

PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF DELAWARE

APPOQUINIMINK EDUCATION ASSOCIATION :
Silver Lake Elementary School :
S. Catherine Street :
Middletown, DE. 19709 :
Charging Party, : U.L.P. No. 1-3-84-3-2A
BOARD OF EDUCATION OF APPOQUINIMINK :
SCHOOL DISTRICT :
4th and Main Streets :
Odessa, DE. 19733 :
Respondent. :

The dispute presented for adjudication results from an alleged unfair labor practice in violation of §4007(a)(1) and §4007(a)(5) of the Public School Employment Relations Act, 14 Del.C. §§4001-4018 (Supp.1982), hereinafter referred to as the Act. The charge was filed on March 7, 1984 by the Appoquinimink Education Association, hereinafter charging party or Association, against the Board of Education of the Appoquinimink School District, hereinafter the District.

The dispute concerns the scope of mandatory bargaining required by §4002(p) of the Act versus subjects which the legislature has permitted the school districts to reserve unto themselves under the "inherent managerial policy" exception of §4005 of the Act.

The current law is the Public School Employment Relations Act, which was passed by the legislature and subsequently signed by the Governor on July 2, 1982. This Act replaces the predecessor statute entitled the Professional Negotiations and Relations Act, 14 Del.C. Chapter 40. All

" " ' ' " public employees other than those certificated teachers in the various public school districts are covered under a separate act, the Right of Public Employees to Organize Act, 19 Del.C. Chapter 13.

FACTS

The Association and District were parties to a collective bargaining agreement effective July 1, 1980 through June 30, 1983. Pursuant to this Agreement, the charging party and public school employer entered into negotiations over a successive agreement. In the course of these negotiations, the charging party submitted a comprehensive proposal, including, among other things, proposed contract articles entitled "Employee Rights", "Association Rights and Privileges", "Employee Hours and Employee Load", "Teacher Employment", "Class Size", "Employee Assignment", "Employee Transfers and Reassignments", "Promotion and Vacancies", "Special Teaching Assignments", "Administrator Teacher Evaluation", "Fair Dismissal Procedure", "Teacher Administration Liason", "Academic Freedom", "Professional Development", "Protection of Teachers, Students, and Property", "Books and Other Instructional Materials and Supplies", "Employee Facilities" and several provisions designated as "Miscellaneous".

The District is unwilling to negotiate these matters, at least to the extent of entering into a collective bargaining process resulting in a written and binding contract between the parties; however, discussions did take place between the parties resulting in agreement as to the content and wording of seventeen (17) items. The District is only willing to incorporate these agreements into a Board Policy Manual which is non-binding

and subject to unilateral change, at the option of the District. The Association maintains the agreements relate to mandatory subjects of bargaining and properly belong in the mutually binding collective bargaining agreement.

As a result of the above positions, an unfair labor practice charge was filed with the Public Employment Relations Board by the Association on March 7, 1984. The District's response was filed on March 22, 1984. On March 30, 1984 and April 20, 1984, two informal conferences were held involving representatives of both parties and the Executive Director of the Public Employment Relations Board. As a result of those conferences an agreed upon Stipulation of Facts (attachment #1) was filed by the parties on May 1, 1984, along with a mutually acceptable briefing schedule. The final brief was filed by the Association on June 26, 1984.

At the time of this decision, no successive agreement between the parties has been reached.

POSITIONS OF THE PARTIES

The charging party contends that each of its proposals, falls within the §4002(p) statutory definition of "terms and conditions of employment" and is therefore a mandatory subject of collective bargaining.

The Public School Employer takes the opposing position that these same proposals are not "terms and conditions of employment" as defined by the Act; rather, the school district contends, they are "within the exclusive prerogative" of the district and are matters of "inherent managerial policy" reserved to the district pursuant to 14 Del.C §4005. The District maintains they are therefore permissive subjects of bargaining, i.e., subjects

" upon which the district may negotiate if it so chooses, but about which it is not compelled to bargain.

ISSUE

The primary issue presented is whether the proposals referenced in paragraph 4 of the Stipulation of Facts (attachment #1) constitute "terms and conditions of employment" as defined in §4002(p); or, are otherwise excluded from the scope mandatory bargaining as constituting "inherent managerial policy" under §4005. of the Act?

Secondly, if the proposals fall under either the exclusionary language of §4002(0) or §4005, what then is their status as it relates to the duty of the parties to bargain?

OPINION

Unfair labor practices are exclusively statutory in origin and violate specific statutory prohibitions. 14 Del.C. §4007. The complaint filed by the Association in this matter alleges a violation of §4007(a) (1) and (5) of the Act, specifically:

a) It is an unfair labor practice for a public school employer or its designated representative to do any of the following:

(1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter;

(5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in the appropriate unit.

At common law public employees had no right to collectively bargain. State v. Delaware State Education Association, Del.Ch., 326 A.2d 868 (1974). It is axiomatic that statutes in derogation of the common law are to be strictly construed [Colonial School Bd v. Colonial Affiliate, Del.Supr., 449 A.2d 243 (1982)], and that a statute is never presumed to deprive the State of any prerogative or right unless the intention to do so is clearly manifest. Hoffman v. Pittsburgh, 75 A.2d 649 (1950).

In order to determine whether or not the District has committed the unfair labor practices charged, it is necessary to first determine which subjects the parties are obligated to bargain and the status of those subjects concerning which the duty to bargain is absent. In making these determinations the purpose and objectives of the Act itself are important considerations. §4001 of the Act sets forth the Statement of Policy upon which the Delaware law is based:

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between reorganized public school districts and their employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public school system.

It is apparent that harmonious and co-operative relationships and the public interest in the orderly and uninterrupted operations and functions of the public school system represent both a primary concern of the legislature and the overriding purpose of the Act. The structure of the Act itself provides a framework to assist the parties in mutually and agreeably resolving their differences and where such resolution is not accomplished, for requesting assistance from the Public Employment Relations Board. In reading §4013(e)

of the Act, it is manifestly clear that the legislature intended to create a piece of legislation establishing collective bargaining rights for both teachers and school districts capable of supporting the Statement of Policy as set forth in §4001.

The school district argues that the controlling provisions of the Act are "unique" and therefore render the case law in other jurisdictions inapposite, as they relate to the scope of mandatory bargaining. The District, however, then proceeds to buttress, in part, its position favoring a narrow interpretation of §4002(p), by analogizing the Delaware statute to what it considers similar state laws as interpreted by both board and court decisions in other jurisdictions. The Association, on the other hand, argues that the Delaware statute is similar in wording and structure to other state laws and was designed to take advantage of established precedent in other jurisdictions. It also supports its position favoring a broad and expansive interpretation of §4004(p) with comparisons to other state's statutes and interpretive decisions.

In the absence of precedent interpreting the provisions of the Act, there is a natural and logical tendency to look to both the established federal law in the private sector and to the developing public sector law in other state jurisdictions as guidelines. As for private sector precedent, the Delaware Public Employment Relations Board stated in Seaford Education Association v. Board of Education of Seaford School District, "Case No.

