

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
FACT FINDING PROCEEDINGS

STATE EMPLOYMENT
RELATIONS BOARD

JUL 6 10 48 AM '98

REPORT & RECOMMENDATIONS
OF THE FACT FINDER

AS ISSUED
JULY 1, 1998

IN THE MATTER OF:

Toronto City Schools
(Employer)
-and-
Ohio Association of Public School Employees
Local 688
(Union)

Case No. 97-MED-10-1167

HEARING:

As the result of mediation and evidentiary sessions held on May 21, 1998 and June 9, 1998, respectively, at the Toronto High School in Toronto, Ohio.

APPEARANCES:

On Behalf of the Union:

Donald J. Siegel	OAPSE Field Representative
Glenna J. Yocum	OAPSE Member
Ronald L. Holmes	OAPSE Member
Robert L. Strake	OAPSE Member
Barbara A. Stratton	OAPSE Member
Karen Thompson	OAPSE Member

On Behalf of the Employer:

G. Daniel Spahn	Attorney
Gary Fisher	Superintendent
Cheryl Uukelic	Treasurer
George Coffman	Board President
John Lewis	Board Member

GREGORY JAMES VAN PELT
LABOR ARBITRATION
MEDIATION & DISPUTE RESOLUTION

1601 LYNDBURST ROAD
LYNDBURST, OHIO 44121

SUBMISSION

In accordance with the provisions of Section 4117.14(C)(3) of the Ohio Revised Code, the undersigned was appointed Factfinder in the present matter, effective on March 30, 1998.

The Parties attempted settlement of issues in dispute, and accordingly entered into a mutual agreement to extend the period for fact finding, as provided for in ORC 4117.14(C)(5).

There being no settlement within the extended period, an attempt was made to mediate issues at impasse between the Parties on May 21, 1998. This attempt failed to result in agreement, and it was determined to present the matter to the Factfinder for his recommendations. Accordingly, the Parties were afforded an opportunity to present evidence and argument in support of their respective positions on June 9, 1998. Positions of both Parties were submitted to the Factfinder prior to the evidentiary hearing.

ISSUES AT IMPASSE

The Parties identified fourteen issues as unresolved:

1. Article I - Collective Bargaining Agreement - Settled at Hearing
2. Article II - Recognition - Settled at Hearing
3. Article III - Rights
4. Article VI - Due Process Procedure
5. Article VII - Leaves
6. Article IX - Holidays
7. Article XI - Work Year, Work Week, Work Day
8. Article XII - Working Conditions
9. Article XIV - Severance Pay
10. Article XVI - Wages
11. Article XVII - Insurance
12. Article XIX - Attendance Bonus
13. Article XXI - Bidding Procedure
14. Article XXII - Terms of Agreement

STATUTORY CONSIDERATIONS

In weighing the positions presented by the Parties, the Factfinder was guided by the considerations delineated in OAC 4117-9-05(K):

- 4117-9-05(K)(1) Past Collectively bargained agreements, if any, between the parties;
- 4117-9-05(K)(2) Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- 4117-9-05(K)(3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- 4117-9-05(K)(4) The lawful authority of the public employer;
- 4117-9-05(K)(5) Any stipulations of the parties;
- 4117-9-05(K)(6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND

Tucked in the rolling hills of eastern Ohio, Toronto sits across the river from Pennsylvania and West Virginia, an area where coal and steel and power have traditionally been the primary industries and the primary employers.

With the decline and closing of these traditional industries, the Toronto City Schools and neighboring communities have suffered severe reductions in funding. To supplement some of these losses the people of Toronto passed a five-year, five mil operating levy in May of 1995. In seeking to pass the levy, citizens of the school district were told that levy funds would be apportioned with two mils going toward replacement of lost industrial property valuations; one mil for technology; one mil for capital repairs; with the remaining mil allocated for personnel.

Prospective deregulation of the power industry, undetermined changes in Ohio's state educational funding, responsibility for provision of unfunded legislative mandates and other factors make the District's financial future unpredictable. As a result, the wages of almost all administrative, professional and service employees of the Toronto City Schools rank among the lowest in the State.

In the Fall of 1997, the District entered into an agreement with the Toronto Education Association, representing the District's classroom teachers, guidance counselors and other professional employees. That contract provided teachers with 2% annual salary increases in each of their contract's three years, in addition to various other considerations.

