

LINCOLN COUNTY SCHOOL DISTRICT
Board of Directors- Special Session
Tuesday, August 23, 2016 – 6:00 p.m.
Newport High School
Newport, Oregon

Minutes

PRESIDING: Ron Beck, Chairman

Present: Ron Beck, Chairman; Amanda Remund, Vice Chairman; Liz Martin, Karen Bondley, Directors

Also Present: Steve Boynton, Superintendent; Michael Morgan, Director of Human Resources; Brian Hungerford, LCSD Attorney; Margaret Olney, OEA Attorney; Jason Foltz, LCEA UniServ; Peter Lohonyay, LCEA President; Laurie Urquhart, Secretary

Handouts: From Ms. Olney- Lincoln County High School Instructional Time 2016-17;
From Mr. Morgan- 2016-17 Schedule

Call to Order- Establishment of a Quorum

Chairman Beck convened the meeting and called the session to order at 6:00 p.m. with a quorum of four board members present. Director Kelley Ellis was excused from the meeting.

Welcome and Purpose

Chairman Beck welcomed participants and the audience, and explained the purpose of the special session was to hear a Level III grievance. He stated the Association would have 20 minutes to present, followed by a District representative for up to 20 minutes. After that, the Association would be given the opportunity to present rebuttal information for ten minutes. The District then would have up to ten minutes for a closing statement.

The Board could ask questions during the hearing. Following the presentations and questions, the Board would deliberate and reach a conclusion.

Association Presentation

OEA attorney Margaret Olney stated that this is a grievance about the fundamental aspects of a teachers work life: student contact time and their receiving instruction. "It is a complicated district here. I see the challenges of the disparate geographic locations. But despite that, the contract should be honored," said Olney.

She stated some students receive significantly more instructional time than others, sometimes by as much as ten days. She said some of the confusion lies in the definition of terms: instructional time and student contact time. The grievance is not about those terms as defined by the Oregon Department of Education, but about face time between students and their teachers.

Ms. Olney stated that a similar number of days does not mean the student contact time is the same. She expressed shock when she discovered the difference between the north and west areas compared to east and south (170 days of instruction compared to 164, respectively), said Olney; six days' difference of student contact time. "You have to look at the bell schedule; the calendar is only one piece," said Olney.

She distributed a summary document she prepared showing proposed high school instructional time for 2016/17, with a caveat that the document likely will have corrections. She noted her handout is not granular.

Ms. Olney noted the schedule was changed at Toledo Jr./Sr. High to go from six periods to five. “The gross disparity is what we are challenging in this grievance. The superintendent does not challenge this; students at some schools see more instructional time than at others.”

She stated the superintendent’s first argument is that what occurs in the school day is a management right, and that principals and staff determine that. She said these factors may not be changed without bargaining them, and made reference to a legal case in 2003 involving Lincoln County School District and prep time at the middle school level. She said the same argument applies to the grievance, which was rejected in that case. “Instructional time and student contact time cannot increase without bargaining; you must notify the Association about the change,” said Olney.

Director Beck asked if this was not done and if the calendars were not sent to the Association. Olney replied that “The calendars tell us nothing. The union was told the change in trimester schedule would be addressed in bargaining.”

The Superintendent’s second argument, said Olney, is that the district needs flexibility to meet the needs of each community. She agreed this is true, but said it should still be within confines of the contract and should still meet bargaining obligations.

Ms. Olney also asserted that the “Superintendent also said the calendar is okay if the building approves it. There is lots of room for mischief in that; it is hard to say no to principals. Especially new teachers may have a lack of knowledge about their rights. It is not incumbent upon teachers to know they must be notified. There is clear case law about this: an agreement by a building is not a substitute for the Association. One of primary roles of the Association is a bulwark.”

Chairman Beck said that a few years ago the district had five or six calendars and is down to two for the current year. He asked if the alleged disparity was an issue in the past. Ms. Olney replied that in 2014 there were different calendars and Memorandum of Understandings (MOUs). She said she was unsure if instructional time was different in the past. Former Human Resources Director Chelsi Sholty wrote that “there will be no change in schedule without notifying the Association.” Olney said the Association wants to be a partner with the District.