2-2-84:

While such decisions may provide such guidance, there are distinctions that exist between the public and private sector.

Experience gained in the private sector, while valuable, will

not however, necessarily provide an infallible basis for decisions in the public sector.

This is a sound principle and applies equally to public sector statutes and precedents in other state jurisdictions.

In discussing the issue of scope of bargaining under the predecessor statute, The Professional Negotiations and Relations Act of 1969, the Delaware Supreme Court concluded:

In the ascertainment of legislative intent and the construction of 14 Del.C. Chapter 40, it is quite significant that in the 1969 Act covering teachers and school administrators the General Assembly deliberately deprived them of the broad enumeration of subjects authorized in 1965 for collective bargaining by other public employees. [Delaware Right of Employees to Organize Act, 19 Del.C. Chapter 13] ... If the General Assembly had intended to authorize the Board to include any relevant matter in a collective bargaining negotiation and contract with teachers and school administrators, it would have known how to define more broadly the subjects authorized for collective bargaining negotiations and contracts. [Colonial School Bd. v. Colonial Affiliates, (Supra.)].

It is immediately obvious that in the current Act covering teachers, the General Assembly deliberately returned to a broad enumeration of subjects similar to that authorized in 1965 for collective bargaining for other public employees.

Under the current Act, the statutory duty to bargain pertains exclusively to "terms and conditions of employment" as defined at §4002(p) as "...matters concerning or related to wages, salaries, hours, grievance procedures and working conditions...". This duty to bargain over terms and conditions of employment is not however, without limitation.

\$4002(p) also contains words of limitation excluding from the duty to bargain "...those matters determined by this chapter or any other law of the State to be within the exclusive prerogative of the public school employer."

Considering \$4002(p), in its entirety, the phrase "matters concerning or related to..." constitutes a broad and encompassing scope of negotiability. It is clear that the legislature intended all matters concerning or related to the specified terms and conditions of employment to be mandatorily bargainable unless statutorily reserved to the exclusive prerogative of the public school employer. What then, is the status of those issues which have been reserved to the "exclusive prerogative of the public school employer"?

The Act itself, provides guidance in answering this question. \$4013(e) addresses the question of legality and enforceability, and is supportive and consistent with the language of \$4002(p). \$4013(e) states:

No collective bargaining agreement shall be valid or enforceable if its implementation would be inconsistent with any statutory limitation on the public school employer's funds, spending or budget, or would otherwise be contrary to law.

In 1974, the Pennsylvania legislature passed Act 195, its counterpart to the Delaware Public School Employment Relations Act. There exists a striking similarity between \$4013(e) of the Delaware statute and \$703 of Pennsylvania's Act 195, which provides:

The parties to the collective bargaining agreement shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be inviolation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

Pennsylvania's Act 195 also contains provisions similar to §4002(p) and §4005 of the Delaware Act, namely §701 and §702 respectively. In relevant part they state:

701: Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to proposal or require the making of a concession.

702: Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilizations of technology, the organizational structure and selection and direction of personnel...

In discussing the impact of §703 of Act 195 on scope of bargaining issues, the Pennsylvania Supreme Court held", 703 merely prevents a term of a collective bargaining agreement from being in violation of existing law...Pa.L.R.B. v. State College Area S. D., Pa.Supr., 337 A.2d 262

(1975). The Court proceeds to state:

If, however, the General Assembly mandates a particular responsibility to be discharged by the board and the board alone, then the matter is removed from bargaining under §701 even if it has a direct impact on 'wages, hours, and other terms and conditions of employment'.

The removal from collective bargaining results not because it necessarily falls within the purview of §702 (in fact it may clearly be within the scope of §701 but rather because to do otherwise would be in direct violation of a statutory mandate and thus excluded under §703...We therefore conclude that items bargainable under §701 are only excluded under §703 where other applicable statutory provisions explicitly and definitively prohibit the public employer from making an agreement as to that specific term or condition of employment.

The basic rationale of the Pennsylvania Supreme Court in the matter of Pa.L.R.B. v. State College, (Supra.) is consistent with our interpretation of §4002(p) and §4013(e) of the Delaware Act. §4013(e) of the Delaware statute precludes the validity and enforceability of contractual provisions which are inconsistent with the designated statutory limitations on, or which would otherwise be contrary to law, and therefore establishes illegal subjects of bargaining. If such subjects are, in fact, bargained they are invalid and unenforceable. For example, 14 Del.C §1023 mandates the number of days required in the school year to be not less than 180. The parties are not free to alter this statutory mandate through the collective bargaining process because they have not authority to do so, nor are they free to bargain over matters determined to be statutorily reserved to the "exclusive prerogative of the public school employer". In either case to do so would be a clear violation of §4013(e). Statutory prohibitions to be effective must be "explicit and definitive". Pa.L.R.B. v. State College Area School District, (Supra.); Huntington Board of Education of Union Free School District v. Huntington Association of Teachers, 282 N.E. 2d 109, 112, (1972); Danville Board of School Directors v. Fairfield,

Vt. Supr., 35 A.2d 473 (1974).

Subjects which are otherwise excluded from the duty to bargain are determined by §4005, School Employer Rights, which places a second limitation on mandatory subjects of bargaining. §4005 states:

A public school employer is not required to engage in collective bargaining on matters of inherent managerial policy which include but are not limited to such areas of discretion or policy as the programs or functions of the public school employer, its standards of services, overall budget, utilization of technology, the organizational structure, curriculum, discipline and the selection and direction of personnel.

§4005 does not constitute an express prohibition on matters of inherent managerial policy but rather allows the districts the license to choose those inherent policy matters it may wish to negotiate while legally refusing to negotiate the remainder.

Our dilemma would be greatly simplified if the phrase "terms and conditions of employment", as defined at §4002(p), and the phrase inherent managerial policy" were easily distinguishable. Many educational policy decisions also impact on a teacher's terms and conditions of employment and vice versa. There is no unwavering line separating the two. West Hartford Education Association v. DeCourcy, 295 A.2d 526, 534 (1972).

Where definitive and explicit statutory prohibitions on bargaining are not present so as to exclude the subject matter under the exclusionary language of §4002(p), the next step is to determine whether or not the subject in question constitutes "inherent managerial policy", of the nature specified in §4005. According to §4005, certain matters of "inherent

managerial policy" are not required subjects of bargaining, even though they may otherwise qualify as "terms and conditions of employment". In determining which subjects are thus excluded from the duty to bargain, a balancing must occur between "matters concerning or related wages, salaries, hours, grievance procedures and working conditions" and those matters which must remain with the public school employer as "inherent managerial policy", necessary for providing the effective, efficient, orderly and uninterrupted functioning of the public school system. In the absence of express and specific statutory exclusions, there must be a rational method for evaluating the impact of a given subject on the apparently divergent interests of §4002(p) and §4005.

