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OFFICIAL OPINION NO. 14

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Gentlemen:

This is in response to your related requests for opinions concerning the application of the Indiana Education Employment Relations Act, (Public Law Number 217, Acts of 1973); specifically, whether, pursuant to a contract negotiated under that law, a school corporation may (1) adjust teacher salary scales only at the beginning of each semester of a school year, and (2) make such salary payments retroactively.

ANALYSIS

The Indiana General Assembly enacted Public Law Number 217 in 1973 and made its intent quite clear in this area by so stating in Section 1 of that law. It is important to review that statement of the intent verbatim:

“Sec. 1. Intent. The Indiana General Assembly hereby declares that:

(a) The citizens of Indiana have a fundamental interest in the development of harmonious and coopera-

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tive relationships between school corporations and their certificated employees;

(b) Recognition by school employers of the right of school employees to organize, and acceptance of the principle and procedure of collective bargaining between school employers and school employee organizations, can alleviate various forms of strife and unrest;

(c) The State has a basic obligation to protect the public by attempting to prevent any material interference with the normal public school educational process;

(d) The relationship between school corporation employers and certificated school employees is not comparable to the relation between private employers and employees among others for the following reasons: (i) a public school corporation is not operated for profit but to insure the citizens of the State rights guaranteed them by the Indiana State Constitution; (ii) the obligation to educate children and the methods by which such education is effected will change rapidly with increasing technology, the needs of an advancing civilization and requirements for substantial educational innovation; (iii) the Indiana General Assembly has delegated the discretion to carry out this changing and innovative educational function to the local governing bodies of school corporations, composed of citizens elected or appointed under applicable law, a delegation which these bodies may not and should not bargain away; and (iv) public school corporations have different obligations with respect to certificated school employees under constitutional and statutory requirements than private employers have to their employees."

That Act establishes procedures whereby a school corporation and its teachers shall bargain collectively with respect to salary, wages, hours, and fringe benefits, and it fixes a time-table aimed at producing a settlement by the date the school corporation is required to give notice of its annual

meeting to adopt a budget and tax rate (which date, pursuant to Code Section 17-3-18-1, is 18 days prior to the last Thursday in August). This law does not, however, grant to school corporations additional powers; it simply requires them to exercise, within a collective bargaining framework, powers they already possess.

The basic law setting forth the powers of local school corporations is the Indiana General School Powers Act, Indiana Code of 1971, Sections 20-5-1-1 to 20-5-6-7. Code Section 20-5-2-2(7) specifically grants to a school corporation the power to employ teachers. It adds the following condition:

“The compensation, terms of employment and discharge of teachers shall, however, be subject to and governed by the laws relating to employment, contracting, compensation and discharge of teachers . . .”

The statutes concerning minimum compensation for teachers, Code Sections 20-6-16-1 to 20-6-16-4, are a part of the laws referred to in Code Section 20-5-2-2(7) and, therefore, must be followed by a local school corporation. The particular section upon which the answer to your first question turns is Code Section 20-6-16-1, enacted in 1975, which reads, in part, as follows:

“If a teacher is licensed by the commission on teacher training and licensing on the first day of service in the current school year or at another date as agreed upon by the school employer and the exclusive representative under IC 1971, 20-7.5, the base minimum salary of the teacher in any public school shall be as follows . . .”

Prior to the 1975 amendment, which substantially changed the language of this statute, the law had been construed to mean that a teacher's position on a salary schedule had to be computed on a basis of training and experience *completed as of the first day of that school year* (1959 O.A.G. No. 35, p. 168, 172); therefore, training and experience gained during that school year could not previously be considered until the succeeding school year.

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Now, the present language indicates the later intent of the Indiana General Assembly to authorize a school corporation, as part of a negotiated contract, to base a teacher's position on a salary schedule on training and experience completed as of the first day of school *or* as of another date in the school year as agreed upon by the school employer and the exclusive representative. Accordingly, a school corporation may, subsequent to the effective date of the 1975 amendment, base a teacher's pay on training and experience completed as of the beginning of the second semester of a school year, as well as the beginning of that school year. A school corporation which utilizes this amended provision must consider carefully the fiscal impact, since the Education Employment Relations Act expressly states that "any contract which provides for deficit financing shall be void to that extent." Code Section 20-7.5-1-3.

The General School Powers Act, *supra*, is also the starting point in answering the second question as to whether a school corporation may make salary payments retroactively. As already noted, Code Section 20-5-2-2(7) gives to the governing body of a school corporation the power to fix and pay salaries of its employees and to contract for services. This power permits the school corporation to pay salaries in whatever manner it deems proper consistent with general state fiscal requirements, particularly that there must be a valid appropriation and that the services for which payments are being made have been rendered. Accordingly, so long as the payments for services provided under a negotiated contract are made after those services are rendered, these payments are permissible.

Whether the agreement as to the amount of salary was reached prior to or after the services are rendered does not affect the validity of this type of contract. Additionally, the Education Employment Relations Act, at Code Section 20-7.5-1-12(e), anticipates a situation where a school corporation and its teachers are unable to reach agreement on a new contract prior to the school year and provides that "the parties shall continue the status quo and the employer may issue tentative individual contracts and prepare its budget based

thereon." When a new contract is agreed upon subsequent to the opening of school, it may provide for pay increases retroactively. Of course, as already noted, any negotiated contract, whether it provides for retroactive pay or not, may not put the school corporation in a position of deficit financing.

CONCLUSION

It is, therefore, my Official Opinion that (1) a school corporation which has agreed to a salary schedule which bases teachers' pay on training and experience completed as of the first day of service in the current school year, may, as part of that agreement, authorize an adjustment in teachers' pay during the school year by considering training and experience completed as of another date later in the school year; (2) pursuant to a negotiated contract executed subsequent to the beginning of the school year, a school corporation may authorize pay increases retroactive to the beginning of the contract period.

However, the Indiana General Assembly has clearly stated that in no event may a negotiated contract provide for deficit spending, and the law states that in these words: "Any contract which provides for deficit financing shall be void to that extent."