Director Beck reminded Ms. Olney that this year, the board published the calendars and gave the Association time to look at them. The district did not hear back from the Association and tabled the decision for a month, when they adopted them.

Ms. Olney stated her belief that “we had made a demand to bargain before that. Part of the problem is that the calendars are focused on a narrow subset of what we are concerned about. They do not reflect student contact time.” She added that it took a while to “sort this out. It did not make sense to me that a district could have six days different.”

The OEA attorney said the Superintendent’s third argument is that it would be impossible for the work load to be perfectly equal between buildings. “The Association agrees with that. But it doesn’t mean it is permissible to have such gross disparity of work load. Class size is a permissive topic. This is a well-established fact of workload that some teachers are teaching ten more days than others. As a parent, I would be concerned as well.”

Ms. Olney asserted that the district reacted in a retaliatory way with the reduction of one period at Toledo Jr./Sr. High, where the LCEA President (Peter Lohonyay) teaches. She said the Association’s objective is to alert the

board and community to “gross inequities. We want to return to parity; it does not have to be exact, but cannot be ten days.” She said the Association is open to MOUs.

Ms. Olney raised the topic of the trimester schedule, and said that at Toledo Jr./Sr. High teachers agreed to teach a sixth period in order to “make it work for the kids. Now, the building was told they can no longer teach six periods, but would go back to five. No other considerations of other ways to address this were offered. Going to a semester schedule would be one way to address this. This was explicitly done due to this grievance, and is problematic.” She said the change undermines the successful STEM program there. “People felt powerless, and disrespected. I understand on one hand: there was a disparity to be dealt with. But the way it was done lends itself to an unfair labor practice. We do not want to litigate this. Would like to sit down and problem solve in a collaborative manner.”

District Presentation

Director of Human Resources Michael Morgan presented for the District. He noted it is important to remember the purpose of a grievance is to consider if the contract was violated rather than if there is a right to bargain. He stated he appreciated Ms. Olney’s perspective, but said that nothing was presented by the Association to demonstrate that the contract was violated.

He stated the change in the schedule at Toledo Jr./Sr. High had nothing to do with this issue, but was done as a result of test scores between the two trimester schools. He noted that he examined bargaining notes from last year, as he was not part of that process. He said he did not find anything related to trimester schedule.

“I asked questions about that. It appeared that the Toledo teachers wanted to add a bonus period that would increase the amount of courses that kids could take. This did increase the amount of instructional time. It was proposed by the school, and supported by the administration. There was no promise to continue this schedule. We looked at how Waldport (the other trimester high school) students did compared to Toledo’s. They demonstrated significantly more growth. So, we looked at using the Waldport model for the trimester schedule.”

Chairman Beck reiterated that the two trimester schools, Waldport High and Toledo Jr./Sr., were on different schedules for a time. Mr. Morgan replied that they were, and added that the bonus period at Toledo did not allow all students to participate due to the busing schedule.

Mr. Morgan also pointed out that he and Mr. Lohonyay meet regularly and that there were discussions about this over time. He said the first notification he recorded was May 16, 2016 when he and Mr. Lohonyay discussed the demand to bargain. This was after board action on the calendars, which do express the instructional days, but not in detail.

“This is not a grievance of the contract language per se. The teachers’ work days were not violated. We have allowed the buildings to make that decision.” He said the district exerts control on the instructional day when evidenced by test data that would drive such a change. “We allow schools to determine how much remediation time they need. It is a benefit that the schools can determine remediation time; it can make a big difference in student achievement,” said Morgan.

Director Bondley asked if cutting the bonus period at Toledo increased class size; it did. The length of class time was also increased, and art was reduced from two periods to one.

Chairman Beck asked how different the achievement between the two schools was. “It was significant, and relates to growth, rather than who passed. Waldport had gains, but in Toledo more students lost ground than even stayed neutral,” said Morgan.

Mr. Morgan reminded the Board that the concept of the grievance is to address violations of the contract, and that did not occur.

Association Rebuttal- (recess to discuss) 6:41 to 6:46 pm.

Ms. Olney introduced UniServ Jason Foltz, who participated in negotiations of the current contract. Mr. Foltz noted that the issue of the change to a trimester schedule was not raised during bargaining. "It wasn't brought up," said Foltz. He said the district had an obligation to raise the issue of the trimester schedule, and the change from six periods to five at Toledo High as it was a "major change."