As with the §4002(p) exclusion, it is necessary to reconcile other state laws with the limitations set forth in §4005 of the Act. Specifically, the school district relies on the following Delaware laws, in addition to the Act itself:

Sub-Chapter III. School Boards of Reorganized School Districts

1. 14 Del.C. s1043: Authority
2. 14 Del.C. s1049: Policy Making
3. 14 Del.C. s1055: Maintenance of School Property
4. 14 Del.C. s1056: School Property; use, control and management

Both the District and the Association recognize the need to reconcile these statutory provisions with §4002(p) and §4005 of the Act. The District claims that the Board's exclusive policy-making authority is set forth in §1043 and §1049 while §1055 and §1056 vest in the public school employer the control, management, and custody of all school

property. The Association argues that neither §1043 nor §1049 conflict with §4002(p) or §4005 of the Act, and to conclude, as does the District, that a general grant of authority evinces a legislative intent to greatly narrow the scope of bargaining is contrary to the specific language of the collective bargaining statute. The Association contends that the state laws relied upon by the District simply establish the areas in which the school boards may operate and are non limiting in nature.

Under §4005, as with the §4002(p), the fact that State statutes encompass subjects which also fall within the §4002(p) statutory definition of "terms and conditions of employment" does not require that the particular subject involved automatically constitutes "inherent managerial policy" so as to be removed from the "duty to bargain".

The parties debate at length over the limitations placed on mandatory subjects by statutory grants of general authority. Basing its decision on other grounds, the Delaware Supreme Court in Colonial (supra.), did not reach this general authority issue. Where either a statute is not expressly prohibitive or where the subject involved is simply not dealt with by statute, the crux of the problem becomes the determination of the rationale upon which the subject in question is determined to be either included or excluded from the mandatory bargaining requirement.

In attempting to strike the proper balance various tests have been adopted. The Pennsylvania test, as established by the State's Supreme Court is whether the impact of the issue on the interests of the employee in wages, hours, and terms and conditions of employment outweighs its

probable effect on the basic policy of the system as a whole. Kansas has determined that under its statutory language the proper test is how direct the impact of an issue is on the well being of the individual teacher, as opposed to its effect on the operations of the school system as a whole. National Education Assn. of Shawnee Mission, Inc. v. Bd of Education of Shawnee Mission Unified School District, Kan.Supr., 512 P.2d 426 (1973). Wisconsin makes its determination based on those items which relate primarily to wages, hours, and conditions of employment. City of Beloit v. Wisconsin E.R., Wisc. Supr., 242 N.W. 2d 231 (1976).

It is interesting to note that subtle differences exist in the approach of other jurisdictions resolving similar situations. For example, while Kansas considers the "directness of impact", Pennsylvania speaks only of the "impact". In this regard the Pennsylvania test is somewhat more liberal in favoring mandatory subjects of bargaining. While Kansas speaks of the "well being" of the individual teacher, Pennsylvania considers the "impact on the interest of the employee". This nuance again indicates a more liberal inclination on the part of Pennsylvania toward mandatory subjects of bargaining. Thirdly, Kansas balances the "direct impact" on the "well being" of the individual teacher against the "effect on the operation of the school system as a whole". Pennsylvania, however, "weighs" the "impact" on the "interest" of the employee versus the "probable effect on the basic policy of the system as a whole".

In dealing with this "balancing test" concept the defendant school district argues that the Delaware legislature has expressly provided that where a subject which would otherwise be treated as a term or condition of employment also "falls within the context of matters treated as being

within the exclusive prerogative of the employer", that subject shall not be treated as a term and condition of employment which the employer is obligated to negotiate; therefore, the district argues, no balancing effort need be undertaken as the exclusive prerogative of the employer controls. However, the district's use of the phrase "falls within the context of matters treated as within the exclusive prerogative of the employer" is, both more expansive than the actual wording of the statute and an oversimplification of the issue.

First, the Act reads, at §4002(p)

such term shall not include those matters determined by this chapter or any other law of the state to be within the exclusive prerogative of the public school employer. (emphasis added).

It is statutorily required that a subject be within the exclusive prerogative of the employer, not merely that it fall within the context of matters treated as within the exclusive prerogative of the employer.

Secondly, the District's interpretation fails to establish the determinative factors considered in excluding otherwise mandatory subjects as constituting "inherent managerial policy" within the meaning of §4005. In reconciling the provisions of §4002(p) and §4005, it is fundamental that there be a method for determining which issues are within the penumbrae of inherent managerial policy and which are within the radius of terms and conditions of employment.

After detailed analysis and careful consideration, it is concluded that the proper test necessary to support the provisions of the Delaware

statute is as follows:

Where a subject in dispute concerns or is related to wages, salaries, hours, grievance procedures and working conditions, and also involved areas of inherent managerial policy, it is necessary to compare the direct impact on the individual teacher in wages, salaries, hours, grievance procedures and working conditions as opposed to its probable effect on the operation of the school system as a whole. If its probable effect on the school system as a whole clearly outweighs the direct impact on the interest of the teachers, it is to be excluded as a mandatory subject of bargaining; otherwise, it shall be included within the statutory definition of terms and conditions of employment and mandatorily bargainable.

It is recognized that the line will often be difficult to draw and while the above may, at first blush, appear to raise more questions than it answers, if we remain constantly aware that the paramount concern is the public interest, as previously defined, no situation is impossible. State College, (Supra.). Over a period of time, on a case by case basis, questions will be answered and guidelines established.

In reaching the foregoing conclusions, due consideration was given to the arguments and the authorities cited by the parties in support of their respective positions. In this regard, I make these brief comments concerning the following points:

First, I agree with the position of the District that if an "item which would otherwise be treated as a term and condition of employment also falls ... within the exclusive prerogative of the public 'school employer", no balancing of interests need be undertaken. A subject determined by

this Chapter or any other law of the State to be within the exclusive prerogative of the public school employer is outside the scope of bargaining as it is an item which the employer is expressly prohibited from negotiating. The argument of the District goes astray where the District appears to use the terms "exclusive prerogative" and "inherent managerial policy" interchangeably. The legislature did not equate these terms and expressly dealt with them under separate and distinct provisions of the Act. One is legally entitled to presume a legislative purpose for this distinction (Colonial, Supra.) and the distinction is clear from the plain meaning of the statutory language.

By equating exclusive prerogatives and inherent managerial policy the District, through a comparison of the Delaware Act with the New Hampshire statute covering public sector collective bargaining, erroneously concluded that our Act is clear and does not require a balancing of interests. However, the New Hampshire law provides, in relevant part:

'Terms and conditions of employment' means wages, hours and other conditions of employment other than managerial policy within the exclusive prerogative of the public employer, or confided exclusively to the public employer by statute or regulations adopted pursuant to statute. The phrase 'managerial policy within the exclusive prerogative of the public employer' shall be construed to include but shall not be limited to the functions, programs and methods of the public employer, including the use of technology, the public employer's organizational structure, and the selection, direction, and number of its personnel, so as to continue public control of governmental functions. R.S.A. Ch.273-A:1 (XI).

