

October 27, 2009

The Marshall County Board of Education met in special called session on Tuesday, October 27, 2009, at approximately 6:40 p.m. in the Board Conference Room at Jones School to discuss responses to a grievance on Article 18: Posting of Positions and a grievance filed by Michael Frey, and to select a member for the negotiating team to replace Dr. Curtis.

Members present were Curt Denton, Kristen Gold, Mike Keny, Craig Michael, Delinda Owens, Randy Perryman, and Ann Tears. Todd Tietgens and Mark Wilkerson had resigned their seats. No members were absent.

Prayer/Pledge

Since school system attorney Sam Jackson was late in arriving, Mr. Denton made a motion to address the issue of selecting a member of the negotiating team before the first items (grievances) listed on the agenda. Ms. Tears seconded the motion and the motion passed 7-0.

Current members of the negotiating team include Mitchell Byrd, Janet Wiles, and Lyn Stacey. Mr. Denton made a motion to appoint Craig Michael to fill this position since he has previous experience on the team; Ms. Owens seconded the motion. Ms. Gold stated that since the previous director of schools served on the negotiating team, she asked when negotiations usually start in the contract year in case the board wanted to select the next director for this position. Interim Director Roy Dukes said it was a decision for the board whether or not to place the next director in that position; he added the law states a board member can fill the position, and there may be issues that need to be discussed in preparation of the 2010-2011 school year. Mr. Keny asked Ms. Wiles if the system has a 30-day window in which to get the vacancy filled; Ms. Wiles said it's 30 days to name someone to the management team, not the negotiating team. Miley Durham, TEA UniServi Coordinator who was in attendance for the next grievance, told the board it is a 30-day window to name someone to the team. Ms. Gold asked if there is a limit to the number of people on the negotiating team; Ms. Wiles said there is no limit for the negotiating team, but there is for the management team. Mr. Michael encouraged the board to name a chief negotiator, because negotiations are an ongoing process and the negotiating team may want to discuss several issues and have a game plan for those issues. Mr. Jackson arrived

at this point in the meeting; he told the board he hasn't looked at the contract, but usually the board has 30 days to fill the position on the negotiating team. The motion to name Mr. Michael to the negotiating team passed 5-1, with Ms. Gold voting no and Mr. Michael abstaining.

Mr. Denton suggested the negotiating team meet to discuss appointing a chief negotiator.

The first grievance addressed for response was Article 18: Posting of Positions. Mr. Jackson said the board's responsibility during the evening was to uphold or deny the grievance that's at issue; his understanding about the positions that were posted, according to the contracts, what he has reviewed, and what was said in the previous week's meeting, the decision to transfer or fill positions is the director of schools purview, not the board's. The board has only one employee: the director of schools. He added this is one of the times the board finds itself in a position that they do not get to make that decision, even though there is a grievance procedure in the contract.

Mr. Keny opened the floor for discussion. Mr. Michael questioned the third position indicated on the grievance: Mentor Teacher. He stated when you read the contract in Article 18B, it says if a position remains vacant because no one applied, the vacancy may be re-posted as a new position and the description for the new position can be different from the original posting. He went on to say Dr. Curtis's response to this portion of the grievance reads the need arose to repost the mentor position when there was only one full-time applicant for the secondary mentor position. Mr. Michael said following the contract to the letter, it states that if *no* applications are received, and the reply given was there was one application, which is inconsistent with the contract. Mr. Jackson stated that the right to make a decision on hiring cannot be taken away from the director of schools; he went on to say when the position was posted the second time it was posted with changes, in essence making it a different position. He added there was nothing in the contract that states if the posting has one qualified person apply, that the position can't be reposted. For clarification, Mr. Keny said if one person applies for a position the director of schools can choose to hire or not hire that person, and if the director chooses not to hire the applicant, the position can be reposted; Mr. Jackson agreed, and the position can be reposted with different qualifications, job duties, or requirements for the position. Mr. Dukes asked if a job is posted and only one person applies who is not fully qualified, you simply repost to get a qualified person, but if the person is qualified you would move

ahead on that one applicant; Mr. Jackson stated you could move on with that one applicant or, as the director of schools, you could choose not to hire that person and repost the position.

