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STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

In the Matter of the Fact-finding Proceedings Between:

TOLEDO FEDERATION OF TEACHERS )	Case No. 96 MED 06 0565
Substitute Teachers Unit )	
and )	<u>RECOMMENDATIONS</u>
TOLEDO PUBLIC SCHOOLS )	Margaret Nancy Johnson
	Fact-finder

Appearances

For the Board of Education:

B. Gary McBride, Esq.  
William Lehrer, Assistant Superintendent  
Robert Corcoran, Executive Directive

For the Federation:

David M. Schnorf, Esq.  
Francine Lawrence, Chief Negotiator  
Jim Dyko, Member, Negotiating Team

Introduction

The Toledo Public Schools, hereinafter "Board," operates as a City School District under the management of the Toledo Board of Education, and offers programs of public education at the elementary and secondary school levels. Teachers employed by the Board, including approximately 375 substitute teachers, are represented by the Toledo Federation of Teachers, hereinafter "Federation." Upon reaching an impasse in negotiations for a successor to the September 1, 1993 through August 31, 1996 substitute teacher contract, the parties engaged in Fact-Finding. On October 16, 1996 Margaret Nancy Johnson, the Fact-Finder appointed by the State Employment Relations Board, convened a hearing at the law offices of Schnorf and Schnorf in Toledo, Ohio, and pursuant to Ohio Revised Code 4117.14, took testimony and evidence on issues remaining in dispute.

In addition to its contract with the Substitute Teachers, the Board is a party to contracts with regular classroom teachers, administrative personnel, and service employees. During negotiations with these other units whose contracts were scheduled to expire on January 31, 1996, the Collective Bargaining Agreements were extended through November 30, 1997.

Salary increases of 3.5% effective on the first day of the extension and an additional 2.5% effective February 1, 1997 were provided. For the duration of these agreements, the Board agreed to maintain parity in respect to salary or wages among all the bargaining units with which the Board collectively bargains.

In negotiations for this contract the parties agreed upon the common expiration date of November 30, 1997. Thus, the subject Collective Bargaining Agreement between the parties will be renegotiated next year as will other contracts with the Board.

### Issues

Pursuant to O.R.C. 4117.14(C)(3)(a) the following issues were identified by the parties in timely pre-hearing statements as the issues remaining in dispute: assignment of continuous building substitutes to elementary schools; compensation for unit members who substitute after retirement; compensation for planning time; travel pay; and wages and benefits. During negotiations the parties reached agreement on long-term assignments and on certification for continuous building substitutes, which agreements are incorporated within this Report and Recommendations.

### Positions of the Parties

#### I Continuous Building Substitutes

The Federation proposes adding to the language in Article VI-A provision for assignments at a single "elementary, junior high and/or high school." Additionally, the Federation seeks to include within the agreement the following:

Five elementary schools, as determined by the greatest student enrollment, shall be assigned a continuous building substitute. Additional continuous building substitutes shall be assigned to elementary buildings based on which school has the greater enrollment.

The rationale for the proposed language is the present inability of the Board to meet the daily need for substitute teachers in the elementary schools. The critical shortage of substitute teachers at the elementary level is documented by the number of teaching positions left unfilled during the 1995-1996 school year on a daily basis. Derived from information compiled by the District Department of Human Resources, as many as 52 substitute requests were unassigned in elementary school buildings in one day.

Additional evidence submitted by the Federation demonstrates the detrimental impact of these statistics on the educational process. A witness from the regular classroom teachers unit with fourteen years teaching experience described the attendant

disruption, overcrowding, and danger associated with combining classes rather than providing for substitute teachers. For every classroom left uncovered, approximately 100 students are affected and deprived of meaningful instruction.

On the other hand, the use of building substitutes has a positive affect on the day to day operations of the school. The substitute becomes familiar with the student body and the staff. Able to develop a rapport, the assigned substitute appropriately responds to student needs and adjusts to classroom situations, thus reducing teaching time lost on discipline.

The Federation argues the District would better serve its community if continuous building substitutes were made available in the elementary schools. As the Board can afford this proposal, the Federation is adamant about its position on this matter.

