

STATE EMPLOYMENT
RELATIONS BOARD

JAN 19 11 47 AM '00

In the Matter of Factfinding

Between

Education Association of
Orrville

and

Orrville City School District
Board of Education

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SERB Case Number:
99-MED-02-0100
Before: Harry Graham

APPEARANCES: For Education Association of Orrville:

Richard Schneider
Ohio Education Association
4111 Bradley Circle, N.W., Suite 150
Canton, OH. 44718

For Orrville City School District:

Dennis M. Whalen
Helen S. Carroll
Whalen & Compton
565 Wolf Ledges Parkway
Akron, OH. 44309-2020

INTRODUCTION: Pursuant to the procedures of the Ohio State
Employment Relations Board three days of hearing were held in
this matter. A vast amount of documentation was received into
evidence. A post-hearing submission was received from the
Employer. It included a response from the Union. With receipt
of that submission the record in this dispute was closed per
the understanding of the parties reached on November 10, 1999
in Orrville.

ISSUE ONE, RECOGNITION

POSITION OF THE UNION: The Union proposes the bargaining unit be changed to include school psychologists. Other area school districts include them in the bargaining unit. Other City School Districts in Wayne County, OH. eg. Wooster and Louisville, include them in the bargaining unit. The Union also seeks to exclude only "tutors" from the bargaining unit. No other bargaining unit in the region includes them.

POSITION OF THE EMPLOYER: The School District points out that configuration of the bargaining unit is the province of the Ohio State Employment Relations Board. (SERB). It should not be touched by the Factfinder it asserts.

DISCUSSION: The Employer is correct on this issue. No matter what the merits of the Union position, it is the State Employment Relations Board that has jurisdiction over this matter. No change is recommended.

ISSUE TWO, NEGOTIATION PROCEDURE

POSITION OF THE UNION: The Union proposes certain changes in the manner in which tentative agreements are memorialized. It also proposes it consider a tentative new agreement within 10 days of reaching it. Finally, the Union proposes that only after the Union has ratified the tentative new agreement would it be submitted to the Employer for its ratification.

POSITION OF THE EMPLOYER: The Employer proposes replacing the current impasse procedure with mediation under the auspices

of the Federal Mediation and Conciliation Service. It also proposes the deletion of the existing requirement of providing the names of bargaining committee members and deletion of language relating to reopening of the Agreement.

DISCUSSION: The Union pointed out that its proposed manner of conducting negotiations been used during the current round of negotiations. It is unexceptional and is recommended to the parties. It is not recommended that mediation replace factfinding in the Agreement. If the parties desire mediation to occur under the auspices of the FMCS or SERB they may utilize it without specific contractual provision. No contract language on this issue is necessary. No other changes are recommended.

ISSUE THREE, GRIEVANCE PROCEDURE

POSITION OF THE UNION: The Union desires a "representative" be permitted to act on behalf of a grievant. It also seeks elimination of the contract section at Article III, Section 2 d replacing arbitration with advisory arbitration at the conclusion of the present agreement. No other changes are proposed.

POSITION OF THE EMPLOYER: The School District proposes reducing the number of days to file a grievance from 45 to 10. It also seeks continuation of the provision concerning advisory arbitration.

DISCUSSION: The provision on advisory arbitration found in the present agreement is unusual. No other district in the area has it. That provision is so out of the mainstream of present-day labor agreements as to be unacceptable. It is recommended that it be removed from the forthcoming Agreement.

The position of the School District with respect to the time to file a grievance is well-taken. Either a person feels strongly that they have a grievance or they do not. If a person thinks they have been aggrieved, they should file a grievance. The position of the Employer on this issue is recommended.

ISSUE FOUR, CLASS COVER PAY

POSITION OF THE UNION: The Union proposes there be in the Agreement a new benefit: pay for covering the class of an absent teacher. The Union seeks pay at 1/7th the prevailing rate of the substitute teacher daily rate for each class covered. The Union also proposes that regular teachers will be used to cover for absent colleagues only when regular substitutes are unavailable.

POSITION OF THE EMPLOYER: The School District does not desire such language. It points out that the Union has made such a proposal in the past but has never been successful in securing its adoption. No reason to adopt it now exists in

the District's opinion.

DISCUSSION: Association Exhibit 5 is conclusive on this issue. It shows all school districts in the region but Orrville make payment as proposed by the Union. The proposal of the Union on this issue must be recommended. It is not recommended that the second part of the Union proposal, requiring use of regular teachers if substitutes are unavailable, be included in the Agreement. Its inclusion will serve to unduly limit the flexibility of the Employer to cover classes.

ISSUE FIVE, REMEDIATION TEACHING

POSITION OF THE UNION: The Union proposes a new benefit, pay at the tutor rate for remedial teaching for proficiency tests, reading recovery and the like. The majority of other districts in the area have some sort of pay for this activity, Orrville should as well in the Union's opinion.

POSITION OF THE EMPLOYER: The Employer is opposed to this benefit. It is new and should not be included in the Agreement.

DISCUSSION: No reason exists not to include this sort of pay in the Agreement. Teachers who perform this work should be paid. It is not a gratuity, given to the students of the District. Teachers who work must be paid. The proposal of the Union is recommended.

ISSUE SIX, EXTENDED SERVICE

POSITION OF THE UNION: This is similar to Remediation Teaching, above. Union Exhibit 7 shows that such pay is the norm in the area. Teachers in Orrville should receive it as well according to the Union

POSITION OF THE EMPLOYER: For the same reasons cited above in Issue 5, the District is opposed to this pay.

DISCUSSION: Both in the governing statute and by tradition comparisons are of prime importance in proceedings of this nature. Union Exhibit 7 shows that extended service pay is common in the area. Orrville is unusual in not making such pay. No good reason was advanced why it should not do so. The proposal of the Union is recommended.