Ms. Tears made a motion, based on what the attorney has told the board, to uphold the decision made by the former director of schools and the grievance be denied; Mr. Perryman seconded the motion. The motion passed 5-1 with Mr. Michael voting no and Mr. Denton abstaining. Mr. Jackson will draft a letter to the MCEA reflecting the decision.

Concerning Mr. Frey's grievance, Mr. Jackson addressed a concern voiced by Mr. Frey during the October 19, 2009, meeting of the board of education. The question was whether or not Mr. Frey would retain his teaching license if he was not in the classroom; it's Mr. Jackson's understanding that the Tennessee Department of Education has a process where they allow a waiver for situations such as this. When this happens, the board will allow the individual to put his/her license on hold, or waiver, and when they go back into the classroom, the license basically picks up where it left off (it is Mr. Frey's responsibility to apply for the waiver). Regarding whether the contract is covered under the negotiated contract, Mr. Jackson read from 49-5-602 (definition #11): Professional employee includes any person employed by a local board of education in a position which requires a license issued by the Department of Education for service. He added the position in which Mr. Frey currently holds as director of transportation does not require a certification or license from the state; therefore, he is not employed as a professional employee as defined in the Education Professional Negotiations Act, so the contract would not apply. He said the board, under the contract, may not have the ability make him a professional employee when he's not, but the board sets the salary for that position, which the board did in an earlier meeting.

Regarding questions about the salary of a supervisor with 17 years experience and a Master's Degree, clarification was made that the Supervisor's Supplement Schedule (Matrix) which shows a 14% supplement for a supervisor with zero years of experience as an administrator is no longer in use; it applies only to supervisors who were on the Matrix at the time it was eliminated. The salary Mr. Frey currently receives is based on a teacher salary schedule for an employee with his years of experience and degree and prorated for a 12-month contract.

Mr. Michael stated his concern is the system has an employee who was involuntarily moved into a position, who supervises an important part of the

organization and is not being compensated for the work he does as a supervisor, and he feels that is inappropriate. Ms. Tears added that she has stated in the past the pay scales at the Central Office are out of line, not just the Transportation Supervisor position; she added there may be other positions that need to be looked at and be fair across the board.

Board members took time to review information garnered from surrounding counties regarding Supervisors of Transportation, including salaries, contract length, and job descriptions. Mr. Perryman suggested placing Mr. Frey back in the classroom and posting the Supervisor of Transportation position; Mr. Dukes responded that currently, with Mr. Frey's supervision, things are going good in that department, and asked if the job is posted does the board would have to come up with a description, requirements, and job title to fit the task.

Mr. Jackson asked if Mr. Frey has an amount that he feels he should be paid; Mr. Frey responded he feels as if his position is equally important to the supervisor of attendance or human resources, who are not directly supervising children, and the supervisor of instruction. He added that in his position he feels he is no different than any other certified supervisor. Mr. Jackson, in using Appendix B of the Contractual Agreement between the Marshall County Education Association and the Marshall County Board of Education, and with the assistance of Budget Director Janet Wiles, determined that per the salary schedule for supervisors and prorating the salary to a 12-month contract, Mr. Frey would be paid \$58,064.40 should he be paid on a supervisor's salary schedule; Mr. Frey is currently being paid an annual salary of \$56,138.

Ms. Gold made a motion that Mr. Frey be paid on a supervisor's salary schedule based on his degree and years of experience resulting in \$58,064.40. Mr. Jackson stated the board should vote whether or not to uphold the grievance first, because Mr. Frey has asked the board to rule on his grievance. Mr. Jackson reiterated that he feels a grievance is not proper because Mr. Frey is not a professional employee; he re-read 49-5-602, which he read to the board at the beginning of the meeting concerning professional employees. Ms. Gold withdrew her motion to allow the board to vote on the grievance.

