

1989

Iowa Supreme Court decisions relating to the implementation of Iowa law in public school settings from 1971 to 1988

Elaine Linda Rasmussen
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**Iowa Supreme Court decisions relating to the implementation of
Iowa law in public school settings from 1971 to 1988**

Rasmussen, Elaine Linda, Ph.D.

Iowa State University, 1989

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Iowa Supreme Court decisions relating to the
implementation of Iowa law in public school
settings from 1971 to 1988

by

Elaine Linda Rasmussen

A Dissertation Submitted to the
Graduate Faculty in Partial Fulfillment of the
Requirements for the Degree of
DOCTOR OF PHILOSOPHY

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For the Graduate College

Iowa State University
Ames, Iowa

1989

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TABLE OF CONTENTS

	<u>Page</u>
CHAPTER I: INTRODUCTION	1
Brief Review of Governmental Authority	2
Statement of the Problem	3
Need for the Study	4
Delimitations of the Study	6
CHAPTER II: REVIEW OF LITERATURE	7
Public Employment Relations	9
Iowa Courts	11
CHAPTER III: PROCEDURES AND TECHNIQUES USED IN THE STUDY	12
Case Briefing	12
Organization of the Study	14
Definition of Terms	15
CHAPTER IV: SCHOOL DISTRICTS	21
School Districts as Quasi-Corporations of State	22
Tuition	25
Property Tax	28
Tort Liability	29
Religion	31
Approval of Schools	33
Significant Legislation Since 1970	34
CHAPTER V: BOARDS OF EDUCATION	38
Authority and Compliance	39
Official Meetings	40
Significant Legislation Since 1970	44

CHAPTER VI: BUILDINGS AND GROUNDS	47
Bids	47
Reversion and Sale	52
Significant Legislation Since 1970	55
CHAPTER VII: PERSONNEL	57
Probationary Teachers	59
Probationary Teachers Staff Reduction	59
Probationary Teachers Contract Termination	61
Nonprobationary Teachers Staff Reduction	65
Nonprobationary Teachers Contract Termination	76
Substitute Teachers	94
Teacher Certification	96
Discriminatory Practices	98
Mandatory Retirement	101
Extracurricular Contract	103
Suspension Without Pay	104
Benefits	106
Administrators	109
Unemployment Compensation	115
Worker's Compensation	118
Classified Employees Contract Termination	121
Union Activities	124
Military Service	125
Significant Legislation Since 1970	126
CHAPTER VIII: STUDENTS	130
Eligibility	131

Student Injury/Death	132
Special Education	139
Significant Legislation Since 1970	142
CHAPTER IX: SCHOOL DISTRICT REORGANIZATION	144
County Boards	145
Area Education Agencies	148
Significant Legislation Since 1970	149
CHAPTER X: ELECTIONS	153
Bond Issues	154
CHAPTER XI: COLLECTIVE BARGAINING	158
Working Agreement	162
Elections	163
Bargaining Unit	164
Benefits	168
Prohibited Practices	169
Negotiability	172
Impasse Arbitration	181
CHAPTER XII: SUMMARY AND RECOMMENDATIONS	192
Need for the Study	192
Statement of the Problem	192
Procedures and Techniques Used in the Study	192
Delimitations of the Study	193
School Districts	194
Boards of Education	196
Buildings and Grounds	197
Personnel	198

Students	202
School District Reorganization	203
Elections	203
Collective Bargaining	204
Recommendations	206
BIBLIOGRAPHY	209
ACKNOWLEDGMENTS	217
APPENDIX I: CASE LISTINGS BY CATEGORY CHART	218
APPENDIX II: SCHOOLS IN COURT CHART	225
APPENDIX III: COURT CASES 1971-1988 CHART	227
APPENDIX IV: CASE FREQUENCY CHART	229
APPENDIX V: CASE DISTRIBUTION CHART -- PERSONNEL	231
APPENDIX VI: CASE DISTRIBUTION CHART -- COLLECTIVE BARGAINING	233

CHAPTER I: INTRODUCTION

For several decades, the public schools of Iowa have been increasingly involved in litigation. Various sectors of the school community have looked with growing frequency to the courts as a means to rectify grievances. The emergence of public sector negotiations as practiced by the teacher organizations of the state has further served to bring school board members, administrators, and teachers into the courtrooms of Iowa. The demands upon the intellectual and fiscal resources of school districts to meet the needs created by an increasing number of courtroom appearances have risen in direct relationship to this trend. School authorities have developed a justifiable concern that such resources not be expended in litigation at the expense of the educational process.

The laws under which schools in Iowa operate are established by the legislature. They are ultimately interpreted through court decisions when disputes arise as to legislative intent for their application to specific situations. Such interpretation fills in gaps that may exist in statutory law and creates a body of precedent which may be applied in future disputes. Prudent school authorities are able to utilize the body of court decisions to assist them in their interpretations of law and to help them apply these principles in such a manner as to avoid unnecessary litigation.

The purpose of this study is to continue a survey of Iowa Supreme Court decisions which have been rendered throughout the history of the State, as began by Skarda in his dissertation completed in 1971 (1).

It is hoped that this study will provide insights to school authorities that will help them gain an understanding of the laws under which they must function, and thus allow them to more efficiently expend the resources for which they bear responsibility, and will update the research of Skarda.

Brief Review of Governmental Authority

In his study, Skarda provided an historical review of the governmental structures which have a direct bearing on the operation of public schools in Iowa. That review is summarized here to provide immediate accessibility of that information to school authorities.

Skarda's analysis of educational governance serves to reinforce an interesting insight into schools. Contrary to popular belief, the courts have firmly established the notion that the maintenance of schools is a state and not a local concern (2, p. 34). The school districts of Iowa are territorial divisions of the state and retain only those statutory powers expressly conferred by law, or reasonably implied as to the exercise of an expressly conferred power. The plenary power of state legislatures to enact statutes to govern the educational experiences of their citizens is exercised within the limitations of state constitutional paradigms (2, p. 35).

There is no mention of education in the Constitution of the United States. The language of the tenth amendment of that document reserving the powers not delegated by the Constitution, nor prohibited by it, to the states leaves education primarily a responsibility of

each state individually. This is not to imply that the federal government has not had an impact upon education within the states. The Ordinance of 1787, known as the "Northwest Ordinance," affirmed the idea that a democracy cannot function adequately unless supported by an educated citizenry, and required each state to provide the resources to encourage education (1, p. 3).

Federal and state laws have influenced the development of educational institutions by providing the basis for civil court decisions and judicial opinions that interpret constitutional and statutory laws. In so doing, the courts rely upon general principles that have been traditional in the course of our nation's development.

Working within the framework of state and federal statutes, and administrative rules developed pursuant to the laws, various state agencies may draft administrative policies and regulations. In the case of the Iowa public schools, the General Assembly has granted rule-making power to the State Board of Public Instruction. Rules promulgated by this agency have the force and effect of law, once adopted under the procedures outlined in Chapter 17A of the Code of Iowa.

Statement of the Problem

The laws which govern schools in Iowa are a product of the General Assembly, either by direct statute or by administrative rule having the force and effect of statutory law. These laws are continuously available to school authorities and interested individuals

in bound form, appropriately supplemented (3, p. 75). What is not immediately discernible from these publications are the compromises embodied in the development of amendments through the legislative process. Ambiguities may exist in the final document which are not readily apparent (1, p. 6). Some light may be shed upon unclear provisions of law by executive construction, either by appropriate department heads or by the attorney general. However, the Supreme Court of Iowa had indicated that even though such construction is entitled to consideration by the court, it is not binding upon it. The problem for school authorities then, is to obtain a complete picture of school law, not only as put into place by the General Assembly, but as interpreted by the Court in the process of resolving disputes.