ISSUE SEVEN, COMMITTEE PAY

POSITION OF THE UNION: The Union proposes that teachers who agree to serve on what may be termed outside committees (eg. North Central Evaluation, Heartland Project) should be released from school to do so. If meetings or other activities occur outside of the school day, the Union seeks pay at the tutor rate. Within the comparison group urged upon the arbitrator as being appropriate some school districts make this sort of pay and others do not.

POSITION OF THE EMPLOYER: The School District is not in favor of adopting this proposal of the Union.

DISCUSSION: The evidence on this item is mixed. Some school districts in the area make this pay. Others do not. There is not the same sort of pattern seen in extended service pay and remediation teaching. The proposal of the Union is not recommended.

ISSUE EIGHT, RENAISSANCE PROGRAM

POSITION OF THE UNION: This is a program new to the Orrville School District. The Factfinder was given to understand that students may be given certain rewards for exemplary behavior and that teachers may be involved in administering the program. The Union seeks pay at the tutor rate.

POSITION OF THE EMPLOYER: The Employer is opposed to this pay.

DISCUSSION: As noted above, this is a program new to the school district. There is nothing to indicate how much time, if any, will be spent by teachers in working with this program. It is premature to contemplate pay when nothing is known about how this program will operate. The position of the Employer is recommended.

ISSUE NINE, IEP/OASIS

POSITION OF THE UNION: As is the case with the issues above, the Union seeks pay for this sort of work.

POSITION OF THE EMPLOYER: The School District urges this matter not be included in the he Agreement.

DISCUSSION: As was the case with the Renaissance Program, this is too speculative to recommend. No evidence was received indicating a pattern on this matter. The position of the Employer is recommended.

ISSUE TEN, PAYCHECKS

POSITION OF THE UNION: The Union proposes certain administrative or housekeeping items with regard to paychecks. Most significantly, the Union urges there occur direct deposit of paychecks. It indicates this is occurring presently and that this proposal merely represents codification of existing practice.

POSITION OF THE EMPLOYER: The Employer sees no reason why this matter should in the Agreement.

DISCUSSION: There is absolutely nothing unusual or novel in the proposal of the Union. It is recommended.

ISSUE ELEVEN, EQUALIZED DEDUCTIONS

POSITION OF THE UNION: It may be the case that on occasion a member of the bargaining unit is docked pay. The Union proposes that any such docking would not exceed one day of pay per pay period.

POSITION OF THE EMPLOYER: The School District responds to this proposal as it did above.

DISCUSSION: This is a new item in the Agreement. No need for it was shown by the Association. It is not recommended this

proposal be included in the Agreement.

ISSUE TWELVE, EARLY PAYOUT

DISCUSSION: At the hearing the parties were basically in agreement on this issue. As reflected on page 246 of the Employer presentation on this issue, there is little difference between the parties. The proposal of the School District with a limit of five employees, rather than five percent of employees is recommended to the parties.

ISSUE THIRTEEN, PENSION PICK-UP

POSITION OF THE UNION: The Association points out that the District is "picking-up" and paying the pension contributions being made on behalf of the Superintendent. As that is the case, it should do so for teachers as well in the opinion of the Union. As it is being done for the Superintendent the Union urges it be recommended for teachers in Orrville as well.

POSITION OF THE EMPLOYER: The District is opposed to the proposal of the Union. It represents a substantial cost, over and above any cost of a salary increase.

DISCUSSION: The proposal of the Union is not supported by the data. Other school systems in the area are not making the sort of payment proposed by the Union in this issue. It is not recommended to the parties.

ISSUE FOURTEEN, RETIREMENT INCENTIVE

POSITION OF THE UNION: There is presently a two year buyout for faculty. The Union proposes increasing it to three years.

POSITION OF THE EMPLOYER: The School District proposes eliminating this program. It sees no need for its continuance.

DISCUSSION: No cogent reason was advanced by either party to alter the present structure of the Agreement. No change is recommended.

ISSUE FIFTEEN, SEVERANCE PAY

POSITION OF THE UNION: The present severance pay maximum is 55 days. The Union proposes increasing it to 65 days. Other Districts in the area, eg. Wooster and Louisville City, pay 65 days. So too should Orrville in the opinion of the Union.

POSITION OF THE EMPLOYER: The District is willing to increase the severance pay maximum to 60 days.

DISCUSSION: Union Exhibit 13 presents a mixed picture. One District, North Central, makes available 66 days of severance pay. Orrville is the lowest in the area at 55 days. The proposal of the District is in the mainstream of area schools and is recommended to the parties.

ISSUE SIXTEEN, HEALTH INSURANCE

POSITION OF THE UNION: The Union proposes that the structure of benefits be included in the Agreement. Further, it proposes continuation of the present plan and the 100%

Employer premium payment.

POSITION OF THE EMPLOYER: The District proposes cutting its premium payment from 100% to 80%. It points out that the benefit level in the present plan is very good. In its opinion employees should pay towards the premium in consideration of the benefit level.

DISCUSSION: To the knowledge of the Factfinder it is not unusual for health insurance benefits to be included in the Collective Bargaining Agreement. That is recommended to the parties. No particular reason was advanced by the Employer to support a substantial change in the existing premium payment arrangement. No change is recommended.

ISSUE SIXTEEN, A, HEALTH INSURANCE OPT-OUT

POSITION OF THE UNION: The Union seeks a new benefit: payment of a portion of the health insurance premium to those employees who are not participants in the plan offered by the District. All area schools with the exception of Dalton make some payment to people who are not in the health insurance plan of the Employer.

