

STATE EMPLOYMENT  
RELATIONS BOARD  
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STATE EMPLOYMENT RELATIONS BOARD  
CASE NO. 96-MED-11-1088

WOOSTER CITY BOARD OF EDUCATION :  
(WAYNE COUNTY, OHIO) :  
 :  
The Employer :  
 :  
-and- :  
 :  
WOOSTER SCHOOL EMPLOYEES :  
ASSOCIATION :  
 :  
The Union :

FACT-FINDER'S  
OPINION AND AWARD

APPEARANCES

For the Employer:

David Millstone, Attorney  
Mary Lou Nuzum, Interim Superintendent  
Bill Sturgeon, Director of Services  
David Denbow, Treasurer

For the Union:

Richard Schneider, OEA  
Peter Larrousse, Local Union President  
Kathy Turning, Local Union Vice President  
Bernie Do Deci, Local Union Vice President  
Barbara McHenry, Grievance Co-Chair  
Lynda Meyer, Local Union Past President

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Attorney-Arbitrator  
Fact-Finder  
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## I. SUBMISSION

This matter came before this fact-finder pursuant to the laws of the State of Ohio and the procedures and rules of the State Employment Relations Board. The parties were unable to resolve their contractual and impasse differences and invoked procedures of the State Employment Relations Act relative to the appointment of a fact-finder. The fact-finder met with the parties on March 8, 1997, March 19, 1997 and March 26, 1997, in an effort to have all of the unresolved issues either settled or heard. The parties stipulated and agreed that this matter was properly before the fact-finder; that the witnesses, when used, would be sworn but not separated and that post hearing briefs would not be filed. It was upon the evidence and argument that this matter was heard and submitted and that this opinion and award was thereafter rendered.

## II. STATEMENT OF FACTS, DISCUSSION AND OPINIONS

Approximately thirty-eight issues came before this fact-finder, those issues, at the outset, being at impasse by and between the parties. As a result of mediation and as a result of fact-finding the number of issues dwindled and the balance was then resolved by this writing.

### A. Smoking.

The school system at Wooster, Ohio, consists of one high school, one middle school, seven elementary schools, two specialty schools, a bus garage, a maintenance building and a central office. The students do not generally appear at the bus garage, maintenance facility or

central office. Students do appear, of course, at the various schools. It was noted that at the high schools students may appear from approximately 5:00 a.m. to 12:00 midnight, at the middle school from 7:00 a.m. until 7:00 p.m. and at the elementary schools, on occasion, from 9:00 a.m. to 9:00 p.m. The specialty schools if they do have their own rules are really not involved in this particular matter because they have their own rules concerning smoking.

The school district sought to maintain a smoke free campus. The union sought some looser restrictions and considerable evidence was presented to the fact-finder in this particular matter. Since students do not appear at the bus garage and maintenance building or the central office there does not appear to be any necessary restrictions at those particular buildings except to state that no smoking shall take place inside any of those buildings at any time. The bargaining unit may smoke on the grounds outside those buildings during the course of a business day without restriction.

The high school, the middle school and the elementary schools present a different picture. Those nine schools have a regular business day at which students attend classes. During that business day there should be no smoking on the campus, in or around the campus of those schools, in or out of the building by anyone whatsoever. Smoking may take place on the exteriors of the building only prior to 7:00 a.m. and after 5:30 p.m. That will allow the bargaining unit herein to have their smoking time on the campus but not in any building for a certain

number of hours that students may be in the building.

Of course, if there are laws enacted concerning smoking by any governmental authority then in that event those laws will supercede the terms of this particular contract in that regard.

Further, there may be no smoking in any board owned vehicle at any time.

#### B. Calamity Days.

The association has reported that the work force is paid for a calamity day. Those who work the calamity day receive an additional two hours of pay. The union wants a premium of four hours of wage for those who work on a calamity day.

