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BEFORE THE
STATE EMPLOYMENT RELATIONS BOARD
CASE NO. 97-MED-04-0440

LOUISVILLE EDUCATION ASSOCIATION *
EMPLOYEE ORGANIZATION *
AND * FACT FINDER'S REPORT
LOUISVILLE CITY SCHOOLS *
EMPLOYER *

I. DATES AND PLACE OF HEARING

This hearing commenced on July 10, 1997 and continued to July 11, July 14 and July 15th, 1997. Pursuant to the agreement of the parties it was held in a neutral site in North Canton, Ohio.

II. PARTIES

The employees are the "classroom teachers, tutors, librarians, guidance counselors and other certificated personnel" employed in the Louisville City School District and are represented by the Louisville Education Association, hereinafter referred to as the "Association".

The Employer, hereinafter referred to as the " Board",
is the Louisville City School District.

III. APPEARANCES

The following persons appeared on behalf of the
respective party as noted:

For the Association:

Richard Schneider, Labor Consultant Drive, Ohio Education
Association; and the following members of the Louisville
Education Association: Phil Unkefer, President; Laura Hipp,
Vice President, Ken Hathaway and Joe Harold, Bargaining Team
Members.

For the Board:

Ronald J. Habowski, Attorney At Law; and the following
members or employees of the Louisville City School District:
Clyde Lepley, Superintendent, James F. Knis, Treasurer,
Wayne McDevitt, Assistant High School Principal, Dr. Judith
Hynes, Assistant Superintendant and Gary L. Pierce, Attorney
At Law.

Witnesses:

The Association presented two witnesses who did not
otherwise enter an appearance as noted above: Fritz Fekete,
a researcher for the Ohio Education Association and a cameo
appearance by Lynn Heitzman, an O.E.A. specialist.

IV. INTRODUCTION

This unit is comprised of 170 members and consists of
classroom teachers, tutors, librarians, guidance counselors,
and other certificated personnel, but excludes supervisors
and management level employees as defined in §4117.01 R.C.

and all substitute teachers employed fewer than 60 days per year.

The existing 3 year contract expired on July 14, 1997. The parties claimed to be "grandfathered" under Section IV of the Public Employee Collective Bargaining Act.

Louisville City is located in Stark County and is adjacent to the following school districts: Canton City, Minerva Local, Plain Local, Marlinton Local and Osnaburg Local. The district has 1 high school, 1 middle school and 4 elementary schools. There are approximately 3,100 students in the district.

The district is primarily residential but several corporations are either headquartered or have a principal office located within the district.

The parties met on 6 prior occasions to negotiate a new contract (April 17, April 28, May 6, May 23, May 29 and June 13, 1997). The 6 bargaining sessions resulted in 2 the resolution of two issues.

The recently expired agreement was the result of an agreement reached between the parties following the rejection of the previous Fact Finder's report by the Board.

V. ISSUES PRESENTED

Seventy-eight (78) issues were identified to be resolved by Fact Finding.

VI. MEDIATION

The parties agreed to mediate the unresolved issues at the onset of the hearing. Mediation resulted in the disposition of 39 of the 78 issues. Many of the issues were resolved by adopting current language after the proposing party withdrew the request, or the parties jointly agreeing to retain current contractual language. Other issues were resolved by modification of existing language. Each issue which was resolved was "signed off" by both parties. The parties agreed to incorporate all "signed-off" issues into the new agreement.

The issues which were resolved through mediation at the beginning of this hearing are: 1. Grievance Procedure (Article III); 2. Self Insurance (Section 604); 3. Liability (Section 605); 4. Legal Leave (Section 703); 5. Professional Meetings (Section 704); 6. Extended Illness (Section 707); 7. Sabbatical Leave (Section 709); 8. Alternate Supplemental Leave (Section 710); 9. Length of School Year (Section 801); 10. Curriculum Study (Section 804); 11. New Programs (Section 806); 12. Department Chairpersons (Section 807); 13. Split Classes (Section 808); 14. Release by Specialist (Section 809); 15. First Aid Supplies (Section 812); 16. Drug Free Workplace (Section 813); 17. Smoke Free Environment (Section 814); 18. Teacher Rights (Section 901); 19. Complaints (Section

902); 20. Rights to Representation (Section 903); 21. Non-renewal Procedure (Section 904); 22. Lesson Presentation (Section 905); 23. Transfers (Section 906); 24. Committees (Section 908); 25. Individual Contracts (Section 909); 26. Reduction In Staff (Section 910); 27. Period Substitute (Section 1201); 28. Payroll Deductions (Section 1204); 29. STRS Pickup (Section 1206); 30. Employees' Children (Section 1209); 31. Grievance Form (appendix); 32. Leave Form (appendix); 33. Observation Preview Form (appendix); 34. Observation Form (appendix); 35. Teacher Appraisal Form (appendix); 36. Limited Contract Form (appendix); 37. Continuing Contract Form (appendix); 38. Extended Time Contract Form (appendix); 39. Additional Duty Form (appendix).

VI. FACT FINDING

Thirty-nine (39) issues (though numerous issues consisted of multiple subsections) were ultimately presented to the Fact Finder for resolution. Due to the number of unresolved issues and the evidence which each party intended to introduce, it was apparent that more than two days would be necessary for hearings. The parties agreed to equally divide the costs of fact-finding in excess of those sanctioned by SERB.

The parties, also, agreed that the De Rolphe decision [DeRolphe v. Ohio, 78 Ohio St.3d 193 (1997)] was not pre-emptive and did not prevent the Fact Finder from determining the issues presented. Lastly, it was agreed that witnesses and or issues could be taken out of order at the request of either party. This report will address each issue in numerical order and not in the order of presentation.

In preparing the following recommendations the Fact Finder considered all relevant and reliable information introduced by the parties. In addition, consideration, pursuant to Rule 4117-9-05(J), was given to the following: the past collectively bargained agreements between the parties, comparison of unresolved issues against other public employees doing comparable work, giving consideration to factors peculiar to the area and classification, the interest and welfare of the public; the ability of the employer to finance and administer the issues proposed; the effect of the adjustments on the normal standard of public service; the lawful authority of the employer; a stipulations between the parties; any other factors, not listed above, which are normally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

ISSUE NO. 1

RECOGNITION

ARTICLE I, SECTION 101

ASSOCIATION PROPOSAL & POSITION: The Association seeks to have the school nurse included within this bargaining unit on the grounds that since she is now certificated she is an automatic member of the unit.

BOARD POSITION: The Board is opposed to adding the school nurse to the bargaining unit through the bargaining procedure.

DISCUSSION: The school nurse has been represented by OAPSE since at least 1994. The Association claims that the nurse, by virtue of her certification, received in 1996, is automatically a member of the unit.

The recognition clause of the contract in Section 101 defines the bargaining unit as "all regularly employed personnel, exclusive of all substitutes . . . and all supervisors and management level employees . . ." In Section 102 a teacher is defined to include "classroom teachers, tutors, librarians, guidance counselors and other certificated personal, excluding . . .". Though teachers are not specifically mentioned in Section 101, it is presumed that they are presumed included in the definition of the unit. The Association is claim the school nurse by virtue of the fact that she received her certificate, albeit

a temporary certificate (she has not completed two courses as of July 14, 1997) and instructs classes in health related areas. She, however, has no classroom duties and is performing the same duties as she did prior to her certification. It is doubtful that she falls within the clear meaning of the word "teacher" as defined in Section 102.

The job of school nurse does not require certification. She does not have a specific classroom assignment nor does she grade students, assign homework, give tests or attend parent teacher conferences. Though the nurse has indicated a desire to join this unit, and a letter from an academic source (Exhibit 1-C) states that in view of her experience and academic training she would more appropriately be included within "the group of professional personnel of teachers than with any other group" she has been and is still included within the OAPSE unit and that union has not indicated a willingness to exclude her from its unit.

Moreover, neither the Association nor the Board has sought a clarification from SERB regarding the inclusion of the school nurse. There was ample opportunity for either or both parties to seek a clarification of this issue prior to fact finding. The contractual definitions contained in Sections 101 and 102 are not particularly clear, especially in regard to the meaning of "other certificated personnel".

Since it is t an Association proposal, it has the burden of establishing the appropriateness of the change. The Association has not met its burden.