POSITION OF THE EMPLOYER: At page 266 of its presentation the Employer has expressed conditional agreement with the concept of payment to people who opt-out of the health insurance scheme. The condition proposed is that employees pay towards the cost of the health insurance.

DISCUSSION: The proposal of the Union is not unusual. Only Orrville and Dalton among school districts in Wayne County do not make the sort of payment the Union is seeking. The amount proposed by the Union is not unreasonable. The proposal of the Employer concerning payment by employees towards the cost of health insurance was rejected above. The proposal of the Union is recommended.

ISSUE SEVENTEEN, PRESCRIPTION INSURANCE

POSITION OF THE UNION: The Union proposes no change. No reason for cost-sharing exists in its opinion. No other school district in the area has made a proposal along this line.

POSITION OF THE EMPLOYER: The Employer seeks the initiation of premium cost-sharing with employees for this insurance.

DISCUSSION: No school district in the region has made a proposal of this nature. No such provision found in other agreements. No change is recommended.

ISSUE EIGHTEEN, DENTAL INSURANCE

POSITION OF THE UNION: The Union desires no change be made in the present allocation of premium payments. Further, it proposes a benefit level as outlined on page 38 of its submission to the Factfinder. According to the Association this is at once a superior benefit package, at less cost than the present plan. It is becoming the norm in the County.

Hence it should be recommended the Union asserts.

POSITION OF THE EMPLOYER: As was the case with other elements of its proposals on health insurance, the School District seeks that a payment towards the premium be made by the members of the bargaining unit.

DISCUSSION: The imposition of cost-sharing of premium costs by bargaining unit members is rejected. It was not challenged that the proposed benefit package is superior to the existing one. Nor was it contested that the cost is less. The proposal of the Union is recommended.

ISSUE NINETEEN, VISION INSURANCE

POSITION OF THE UNION: The Union proposes a new benefit, vision insurance. In its opinion, the time to add such a benefit has come.

POSITION OF THE EMPLOYER: The Employer notes this represents a new benefit. Insufficient specifics were provided by the Union to give a basis for an award on its behalf in the opinion of the District.

DISCUSSION: The Employer is correct. This is new. No other district in the County provides this benefit. No vision insurance is recommended.

ISSUE TWENTY, SECTION 125 DEDUCTION

POSITION OF THE UNION: The Union proposes this benefit be made available for bargaining unit members.

POSITION OF THE EMPLOYER: The District is of the view that the accounting function associated with this proposal will be burdensome and costly. Hence, it should be rejected.

DISCUSSION: The assertion of the Employer concerning the cost associated with this benefit was rebutted by the Union.

According to its uncontradicted account, a nearby school district, Wooster, has initiated this benefit. The cost to the Wooster District approximates \$800.00 per year. Wooster uses an outside administrator to administer the plan. Given those considerations and the benefit to employees attendant upon the 125 Plan, it is recommended to the parties.

ISSUE TWENTY-ONE, OTHER INSURANCE QUESTIONS

POSITION OF THE UNION: The Union proposes that people who work 30 or more hours per week be covered by the insurance package of the District. Were such a person to be transferred to a less-than 30 hour per week position they would retain coverage. People who work less than 30 hours per week would have premiums paid on their behalf on a pro-rata basis. The Union also desires that a copy of all insurance coverages be provided the Association President and that the District provide assistance in claims filing.

POSITION OF THE EMPLOYER: The District is opposed to the proposals of the Union. Should it have to provide benefits to part-time employees costs would increase. Further, the text

of the insurance plans are available in the District offices. The Union can inspect it. Finally, the District does not desire to assume the burden of providing assistance to employees who have been denied benefits.

DISCUSSION: The data in Assn. Ex. 18 are generally supportive of the Union position. The exception is in the area of part-time employees. No change in the present agreement is recommended with respect to coverages for employees who work 30 or less hours per week. The other aspects of the Union proposal are supported by the evidence and are recommended to the parties.

ISSUE TWENTY-TWO: CURRICULUM AND STUDY GUIDE

POSITION OF THE UNION: No change.

POSITION OF THE EMPLOYER: The District seeks replacement of the word "director" with the word "coordinator" in Article V. It also proposes all work relating to this activity be performed at school. Finally, it proposes that any payments made by the Tri-County ESC not be duplicated by the District.

DISCUSSION: No particular justification was advanced to change the existing contract language on this issue. No problems with its administration were shown. No change is recommended.

ISSUE TWENTY-THREE, TUITION REIMBURSEMENT

POSITION OF THE UNION: The Union seeks substantial change in

this article. It desires the amount available to \$10,000 from \$5600.00. It also desires that tutors be eligible for this benefit; that the allocation be made available twice per year; that payment be made to courses approved by the LPDC and that reimbursements be made to employees within 30 days of application.

POSITION OF THE EMPLOYER: The Employer points out the amount sought by the Union for tuition reimbursement represents an increase of almost 100%. This is excessive in its view. It regards the proposal to divide reimbursement in two as cumbersome. The District is strenuously opposed to payment for courses sanctioned by the LPDC. Such reimbursement is inappropriate in its view.

DISCUSSION: A modest increase in tuition reimbursement funds is in order. Wide disparity exists among area schools on this amount. It is recommended \$8000.00 be provided for tuition reimbursement. It was not shown by the Union that the present reimbursement system was flawed. No changes are recommended. No further changes are recommended in this article.