This language most notably differs from that of the Delaware Act in that it combines managerial policy and the employer's exclusive prerogatives, as determined by law, in the exception to terms and conditions of employment. The language includes an express prohibition of policy matters. 14 Del.C. §4005 provides only that an employer shall not be required to bargain policy matters, thereby allowing the districts the freedom to choose those policy items which it may choose to negotiate and legally refusing to negotiate others. Only by assuming that "inherent managerial policy" and "exclusive prerogatives" of the employer are synonymous could the New Hampshire precedent be logically invoked.

Secondly, with regard to the Association's argument concerning the appealability to the State Board of Education of local school board rules and regulations as opposed to issues arising from grievance procedures contained in collective bargaining agreements, while this situation may affect control of the local boards, it is irrelevant to the interpretation of the statute in question.

Finally, the issue in this matter was presented and decided within the mandatory-permissive context and the balancing test applied to each proposal in order to determine its negotiability status. The following comments are provided as guidelines in applying the balancing test. Once established that a given proposal touches a term and condition of employment, it must also be determined whether or not the proposal also touches upon inherent managerial policy. If so, in order to reduce the level of negotiability from mandatory to permissive, the impact on the school system as a whole must clearly outweigh its direct impact on the individual teacher. Generally, where the subject matter of a given proposal relates to substance or the establishment of criteria for the ultimate decision, it tends toward permissive, as infringing upon the decision-making authority of the employer. Where

the subject matter of a proposal relates primarily to matters of procedure or communication, it tends toward being mandatory. However, in determining what constitutes inherent managerial policy, impact is an equally important factor.

The decision reached today does not require either party to agree with proposals submitted by the other. What it does require is a sincere and good-faith interchange of ideas. Nor does this decision represent a judgment as to the rightness or wrongness of the individual proposals; merely, that the subject matter of each is either mandatorily or permissively negotiable.

CONCLUSIONS OF LAW

Based on the foregoing, I make the following conclusions of law:

1. The Appoquinimink School Board is a Public School Employer within the meaning of /Section 4002(m) of the Delaware Public School Employment Relations Act, 14 Del.C. sec.4001-4018 (Supp.1982).
2. The Appoquinimink Education Association (DSEA, NEA) is an Employee Organization within the meaning of section 4002(g) of the Delaware Public School Employment Relations Act.
3. The Appoquinimink Education Association is the exclusive bargaining representative of the School District's certificated professional employees within the meaning of section 4002(j) of the Delaware Public School Employment Relations Act.
4. In applying the balancing test, as established in the foregoing opinion, to the proposals submitted by the Association and here in question (attachment #2), the following determinations are made:
 - I. Employee Rights
 - A. Mandatory
 - B. Mandatory
 - C. Mandatory as to tenured teachers; Permissive as to non-tenured teachers
 - D. Mandatory
 - II. Association Rights and Privileges
 - A. Permissive
 - B. Permissive
 - C. Permissive

- D. Permissive .
- E. Permissive .
- F. Permissive .
- G. Permissive .
- H. Permissive .
- I. Permissive .
- J. Permissive .
- K. Permissive .
- L. Permissive .
- M. Permissive .

III. Employee Hours and Employee Load

- . A. Mandatory
- . B. Mandatory
- . C. Mandatory
- . D. Mandatory
- . E. Mandatory
- . F. Mandatory
- . G. Mandatory
- . H. Mandatory
- . I. Mandatory
- . J. Mandatory
- . K. Mandatory
- L. Permissive .
- M. Permissive .
- . N. Mandatory
- Addition: Mandatory

IV. Teacher Employment

- A. Permissive .
- . B. Mandatory .
- . C. Mandatory
- . D. Mandatory

V. Class Size

- A. Permissive .
- B. Permissive .
- C. Permissive .
- D. Permissive .

VI. Employee Assignment

- A. . paragraph 1 - Mandatory .
 paragraph 2 - Permissive as to assignment .
 Mandatory as to notification
 . paragraph 3 - Mandatory
- B. . Mandatory

VII. Employee Transfers and Reassignments

- A. Transfers - Permissive except as to provisions regarding requests for transfers, which are deemed to be mandatory
- B. Voluntary Transfers and Reassignments
 - . 1. Mandatory
 - . 2. Mandatory
- C. Involuntary Transfer and Reassignment
 - . 1. Mandatory
 - . 2. Mandatory
 - 3. Permissive .
 - . 4. Mandatory
 - . 5. Mandatory
 - . 6. Mandatory

VIII. Promotions

- A. Permissive • (note: involves vacancies outside of bargaining unit)
- B. Permissive •
- C. Permissive •
- D. Vacancies
 - 1. Mandatory
 - 2. Mandatory
 - 3. Mandatory

IX. Special Teaching Assignments

- A. Mandatory
- B. Permissive •
- C. Permissive •

X. Administrator Teacher Evaluation

- A. Permissive, except as to classroom visits and conferences which are mandatory
- B. Mandatory
- C. Mandatory
- D. Permissive •
- E. Permissive •
- F. Mandatory
- G. Permissive •
- H. Mandatory
- I. Permissive •
- J. Permissive •

XI. Fair Dismissal Procedures

- A. Notice of Termination - Mandatory
- B. Non-Tenured Teachers - Permissive •
- C. Reduction in Force

- 1. Mandatory
 - a. Mandatory
 - b. Mandatory
 - c. Mandatory
- 2. Mandatory
- 3. Mandatory
- 4. Mandatory
- 5. Mandatory

XII. Teacher Administration Liason

- A. Permissive
- B. Permissive -

XIII. Academic Freedom

- A. Permissive
- B. Permissive
- C. Permissive -

XIV. Recognition

- A. Mandatory
- B. Mandatory

XV. Professional Development

- A. Mandatory
- B. Mandatory
- C. Mandatory
- D. Mandatory

XVI. Protection of Teachers, Students, & Property

- A. Protection of Teachers
 - 1. Permissive
 - 2. Permissive
- B. Mandatory

. C. Mandatory

. D. Mandatory

E. Permissive .

XVII. Books and Other Instructional Materials and Supplies

A. Permissive .

B. Permissive .

. C. Mandatory

. D. Mandatory

XVIII. Employee Facilities

A. 1. Permissive .

2. Permissive .

3. Permissive .

B. Permissive .

. C. Mandatory

XIX. Miscellaneous

. A. Mandatory

. B. Mandatory

. C. Mandatory

D. Permissive .

E. Permissive .

. F. Mandatory

. G. Mandatory

. H. Mandatory

. Addition: Mandatory

5. By refusing to engage in collective bargaining over the proposals of the Association, as set forth in attachment #1, the School District violated section 4007(a)(5) of the Act.

6. By engaging in the conduct described above in paragraph 5, the School Board did not violate section 4007(a)(5) of the Act. There is not sufficient evidence on the record to warrant a finding that the Board interfered with, restrained or coerced any employee in or because of the exercise of any right guaranteed under this Chapter.

