United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF DEFENSE DEPARTMENT OF DEFENSE STATESIDE DEPENDENTS SCHOOLS QUANTICO DEPENDENTS SCHOOL SYSTEM QUANTICO, VIRGINIA and QUANTICO EDUCATION ASSOCIATION	Case Nos. 91 FSIP 246 91 FSIP 250

DECISION AND ORDER

The Quantico Education Association (Union) and the Department of Defense, Department of Defense Stateside Dependents Schools, Quantico Dependents School System, Quantico, Virginia (Employer), each filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119.1/ The impasse arose following negotiations for a successor collective-bargaining agreement.

After investigation of the requests, the Panel consolidated the cases and directed the dispute, which involves economic issues for teachers, to private factfinding. Under this procedure, the designated factfinder's fees and related expenses were to be shared equally by the parties. Following receipt of the factfinder's report, which was to contain recommendations for settlement that were supported by rationale, the parties were to advise the Panel as to whether or not they accepted the factfinder's recommendations. The parties also were notified that once the Panel received the factfinder's report, and the parties' responses thereto, it would take whatever action it deemed appropriate to resolve the impasse. On March 9 and 10, 1992, a hearing was held before Factfinder Richard I. Bloch in Quantico, Virginia. A stenographic record was made, testimony and argument were

1/ The Union was the filing party in Case No. 91 FSIP 246. The Employer filed the request in Case No. 91 FSIP 250.

presented, and documentary evidence was submitted. In accordance with the Panel's procedural determination, the factfinder issued his report, which contained recommendations for settlement, on April 3, 1992.

The Panel was advised by the Union that it accepted the factfinder's recommendations in their entirety. The Employer advised the Panel that it accepted the factfinder's recommendations on all but five of the outstanding issues. In an accompanying statement of position, the Employer raised new duty-to-bargain questions with respect to each of those issues; it also alleged that one issue should not be considered by either the factfinder or the Panel, as it was withdrawn by the Union at an earlier stage of the proceedings.

The Panel directed the parties to submit additional written statements addressing the unresolved issues on their merits as well as the duty-to-bargain questions. Submissions were made in accordance with this directive. The record is now closed, and the Panel has considered all of the evidence and argument contained therein.

ISSUES AT IMPASSE

The parties are at impasse over five issues: (1) Article 11, Section 3a -- Planning/Preparation Time; (2) Article 12A, Section 5b -- Tuition Assistance; (3) Article 12C, Section 4 -- Salary Schedule; (4) Article 13, Section 2a -- Personal Leave; and (5) Article 13, Section 2e -- Sabbatical Leave. The factfinder's recommendations with respect to these issues are set forth in the attached Factfinder's Report and Recommendations.

1. Planning/Preparation Time

a. The Union's Position

The Union proposes the following wording:

> There shall be 4 professional days for planning at the High School and Middle School and 3 1/2 such days at the Elementary Schools (K-5), during which no more than 4 hours total will be used for in-service training.

This proposal is consistent with the current practice of minimizing the amount of professional time devoted to in-service training. It alleges that of the 28 total duty hours available during professional days, only 4 are used for training programs. Planning time is essential to the teaching profession, and if teachers are not provided adequate time to plan during professional days, the work would have to be done either in the evening or on weekends. In response to the Employer's allegation of nonnegotiability, the

Union maintains that its proposal is negotiable and relies on the holding of the Federal Labor Relations Authority (FLRA or Authority) in Overseas Education Association and Department of Defense Dependents Schools, 39 FLRA 153 (1991).

b. The Employer's Position

The Employer's proposal is as follows:

> There shall be 4 professional days for planning at the High School and Middle School and 3 1/2 such days at the Elementary Schools (K-5), during which teachers will be allowed at least 2 1/2 hours per day for professional planning.

Under the Employer's proposal, teachers would be allowed at least 2.5 hours of planning time during each professional day. In-service training, necessary to educate teachers on topics such as AIDS and new instructional methods, should not be sacrificed in favor of additional planning time. Under Article 11, Section 3e, of the agreement, each teacher is already allowed 182 planning periods per year; this amount of time, combined with the time allowed on professional days, is a sufficient amount to be devoted to planning.

The Union withdrew this issue from its package at an earlier stage of the proceedings; thus, its proposal should not have been considered by the factfinder. Furthermore, the proposal is outside the duty to bargain, as it conflicts with the Employer's right to assign work under section 7106(a)(2)(B) of the Statute. The Employer cites Overseas Education Association and U.S. Department of Defense Dependents Schools, FPO, Seattle, 42 FLRA 197 (1991) and Fort Knox Teachers Association and Fort Knox Dependents Schools, 22 FLRA 815 (1986), in support of its position. It also contends that none of the proposals examined by the Authority in the case cited by the Union are substantively identical to the Union's proposal in this case. Therefore, there is no case law available for the Panel to apply in accordance with Commander, Carswell Air Force Base, Texas and American Federation of Government Employees, Local 1364, 31 FLRA 620 (1988), to resolve the duty-to-bargain question. The Employer does not, however, urge the Panel to relinquish jurisdiction over the issue; to the contrary, it argues for adoption of its own proposal on the merits.

CONCLUSIONS

Turning first to the duty-to-bargain question, we find it unnecessary to consider the parties' arguments regarding the negotiability of the Union's proposal because the existing contract wording provides the most suitable resolution to the impasse. In our view, neither party has demonstrated a need for altering the

current provision. Although we are mindful that there may be disagreement over its interpretation, we are convinced that such disputes can be resolved through the parties' negotiated grievance procedure. Accordingly, we shall order both sides to withdraw their respective proposals and to maintain the status quo.

2. Tuition Assistance

a. The Union's Position

The Union proposes the following wording:

> The Superintendent shall approve requests for tuition assistance, for a maximum of 9 credit hours each school year, for course work at accredited institutions.

Under this proposal, all employees who apply would receive full tuition reimbursement for up to 9 credit hours per school year. Tuition reimbursement provides an incentive for teachers to continue their professional development, thereby enhancing the overall quality of the Employer's education program. Since most teachers who are pursuing graduate degrees take two courses (six credits) during the school year and three additional courses (nine credits) over the summer, reimbursement for nine credits per year is fair.

b. The Employer's Position

The Employer proposes the following:

> The Superintendent shall approve requests for tuition assistance up to $70 per credit hour, for a maximum of 3 credit hours each school year, for course work at accredited institutions for the purpose of recertification.

A cap of $70 per credit hour with a limitation of 3 credit hours per year would allow tuition reimbursement funds to be made available to more employees and would be more generous than tuition programs offered by comparable school districts. Specifying the maximum amount of reimbursement would eliminate the uncertainty existing under the present system; in this regard, the Employer emphasizes that the current program may operate as a disincentive for employees to apply. With respect to the Union's proposal, it is stressed that there is no demonstrated need for the proposal and were it to be adopted, the Employer's maximum exposure would be approximately $485,000. Finally, the factfinder's recommendation is nonnegotiable, as it would interfere with the Employer's right under section 7106(a) of the Statute to determine the agency's budget.