RECOMMENDATION: It is the recommendation that the school nurse not be included in this bargaining unit.

ISSUE NO. 2

NEGOTIATION PROCEDURE

ARTICLE II, SECTION 201

ASSOCIATION PROPOSAL & POSITION: The Association proposes to change Subsection (B) by requiring both parties to exchange all proposals for changes at the first negotiating session rather than the current practice of placing the burden of presenting the proposed changes on the party desiring to open negotiations for a successor agreement.

BOARD POSITION: The Board desires to retain the procedure contained in the current agreement.

DISCUSSION: The proposal is two-fold. The first change seeks the exchange of all new proposals at the first negotiating session. The second attempts to prevent the introduction of new issues after the original exchange, without the consent of both sides.

A collective bargaining agreement is intended to cover the day to day relationships between an employer and its employees. It is quite possible that an issue or issues may

arise during the negotiating process which were either not known at the time of the first exchange of proposals or which arose in the interim. Under the Association's proposal subsequent proposals could not be made without the consent of the other party. If consent is withheld, then a question of whether the parties intended to retain the current language arises. The Fact Finder believes the second part of the proposal is too restrictive.

The first issue, the mutual exchange of proposals has more merit and may resolve the Association's belief that insufficient progress regarding the resolution of open issues was made at the bargaining sessions. If a mutual exchange of issues occurs at the first meeting, the second meeting can be used to respond to those issues. The response can take the form of a reply, or possibly a counter-proposal.

RECOMMENDATION: It is recommended that Subsection (B) be amended as follows: "At the first negotiating session, the parties shall exchange all written proposals for the successor agreement. At the second negotiating session, each party shall respond to the proposals of the other party. A response to a proposal may take the form of a written reply or counter-proposal or a combination of the two".

ISSUE NOS 4, 5, 6, 7 AND 8

INSURANCES

ARTICLE VI, SECTIONS 601, 602, 603, 604 AND 605

ASSOCIATION PROPOSALS AND POSITION: In Issue 4(a) the Association proposed to amend Section 601(B)(3) to empower the Health Insurance Committee to "review any proposed changes or amendments to the plan, and to make such changes and amendments subject to approval of both the Board and Association". Issue 4(b) sought a clarification on lifetime maximums, Issue 4 (c) requested that certain in-patient and out-patient surgeries be paid at 100% instead of the current 80/20, and certain procedures which may elective to the list of covered procedures. Issue 4(d) sought to increase the insurance option from \$500 to \$1,000 (Section 601(G)).

In Issue 5 the Association desired the implementation of a prescription drug card plan .

Issue 6 is a demand for increased life insurance benefits by \$2000 per year.

Issue 7, proposed an increase in orthodontia limits from \$1000 to \$2000, the elimination of deductibles in Classes II, III and IV procedures and changing Root Canals to Class I from Class II.

Lastly, the Association proposed to add optical benefits in Issue 8 (\$300 maximum annually).

BOARD POSITION: The Board opposed all changes on the basis of management rights and excessive costs.

DISCUSSION: The provisions regarding health and medical insurance coverage are comparable to those benefits being paid in other districts through out the area. The current agreement provides that existing hospitalization, surgical and major medical coverage and benefit levels remain in effect (1994 to 1997). Neither party sought to change this section (Section 601(A)). Therefore, the new contract must provide that the existing coverages remain in effect for the duration thereof.

In 1994 Fact Finder Jaffe recommended that the costs of medical and hospital insurance be divided on a 90/10 basis. The recommendation was rejected, and the parties later agreed upon full employer paid premiums. Since no change to the existing language was sought by either party, the Board has tacitly agreed to pay the full cost of existing health insurance benefits.

The present health benefit package is partially contained in the collective bargaining agreement and in a printed document entitled "Restated Health Benefit Plan" (Association Ex. 4) last amended in 1995 [which appears to have superseded the printed "Summary Plan Description"

published by the plan's administrator, Klais & Co. in 1991]. This bifurcated package requires someone to check at least two and possibly three different documents to ascertain benefits and coverages. Consolidating the plan into a single document would eliminate much of the confusion surrounding this issue.

The changes sought in Issue 4(a) were not supported by convincing evidence. No justification was given for the necessity of requiring the Health Insurance Committee, which meets irregularly, to approve of all changes to the plan. Though the Association pleaded that the Board had continually made unilateral changes to the plan, no evidence of unilateral material changes was introduced (There was evidence, however, of unilateral changes which were not material or which did not reduce benefits or increase costs). The focus of the committee was and is to conduct an ongoing review of health insurance costs and benefits. The Board is contractually barred from making unilateral changes which would result in a reduction of benefits or increase members' costs. Thus, the members are sufficiently protected by the current language and there is no need to endow the Health Insurance Committee with new duties and powers.

It is also noted that the Association did not file a single grievance over the issue of unilateral Board changes to the health benefits plan.

The Association's request in Issue 4(b) that Section 601(F) be clarified to assure that the maximum overall benefit of \$1,000,000 be amended to be certain that the maximum benefit is calculated on a per person basis is meritorious and is granted.

Issue 4(c) sought to eliminate the co-payment requirement on certain medical procedures and to extend coverage to certain procedures which may be characterized as elective. It is noted, however, that current benefit levels appear to be fair, equitable and comprehensive. The purpose of medical insurance is to be a buffer between the individual and the costs of catastrophic illnesses and long hospitalizations. The Association did not establish that the current schedule of benefits have created any hardships on any of its members. Health insurance was never intended to eliminate the risks of medical care. An employer should not be regarded as an insurer against all medical expenses. Certainly, a comprehensive, no cost, no risk health insurance benefit package would be attractive to everyone, but it is necessary to weigh the potential costs thereof against the benefits. The costs of such a comprehensive plan were not introduced, but they undoubtedly would be extremely high. The sharing of costs as is now done keeps the overall expense at least manageable.

Issue 4(d) seeks to increase the opt-out from \$500 to \$1,000 for those members who elect not to be covered under the Board's medical plan. The Fact Finder was not provided with overall average cost per member, but a review of the Benefit Analysis Report (Board Exhibit 5-1) which does not appear to have any hospitalization costs included, discloses that the Board expended over \$2,000 per member in the year to date ending January 31, 1997. Thus, the Board would realize a substantial savings if this option were elected.

If the exercise of the option does not adversely affect the cost of covering the participating members, the Board would experience a significant savings even if it would pay a \$1,000 opt-out. The Association's request is recommended to that extent.

The Association requested the implementation of a prescription drug card program in Issue No. 5. Currently, the members prescription drug expenses are discounted through a local chain and are subject to an 80/20 co-pay reimbursement (Section 601 (D)(6)). It appeared that the principal reason for the prescription card request was the unwillingness of members to await reimbursement of drug expenses as is the current policy. There was also evidence to suggest that the particular chain offering the discounted prices was not convenient to all members.

While the Association estimated the additional cost of a prescription card program to be \$34,000 per year, the Board's estimate was \$75,000. Currently, the Board is paying out about \$71,000 in prescription reimbursements each year. Though only 1 district within Stark County has such a plan, there was evidence that other close-by districts have adopted a generic/proprietary drug card system. No evidence of the cost of those programs was introduced. Average member costs for the current program are \$417 which is not unreasonably high. Neither side apparently explored the possibility of a prescription drug card limited to a single drug chain. This type of program may be cost effective and eliminate the opposition to reimbursement of costs. The costs of a prescription drug card as proposed are too high and the benefits of the plan are outweighed by its costs.

The changes sought in Issue No. 7 in increasing the maximum benefit for Class IV dental services to \$2000 from the existing \$1,000 (See the contract which appears to have a \$1,000 maximum and the Restated Plan which appears to have a \$950 maximum limit), deleting deductibles for Classes II, III and IV services and changing a Root Canal Procedure from a Class IV (80%) to a Class I (100%) benefit were generally unsupported by any factual evidence of cost, benefit or need. Admittedly, the present orthodontia schedule would likely pay for about one-third the actual costs, members

must expect to pay for a certain amount of health and medical expenses and orthodontia very often is an elective procedure. Also, there did not appear to be an overwhelming, or for that matter any need, for taking root canal therapy from a co-pay to a full pay service.