Need for the Study

The public school system has become increasingly involved in terms of its relationship to the value system of the society that supports it. The amount of litigation focused upon educational practices has risen correspondingly. Many cases that would have gone unchallenged in the past now provide the setting for judicial definition or limitation of the action at issue. A catalytic factor in this march toward the courtroom is the changing face of education in terms of its social responsibility. Many view the classroom as the appropriate area for the delivery of remediation for such social challenges as substance abuse, juvenile justice, vocational preparation,

and other troubling problems of a technologically changing society (2, p. xiv).

Divisive litigation can have a paralytic effect upon the educational programs of a school system, and sap the human and financial resources which should be directed towards student instruction. The morale of the participants is often adversely affected and the mission of the educational process may become secondary. Additionally, the erosion of the resources of the schools through long and costly legal battles may raise questions about the wisdom of the actions that preceded such battles. The changing demographics of school districts prompts the courts to make long-term interpretations of the issues at hand, which may paralyze school personnel in terms of the immediate actions available to them (2, p. xiv).

There is a need for risk management training in the area of legal precedent and decision making. School personnel must devote the majority of their educational training to the development and delivery of an appropriate educational program. They are not expected to become technologists in the area of legal procedures, but they can ill afford ignorance of the laws under which they must operate. It is hoped that this review, supplementing that of those cited, will assist those directly involved in the operation of public schools by providing a resource of court interpretations and judicial opinions of the school laws of the State of Iowa to date.

Delimitations of the Study

Court decisions and reporting procedures vary from state to state in accordance with the legal requirements of the state. Consistent with the guidelines established by Skarda, this study is limited to the following:

1. Iowa Supreme Court and reported Court of Appeals decisions from 1971 through 1988.
2. Iowa Supreme Court and reported Court of Appeals decisions which only influence the operation of public schools. The history of these cases at the lower court level was not included in this study.
3. Iowa Supreme Court and reported Court of Appeals decisions which currently influence the operation of public schools. Obsolete cases were excluded from the study except when used for historical reference.

CHAPTER II: REVIEW OF LITERATURE

This chapter consists of a review of related materials acquired from dissertations, theses, publications, and the Iowa Code. With the exception of the dissertation written by Paul Skarda of Iowa State University, no publication was primarily devoted to Supreme Court decisions in Iowa or any other state.

The literature reviewed indicated the lack of any comprehensive study, or even a compilation of Iowa Supreme Court decisions which involve the public schools of this state since Skarda. A review of Comprehensive Dissertation Index, January 1971 to September 1988, indicated no record of a study which appears to research or catalogue decisions of the Iowa Supreme Court involving public educational agencies. A search of E.R.I.C., a computerized data bank of educational materials, also produced no titles or materials which deal directly with this subject. The Education Index, The Index to Legal Periodicals and Current Law Index list numerous articles that provide helpful background information, but none of them contain materials that cover the decisions of the Iowa Supreme Court with regard to school law.

During the period of time covered by this study, several studies were completed in the form of dissertations which have contingent value in terms of procedure and background information. In 1976 William Kritsonis of the University of Iowa wrote "A Study of Selected State Supreme and District Court Decisions on the Non-Renewal of Public School Professional Personnel Contracts for Reasons of Declining Enrollment or Economic Stress in Accordance with Due Process

of the Law." In the same year a study entitled "The Impact of Legal Decisions Rendered from 1970-76 Pertaining to State Athletic Association and Public School Board Eligibility Rules for Student Participation in Athletics" was written at Iowa State University by John Cox.

Later studies include "An Analysis of the Contents and Development of Open Meetings Laws in the United States with Emphasis upon Public Education and the Iowa Open Meetings Law" by Stephen Williams at The University of Iowa in 1980, and "An Examination of Supreme Court Case Law of Selected States Following Abrogation of Governmental Immunity of School Districts" by Judith Strickler at The University of Iowa in 1983. That same year a comprehensive study of "The Parameters of Student Legal Responsibility as Delineated In or Developed From Reported Federal Court Decisions Rendered Between February, 1969, and January, 1983" was completed by Larry Bartlett at Iowa State University.

While these studies are pertinent in their content to the extent that they investigate legal regulations of school districts, they are either not specific to the state of Iowa, or comprehensive within the time frame under discussion here.

In his study, Skarda reviewed three areas of literature from which many cases of record were drawn. Those areas are tort liability, students, and personnel. Significant in his discussion of tort liability was the evolution of legislation by the 62nd General Assembly in 1967 which abolished the doctrine of immunity from liability of Iowa public schools and subjected these school districts

to liability for the torts of their officers and employees while acting within the scope of their employment.

Skarda's discussion of student rights centered upon the changes in judicial decisions in that regard based not upon new statutes, but upon a re-emphasis of constitutional rights (1, p. 13). In his study, Bartlett expanded the consideration of student rights in light of constitutional parameters, and investigated the parallel concept of student responsibilities under the law.

The third area of review by Skarda, entitled "Personnel" dealt primarily with those rights enjoyed by certificated personnel, specifically teachers, within a school district. Certification, contracts, selection, dismissal, and retirement programs for teachers were among those issues discussed. This study will expand that discussion to include all employee groups within a school system, both certificated and classified.

Public Employment Relations

Since the inception of public sector negotiations for collectively bargained master contracts between public school employers and their certificated and classified employees, the Iowa Supreme Court has been asked to interpret Chapter 20, the Iowa Code a number of times. Chapter 20, known as the Public Employment Relations Act (PERA or PER Act) contains thirty sections specifying definitions and procedures for the accomplishment of public sector bargaining without the utilization of strike procedures.

To accomplish this goal, the Act authorizes the establishment of a Public Employment Relations Board (PERB) charged with the responsibility of administering the Act. The PERB consists of three members, appointed for staggered four-year terms by the governor, subject to confirmation by the senate. The duties of the PERB include: collecting data relating to wages, hours, benefits, and other conditions of public employment, and making that information available to interested persons or organizations; maintaining a list of qualified individuals to serve as fact-finders, mediators, and arbitrators, and establishing their compensation; holding hearings, examining witnesses, taking testimony and receiving evidence in cases brought before it; and adopting and enforcing rules to facilitate the administration of the Act. Each PERB member may serve as an individual hearing officer in cases before the Board.

Having received a complaint, the PERB may dismiss it if a determination is made that the charge is without basis, or the hearing officer may conduct a hearing on the complaint and issue an order. The decisions of hearing officers may be appealed to the entire Board, and the decisions of the Board may be appealed to the District Court under the Administrative Procedure Act (4, p. 1). District Court decisions and rulings may be appealed to the State Supreme court for final disposition.

Iowa Courts

In every county in the state there is at least one magistrate court. Magistrate courts have jurisdiction over limited types of civil and criminal matters. District Courts handle civil and criminal cases as well, including cases about domestic relations, adoptions, estates, and appeals of cases tried in magistrate court. The Iowa district court is a court of general jurisdiction. There are eight judicial districts in Iowa, each with one or more divisions.

The Iowa Supreme Court is the highest appellate court in the state. Decisions made in district court may be appealed to the Supreme Court, which may elect to hear the case, or it may assign it to the Iowa Court of Appeals. The Supreme Court may also affirm or reverse decisions made by the Court of Appeals.