The bargaining unit here is composed of approximately 35 bus drivers, custodians, maintenance workers, secretaries, aids and cooks employed by the District. In 1994, during negotiation of the predecessor collective bargaining agreement, these employees were represented by the Toronto Support Association. In June of 1997, the bargaining unit changed representation to the Ohio Association of Public School Employees, Local #688. These negotiations represent the first collective bargaining effort engaged in by the Parties.

In consideration of this background, the following recommendations are respectfully submitted:

FINDINGS AND RECOMMENDATIONS

ARTICLE I - COLLECTIVE BARGAINING AGREEMENT

Settled by tentative agreement of the Parties - June 9, 1998

ARTICLE II - RECOGNITION

Settled by tentative agreement of the Parties - June 9, 1998

ARTICLE III - RIGHTS

Union Position:

The Union proposes the "fair share" deduction of Union dues and fees from bargaining unit members' pay, regardless of Union membership. Thirty-three of the bargaining unit's thirty-five employees are bargaining unit members, says the Union.

Moreover, it argues that the contracts of the County's three other school districts contain such fair share language.

District's Position:

The Board opposes the inclusion of fair share fee language in this contract, arguing that its imposition violates individual employees' rights to join or not join the Union, and that Local 688 should be responsible for attracting its own membership. The District's teachers do not have such language in their agreement, says the Board, despite having attempted to secure the provision during negotiations.

Discussion:

That 33 of the bargaining unit's 35 members have chosen to join Local 688 indicates that OAPSE has attracted all but a minimal number of potential members, despite the District's arguments. The imposition of a fair share dues deduction on the remaining two employees therefore effects only a small percentage of the bargaining unit.

While under no circumstance should employees be required to join the Union, it seems reasonable that those few who have chosen not to join share in the administrative costs of Union benefits and services provided equally to all bargaining unit members. The fair share deduction of dues from the pay of non-union bargaining unit members enjoys wide contractual and statutory acceptance, including provisions in the contracts of all other County school districts. Accordingly, the Union's proposal for a fair share dues deduction is recommended.

Contract Provisions:

Article III

D. Union Security and Dues/Fees Deductions

1. *All employees, whether employed by the Board as regular full time or regular short hour employees and who are eligible to hold membership in OAPSE Local 688, shall:*
 - (A) *Become a member of OAPSE Local 688 and execute an authorization for dues deductions on a form provided by OAPSE.*
 - (B) *In the alternative, the Board Treasurer shall deduct from the salaries of the employee/s not applying for membership a service fee in the amount set forth in written notification by the OAPSE Local #688 Treasurer. Such notice shall be provided not later than*

September 15 of each school year. Such fee shall not be required as a condition of employment following the probationary period provided in this Agreement.

- (C) *Any employee who has been declared exempt for religious convictions by the SERB shall not be required to pay said fair share fee. However, such employee shall pay, in lieu of such fair share fee, on the same time schedule as Association dues are payable, an amount of money equal to such fair share fee to a non-religious charitable fund exempt from taxation under Section 501 C (3) of the Internal Revenue Code, mutually agreed upon by such employee and the OAPSE State Treasurer. Such employee shall furnish to the Association State Treasurer written receipts evidencing payment to such agreed upon non-religious charitable fund. Failure to make such payment or furnish such receipts as proof of payment shall subject such employee to the same sanctions as would non-payment of union dues under the contract.*
- (D) *In no case shall the monthly service fee be in excess of the regular OAPSE membership dues.*
3. *Such deductions shall be made in 26 equal installments beginning with the second pay in September. Signed payroll deduction authorizations executed by the members shall be continuous from year to year or until such time as the employee withdraws such authorization in writing: Withdrawal of membership does not preclude payment of the fair share fee. An employee may withdraw membership during a ten (10) day period from August 22 through August 31. Should a member withdraw during this withdrawal period, the Board Treasurer shall then deduct according to Section 2(b).*
4. *Payroll deduction shall occur immediately upon request or in the case of new employees, following the probationary period.*
5. *The Board Treasurer shall forward to the OAPSE State Treasurer the amount of the State dues/fees, along with a complete description by name and amount, for each employee. A copy of this description shall be forwarded to the Local Treasurer. The Board Treasurer shall forward directly to the Local Treasurer the amount deducted for the local dues. This shall be done within ten (10) days following each deduction.*
6. *The Union shall defend and indemnify the Toronto City Schools, the Board of Education, the Treasurer, in their individual official capacities and hold them harmless against any and all claims, demands, suits or other forms of liability, including legal fees and expenses, that may arise out of or by reason of the action taken by the Toronto City Schools for the purposes of complying with any of the provisions of this Article or in reliance on any list, notices, or assignments furnished under any such provisions. The Union shall retain control of any appointments of legal counsel for defense and indemnification purposes. The Board shall have input into the process with the Union Attorney. Should the Board wish to retain their own attorney, it shall be at their expense.*