Mr. Michael asked Mr. Jackson to once again read 49-5-602, definition #11.

Mr. Perryman asked Mr. Frey if he would be satisfied with the aforementioned \$58,064.40 and drop the grievance. While waiting for an answer from Mr. Frey,

Mr. Denton asked if the salary was raised, if and when Mr. Frey is replaced would the incoming salary be the base salary; Mr. Jackson said the salary could be set at a different amount before hiring a new person. In answering Mr. Perryman's question, Mr. Frey said no, he would like to be paid the same as other supervisors.

Mr. Michael asked Mr. Jackson if, from the state's perspective, the attendance supervisor position is mandated as a certified position or is this controlled by the LEA; Mr. Jackson stated he was not sure, but Mr. Dukes stated that in the past it has been a certified position. Clarification was made that the HR position is not a certified position.

To clarify the supervisory positions and salaries not requiring certification, Mr. Michael mentioned food service, maintenance, human resources and transportation with salaries ranging from the low \$50,000 to almost \$70,000. Mr. Jackson stated the board would have to make a decision of pay; he went on to reference Mr. Perryman's question to Mr. Frey about being satisfied with the salary of \$58,064.40, per the supervisor's salary schedule to which Mr. Frey said no, he wanted to be paid as the other supervisors. Mr. Jackson added that if Mr. Frey were paid this amount, he would be paid on a supervisor's schedule. Mr. Michael asked Mr. Jackson if the grievance had to be voted on before a motion was made addressing the adjustment of salary; Mr. Jackson stated, after looking at the agenda, that he felt the board could make a motion prior to voting on the grievance. Mr. Michael then made a motion to set the supervisor of transportation salary at \$61,000 which is in line with surrounding counties and falls between the high and low salaries of supervisors in positions that do not require certification or license, even though this individual is a certified individual in this position. The motion failed for lack of a second.

Addressing a portion of the grievance which stated Mr. Frey is deprived of all professional development opportunities as a teacher, Mr. Jackson stated there would probably be opportunities for someone in Mr. Frey's position to attend conferences; Mr. Dukes agreed. Mr. Jackson said that the school system had an obligation to provide these opportunities for certified personnel, without any action from the board.

Mr. Denton asked, since Mr. Frey's grievance mentions being paid in accordance with the Matrix which is no longer in use, if the grievance is upheld would the board be obligated to pay per the Matrix; Mr. Jackson said yes.

Ms. Owens made a motion, with a second by Ms. Tears, to deny the grievance. The motion passed 7-0. Mr. Jackson will draft a letter to Mr. Frey reflecting the decision.

Mr. Denton told the board he feels Mr. Frey is doing an excellent job as supervisor of transportation.

Mr. Keny made a motion to pay Mr. Frey according to the supervisor's schedule and make it retroactive to the date he started as supervisor of transportation; Ms. Owens seconded the motion. Ms. Tears reminded the board there are other positions in the system in which employees may or may not be at the level of pay they should. Mr. Keny asked Mr. Dukes if he would look into this; Mr. Dukes said he would check with surrounding counties to use as a comparison. Mr. Denton expressed his concern that it wouldn't be fair to others if Mr. Frey was given a raise just because he brought a grievance before the board, and they wouldn't be given a raise. Ms. Tears said the attorney had stated earlier the pay previously set by the board for Mr. Frey was fine; Mr. Keny concurred. The motion to pay Mr. Frey according to the supervisor's salary schedule failed 5-2 with Mr. Keny and Mr. Michael voting yes.

The meeting adjourned at 8:10 p.m.

Respectfully Submitted,

Mike Keny, Chairman

Roy Dukes, Interim Director