The Iowa Court of Appeals was established in 1976 by the 66th General Assembly. It is a five-member appellate court. The Court of Appeals is authorized to review all civil and criminal actions, post-conviction remedy proceedings, small claims actions, writs, orders, and other processes transferred to it by the Supreme Court (5, p. 15). The Iowa Court of Appeals hears only those cases transferred to it by the Supreme Court. Rulings issued by the Iowa Court of Appeals are reported in legal publications such as the North Western Reporter only if they may be cited as precedent for future litigation.

CHAPTER III: PROCEDURES AND TECHNIQUES
USED IN THE STUDY

The research referred to in this study has been historical and topical in nature and has been limited to primary source data. Those data consist of state Supreme Court decisions and Court of Appeals decisions contained in the Second Series of the North Western Reporter, the official reporter for Iowa since 1970. The Iowa Reports publication utilized by Skarda in his study ceased publication after 1970. The North Western Reporter, 2nd contains complete reported decisions from state supreme courts with jurisdiction in a specified geographical area of the United States, including Iowa. Appropriate court decisions published in this series were located using Shepard's Iowa Case Names Citator, 1925-1984.

Secondary sources of information included commentaries and descriptions of court decisions contained in dissertations, publications of the Iowa Association of School Boards, and other publications pertinent to Iowa schools and related legal issues. Research from these sources was conducted since 1970.

Case Briefing

To provide continuity between the Skarda study and this investigation, the system of briefing primary source cases utilized by Skarda has been adopted here. In his investigation Skarda obtained four major sources of information from each case: (1) facts, (2) issue or issues, (3) decision, and (4) reasons. From this

information, summaries were fashioned for each case which sought to capture the essence of the decision reached as well as the underlying reasoning which supported the decision. An example of a brief obtained from the case of Aplington Community School District v. Iowa Public Employment Relations Board (6) is presented.

Facts: 1. The Aplington Community School district and the Aplington Education Association, the exclusive collective bargaining agent for school teachers and other professional non-supervisory employees in the district, were parties to a collective bargaining agreement which was due to expire before the 1985-86 school year. In December 1984, the parties began negotiating a successor contract to commence in July 1985.

2. During negotiations, the association proposed that an article on evaluations be included in the contract. Language in this proposal established evaluation criteria to be utilized within the evaluation procedure, and additionally, constructed a grievance procedure to be used within the context of evaluation.

3. The association argued that these proposals constituted mandatory subjects of bargaining under Iowa Code section 20.9 of the Public Employment Relations Act. The district argued that they did not.

4. Following a hearing on a request for an expedited resolution, PERB issued a ruling finding both proposals constituted matter for mandatory collective bargaining.

5. The district filed a petition for judicial review in district court, which reversed the ruling of PERB and concluded that neither of the disputed proposals was a mandatory subject of bargaining.

6. From this ruling, both PERB and the association appealed.

Issues: Must a public employer bargain about criteria by which its employees would be evaluated under 20.9 the Iowa Code? Does the right to grieve evaluations constitute a mandatory subject of bargaining?

Decision: The court decided for the appellants (PERB and the association).

Reasons: 1. In Saydel the court considered the statutory phrases "transfer procedures" and "procedures for staff reduction" within Iowa Code section 20.9. It stated that the term "procedures" in the PER Act had a broader meaning than it had been given in previous PERB decisions, and concluded that the term "procedures" necessarily included substantive criteria. The evaluation procedures criteria proposed by the association in this case had similarities to the impasse procedures criteria in that some comparisons of substantive factors were involved. They were also similar to the transfer procedures and procedures for staff reduction criteria found to be mandatory subjects for negotiation in Saydel.

2. No principled difference existed between the facts existing in Saydel and those in the present case. It would have been inconsistent for the court to conclude that the term "procedures" had a different meaning within section 20.9 when it referred to transfer or staff reductions than when it followed the word "evaluation."

3. Because the court determined that evaluation criteria are included in "evaluation procedures" as a mandatory subject for bargaining, it also ruled that the grievance procedures related to such a topic are also subject to mandatory negotiation.

In addition to the information supplied under the four major categories above, the date of the case, the name of the plaintiff and the defendant and the voting position of the judges is recorded.

Organization of the Study

In his study Skarda organized the Supreme Court cases into an approximation of the historical development of the practices and procedures of the school systems in Iowa. This study replicated that organization with some exceptions. The section of Skarda's study that dealt with teachers was expanded to include all employees that are part of a school system in Iowa. This group includes teachers, administrators, and classified or support employees.

An additional chapter was written to document the Supreme Court cases that have grown from the collective bargaining process since its inception. The study is organized into twelve chapters related to the following topics:

Chapter I	Introduction
Chapter II	Review of Literature
Chapter III	Procedures and Techniques Used in the Study
Chapter IV	School Districts
Chapter V	Boards of Education
Chapter VI	Buildings and Grounds
Chapter VII	Personnel
Chapter VIII	Students
Chapter IX	School District Reorganization
Chapter X	Elections
Chapter XI	Collective Bargaining
Chapter XII	Summary and Recommendations

Each chapter is divided into subtopics with the appropriate case decisions included. Summaries of each case are presented with attendant citations and headnotes as reported in the North Western Reporter, 2nd. Where appropriate, at the conclusion of each chapter a brief discussion of the issues and trends evidenced in legislative activity since 1970 is presented.

Definition of Terms

A study of the reports of the cases heard by the Iowa Supreme Court necessarily involved terminology used primarily by those familiar with legal lexicon and required that some definition of terms be included. The following list of terminology was derived from the cases discussed in the study. The definition for the terms was taken from Black's Law Dictionary, Fifth Edition (7), a West publication.

- Additur:** The power of trial court to assess damages or increase amount of an inadequate award made by jury verdict, as condition of denial of motion for new trial, with consent of defendant whether or not plaintiff consents to such action.
- Adjudicate:** To settle in the exercise of judicial authority. To determine finally.
- Affirm:** In the practice of appellate courts, to affirm a judgment, decree, or order, is to declare that it is valid and right and must stand as rendered.
- Allegation:** The assertion, claim, declaration, or statement of a party to an action, made in a pleading setting out what he expects to prove.
- Amicus Curiae:** Literally, friend of the court. A person or agency with strong interest in or views on the subject matter of an action may petition the court for permission to file a brief, ostensibly on behalf of a party but actually to suggest a rationale consistent with its own views.
- Appeal:** Resort to a superior (i.e., appellate) court to review the decision of an inferior (i.e., trial) court or administrative agency.
- Appellant:** The party who takes an appeal from one court or jurisdiction to another.
- Appellee:** The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. Sometimes also called the "respondent." It should be noted that a party's status as appellant or appellee does not necessarily bear any relation to his status as plaintiff or defendant in the lower court.
- Arbitration:** The reference of a dispute to an impartial (third) person chosen by the parties to the dispute who agree in advance to abide by the arbitrator's award issued after a hearing at which both parties have an opportunity to be heard.
- Certiorari:** To be informed of. A writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein.
- Citation of authorities:** The reading, or production of, or reference to, legal authorities and precedents in arguments to courts, in legal textbooks, law review articles, briefs,

or the like to establish or fortify the propositions advanced.