REMEDY

Pursuant to section 4006(h)(2) of the Act, the Appoquinimink School Board is ordered to:

Cease and desist from:

1. Refusing to collective bargain over the proposals of the Association, as set forth in attachment #1;
2. The School District shall take the following affirmative action:
 - a. engage in collective bargaining on the proposals of the Association as set forth in attachment #1 and which have been determined herein to be mandatory subjects of bargaining ¹
 - b. Notify the Public Employment Relations Board in writing within fifteen (15) calendar days from the date of this Order of the steps that have been taken to comply with with the Order.

IT IS SO ORDERED.

Charles D. Long

CHARLES D. LONG, Executive Director
Delaware Public Employment Relations Bd.

D. Murray - Sheppard

DEBORAH L. MURRAY-SHEPPARD
Administrative Assistant
Delaware Public Employment Relations Bd.

(1) The agreement reached on the content and wording of seventeen (17) items is not binding on the parties as resulting from statutorily required collective bargaining because at the time of the discussions the District had made its position regarding negotiability clear to the Association. The District entered into agreement based on what it thought to be Board Policy. Had it been engaged in true collective bargaining leading to a written and mutually binding contract, its positions may have been different.

RECEIVED

MAY 2 1984

PERB

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF DELAWARE

APPOQUINIMINK EDUCATION
ASSOCIATION,

v.

BOARD OF EDUCATION OF
APPOQUINIMINK SCHOOL DISTRICT

ULP NO. 1-3-84-3-2A

STIPULATION OF FACTS

1. The Appoquinimink Education Association (Charging Party) is the exclusive bargaining representative of the Public School Employer's certificated professional employees within the meaning of §4004 of the Public School Employment Relations Act, 14 Del. C. §§4001-4018 (Supp. 1982).

2. The Charging Party and the Public School Employer were parties to a collective bargaining agreement effective July 1, 1980 and expiring June 30, 1983.

3. Pursuant to the aforementioned collective bargaining agreement, the Charging Party and the Public School Employer entered into negotiations over a successive agreement.

4. In the course of these negotiations, the Charging Party submitted a comprehensive proposal for a successive agreement between the parties. This proposal included among other things, proposed contract articles entitled "Employee Rights", "Association Rights and Privileges", "Employee Hours and Employee Load", "Teacher Employment", "Class Size", "Employee

Assignment", "Employee Transfers and Reassignments", "Promotion and Vacancies", "Special Teaching Assignments", "Administrator Teacher Evaluation", "Fair Dismissal Procedure", "Teacher Administration Liason", "Academic Freedom", "Recognition", "Professional Development", "Protection of Teachers, Students, and Property", "Books and other Instructional Materials and Supplied", "Employee Facilities", and several provisions designated as "Miscellaneous".

5. The Public School Employer takes the position that the proposals referred to in paragraph 4 (except positions of the proposals regarding "Employee Hours and Employee Load") are not "terms and conditions of employment" defined in 14 Del. C. §4002(P), since (the District contends) they are not "matters concerning or related to wages, salaries, hours, grievance procedure and working conditions". Rather, the District contends that the issues addresses in those proposals are "within the exclusive prerogative" of the District and are matters of "inherent managerial policy" reserved to the District pursuant to 14 Del. C. §4005.

6. The District has submitted to the Charging Party a contract which it is willing to sign regarding those issues which it contends are properly negotiable under 14 Del. C. Ch. 40. The District has also offered to adopt as District policy the content and language of the proposals referred to in paragraph 4 as modified during discussions between the District and the Charging Party. The Charging Party has rejected these proposals.

7. The Charging Party contends that each of the items referred to in paragraph 4 is a term and condition of employment, and therefore negotiable under the Act.

8. Agreement has been reached on the content and wording of seventeen (17) items.

YOUNG, CONAWAY, STARGATT & TAYLOR

By 

Eleventh Floor
Rodney Square North
P. O. Box 391
Wilmington, Delaware 19899

Attorneys for Appoquinimink
Education Association,
Charging Party

BAYARD, BRILL & HANDELMAN, P.A.

By 

300 Market Tower
P.O. Box 1271
Wilmington, Delaware 19899

Attorneys for Board of
Education of Appoquinimink
School District, Respondent

Article I: EMPLOYEE RIGHTS

- A. Every employee of the Board shall enjoy all the rights and privileges as set forth in the Delaware Code and established Board Policy and both documents shall be made available to teachers.
- B. The teachers shall maintain the right and the responsibility to determine grades within the grading policy of the Appoquinimink School District based upon the professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. No grade shall be changed without consultation with the teacher. The teacher shall have the right to be accompanied by an Association representative at any meeting called to discuss his/her grades. If, after such consultation the administration chooses to change a grade, it shall be indicated on the student's permanent record that the grade was altered by the administration. The teacher involved shall be notified in writing of such change.
- C. No employee shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of a professional advantage without just cause.
- D. A teacher is entitled to request association representation in a Formal disciplinary meeting with Administration or in a Formal meeting addressing violation of the labor agreement. If the Teacher requests association representation, the representative will attend. In this context, Formal disciplinary meeting shall mean that the exact purpose of the meeting is to finalize a document(s) for employee's records.

Article II: ASSOCIATION RIGHTS AND PRIVILEGES

- A. The Board agrees to furnish to the Association, in response to reasonable requests, information which is necessary for the association to service membership.
- B. The rights and privileges of the Association and its representatives as set forth in the Agreement shall be granted only to the Association as the exclusive representative of the teachers, and to no other teacher organizations during the life of the contract.
- C. The Association shall have the same right to use school buildings for Association business on the same basis as other school affiliated organizations, in accordance with District policy.
- D. The Association shall have the right to use the interschool mail facilities and school mail boxes for individually addressed material or for delivery of bulk items to the Building Representatives. The Building Principal will be provided a copy of such bulk items.
- E. The Association shall have access to a bulletin board in each faculty lounge.
- F. The Association shall have the right to use school facilities and equipment, including typewriters, mimeograph machines, other duplicating equipment, calculating machines, and all types of audio visual equipment of reasonable times, when such equipment is not otherwise in use.
- G. An Association representative may speak to the staff after the end

- of a faculty meeting.
- H. The Association may take part in the orientation of new teachers.
 - I. The Superintendent of Schools will invite Association participation in all initial interviews for administrative vacancies. This participation will include AEA member who is assigned to the particular school where the vacancy occurs. The Association may submit its recommendation to the Superintendent for presentation to the Board of Education.
 - J. If fair-share agreements are deemed legal under the laws of the State of Delaware, the parties agree to reconvene to amend this article with respect to collection of fees from non-members of the Association.
 - K. The Association shall have representation on all committees of direct concern to teachers.
 - L. The School District will provide to the Association, upon request, Public Record personnel information generated and maintained by the District, for effective representation of the members.
 - M. The president of the Association or designee shall receive 2 days separate from sick leave or personnel days, substitute paid by Association for Association business use.