ISSUE TWENTY-FOUR, LEAVE OF ABSENCE

POSITION OF THE UNION: The Union has a comprehensive proposal on this issue. It seeks deletion of the phrases, "the law provides," "full-time" and "of the Board of Education." It also proposes an increase in available leave to 260 days from

230. The Union further seeks to eliminate the present six-week restriction on pregnancy leave. Additionally, it proposes to add "sibling" to the definition of immediate family and to delete the words "brother and sister." It also desires sick leave be made available to attend the funeral of a person not in the immediate family. A new benefit, creation of a sick leave transfer program is also proposed. The Union also desires there be deduction of sick leave in 1/2 day units, a \$200.00 per year attendance incentive and 3 unrestricted personal leave days. It further proposes there be 1.5 days sick leave granted to employees who have not used personal leave during the prior year. Various other changes are proposed in the Association leave section of the Agreement. It also desires leave for jury duty and service as a witness. Finally, it proposes a new sort of leave, professional leave.

POSITION OF THE EMPLOYER: The District regards the proposed expansion of sick leave to be excessive. In its opinion, the other proposed changes are unnecessary. The proposed attendance bank and attendance incentive payment are not viewed favorably.

The District proposes including contract language indicating the commitment of the parties to abide by the Family and Medical Leave Act.

The Employer is opposed to elimination of the Superintendent's discretionary authority to grant or withhold personal leave as well as creation of unrestricted personal leave days. It regards any change in Association leave as unnecessary. So too is the "witness" leave provision proposed by the Association. The proposal for a new leave, professional leave, is also rejected.

DISCUSSION: Examination of Union Ex. 21 shows that Orrville is now at the low end of available sick leave accumulation in the area. The data shows too that the proposal of the Union is excessive. It is recommended that there be sick leave accumulation of 245 days. Some support, but insufficient support, is furnished for the Union proposals concerning the sick leave transfer and incentive payments. They are not recommended to the parties. All other districts in the area provide three days of unrestricted personal leave. The appropriate language from the Wooster agreement is commended to the parties. No support is provided for the Union proposal on sick leave transfer is found in the evidence. It is not recommended. It was not shown by the Union that the present Association Leave article is inadequate. No change is recommended. All area school districts provide the sort of compulsory leave suggested by the Union: witness and jury. It is recommended to the parties.

refers to the concept of seniority when lay-offs are to be made. The bone of contention in this matter is related to how seniority is to be measured. The current Agreement refers to "continuous" service. The Union urges it be altered to refer to "total" service.

POSITION OF THE EMPLOYER: The District proposes additional language in the Agreement to deal with lay-off. It proposes that if the State Auditor directs it to do so, it "shall have the authority to make necessary salary reductions or reductions in force... to operate within anticipated resources. The District is opposed to the other changes advanced by the Union.

DISCUSSION: The evidence provided to the Factfinder concerning the ability to justify lay-off for financial reasons supports the proposal of the Union without reservation. Each and every school district in the County has a similar restriction. Orrville cannot deviate from the normal situation. The proposal of the Union on this matter is recommended.

Similarly, the current language dealing with the authority of the District to determine upon lay-off is overly broad. It removes from the grievance procedure all ability to challenge lay-off decisions. The proposal of the Union is recommended. That of the Employer, concerning the expansion

of its authority to lay-off as determined by the State Auditor is rejected.

The proposal of the Union concerning computation of seniority is not unusual. It is of limited applicability. No reason exists to wipe from the books all service with the Employer, even though it may have been broken. The proposal of the Union on this issue is recommended.

ISSUE TWENTY-SIX, DISMISSAL PROCEDURE

POSITION OF THE UNION: The Union proposes a new section of the Agreement to deal with dismissal. In sum, the proposal would prevent arbitrary and capricious removal, provide for notice by March 30 and appeal to the Superintendent and then the School Board.

POSITION OF THE EMPLOYER: The Employer points out that agreements in the area are silent on this issue. Dismissals are currently subject to the relevant statutory provisions. No need for the proposal of the Union exists in the opinion of the Employer

DISCUSSION: The proposals of the Union are not revolutionary. They are essentially procedural in nature and are not burdensome. That employees should not be dismissed in arbitrary and capricious fashion can hardly be argued. The proposal of the Union is recommended.

ISSUE TWENTY-SEVEN, DISCIPLINARY ACTION

POSITION OF THE UNION: The Union proposes no person be disciplined arbitrarily, capriciously or unreasonably.

POSITION OF THE EMPLOYER: The District points out that the proposal of the Union is de-facto in the Agreement as the proposed standards are utilized by arbitrators. No need for the proposal of the Union exists.

DISCUSSION: The discussion above re issue twenty-six is reiterated. The proposal of the Union is recommended.

ISSUE TWENTY-EIGHT, NON-DISCRIMINATION

POSITION OF THE UNION: The Union proposes conventional language reflecting the commitment of the parties not to engage in discrimination due to "race, color, age, disability, religion, national origin or sex." The Union proposal would further permit deviation from that commitment "after Agreement with the Association."

POSITION OF THE EMPLOYER: The District is generally opposed to the proposal of the Union. It points out it has a legal obligation not to discriminate. No reason for this proposal exists in its opinion.

DISCUSSION: The Employer is correct. The proposal of the Union is not recommended.

ISSUE TWENTY-NINE, STUDENT DISCIPLINE

POSITION OF THE UNION: The Union proposes new contract language on this matter. It asserts student discipline has

been a problem in the District. Other area school districts have contract language dealing with this matter.

POSITION OF THE EMPLOYER: The District asserts no great problem exists with discipline of students. The data, (Union Ex 30) do not show wide-spread adoption of the sort of language urged upon the Factfinder by the Union. As no need has been demonstrated and no pattern exists, the proposal of the Union should not be recommended according to the District.

DISCUSSION: The argument of the District is correct. No pattern of contract language on this issue is evident. Nor was it shown that the present system of student discipline in the District would benefit from inclusion of the proposal of the Union. It is not recommended.