Equally adamant, the Board perceives the Federation proposal as an infringement upon its inherent right to assign personnel and as an attempt to mandate minimum staffing levels. While the Board recognizes the value of building assignments, it is currently unwilling to abandon the flexibility it has retained to recruit qualified college graduates becoming available during the school year but for whom no current permanent employment position exists. Moreover, as staffing is a specifically reserved managerial prerogative, the Board will not relinquish its statutory right on this issue. Finally, the Board suggests that the substitute issue is really an absentee problem rather than a staffing shortage.

## II Compensation for retired teachers who substitute

The Federation proposes that members of the bargaining unit who substitute after retirement and are assigned as long-term substitutes should be paid the current contract salary rate they would earn if a regular teacher, beginning on the eleventh (11th) day of such assignment. The rationale for the proposal is that teachers who retire and then return to the classroom as substitutes ought to be compensated at a rate of pay which is commensurate with their experience. Since there is such a severe shortage of substitutes as has been evidenced in the consideration of the preceding issue, retirees should be encouraged to serve in this capacity. Moreover, retirees are a valuable resource whose expertise and experience should benefit the school district. Again, as the district can well afford this proposal, it behooves the parties to act upon the same.

The Board of Education believes that the matter of pay for retirees should be deferred until negotiations for the successor contract. Because of the "me too" commitment, the Board is reluctant to enter into a contractual obligation that may have ramifications beyond the bargaining unit.

## III Planning Time Compensation

The shortage of substitutes results in teachers being required to provide coverage for a second teacher, to use

planning time for instruction, and to teach in excess of the contractual workday. Teachers ought to be appropriately compensated for the additional duties and the Federation proposes increasing the compensation for such services from \$9.00 to \$10.00.

As it agreed to a 12.5% increase in planning time compensation during the 1994 negotiations, the Board is opposed to further increases at this time. Absent a meaningful adjustment the Board takes the position that increasing planning time compensation should not be considered until the 1997 negotiations.

#### IV Travel Pay

The Federation proposes increasing travel pay for teachers who are required to travel between locations during the work day from \$2.00 to \$3.00.

Again, as travel pay was doubled during negotiations for the reopener, the Board is opposed to increasing travel pay in this round of negotiations, especially should an increase potentially expose the Board to the effects of the "me too" requirements of its other contracts.

#### V Fringe Benefits

The Federation proposes increasing accidental death and dismemberment insurance for members from \$20,000 to \$30,000 and a similar increase in term life insurance. As insurance benefits will not trigger the "me too" clause of other contracts about which the Board is concerned, this proposal is a reasonable incentive for attracting substitute teachers. While the Federation asserts that the fringe benefits for substitute teachers do not compare with fringe benefits for its other constituents, the Board maintains that the 50% increase proposed by the Federation is unreasonable given the fact that in 1994 the Board agreed to a 100% increase in these benefits.

#### VI Wages

The Federation proposes increasing Class I wages to \$76.12 per day, Class II wages to \$66.62 per day and Class III to \$90.00 per day. In order to recruit substitute teachers, the Board must provide an adequate compensation. Because the compensation offered by the Board is not competitive, potential candidates are attracted to work in neighboring communities. The Board has the ability to pay the modest increase proposed by the Federation which will improve the quality of the educational program.

The Board herein insists that any wage increase be consistent with what has been negotiated with other unions. A wage proposal which exceeds the 3.5% and 2.5% increases will activate the "me too" provisions of other contracts and become financially disastrous for the district.

## Discussion

Current themes underlie the positions taken by the parties relative to the economic issues now in consideration. Contract modifications proposed by the Federation address a critical shortage of substitute teachers and its impact on the educational program proffered by the School Board. The Federation argues that a competitive wage package would enable the Board to attract substitute teachers and alleviate the present crisis. Of paramount concern to the Board, however, is the need to avoid the consequences of the "me too" provisions it has negotiated with its other bargaining units. The economy of the District cannot sustain the ramifications of wage proposals which will impact other collective bargaining agreements remaining in effect until December 1, 1997.

A review and analysis of the positions argued herein indicates that compromise contract language may satisfy the concerns of both of the parties. Although the Board argues that the issues should not be addressed until the next round of negotiations, the Fact-finder recommends a commitment on the part of the Board to the economic proposals of the Federation. It is essential that the Board demonstrate an understanding of and a willingness to address the substitute shortage crisis. In order to avoid the consequences of the "me-too" language negotiated in other contracts, however, the Fact-finder recommends that wage increases should take effect on the dates and at the per centages which correspond to the increases negotiated for the other units. Travel pay and retired teacher compensation should be effective December 1, 1997. The conclusion of the Fact-finder is that any economic provision discussed herein shall not trigger the "me too" provisions of the other bargaining units. Recognizing both the current substitute teacher crisis and also the economic realities of the "me too" provisions, the Fact finder submits the recommendations which follow.