CONCLUSIONS

In examining the duty-to-bargain question, we find it unnecessary to consider the parties' arguments regarding the negotiability of the factfinder's recommendation because, in our view, the Employer's proposal provides the most reasonable resolution to the dispute. In this regard, we conclude that the Union has not demonstrated a need for adoption of its proposal. Moreover, given the current downsizing of the Department of Defense (DOD), we believe that the potential cost of the Union's proposal is excessive. The Employer's proposal, on the other hand, provides an economic benefit at a reasonable cost and appears to be in line with tuition assistance programs provided by neighboring school districts. For these reasons we shall order its adoption.

3. Salary Schedule

a. The Union's Position

The Union proposes the following salary schedule:

The base salary for the 1991-92 school year shall be $25,209. This amount constitutes a 7% increase over the 1990-91 salary schedule. This base salary rate shall be effective July 1, 1991. The base salary shall be increased 7% per annum for each succeeding year of this contract, effective July 1, 1992 and July 1, 1993. The base salary shall be indexed as follows:

Bachelors: 1.00, 1.06, 1.12, 1.18, 1.24, 1.30, 1.35, 1.40, 1.45, 1.50, 1.55, 1.60, 1.65, 1.70 = 14th step (13 years service).

Bachelors + 15: 1.05, 1.11, 1.17, 1.23, 1.29, 1.35, 1.40, 1.45, 1.50, 1.55, 1.60, 1.65, 1.70, 1.75 = 14th step (13 years service).

Masters: 1.15, 1.20, 1.25, 1.30, 1.35, 1.40, 1.45, 1.50, 1.55, 1.60, 1.65, 1.70, 1.75, 1.80, 1.85, 1.90, 2.00 = 18th step (17 years service).

Masters + 30: 1.20, 1.25, 1.30, 1.35, 1.40, 1.46, 1.52, 1.58, 1.64, 1.70, 1.76, 1.82, 1.88, 1.94, 2.00, 2.06, 2.12, 2.18 = 18th step (17 years service).

Doctorate: 1.25, 1.31, 1.37, 1.43, 1.49, 1.55, 1.61, 1.67, 1.73, 1.79, 1.85, 1.91, 1.97, 2.03, 2.09, 2.15, 2.20, 2.25 = 18th step (17 years service).

In the alternative, the Union proposes adoption of the Falls Church (Virginia) School District salary schedule, provided that any teacher who would otherwise have his or her salary reduced under that schedule would retain his or her current salary. As a third option, the Union has also proposed a 2-tier pay and annual leave structure. Under this plan, those teachers employed at the beginning of the 1991-92 school year would remain under the Union's proposed salary schedule, as set forth above, and would continue to earn annual leave in accordance with existing leave policies. Those hired after the start of the school year would be placed on the Prince William County (Virginia) School District salary schedule and would accrue personal leave in accordance with the Employer's proposal.

Since employees received a salary increase totaling 25 percent over the last 3 years, its proposal, which totals 21 percent over 3 years, is equitable. Higher pay has allowed the school system to attract and retain superior teachers; as evidence of this, the Union emphasizes that Quantico currently has the highest percentage in the state of teachers with postgraduate, professional certificates or degrees. This translates into a better overall education program, a measure of which is higher student test scores. Because they are covered under Federal retirement plans (either Federal Employees' Retirement System (FERS) or Civil Service Retirement System (CSRS)), Quantico teachers receive less in the way of contributions to their retirement (between 7.68 percent and 11.88 percent less) than their counterparts in other school districts; higher pay rates are appropriate to offset this difference.

With respect to comparability, Quantico most closely resembles the Falls Church School District because: (1) the size of the faculty and student body are similar; (2) the length of the workday is the same; and (3) Falls Church teachers also receive less in the way of retirement contributions than do teachers in other districts. With respect to the Employer's proposal, the Union disputes the argument that the Prince William School District is the more comparable district. The Employer's proposal is discriminatory under the Age Discrimination in Employment Act, as it would have a disparate impact on those teachers who are 40 or older; most employees at the high end of the salary schedule (who are older teachers) would have their salaries frozen under the Employer's proposed schedule.

Finally, the Employer's allegations of nonnegotiability with respect to the factfinder's recommendations are misplaced. In this regard, the Union believes that American Federation of Government Employees, AFL-CIO and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 2 FLRA 604 (1980), is not applicable. Under the second prong of the Wright-Patterson test, a union proposal is nonnegotiable if it would result in significant and unavoidable increased costs which are not offset by

compensating benefits. Initially, the cost of several proposals cannot be aggregated to demonstrate a significant increase in costs. Also, none of the factfinder's recommendations, standing alone, would result in either a "significant" or an "unavoidable" increase in the agency's costs. However, even if the costs of its proposals are "significant" and "unavoidable," there has been no affirmative demonstration by the Employer that such costs are not offset by compensating benefits. For these reasons, the Panel is urged to resolve the duty-to-bargain question and to find the factfinder's recommendations to be negotiable.

b. The Employer's Position

The Employer proposes the following:

> Pay changes shall go into effect at the beginning of the pay period in which the school year begins. Salary schedules for school years 1991-92 through 95-96 are attached.[2/] Only longevity increases, averaging 3%, will be paid for the 1991-92 school year. Each succeeding year will include the longevity increase plus a 2% cost of living adjustment.

This proposal was crafted by averaging the salaries of Prince William and Quantico for school year 1990 and increasing that amount by 5 percent; in essence, it would provide for higher starting salaries but would reduce step increases, thereby reducing salaries at the "high end" of the schedule. Prince William is the most comparable school district since most teachers live in Prince William County and the district is geographically contiguous to Quantico. Because prior raises totaling 25 percent over 3 years were required by the state of Virginia to raise the state's ranking of teacher salaries, it is unreasonable to look to that experience to resolve the instant impasse. Also, since Quantico teachers are already the fifth highest paid in the state, this is not a situation which calls for catch up pay; thus, there is no demonstrated need for the Union's proposal. Finally, under the current pay scale, starting salaries are not competitive, making it difficult to attract entry-level teachers.

With respect to comparability, in the majority of school districts in Virginia, teachers did not get a salary increase for the 1991-92 school year. The results of an informal survey indicate that surrounding districts took the following actions with respect to wages for school year 1991-92:

2/ The Employer has indicated that it has accepted the factfinder's recommendation of a 3-year agreement. Accordingly, we will assume for purposes of this discussion that the Employer's proposal covers only school years 1991-92, 1992-93, and 1993-94.

Arlington	step + 2%
Alexandria	step + 2%
Falls Church	step only
Prince William	step only
Stafford	step advance but same salary
Fairfax	no adjustment

For school year 1992-93, the same districts plan to take the following actions:

Arlington	step only or step + 2%
Alexandria	at best, step only
Falls Church	step + 2%
Prince William	3.2% - no step
Stafford	5% - includes step of 1.7%
Fairfax	3.8% step only

Teaching at Quantico provides nonmonetary rewards and benefits to teachers such as (1) well-behaved students; (2) a secure community (no drugs, violence, etc.); (3) a high level of parental support and input; and (4) well-maintained buildings and physical surroundings; overall, it is a nice place to work. Teachers are apparently satisfied with working conditions since the turnover rate for the last 3 years has been only 7 percent.