ISSUE THIRTY, PARENTAL COMPLAINTS

POSITION OF THE UNION: The Union proposes new language in the Agreement to deal with this matter. Its proposal contemplates a comprehensive system to deal with such complaints including no use of anonymous complaints and no placement of such complaints in the personnel file unless they have been acted upon. The overwhelming number of area school districts have such provisions in their agreements.

POSITION OF THE EMPLOYER: The District asserts there is no problem in this area. No need for the Union's proposal exists

in its view.

DISCUSSION: Most area school districts have contract language dealing with the issue of parental complaints. Nothing in the proposal of the Union is ground-breaking. It is recommended to the parties.

ISSUE THIRTY-ONE, INDIVIDUAL CONTRACTS

POSITION OF THE UNION: The Union proposes a new section in the Agreement to deal with the manner in which individual contracts are issued. Its Exhibit 32 shows its proposal of 3-1's, 3-2's, 2-3's and then 4's, to be in the mainstream of area school systems. No reason not to recommend acceptance of its proposal exists according to the Union.

POSITION OF THE EMPLOYER: The Employer points out that the proposal of the Union would extend to a non-teacher group, tutors. This is inappropriate according to the District. Further, the proposal of the Union is more restrictive than the relevant Ohio statute dealing with this matter. The proposal of the Union is not supported by the evidence in the District's opinion and no need for it has been shown. Hence, it should not be recommended according to the Employer.

DISCUSSION: Other Agreements in the area provide for this issue. No reason exists for Orrville to be the exception. The formula proposed by the Union is unremarkable and is recommended. It is not recommended that tutors be included

within the provisions of this article. Other area school districts include the appropriate forms within their agreements. That is recommended to the parties. Other aspects of the Union proposal, eg. Continuing Contract Eligibility, are recommended.

ISSUE THIRTY-TWO, VACANCIES AND TRANSFERS

POSITION OF THE UNION: The Union proposes new language on this matter. Its proposal contemplates the definition of a vacancy, a posting procedure and provisions to deal with voluntary and involuntary transfers. All other school districts in the area have language along the lines proposed by the Union in this issue.

POSITION OF THE EMPLOYER: The employer objects to all aspects of the Union proposal. It indicates no problem exists in this area and urges its rejection in toto.

DISCUSSION: The proposal of the Union is supported by the evidence. Of course, the Employer objects to it as it infringes upon its managerial authority. Reading the proposal of the Union on this matter does not support the point made by the Employer concerning restriction of filling vacancies with temporary employees only. The text of the Union proposal merely indicates a vacancy occurring after the start of the school year will be filled "temporarily." It does not guarantee the vacancy will be filled by an incumbent employee

of the District. The proposal of the Union on this issue is recommended.

ISSUE THIRTY-THREE, EVALUATIONS

POSITION OF THE UNION: The Union proposes a comprehensive evaluation system. Without detailed recitation, it provides for who will be evaluated, when they will be evaluated and the manner in which evaluation will occur. Once again, all area school districts have language similar to that proposed by the Union. 2

POSITION OF THE EMPLOYER: The Employer proposes maintenance of the status-quo with one minor change. It agrees with the Union that the provisions of ORC 3319.111 would be superseded by the Agreement. In the opinion of the Employer the existing system has not been shown to be defective. Hence, no change should be made.

DISCUSSION: Concerns raised by the Employer on this matter are well-taken. There is a potential conflict between the opinion of the LPDC and a teacher concerning remediation of deficiencies. Other aspects of the Union proposal on this issue are unremarkable. The proposal of the Union with the exception of its proposed 4, g (p. 76 of the notebook) be included in the forthcoming agreement.

ISSUE THIRTY-FOUR, STUDENT MEDICAL NEEDS

POSITION OF THE UNION: The Union proposes new language giving

teachers the right to refuse to administer medicine to students if they so choose. All other school districts in the region permit this to occur.

POSITION OF THE EMPLOYER: The Employer is opposed to this proposal. It asserts no problems have ever developed in this area and no language is required.

DISCUSSION: The proposal of the Union is recommended. Other area schools have contract language relating to this matter. In an era of concern over communicable disease and liability, to permit teachers to decline to administer medication, an act arguably outside of their expertise, is unexceptionable. No reason can be advanced for not incorporating the proposal of the Union into the Agreement.

ISSUE THIRTY-FIVE, NOTIFICATION OF CRIMINAL BEHAVIOR

POSITION OF THE UNION: The Union seeks inclusion of contract language calling for notice to be given to teachers if a student assigned to them has a history of violent and aggressive behavior. Once again, all area school districts have language dealing with this matter.

POSITION OF THE EMPLOYER: The School District regards the Union proposal to be ambiguous. It will be difficult to implement. Further, the language proposed by the Union comes from a nearby school district, Wooster, OH. Problems in Wooster may not be mimicked in Orrville. No reason exists for

this proposal in the Employer's opinion.

DISCUSSION: It seems logical that teachers who have in their classrooms a potentially violent student would be so notified. At the hearing problems in this area were forcefully brought home to the Factfinder by members of the Union negotiating team. Prudence would dictate adoption of the Union proposal and it is recommended to the parties.

ISSUE THIRTY-SIX, NOTIFICATION OF COMMUNICABLE DISEASE

POSITION OF THE UNION: See the discussion above. It is noted that area school districts present a mixed pattern on this matter. Half have such language, half do not. (Excluding Orrville).

POSITION OF THE EMPLOYER: See above.

DISCUSSION: For the reasons set forth above relating to notice of criminal behavior, the proposal of the Union must be recommended to the parties.

ISSUE THIRTY-SEVEN, CLASS SIZE

POSITION OF THE UNION: The Union has a comprehensive proposal in this area. Various numerical standards are included in its proposal. Other area school districts have language on this matter. No reason exists not to include its proposal in the Agreement the Union asserts.

