

Monday, April 8, 2019 [Corrected]

MINUTES OF THE SPECIAL MEETING OF THE
BRIDGEPORT BOARD OF EDUCATION, held April 8, 2019,
at Bridgeport Regional Aquaculture Science & Technology
Education Center, 60 St. Stephens Road, Bridgeport,
Connecticut

The meeting was called to order at 6:06 p.m.

Present were Chair John Weldon, Secretary Joseph Sokolovic, Hernan Illingworth, Sybil Allen, Maria Pereira, and Joseph Lombard. Chris Taylor arrived subsequently as noted.

Supt. Dr. Aresta L. Johnson was present.

The sole agenda item was BEA Grievance 2763, class action relating to class size and no substitutes.

Atty. Eric Marshall appeared for the Bridgeport Education Association. He said the grievance involves the impact of the district's decision not to hire substitute teachers last May and in September 2018. He said Article 7.1.1 of the contract codified class size limits depending on grade level. He said 7.1.2 provides exceptions only if the superintendent determines that it is necessary to do so in the best interests of the educational process, but not for purely financial reasons. He said it is the expressed intent of the parties in the contract not to split grades, yet that is what happened.

Atty. Marshall said in May and September split-grade classes occurred frequently. He said the data he was

presenting was only a small sample of what teachers in the district collected. He said there were more than 250 instances in May when either class size limits were exceeded or split grades were achieved, or both. He said the data highlighted when the split grades were more than two grades apart, including mixing students as much as eight grades apart. He said most class sizes were exceeded by two to five students, but sometimes it was exceeded by double-digit numbers.

Atty. Marshall said the practice raises concerns about student safety and whether the district is providing the mandated appropriate education for students. He said teachers raised concerns about knowing the students' IEPs and medical needs. He said special education teachers were routinely pulled out of classes to provide coverage when substitutes were not provided.

Atty. Marshall asked the board to find that the contract has been violated.

Atty. Floyd Dugas of Berchem Moses said the case was about when a class size exceeds a certain number on a permanent basis. He said last year to address financial deficit a decision was made not to provide subs except in limited circumstances. He said if the board approves the grievance it would reverse an action of the superintendent and reverse an action of the board to not provide substitutes in October as well.

Atty. Dugas said a grievance is not an opportunity or a vehicle to complaint about anything you want to complaint about. He said a grievance must demonstrate a clear and unequivocal violation of contract language, with the burden of proof on the union.

Atty. Dugas said looking at the entire Article 7 makes it clear it is only talking about permanent assignments. He said it does not apply to a given day when students have to be split on a given day because a teacher calls out.

Atty. Dugas said 7.1.2 indicates exceptions to the provisions of this section may be made only if the superintendent determines it is necessary to do so in the best interests of the educational process. He said faced with a significant budget deficit a decision was taken to not provide substitutes in May except in limited circumstances, which yielded an estimated \$100,000 in savings. He said the superintendent made the determination that was necessary and in the best interests of the district or the educational process.

Atty. Dugas said the way he reads the contract a split-grade class is one that has multiple grades in it.

Atty. Dugas said the remedy requested is to pay the teachers, who are not hourly employees, an hourly rate for each hour for each student assigned to their class. He said the estimated cost of the request is hundreds of thousands of dollars for May. He said the contract does not provide for an hourly supplement for a teacher the board is already paying.

Atty. Dugas said another reason to deny the grievance is the failure to file it timely. He said the contract calls for a grievance to be filed within thirty days after an event. In 7.1.6 it indicates that this type of grievance has to be filed within three school days, yet the grievance was filed on June 25th for the month of May. He said he believed the grievance would be denied by an arbitrator on that basis if it gets that far.

Dr. Johnson said she brought the matter to the BEA and BCAS in the hope that we could all work together because the district is spread so thin. She noted the trend of high absenteeism for teachers in May. She said if the district was prevented from doing this it would impact the educational services that have to be provided to all the children.