The last medical insurance proposal, Issue No. 8, is the Association's request for optical insurance, actually a reimbursement of optical expenses capped at \$300 per year, estimated by the Association and the Board to cost an additional \$51,000 per year. Average optometric and optician expenses was not produced, but such expenses are usually not annual affairs and constitute, but a small percentage of a members gross earnings, and the type of expense that a member should anticipate paying personally.

The last insurance issue, Issue No. 6, is the Association's request that the present life insurance benefit be increased by \$2000 per year from the present \$32,000. The Association submitted that the costs of insurance are \$.20 per \$1000 of coverage or an additional \$816 per year for the entire unit. The Board admitted that in the past increases had been given, but only in the last year of the contract. The Fact Finder does not regard that practice as precedent setting so as to prevent a recommendation that would provide for an increase in any year or years other than in the final year of a contract. A

review of the practices of other districts does not disclose a clear trend in benefits, but it appears that Louisville is somewhere in the middle, trailing North Canton, but leading Canton City, its neighbors. A modest increase is not unreasonable in spite of the increase in cost to the Board. Past practices do not mean that such an increase is limited to the last year of a contract.

RECOMMENDATIONS: The Fact Finder makes the following recommendations concerning insurance benefits:

a. Issue 4(a), against any changes in the current practice;

b. Issue 4(b), in favor of the Association's proposal. The words "per person shall be inserted inn Section 601(F)(1) following the numerical limitation and prior to the word "lifetime" and in Section 3.2.1 of the Restated Plan.

c. Issue 4[c] against the proposal;

d. Issue 4(d) in favor of the proposal;

e. Issue 5 against the proposal;

f. Issue 6, in favor of the proposal in part, by increasing life insurance benefits to \$35,000 effective January 1, 1998;

g. Issue 7, against the proposal; and

h. Issue 8, against the proposal.

ISSUE NO. 11

SICK LEAVE

ARTICLE VI, SECTION 701

ASSOCIATION PROPOSAL & POSITION: The association seeks to add "aunts and uncles" to the definition of "immediate family" contained in Subsection (E) (Issue No. 11(a)). The second portion of the issue, 12(b) is a request to add language establishing a sick leave transfer policy in which sick leave time may be transferred, one time, from one member to another if the second member has or will shortly exhaust his / her accrued sick leave.

BOARD POSITION: The board rejected the entire proposal. It urged the adoption of the present language which it claims as been in effect for 6 years as far as the subissue is concerned and was opposed to the establishment of a sick leave transfer policy.

DISCUSSION: The existing language defining "immediate family" does not include "aunts and uncles", but does include "other residents of the teacher's home." During discussions, the Association submitted that as the unit ages, more members will be called upon to attend elderly members of their respective families. Only one instance of a need was offered by the Association. The Fact Finder is

reluctant, therefore, to recommend a change in existing language to cover the need of one individual member. The existing language of Subsection E is quite broad and should not be further expanded. Under the present definition, an aunt or uncle is considered as a member of the "immediate family" if residing in the home of the member. The Fact Finder is not convinced that further expansion of the definition is necessary.

The establishment of a sick leave transfer between members is different in concept from a sick leave pool which this Fact Finder recommended against in the Sylvania City Schools case. Nevertheless, the bottom line whether a pool is established or a transfer policy adopted is quite the same. Sick leave is a personal benefit extended to the employee by the employer. Moreover, the Association could only cite only the most unlikely of circumstances in which such a transfer would be necessary. No cost factors were introduced. The Fact Finder does not believe that the adoption of a transfer policy is necessary since the usage would be limited and bookkeeping difficult.

RECOMMENDATION: The Fact Finder recommends against the proposal.

ISSUE NO. 12

PERSONAL LEAVE

ARTICLE VI, SECTION 702

ASSOCIATION PROPOSAL & POSITION: The Association proposed to eliminate Subsections 1 through 7 which permit personal leave only for reasons specified therein.

BOARD POSITION: The proposal was rejected by the Board on the basis of prior abuse.

DISCUSSION: The Board referred to an arbitration decision cited by Fact Finder Jaffe in his 1994 report. (American Arbitration Association Case No. 53-390-00095-93). This Fact Finder as did Mr. Jaffe, does not find that case to be particularly relevant. It is apparent that this issue is and has been a matter of contention for at least the past 3 years. The elimination of the specified reasons may, in fact, reduce the possibilities of disagreement over the use of this benefit. If the parties intended this benefit to apply only in emergency situations, then the subsection is misnomered. Abuse does not seem to be a pivotal reason in compelling the perpetuation of the current language. Subsection B (Sec. 702(B) prevents against the use of personal leave to extend a vacation or holiday. In order to prevent against using this benefit to avoid parent / teacher conference days, such a prohibition can easily be added to

that subsection. Otherwise, the employee should be free to use such days as he / she sees fit.

RECOMMENDATION: The Fact Finder recommends adoption of the proposal, provided it not be used to extend holiday or vacation time or to avoid parent/teacher conference days.

ISSUE NO. 15

ASSAULT LEAVE

ARTICLE VI, SECTION 705

ASSOCIATION PROPOSAL & POSITION: The association proposed to increase the maximum number of days available to a teacher injured as a result of an assault while acting within the school of employment from 45 days to 60 days.

BOARD POSITION: The board opposed any increases.

DISCUSSION: The proposal to increase assault leave is an attempt to cure a non-existent problem. The present leave has not been exercised one time. A work-place injury as the result of an assault is, of course, covered under Workers Compensation. The Association is wary of using temporary total benefits under Workers Compensation since accumulated sick time must first be exhausted and the Association believes that sick time should not be used to cover work place injuries. Neither party introduced the potential costs of the change into evidence.

Other districts provided between 30 and 180 days coverage. Though the Board opposed increasing this benefit, it never explained, to the satisfaction of this Fact Finder, why the recently concluded OAPSE agreement grants those members 60 days leave. It would appear that the teachers face at least an equal risk of a work-place assault as do support staff personnel.

RECOMMENDATION: It is recommended that the maximum number of days available for assault leave be increased to 60.

ISSUE NO. 16

CHILD CARE LEAVE

ARTICLE VI, SECTION 706

ASSOCIATION PROPOSAL & POSITION: This proposal sought an increase in unpaid child care leave of up to 2 years.

BOARD POSITION: The board was opposed to increasing the leave permitted hereunder claiming that "it is not uncommon to have children 2 or 3 years apart and under the Association's proposal the employee would be on leave in perpetuity.

DISCUSSION: Under the current contract, depending upon when the request for leave is made, the maximum unpaid leave time is closer to 18 rather than 12 months. The Association gave no evidence of need. It appears that the Board's main

concern is that the employee returning to work from this unpaid leave, could make-up the missing contributions to STRS and the Board would thereupon be required to contribute its share.

No evidence concerning additional costs was introduced. The Association gave no evidence of need.

RECOMMENDATION: The Fact Finder recommends against the proposal.

ISSUE NO. 18

PROFESSIONAL ORGANIZATIONAL LEAVE

ARTICLE VI, SECTION 708

ASSOCIATION PROPOSAL & POSITION: The Association sought a language clarification by the addition of the following to Subsection 708 (B): "for same purposes as has been past practice."

BOARD POSITION: The Board urged the adoption of the current language.

DISCUSSION: Apparently the within section has been used to permit members to attend NEA and OEA monthly meetings with pay, but the subsection appears to refer only to long term organizational leave, such as that incurred when a member is elected to a state or national office. Since it has been the policy of the parties to permit members to attend national organizational meetings with pay, the policy

should be incorporated into the collective bargaining agreement. It should be specified that long-term leave is unpaid and short-term leave, not exceeding 30 days in any school year, is paid.

RECOMMENDATION: It recommended that the proposal of the Association be granted to the extent reflected in the preceding discussion.

ISSUE NO. 21

REPORTING ABSENCES

ARTICLE VII, SECTION 711 (NEW)

ASSOCIATION PROPOSAL & POSITION: The Association proposes the addition of language that would create a single centralized number for reporting absences.

BOARD POSITION: The board argued against the adoption of this proposal.