Quantico teachers do not receive less in the way of retirement contributions than other similarly-situated teachers. For employees covered by FERS, the Employer contributes 12.9 percent of an employee's salary to that retirement system. It also contributes up to 5 percent of an employee's salary to the Federal Thrift Savings Plan, and 6.2 percent to Social Security. For employees covered by CSRS, the Employer contributes 7 percent of an employee's salary to that retirement plan. Thus, Employer contributions to employee retirement plans are comparable to those made by other school districts.

The cost of the Union's proposed salary schedule is not justified. The school system's budget is based solely on projected student enrollment and there is no way of supplementing it (e.g., raising taxes, issuing bonds, etc.) as is done in local school districts. Moreover, it is projected that the Quantico budget will increase by a smaller percentage over the next 7 years. Given this premise, funds to cover salary increases would have to come from monies budgeted for other items. If the cost of operating Quantico Dependents School System becomes excessive, there exists the possibility that it may be turned over to a local school district; a 1991 RAND study examined this as a possibility.

Finally, the factfinder's recommendations on pay scale, salary increase, and annual leave, taken together, interfere with the Employer's right to determine its own budget. In support of that position, the Employer relies on the second prong of the Wright-

Patterson test. In its view, the factfinder's recommendations on these issues would result in a significant and unavoidable increase in costs which is not offset by compensating benefits.

CONCLUSIONS

In examining the duty-to-bargain issue, we find that resolution of this question is not necessary because, in our view, the factfinder's recommendation is inadequate to resolve the dispute. We note, however, that the U.S. Supreme Court has held in Fort Stewart Schools v. Federal Labor Relations Authority, __ U.S. __, 110 S. Ct. 2043 (1990), that since wages of civilian teachers are not set by any statute, Congress did not preempt negotiations over them. Moreover, with respect to the Employer's argument that the factfinder's recommendations on pay scale, salary increase, and annual leave, taken together, are nonnegotiable under the second prong of the Wright-Patterson test, we note that under existing FLRA case law, proposals are examined individually in determining whether a particular proposal would result in such an increase in cost as to render it nonnegotiable under Wright-Patterson.[3/]

Turning now to the merits, we conclude that neither party's proposal, nor the factfinder's recommendation, would provide a suitable accommodation. Given the circumstances of this case, both the Union's proposal and the factfinder's recommendation provide too generous an increase. In this regard, we believe that the comparability data set forth in the record do not support adoption of either. Moreover, given continuing DOD downsizing, and the increased emphasis on cost-cutting, salary increases of this magnitude are not justified. Adoption of the Employer's proposed salary schedule, on the other hand, would result in a significant number of teachers receiving no increase at all; this result is also unacceptable. Accordingly, we shall order the adoption of a two-tiered salary schedule which provides a more equitable resolution. Teachers hired prior to the start of the 1991-92 school year will remain on the prior salary schedule; those pay rates shall be increased by 2 percent each year for school years 1991-92, 1992-93, and 1993-94. Teachers hired after the start of the 1991-92 school year shall be placed on the Employer's proposed salary schedule for school years 1991-92, 1992-93, and 1993-94, provided that any teacher who would have his or her salary reduced by being placed on the new schedule shall retain his or her current salary until such time as the teacher's salary under the new schedule exceeds his or her current salary.

3/ Fort Bragg Unit of North Carolina Association of Educators, National Education Association and Fort Bragg Dependents Schools, Fort Bragg, North Carolina, 12 FLRA 519 (1983).

4. Personal Leave

a. The Union's Position

The Union proposes that the status quo be maintained; that is, annual leave would continue to be accrued according to the system used for other Federal employees. Teachers would also continue to take annual leave during periods of holiday shutdown and would "cash out" any unused annual leave at the end of each school year. Employees could continue to use sick leave during periods of holiday shutdown, as necessary, and would be allowed 3 days of bereavement leave for each instance of bereavement. The Employer's allegations of nonnegotiability should be rejected for the same reasons that were raised with respect to the salary issue.

The current practice encourages teachers not to use annual leave during the school year. This is beneficial to the district, as it minimizes disruption in the classroom and saves on the cost of substitute teachers. Allowing employees to use sick leave during holiday shutdowns also is beneficial for the same reasons; under the current system, teachers generally schedule elective or nonemergency medical treatment during holiday periods. The current system operates at all other Section 6 schools, and there is no demonstrated need to change.

The Employer's proposal, on the other hand, would result in a 2 1/2 to 5 percent pay cut for the majority of teachers, since most elect not to use annual leave during the school year. It would also result in a total of 333 lost days of instruction plus the cost of substitute teachers on those days. The reason for this is that teachers would use all 3 days of personal leave so as not to lose them at the end of the year. In sum, not only is the Employer's proposal a takeback of an existing economic benefit, but it would also result in increased costs to the school system.

b. The Employer's Position

The Employer proposes that employees receive 16 days of personal leave per school year. Ten days of this leave would be distributed among Thanksgiving, Winter, and Spring break periods in accordance with the school calendar. Such periods of leave could not be charged to sick leave. Three days of this leave could be used as discretionary personal days off as approved by the administration. The 3 remaining days would be set aside to be used as bereavement leave if needed. Any of the 3 discretionary personal days unused at the end of the school year would be converted to accumulated sick leave at that time; unused bereavement days, however, would be dropped.

The leave system for a typical 12-month Federal employee should never have been applied to teachers; it is a windfall for more senior employees and is overly harsh for new hires, since they

have no discretionary time off. The concept of annual leave is foreign to the teaching profession; no school district in the immediate area operates under such a system. Teachers are already off duty for 10 weeks during the summer; 10 to 12 days over Thanksgiving, Winter, and Spring break periods; and on 10 Federal holidays. These breaks in the work cycle provide time for replenishment that annual leave provides to other Federal employees. Moreover, other Federal employees cannot cash out unused annual leave, but rather, can carry over only 240 hours; any excess over that amount is lost. Finally, the factfinder's recommendation of maintaining the status quo is outside the duty to bargain; in support of this position, the Employer raises the same arguments as it did with respect to the salary issue.