## Recommendations

I Article VI-CLASS III-A  
Some substitute assignments shall be designated by the Board as assignments at a single elementary, junior high and/or high school on a daily basis and shall be made by the Personnel Office only. These designations shall not be from the Class II list.

In addition, as a recognition and an indication of the concern of the District for the substitute shortage, the Fact-finder recommends the parties enter into the following Letter of Understanding to be included as an Appendix to the Agreement:

The Board agrees to give consideration to the

recommendations of the Federation to use continuous building substitutes at elementary schools to help alleviate the shortage of substitute teachers. For the duration of this contract and on an experimental basis only, additional continuous building substitutes shall be assigned to elementary schools at the discretion of the Board at times and locations to be determined by the Personnel Office according to the realistic needs of the school district. While the same is not mandatory, the Board acknowledges the Federation recommendation of the assignment of five such substitutes at elementary schools maintained by the School District.

II Article VIII-A

Effective December 1, 1997, former members of the classroom teacher bargaining unit who substitute after retirement and are assigned as long-term substitutes shall be compensated at Step 12 as provided for in Article XXXV, Section P, page 124 of the teacher's Master Contract beginning on the eleventh day of such assignment.

III Article VIII-F

If class coverage is accepted by a substitute during time reserved for planning, he/she shall receive a bonus for each hour in which such coverage in lieu of planning time occurs at the rate of \$9.32 effective August 26, 1996 and \$9.55 effective February 1, 1997.

When no regular teachers are available to accept a second class (or part of a class) of students in addition to their regular class as per Article XIX, A, of the regular teachers' contract, substitutes may accept such assignments at the rate of \$9.32 per hour effective August 26, 1996, and \$9.55 per hour, effective February 1, 1997.

When a continuous building substitute is moved from his/her school and this results in more than six and one-quarter ( $6\frac{1}{4}$ ) hours service per day, exclusive of the lunch hours, the substitute will be paid at the rate of \$9.32 effective August 26, 1996 and \$9.55 effective February 1, 1997, for the time in excess of the six and one quarter hours per day.

IV Article VIII-C

Effective December 1, 1997, Class I and Class II

substitutes who receive traveling assignments shall be compensated at the rate of \$2.00 for such assignments or pursuant to Internal Revenue Service regulations, whichever shall be greater.

V Article VIII-G  
Effective January 1, 1997, The Board shall provide each substitute with accidental death and dismemberment insurance in the amount of \$30,000.

Effective January 1, 1997, the Board shall provide \$30,000 term life insurance for substitutes who have sixty (60) or more days substitute service at Toledo Public Schools provided that the employee make written application in the Personnel Office for such policy following the completion of sixty (60) days of service.

VI Article VIII-A  
Retroactive to August 26, 1996, a 3.5% wage increase shall be implemented, and effective February 1, 1997, a 2.5% wage increase shall be implemented.

To the extent the 1993-1996 Agreement and the reopener have been modified by Agreements reached by the parties during negotiations prior to fact-finding, these modifications are incorporated herein and made a part of the recommendations of the Fact-Finder. The foregoing recommendations are based upon the facts presented to the Fact-finder in October, 1996 and are not to be deemed determinative of future fact-finding proceedings involving these parties.

Respectfully submitted,

  
Margaret Nancy Johnson  
Fact-finder

Service

A copy of these recommendations has been issued by Federal Express this 20th day of November, 1996, to G. Gary McBride, Esq., of Spengler Nathanson, 608 Madison Avenue, Suite 1000, Toledo, Ohio, 43604-1169; David M. Schnorf, Esq. of Schnorf and Schnorf, 405 Madison Avenue, Suite 1400, Toledo, Ohio 43604; and G. Thomas Worley, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.

V. CLASS III - LONG-TERM ASSIGNMENTS

p. 12 A. Change to read:

Substitutes who have completed a Class III assignment lasting for at least sixty (60) school days shall have priority for Class III assignments thought to be for a duration of forty-five (45) school days or longer as they become available subject to the provisions of (E) and (H), below.