ARTICLE VI - DUE PROCESS

Union Position:

Arguing that present contract language violates bargaining unit members' rights to due process, the Union proposes deletion of a clause limiting grievances to suspensions of "more than three days" in paragraph B of Article VI.

District's Position:

The Board maintains the present language derives from civil service provisions to which it is subject. The restriction of grievances to suspensions of over three days gives the Board flexibility in its disciplinary practices, says the Board. Moreover, it asserts that no improper disciplinary actions have occurred in the past, and therefore no changes need be made in the contract provision.

Discussion:

The District's contentions that limitations on grievances affords it flexibility in its disciplinary actions, and that the costs of allowing all suspensions access to the grievance procedure outweigh the benefits is not compelling. Suspensions, even those of a single day, are relatively serious disciplinary actions; and restrictions on their grievance unquestionably limit a Union member's right to due process. Further, it is reasonable to believe that lack of access to the contractual grievance procedure in early disciplinary actions may preclude a progressive disciplinary approach and eliminate the resolution of disputes between the Parties at the earliest possible opportunity.

Of the three other districts in the County, two comparable contracts contain no restriction on the grievance of suspensions, while the third limits grievances to suspensions of more than one day. Accordingly, it is recommended the Union proposal to delete the limitations in Article VI be accepted.

Contract Language:

Article VI - Due Process Procedure

B. If the Board terminates, suspends for ~~more than three days~~, . . .

ARTICLE VII - LEAVES

Union Position:

The Union proposes sick leave accumulation permitted under Article VII A(1) be increased to 235 days in the first year of the agreement; 245 days in the second year; and 255 days in the third contract year. In seeking the increase, the Union asserts that bargaining unit members deserve the same leave as other Board employees. This increase, says the Union, would result in greater morale among bargaining unit members and would cost the Board nothing.

The Union also seeks the inclusion of Aunts and Uncles in the Bereavement Leave provisions of Article VII H(5).

District's Position:

The Board maintains that the sick leave accumulation proposed by the Union was offered as part of a "package". This package, says the District, was refused by OAPSE and it argues that the number of accumulated days offered by the Board at factfinding reflect increases received by the District's teachers in their new agreement. Moreover, the Board presents evidence that other districts in Jefferson County provide for similar accumulation.

The District also proposes language in Article VII B(1) providing for a two-for-one charge of days used to extend vacation, holiday and sick leave in certain circumstances. The Board does not oppose inclusion of Aunts and Uncles in bereavement leaves.

Discussion:

Increases in accumulated sick leave proposed by the Employer seem reasonable, fair and in accord with comparable contracts in Jefferson County. Consequently, the District's proposal will be recommended.

Likewise, the Board's request to double-charge for unrestricted days used to extend vacations, holidays and sick leave, excepting those used in bereavement or emergency situations will be recommended, in order that the Board may schedule its employees effectively.

Recommended Contract Provisions:

Article VII - Leaves

A. Sick Leave

1. Support personnel shall be credited with sick leave at the rate of one and one-quarter (1 1/4) days per month to a maximum of fifteen (15) days per year. Leave is cumulative to 220 days in 1997-98; 230 days in 1998-99; and 240 days in 1999-00.

B. Personal Leave

1. . . . Unrestricted personal leave taken before or after a holiday or vacation recess or used as an extension of sick leave, except in the case of death or emergencies as set forth hereinabove, shall be charged at two (2) days for each day used.

H. Bereavement Leave

Addition of a second sentence reading:

A bargaining unit member may use three (3) days of such bereavement leave for aunts or uncles, which shall be included in the five days granted herein.

ARTICLE IX - HOLIDAYS

Union Position:

The Union proposes changes in the holiday pay provisions that would effectively provide bargaining unit members required to work on holidays two and one-half times their regular rate of pay. Support personnel, particularly custodians, are currently required to work on the holiday at one and one-half times their hourly rate, while co-workers permitted to stay home still receive their regular wages. In effect, says the Union, these employees earn only an additional one-half day's pay for a full day of work.