CONCLUSIONS

In examining the duty-to-bargain question, we again find it unnecessary to consider the parties' arguments regarding the negotiability of the factfinder's recommendation. This is because we do not find the status quo to provide a suitable resolution to the impasse. We conclude that the current annual leave system is unique among the surrounding districts and that the provision allowing for the cash out of any unused annual leave at the end of the school year is a windfall for more senior teachers. On the other hand, a direct takeback of this economic benefit would be unfair and would likely have a detrimental effect on teachers' morale. Accordingly, we shall order the adoption of a two-tiered system, consistent with our discussion of the salary issue, which we believe to be a superior resolution of this matter. Teachers hired before the start of the 1991-92 school year will continue to accrue annual leave in accordance with the status quo, including the cash out of all unused annual leave at the end of the school year. The procedures set forth in the Employer's proposal shall govern use of annual leave. These employees will be entitled to 3 days of administrative leave for each instance of bereavement. Teachers hired after the start of the 1991-92 school year shall earn annual leave as follows: Employees will be allowed 13 days of personal leave per school year. Ten days of this leave will be distributed among Thanksgiving, Winter, and Spring break periods in accordance with the school calendar. Such periods of leave may not be charged to sick leave. Three days of this leave may be used as discretionary personal days off as approved by the administration; any unused portion of these 3 days will be cashed out at the end of the school year. These employees will be entitled to 3 days of administrative leave for each instance of bereavement.

5. Sabbatical Leave

a. The Union's Position

The Union proposes that after 7 consecutive years of service

with the school system, employees would become eligible for a maximum of 1 year of sabbatical leave. Sabbatical leave would be granted for the purpose of study, travel, or for other purposes approved by the Board of Education. Under this plan, employees on a study sabbatical would be required to take a minimum of 9 hours each semester. Employees on a study sabbatical would receive 65 percent of their regular salary, with employees on a travel sabbatical receiving 50 percent. Any deviation from the original approved program without written approval of the Superintendent would result in forfeiture of sabbatical funds; reimbursement of any funds received would be required under this circumstance. Employees taking a sabbatical would be entitled to return to the position they occupied prior to their leave or to another position of a similar nature.

Sabbatical leave should be an earned right which is established after 7 years of service. The Employer has not demonstrated a need to reduce the pay provisions for study leave, nor has it demonstrated a need to eliminate pay for travel leave. Furthermore, the Employer has not demonstrated a need to eliminate selection decisions from the grievance procedure and payback agreements, as required under the Employer's proposal, are not necessary. With respect to the Employer's allegations of nonnegotiability, the factfinder's recommendation does not conflict with the provisions of the Training Act, 5 U.S.C. § 4108 (1988), and, therefore, is within the duty to bargain.

b. The Employer's Position

Under the Employer's plan, after 7 consecutive years of service, employees would become eligible to apply for a maximum of 1 year of sabbatical leave. Normally, no more than 2 percent of full-time teachers would be on sabbatical leave at any one time. Approval of sabbatical leave would be subject to available funds, and would be granted at the discretion of the Board of Education; the Board's decision would be final and nongrievable. Seniority would be considered when candidates are equally qualified in all other aspects. Sabbatical leave would be granted for the purpose of study or for other purposes as approved by the Board, and a minimum of 9 semester hours would be required each semester. Under this plan, employees on sabbatical leave would receive one-half of their regular salary for study but would receive no payment for travel leave. Any deviation from the original approved program without written approval of the Superintendent would result in forfeiture of sabbatical funds; reimbursement of any funds received would be required under this circumstance. Employees granted sabbatical leave would enter into a payback agreement whereby they would agree to continue working for the Employer for a minimum of 3 years after completing their year of sabbatical; should an employee fail to continue working for 3 years, he or she would be required to pay back, on a prorated basis, the funds he or she received during the period of sabbatical leave. Employees would

also be entitled to return to the position they occupied prior to their leave or to another position of a similar nature within the school system.

This proposal is supported by the comparability data which was proffered at the factfinding hearing. The Employer does not know of any program in the state of Virginia that grants employees the right to sabbatical leave merely on the basis of continuous service; sabbatical leave should not be an entitlement based on years of service, but rather, a benefit offered to employees as an investment in the future. In those districts having sabbatical leave programs, payment rates are comparable to those it has proposed. Moreover, requiring payback agreements is consistent with the requirements of the Training Act, 5 U.S.C. § 4108 (1988). Finally, the factfinder's recommendation, which provides for a modified version of the status quo, is nonnegotiable, as it omits reference to the aforementioned provisions of the Training Act.

CONCLUSIONS

In deciding this issue, we shall first address the nonnegotiability allegations which were raised by the Employer. In Carswell, the FLRA concluded that the Panel may apply existing case law to resolve a duty-to-bargain question which arises during impasse proceedings. In National Federation of Federal Employees, Local 1430 and U.S. Department of the Navy, Naval Facilities Engineering Command, Northern Division, Philadelphia, Pennsylvania, 39 FLRA 581 (1991), the Authority found negotiable a union proposal on sabbatical leave which did not contain a provision incorporating the requirements of the Training Act, 5 U.S.C. § 4108 (1988). Therefore, since failure to make reference to the Training Act apparently does not render a sabbatical leave proposal nonnegotiable, we conclude that the factfinder's recommendation is not outside the duty to bargain.

Turning now to the merits, we conclude that the factfinder's recommendation provides an adequate resolution of the dispute. The current provision strikes a reasonable balance between the competing interests with respect to this matter; neither party has demonstrated a need for modifying the existing wording. Furthermore, seniority should be considered in granting sabbaticals when candidates are otherwise equally qualified. Accordingly, we shall order adoption of the factfinder's recommendation.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of the proceeding instituted under the Panel's regulations,

5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under section 2471.11(a) of its regulations hereby orders the following:

1. Planning/Preparation Time

The parties shall withdraw their proposals and shall maintain the status quo.

2. Tuition Assistance

The parties shall adopt the Employer's proposal.

3. Salary Schedule

The parties shall adopt the following provision:

Teachers hired prior to the start of the 1991-92 school year will remain on the prior salary schedule; those pay rates shall be increased by 2 percent each year for school years 1991-92, 1992-93, and 1993-94. Teachers hired after the start of the 1991-92 school year shall be placed on the Employer's proposed salary schedule for school years 1991-92, 1992-93, and 1993-94, provided that any teacher who would have his or her salary reduced by being placed on the new schedule shall retain his or her current salary until such time as the salary under the new schedule exceeds his or her current salary.

4. Personal Leave

The parties shall adopt the following provision:

Teachers hired before the start of the 1991-92 school year will continue to accrue annual leave in accordance with the status quo, including the cash out of all unused annual leave at the end of the school year. The procedures set forth in Employer's proposal shall govern use of annual leave. These employees will be entitled to 3 days of administrative leave for each instance of bereavement.

Teachers hired after the start of the 1991-92 school year shall earn annual leave as follows: Employees will be allowed 13 days of personal leave per school year. Ten days of this leave will be distributed among Thanksgiving, Winter, and Spring break periods in accordance with the school calendar. Such periods of leave may not be charged to sick leave. Three days of this leave may be used as discretionary personal days off as approved by the administration; any unused portion of these 3 days will be cashed out at the end of the school year. These employees will be entitled to 3 days of

administrative leave for each instance of bereavement.

5. Sabbatical Leave

The parties shall adopt the factfinder's recommendation.

By direction of the Panel.

Linda A. Lafferty
Executive Director

August 10, 1992
Washington, D.C.