DISCUSSION: The association wants to establish a centralized number for reporting absences. Unscheduled absences are reported to the principal or his assistant who then calls into an individual responsible to arrange for substitute teachers. The policy is inconvenient and burdensome, ie. long-distance toll charges are incurred by teachers living outside the calling area or by teachers calling principals living outside of the calling area. Also, absences may only be reported between 5 a.m. and 6 a.m. and between 8 p.m. and 9 p.m. which acts as a further

inconvenience. The Board deferred to Fact Finder Jaffe's 1994 report which recommended against the Association's proposal. Jaffe noted "it had been indicated that the Board may be receiving a venture capital grant and the instant issue may be resolved at that time." If the Board received such a capital grant, it did not invest it in a central reporting number and the Association, 3 years hence, has renewed this request. If the principal is interested in tracking absences as was argued, he too can call the same centralized number. In this case, the convenience to the teachers outweighs the burden upon the Board of establishing a new reporting system. A single, local number (whether system wide or for each separate school) should be established. Whether the party to whom an absence is reported can or should be the same party arranging for substitute teachers is not at issue herein. (The Board stressed that the party making such substitute arrangements is certificated).

RECOMMENDATION: The proposal of the Association is recommended.

ISSUE NO. 23

SCHOOL CALENDAR

ARTICLE VIII, SECTION 802

ASSOCIATION PROPOSAL & POSITION: The Association seeks to change subsection (B) by permitting individual buildings to adopt the dates of conferences and specifying that evening conferences not exceed 3 1/2 hours per conference nor one conference per week.

BOARD POSITION: The Board desires to retain current language.

DISCUSSION: The present policy appears to have evolved over a period of time and incorporates some of the recommendations of Fact Finder Jaffe. The reason behind the proposal is unclear, but it appears that the Association would permit each individual building to schedule the dates of conferences depending upon the vote of the teachers.

The proposal does not request an increase in comp or release time. The Fact Finder can ascertain no valid reason why such conferences should not be held on a district-wide basis. The Fact Finder also believes that comp time should be on the day following the evening conference. It is very conceivable that a teacher attending a lengthy evening conference will not be sufficiently prepared to teach a full load the next morning. The present language grants some

flexibility in scheduling compensatory time as per the comp time already for November, 1997.

RECOMMENDATION: The Fact Finder recommends against the proposal and suggests that the present contractual language be adopted into the new agreement.

ISSUE NO. 24

NORMAL WORK DAY

ARTICLE VIII, SECTION 803

ASSOCIATION PROPOSAL & POSITION: The Association seeks the addition of two subsections. For purposes of discussion, these matters will be referred to as Issues 24(a) and (b). In the first issue, the Association seeks to relieve teachers from playground duties. In the second issue, the Association desires its members to be relieved from collecting fees.

BOARD POSITION: The Board opposes both proposals.

DISCUSSION: The Board estimated it would require the hiring of 8 aides at a cost of between \$65,000 and \$130,000 per year to supervise playground activities. Supervision of playground activities is on a rotating basis, generally occurring between 1 and 2 times per week. The board stressed the importance which teacher supervision contributes to the overall growth process of each student and the feeling which such interaction creates between them. While the Fact

Finder is hesitant to characterize playground duties in such glowing terms, the hard fact remains that the teachers have been discharging this duty for which they are being paid and the Association failed to introduce any convincing reasons why they should now be relieved of this task.

The second part of the proposal, relieving the teachers the collection of fees, is more meritorious Teachers, however, should be held safe and harmless in the event of loss, except in cases of their own gross negligence. Though the board hired a bookkeeper to collect fees at the high school level, it was unwilling to hire a bookkeeper at each of the elementary schools nor was it willing to assign the task to the secretarial staff. Teachers have collected fees in the past and there has been no showing that the task is overly taxing or burdensome.

RECOMMENDATION: It is recommended that the Association's proposal be denied, but that language reflecting the liability of teachers only in instances of their own gross negligence be placed in the new contract.

ISSUE NO. 26

INSTRUCTIONAL LOAD

ARTICLE VIII, SECTION 805

ASSOCIATION PROPOSAL & POSITION: The Association has made a 3 part proposal to Section 805, the first of which limits

classroom size [26(a)]; Second, requiring the addition of 5 teachers at the elementary level [26(b)]; and Third, requiring the retention of technology teachers regardless of funding for the lack thereof (26[c]).

BOARD POSITION: The Board opposed any changes to the current agreement.

DISCUSSION: The first proposal, limiting class , was estimated to require adding 3 or 4 additional teachers at a cost of \$100,000 plus by the Association and 20 teachers by the Board. Enrollment has remained stable at 3,100 for the past two years, which is an increase of approximately 150 since the previous Fact Finder's report in 1994. The Board estimated that there would be no future significant increases in enrollment. Average class size ran between 19 and 27 which complies with state regulations.

Interestingly, this same issue was raised in the 1994 contract and Fact Finder Jaffe declined to recommend the Association's proposal. Present law requires that classroom ratios be in accordance with Rule No. 3301-35-03 OAC and §3307.012 R.C. which provides for a 25 to 1 ratio based on average daily student attendance. The proposal is not based on average daily student attendance. It, if adopted, would automatically trigger some form of unspecified relief. If an out of district transfer results in 26 students, does the teacher have the right not to teach that particular class,

must the Board divide the class in half, or must the student be placed in an earlier or later course which has less than the limit? Those are just some of the issues that would flow from the adoption of such a proposal. The inflexibility of the language creates both uncertainty and a heavy administrative burden. It is also not inconceivable that additional teachers would be required to be hired and additional classrooms constructed. The burden of adopting the proposal far outweighs its potential benefits. The Association failed to establish that the students are suffering as a result of the present policy. The proposal requiring an automatic 25 to 1 ratio is both inflexible and costly.

The second request, Issue No. 26(b), seeks the addition of 5 new teachers (one each elementary art, music, physical education and two in computer technology). Currently the district has 2 physical education elementary teachers who handle about 50% of such classes, the remaining 50% is taught by classroom teachers. All instruction in art is taught by regular classroom teachers. Classroom teachers do not instruct in music or computer technology. The teachers argued that they do not receive specific computer training, and are therefore unable to properly instruct their students. They do, however, receive limited hardware training. The Association estimated the additional costs of

the 5 new teachers at \$157,000. Other than the estimated increase in costs, which the Board is not prepared to assume, there was no evidence introduced establishing the necessity to adopt this proposal. Historically, elementary classroom teachers have instructed both art and physical education classes. No evidence was introduced to establish that classroom teachers are not capable of such instruction or that such instructions create a burden upon their time or lessen the time which they would otherwise devote to other classroom instruction.

The third request, Issue No. 26[c], appears to contractually bind the Board to guarantee the retention of technology teachers in the event that state funds are either reduced or eliminated. Though student proficiency in the use of computers is a worthwhile goal, a contract provision guaranteeing job security for computer technology instructors is not the proper forum by which to realize the goal. The economic ramifications to the Board could be quite high in the event state funding, over which the Board has no control, is reduced or eliminated.

RECOMMENDATION: In view of the present contractual language obligating the Board to comply with state regulations concerning class size and the potential economic impact of both proposals, the Fact Finder recommends against their adoption.

ISSUE NO. 31

JOB SHARING

ARTICLE VIII, SECTION 810

ASSOCIATION PROPOSAL & POSITION: This proposal seeks to amend the present job sharing provisions of the contract by providing that job sharing be approved by the principal, superintendent and Association on a case by case basis instead of the current procedure requiring the approval of the principal, superintendent and Board. The present clause is silent as to whether job sharing is considered on an individual or some other basis. The Association also proposed that any dispute arising out of the job sharing contract not be grievable and that both the Association and Board join together in the event any aggrieved individual pursue litigation to present a common defense.

BOARD POSITION: The Board urged the retention of the current language and apparently made no counter to the Association's proposals.

DISCUSSION: The Association proposed sweeping changes to this section of the bargaining agreement. The current language stipulates that job sharing arrangements are to be approved by the principal, superintendent and Board. One proposal limited the consent to only the superintendent. Another proposal based approval upon the consent of the

principal, superintendent and Association, eliminating the Board.