District's Position:

The Board contends that it has not been following procedures provided for in the current contract, and seeks language to clarify and memorialize its present holiday pay practice. Under this practice, all employees except custodians are paid time and one-half for all hours worked in excess of 40, including the holiday hours. The Union, it says, is requesting double and triple time for support employees the Board has every right to expect to work on holidays. Moreover, the District maintains bargaining unit members enjoy substantially more paid holidays than do similar employees in comparable districts.

Discussion:

The Parties here have some agreement that bargaining unit members required to work on holidays should be compensated. The Board suggests language memorializing what it asserts is its present practice of including holidays as hours worked in the computation of weekly overtime. The Union proposes these workers receive time and one-half for all holiday hours worked.

It is reasonable that support personnel working scheduled holidays be compensated for that work, in addition to receiving the holiday pay enjoyed by their co-workers. However, it seems unnecessary that these employees effectively receive double and triple time and one-half for services required of their positions whether the schools are open or not. Accordingly, it is recommended that Article IX D be modified to provide for straight time compensation for the hours worked, in addition to regular holiday pay.

Recommended Contract Provisions:

Article IX - Holidays

D. When any bargaining unit member is required by the employee's supervisor to work any of the paid holidays, he/she shall be paid his/her regular hourly rate of pay in addition to holiday pay. When any bargaining unit member has been required to work on paid holidays two times in any school year, he/she will be compensated at one and one-half times his/her regular hourly rate of pay beginning with the third holiday worked, in addition to holiday pay.

ARTICLE XI - WORK WEEK, WORK YEAR, WORK DAY

Union Position:

The Union proposes several changes to Article XI. Among these are a provision to provide minimum staffing requirements. These minimums are necessary, says the Union, due to severe under-staffing, particularly in the Middle School Cafeteria. The Union also proposes language to provide part-time workers lunch benefits similar to those of full-time support personnel. In addition, OAPSE seeks to provide calamity day pay to support employees required to work declared calamity days, in addition to their normal hourly rate.

OAPSE also proposes language restricting the use of workers provided through welfare work programs. Such workers, says the Union, should not be used to perform traditional bargaining unit work.

District's Position:

The District rejects the Union's proposal for minimum staffing requirements, characterizing the language as a maintenance of standards provision in violation of the Board's management rights. Similarly, it opposes the Union's paid lunch request on the basis that full-time employees are defined in Article XI and in other contract clauses. The Union, it asserts, is merely attempting to re-define part-time for other purposes. In addition, the District contends that provision of lunch breaks to such employees would be impractical.

The Board opposes the Union's proposal to pay calamity pay to custodians and other employees who do not work with students. Those functions performed by bargaining unit members are necessary regardless of whether or not the schools are open, according to the Board, and as such are part of the duties of support personnel.

Despite the Union's assertion, says the Board, welfare workers are not utilized by the Board to take work or hours from bargaining unit members. Such workers, it contends, are utilized primarily out of civic responsibility, and while they may be properly used to substitute for support personal, are in no way utilized to the detriment of Union members.

Discussion:

The Union's proposal requiring minimum staffing in the District's offices and cafeterias clearly subverts the Board's essential management right to direct and assign its work force in the most efficient manner. Accordingly, its inclusion in this collective bargaining agreement cannot be recommended. Likewise, the assurance of a paid lunch to employees working less than full-time burdens the Employer in both scheduling and logistics; it also is not recommended.

While the Union's argument that bargaining unit members required to work on declared calamity days should be compensated with premium pay at first sounds equitable, examination of Sections B and C of Article XI reveals that custodians and other employees likely to be affected by such provision have established days and hours

in excess of other employees. In consideration of this, it is reasonable to accept the Board's contention that calamity day work is indeed part of the job, whether or not students are present. Consequently, the Union's proposal is not recommended.

It is, however, reasonable that work traditionally performed by bargaining unit members not be performed by welfare or other program workers, who work at no cost to the District. This is not to preclude the use of these workers as legitimate substitutes for support personnel, under the provisions of Section I.