In the Matter of the Fact-Finding Between

THE DEPARTMENT OF DEFENSE
STATESIDE DEPENDENT SCHOOLS,
QUANTICO DEPENDENT SCHOOL SYSTEM

AND

QUANTICO EDUCATION ASSOCIATION

91-FSIP 246
91-FSIP 250

Hearings held March 9 and 10, 1992

Before Richard I. Bloch, Esq.

APPEARANCES

For the Association

Richard J. Hirn, Esq.

For the Employer

Raymond McKay

FACT FINDER'S REPORT AND RECOMMENDATIONS

This fact finding arises under Section 2471.6(a)(2) of the Federal Service Impasses Panel Regulations. On January 17, 1992, the Executive Director of the FSIP directed the dispute to private fact finding. It was understood that the fact finding report and recommendations would be forward to the Panel and to the parties by the close of business on April 3, 1992.

Hearings were held at the Burrows Elementary School on March 9 and 10. Witnesses were presented for both sides and a verbatim transcript was prepared. On the basis of the evidence and arguments, the fact finder has prepared the following recommendations, which are hereby submitted to the Panel and to the

parties.

General Observations

The relationship of these parties is highly unique. Unlike its private sector counterparts, this Board of Education draws its funding directly from the Department of Defense, and has no concerns with respect to bond issues, real estate tax apportionments, and other funding devices existent in the private sector. The teachers, for their part, are freed of the normal federal sector constraints on bargaining for wages. Unlike most federal sector employees' situations, this is a true collective bargaining relationship.[1]

Concerning the respective offers, this is the parties' first time at the bargaining table. It has been an exercise that has now extended almost a year and both parties express their desire not only to avoid repeating it in the near future (as evidenced by their respective suggestions of a three and five year contract) but are jointly desirous of having it set to rest quickly.[2] To this

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[1] In May of 1990, the United States Supreme Court upheld the Federal Labor Relations Authority's conclusion that the Federal Service Labor-Management Relation Statute (FSLMRS) required the School District to bargain over, among other things, wage and fringe proposals. See Fort Stewart Schools v. Federal Labor Relations Authority, et al. 495 U.S. 641, 110 S.Ct. 2043 (1990).

[2] Negotiations on the Agreement between the parties began May 13, 1991 and, according to the evidence, were conducted at least eight hours a day, Monday through Friday through June 18, 1991. Subsequent mediation, in mid-June on of 1991, failed and impasse was invoked on June 18, 1991. As indicated above, a subsequent referral of the matter to the Federal Impasse Panel was remanded by the Panel back to fact finding.

end, the Federal Services Impasse Panel (FSIP) wisely remanded it to the parties and to the fact finding processes, with a relatively short time frame -- a fact finding report was to be rendered no later than April 3. The parties can, of course, fulfill their own desires by accepting the recommendations with the recognition that compromise is the heart and soul of any relationship, collective bargaining or otherwise.

The Quantico teaching faculty of 111 people is, by accounts of both sides, exceptional. Sixty-five percent of the teaching force has earned an advanced degree, ranking these teachers, percentage-wise, well ahead of any school system in the state. Moreover, with due regard for the transient nature of a military base, it is a seasoned, experienced group of people. By all accounts, this is a school system that is functioning well in this community, one that is plagued by few or none of the problems of unrest that characterize some surrounding school districts. To be sure, much of this is due to the relatively closed nature of the Quantico community, but that is part of the point. This is a system that has functioned expertly and well, with strong parental support, effective and experienced teachers and able administration. It is a relationship that has worked and that ought to be preserved to whatever extent reason permits. There are no glaring imbalances or inequities in the present relationship. Moreover, in certain aspects the respective proposals are more the product of a perceived obligatory adversarialness than of a demonstrated need

for change. This, too, underscores the need to retain the present system, to whatever extent reasonable. For this reason, the emphasis in these recommendations is, for the most part, on retaining the status quo. One turns, then, to items in dispute.

Article V, Section 2 -- Integration of Past Practices[3]

The employer here seeks incorporation of language that would continue, during the life of the Agreement, "mandatorily negotiable past practices." The employer claims it does not seek authority to unilaterally discontinue past practices, merely to draft language that would freeze existing practices.

The QEA has declined to discuss or to bargain the matter which, for purposes of this Opinion, the fact finder treats as rejecting management's proposal.

In the absence of any evidence as to the actual impact of such provision, the recommendation is that no such language be incorporated into the new Agreement.

Article 5, Section 4 -- Notification of Abuse Report.

The QEA suggests incorporation of the following language into the new Agreement:

In the event a unit employee is accused of abusing a

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[3] The Article and Section numbers referenced herein are those set forth in Joint Exhibit 4, the working document containing the respective proposals. They have no necessary relationship to corresponding sections of the expired labor agreement.

> student, Management will immediately discuss the allegations with the employee prior to reporting the alleged incident to Social Service Authorities. In the event that a parent reports allegations of abuse to Social Service authorities directly, Management will immediately discuss the allegations with the affected employee as soon as Management learns from Social Service Authorities or on base family services that such allegations have been made against the employee.

According to the evidence, there have been no problems and no grievances under the current system of investigation.[4] The proposed language, therefore, does not appear to respond to a current problem that has surfaced in practice. Nor, one concludes, is the proposal necessarily appropriate in and of itself. There may be situations where some discreet inquiry by various authorities may be appropriate prior to confronting the employee. There is no cause to find that this type of protective provision, one that, according to the Association, would mandate that teachers always be informed as an initial step, is required in the new Agreement.

Article 11, Section 3(a) -- Planning/Preparation Time

Under the expired Agreement, Article XII, Section 20 provides as follows:

> There shall be four professional days for planning, of which will be one-half day of the in-service/workdays. One of the four professional days for planning will be an instructional day when the students shall be released at 1:00 p.m. and the remainder of the day shall be used for planning.

Despite the contract language, the Association claims, and it is

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[4] Transcript, p. 62 et seq.

not disputed from the evidence that, in accordance with past practice, twenty-four hours of annual planning/prep time are afforded middle and high school teachers; twenty hours to elementary school teachers. It would retain the status quo. Management's proposal for the new contract is as follows:

> There shall be four professional days for planning at the high school and middle school and three and one-half such days at the elementary schools (K-5), during which teachers will be allowed at least two and one-half hours per day for professional planning.

Management's proposal, therefore, serves to potentially reduce guaranteed preparation time to ten hours. The Union, for its part, proposes that no more than four hours be utilized during the professional days for in-service training.

A Union witness testifies, persuasively, that preparation time is desperately needed and that the professional planning days serve this need, at least in part. There is no evidence that the present allocation of hours is somehow being poorly utilized or that in-service training or system-wide planning is receiving short shrift. The finding, therefore, is that the Association proposal, which allows for up to four hours of in-service training is not unreasonable and accommodates, to a certain degree, at least, Management's desire to provide such training during the professional planning days.

