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State Board of Education

Educational and Cultural Serv.

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Attorney General

Salary of V.T.I. Instructor under Master Contract

SYLLABUS:

When provisions in a contract specify the method for adjustment of wages by use of attached salary schedules, computation of salary adjustments must be confined to the terms of the contract, and consideration should not be given to salary schedules utilized prior to the contract period.

FACTS:

The State Board of Education entered into a Master Contract with the Vocational Technical Institute Faculty Association effective July 1, 1972. Article VI of the Contract contains salary provisions as follows:

- "A. All instructional personnel now on the VTI instructors schedule will be moved to the current state pay plan in the following manner:
1. Initial placement will be based on the 1972-73 salary status. Location on the state pay plan for range and step will be determined by relative position on current salary schedule as provided in the attached Schedule A.
 2. For 1972-73, instructors currently contracted for 44 weeks will move from their weekly salary (based on a 44-week proration) to the closest higher weekly rate on the existing state pay plan and placed on a 42-week contract.
 3. Instructors may be promoted annually (to the limit of their range) subject to satisfactory evaluation of their performance. Instructors' salaries shall range from 18B through 25Y on the state pay plan.
 4. For the duration of this agreement, no instructor now on 44-week contract shall suffer a loss in total annual salary during the period of adjustment to a 42-week contract period based on the above plan.

* * * ." Paragraph 6.1, A, 1-4. (Emphasis supplied.)

In March, 1973, Instructor Nakell of the Business Education Department at Northern Maine Vocational Technical Institute was informed his salary for the school year 1973-74 was to be \$10,483.20. (A memo dated March 15, 1973, attached to this opinion and designated Appendix A, shows how the figure of \$10,483.20 was arrived at.) In due course, Instructor Nakell complained to Commissioner McGary about the amount of salary. Mr. Nakell believes the salary should be \$10,755. Mr. Nakell reasons that the terms of the Master Contract relating to salary should be interpreted to mean that no instructor will receive less salary than he would have received under a previous salary schedule.

In a letter dated March 30, 1973, Commissioner McGary advised the teacher that it was his opinion the correct amount of salary to be paid the teacher for the school year 1973-74 was \$10,483.20; and not the amount contended for by the teacher. The Commissioner reasoned that the salary provisions of the Contract intended to make use of pay schedules attached to the Contract and that utilization of "previous pay schedules" was not in order. Moreover, the Commissioner noted that Mr. Nakell suffered no loss of salary during the transition period, i.e., the period during which the work year was reduced from 44 weeks to 42 weeks.

There is no dispute about the fact that when the Master Contract was negotiated in the school year 1971-72, Mr. Nakell was receiving a salary of \$8,796, and that in the first year of the Contract, (the school year 1972-73) Instructor Nakell's salary was increased \$1,458, to \$10,254. As for the school year in question, 1973-74, Mr. Nakell will realize a further increase of \$229 in his salary.

Following receipt of Commissioner McGary's letter, Mr. Nakell appealed the Commissioner's ruling to the State Board of Education pursuant to 20 M.R.S.A. § 51, sub-§ 3, ¶ B. On June 6, 1973, the State Board of Education, acting as an appeals board for unclassified personnel, held a hearing at which both the Commissioner and Mr. Nakell presented their contentions. The State Board of Education seeks a legal opinion from the Attorney General in order to assist the Board in resolving the matter.

QUESTION:

Is the Commissioner correct in his conclusion that Mr. Nakell is legally entitled to a salary of \$10,483.20 for the school year 1973-74, rather than the figure of \$10,755 sought by Mr. Nakell?

ANSWER:

Yes.

REASONS:

Commissioner McGary's conclusion is supported by language in the Contract; Mr. Nakell's position is not. The language in the Contract, relating to salary, provides that all instructional personnel at the vocational technical institutes are to undergo adjustment to the current state pay plan in the manner provided in the Contract. Part of the transition involved reduction in the work year from 44 weeks to 42 weeks. The Contract clearly specifies that no instructor is to suffer a loss in total annual salary during the period of adjustment. Mr. Nakell suffered no loss in total annual salary within the meaning of the Contract. During the time when Mr. Nakell's work year was reduced, 1972-73, his salary was increased \$1,458. For the school year 1973-74, Mr. Nakell will receive a further increase in salary of \$229.

Mr. Nakell contends he has suffered a loss in total annual salary because he would have been receiving more salary under the old pay scale and the 44-week work year than he receives under the present contract. That reasoning requires one to abandon the terms of the contract.

At the hearing before the State Board of Education June 6, 1973, Mr. Nakell's representative stated that it was Mr. Nakell's position that the words: "For the duration of this agreement * * * ", were synonymous with the words: "the period of adjustment", appearing in Article VI, paragraph A, sub-§ 4. That interpretation does not reasonably flow from the contract provisions. It seems clear that the parties intended the "period of adjustment" to mean that period during which the work year was reduced from 44 weeks to 42 weeks. Also, the words "duration of this agreement" are synonymous with "Duration of Contract", appearing in Article XV, i.e., that the contract will be effective between specified dates.

For the reasons set forth herein, it is our opinion that the Commissioner's ruling is the correct interpretation of the salary provisions of the contract.

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