Neither the board nor the association has indicated any problems relevant to calamity days as the terms are indicated within the confines of the current contract in that regard. There being no reason to change the rules concerning calamity days it is this fact-finder's opinion that the present language stay as is. Simply put, if there isn't a problem it need not be repaired.

#### C. Sick Leave.

The association has requested three different changes relevant to the sick leave clause. The association requested a greater accumulation of sick days per year, a deduction of sick leave use on an hour by hour

basis and a request for sibling assistance on a sick day. The only issue left in this category to be decided upon by the fact-finder is relevant to the number of sick day accumulation, with the parties having settled the other issues during a mediation session. There is no cogent reason to increase the number of sick day accumulation. At the present time there is an accumulation of 243 sick days allowable and no hardship was indicated to any bargaining unit member as a result of that total number. Simply put, it is apparent that the bargaining unit wanted to change it just for the sake of changing it and without good reason shown, a change is unnecessary.

D. Personal Leave.

There are eight work classifications at the facility. Those classifications are indicated and stated as follows. The numbers beside those classifications are the present incumbent job holders in those classifications and that listing revealed the following:

1. Custodian - 40.
2. Maintenance - 9.
3. Aides - 77.
4. Cafeteria - 32.
5. Mechanics - 2.
6. Bus Drivers - 26.
7. Secretaries - 25.
8. Special Services - 3.

Custodian and maintenance personnel work three shifts and the aides

work two shifts. All the rest of the classifications work one shift. There is allowable presently, days off for personal leave if no more than four out of the entire work force are off. The bargaining unit seeks to have a ten percent rule whereby a total of ten percent of the work force may use personal leave at one time. The employer has denied such request.

It is apparent that some relief should be given to a bargaining unit of this size so as to allow a greater flexibility for time off for the personal days granted under the terms of the contract. Simply put, it is apparent from the numbers indicated and from the amount of people who are in the department that time off cannot be obtained readily when requested. For that reason this fact-finder is inclined to allow eight people off per shift but no more than one in each classification. That doubles the amount of personnel that may be off but limits that personnel by classification to whether or not they may obtain a personal leave day. Special situations may arise and the bargaining unit members may seek such assistance, from supervision as such situation arises.

E. Association President Release Time.

The bargaining unit at this particular Board of Education consists of approximately five hundred and twenty people in that the professional personnel and the nonprofessional personnel form the bargaining unit. The association has requested release time for the association president of one-half of every day. The board has rejected that thought on the basis that the matter is expensive and unnecessary.

The fact of the matter is, the bargaining unit is especially large for part-time officers. There is no doubt that the union has many activities to handle during the course of any business day. Simply put, however, the union didn't present sufficient evidence to reveal that it cannot take care of its business without some free time for a union person to have during the course of a business day. On that basis, it is apparent that some relief in that regard is not necessary.

Based upon the fact that this is an initial activity sought by the union and based upon the fact that there was no showing of a need for the time every day, this fact-finder is denying the request of the bargaining unit. Furthermore, the release time, as requested, is a cost factor of a substantial nature. There was no showing that other units elsewhere benefit from such a fringe benefit. A diary should be kept of the workload accomplished by the president as proof in further negotiations to show the need, if there is one, for such release time. That diary shall be made available to the employer upon proper request and as evidence, when such evidence is needed. However, this contract period does not merit release time.

F. Aides on Buses with Preschool Children.

There is no evidence in the record to show the need for aides on buses that transport preschool children. These are not buses that are for the handicapped program or with children in wheelchairs. These buses are merely transportation for children that go to preschool who are able to handle a bus ride. There has been no indication by the association that there has been any problems in the past with this type

of activity. Without a showing of a problem there is hardly need for further assistance.

Contractual indications and changes are usually mandated to correct some problem. None has been shown and for that reason I am not inclined to grant any relief to the union for that particular matter. It is my understanding that there are aides on preschool transportation activity when handicapped children are involved. Such is not the case here and that is a distinction with a clear difference. For that reason I am not inclined to allow the request of the union that was made on this particular subject.