Article XII A, Section 5(b) -- Tuition Assistance

Article IV, Section 8 (a-c) of the expired agreement has previously provided the ground rules for tuition assistance:

> Section 8. The parties agree that job-related training and development of teachers can substantially contribute to the primary goal of the school system. The Employer agrees to develop and maintain a program of assisting teachers in their professional education and development. Consistent with management needs and resources the Employer's training program will be planned and budgeted to meet individual employee development needs, and to ensure that the Employer maintains the professional work force with the school system requires. Under this program:
>
> a. Principals will survey all teachers in each school to review the individually determined developmental goals and tuition assistance requests of teachers. Each principle will identify those training or tuition requests which, if granted, can contribute to the mission and operations of the school The Principal will forward to the Superintendent the principal's recommendations for tuition assistance, along will all requests which the teachers had submitted for the principal's action.
>
> b. The Superintendent shall review, identify, and approve or disapprove all tuition assistance requests, based upon the availability of funds, management's determination of maximum benefit to the school system, and the limits and requirements in Chapter 41, Title 5 U.S.C.
>
> c. After all approved training has been identified, and before the end of each school year, the Employer will reimburse all teachers whose requests were approved on the following basis:
>
> (1) If funds are available to pay for the entire allowable costs to all teachers, this shall be done.
>
> (2) If that cannot be done, each teacher's initially computed share will be the quotient of the total budgetary allocation divided by the total number of participants. This method will be repeated until the

> funds are exhausted. In no case will the reimbursement to a teacher exceed the allowable expenses incurred by the teacher.

Several points are apparent. First, by agreement in the previous contract, the parties recognized that "job-related training and development of teachers can substantially contribute to the primary goal of the school system." Unquestionably, this remains the case. That language also accommodated the need for tuition assistance, but with substantial flexibility on the part of management. Subsection B, for example, allows the Superintendent to review and approve tuition assistance requests based upon the "availability of funds, management's determination of maximum benefit to the school system, and the limits and requirements" of law. Additionally, reimbursements are, according to subsection (c), conditioned on the availability of funds. The employer currently budgets $7,000 a year for tuition assistance. Employees approved for such assistance are reimbursed for tuition costs with no restrictions on the amount per credit hour reimbursed and no restrictions on the number of credit hours. Course work must be for "job related training and development" and reimbursement is subject to availability of funds.

Management's proposal would guarantee employees certain tuition reimbursements, but limited to $70 per credit hour and a maximum of three credit hours per school year. Moreover, reimbursement would be solely for recertification.

The Association, for its part, wishes to retain the unrestricted reimbursement for any "job related training and development" but seeks to make reimbursement a right not subject to the availability of funds.

To be sure, there is some merit, at least theoretically, in limiting reimbursement on a dollar and/or credit hour basis. As the employer notes, this ensures availability of funds for deserving recipients. At the same time, with reference to this particular employment relationship, it is clear, once more, that this has simply not been a problem area in the past. To the contrary, the present tuition reimbursement scheme has worked well. There has been no apparent demand outstripping supply; teachers have been utilizing funds in an apparently reasonable manner to expand their professional expertise, without necessarily restricting the application of such funds solely to recertification in a narrow field. The Board, for its part, has been responsive to the needs and wishes of its highly trained work force[5] and the current contingency -- that reimbursement is subject to "availability of funds" -- has served as adequate protection against a run on this particular bank. For these reasons, the finding is that the current status quo, as codified in Article XII

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[5] Remarkably, the Board suggests there is no necessary relationship between the extent of post-graduate education and one's capabilities and effectiveness as a teacher. The fact finder rejects this suggestion. Indeed, the wage structure of the school system, not to mention the underlying assumption behind education at all, is to the contrary.

A, Section 5, should remain, subject to a maximum of nine credit hours. The recommended language is as follows:

> Section 5. Tuition Assistance and Training. The Employer shall provide financial assistance for tuition and training to employees according to the following terms and conditions:
>
> a. Requests for tuition assistance shall be forwarded to the Superintendent for review. Such requests must contain a description of the course work, the cost of tuition, and a statement indicating the applicability of the training to the employee's current responsibilities. The parties recognize that tuition assistance may not be provided for the sole purpose of providing an opportunity to obtain one or more degrees.
>
> b. The Superintendent shall approve requests for tuition assistance for a maximum of nine credit hours each school year, for course work at accredited institutions.
>
> c. Approved tuition assistance shall be paid to employees by reimbursement upon presentation of a tuition receipt to the Superintendent after course work is successfully completed.
>
> d. The Employer, within its sole discretion, shall continue to send employees to short training courses for professional advancement as required.

Article XII A, Section 6 -- Conference Attendance.

Article VII, Section 9 of the current Agreement provides for selection of employees to attend professional conferences. The Association proposes new language that would, in essence, require management to consult with the Association as to which teachers shall attend conferences, and to inform the Association of its selections as well as its reasons for not adopting Association

suggestions as to attenders.[6] Common sense suggests that selectees for conferences be appointed on a rational basis that includes considerations of the maximum benefit to be derived by both the teacher and the School Board. But nowhere in the evidence are there grounds by which one may conclude either that the appointment process has somehow been abused in the past or that a modification of this complexity is in any way called for.

Article XII B, Section 3 -- Extra Curricular Activates

Currently, sponsors of extra curricular activities are paid at a percentage of the base pay -- the beginning salary of the BA schedule. The Association seeks compensation on the basis of the same percentages, but calculated with reference to the particular sponsor's current salary.

The Association's proposal, however, lacks merit. The current

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[6] The Association's proposed language states:

> Priority consideration for selection to attend professional conferences at the employers expense shall be given first to employees who are affected by a curriculum revision and next to those employees who did not attend a conference during the previous school year. Prior to making its final determination of who will be selected to attend conferences, the employer will provide the Association with a list of its tentative selectees and justification for not having selected any employee entitled to priority consideration. Management will consider the Association's comments and recommendations prior to making a final determination of selectees, and will notify the Association of its final selections and specific reasons why it did not implement the Association's recommendations.

salary schedule compensates teachers based on their years of teaching experience in a given subject field. This has no necessary relevance, however, to their capabilities as a sponsor of an extra-curricular activity.

The parties also differ as to the proposed table of points/percentages applicable to Varsity Cheerleading and the high school newspaper, as well as to Department Heads. Having carefully reviewed the respective presentations on these points, the employer's proposal is adopted, including compensation of sponsors at $75 per day for extra-curricular sessions that occur before the beginning of the school year. Presently, such sponsors are compensated at the rate of $50 per day. The $75 stipend is both reasonable and appropriate.

Article XII(C) -- Salary

Issue One -- Credit for Previous Teaching Experience.

The QEA proposes full credit, retroactively, for previous teaching experience for purposes of placement on the salary schedule. The employer suggest retention of the status quo, which is to credit previous teaching or military experience up to five years; provided, however, the employer would credit experience in excess of five years, in its discretion.[7] The evidence persuades

[7] The employer proposals are contained in Article XII C of Joint Exhibit 3. The QEA proposals are contained in Article XII C of Joint Exhibit 4.

the fact finder that the present system should be retained.