- Collateral attack:** With respect to a judicial proceeding, an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it.
- Concurring opinion:** A separate opinion delivered by one or more judges which agrees with the decision of the majority of the court but offering own reasons for reaching that decision.
- Contract:** An agreement between two or more persons which creates an obligation to do or not to do a particular thing.
- Declaratory Judgment:** A binding adjudication of the rights and status of litigants even though no consequential relief is awarded.
- De Facto:** In fact, in deed, actually.
- Defendant:** The person defending or denying; the party against whom relief or recovery is sought in an action.
- De jure:** Descriptive of a condition in which there has been total compliance with all requirements of law. Of right; legitimate; lawful, by right and just title.
- De novo:** Anew; afresh; a second time.
- Demurrer:** An allegation of a defendant, which, admitting the matters of fact alleged by complaint or bill to be true, shows that as they are therein set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer.
- Dissent:** Contrariety of opinion. Most commonly used to denote the explicit disagreement of one or more judges of a court with the decision passed by the majority upon a case before them. In such event, the nonconcurring judge is reported as "dissenting." A dissent may or may not be accompanied by an opinion.
- Due process:** Two such clauses are found in the U.S. Constitution, one in the 5th Amendment pertaining to the federal government, the other in the 14th Amendment which protects persons from state actions. There are two aspects: procedural, in which a person is guaranteed fair procedures, and substantive, which protects a person's property from unfair governmental interference or taking.

Enjoin: To require; command; positively direct. To require a person by writ of injunction, to perform, or to abstain or desist from, some act.

Estop: To stop, bar, or impede; to prevent; to preclude.

Governmental Immunity: The federal, state and local governments are not amenable to actions in tort except in cases in which they have consented to be sued. The federal government under the Federal Tort Claims Act has waived its immunity in certain cases "in the same manner and to the same extent as a private individual under like circumstances." Most states have also waived governmental immunity to various degrees at both the state and municipal government levels.

Injunction: A prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant, for that purpose, forbidding the latter to do some act which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law.

In loco parentis: In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities.

In re: In the affair; in the matter of; concerning; regarding.

Interlocutory: Provisional; interim; temporary; not final.

Judgment: The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination. The final decision of the court resolving the dispute and determining the rights and obligations of the parties.

Laches: "Doctrine of laches," is based upon the maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Liability: A broad legal term. It has been referred to as of the most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent, or likely. It has been defined to mean: all character of debts and obligations.

Liabile: Bound or obliged in law or equity; responsible.

Mandamus: We command. This is the name of a writ which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act, therein specified.

Mediation: Intervention; interposition; the act of a third person in intermediating between two contending parties with a view to persuading them to adjust or settle their dispute.

Parol: A word; speech; hence, oral or verbal. Expressed or evidenced by speech only; as opposed to by writing or by sealed instrument.

Petition: A formal written request addressed to some governmental authority.

Plaintiff: A person who brings an action; the party who complains or sues in a civil action and is so named on the record.

Plenary: Full, entire, complete, absolute, perfect, unqualified.

Quasi: As if; almost as it were; analogous to. This term is used in legal phraseology to indicate that one subject resembles another, with which it is compared, in certain characteristics, but that there are intrinsic and material differences between them.

Quasi judicial: A term applied to the action, discretion, etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.

Ratification: In a broad sense, the confirmation of a previous act done either by the party himself or by another; as confirmation of a voidable act.

Relief: Deliverance from oppression, wrong, or injustice. In this sense it is used as a general designation of the assistance, redress, or benefit which a complainant seeks at the hands of a court, particularly in equity.

Remand: To send back. The sending by the appellate court of the cause back to the same court out of which it came, for purpose of having some further action taken on it there.

Res ipsa loquitur: The thing speaks for itself; rule of evidence whereby negligence of alleged wrongdoer may be inferred from mere fact that accident happened provided character of accident and circumstances attending it lead reasonably to belief that in absence of negligence it would not have occurred.

Res judicata: A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.

Statute: An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government.

Tort: A private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages. Three elements of every tort action are: Existence of legal duty from defendant to plaintiff, breach of duty, and damage as proximate result.

Vitiate: To impair; to make void or voidable; to cause to fail of force or effect.

Writ: An order issued from a court requiring the performance of a specified act, or giving authority to have it done.

CHAPTER IV: SCHOOL DISTRICTS

School districts are the basic units of school government in the State of Iowa. Statutory authority for their creation as corporations with limited powers is found in Chapter 274, School Districts in General, The Code of Iowa. Historically school districts have operated under one of three structures authorized by Iowa statute.

An independent school district is one which bears the name of the city, township, or village in which it is operated. If there is more than one district in that geographic unit, an appropriate name or number must be included in its designation, such as Greeley Independent School No. 8, or the Independent School District of East Greene Township.

Consolidated school districts were created at a later date in an attempt to obtain a larger tax base. Consolidated schools were often marriages of smaller independent districts with centrally located buildings, frequently in rural areas. A consolidated school district must be so designated in its name: i.e., Starmont Consolidated School District.

Community school districts were the last to be conceived, responding to a need for an even larger tax base. Community school districts may have more than one attendance center per district and are not limited to one centrally-located facility.

While the number of instances that the Supreme Court of Iowa has been asked to assist in the resolution of problems relating to the nature, power, duties, and responsibilities of school districts are not

legion, they are nonetheless significant in the definition of their operation, and the limitations placed upon them by statute.

School Districts as Quasi-Corporations of State

Chapter 274.2, The Code, states that the provisions of law relative to common schools shall apply alike to all districts, except when otherwise clearly stated. The powers given to one form of corporation, or to a board in one kind of corporation, shall be exercised by the other in the same manner, as nearly practicable. The exception stipulated in this section is that school districts may not incur original indebtedness by issuing bonds until so authorized by the voters of the school corporation.

The following cases fall generally into the category of litigation arising out of the operation of school districts as limited corporations under the statutes:

Clinton Community School District v. Anderson (8)

The Clinton District filed suit against Charles Anderson who was Clerk of District Court in and for Clinton County, Maurice Baringer, who was the Treasurer of the State of Iowa, and the Iowa Department of Environmental Quality to retrieve certain fines which had been levied by the state against a private corporation in Clinton County for the discharge of waste into the Mississippi River. The district pursued its claim under the wording of Chapter 666.3 of the Iowa Code which provided: "All fines and forfeitures, after deducting therefrom court costs, court expenses..., and fees of collection,

if any, and not otherwise disposed of, shall go into the treasury of the county where the same are collected for the benefit of the school fund."

The state based its case upon a different chapter of the code, Chapter 455B.59(1), which made some differentiation between the terms "civil" penalty and "criminal" penalty, and provided for the collection of civil penalties by the state, not the county. The Supreme Court upheld the state's contention and the fines were duly accorded to the state.

Civil penalty imposed upon private corporation for discharging pollutants into river was not a criminal fine and thus was not required to go into treasury of county where the penalty was collected for benefit of school fund; rather, the proceeds should have been paid directly to state treasury (8, p. 73).

Hubbard v. Des Moines Independent Community School District (9)

Hubbard, an employee of the district had his wages subjected to garnishment under Chapter 642.14, The Code. The district duly surrendered the monies to the Sheriff for disposition. Hubbard brought action against the district because he had not been given advance notice that such action would be taken. The district alleged it had no responsibility to give notice of garnishment under the law. A subsidiary issue was, if the district had been so obligated, did its failure to do so create a wage-claim cause of action?

The court ruled that section 624.4 imposes the responsibility of notification to the principal defendant upon the garnishment plaintiff, and not the garnishee, in this case, the school district. As a

consequence the issue of the wage-claim cause of action was rendered void.