POSITION OF THE EMPLOYER: The Employer opposes the proposal of the Union. It views it as unduly restrictive and

unworkable.

DISCUSSION: Examination of area labor agreements shows they generally are similar to the proposal of the Union on this matter. That said, the expressed concern of the District over special education class size is well taken. Particular reference is given to the Agreement in Green Local School District. The language found in that Agreement is recommended to the parties. As it is readily available, it will not be reproduced in this report.

ISSUE THIRTY-EIGHT, GRADE REPORTING

POSITION OF THE UNION: The Union proposes a minimum of three (3) work days between the end of a grading period and the due date for grades. Notice may be required to provide supplementary information to the athletic department when relevant. Many, but not all, area schools have language similar to that proposed by the Union.

POSITION OF THE EMPLOYER: The District opposes the proposal of the Union. It asserts no problem exists with respect to reporting of grades. No contract language on this subject is justified it claims.

DISCUSSION: Why this should be a bone of contention is mysterious. Teachers need some time to submit grades. It was not shown that the proposed three day period is unreasonable. The Union proposal contemplates reports to the athletic

department if necessary. The Union proposal is recommended to the parties.

ISSUE THIRTY-NINE, TEACHER WORK DAY AND YEAR

POSITION OF THE UNION: The Union has a very, very comprehensive proposal in this area. It proposes that if a teacher accepts a seventh instructional class, pay will be 17% of the BA base salary. Further, it proposes planning time to be in 25 minute blocks and that it shall not overlap a duty-free lunch. In addition, the District is asked to facilitate common planning time for teams it approves and to commit itself to performing staff development activities only during the work day. The Union continues to propose that arrival and dismissal time be flexible and that the building Principal not unreasonably deny such flexibility. The Association wants input into the school calendar and an opportunity to vote on it. The outcome of the vote would not be binding on the Employer. Finally, the Union wants equal distribution of duties except for persons covered by supplemental contracts.

POSITION OF THE EMPLOYER: The Agreement at Article VII, Section B deals with the issues raised by the Union. The Employer asserts no change is necessary. No problems have developed in this area. No change is justified.

DISCUSSION: Why a teacher who accepts an overload should not

be paid is unfathomable. Persons work for pay in our system. The current Agreement defines a work day as six instructional classes and no more than four preparations. It is recommended that the pay aspect of the Union proposal, 17% of the BA base, be adopted together with continuation of the current definition of the normal day, six and four.

It is also recommended that the proposals of the Union with respect to planning time as reflected on page 40 of its prehearing statement, Sections 4 and 5, be adopted. No other changes are recommended.

ISSUE 40, PERSONNEL FILES

POSITION OF THE UNION: The Union proposes change in this article. It proposes addition of the word "and" in Section 1, deletion of "by the Superintendent" in Section 2 and provision of detrimental material from the personnel file and exclusion of anonymous material from the personnel file.

POSITION OF THE EMPLOYER: The District does not object to the Union proposal in its entirety. It does object to the deletion of the word "Superintendent" from Section 2. Someone must determine if the material is detrimental.

DISCUSSION: It is recommended that the "Superintendent" in Paragraph 2 remain unchanged. Inclusion of the word "and" in Section 1 is superfluous. It is not recommended. The changes in Section 3 proposed by the Union are not objectionable and

are recommended to the parties.

ISSUE FORTY-ONE, PAYROLL DEDUCTIONS

POSITION OF THE UNION: The Union seeks the ability for employees to alter their tax sheltered annuity deduction every four weeks, from twice per year as is the case presently. It also seeks the ability for employees to authorize deduction for the EPAC (political action committee) once per year. The deduction would continue until revoked.

POSITION OF THE EMPLOYER: The District asserts the increase in the number of potential changes in the TSA requested by the Union is excessive. It also views the proposed PAC deduction as being burdensome and potentially illegal. For these reasons it rejects the entire proposal of the Union.

DISCUSSION: The Employer is correct with respect to the number of changes being proposed by the Union to the TSA. It is excessive. No change is recommended. As is seen on Union Exhibit 40, deductions for PAC's are common. That part of the Union proposal is recommended to the parties.

ISSUE FORTY-TWO, CERTIFICATED STAFF CONDUCT REVIEW BOARD

POSITION OF THE UNION: The Union seeks deletion of this entire section. In its opinion, it may call for teachers to function as supervisors. This is inappropriate according to the Union.

POSITION OF THE EMPLOYER: The Employer is opposed to the

proposal of the Union. It asserts no change is justified.

DISCUSSION: The Employer is correct. The Review Board must be jointly established. No reason was shown by the Union to abolish it. Nor was it even shown it is functioning. No change is recommended.

ISSUE FORTY-THREE, STAFFING

POSITION OF THE UNION: The Union proposes there be a full-time technology coordinator and sufficient art and music teachers. The Union feels there must be a full-time person to repair computer equipment and that it is inappropriate for teachers to be teaching outside of their field of expertise, eg, art, music.

POSITION OF THE EMPLOYER: The Employer opposes this proposal of the Union. In its opinion, it improperly infringes upon management rights.

DISCUSSION: The Employer is correct. The proposal of the Union is not recommended.

ISSUE FORTY-FOUR, TUITION WAIVER

POSITION OF THE UNION: The Union proposes that if children of teachers who live outside of the district desire to attend Orrville schools that tuition be waived. All other school systems in the area provide this benefit.

POSITION OF THE EMPLOYER: The District is not opposed to this proposal in principle. It is concerned about the financial

impact and asserts it should be viewed in connection with the entire financial package that is ultimately arrived at.