Issue 2 -- Credit on Pay Lanes

The current Agreement establishes eligibility requirements for placement on various pay lanes. For the BA plus 15 lane, for example, courses must be toward a Master's Degree and be completed within five years. Failure to complete the program within the allocated five years places the employee back on the BA lane. For the Master's plus 30 lane, courses must be job related, be from an accredited four-year college and be toward an approved University certificate program. The Association proposal would remove such specific requirements, providing only that "all academic course work taken from an accredited institution shall be valid..."

The pay lanes in the contract exist for the express purpose of recognizing higher level academic achievements. The restrictions incorporated in the expired Agreement (Joint Exhibit 6) are by no means unreasonable. There is no showing that they have contributed to the failure of an otherwise qualified person to progress as was contemplated under the system and the recommendation, therefore, is that the status quo be retained in the new contract.

Article XII C, Section 4 -- Timing of Salary Increases.

The current system is to be retained.

Issue 4 -- Salary Schedule.

With respect to the wage offers, which compromise the core of this dispute, the fact finder casts a pox on both houses, not in

the interest on Solomonesque baby-splitting, but because the bargaining process has failed, in this instance, to yield offers that are fully responsive to this particular relationship. The reasons for this are as follows.

Prior to the current negotiations, teachers have received generous wage increases that have served to keep them in reasonable parity with surrounding communities. In the most recent three years, for example, Quantico teachers received increases of ten percent, ten percent and five percent, respectively. Additionally, due to the existence of a step scale that ties automatic wage increases to length of service, many teachers received added stipends averaging about four percent. They rank high, therefore, both in terms of surrounding jurisdictions and communities statewide.[8] This is not a situation calling for catch-up adjustments. In this light, the increase proposed by the QEA --7% per year for three years, in addition to the step adjustments -- is simply more than reason demands. At a time when municipalities are facing financing crises and when wage freezes, or minimal

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[8] According to Association Exhibit 13, the average salary of a Quantico teacher, $38, 770, ranked them high, both locally and in the State. Comparisons of teachers' salaries is difficult and often elusive, due, among other things, to the existence of varying step schedules, salary lanes and accompanying fringes. Yet, Joint Exhibit 10 confirms that, relatively speaking, Quantico teachers have been doing well. They are fairly ranked, in terms of overall salary, with teachers from the Alexandria, Arlington and Falls Church School Districts, all of which, whether compared on the Bachelor's, Master's, doctorate, or other schedules, are among the top half-dozen districts in the state. Association Exhibit 13 suggests that Quantico Teachers would rank somewhere around fifth in the State on the basis of the overall average salary.

increases, are pervasive, this type of adjustment would catapult this school system well beyond anywhere suggested by the comparison evidence or demanded by the evidence.

But the agency's offer, for its part, is unnecessarily low. The QDSS suggests that the proper comparison is with Prince William County, but there is scant evidence as to why such comparison is proper or what it was that commended itself to the Board, other than the considerably lower salaries. In terms of size of work force, nature of the community and even length of the work day (PG County teachers work 30 minutes less per day) there is no reason for one to conclude that this particular community is necessarily an appropriate benchmark. Moreover, the impact of the Board's offer would be substantial and harsh. It would have the effect of freezing the salaries of a large part of the work force, with a notably significant impact on its more seasoned members.

The parties argue at length as to whether the School Board's offer is discriminatory in terms of its notable favoring of younger (and less expensive) teachers. The fact finder need not, therefore does not, examine the legal implications of the offer. It suffices to say that the Board's offer, if implemented, would unfairly impact a substantial number of the workforce.

The employer proposes a 9.1% increase in the BA step one salary, which would raise it from $23,560 to $25,700. It further suggests a restructuring of the Step increase schedule in the manner adopted by the Prince William County School Board. This

would effectively increase some salaries and decrease others, although it would "grandfather" any teacher whose current salary exceeds the proposed salary until that salary would equal or exceed the current rate of pay. The employer also suggests a 2% wage increase and step increases ranging from approximately 2.2% to 3.6% for subsequent years of the Agreement.

The Association, for its part, proposes three alternatives. First, it suggests a 7% increase at the BA step one salary, together with an increase in the steps for the BA and the BA plus 15 at step two and higher. Master's at step seven and higher would be somewhat decreased. Similar adjustments would apply for the second and third year of the agreement.

Alternatively, they propose the salary that now exists in the Falls Church City School System. Increases or decreases for the second and third years of the agreement would parallel those for Falls Church.

Finally, it suggest a two-tier structure, wherein its proposal of the 7% increase plus retention of annual leave (to be discussed below) would be adopted for the first year of the Agreement with management's proposal applicable to all new hires.

Both proposals leave much to be desired. Management's proposal incorporates a five-year Agreement which serves, among other things, to freeze the wages for eighty teachers. Forty-one of one hundred eleven teachers are presently at the top of the salary schedule and would, therefore, receive no pay increase for

the 91-92 school year. An additional forty teachers' salary would be frozen because the current step is higher than Management's proposed salary schedule. Indeed, only thirty of the 111 teachers would receive any pay increase.

The Association argues vigorously that, in addition to the problems engendered by the widespread freeze inherent in Management's proposal, the proposal is also discriminatory as a violation of the Age Discrimination in Employment Act. The new salary schedule, it is claimed, dramatically increases the salaries of those teachers with little experience and no graduate degrees but decreases the salary of those teachers with graduate degrees and years of experience. As indicated earlier, it is unnecessary to resolve the legal impact of management's proposal. It suffices to note that, from the evidence, it is clear that the proposal does, indeed, profoundly impact a substantial portion of the experienced faculty at the Quantico schools, this without apparent necessity or reason. This is an effective, highly educated work force that has served the system well. These teachers have received relatively generous wage increases in the past three years (10%, 10% and 5% respectively) but are by no means out of line with geographically contiguous school districts. Nor is there reason to conclude that the school system is either so similar to Prince

William County Schools [9] or that the financial status of the District is so imperiled as to warrant the type of wage adjustment suggested by the Board of Education.

While a long-term labor agreement may well inure to the benefit of all concerned (as observed, both parties suggest a relatively longer term) such an agreement is normally accompanied by higher, rather than lower, compensation.

Even considering this, however, the Association proposals do not satisfy the test of reason. As indicated above, Quantico teachers have been compensated reasonably well in the past and stand reasonably well situated as compared to surrounding School Districts. It is difficult to fully compare these teachers and this District to others. Being situated on a military base in a

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[9] Comparison with the Prince William School District is also troublesome inasmuch as that district comes under the Virginia retirement system wherein the employer contributes 7.68% of the salary and the employee contributes 5%. In Prince William County, as in most of the school systems in Virginia, a school system underwrites an employee's share, in addition to paying 6.2% toward Social Security. This amounts to a total retirement benefit of 18.88% of the base salary. In Quantico, on the other hand, teachers hired prior to January of 1984 are under the Civil Service Retirement Act. Under that statute, management pays 7% to retirement. Teachers hired after January of '84, together with employees who avail themselves of a subsequent option, come under the Federal Employee Retirement System -- FERS. These employees receive a 6.2% Social Security contribution and can avail themselves of a thrift savings plan incorporating matching contributions from management from 1 to 5%. A witness for the Association calculated that Quantico employees would have a total benefit package ranging anywhere from 7.2% to 11.2%. Thus, a differential exists between Prince William and Quantico that can amount to as little as 7.6% more for Prince William employees to a possible 12% differential.

relatively rural setting, funded not by bond issues and community political considerations, but by the Federal government, this District cannot reasonably be compared either to the Fairfax County or the Prince William County Schools. The District itself faces no immediate financial crisis nor do the teachers face the necessity of catching up. All of this suggests a labor agreement that is tempered both in terms of duration and compensation. A three year agreement will adequately respond to both parties' desire for some reasonable continuity in the labor relationship. Retention of the current Step Schedule will continue to implement a fully rational system that compensates faculty members based on the assumption of greater expertise attending greater length of service. Additionally, an across the board increase of 3%, 4% and 4.5% in each of the three years, taken together with the built-in step increases, should properly respond to both the needs of the teachers and the Board.