Statute proscribing entry of judgment against garnishee until principal defendant has had ten days' notice of garnishment proceeding imposes duty on garnishment plaintiff to give notice of garnishment proceeding to principal defendant, and neither statute nor common law placed such duty on garnishee; since garnishee therefore does not have duty to give notice, no action for alleged breach lies against garnishee (9, p. 239).

Hoefer v. Sioux City Community School District (10)

Robert and William Hoefer, representing a previous provider of health insurance to the Sioux City School District filed a petition asking that a writ of certiorari be granted to determine if the district had exceeded its authority in granting an insurance contract to the Wisconsin Education Association Insurance Trust. The district had advertised for bids and the agency represented by the Hoefers had submitted the lowest bid. The district, nonetheless, acting in open session, granted the contract to the WEAIT, alleging that it had absolute jurisdiction over the matter. The court held that certiorari was available in this case, because the district had made decisions that were quasi-judicial in nature in its process of adopting the bid of Wisconsin Education Association Insurance Trust.

In determining whether action is judicial or quasi-judicial in nature for purpose of granting certiorari, factors to be considered are whether questioned act involves proceeding in which notice and opportunity to be heard are required, whether determination of rights of parties is made which requires exercise of discretion in finding facts and applying law, or whether challenged act goes to determination of some right protection of which is peculiar office of courts (10, p. 222).

Sioux City Community School District v. Board of Public Instruction (11)

This case is subsequent to the decision in Hoefler (10). Hoefler pursued his appeal of the Sioux City School District's action in rejecting his bid and accepting that of the Wisconsin Education Association Insurance Trust, claiming that the district was not authorized to contract with the WEAIT for health insurance in view of Iowa Code section 509A.6. In that section, the legislature has listed specific types of entities with whom public bodies may contract for such insurance. The State Board of Public Instruction, upheld by the Court, ruled that in so doing, the legislature implied the exclusion of possible insurers. In a related decision the United States Court of Appeals for the Eighth Circuit ruled the Wisconsin Education Association Insurance Trust did not qualify as an employee welfare benefit plan under the Employee Retirement Security Act.

Purpose of statute governing contracts between insurance carriers or health maintenance organizations and governing bodies of school districts is to assure school employees that their fringe benefits, paid by employee contributions and tax funds, will be afforded the protection provided by insurance commissioner's regulation of insurance providers (11, p. 739).

Tuition

Tuition is defined as financial reimbursement for educational services. The statutory authority for school districts to provide free education to bona fide residents of the district and to establish and charge tuition to nonresidents is Chapter 282, The Code. Skarda identified two cases which resulted in Supreme Court decisions prior

to 1971. Since that study, two additional disagreements about the payment of tuition have been considered by that Court.

Maquoketa Community School District v. George (12)

Mary and William George were the parents of four minor children, all of whom attended school in the Maquoketa Community School District. The Maquoketa board determined that they were in fact, not residents of the district, and should either be attending school elsewhere or paying tuition to the district. George appealed to the State Board of Public Instruction which agreed with the position taken by the board and directed the family to begin payment of tuition for educational services.

George challenged the State Board's decision and claimed that it was prohibited from entering a money decision in this appeal. The Court held that the Board's decision could not be attacked by appeal, and was in fact res judicata in this case. The decision alleged to be a money decision was in fact, a decision to charge tuition, not a judgment for a fee or penalty. The decision of the State Board was affirmed.

Though determined by State Board of Public Instruction that children were not actual residents of districts in which they were attending school determined essential element of cause of action to collect tuition from the parents of such children, such determination did not violate statutory prohibition against Board entering a money judgment, since other essential elements of the cause of action remained to be determined as provided by law (12, p. 520).

Lakota Consolidated Independent School v. Buffalo Center (13)

The Lakota School District alleged in a petition to the Court that the Buffalo Center-Rake Community School District had permitted students whose residence was in the Lakota District to attend school in Buffalo Center without payment of tuition, and that the Buffalo Center District had in fact, provided bus transportation to those students outside of its own district. The students in question were the wards of legal guardians who lived within the Buffalo Center District but they continued to live with their parents who were residents of the Lakota District.

The Court ruled that the encouragements offered the students by Buffalo Center, i.e., attendance without tuition and transportation outside of the district, had the net effect of encouraging these students to continue attending school in Buffalo Center, and of depriving the Lakota District of revenues in the form of state aid. The balance lies between requiring the Buffalo Center-Rake District to comply with the law on one hand, and permitting financial loss to the Lakota District on the other.

Plaintiff school district's claim that defendant school district allowed students residing in plaintiff district, who would have otherwise attended there, to attend school in defendant district without payment of tuition, thus causing loss of state foundation school aid to plaintiff with interest which was both ascertainable and worthy of protection, and sufficiently stated claim for money damages on which relief could be granted (13, p. 704).

Property Tax

Property tax has been a source of support for the public schools of Iowa since the time of their inception. Statutory authority for school boards to establish budgets and levy property tax to support them is found in the Local Budget Law, Chapter 24, The Code. Although school budget certification is often a source of controversy within local districts, it has not been the subject of Supreme Court consideration with any great frequency. Skarda discussed eight such cases occurring before 1970, and one additional case is cited here since that time.

Langel v. Board of Supervisors of Carroll County (14)

The Eden Township School District did not operate a public school within its district during the years 1964-1968, but sent its public school students to schools operating in nearby Manning and Templeton Independent School District. Tuition was paid by the Eden School District to the host districts. Electors in the Eden District participated in the election process for the Carroll County Board of Education, and education services were provided to Eden students by the county system. Nonetheless, a group of taxpayers of Eden School District filed suit for a refund of property taxes levied in their district, alleging that section 273.2 of the law stipulated that taxes be levied to support public schools, and that the Eden District, in fact, did not operate a public school.

The Court ruled the statute to be ambiguous, and invoked statutory construction to interpret the intent of the law. The Court reasoned the legislative intent would more accurately use the terminology "public school districts" in its application of taxation rules, thereby including school districts regardless of whether or not a public school was operated therein.

Where school district and its residents had been furnished services by county school system, resident electors of district had voted for county school system officials and district had in fact operated as part of county school system, school district residents were subject to county school taxes in the same manner as any other school districts which were part of the county system (14, p. 608).

Tort Liability

Tort liability means every civil wrong which results in wrongful death or injury to person or property rights and includes, but is not restricted to, actions based upon negligence, error or omission, nuisance, breach of duty, or denial or impairment of any right under any constitutional provision, statute or rule of law. For many years the Iowa public schools were immune to these liabilities because they were considered to be agencies of the state. Chapter 613A, the Code sets forth the laws now in effect regarding tort liability of governmental subdivisions. Section 613A.1 describes the meaning of "municipality" in tort proceedings to include city, county, township, school district, and any other unit of local government except a soil conservation district. With some exceptions noted in this chapter, every municipality in that definition is subject to liability for its

torts and those of its officers and employees, acting within the scope of their employment or duties.

Since 1971 there have been many instances of tort liability claims as part of litigation against school districts. Most of them are contained within actions found in other chapters of this study, particularly those cases involving personnel. One instance of a tort created through nuisance dealing specifically with a school district has also reached the Supreme Court and is cited here.