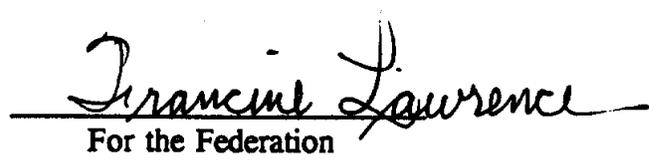
Seniority will be used when placing long term substitutes in assignments expected to last sixty (60) days or more. Substitute seniority shall consist of the year, month and day of the most recent hire as a substitute teacher. This date of hire shall be considered the first day of work during the substitute's most recent uninterrupted employment as a substitute teacher as determined by submission of the "notification of intent" form. Temporary inactive status shall not be considered as interrupted employment. In cases of tied seniority, the person with a four-year certificate shall be considered to have the greater seniority; otherwise the tie shall be broken by lot in the Personnel Office in the presence of the affected substitutes and a representative authorized by the Federation. Consideration of seniority shall be applicable only to substitutes who are or will be available at the time an assignment becomes available. This process is subject to the provisions of (H), below.

Substitutes with two or more valid unsatisfactory Performance Reports during the previous three years will not be considered for long term assignments, except by mutual agreement of the intern board of review, when applicable, Federation and Board.

Substitutes must be properly certificated to be assigned. Rights granted under Article XIX of the regular teachers' contract should also be consulted.

The Personnel Office will provide the Federation with a list of substitutes who have completed assignments of sixty (60) days or more of continuous service and a seniority list of the substitutes before the start of school each fall, and upon request thereafter.

  
For the Board

  
For the Federation

10-16-96

Effective with the signing of this agreement, each continuous building substitute will have until July 1, 2002 to become the holder of a four-year provisional certificate in a subject teaching area taught in a Toledo Public elementary or secondary school. Each person who, after this agreement is signed, is afforded a continuous building substitute position will have until July 1 following five years from the date of his/her assignment to obtain a provisional certificate in such a teaching area. The continuous building substitute will be required to serve one year in the intern program upon being hired as a contract teacher.

If there is no assignment for the continuous building substitute who has obtained the four-year certificate by the required date, the candidate will remain a continuous building substitute until a position occurs.

If the continuous building substitute does not succeed in obtaining a four-year certificate he/she will have the choice of becoming a Class I or Class II substitute, but will not be afforded a continuous building substitute position for the following school year.

  
For the Board

Francine Lawrence 10-16-96  
For the Federation



State  
Employment  
Relations  
Board



65 East State Street  
Columbus, Ohio 43215-4213  
(614) 644-8573

December 12, 1996

Ms. Francine Lawrence  
Toledo Federation of Teachers  
111 South Byrne Road  
Toledo, OH 43615

Mr. B. Gary McBride  
SPENGLER, NATHANSON  
608 Madison Avenue - Suite 1000  
Toledo, OH 43604-1169

RE: Case No. 96-MED-06-0565  
Toledo Federation of Teachers and Toledo  
Public Schools

Dear Ms. Lawrence and Mr. McBride:

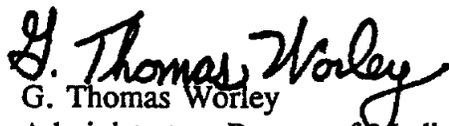
The fact-finding report in the referenced case was issued on November 20, 1996.

The Toledo Federation of Teachers and Toledo Public Schools have not certified to the SERB the results of votes regarding the fact-finding report within 24 hours of the expiration of the voting period.

The fact-finding report is deemed accepted by the Toledo Federation of Teachers and Toledo Public Schools in that they have failed to communicate the vote to the SERB in accordance with Ohio Administrative Code Rule 4117-9-05(M) and (N).

I provide this notice as an administrative function of the Bureau of Mediation. The notice does not represent a Board determination. That decision may be sought through the unfair labor practice proceedings of Section 4117.11 of the Ohio Revised Code or the motion procedures outlined in Ohio Administrative Code Rule 4117-1-04.

Sincerely,

  
G. Thomas Worley  
Administrator, Bureau of Mediation

GTW:dym  
96-0565f/106f  
cc: Ron Auteri  
Margaret Nancy Johnson