The Association contended that the Board's refusal to counter this proposal amounted to an Unfair Labor Practice pursuant to §4117.11 R.C. Current contract language specifies that job sharing only be done with the consent of the principal, superintendent and board. The proposal substituted the Association in place of the Board. The second, sought to make such job sharing arrangements on a case by case basis. Presumably, some other format, however undisclosed, is presently used. No evidence of usage, or instances of dissatisfaction to the present language were produced. Since this is an Association proposal, and the language sought to be changed, was the result of previous collective bargaining, the burden of proof rests with the party seeking the change. This burden was not met.

RECOMMENDATION: The Fact Finder recommends against the adoption of the proposal to amend Section 810.

ISSUE NO. 36

ENTRY YEAR PROGRAMS

ARTICLE VII, SECTION 811

ASSOCIATION PROPOSAL & POSITION: This proposal runs in conjunction with Issue No. 45. The changes sought by the Association would adopt a May, 1989 document entitled "Entry

Year Program" into the agreement as an appendix. The second change would provide for Board rather than State funding.

BOARD POSITION: The Board urged retention of the current language.

DISCUSSION: The program is not currently in use due to a lack of funding by the State. Mentors are not now assigned to new teachers. The proposal would change the source of funding from the state to the local board. The costs of this program were not introduced into evidence. This proposal like many others suggested by the Association has merit, and would likely assist new teachers in adopting to the system. Unfortunately, the merits of this proposal are counter-balanced by its costs, however unknown. Apparently the new teachers have been introduced into the system without the assistance of a "mentor" for an undisclosed period of time due to a lack of state funding since the current contract refers to the then present lack of funding. There is no reason to believe that new teachers cannot continue to teach without the assistance of a mentor, and there is no factual evidence to suggest that funding missing in the last negotiation and recognized by the Association as such, has suddenly appeared. If the State renews funding, the current language provides the mechanic's of reinstating the program.

RECOMMENDATION: The Fact Finder recommends against the Association proposal.

ISSUE NO. 36

PORTABLE TELEPHONES

ARTICLE IX, SECTION 815 (NEW)

ASSOCIATION PROPOSAL & POSITION: The association proposes to contractually require the Board to provide portable telephones for the use of the teachers.

BOARD POSITION: The Board claimed it recently installed new telephones from which teachers can make calls during the school day.

DISCUSSION: The Association submitted that portable telephones were necessary to enable teachers to make outside calls to parents and cited a lack of privacy over the current facilities, some calls having to be made from the guidance office, others from the library, etc. The Association attempted to contractually bind the Board to install 1 portable phone in each elementary school building, 2 in the middle school and 2 in the high school, the latter two each to have a separate line. Though the association claimed that the present facilities offered no privacy in making student-related calls, it is difficult to imagine a less private communication system than a portable telephone. It appears that the Board has attempted to correct a lack of telephone facilities. The evidence, unrefuted by the Association, disclosed that the Board added

3 places from which to make phone calls in the high school; that there are 30 phones available to teachers in that building and that telephones were added in the elementary school buildings. The Fact Finder is hesitant to contractually bind either party to a specific number or type of phone for use by teachers. If the present number or location of telephones is demonstrated to be adequate, the problem can be addressed during the life of the new agreement or certainly raised in the next negotiation. In the meantime, it would behoove both parties to ascertain whether the recent changes are adequate, rather than unnecessarily placing restrictive language into this new agreement.

RECOMMENDATION: The Fact Finder recommends against adoption of the Association proposal.

ISSUE NO. 37

RESOURCE AND LIBRARY AIDES

ARTICLE VIII, SECTION 816 (NEW)

ASSOCIATION PROPOSAL & POSITION: The Association proposed the adoption of this new section which would require library aides to remain on duty at all times that classes are in session. The Association claimed that the lack of staffing stifles the maximum use of the facilities.

BOARD POSITION: The Board submitted that it employs 3 technical employees for the 4 elementary school libraries and that there is no problem in either the middle or high schools. The Board filed an unfair labor practice charge against the association for bringing this issue to an impasse.

DISCUSSION: During the discussion of the issue, it was ascertained that this proposal would cost the Board an additional \$40 to \$60,000 per year. Library aides are covered under the OAPSE agreement which provides that such personnel work 6 1/2 hours per day. The proposal would require the hiring of at least one more aide, as well as increasing the number of paid hours of current aides. Other than the claim that the lack of adequate personnel, library aides, prevents the full use of this resource, no other evidence was introduced to support the proposal. The Association admitted there was no problem at either the high or middle schools. Apparently, the problem is limited to the elementary schools, the largest of which will be staffed by a full-time aide and the other 3 staffed 3 or 4 days per week, depending upon undisclosed criteria.

These change are otherwise untested and until this new staffing program has been in place, the proposals cannot be recommended. Students in the system appear to be outperforming students in comparable areas.

RECOMMENDATION: The Fact Finder recommends against adoption of the Association proposal.

ISSUE NO. 38

OBTAINING SUBSTITUTES

ARTICLE VIII, SECTION 817 (NEW)

ASSOCIATION PROPOSAL & POSITION: The Association proposed that a substitute teacher be obtained in each instance of an instructional teacher's absence.

BOARD POSITION: The Board claimed that it could not comply with the proposal. It also claimed to have filed an unfair labor practice against the Association for bringing this matter to impasse during these negotiations on the grounds that the Association does not represent substitute teachers.

DISCUSSION: The Board claimed it could not comply with the proposal, particularly in those instances in which a large number of substitutes may be necessary on any particular day. The discussion disclosed that the district pays \$50 per day (\$6.66 per hour) for substitute teachers and has had difficulty in attracting substitutes in the past, which is not entirely surprising. The Association, on the other hand, argued that the failure of the administration in obtaining substitutes for classroom absences dumped unattended students into scheduled study

halls, thereby increasing the burden upon the teacher assigned to supervise the regularly scheduled study hall and making it difficult for regularly scheduled students to have quality study time. The Board did not dispute the Association's argument concerning the size of some study halls, but claimed that such instances were rare.

The Fact Finder believes that the proposal was intended to relieve the burden and stress upon members of its unit and not as a means of increasing its unit to include substitute teachers. The Fact Finder is of the opinion that when one teacher is required to supervise extra students because the regularly assigned teacher is absent and a substitute could not be found, the working conditions under which that particular teacher is required to work are affected. Therefore the Association has the right and obligation to bargain this issue on behalf of its members. The Association does not appear to be advancing this issue to increase the number of substitutes, but to relieve the burden placed upon its members.

The Association's position is well taken. It is incumbent upon the Board find adequate substitutes and if cannot do so, the normal classroom size should not be increased because of its inability. Upon the request of the regular teacher, the administration shall assign a qualified person to assist the regular teacher. Unfortunately no

evidence of increased or additional costs was introduced, but this is a case in which the benefits to both the teacher and students far outweigh the burden imposed upon the Board. Doubling and tripling up of classes to cover an absence does no one any good. Students learn less and are more apt to get into trouble. This practice, however frequent or rare [no evidence was introduced by either side] has been a long festering issue for the members of this unit. While unusual to address such a problem in a collective bargaining agreement, it is not impossible to do so. Adding appropriate language to the contract will demonstrate that the parties recognize the existence of a problem and that certain actions are being undertaken to relieve the situation.

RECOMMENDATION: The Fact Finder recommends the adoption of the Association proposal with the qualification that either a substitute be obtained in each instance of an absence of an instructional teacher or the regularly assigned classroom teacher be provided with qualified assistance upon request.

ISSUE NO. 39

INCLUSION

ARTICLE VIII, SECTION 818 (NEW)

ASSOCIATION PROPOSAL & POSITION: The Association sought to include in the new contract a proviso dealing with education

of students with disabilities. It made a comprehensive 10 part proposal which appeared to parallel existing law.

BOARD POSITION: At first, the Board opposed the entire article dealing with inclusion. (This opposition was reduced to 3 sections, 2 of which were submitted to fact finding and 1 withdrawn by the Association.

DISCUSSION: Originally submitted as a 10 part proposal and opposed in all 10 parts by the Board, after argument it was ascertained that the parties were in agreement on 7 of the 10 issues. Accordingly, Sections 1 through 5, 7 and 9 were approved as proposed by the Association and the parties signed off on those subsections.