Kriener v. Turkey Valley Community School District (15)

Luke and Leona Kriener were owner-operators of a dairy farm located adjacent to the site where the Turkey Valley Community School District constructed a new high school in 1963. A small creek drained from the school property through the Kriener farm. As part of the construction, the district established a sewage treatment lagoon or stabilization pond near the creek. The Krieners contended that after the district began using the lagoon, offensive and sickening odors emanated from the lagoon and effluent was noticeably present in the creek waters on the Kriener farm. In subsequent years the Krieners began having difficulty with calf mortality and herd mastitis, which they attributed to the herd's contact with the creek flowing from the lagoon area.

Other witnesses for the district disputed the Kriener's claims of odors and unprocessed sewage being present, and testified as to the legality of the construction of the stabilization pond. The Court ruled that, even though the pond might be legally constructed, it

still could constitute a tort, and the district was not immune from an action for injunctive relief and damages. Section 657.1, The Code, provided: "Whatever is... offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof." Accordingly, the Court assessed damages to the district and provided an injunction against further use of the lagoon.

Generally, probable cause of damages to person or property by maintenance of a nuisance is determinable by the trier of the facts (15, p. 526).

Religion

The separation of church and state is a doctrine established by the Constitutions of the United States and of the State of Iowa. Although prior to 1971 there were cases before the Supreme Court that dealt directly with challenges to that doctrine. A different issue has evolved since that time from the concepts of religion and education. This issue falls more into the realm of compulsory attendance of school-age children and their attendance at nonapproved religious schools.

Johnson v. Charles City Community Schools Board of Education (16)

The issues litigated in this case were twofold. The first issue involved a determination of whether the state has a fundamental authority to set education standards for private religious schools;

the second dealt with Section 299.24, The Code, popularly called the Amish exemption.

In the fall of 1980 the Cavalry Baptist Church of Charles City organized a parochial school to serve the children of its members. The curriculum chosen was the Accelerated Christian Education Program. Parents are given the responsibility for reporting information to the state regarding the provision of education to their children. Parents of children attending this school failed to do so, and the state charged them with violating Iowa's compulsory attendance law, Iowa Code 299. They in turn, sought relief by asking that the Amish exemption be applied equally to their situation.

Citing Pierce v. Society of Sisters 268 U.S. 510 S. Ct. 571 (1925) as authority, the Court refused to limit or curtail the power of the state to reasonably regulate all schools, to inspect, supervise, and examine them, their teachers, and their pupils, to require attendance, and to mandate that certain studies plainly essential to good citizenship be required. One way the state has done this is to enact compulsory education statutes. A citizen must submit to such statutes, persuade society to change them, or join a society without them.

To obtain an exemption under Section 299.24, the court ruled the congregation had to prove that tenets of their church were in conflict with teaching the subjects listed in the statute. The requirement of reporting students' attendance and hiring a certificated teacher did not deny the church of its ability to teach those subjects in its own way with books and teachers of its own exclusive choice. The church

did not demonstrate that their children's educational needs were significantly different from those of other children, as in the case of the Amish community.

State has clear right to set minimum educational standards for all its children and corresponding responsibility to see to it that those standards are honored; when such standards are set in place, compliance with them falls within ambit of fundamental contract between citizen and society (16, p. 74).

Legislature did not intend "Amish exception" to compulsory attendance law to be available to any and all church groups who seek to provide for religiously oriented education (16, p. 75).

Approval of Schools

Statutory authority for the approval of schools for state aid payments is found in Chapter 257, The Code of Iowa. Section 257.25 provides that the State Board of Public Instruction establish standards for approving all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. It further stipulates that the State Board maintain a list of all so authorized schools in the state, and that it promulgate rules to require that a multicultural, nonsexist approach is used to implement the educational program by all school districts.

The standards that constitute an approved educational program have been under constant scrutiny and review by the legislature, particularly in the last few years, and are subject to addition or augmentation by that body, as well as by the State Board of Public Instruction.

Skarda discussed one incident whereby the constitutionality of mandated rules for the operation of schools was challenged. There has not been a similar challenge since Skarda completed his study, and no other cases involving educational standards per se have reached the Supreme Court. The only reference to standards as an issue was discussed in the section above, dealing with a nonapproved religious school.

Significant Legislation Since 1970

In 1976, the Sixty-sixth General Assembly enacted legislation establishing the maximum tuition fee that a district may require for students attending a school in a district other than their district of residence. That amount is established as either the state cost per pupil or the district cost per pupil of the receiving district, as computed under the school foundation aid formula. The tuition fee is the lesser of the two figures.

House File 2361, enacted in 1978 makes changes in the operation and financing of school districts. It defines and provides for community education programs and allows school districts to utilize their recreation levy for such programs. The date of certification for the Schoolhouse Fund Levy is changed from February 1 to March 15.

Legislation in 1981 allows school districts located near Iowa's borders to send students to a public school across the state line if the school in the other state is closer than the resident attendance center. It authorizes the district to pay tuition at a rate acceptable

to both boards, but not less than the lower average cost per pupil of the two affected school districts for the previous year.

Major attention was paid to the school districts of Iowa during the 1985 session of the Seventy-first General Assembly. House File 686 enacted many of the recommendations of the Excellence in Education Task Force. In the area of approval of schools and standards, the Act requires the State Board of Public Instruction to review standards for approved schools and to develop new standards after consultation with affected education groups and associations. The new standards are required to reflect more than the educational program of the school or school district and must relate to the entire school planning, teaching, and assessment environment.

The Act also revises the section of the Code that requires school districts to develop goals and assess progress toward meeting such goals, requiring the use of advisory committees in the development process and the evaluation of progress. The Act requires the State Board of Public Instruction to develop model policies and curricula in a number of different areas and to perform a number of functions relating to competency testing procedures for students, surveying the educational needs of business and industry, encouraging the sharing of nonathletic programs, developing expectations for academic preparation of high school students, and developing and utilizing different kinds of information from school districts. It directs the State Board to develop recommendations relating to evaluation processes of school employees, for conducting research and development, and for preschool activities.

The Act specifies that the parent or guardian of a student may obtain from the State Board of Instruction a review of an action or omission of the board of a school district if the parent or guardian believes that the student is not receiving an appropriate instructional program.

A portion of H.F. 499 passed by the 1987 Iowa General Assembly has significant effect on approval standards for Iowa schools, providing for modifications to the accreditation process adopted previously and the role of the State Board of Public Instruction in that process. This statute requires that each school district and nonpublic school desiring approval must meet the accreditation standards prescribed by July 1, 1989. The Department of Education must monitor school districts and nonpublic schools by means of a review of compliance form to be completed by the schools and an annual onsite visit by Department employees. Under certain conditions, the Director of Education may appoint an accreditation committee to visit the school district or nonpublic school to determine whether the standards have been met and to report its findings to the Director. An appeal process is available if the committee's findings are negative, a correction plan may be developed, and further review carried out. If the deficiencies are not corrected, the State Board must merge the school district with one or more contiguous school districts.

The 1988 General Assembly produced S.F. 2094 which requires that minimum curriculum standards for grades one through six supplement courses already taught in the areas of health, physical education, and communicable diseases with instruction about human sexuality,

self-esteem, stress management, interpersonal relationships, and acquired immune deficiency syndrome (AIDS). Additionally, each school board must provide an outline of the human growth and development curriculum requirements to parents annually.

S.F. 2278 supplants the school standards previously contained in section 256.11 with an educational program based upon the rules adopted by the State Board of Education under section 256.17. The new program is to be taught from a global perspective at all grade levels. The major impact of this legislation is to increase requirements in all subject areas in grades nine through twelve, increase vocational education standards, provide for qualified media specialists in each school, and to require programs for special education, gifted and talented, and at-risk students.

