the question of whether or not those who remain out of the Union should benefit from the efforts of the Union without cost. Although R.C.3319 grants some protection, a collective bargaining unit can implement these protections more effectively and negotiate other benefits not included in state law. The only result of rejecting the agency fee proposal is to weaken the Union to the special advantage of the Board as non-union employees could reap benefits without cost.

Note that the proposal of the Union would not begin until the second payroll period in January, 1996.

Recommendation:

Adopt the Union proposal on agency fees as 5.03. (Appendix #5 attached). This protection in addition to grievance arbitration partly balances strong management's rights

6 Employee Evaluation

Comment:

The parties was reported settled and agreed during the hearing to

- (1) Renumber 6.01, 6.02 and 6.03 as 6.02, 6.03 and 6.04, and
- (2) Inserting a new provision 6.01:

"Unless and until mutual agreement is reached under Section 6.02 state law shall apply and any challenge to a non-renewal shall be pursuant to R.C. 3319.11(G)", and

- (3) otherwise adopt the Board's proposal.

(See Appendix #6 and the document titled "SUPERVISION AND APPRAISAL OF CERTIFIED PERSONNEL").

8 Reduction in Force

Board position:

Desires to replace R.C. 3319.17, under which there are four statutory reasons ("declining enrollment, return of teachers to regular duty from leaves of absence, closing of schools, or territory changes affecting the district.") for which the Board can "non-renew" after timely and appropriate evaluations [ORC 3319.11 and 3319.111].

8.01 proposed by the Board adds: "financial reasons" and expands "declining enrollment" to read "declining or insufficient enrollment." It is submitted that all or 10/11 VEPD's and all 6 JVSD's provide "financial reasons." The trade off, according to the Board, provides recall rights and traditional seniority based layoffs and recall.

Union proposes:

No reduction in force during the term of Agreement.
(An alternative draft was submitted by the Union, but rejected by Management).

Recommendation:

The Union position is too restrictive on management. However, despite the unanimous comparisons described by the Board, the flexibility the Board gains from the changes in its favor are not sufficiently balanced by its claimed protection with provisions for seniority-based recall and layoff language.

This area may become the subject of some future negotiation. In the interim, I recommend no contract provision except to remain subject to R.C. 3319.17.

10 Just Cause

This issue was withdrawn by both parties at the hearing

11 Employee Practices/Seniority

This issue was reported settled by the parties at the hearing.

(See: Union report page 17; Board page 29/30. (Relating generally to seniority of individuals who becomes part of management and later return to the bargaining unit)).

12 Personal Professional Records

This issue was reported settled at the hearing by deleting Board proposed Article 12.11.

13 Compensation; payroll practices

Issues:

13.01 A refers to salary schedule in Appendix "A" attached to the contract.

13.01 B set a separate schedule "B" for Coordinators.

13.01 C involves the issue of whether or not employees will be given credit for prior teaching at chartered private schools.

13.01 E whether or not to continue to send annual salary notices.

Union proposes:

13.01 A. increases over three years at 8%, 8% and 8%.
(asserting the previous raise was 3% and there was no raise in 1994).

13.01 B rejection of the Board proposal to freeze coordinators salaries, (asserting that Coordinators have more responsibility than regular teachers and, therefore, should be compensated at a higher rate).

13.01 C credit should be given for private teaching experience at chartered schools.

13.01 E that annual salary notices continue to be issued by the Board.

Board proposes:

13.01 A provide increases over three years of 2%, 2% and 2%. (Asserting this is competitive with the contiguous JVSD's and the VEPA's. It is argued that the cost of living at 2.7% to 3.2% percent is overstated, quoting Federal Reserve Chairman Alan Greenspan, by 1%, and that Ohio's CPI is 80% of the national CPI. Furthermore, the Board can only pay increases out of reserves and will be forced to reduce reserves too much. 8%-8%-8% will cost \$1.731 million and would be imprudent. 2-2-2 would cost \$587,00 with no new income on the horizon therefore some would come from Board reserves. Employees arguably are not in a catching up mode having received increases over 12 years exceeded the CPI, if increases in health benefits of 156% are taken into consideration.