Three subsections were submitted for fact finding. Section 6 (Issue No. 39 (a)) sought release or comp time for the preparation of IEP's and IEP conferences. The evidence revealed that IEP's are prepared by the special education teachers who receive input from staff members and parents. The average special education teacher prepares 12 IEP's during the course of the school year. A minimum of 45 minutes is required for each IEP. Teachers have always prepared such plans. Some teachers complete all IEPs within the school day. Further, evidence disclosed that the Board provides no release time nor additional compensation for after school conferences or parental meetings. It was also admitted that out of approximately 350 IEP conferences, 20

are held outside of normal working hours or on non conference dates during which the special education teacher would receive release time along with other classroom teachers. The testimony revealed that special education teachers attempt to arrange all conferences within the school day or during scheduled parent / teacher conference days, but some conferences cannot be held except after normal school hours.

It is not fair to those teachers to require them to work outside of the normal work day and not compensate them with added pay or release or comp time.

In Section 8 (Issue No. 39(b)) the Association proposed that all teachers with medically fragile students be trained in any procedure necessary to protect the child and that general classroom teachers not be required to perform any medical procedure.

It was ascertained that no one, except a licensed physician, provides a medical service and that aides or attendants generally provide support services, such as gastrostomy tube feedings, catheterizations, or tracheostomy suctioning. Obviously no person without formal training should be expected to administer any medical support service. Teachers are not trained to be medical support personnel. Moreover, there is an element of personal

liability in the event that a teacher attempts to administer such a service, albeit well intentioned.

Section 10, identified as Issue No. 39[c], after lengthy debate was withdrawn by the Association.

RECOMMENDATION: It is the recommendation of the Fact Finder the Association's proposal regarding release or comp time [Issue No. 39(a)] be granted in part, to the extent that a special education teacher be provided with release or comp time for those conferences or meetings which cannot be conducted during the normal school day or during scheduled parent / teacher conferences, on an hour for hour basis.

In Issue No. 39(b) it is recommended that the Association's proposal regarding the administration of medical support services, incorrectly identified as medical procedures in the proposal, be granted.

ISSUE NO. 40

STUDENT MEDICAL NEEDS

ARTICLE VIII, SECTION 819 (NEW)

ASSOCIATION PROPOSAL & POSITION: The proposal parallels Issue No. 39(b).

RECOMMENDATION: It is the recommendation of the Fact Finder that the Association proposal be granted with the following change: following the word "any" on the third

line, the following language be inserted: "medical or related service on or dispense any medication to a student."

ISSUE NO. 41

NOTIFICATION OF CRIMINAL BEHAVIOR

ARTICLE VIII, SECTION 820 (NEW)

ASSOCIATION PROPOSAL & POSITION: The Association proposed that the administration notify the classroom teacher if a student with a known history of criminal behavior or aggressive, violent nature is assigned.

BOARD POSITION: The Board did not accept the proposal.

DISCUSSION: The proposal appears to be reasonable and requires the Board to advise the teacher of only what is known. The proposal does not create a duty upon the administration to search out whether a particular student has a criminal record. It creates a duty of sharing with the teacher only what is known. The proposal is limited to factual knowledge, and seems to have been made by the Association out of concern for the safety of both the teacher and other students. Unlike Fact Finder Jaffe, this Fact Finder concludes that there is nothing inherently wrong in the Board sharing this knowledge with the classroom teacher affected.

RECOMMENDATION: The proposal to disclose a student's known criminal record is recommended.

ISSUE NO. 42

NOTIFICATION OF COMMUNICABLE DISEASE

ARTICLE VIII, SECTION 821 (NEW)

ASSOCIATION PROPOSAL & POSITION: This proposal seeks to have the teachers notified of known, serious communicable diseases with whom teachers are assigned, except as restricted by law.

BOARD POSITION: the Board opposes the inclusion of this proposal.

DISCUSSION: The same proposal was not recommended by Fact Finder Jaffe in 1994. Jaffe cited Sections 3701.24 and 3701.253 (sic) (See; Section 3701.243). The qualification of the proposal, prohibiting the disclosure of such information where prevented or restricted by law, is not, in this Fact Finder's opinion, sufficient protection against the probability of civil suits. The aforementioned statutes create a cloak of confidentiality with regard to many communicable diseases, and the test results. The fact that this clause is contained in other collective bargaining agreements is not controlling, particularly since the Board is opposing the proposal.

RECOMMENDATION: The Fact Finder recommends against the proposal.

ISSUE NO. 43

REPORTING OF GRADES

ARTICLE VIII, SECTION 822 (NEW)

ASSOCIATION PROPOSAL & POSITION: The Association proposes that a minimum of 3 working days be maintained between the close of a grading period and the date on which grades are due.

BOARD POSITION: The Board opposed the proposal.

DISCUSSION: This issue was also addressed in 1994 by Fact Finder Jaffe who recommended against adoption of the proposal. During arguments at this fact finding session, the Board never explained its opposition to this proposal which on its face appears reasonable and does not increase costs. Apparently many of the difficulties associated with the dates on which grades are to be submitted following the close of any grading period are caused by the desire of many principals who set the dates on which grades are due to be among the first to use the services of a centralized computer grading service. Moreover, there does not seem to be any district-wide policy on this subject. There is no established reason why the teachers should be rushed into submitting grades. This is a non-economic issue. The teachers are not seeking comp or release time nor are they requesting extra pay or extra days.

RECOMMENDATION: This proposal is recommended.

ISSUE NO. 44

OCCUPATIONAL SAFETY AND HEALTH

ARTICLE VIII, SECTION 823 (NEW)

ASSOCIATION PROPOSAL & POSITION: This proposal seeks the addition of language which appears to paraphrase §§ 4167.04 to 4167.06.

BOARD POSITION: The Board opposed the proposal on the basis that the proposal would permit an aggrieved employee "two bites of the apple", ostensibly the filing of both a civil rights case and a grievance.

DISCUSSION: This proposal paraphrases the above statutes in great part. One exception appears to limit the remedies available to the alleged aggrieved teacher wishing to assert a claim of discrimination to the grievance procedure, whereas the statute (§ 4167.06 [C] R.C.) states that an employee refusing to perform assigned tasks who fails to meet all of the statutory conditions set forth in Subsection (A) is subject to any disciplinary action provided by law or agreement. The proposal appears to limit the employee to the grievance procedure which may, in fact, restrict statutory rights.

In any event, this same issue was decided by Fact Finder Jaffe in 1994. Though the statute was enacted in 1993, neither party could produce a single instance in which

this statute has been utilized by an aggrieved employee. The statute comprehensive. This Fact Finder can find no reason to enhance the rights granted in the statute nor is there any reason to include it within the collective bargaining agreement. The rights granted therein are not dependent upon the endorsement of the collective bargaining agreement. There is nothing in the statute to suggest that rights contained therein are nullified if no mention of the statute is made in the collective bargaining agreement covering the affected employee. There is no need to either repeat the statute or to tinker with the rights provided therein.

RECOMMENDATION: This proposal is not recommended.

ISSUE NO. 45

PROFESSIONAL DEVELOPMENT COMMITTEE

ARTICLE VIII, SECTION 824 (NEW)

ASSOCIATION PROPOSAL & POSITION: This proposal paraphrases Senate Bill 230, enacted in 1996, ineffective 1998.

BOARD POSITION: The Board opposes the Association's proposal and seeks the adoption of a clause which, paraphrased, states that the Association president and the superintendent shall meet to confer on the implementation of a professional development committee. If the meeting results in an agreement, then it would be reduced to writing

and attached to the collective bargaining agreement as an appendix. If no agreement is reached, the proposal states that each side submit its recommendations to the other. It requires an agreement not later than December 31, 1997.

DISCUSSION: The Association proposal, in great part, paraphrases the Senate Bill and addresses those issues required or permitted to be addressed by the statute since this district is covered by a collective bargaining agreement. The Board proposal is inadequate and does not contain any mechanics for the resolution of disputes concerning the implementation of the law, much less the workings of the committee.

The Association proposal addresses a number of areas, i.e. term of office; majority vote; secretarial services; meetings; rate of compensation which are either not specified in the bill, or which are left to be decided by the Board if the parties cannot mutually agree. The proposal appears aimed at those very issues. (see line Nos. 5,459 through 5,467).