DISCUSSION: Tuition waivers of the sort proposed by the Union are common. The problem is that the cost associated with the proposal of the Union is unknown. In order to limit the financial exposure of the District the proposal of the Union is recommended with the addition that no more than ten (10) students per year receive the waiver. Students eligible for the tuition waiver should be selected in order of their application. Applications should be received no earlier than the end of the school year preceding the year for which the tuition waiver is sought.

ISSUE FORTY-FIVE, JOB SHARING

POSITION OF THE UNION: The Union proposes a new concept for the District: job sharing. The proposal of the Union contemplates the split of one position into two. The concept has been embraced by some, but by no means all, of school districts in the area.

POSITION OF THE EMPLOYER: The District is opposed to the proposal of the Union. It asserts that students may find it difficult to deal with two teachers per year, rather than the customary one. Consequently, the proposal should be rejected the District urges.

DISCUSSION: Comparability does not furnish guidance on this

issue. The evidence is mixed. Given no evidence concerning the effect of this proposal on students, for good or ill this Factfinder is unwilling to recommend its adoption.

ISSUE FORTY-SIX, EDUCATION OF STUDENTS WITH DISABILITIES

POSITION OF THE UNION: The Union has a lengthy and detailed proposal on this issue. The language it suggests was drafted by a law firm with a major labor law practice. Among area schools only Dalton does not deal with this issue in the Agreement. Hence, the Union urges its adoption.

POSITION OF THE EMPLOYER: The District generally rejects the proposal of the Union. In its view, it is overly broad and may carry unknown cost implications. Should the proposal be embraced in concept, the Employer proffered certain suggestions to modify it. These are found at pages 390-392 of the Employer's exhibits.

DISCUSSION: Examination of various agreements found in the area shows the proposal of the Union to be widely accepted. For instance, the current Agreement at Southeast Local Schools incorporates the proposal of the Union verbatim. There is, however, a significant omission in Southeast. Item 11 in the proposal of the Union is not incorporated into the Southeast Agreement. It is recommended that the proposal of the Union be adopted, less item 11, "Release time for IEP Preparation."

ISSUE FORTY-SEVEN, LOCAL PROFESSIONAL DEVELOPMENT COMMITTEE

POSITION OF THE UNION: The Union proposes creation of a joint committee to deal with continuing staff development issues. Teacher members would be paid \$16.00 per hour for meetings. Support services would be provided by the District. The Union points out that all other nearby school districts have such an organization.

POSITION OF THE EMPLOYER: The District has no strong objections to the proposal of the Union. It urges that the Committee be restricted to five people, a majority of whom would be teachers. Concerned about cost, the District proposes a maximum expenditure per year of \$500.00.

DISCUSSION: The proposal of the District is well-taken. It is recommended that the proposal of the Union, as modified by the District, 5 members and a budget of \$500.00 per year, be adopted.

ISSUE FORTY-EIGHT: BLOOD BORN PATHOGENS

POSITION OF THE UNION: The Union urges that bargaining unit members be considered as "at risk" for blood born pathogens. Training would be provided.

POSITION OF THE EMPLOYER: The District has no particular opposition to this proposal.

DISCUSSION: No discussion is required. The proposal of the Union is recommended.

ISSUE FORTY-NINE: NEW PROGRAM TRAINING

POSITION OF THE UNION: The Union proposes that teachers not be required to participate in any pilot program without first being given an opportunity for input and training.

POSITION OF THE EMPLOYER: The District opposes this proposal. In its opinion, the proposal is vague and impossible to implement.

DISCUSSION: The position of the Employer is recommended. No contract language on this issue should be in the Agreement.

ISSUE FIFTY, YEAR-ROUND SCHOOL

POSITION OF THE UNION: The Union proposes that if the District determines to operate schools on a year-round basis, that it first negotiate with the Union.

POSITION OF THE EMPLOYER: The Employer is opposed to this proposal of the Union.

DISCUSSION: Certainly were the District to go to a year-round school calendar the effects upon the staff would be profound. It is not too much to expect that the parties bargain the "effects" of such a change. It is recommended that the contract express the commitment of the parties to "effects bargaining" if the District determines on year-round school operation.

ISSUE FIFTY-ONE, CRIMINAL BACKGROUND CHECK

POSITION OF THE UNION: The Union opposes the proposal of the

District on this issue.

POSITION OF THE EMPLOYER: The District has a two-pronged proposal on this issue. It proposes that new applicants for employment be subject to a criminal background check at their own expense. It further proposes that incumbent employees be subject to a criminal background check at the expense of the District.

DISCUSSION: If the District wants to make a condition of employment for new employees passing of a criminal background check paid for by the applicant it may do so. No contract language on this matter is necessary. The authority sought by the Employer to conduct criminal background checks on current employees is not properly within the scope of the Agreement and is not recommended.

ISSUE FIFTY-TWO, DURATION AND INTENT

POSITION OF THE UNION: The Union proposes a one-year agreement.

POSITION OF THE EMPLOYER: The Employer proposes a three-year agreement. Such duration has been the norm in the District.

DISCUSSION: To commit the parties to renegotiate their agreement soon after completion of the 1999-2000 agreement is foolhardy. It is recommended that the forthcoming Agreement be for a term of three years with negotiation to take place solely on salaries for the second and third years of the

Agreement.

ISSUE FIFTY-THREE, FORMS

POSITION OF THE UNION: The Union proposes that various forms, eg grievance, salary notice form, be included in the Agreement.

POSITION OF THE EMPLOYER: No position is on record.

DISCUSSION: The proposal of the Union is recommended.

ISSUE FIFTY-FOUR: SUPPLEMENTAL SALARIES

POSITION OF THE UNION: The Union has compiled data (behind tab 5 in its notebook) representing area-wide averages for various supplemental positions. It proposes that "prior" to execution of the Agreement that a joint study committee examine salaries for supplemental positions. Presumably agreement upon the proper compensation levels could be reached.