13.01 B Coordinators compensation to be frozen until teachers salaries catch up. Coordinators should be on same salary schedule as teachers and are presently paid \$3,000 - \$6,000 more on the schedule plus "extended service", although they are not management nor do they have administrative certification. Their coordinator duties replace their instructional duties. Comparables do not support a separate salary schedule for coordinators.

13.01 C no serious controversy

13.01 E discontinue annual salary notices as a waste of time.

Recommendation:

Taking into account direct and indirect cost increases which may be incurred by the Board as recommended in this entire Report:

13.01 A

The demand of the Association is not supported by the evidence and is rejected. On the other hand, the rationale of the Board that the CPI of 2.7 to 3.2% is overstated by 1% and that Ohio's CPI is 80% of the national index is novel, but is based on selected or isolated points rather than comprehensive expert economic data. Furthermore, the market as indicated by both management's contiguous JVSD's and the Associations comparables indicate that the Board's offer of 2%-2%-2% is below the market which exceeds the CPI. However, because the Board's actual ability to pay is somewhat limited, I recommend that compensation be increased to keep net buying power minimally close to inflation as follows:

Appendix A will be reconstructed to provide increases for teachers in the amount of 2.5% for the first year, 3% for the second year, and 3.5% for the third year of this agreement.

13.01 B

The duties and responsibilities of coordinators are different when compared to teaching duties, and they are more comprehensive. A continuing disparity in compensation between the two may very well be justified, however, the evidence was not persuasive either way on this issue and must ultimately be resolved by the parties. Here, the parties simply took strong conflicting positions.

Appendix A will be reconstructed to provide increases for coordinators in the amount of 2.5% for the first year, 3 % for the second year, and 3.5% for the third year of this agreement.

13.01 C

Credit should be given for private teaching experience at educational institutions chartered or recognized at equivalent to those chartered by the State of Ohio.

13.01 E

The Board may discontinue annual salary notices, however, the Board shall provide written confirmation of an employee's own salary within a reasonable time after a written request by the employee for such confirmation.

16 Severance Pay

Union proposes:

Bargaining unit members to be paid up to 50 days (1/4 of 200) of his/her unused sick leave as an incentive to teachers to accumulate sick leave. It is asserted many contracts have more than 45 days severance pay.

Board position:

The Board currently pays up to 45 days (1/4 of 180). Only 2 of VEPD allow 50 days.

Recommendation:

The Board's position is approved. There is insufficient evidence for an increase in payment for sick days at this time. Board proposed Article 16 is approved.

17 Group Insurance

Union proposes:

Include the specifications for insurance coverage in the contract in order to retain the coverage regardless of the carrier.

The full costs are presently paid by the Board and the Union rejects the Board's proposal to have the bargaining unit pay 7% of any increase in costs.

Board position:

The Board presently pays 78.4% of Option A; 86.4% of Option B; and 100% of Option C health premiums, and 92% of dental premiums.

The Board proposes to pay 93% of any increase in costs of health and dental premiums, and members of the bargaining unit would pay 7%, based on VEPD comparables which reflect either a similar percentage or a fixed maximum.

Recommendation:

The apparent purpose of this demand is to give employees some recognition of their medical costs. However, this approach also give Management a little less of a stake when rates are raised in that they may be concerned only with their net cost.

There was evidence comparing other JVSD's all of which require some contribution. Seven (7%) percent by the employees is at the higher end of that scale.

My recommendation is:
17.04(B)

"The Board shall pay all increases in the cost of the \$500/1000 deductible health insurance plan and pay ninety seven (97%) of any increase in any other health insurance plans. The board shall pay the entire increase in the cost of dental insurance. The amounts under the flexible spending plan shall be increased by the same percentage as the percentage increase in the \$500/1000 deductible plans."

Furthermore, I agree with the Union that the benefits meet or exceed the benefits in effect 9/15/94, and that they be specifically set forth in the collective bargaining agreement as part of Article 17 (in the style or form set forth on pages 27-32 of the Union "Report)."

19 Working Conditions

Union proposes:

Most schools that feed into Apollo have less than an 8 hour day and the Union requests a 7 1/2 hour day and a 183 day year.

There are some classes with juniors and seniors in the same class.

Union seeks pay including summer; pay for substituting by giving up planning (200 minutes a week).