The Board's counter-proposal did not adequately address the issues which the statute opens to resolution by the collective bargaining process. The makeup, term, structure, vacancies, scope, committees, frequency and time and place of the meetings is a legitimate matter of collective bargaining between the parties.

RECOMMENDATION: It is recommended that the proposal of the Association be adopted with the following changes: 1. Training be capped at 2 days (Section 7); 2. Compensation be limited to release time for meetings held outside normal working hours; 3. Meetings shall be held 4 times per school year during normal work hours and shall not exceed 3 1/2 hours per meeting; 4. The superintendent shall approve of any meeting sought to be held outside of normal work hours, and 5. Committee members shall be compensated be at the rate of \$30 per half day.

The Fact Finder recommends that the proposal be appended to the new agreement as an appendix. Appropriate language reflecting the formation of a Local Professional Development Committee and referring to the proper appendix may be included as Section 824.

ISSUE NO. 52

VACANCIES

ARTICLE IX, SECTION 907

ASSOCIATION PROPOSAL & POSITION: The Association seeks the modification of the existing language by making seniority the determining factor in the filling of vacancies.

BOARD POSITION: The board desires that the language of the current contract be retained.

DISCUSSION: The crux of the proposal lies in the modifications sought to Subsection (B) which seeks to introduced seniority as the determining factor in filling vacancies. The Association qualified the proposal by requiring the applicant to be properly certified. Seniority would be the determining factor if all else was equal. The proposal also permits that administration to deny an applicant if it is proven that the assignment would be harmful to the students.

The vacancy proposal appears to be aimed at competing applicants who are otherwise equally qualified. In that instance seniority should prevail. The Fact Finder believes that this is the situation to which the proposal was directed. The arguments of the Board in opposing this amendment are not convincing. The filling of a vacancy on the basis of seniority between otherwise certified and qualified applicants is not a statutory duty as suggested by the Board in its brief.

RECOMMENDATION: The Fact Finder recommends adoption of the modifications to Subsection (B) as follows: "If properly certified and qualified to teach the classes normally taught therein, the applicant with the most seniority shall be given the position, unless the administration can demonstrate that the assignment would be harmful to the students directly affected thereby." The Fact Finder

recommends that the balance of the language of the current agreement be retained.

ISSUE NO. 56

PERSONNEL FILE

ARTICLE IX, SECTION 911

ASSOCIATION PROPOSAL & POSITION: The Association propounded this proposal in order to assure that only one personnel file be maintained.

BOARD POSITION: the Board opposed any change to the language of the current agreement.

RECOMMENDATION: The Association suggested the reason behind this proposal was that a principal of one of the elementary schools had kept a personnel file on a teacher(s) and apparently referred to or used it. The Association sought clarifying language to assure that only one personnel record would be maintained. The Board never sufficiently explained its opposition to the language change.

RECOMMENDATION: It is recommended that Section 911(A), beginning on the eighth line be amended as follows: "The Board shall keep and maintain a single personnel file on each teacher." The current language beginning with: "The official" and ending with "be used" is recommended to be deleted.

SALARIES

ARTICLE X, SECTION 1001 TO 1008

ASSOCIATION PROPOSAL & POSITION: The Association is seeking an across the board increase in the salary schedule of the 7%, 6% and 6% in each year of a 3 year contract.

BOARD POSITION: The Board countered with a 3% increase in the 1 year contract which it was offering.

RECOMMENDATION: The Association's witness, Mr. Fekete, attempted to establish that the Board has the present ability to meet the Association's 3 year pay demand. He cited that the Board has not borrowed funds since 1995.

The facts established that the district has operated at a surplus for the past three years. While the Association submitted that a surplus of between 5 and 8% was acceptable, the Board submitted that a minimum of 8 1/2% was necessary and 10% desirable. The exhibits introduced by both parties established that the district had a year ending surplus of approximately \$2.1 million dollars. (Exhibit 57 (J-2)). A portion of those funds may, however, have been encumbered by unpaid expenses. Regardless of the amount, the Board operated the district at a surplus. The Fact Finder finds that the Board has the ability to pay a reasonable increase in salary.

The Association argued that its wage increase would simply keep its members at the same level, fifth, in comparison to other city school districts in the area. A 7% increase would appear to place Louisville at the top level in this comparison (Exhibit 57 (N)). A review of comparable salary schedules discloses that Louisville ranks in the middle of city wide school districts in Stark County. It also ranks at the low mid level in total property valuations for school districts within Stark (Board Exhibit 57-1 and 57-2). Its millage ranks it 9th out of 17 districts and slightly below the Stark County average of 52.5 mills per \$1000 of valuation. The Board submitted that the Fact Finder use a 5 year average in operating surpluses in considering its ability to pay any increases.

In 1994, Fact Finder Jaffe recommended a 3% increase in each year. The recommendation was rejected and the parties eventually settled on a freeze in the first year and a 3% increase in each of the remaining 2 years. The Board argued that though the teachers did not receive an increase in the first year of that contract, they did receive a \$300 lump sum payment when it became obvious that the district would operate at a surplus for that fiscal year. The lump sum payment was not added to the base salary schedule and subsequent increases did not reflect the lump sum payment. The Board stated that the 5 year average of unit members of

2.94% exceeded the state wide average by .03% and that the unit members showed a .08% gain over the Consumer Price Index for the same period (Board Exhibit 57(10)). It appears that the teachers has barely kept pace with increases in the CPI for the last 5 years.

The Association claimed that it would cost the district \$75,000 for each 1% increase in the salary schedule. This estimate did not include any additional payments due because of Medicare. (Association Exhibit 57 (E)). There was also evidence introduced that established that state funding would remain at least constant, if not increased. The Board recently concluded a 3 year contract with OAPSE calling for a 3% annual increase in wages.

RECOMMENDATION: The Fact Finder recommends that salary schedules be increased by 5% in the first year commencing July 15, 1997, 4% in the second year commencing July 15, 1998 and 3.5% in the third year commencing July 15, 1999.

ISSUE NO. 58

SUPPLEMENTAL SALARIES

ARTICLE XI, SECTION 1102 TO 1106

ASSOCIATION PROPOSAL & POSITION: The association proposed increases in the supplemental salary schedule covering a number of positions, In addition it sought to make paying supplemental positions into what are now unpaid volunteer

positions. In addition, the association proposed to extend the number of days beyond the end of the normal school year for certain positions and to pay them at a stated daily rate.

BOARD POSITION: The Board argued against increasing the supplemental salaries on the grounds such salaries are paid on the basis of a percentage of the Bachelor of Arts base salary.

DISCUSSION: The salaries received by coaches, coordinators and others are in addition to the normal salary received and are based upon a percentage of the base salary. Thus, if the salary schedule is raised by 5%, the Assistant Baseball coach would also receive a 5% increase in his supplemental salary. No substantive evidence was introduced to establish any need for the increases in the supplemental salary schedule. The "built-in" adjustment factor results in an increase in these salaries depending on any general salary increase. Many of the supplemental positions are staffed voluntarily by teachers. If the Board chooses not to establish payment for this work, the teacher has the choice of continuing therein or not. It then becomes incumbent upon the administration to either obtain a substitute coordinator, discontinue the program or turn it into a paying position which will attract the necessary teacher or staffer.. The Fact Finder is reluctant to create

paying positions out of positions which are currently unpaid. The present scale of supplemental salaries is fair based upon the automatic adjustment aforementioned.

Further, there is no compelling reason to convert the issue of extended time into a contractual matter. There appears to be the only one district, Northwest, which includes the issue of extended days into the collective bargaining agreement. Currently, the positions requiring extended days are paid at a daily rate. The Board was unwilling to bind itself to a specific number of days. The Fact Finder sees no reason to recommend a change in the current practice.

RECOMMENDATION: The Fact Finder does not recommend the Association's proposal.

ISSUE NO. 60

MILEAGE

ARTICLE XII, SECTION 1202

ASSOCIATION PROPOSAL & POSITION: The Association seeks a 1 cent increase in each year of a 3 year agreement.

BOARD POSITION: The Board has agreed to a 1 cent increase raising the mileage compensation from \$.28 to \$.29 per mile.

DISCUSSION: IRS guidelines call for payment of \$.32 per mile. The use of private vehicles is voluntary. While the Board's offer is less than IRS guidelines if a teacher is

unwilling to accept the amount paid by the Board, the teacher may refused to use his / her automobile thereby requiring the administration to find a substitute vehicle or to use a board vehicle or cancel the trip.