Such changes in requirements constitute potential challenges to not only the requirements themselves, but the discretionary authority to measure their attainment and the actions taken by the State Board of Public Instruction as a consequence of their determinations on review.

CHAPTER V: BOARDS OF EDUCATION

Since education has been defined by the courts, the State Constitution, and the State Legislature as a state function, and since the Federal Constitution passed this responsibility along to the states in an indirect manner, members of the board of directors of a school district are officials of the state. Although they are elected in local elections to represent a finite jurisdiction, they are ultimately responsible to the State Department of Education and the State Legislature and are governed by the statutes of the State of Iowa.

Historically, school boards drew their genesis from committees that were established by New England town meetings to regulate the schools and to deal with problems that may have accrued to the schools. With the increasing complexity of the educational process, these committees soon were replaced by boards of directors, elected by the public, and guided by statutory direction.

Chapter 277 of the Code of Iowa sets forth the procedures to be followed in the election of school board members in this state, and Chapter 279 provides the powers and duties thereof. In Iowa, the requirements to be eligible to be elected to the board of directors of a school district are the same as those qualifications which bestow eligibility to vote. These qualifications are: (1) to be a citizen of the United States, (2) to be at least twenty-one years of age, and (3) to be a resident of the state at least six months, of the county sixty days, and of the local district ten days.

School districts including all or part of a city of fifteen

thousand or more population must have seven members on the board of directors. All other districts must have five. Any district may authorize seven members if it so chooses, but none may have less than five (17, p. 298). The terms of board members rotate and are so arranged that an entire board is not elected at the same time. Most terms are for three years.

Decisions of boards of directors are subject to appeal, either administratively or judicially, depending upon the nature of the dispute. In his study Skarda identified sixteen cases in which the authority of school boards to act in a given manner was disputed in the Supreme Court. In the area of authority and compliance, only one case has reached that level of adjudication since 1970.

Authority and Compliance

Bishop v. Iowa State Board of Public Instruction and Valley Community School District (18)

The Valley Education Association filed a complaint with the Iowa Professional Teaching Practices Commission charging Superintendent of Schools Richard Burmeister with unprofessional practices. The complaint emanated from the temporary suspension by Burmeister of five teachers of the school district, resulting from a drinking incident. Burmeister acted with the apparent knowledge and implied approval of the school board. The Valley Community School Board approved payment of Burmeister's legal fees incurred as a result of the proceeding. Two teachers then filed an appeal with the State Board of Public Instruction, challenging the school board's authority to pay

Burmeister's legal expenses in such a hearing. A panel of the Board of Public Instruction found that the school board had such authority, and the teachers appealed for judicial review.

The Court ruled the phrase "as necessary" in section 279.37 created a strong inference of board discretion on the part of local boards in making decisions to employ counsel. The only powers of a school board are those expressly granted or necessarily implied in the governing statutes. The language of the section allows payment of legal expenses of the school corporation, making no specific mention of school administrators. The actions of Burmeister were official actions taken by him on behalf of the district. The board had authority to act in the manner it did.

School board had discretionary power to pay school superintendent's legal expenses incurred in defending complaint filed against him with professional teaching practices commission which arose out of superintendent's suspension of five teachers, which constituted official school action on behalf of school district (18, p. 889).

Official Meetings

The intent of Chapter 21, The Code, is to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decision, as well as those decisions themselves, are easily accessible to the people. If there is any ambiguity in the construction or application of this law, the statute itself dictates resolution in favor of openness (19). The remaining three cases discussed here and which have been considered by the

Supreme Court since 1971 deal with the issue of open meetings and public disclosure of the basis and rationale for a decision made by a school board.

Anti-Administration Association v. North Fayette Community School District (20)

There was considerable public interest in the activities of the North Fayette Community School Board during the spring of 1971. A group who called themselves the Anti-Administration Association desired to participate in conducting the administrative affairs of the district. At the regular meeting on March 15, 1971, the board's agenda included a consideration of the contracts to be offered teachers for the coming school year, as well as a separate discussion of contracts for the four principals and the superintendent. After a brief public session the board adjourned to a closed session for the purpose of discussing certain personalities of teachers on the staff, and to discuss administrative salaries. Following the closed session the board reconvened in open session and authorized the offer of all contracts. Counsel for the taxpayer's group filed an action against the board, seeking to void the contracts and to issue an injunction against the board preventing future closed meetings.

The court ruled that there was no actual violation of the open meetings law, but the board had been careless in its adherence to it. It further ruled that Chapter 28A could not be interpreted to state that a violation thereof would void the action of the public body. There was no evidence that the board would violate the open

meetings law in the future so the injunction would not be an appropriate remedy.

Even if "open meetings" law was violated when contracts for school teachers and administrators were approved by board, such contracts were neither void nor voidable (20, p. 724).

Keeler v. Iowa State Board of Public Instruction and the Marshalltown Community School District (21)

The board of directors of the Marshalltown Community School District decided in March 1981 to close the elementary school in Albion at the end of the 1980-81 school year. The decision was made after several months of discussion regarding budgetary constraints and various methods of addressing them. The agenda for the meeting at which the decision was finally reached did not specifically list "school closing" as an item, but included it under the general category of "budget cuts." Keeler and sixty other persons residing in or near Albion appealed to the State Board of Public Instruction to void the decision made by the board due to alleged violations of the open meetings law. The State Board declined to do so and affirmed the district's action.

The Court determined that a petition for judicial review of a State Board decision was not the proper vehicle for determination of the open meetings law. The plaintiffs should have pursued an original action in district court in the county in which the school had its principal place of business. Having disposed of that issue, the court further found that the history of the board consideration of the closing, the full opportunity for public input at various stages of the

consideration, the notice of the March meetings, and the participation of many individuals from Albion in that meeting, denied the contention that the public's knowledge and opportunity to be heard were adversely affected by the style of the meeting notice.

Exclusive mechanism for enforcement of open meetings law is an original action in district court for county in which governmental body has its principal place of business; evidentiary proceeding is necessary and special remedies are available (21, p. 110).

The Board of Directors of the Davenport Community School District v. The Quad City Times (22)

The Davenport Community School district board of directors gave written notice to a nonprobationary administrator that it had voted to consider termination of his contract. The notice stated specific reasons for the consideration. After a hearing was held at the request of the administrator, the hearing officer submitted to the board and the administrator his findings of fact and his proposed decision. The administrator appealed and requested a private hearing before the board. The board presided at the private hearing and heard the case de novo. It then convened in open session and by roll call vote decided to continue the administrator's contract.

The Quad City Times sought to examine the transcript of evidence generated at the first hearing in which the board undertook to decide whether to terminate the contract. The board resisted this request, being unsure whether the transcript was exempted from public access. On appeal, the Court found within the statutes a clear legislative intent to provide the public access to the information upon which the board would base its decision. It made an analogy between hearings

before the board and trials by jury, in which trials are for the most part, open. Only the deliberations of the jury are confidential in nature.

Transcript of proceedings before hearing officer which concerned proposed termination of nonprobationary school administrator was public record accessible to newspaper under statute which requires public disclosure and not exempted by statute which makes deliberations of appeal to school board private (22, p. 80).

Significant Legislation Since 1970

Legislation remaining operative since 1970 involving the operation of school boards includes House File 418, enacted in 1979 which adds to the list of methods of electing members of local school boards a fifth optional method. This method creates a seven-member board with three members elected at large and four elected as residents of and by the voters of individual subdistricts. It also provides that a referendum on changing from one authorized method of electing a school board to another may be called by a petition signed by thirty percent of the number of persons voting in the most recent election in the district.