Chairman Beck asked for clarification of the timeline surrounding the use of the trimester schedule and calendar. He noted the calendar for the trimester schedule for WHS and Toledo was adopted in spring of 2014/15, during bargaining. "The school year was over but bargaining was not complete. Then, bargaining began again in 2015/16."

Attorney Olney said that the district did not make a proposal about the change to a trimester schedule. "It was discussed as a trial balloon and temporary. That was not the fight at that moment. That's why, for this year, there was a demand to bargain."

Ms. Olney said, "This grievance is really about every contract: good faith and fair dealing. We are not alleging a violation of concrete terms. Fundamentally, it is a violation for teachers to teach such different amounts of instructional time. As to bargaining, it is clear that the Superintendent did not think there was an obligation to bargain this." She added that the administration said the change from six periods to five at Toledo was due to the grievance, not due to test scores. "Test scores were not out yet," said Olney.

She added that conclusions cannot be drawn from one year of data. She said the change in schedule at Toledo was done in retaliation, and said there is another grievance about insurance for part-time teachers. This other grievance involves a teacher at Toledo Jr./Sr., the same school where the LCEA President teaches.

District Closing Statement

Director of Human Resources Michael Morgan distributed a copy of a schedule showing instructional time for each school this year. He noted it is calculated the same way for every building and is consistent. He said he was struggling with the notion of the schedule not being raised during bargaining. "It seems strange. If that was a concern, why was it not brought up? I did not see any notes that it was a concern," said Morgan.

He added that Mr. Lohonyay and he meet monthly, and added that Mr. Lohonyay also meets with the Superintendent on a regular basis. "If it was a concern, why was it not brought up at one of those meetings?"

Mr. Morgan said administration started seeing the growth (or lack of) pattern early, before test scores were out. He agreed that one year of data is not ideal, but "you have to look at something. The Association had many times to informally discuss the issue, and this did not happen."

Mr. Morgan urged the Board to uphold the superintendent's decision. "You may need to make some other kinds of considerations. Whether it means discussions or opening bargaining is to be determined," he added.

Board Questions and Deliberation

Board Chair Ron Beck noted questions of either side would now be accepted. Director Remund asked Ms. Olney if the hours she had for teaching the sixth period at Toledo were based on student attendance. Mr. Olney replied it was based on the fact that the teacher was teaching then.

Discussion of the grievance. Chairman Beck asked board members to now consider the alleged violations of the contract, Articles 15 and 18 in this grievance.

Article 15, work year. Mr. Beck noted he heard nothing challenging this, and asked if any board members had questions about alleged violations. Director Bondley did not have questions, but commented that the contract needs to be dealt with as it exists now, and said teachers are professionals.

Article 18, salaries. Director Remund noted she did not see anything that should have been bargained. Chairman Beck agreed, noting this article is about salary and placement on the schedule.

Chairman Beck recalled that discussions with the community college were occurring about the same time. Superintendent Boynton agreed, saying the trimester schedule was developed to provide more opportunities for students at small schools. Mr. Boynton said staff at both schools were involved in the discussion, including the union president.

Mr. Beck commented “I have always cherished the fact that our schools had the ability to adjust their schedules. With the change in Human Resources directors and the Superintendent, it may not have been worked out perfectly. I don’t see a violation of either article, or the fair dealing clause. I believe the district is executing the terms of the contract.”

Director Martin said she has been involved with bargaining in the past. “With some new players on the team, we cannot assume that things will be the same. This will help with transparency in future bargaining. For today, I do not see that the contract was violated.” Director Remund agreed.

Chairman Beck noted the board could sustain the decision of the superintendent, or could overturn it. “I cannot find that the good faith and fair dealing clause was violated,” said Beck.

Attorney Brian Hungerford said that clause could allow anything to be subject to grievance. “You need to decide if actual articles of the contract were violated,” said Hungerford.

Decision of Superintendent Sustained

Motion 16/17-6

On motion of Director Bondley, seconded by Director Martin, the Board unanimously sustained the decision of the Superintendent regarding the Level III “Inequitable Workload and Salary” grievance.

The meeting was adjourned 7:21 p.m.

Chairman

Superintendent