#### G. Cost of License.

In this particular matter the union sought the employer to pay for a renewal of a license to drive. The cost was nominal. The board denied such request. It is apparent that this cost is one that should be paid for by the employee. If an employee sought a certain type of classification that demands a special license then in that event that license holder is responsible for the cost of the license. There was no showing of any hardship. There was no showing of any problem that resulted as a consequence of the board's refusal. There is no reason to grant the request of the union in this regard.

#### H. Wage Equalization.

There are secretaries that work in the central office that are members of the bargaining unit. There are also secretaries who work in

the central office that are exempt employees. Many times the exempt employees have a higher wage than the bargaining unit employees. The association has sought equalization between the union and the non-union employees. The board has denied this request. Wage equalization is usually sought between different classifications of the bargaining unit. In this particular matter the association has sought an equalization of wage between union members and non-union members. There has been a carving out of the bargaining unit for some secretaries that are exempt. Such is the case because of the activities in which those secretaries may be engaged and it may well be that the secretarial duties of the exempt employees are of greater sensitivity than the union employees. As a result, the exempt employees may merit a greater wage. There was no evidence in the record to show otherwise. As a result, the request of the association is denied.

I. Inspections.

On occasion the board employs an outside company to accomplish some particular workload. The board thereafter sought the use of bargaining unit people to inspect the work of the outside contractor. The association sought to reject such inspection workload. It is my understanding that at the present time there are no outside contracts and the request of the association is preemptive. In other words there is no need at this particular time to be involved with inspections of an outside workload when such are not being accomplished.

J. The issue raised in this particular section is whether or not student workers/volunteers may replace bargaining unit members.

The association sought to disallow students and volunteers from replacing bargaining unit members and the board rejected the union's request. The first question is whether or not student workers may serve as employees and replace bargaining unit members from their rightful workload. The answer to that question should be an unequivocal no. Students are at school for the purpose of learning and not for the purpose of replacing bargaining unit members.

The real question in this particular matter is whether or not volunteers may accomplish the workload of a bargaining unit member. Evidence revealed that there are many volunteers in the school system; that that has historically been true; that to take away the volunteer system in a public school would be entirely inappropriate and contrary to the volunteer activity that has occurred for a long period of time. It is true that schools are under great monetary pressure to accomplish their purpose. Volunteers allow that to occur.

The bargaining unit however must be protected since they are the recognized unit under the terms of the collective bargaining agreement. That does not mean that volunteers cannot be used to accomplish a workload but attention must be paid to the bargaining unit and a balance must be struck so as not to cause undue hardship to the bargaining unit. In other words, volunteers cannot cause layoff. That would be an extreme case and such activity is not to be fostered. Likewise, while the act of volunteering is necessary, there must be a belief that the bargaining unit has certain rights due to them under their contract of collective bargaining and those rights must be respected so as not to cause undue hardship to the bargaining unit members. A rule of reason

must be used on this particular issue.

K. There was a request on the part of the bargaining unit that there be one library technician per building for at least six hours.

The board rejected that on the basis of monies. There was no showing on the part of the bargaining unit that as a matter of fact any problems had occurred relative to this particular matter. Since no harm has been shown the rejection of the board must stand. This particular clause was sought for use in the seven elementary schools and at Boy's Village.

L. RK Procedures.

The association sought additional insurance for obtaining certain RK and PRK procedures from their health carrier. The board rejected because of cost. There was no showing that any hardship had occurred as a result. The rejection of the board must stand.

M. Life Insurance.

The association sought an increase in life insurance from \$20,000.00 to \$30,000.00. The same was rejected by the board. There was no good showing on the part of the bargaining unit as to why such was demanded other than to state that other school districts had offered their bargaining unit members such insurance. The evidence in that regard was not convincing and the life insurance request is hereby denied.