POSITION OF THE EMPLOYER: The District opposes creation of a study committee to deal with the issue of supplemental salaries. In its opinion, such a body will delay implementation of the Agreement. The District also asserts that as supplemental salaries are linked to the salary schedule and increase along with it, no changes are necessary.

DISCUSSION: The position of the Employer on this issue is unquestionably correct. Obviously this Agreement is late in

coming. Further delay is unacceptable. No change is recommended in supplemental salaries. Nor is it recommended that additional compensation be made to persons involved in post-season play as contemplated by Union proposal "d" on this issue. It is recommended that coaches "at risk" for blood born pathogens receive training as recommended in Issue 48.

ISSUE FIFTY-FIVE, STRS PICK-UP

POSITION OF THE UNION: The Union proposes that the Employer pay the employee's share of payments into the State Teachers Retirement System.

POSITION OF THE EMPLOYER: The District points out that it presently engages in what might be termed the conventional form of pension pick-up. This provides a tax saving to the employee at no cost to the District. The proposal of the Union, for payment of the teacher's portion of funds due STRS is not seen anywhere. It is so novel as to mandate its rejection according to the District.

DISCUSSION: The District is correct. The proposed form of pension pick-up advanced by the Union is not found anywhere. No change is recommended.

ISSUE FIFTY-SIX, TUTOR PAY

POSITION OF THE UNION: The Union proposes there be a \$1.00 per hour increase for each classification of tutor by years

of experience. In its opinion, the Superintendents of the Orrville and Wooster School Districts receive similar pay, so too should tutors in the respective districts.

POSITION OF THE EMPLOYER: The District regards the increase proposed by the Union to be excessive. It proposes a three percent (3.0%) increase be made to tutors. This is more in line with what is occurring in the region.

DISCUSSION: The argument of the Union, seeking to tie tutor salaries in Orrville to those in Wooster is unpersuasive. The similarity of Superintendent pay does not carry the weight asserted by the Union. On the other hand, the proposal of the Employer is on the low side. A four percent (4.0%) increase is recommended in tutor pay.

ISSUE FIFTY-SEVEN, SALARY INDEX and INCREASE

POSITION OF THE UNION: The Union has a two-fold proposal concerning salary increases. Initially, it seeks revision of the salary index. Pointing to its Exhibit 52, it notes that the Index in Orrville is below the State mandated minimum. Further, it is below the pattern of indexes found in the region. The proposal of the Union contemplates an increase in the amount between each step at each of the various columns on the index. In the opinion of the Union, such a revision would bring the index in line with indexes in the area as well as move towards compliance with the requirements of the

State. The cost of improving the index is small in the Union's opinion. Were its proposal to be adopted, the cost of a one percent (1.0%) wage increase would increase by \$830.00 per year in the first year of the Agreement.

The second element of the Union proposal is an eight percent (8.0%) increase in the present BA base salary. Without reiterating the details of the Union presentation it asserts that the District is well able to pay not only this proposal, but other elements of the Union's proposal as well. The Employer has a healthy cash balance, and a trend of rising revenues. No question of inability to pay can be raised. As that is the case, the Union urges an award in its favor on this issue.

The Union also proposes additional steps be added to the salary schedule at 21 and 23 years of service. Other school systems in the County with the exception of Triway provide for steps beyond 20. Orrville should as well the Union asserts.

POSITION OF THE EMPLOYER: The District proposes there be a three percent increase on the BA base. This would translate into a three percent increase in the schedule. Teachers who move a step due to an additional year of service would get the step increment in addition to the upward revision of the schedule.

Its position on the salary issue is supported by the evidence according to the District. Public employee salaries in Ohio have been increasing at 3.1% on average in 1999. Further, the District is the second best paying in the County, behind only Wooster. No reason exists to pay more than this proposal in the opinion of the Employer.

The District points out that it has been having difficulty attracting new teachers at the entry point of the salary schedule. Under those circumstances, to add steps at the top of schedule is unjustified.

DISCUSSION: Examination of the voluminous amount of financial data introduced by the parties can lead to but one conclusion: the District is in very sound financial condition. It can meet any reasonable financial settlement. That does not prompt the conclusion that the proposal of the Union should be adopted. As pointed out by the Employer, no increases of the magnitude sought by the Union are being seen in the State. Further it has not been shown to the satisfaction of the neutral that salaries in Orrville are markedly substandard.

Examination of Union Exhibit 57 shows that among settlements in the region there is a commonality at about 3.5%. Some are more, others are less. But, for the 1999-2000 school year 3.5% is a frequently seen settlement. Such a

settlement will not adversely affect the School District. It is in the mainstream of area-wide settlements and is recommended to the parties.

The salary schedule in Orrville is unusual in not having steps beyond 20. All other area schools have such steps with the exception of Southeast. It is recommended there be one additional step added to the schedule, at 23 years of service.

No doubt exists that the current Orrville salary schedule is substandard. Examination of Union Exhibit 52 shows that it is well below other school districts in the region. It is under the State prescribed minimum. It is recommended that the State minimum salary schedule as shown on Union Exhibit 52 be adopted.

ISSUE FIFTY-EIGHT: SUPPLEMENTAL SALARIES

POSITION OF THE UNION: The Union is proposing increases in supplemental salaries when expressed as a percentage of the BA base salary. Its proposals represent the average of other schools in the area.

POSITION OF THE EMPLOYER: The District proposes no changes in the existing salary schedule. It views it as adequate and points out that supplemental payments will rise in line with the increase in the BA base salary.

DISCUSSION: No change is recommended. It was not shown that

the supplemental payments made in Orrville are substandard.

Signed and dated this 18th day of January, 2000 at
Solon, OH.



Harry Graham
Factfinder