RECOMMENDATION: The Fact Finder recommends adoption of the Board's counter-proposal of \$.29 per mile.

ISSUE NO. 61

PAYROLL PAYMENT

ARTICLE XII, SECTION 1203

ASSOCIATION PROPOSAL & POSITION: The Association proposed to eliminate the last sentence of Subsection (D) of this section. In addition, it proposed a schedule of payments and sought to change the method of summer payments.

BOARD POSITION: the Board sought to retain the language of the current agreement, updating the dates of payment to coincide with the current calendar.

DISCUSSION: The parties were an substantial disagreement over all matters in this issue. A listing of each day day in a labor agreement is unnecessary. Also, a teacher is entitled to receive all of his / her pay at the conclusion of the school year since no further duties are performed until the beginning of the next school year.

RECOMMENDATION: The Fact Finder recommends that salaries be paid in 24 equal installments on the 1st and 15th days of

each month commencing September 1, 1997 unless, the member requests payment of all unpaid salary at the end of the school year. The requests shall be made in writing by June 15th. Payment of the remaining unpaid salary shall be made in a lump sum on the next regularly scheduled pay date (July 1).

ISSUE NO. 63

PROFESSIONAL DEVELOPMENT PROGRAM

ARTICLE XII, SECTION 1205

ASSOCIATION PROPOSAL & POSITION: The Association proposes modifications to the current development program, particularly in light of the new evaluation and licensing requirements mandated by recent changes in the law.

BOARD POSITION: The Board agreed in part with the Association proposal following presentation of evidence.

DISCUSSION: The Association sought 3 changes to the current program.

First, it wanted to reduce eligibility to participate in the tuition reimbursement program from 3 years to 1 year. The reduction was not opposed and is recommended.

Second, the Association requested that the cost of any state mandated evaluation be paid by the Board. Apparently this evaluation is applicable to first year teachers and is necessary to receive a permanent certificate or at least a

certificate that would permit the teacher to continue in the same position. This request is reasonable and is recommended.

Third, the Board is to pay the licensing fees required for renewal of teaching certificates. This also reflects changes in the current law. Renewal licensing fees will now be required at the end of the fourth, sixth and eighth years and will range in costs from \$9 to \$75. These licensing fees will only be required of newly hired teachers. This request is also reasonable.

RECOMMENDATION: The Fact Finder recommends:

1. That the eligibility period for tuition reimbursement be reduced from 3 years to 1 year.

2. That the Board pay the costs of state mandated evaluations for first year teachers.

3. That the Board pay for the license renewals or reimburse the teacher for the costs of thereof, provided that such renewals are necessary to permit the teacher to perform the current job.

ISSUE NO. 65

SEVERANCE PAY

ARTICLE XII, SECTION 1207

ASSOCIATION PROPOSAL & POSITION: The Association proposes to eliminate the 59 day cap imposed by the current contract

and to replace the language by a flat 25% of accumulated sick leave.

BOARD POSITION: The Board urged retention of the current language.

DISCUSSION: Currently, a member is entitled to receive, upon retirement, severance pay based upon accumulated sick leave. A 59 day cap is provided in the current agreement. The Association seeks to remove the cap and compute severance pay at a flat 25% of accumulated sick leave which is capped at 262 days. The Board opposed increasing the days and cited that it would cost and additional \$50,000 per year if 20 teachers would retire.

The Fact Finder believes that the cap imposed in Section 701 is sufficient protection for the Board. Removing the 59 day limitation would, in effect, increase the number of days upon which the severance pay is based to 65 days. The proposal is reasonable.

RECOMMENDATION: The Fact Finder recommends in favor of the Association proposal.

ISSUE NO. 66

EARLY RETIREMENT

ARTICLE XII, SECTION 1208

ASSOCIATION PROPOSAL & POSITION: The Association proposes to continue the current incentive program to 2000, and to

continue the doubling of the severance pay upon retirement or to provide for a 2 year service buyout.

BOARD POSITION: The Board is opposed to the continuation of the present early retirement incentive program and is also opposed to a 2 year buyout.

DISCUSSION: Currently the contract provides for a doubling of the severance pay up to a maximum of \$10,000. However the current program ends with the expiration of the contract and the Board is opposed to either retaining, extending or modifying it.

In addition the Board submitted that early retirement packages are a matter of permissive and not mandatory bargaining. The Association argued that once fact finding begins the issue becomes a subject of mandatory bargaining.

Also, the Association originally proposed a 4 year buyout, but reduced the demand to a 2 year program at the onset of arguments over this issue. The Board was taken by surprise.

The Association's proposal would save the Board \$114,000 in the first year of the program if all eligible teachers take early retirement. The Association argued that school districts in Wooster, Green, Orrville and Northwestern have an early retirement system in their current contracts. Also, the Association claimed that if the current program of doubling severance pay were retained,

the Board would still experience a significant savings in the hiring of replacement teachers who hire on at a significantly less rate than that paid to a 30 year teacher.

Nevertheless, the early retirement program was the result of collective bargaining and, in fact, is reflected in the current agreement. Nothing has occurred in the relationship between the parties or in the ability of the Board to fund the current program to require its discontinuance. Therefore, in the opinion of the Fact Finder, there is no justification to abruptly terminate this program. Changing the program to either a 2 or 4 year buyout would, in the opinion of the Fact Finder, require a significant change and no analyses comparing the present system against the proposed 2 year buy-out was presented. Since the Association presented the issue in the alternative, the Fact Finder recommends retention of the current program.

RECOMMENDATION: The Fact Finder recommends the following: that an early retirement incentive program in which eligible teachers (30 years service) who retire on or before June 30th will receive an early retirement incentive computed on the lesser of two times their severance pay (Section 1207) or \$10,000, provided that notice of the given by the last day of February in the year of retirement be incorporated into the new agreement. Early incentive

retirement benefits shall be paid by July 15th in the year of retirement.

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EFFECTS OF THE CONTRACT

ARTICLE XIII, SECTION 1301

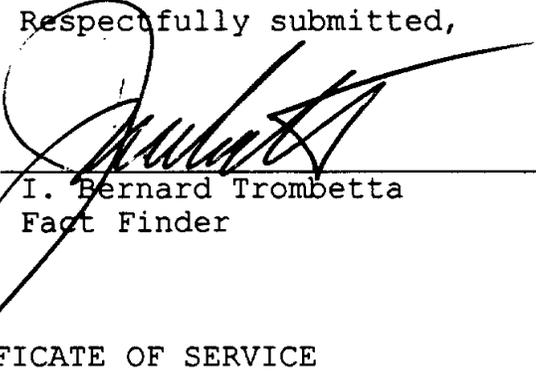
ASSOCIATION PROPOSAL & POSITION: The Association has proposed a 3 year agreement.

BOARD POSITION & COUNTER PROPOSAL: The Board opposed a 3 year agreement, but instead, proposed a 1 year contract.

DISCUSSION: The Board opposed a 3 year contract based upon the unknown effects of the various proposals now pending before the Ohio General Assembly regarding school funding. Despite the uncertainties facing boards of education in this state because of changes mandated by the Ohio Supreme Court in DeRolphe, all evidence submitted to the Fact Finder by both parties indicated that Louisville would experience not a decrease in state funding, but an increase. Also, during this session, the Board stated that if a 3% increase were granted, it would agree to a 3 year agreement. Moreover, the Board recently concluded a 3 year OAPSE agreement. The Fact Finder can only conclude that the Board is not opposed to a 3 year contract in principal, otherwise it would not have extended a 3 year agreement to the support staff.

RECOMMENDATION: The Fact Finder recommends adoption of a 3 year agreement commencing July 15, 1997 and terminating July 14, 2000.

Respectfully submitted,



I. Bernard Trombetta
Fact Finder

CERTIFICATE OF SERVICE

This report was served upon Richard Schneider, Labor Relations Consultant, Ohio Education Association, 4111 Bradley Circle, N. W., Suite 150, Canton, OH 44718 and Ronald Habowski, Attorney for Louisville Board of Education, 215 West Garfield Road, Suite 230, Aurora, OH 44202 on the 10th day of August, 1997.