N. Optical Reimbursement.

The association sought reimbursement up to \$300.00 for prescription lenses, etc. The board rejected. The same reason is true as indicated hereinabove that there was no showing of a convincing nature that other school units had offered the same to their employees. The rejection is affirmed.

O. Severance Pay.

The association sought a new cap of sixty days for accumulated sick leave rather than the current fifty-eight day cap. There is evidence that some relief should be given to the bargaining unit in that regard and severance pay cap therefore should be approved with a cap of sixty days.

P. Incentive for Early Retirement.

There presently is no such plan. The board does not want to get involved because of a speculative cost that may be involved with this plan. That is especially important at this point since the finances of the schools in the State of Ohio are presently in flux due to an opinion of The Supreme Court of the State of Ohio just recently rendered. The environment is presently not conducive to the initiation of an early retirement plan at this moment and perhaps this should be negotiated again. As a result, the incentive for early retirement as sought by the union is hereby denied.

Q. Vacancy and Postings.

One portion of this particular issue is that the union sought to use the perceiver interview process as a process that can be reviewed. A perceiver receives sensitive information in an interview that should be allowed to stand without review, otherwise the process of a perceiver, as I understand it, has no meaning. As a result, I must reject that review process as requested by the association.

Further, the association sought a posting within ten working days of a vacancy which posting shall occur for five working days in each building. The board rejected. However, I am not sure of the reason for the rejection for the board. It appears to me that a posting should be published and that a publication should take place in each building by a posting. Management, it appears, has the right to determine the vacancy. Once the vacancy is indicated to be the case and the filling of that vacancy is to occur, a posting for that vacancy shall occur in each building in which there are staffing by bargaining unit members. Publication is important and a posting in the building is important therefore.

R. Wage Schedule.

The current contract was effective for the period of January 1, 1994, through December 31, 1996. The bargaining unit is seeking retroactivity therefore in their wage schedule dating back to the first day of January, 1997. The board is resisting such retroactivity.

Furthermore, the union is desirous of a wage increase in the amount of 4% from January, 1997, to July 1, 1997, then a 6½% increase, then another 6½% increase in July of 1998, then another 6½% increase in July of 1999, or a total of 22½% over a period of the contract. The association on the other hand is willing to accept 2% beginning on January 1, 1997, with a "me too" provision based upon other contracts negotiated following this. On the other hand the employer has offered 1½% on the effective date of this contract with 1½% on January, 1998 and another 1½% on January of 1999. Thus, there is a difference between the 22½% sought by the association and 4½% offered by the board.

A 3½% wage increase would not be out of line in this particular situation. Earlier in the year the fire fighters in the City of Wooster and the management of the city received a similar pay increase. A wage increase of a similar nature by the school board for their non-professional staff would be in line with the wages received elsewhere within the same political area. For that reason I am going to recommend a 3% wage increase retroactive to January 1, 1997 and for all of 1997. I am going to further recommend that a 3½% increase be given to this bargaining unit on January 1, 1998 and an additional 3½% increase beginning January 1, 1999.

#### S. Hourly Wage Index.

The association proposed a twelfth step on its pay index. No cogent reason was given for this request and as a result it should be denied.

T. Duration.

The duration of this contract should be three years beginning January 1, 1997, as the effective date. The parties have had a three year agreement in the past and there is no reason to change it. Furthermore the stability of the work force is buttressed by a three year contract and therefore this grievance should be for the calendar years 1997, 1998, 1999.

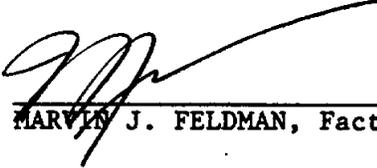
U. Preamble.

The preamble of the previous contract should be continued. There is no reason to change it.

III. AWARD

The above indicated paragraphs are hereby the order of the fact-finder.

Made and entered  
this 10th day  
of April, 1997.

  
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MARVIN J. FELDMAN, Fact-Finder