Recommendations:

Article XI - Work Week, Work Year, Work Day

- I. *Addition of the sentence:
Welfare workers, or workers from other government programs, shall not be used solely to perform bargaining unit work, but may substitute for absent employees under the above provisions.*

ARTICLE XII - WORKING CONDITIONS

Union Position:

The Union proposes that Bus Drivers be reimbursed for the cost of obtaining and renewing their Commercial Driver's License and that Custodians holding boiler licenses be reimbursed for their cost as well. In addition, the Union seeks that Employees required to submit to random drug testing be compensated for their time at their regular hourly rate instead of the flat fee now provided by the Board.

District's Position:

The Board argues that CDLs and boiler licenses are job requirements, and as such are the responsibility of each individual Employee. The District also contends that the flat fee approach to compensating bargaining unit members for time spent in drug testing procedures is adequate for the time required, and discourages Employee abuse.

Discussion:

There is little basis for the Union's request for reimbursement in the obtainment and renewal of licenses required in bargaining unit positions. Such licenses are a job qualification, similar to certificates required of the Board's professional personnel, and as

such are the proper responsibility of each individual employee as a condition of employment. Therefore, neither proposal is recommended.

However, it is the statutory responsibility of the Board to compensate employees at their regular hourly rate for drug testing or other job requirements. The District's present policy of flat rate compensation does not meet this requirement. The Union's proposal in this regard is accordingly recommended.

Recommended Contract Provisions:

Article XI - Work Week, Work Year, Work Day
The Board will compensate employees for drug or other required testing procedures at their regular hourly rate of pay.

ARTICLE XIV - SEVERANCE

Union Position:

The Union proposes changes in the maximum unused sick leave credit from 45 to 50 days. It also proposes a \$3,000. Per year retirement incentive.

District's Position:

The Board offers 48 days of maximum unused sick leave credit. It proposes an incentive package of \$3,000 in the first year of the contract; \$2,000 in the second year; \$1,000 in the third year. This offer, says the Board, supports the intention of the Parties to encourage eligible employees to avail themselves of early retirement opportunities during the initial year of the contract, with less incentive as the contract period progresses.

Discussion:

As neither side supports their proposal for increase in the number of maximum unused sick days on the basis of specific argument, it seems reasonable to adjust this number to reflect a compromise between the two positions. Consequently, 49 days is recommended.

The Board's position with regard to the amount of retirement incentive seems reasonable. Decreasing the incentive amount over the contract period effectively encourages Employees to avail themselves of retirement opportunities sooner rather than

later. However, the Union's contention that the agreement's first year is effectively over, and its desire to guarantee the bonus to those Employees retiring this year are likewise valid concerns. Accordingly, retroactive applicability of the first year's \$3,000 provision to January 1, 1998 is recommended.

ARTICLE XVI - WAGES

Union Position:

The Union proposes wage increases for bargaining unit members of 2% in each of the contract's three years. In addition, OAPSE proposes the addition of a salary schedule step in each of the contract's two final years. These proposals, says the Union, would bring bargaining unit members in line with other Board employees, whom the Union contends enjoy additional salary schedule steps, and therefore increased earning opportunity.

Bargaining unit members have not, in the past, been treated equitably, according to the Union. Teachers as well as administrators have enjoyed increases in wages that are not reflected in the wages paid support personnel. It is time, says the Union, to treat these Employees with the respect they deserve, and to afford them the reasonable increases proposed by OAPSE.

The Union argues that the Board's ability to pay the increases proposed, as well as the additional salary schedule steps, has not been an issue throughout the negotiations, and it consequently cannot make such a claim in the present proceedings.

District's Position:

Pointing out that the current contract year has virtually expired, the Board proposes a lump sum payment in 1998 in lieu of salary increases. This payment, says the District, is two-tiered, and is designed to compensate both those employees eligible for a step increase, and those who are not. The Board rejects the Union's proposal for an increase in the number of salary schedule steps, maintaining that such additional steps would balloon the salary schedule, and significantly increase the bargaining unit's salary package.

In the second and third contract years, the District proposes wage increases of 2 percent per year.

Discussion:

There is little doubt that the support personnel employed by the Toronto City Schools are paid less than similar workers in comparable communities. However, the Union provides little support for its argument that bargaining unit members have been discriminated against, in favor of teachers and administrators. However loyal and dedicated these employees, the requirements for their positions do not require the same credentials as the professionals with whom they work. Moreover, the reality is that bargaining unit members are unfortunately aligned with their professional and administrative co-workers in the District; no one employed by the Board, it seems, enjoys competitive compensation.