Article XIII -- Leave

Article IV, Section 3 of the expired Agreement provides that teachers with three years or less service get ten school holidays. Those with three to fifteen years of service get six hours per pay period annual leave, amounting to five additional days; teachers with fifteen or more years of service receive eight hours annual leave per pay period amounting to ten additional days. The

employer would modify the current scheme, providing in its proposal that all teachers would receive ten school holidays plus three personal leave days and three days of bereavement leave. The employer also proposes that unused personal leave be converted to unused sick leave at the end of the school year. The effect of this would be to discontinue the current practice of paying teachers for unused annual leave days at the end of the school year. The Association, for its part, proposes retention of the status quo.

According to the evidence, most teachers in the school system do not use their annual leave days. Inasmuch as they receive payment for these days at the end of the year, this constitutes an added, and sometimes significant, increment to their pay. From the Board's standpoint, it obviously provides an incentive for teachers to forego the use of guaranteed time off, thereby not only guaranteeing a continuity of instruction but also the avoidance of the cost of retaining replacement teaching personnel. There is no evidence in the record that suggests a need, financial or otherwise, to discontinue this benefit.

Article XIII, Section 2(c)(5) - Holidays, vacations and sick leave

This portion of the dispute involves Management's proposal that "holidays and vacations to which an individual is entitled which occur during sick leave shall not be charged against such leave." In the absence of evidence concerning the need for

revision, the status quo is recommended.

Article XIII, Section 2(d) - Administration Leave

Presently, teachers receive three days of administrative leave to attend college or university courses that begin prior to the end of the school year or that end after the new school year begins. The Board's proposal would charge this absence to personal leave. The Association, for its part, wishes to retain the status quo. There is no evidence in the record supporting the conclusion that the current system should be modified. Accordingly, the status quo is recommended.

Article XIII, Section 2(e) -- Sabbatical Leave

The present sabbatical leave provision, contained in Article IV, Section 10 of the expired contract, provides, among other things, pay at the rate of 65% of the salary for academic study and 50% of the salary for travel related to increasing the teacher's competence. The extent of sabbatical leave is discretionary with the School Board, and the number of teachers on sabbatical leave is normally limited to 2% of the faculty. A teacher not selected for a sabbatical may grieve. Both sides propose changes to the existing provision.

The Board, for its part, would reduce compensation to 50% for academic study and would abolish sabbatical leave for travel. Additionally, it would exclude the protest of non-selections from

the grievance procedure and would require a teacher to reimburse the sabbatical leave if he or she leaves Quantico for any reason within three years.

The Association would make all teachers eligible for sabbatical leave after seven years' service, with the sabbatical becoming a contractual right.

There is reason to conclude that neither side's proposals for change has merit. The evidence contains no indication of a financial drain as a result of sabbatical requests, and, particularly considering the rather broad discretion that resides with the Board at this point in terms of granting such leaves, the present mechanism appears to present no significant threat. There is no reason to conclude that leave for travel which, in fact, is designed to increase a teacher's competence should not, in the appropriate case, be compensated as it is at present. Nor is there cause to find that a teacher should somehow repay a sabbatical leave if he or she leaves within three years.

In academia, sabbaticals have traditionally been considered a time for refreshing and renewing. They normally occur only after a set period of acceptable service and, while the concept of renewal contemplates further service, there is no cause for, nor is there any model or precedent that would suggest, the type of penalty inherent in the repayment provision here suggested by the Board. The fact-finder, therefore, recommends retention of the

present provision.

The employer proposes that seniority be considered in granting sabbaticals when candidates are equally qualified in all respects. This is by no means unreasonable and is recommended.

Article XIII, Section 4(c)-(d)-(e) -- Excused Absences

Article III, II and XII of the expired agreement deal with leave policies relevant to personal business on base, visitation of other schools or conferences, and funeral services of other faculty members. Article XII, Sections 16 deals with bereavement leave for immediate family members. The parties have each made proposals with respect to changing the current status of such leaves. But the record is devoid of any compelling reasons supporting the changes and retention of the status quo under the expired agreement is, in all cases, recommended.

Article XIII, Section 4(a) -- Parental Leave

Based on the testimony and evidence, the following language is recommended:

a. Parental Leave

(1) Leave related to pregnancy and confinement or care of infants, including adopted infants, may consist of sick leave, advanced sick leave, annual leave or leave without pay, as applicable. Female employees may use sick leave for maternity reasons when incapacitated for duty or when undergoing examination or treatment related to pregnancy and confinement as documented by medical certification of a physician. Leave without pay normally will be granted only when

appropriate accrued leave has been exhausted. An employee requesting leave for maternity reasons should notify the supervisor as early as possible of the types of leave requested, the approximate dates and the expected delivery date.

(2) An employee may request Only annual leave or leave without pay, if adequate annual leave is not available, in order to care for minor children or the mother of the newborn child while she is incapacitated for maternity reasons. Approval of such leave is subject to the rules applicable to annual leave or leave without pay for other purposes.

b. Worker's Compensation Leave: An employee absent from duty because of an accident incurred in the line of duty and which qualified the employee for Worker's Compensation shall be granted leave and this leave shall not be deducted from the employee's accumulated sick leave. Worker's Compensation leave shall be granted from the first day of disability provided such person shall qualify for loss time benefits, in accordance with law and applicable government-wide regulations, and shall extend for such time as the employee qualifies under said regulations for compensation and benefits.

Article XIII, Section 5 -- Bereavement Leave

The current Bereavement Leave Section is contained in Article XII, Section 16. The language grants three days of excused absence for immediate family members. The Association's proposed language establishes an expanded definition of "immediate" family member to include, among others, spouses of children, in-laws and any blood relationship "who close association was such as to have been the equivalent of a family relationship".

The Association proposal also would modify the allotted time from the current status -- three days total per year -- to three days for each incident of bereavement. There is no cause, one

concludes to extend the bereavement benefit this broadly for, among other things, there is no way to estimate the rather broad absenteeism that might result from this type of provision. It is not, therefore, recommended.

RICHARD I. BLOCH, ESQ.

April 3, 1992

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