Article III: EMPLOYEE HOURS AND EMPLOYEE LOAD

The Charging Party's proposal on this subject consists of the provisions of Article VI of the expired collective bargaining agreement with the following addition:

Employees required to work beyond the regular work day shall be paid at a rate based upon the teacher's salary or compensated with equal relief time except where specified in this Article.

Provisions of the expired agreement:

ARTICLE VI: Employee Hours and Employee Load

- A. Teachers are expected to devote to their assignments the time necessary to meet their responsibilities, so that they will not be required to sign in or out. Teachers shall not be required to be in their buildings before 7:55 a.m. The teacher's normal workday shall not exceed seven and one-half hours (7 1/2) per day. Teachers may leave for the day as soon as their professional obligations have been met.
- B. Any teacher who desires to leave school before the end of the school day in order to keep a medical or professional appointment may apply to the building principal for permission to leave at a specified time. Such permission may be granted providing a satisfactory means of supervising any scheduled classes and/or duties of the teacher are agreed upon.
- C. Any teacher who is required to work beyond the regular teacher in-school work year as defined by the State calendar shall be paid at a rate based upon the teacher's annual salary.
- D. Teachers shall have a 30-minute duty-free lunch period each day at which time they can depart from the building. The thirty minute duty-free lunch period will be arranged during the normal building cafeteria luncheon phases of the school day. Verbal or written notification shall be provided to the principal's office (principal

- assistant principal or office secretary) that the employee is leaving the building. Form of notification, either written or verbal, is at the teacher's option.
- E. Teachers shall also be scheduled for periods (planning or preparation) when their presence in the classroom with their students is not required. During these times teachers may leave the building provided that (1) such absence does not interfere with their professional duties which have been scheduled no later than the previous school day, and (2) provided they notify the principal's office (principal, assistant principal, or office secretary) of their intentions. Some examples of professional duties are: parent teacher conference, town meeting, meeting required under PL94-192, etc. Form of notification, either written or verbal, is at the teacher's option.
 - F. The Superintendent agrees to initiate a calendar committee. Composition of the committee will be as follows: two (2) members selected by the Board, two (2) members selected by the local association with the Superintendent or his designee as chairman. Specific purpose of the calendar committee is to provide recommendations on district school calendar to the district Board and the Superintendent prior to April 1 each year.
 - G1. The Board and the Association agree that a teacher's primary responsibility is to render professional service and to the extent possible, the teacher's time should be utilized to this end.
 - G2. The Board, therefore, agrees to expend the employment of teacher aides and/or clerical assistance to minimize non-teaching or otherwise non-professional duties.
 - G3. Until such time as aides are hired in sufficient quantities to relieve the teachers of the aforementioned duties, the duties will be shared on an equal basis by all teachers.
 - H. Employees who may be required to use their automobile in the performance of their duties, and employees who are assigned to more than one school per day shall be reimbursed for all such travel at the State approved rate. Such reimbursement shall not be for the employee's travel from home to his initial place of employment nor from the last place of employment to his home.
 - I. Teachers shall not be required to be present when specific teachers of arts, physical education, music, etc., are working with their pupils. This time is considered preparation time by the so relieved.
 - J. All teachers in the District shall have five (5) planning periods per week. The length of each planning period will be at least forty (40) minutes.
 - K. In cases of extreme emergency, a teacher may be used as a substitute. However, teachers will not be used as substitutes if notice of absence has been given by 6:00-6:30 a.m. on the day of said absence or the day before. In the event the District chooses to use a teacher as a substitute, said teacher shall be given compensatory time, equal to that spent as a substitute. The utilization of this time shall be arranged with the building principal.
 - L. For purposes of this item, faculty meeting shall mean that a majority of the professional teaching staff of a building meets with an administrator or designee to discuss educational programs or policies. There shall not be more than the average of one

faculty meeting per month for the school year. The required duration shall not exceed an average of fifty (50) minutes.

- M. If a utility emergency creates hazardous conditions for continuing instruction within a building, the Superintendent will issue appropriate guidance for alternative instructional locations or building closures.
- N. When authorized federal money is available, teachers (those who have "regular classroom" duties and are certified to work with "special students") will be given release time to write Individual Educational Plans (IEP's) for PL94-192.

Article IV: TEACHER EMPLOYMENT

- A. The Board has the legal authority to employ staff members and has standards which expect excellent personal and professional qualifications, with due regard for standard certification, diversity of background, advanced training and appropriate experience.
- B. Each teacher shall be placed on the proper step of the salary according to the regulations of the Department of Public Instruction.
- C. Teachers with previous experience in the Appoquinimink School District shall, upon returning to the system, receive full credit on the district salary schedule for all outside experience as defined in the Delaware Code.
- D. Teachers shall be notified in writing of their contract and salary for the ensuing year no later than May 1.

Article V: CLASS SIZE

- A. The Board and Association recognize the need for continuing efforts in order to achieve effective class size.
- B. The Association is aware that the addition of art, music and physical education teachers in the elementary schools will require the adjustment of class size to free the necessary teacher units; however, the Board agrees that should such a person serve more than one school that the increased student load be borne equally by each participating school.
- C. The Board agrees that a program in art, music and physical education taught by specialists will be continued at the elementary level (1-5). Although a formal program (taught by specialists) in art, music and physical education shall not be mandatory at the kindergarten level, instruction in these areas shall be cooperatively developed by the building principal and the kindergarten teachers.
- D. Available substitutes will be hired when art, music and physical education teachers are absent.

Article VI: EMPLOYEE ASSIGNMENT

- A. All teachers shall be given written notice of their subject and/or grade assignments, and building assignments for the forthcoming year not later than June 30, unless an emergency precludes it. Notification of extra-duty assignments will be provided, in writing as early as practicable with respect to the assignment and its season.

The Superintendent shall assign all newly appointed personnel to their specific position within that subject area and/or grade level for which the Board has appointed them. The Superintendent shall give notice of assignments to new teachers as soon as practicable, and except in cases of emergency, not later than August 15.

In the event that changes in such class, grade and/or subject and building assignments are necessary after receipt of the original notice, the teacher affected shall be notified in writing. If the teacher requests, a meeting will be scheduled with the Superintendent or his designee to discuss the change.

- B. Schedules of teachers who are assigned to more than one school shall be arranged so that no teacher shall be required to engage in an unreasonable amount of inter-school travel. Such teachers shall be notified of any changes in their schedules as soon as possible.

Article VII: EMPLOYEE TRANSFERS AND REASSIGNMENTS

A. Transfers

Transfers refers to a move from one building to another. Reassignments refers to a change in the assignment while remaining at the same location. Transfers and reassignments may be requested by the employee affected, by the principal of the employee's school, or may be initiated by the Board of Education or its designee as provided in Board Policy. The determination of a need for transfer or reassignment is the sole responsibility of the District as described in Board Policy and the principal criterion for consideration is whether the transfer will result in the best educational program in the District. The best educational program results from the selection of a school staff which is well balanced in terms of employees experience, general background and competence. Careful consideration will be given to each of these when considering the need or the method of implementing transfers or reassignments.