Ms. Pereira said the policy applied to September and May. She said teachers are required to use all their personal days by the end of the year or they will lose them.

Ms. Pereira said the Marlene Sigel, the chief financial officer, said at the last Finance Committee meeting that the policy would not be implemented in May 2019.

Ms. Pereira said the October 1st date only applied to controlled transfers and has nothing to do with the provision in question. Atty. Dugas said the whole article deals with class size.

Mr. Taylor arrived at the meeting.

Ms. Pereira said she did not believe it was possible to argue that it was great to mix 6th, 7th and 8th graders in the same class with kindergarten students. She said the only reason this was done was because it was a cost-savings measure.

Atty. Marshall said there is nothing in Article 7 of the contract that says anything about class sizes on a permanent basis. He said there is precedent for paying teachers in situations like this. He added the timeliness claim is being raised for the first time now and that should be considered a waiver of that defense.

Atty. Marshall said the BEA's position is that to go from financial savings to educational benefit is a stretch. He said that could not be what was contemplated when the language was negotiated into the contract.

Atty. Dugas said today was the first time he raised the timeliness issue and Atty. Marshall was wrong and it could be raised any time before arbitration. Dr. Johnson said it came to her as a class action so it did not go through the tiers.

Atty. Dugas said the time limits regarding grievances gives the district time to react to the situation. He said it needed to be filed, in a worst-case scenario, within three days after the month of May.

Atty. Marshall said the time limits are inapplicable because the district did the same thing in September 2017 and the union objected formally to it. He said the union did not pursue the grievance at that time because it was assured it was a one-time deal and would not happen again. He said this gave the district notice that the union objected to this practice.

Ms. Pereira asked if the board agreed not to do this again if the BEA would withdraw the grievance. Mr. Marshall said yes.

Atty. Dugas said 7.1.6(b) indicates that if no written grievance is delivered by the 30th day after the date of enrollment of the first student that will cause the contractual limits to be exceeded it will be recognized that the grievance has been waived. He said this indicates the union has waived the grievance.

In response to a question, Atty. Dugas said the board could deliberate in a non-meeting.

Ms. Allen moved to recess into a non-meeting to discuss the merits of this grievance. The motion was seconded by Mr. Sokolovic.

The motion was approved by a 5-1 vote. Voting in favor were members Weldon, Taylor, Allen, Sokolovic and Lombard. Mr. Illingworth was opposed. Ms. Pereira abstained.

The meeting was recessed at 6:49 p.m. and reconvened at 7:03 p.m.

In response to a question, Atty. Marshall said the BEA would withdraw the grievance in exchange for an agreement for a cease and desist not to do this again going forward. He said he agreed with Mr. Weldon that this kind of thing will occur just as a matter of day-to-day operation where there simply aren't enough people to fill absences.

Mr. Marshall said the grievance was about a policy of the district, not an isolated incident. He said he did not believe the grievance had ever been about isolated incidents.

Ms. Pereira noted Kelly Services only guarantees a 92 percent fill rate for substitutes.

Ms. Pereira moved *"to immediately cease the practice of failing to provide substitutes as a cost-saving measure on the condition the BEA withdraws Grievance 2763."*

The motion was seconded by Mr. Sokolovic. The motion was approved by a 6-0 vote.

Voting in favor were members Illingworth, Sokolovic, Pereira, Weldon, Allen, and Lombard. Mr. Taylor abstained.

Atty. Marshall said he would write the matter up with Atty. Dugas and present it to Dr. Johnson. Atty. Dugas said he spoke to the superintendent and she was amenable to such an agreement.

Ms. Pereira moved the meeting be adjourned. The motion was seconded by Ms. Allen and unanimously approved.

The meeting was adjourned at 7:08 p.m.

Respectfully submitted,

John McLeod

Approved by the board on April 22, 2019