The Board's contention that the contract's first year has expired, and its proposal to pay a lump sum in lieu of a percentage increase has merit. Consequently, that proposal will be recommended. However, such payment eliminates the compounding in future contract years which a percentage increase would provide. To offset this loss, it is recommended that the computation of second and third year percentage increases be based on a schedule calculated to include a 2% increase in the first contract year.

While the District's ability to pay the wages proposed by the Union is not in question, it is clear that additional salary steps in this contract might put the Employer in a difficult and unpredictable financial position. Given the District's uncertain financial future, the additional steps cannot be recommended in this contract.

Recommendations:

Article XVI - Wages

A. The hourly rates for bargaining unit members in the 1997-98 school year shall remain the same, however, a \$225.00 payment shall be made to those bargaining unit members who qualify for a step increase. A \$425.00 payment shall be made to those bargaining unit members who do not qualify for a step increase. Such payments shall be made within thirty (30) days of the execution of this Collective Bargaining Agreement. Notwithstanding this provision, at the end of the initial contract year the pay schedule set forth in Appendix A shall be revised to reflect a 2% increase for purposes of calculation of percentage increases in this Agreement's remaining years.

The hourly rates for bargaining unit members shall reflect a 2% increase for the 1998-99 school year according to the pay schedules set forth in Appendix A.

The hourly rates for bargaining unit members shall reflect a 2% increase for the 1998-99 school year according to the pay schedules set forth in Appendix A.

ARTICLE XVII - INSURANCE

Union Position:

The Union proposes language lowering the present minimum insurance eligibility requirements from employees working at least 6.5 hours per day and nine months of the year to bargaining unit members working at least 30 hours per week. The proposal, the Union says, responds to its assertion that the District currently provides insurance coverage to fewer employees than other school system in Jefferson County.

The Board's cost for this increased eligibility is small, according to the Union. It contends its proposal would make nine bargaining unit members eligible, with only one of those taking the family policy and one 6.5 hour Employee converting from a single policy. Consequently, the Union maintains the Board's additional expense would amount to only \$685.00 per month; far less than the additional \$100,000.00 per year asserted by the Employer.

District's Position:

The Board maintains that only 13 members of the bargaining unit currently have insurance coverage. An obligation to extend this benefit to as many as 20 other support personnel at premiums of \$5,000 per year, says the Employer, might result in cost increases of some \$100,000. Because it is self-insured, the Board argues that added health care costs are likely to be incurred, in addition to increased premium payments. The Board points out that other area school districts offering full hospitalization to less than full-time employees are experiencing extreme financial difficulties as a result.

Discussion:

While it is difficult to imagine the results of offering insurance coverage to additional members of the bargaining unit would be as Draconian as the 25% cost increase postulated by the Board, there is no question that significant, unforeseen insurance expenses could be ruinous in a District whose funding sources are as tenuous as those of the Toronto City Schools. However, there is little evidence that extending

single insurance coverage to bargaining unit members who work at least 30 hours per week and nine months per year would result in financial catastrophe.

Moreover, similar employees in Jefferson County's other three school districts enjoy greater health care participation than do their Toronto counterparts. Accordingly, it is recommended that the Employer's health care proposal be accepted, with the exception that single coverage benefits be extended to those bargaining unit members working 30 hour workweeks for at least nine full months. Current language in Section A(2) offering payment of 65% of premiums to 6 hour Employees would accordingly apply to the difference between current actual premium costs for single and family coverage.

Recommended Contract Provisions:

Article XVII - Insurance

Modification of Section A(2), paragraph 3 to read:

However, for those current employees who work six (6.0) hours or more per day at least nine full months per year who choose single coverage, the Board will pay one hundred percent (100%) of the premium in effect for such single coverage. The Board will pay the percentages set forth in this paragraph A(2) on the difference between the cost of single and family coverage for those employees choosing family coverage. The Board payment of the premium will be subject to the cap set forth hereinafter.

- B. Each member of the bargaining unit covered by the District's hospitalization plan, shall be responsible for any premium increase over and above those in effect on June 30, 1997. This cap on insurance will be implemented as follows:***

The Board will pay the applicable percentages of the insurance premiums in effect on June 30, 1997, for the respective coverages as set forth in subsection A. The premium on June 30, 1997 will be the cap used in determining an employee's contribution to insurance. Each employee shall pay his or her share of the premiums as set forth in paragraph A, plus any difference between the June 30, 1997 premium and the actual premium cost. Such employee contribution shall be made through payroll deduction over a twelve month period.