B. Voluntary Transfer and Reassignment

1. Teachers who desire a reassignment in grade and/or subject or who desire to transfer to another building may file a written statement of such desire with the Superintendent. Such statement shall include the grade and/or subject to which the teacher desires to be transferred or reassigned, in order of preference. Such requests for transfer or reassignment for the following school year shall be submitted not later than May 15. Requests for transfer will be kept on file until September 1 of the year for which the transfer or reassignment was requested.
2. No teaching position will be permanently filled until all transfer and reassignment requests on file have been reviewed and placed in competition.

C. Involuntary Transfer and Reassignment

1. Involuntary transfer or reassignment because of changes in enrollment, curriculum or other unusual situations may be made at any time as authorized by the Superintendent. The reasons for an involuntary transfer will be given to the employee in writing.
2. An involuntary transfer or reassignment shall be made only after a consultation meeting between the employee and the Superintendent or his designee. If, subsequent to this meeting, the

transfer or reassignment is initiated over the objection of the employee, the employee may request and shall receive a second meeting with the Superintendent. The employee may have an Association representative present at such a second meeting. If after this meeting, the employee still objects to the transfer, he/she may request a hearing before the Board of Education at its next regular meeting.

3. Transfers shall not be used by an administrator or the Board of Education as punitive or disciplinary action.
4. Employees being involuntarily transferred or reassigned may indicate a preference regarding transfer or reassignment which will be taken into consideration whenever a choice of positions is available.
5. Administrative transfer or reassignment shall take place only after all other possible ways of filling the vacancy have been considered and all reasonable efforts to use other means have been exhausted. The District will actively seek volunteers for transfers prior to using an involuntary transfer. The District will not use involuntary transfers for the purpose of filling a request for a voluntary transfer.
6. Involuntary transfer - least senior certified person, with appropriate grade level experience or experience in area to be filled, would be transferred or reassigned.

Article VIII: PROMOTION

- A. Promotion is the appointment of a teacher to an administrative or supervisory position.
- B. In the case of substantially equally qualified applicants, preference shall be given to persons currently employed by the District.
- C. Positions and/or vacancy announcements will be posted in each school and a copy sent to the Association at least fourteen (14) calendar days prior to the date when written applications must be submitted.
- D. Vacancies
 1. All positions and/or vacancy announcements will be posted in each school and a copy sent to the Association at least fourteen (14) calendar days prior to the date when written applications must be submitted.
 2. Employees may file a request at any time for a known vacancy, or in advance for any vacancy which may develop later in the year or over the summer.
 3. No teaching position will be permanently filled until transfer and reassignment requests on file have been reviewed and placed in competition.

Article IX: SPECIAL TEACHING ASSIGNMENTS

- A. All known special teaching positions shall be posted on or before May 1 of each year. Those not known by May 1 will be posted as soon as possible thereafter.
- B. Available and certified current employees of the Appoquinimink School District shall be employed before any out of district candi-

dates for the adult education program, summer school (if held), home teaching and federal programs.

- C. When all other factors are substantially equal, favorable consideration will be given to seniority in the Appoquinimink School District.

Article X: ADMINISTRATOR TEACHER EVALUATION

- A. Evaluation of an employee's professional performance shall be conducted for the purpose of improving the educational process and of the improvement of teacher performance and may include classroom visits and conference.
- B. Employees shall be given a copy of any evaluation report within five (5) working days of said evaluation and shall review such report with the person preparing it before it is submitted to the permanent central office employee file.
- C. Provisions shall be made for the employee to write his own statements concerning the evaluation, whether he agrees or disagrees with it, and such statements shall be included with the report.
- D. Such evaluations shall take into consideration any adverse conditions under which the teacher must work.
- E. The administration shall provide assistance to rectify professional difficulties which may lead to employees receiving sub-standard evaluations.
- F. Any teacher may review his personnel file after giving 24 hours notice and scheduling a mutually acceptable meeting time with the individual responsible for maintaining such records. If after the review, the teacher feels that certain items in the file should be removed, he may request an appointment with the Superintendent for the purpose of discussing such removal. The Superintendent shall meet with the teacher within ten (10) calendar days. The Superintendent of School will authorize the removal of any material more than five (5) years old, if requested by employee.
- G. Teacher evaluation documents shall be cooperatively prepared by the school district and the Association when documents are revised.
- H. The teacher evaluation document shall reflect the performance of the teacher as seen by the evaluator. The entire evaluation process shall be conducted openly and with full knowledge of the teacher.
- I. The evaluation document may reflect in its completed form, more than one day's teaching performance and this shall be noted on the evaluation document.
- J. Evaluators shall remain in the classroom for a sufficient amount of time to make a meaningful evaluation.

Article XI: FAIR DISMISSAL PROCEDURES

- A. Notice of Termination
Termination of teacher's service shall be in accordance with Chapter 14, Title 14 of the Delaware Code.
- B. Non-Tenured Teachers
Non-tenured teachers who are not offered a subsequent contract will be allowed an informal meeting with a representative of his/her choice. This informal meeting shall be to discuss the reason(s)

for lack of a contract offer, but shall not involve cross-examination of any personnel. Lack of a contract offer to a non-tenured teacher is excluded from recourse to the grievance procedure.

C. Reduction in Force - Tenured and Non-tenured Teachers

In the event that the District finds it necessary to reduce the teaching staff because of decreased enrollment or a reduction in educational services the following procedure shall apply:

1. The selection of the employee to be terminated shall be based upon district-wide seniority within areas of full certification. In the event that more than one of the teachers involved have the same amount of continuous service, the following criteria shall be applied:
 - a. The employee with the largest number of years of teaching experience shall be retained.
 - b. In the case where the above does not solve the dispute, the employee with the least number of credits beyond his/her Bachelor's degree shall be terminated. (Credits must be on file with the district officer prior to February 1 to be considered. Master's degree is considered higher than B+30)
 - c. In a case where neither (a) or (b) will solve the dispute, the Superintendent or designee may select the teacher to be recalled.
2. Seniority shall be defined as the length of continuous service in the Appoquinimink School District. (Board approved leaves of absence shall not interrupt continuous service, but shall not accrue as seniority)
3. The Superintendent shall establish a seniority list of all employees within the bargaining unit, K-12. The Superintendent shall furnish one copy of the seniority list any time prior to April 1 of the school year. Seniority dates not challenged as provided by that date shall be regarded as correct by the employee and the Association and no further appeals shall be honored.
4. In the event a teacher affected by a reduction in force possesses multiple certification, he/she may, upon request, be assigned to his/her alternate area of certification. If, upon such reassignment, a situation of imbalance is created, the teacher having the least number of years of service in the Appoquinimink School District shall be terminated subject to the provisions of this Article.
5. Certified employees who are RIF'ed shall be entitled to recall for a period of 1 year from the date of termination to any vacancy within the district for which the employee is certified. In the event of recall the District will notify employee by certified mail. The employee has seven (7) working days, from postmark date, to respond (accept/decline). No response, unless there are extenuating circumstances, constitutes denial of offer. If the employee denies job offer, the employee will be removed from the recall list and shall lose seniority rights. Employee response will be considered as of post mark of written reply.