ARTICLE XIX - ATTENDANCE BONUS

Union Position:

The Union seeks an increase in the attendance bonus from two to three hundred dollars for bargaining unit members using no sick or personal leave; and an increase from

one hundred to one hundred fifty dollars to those Employees using only one sick or personal leave day.

District's Position:

The Board contends it offered this proposal as part of a package during negotiations. However, it says, the Union's rejection of the entire package has resulted in withdrawal of the offer.

Discussion:

While there will undeniably be a cost to the District in implementing this increase, it is reasonable that increased attendance and resulting scheduling benefits will outweigh the minimal expenditure. Consequently, the proposal will be recommended.

Recommended Contract Provisions:

Article XIX - Attendance Bonus

Each full-time (6 1/2 or more hours per day) bargaining unit member who does not use any sick leave or personal leave in a school year shall receive a bonus of three hundred dollars (\$300) per year. Each full-time bargaining unit member who uses a total of one day of sick leave or personal leave shall receive a bonus of one hundred fifty dollars (\$150). Any regular part-time bargaining unit member who qualifies for an attendance bonus shall receive a pro-rated amount based on the portion of the regular 6-1/2 hour work day of the bargaining unit member. Payment to eligible bargaining unit members shall be made no later than August 1st following conclusion of the school year.

ARTICLE XXI - BIDDING PROCEDURE

Union Position:

Pointing to what it contends have been difficulties in the past, the Union proposes language it says will result in all vacancies being posted and filled in a timely manner. At present, it contends, bargaining unit members cannot bid on open positions. As no bargaining unit job requires extensive qualifications, according to the Union, there is no reason vacant positions should not be filled by present Employees.

District's Position:

The District maintains that no problem in bidding and filling vacancies has occurred in the past, with the exception of one matter which it maintains was the result of oversight rather than intent. Seniority, according to the Employer, should be only one of several qualifying factors in filling vacant positions; the demand that all vacant positions be filled solely on the basis of seniority violates its management rights. The Board agrees, it says, to post any future vacancies in accordance with existing contract language.

Discussion:

There is little evidence that the posting and bidding procedures contained in Article XXI are defective, or that their circumvention has been problematic in the past. Accordingly, the Board's proposed contract language provides adequate balance between increasing promotional opportunities open to bargaining unit members, and the Districts' need to fill positions with qualified Employees.

Recommended Contract Provisions

Article XXI - Bidding Procedure

- A. *Current contract language.*
- B. *Current contract language.*
- C. *Employees from within the vacated classification who apply during the posting period shall be considered before making an appointment from outside the vacated classification and/or the eligibility list. The vacancy shall be filled by the most qualified applicant as determined solely by the Superintendent and/or Board.*
- D. *If a vacant position is not filled by an employee from within the vacated classification, other bargaining unit members who applied for the position shall be considered by the Superintendent, along with other applicants from outside the bargaining unit. The vacancy shall be filled by the most qualified applicant as determined solely by the Superintendent and/or Board of Education. All applicants must meet civil service eligibility where required by law.*
- E. *Whoever fills a vacancy shall take the position subject to the following conditions:*
 - (1) *Such person shall be subject to a probationary period of 90 days and may, at any time during that period, be removed should the work performance not be satisfactory. A bargaining unit member shall be reassigned to his/her former position.*

- (2) *During the 90 day probationary period, a person hired from the bargaining unit may request to be returned to his/her former position.*
- (3) *Prior to October 1st of the school year, a seniority list, by classification, shall be made available to the members of the bargaining unit upon request. For purposes of this Article and Article VIII, the seniority shall be determined by the actual date of hire into the employee's current classification or the date of transfer into said classification.*

ARTICLE XXII - TERM OF AGREEMENT

Recommended Contract Provisions:

- A. *Current contract language*
- B. *Current contract language*
- C. *Current contract language*
- D. *Current contract language*
- E. *Current contract language*
- F. *Duration*

This Agreement shall become effective retroactive to July 1, 1997 and remain in full force and effect until June 30, 2000.

Respectfully submitted,
this 1st day of July, 1998,
at Lyndhurst, Cuyahoga County, Ohio


Gregory James Van Pelt
Factfinder