Article XII: TEACHER ADMINISTRATION LIAISON

- A. The Association shall select a liaison committee for each school building which may meet with the principal at least once a month during the school day, for the duration of the contract to review and discuss local school problems and practices, and to play an active role in the revision and development of building policies. Areas for consideration shall include but not be limited to such matters as curriculum, textbooks, distribution of materials and supplies, discipline and parent visitation. Said committee shall consist of not more than one (1) member for every ten (10) teachers in the school building or major fraction thereof, but shall in no event have less than one (1) member per school.
- B. The Association-district liaison committee may meet with the Superintendent at least once a month during the school year to review and discuss current school problems and practices and the administration of this agreement.

Article XIII: ACADEMIC FREEDOM

- A. The personal life of a teacher is not an appropriate concern for action of the Board except as it may directly prevent the teacher from performing properly his assigned functions during the work day.
- B. Teachers shall be entitled to full rights of citizenship, and no religious or political activities of any teacher nor the lack of shall be grounds for any decompensation or discrimination with respect to the professional employment of such teacher, providing such actions do not violate District Board Policy.
- C. The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the Appoquinimink School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with the performance of their teaching responsibilities.

Article XIV: RECOGNITION

- A. The Board hereby recognizes the Association as the exclusive and sole representatives for collective negotiations concerning terms and conditions of employment for all regularly employed personnel under contract: classroom teachers, guidance counselors, school nurses, librarians, visiting teachers, psychologists, extra-duty personnel who are otherwise defined as members of the bargaining unit, subject coordinators who do not fill administrative positions but excluding cafeteria employees, custodians, clerical staff and teacher aides.
- B. Unless otherwise indicated, the term "Teachers" when used hereinafter in this Agreement shall refer to all professional employees represented by the Association in the negotiating unit as above defined.

Article XV: PROFESSIONAL DEVELOPMENT

- A. Teachers requested in writing by the Board to take courses (consi-

dered to be those other than those required for certification) of benefit to the District shall be reimbursed the cost of tuition, books and mileage. Teachers shall present written proof of payment and successful completion in order to receive reimbursement.

- B. Teachers requested in writing by the Board to attend workshops, seminars, or conferences shall be reimbursed allowable expenses upon supplying receipts and/or vouchers confirming successful participation.
- C. Allowable expenses shall include: registration, transportation, lodging and meals.
- D. In instances where conflict develops between teacher's graduate class schedule and District meetings, the teacher will be excused to attend graduate class.

Article XVI: PROTECTION OF TEACHERS, STUDENTS AND PROPERTY

- A. Protection of Teachers
 - 1. The Board shall reimburse teachers for the cost of any clothing or any other personal property damaged or destroyed while on school property and/or while in the discharge of his/her duties.
 - 2. A teacher shall be reimbursed for the cost of medical, surgical or hospital services incurred as the result of any injury sustained in the course of his/her employment in accordance with the provisions of the Workman's Compensation Laws.
- B. A teacher may, within the scope of his/her employment, use and apply such amount of force as is reasonable, necessary and lawful, to quell a disturbance threatening physical injury to others; to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil; for the purpose of self defense; and for the protection of persons and property. Teachers shall immediately report cases of assault suffered by them in connection with their employment to the principal. The District shall process any cases of assault in accordance with State Law. The teacher shall be advised as to any action taken and reasons for said action.
- C. Maintenance of classroom control and discipline shall be in accordance with policies established by the Appoquinimink Board of Education. The administration may be called upon by teachers to assist in these endeavors. The teacher may appeal to the Superintendent when he/she feels that the assistance is not sufficient.
- D. Any student sent to the office by a teacher for disciplinary reasons shall not be returned or readmitted to the class from which he was referred until the teacher involved has received results of the principal's investigation and his decision regarding the adjustment.
- E. If a teacher alleges assault and battery by a student then such teacher shall submit a notarized statement of charges against such student and the teacher shall not be required to readmit that student to his class pending disposition of such charges by the appropriate legal body.

Article XVII: BOOKS AND OTHER INSTRUCTIONAL MATERIALS AND SUPPLIES

- A. The Board shall allocate sufficient funds to provide for purchase and/or replacement of textbooks, library books, instructional

materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities.

- B. Textbooks and instructional materials in all subject areas and at all grade levels shall be selected in accordance with Board policy so as to best show the cultural diversity and pluralistic nature of American life.
- C. Consumable materials, repair services, and lockable areas shall be provided if building budget permits.
- D. Teacher will be provided with a lockable area for his/her personal use.

Article XIII: EMPLOYEE FACILITIES

- A. All facilities shall be designed to contain the standards enumerated below:
 - 1. Space shall be provided for employees to store instructional materials and supplies.
 - 2. A lounge and/or employee work area, with adequate ventilation, shall be provided which at least meet standards of the 1980-81 school year.
 - 3. The lounge and/or employee work area(s) of the school buildings shall be accessible to all teachers in the assigned building.
- B. The professional staff shall be represented on the committee writing educational specifications of new facilities or renovations to existing facilities.
- C. No teacher shall be required to work under unsafe working conditions.

Article XIX: MISCELLANEOUS

The Charging Party's proposal on this subject consists of the provisions of Article XXVII of the expired collective bargaining agreement, with the following addition:

All rules, regulations, and policies of the school district as well as all terms of this Agreement, shall be applied equally and fairly without discrimination to all employees.

Provisions of Article XXVII of the expired agreement:

MISCELLANEOUS PROVISIONS

- A. The Board and the Association agree that there shall be no discrimination, and that all practices, procedures and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, or marital status.
- B. This Agreement constitutes Board policy for the term of said Agreement to any employee or groups of employees unless contrary to law, then such provision or application not deemed valid and subsisting except to the extent permitted by law but all other provisions or applications shall continue in full force and effect.

- C. Any individual contract between the Board and an individual teacher heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract contains any language inconsistent with the Agreement, this Agreement, during its duration, shall be controlling.
- D. Copies of this Agreement shall be printed at the equal expense of the Board and the Association after agreement with the Association on format within thirty (30) days after the Agreement is signed. The Agreement shall be presented to all teachers now employed, hereafter employed, or considered for employment by the Board.
- E. The Superintendent will request and review recommendations regarding bus scheduling and student loading at the school buildings.
- F. Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provisions of this Agreement, either party shall do so by telegram or registered letter at the following addresses:
 - 1. If by Association, to Board at Appoquinimink School District, 4th and Main Streets, Odessa, Delaware, 19730.
 - 2. If by Board, to Association at Local Association or Association President.
- G. Inservice. The District Office shall publish the proposed inservice days to include start and finish times (uniform by level) by first teacher day each year. Both parties recognize and agree that State priorities may alter the local district inservice program.
- H. Each employee shall be given a written accounting of his accumulated sick leave credit as early as feasible after the beginning of the school year.