In 1981, the Sixty-ninth General Assembly authorized governmental bodies to meet in a closed session to discuss employment conditions of employees not covered by a collective bargaining agreement. One year later, boards of directors of a school corporation were authorized to appoint one person to serve as both the secretary and treasurer of the board.

Senate File 540, enacted in 1986 makes several changes to the Campaign Finance Disclosure Law. Notably, candidates are required to deposit all contributions within seven days of receipt in an account maintained by the candidate's committee in a financial institution. If school board candidates receive contributions, expend funds, or incur indebtedness in excess of two hundred fifty dollars, the candidate must establish a committee and file the required reports with the county election commissioner, and a separate bank account must be established for the candidate's committee.

The 1987 Session of the General Assembly made some changes in the rules under which boards must operate that will have some impact in the future. As a result of legislation enacted during that session members of the board of directors may now be individuals whose spouses receive compensation directly from the school board. Spouses of employees have been prohibited from serving as school board members in the past.

School boards may now meet and organize at the first regular board meeting after a regular school election rather than at a specific time on a specific date. Boards must now publish the proceedings of each regular and special meeting in a newspaper published in the district or having general circulation within the district. The fee for such publication will be allowed to increase until July 1, 1989, when it will be the legal publication fee provided by statute.

Another piece of legislation from the 1987 session will also have a financial impact upon local school districts. This statute provides that a local board may levy a property tax to pay the costs of providing

incentives for early retirement for teachers if the total estimated accumulated cost does not exceed the total estimated accumulated savings.

Still from the 1987 session, S.F. 106 requires boards of directors of school districts to establish written evaluation criteria and to establish and annually implement evaluation procedures for school district administrators. The Act also requires boards to establish written job descriptions for supervisory positions in school districts.

CHAPTER VI: BUILDINGS AND GROUNDS

As quasi-corporations of the state, school districts may acquire and hold property in the name of the state. The control of such property is actually under the jurisdiction of the legislature. There are no contractual relations between the state and the local school districts with regard to property and buildings. Rather, the districts act as trustees for the public at large. The authority granted school districts to build facilities includes the right to purchase land for playgrounds, transportation facilities, and other educational needs.

School boards are required to insure their property against hazard. In most instances, the sale and purchase of property is regulated by statute and requires approval of the voters. Exception is made when the property is of insignificant value, or when land is acquired through the use of the levy authorized in section 297.5, often referred to as the "Twenty-Seven Cent Levy." A recent change in that section requires voter approval for the construction of school buildings or administration buildings (23, p. 371). The levy itself can be implemented through official approval of the board.

Bids

When construction, demolition, erection, alteration or repair of a school facility exceeds twenty-five thousand dollars, the district is required by Chapter 23, The Code, to let bids for its completion. The statute requires in part "The municipality shall let the work to

the lowest responsible bidder submitting a sealed proposal" (24, p. 65). It provides a procedure as well wherein a district may reject all bids if it should deem them unacceptable, and then request new bids for the same project.

Since 1971, three different challenges to a district's action in regard to the bidding procedure have been considered by the Supreme Court. Seven other instances were investigated by Skarda in his research prior to that date.

Menke v. Board of Education, Independent School District of West Burlington (25)

In response to an invitation to bid on work to be done on an addition to the West Burlington Senior High School, Richard Menke submitted a bid, and accompanied his bid with a check drawn on the State Central Savings Bank. The check had been submitted to an officer of the bank for certification prior to Menke's sending it to the district, and had been duly stamped. For reasons unknown, no signature of a bank officer had been placed on the line provided for it, an omission not noticed by either Menke or the bank. When the bids were opened by the board, it was found that Menke's bid was the lowest submitted. However, the check was returned to Menke advising him that his bid had been rejected due to the lack of authenticating signature from the bank. When the contract was awarded to another bidder, Menke filed suit, claiming damages in the amount of the net profits he would have realized from the performance of the contract.

The court ruled that the principal issue was whether a check stamped as was Menke's check, was properly certified as a matter of law. It ruled that although it is consistent with customary certification practice to conclude that the affixing of the stamp certifies a warrant, the bank in this case had an intention to also require the script signature of a bank official to verify certification. With regard to any cause of action against the board, the court held that the lowest pecuniary bid was but a single factor in the determination of who was the lowest responsible bidder and the board was justified in rejecting the lowest bid, absent a certified check and proceeding to the next qualified bidder.

Board of education was justified in rejecting low bid by contractor when bid was accompanied by security in form of check which was not properly certified (25, p. 692).

West Harrison Community School v. Iowa State Board of Public Instruction and William Clegg (26)

In December of 1981, the West Harrison Community School issued an invitation to a number of firms to bid on a project to control the threat posed by asbestos in the insulation used in two of the district's attendance centers. The lowest bids were submitted by William Clegg. On February 10, 1982, the school board met and received bids from Clegg as well as those from Advanced Insulation Services, the Judy Company, and Hamilton Insulation and Roofing. Subsequent to that meeting, the superintendent was authorized to negotiate further with Advanced and the Judy Company regarding the possibility of accomplishing the work with a spray-on cellulose encapsulation procedure. Although Clegg had initially recommended such a procedure, it was

not included as a specification in the formal bid request. One month later the board awarded the bid to Advanced. Clegg's attorney contacted the board advising them they had not fully complied with the statutory requirements by not awarding the contract to Clegg, the lower bidder, without determining that he was not a responsible bidder.

Consequently, the board rescinded its contract with Advanced and rejected all other bids previously submitted. At the same time the board decided to split the project and call for two separate proposals, one for each attendance center, and so advised Clegg. The district, however, did not solicit a bid from Clegg, but received bids for the two new projects only from Advanced and two other firms. All bids were under \$25,000 for each project. The bids from Advanced were accepted on May 28, 1982, and the work was completed by that company. Clegg made an appeal to the Iowa State Board of Public Instruction which held a hearing and issued its decision in Clegg's favor. On appeal to the district court, the decision was reversed. The issue considered by the Supreme Court was whether the district had improperly split the bid into two projects to avoid the applicability of the public bidding statute, Iowa Code section 23.18. The court ruled that the district officials had clearly divided a construction project for the purpose of precluding Clegg from participating in any phase of the project.

Generally, court is reluctant to interfere with local school board's determination of who is lowest responsible bidder, absent proof that determination is fraudulent, arbitrary, in bad faith, or an abuse of discretion (26, p. 685).

State Board of Public Instruction was authorized to conclude that school district abused its discretion in splitting construction project into two separate contracts after previously treating it as one (26, p. 686).

Elview Construction Company, Inc. v. North Scott Community School District (27)

In April 1983 the North Scott Community School Board decided to build an addition to an existing school. The board properly adopted proposed plans and contract forms and set a time for a public hearing on the matter. No objections to the project were raised at the hearing. The board decided to split the project into individual contracts according to the types of work to be done. This resulted in twenty-six contracts making up the general project. Bids were solicited for a general contract for the entire project and in the alternative for each of twenty-six individual contracts. When the bids were opened, it was determined that the individual contracts would be the most efficient way for the district to proceed, and a general construction manager was hired.

The bidding process failed to produce bids on seven of the twenty-six contracts so the board informally solicited price quotations for them and awarded purchase orders on them after the normal bidding process had been completed. One such contract, for metal windows and doors, had been bid on by the Elview Company, but was rejected because the board considered it too high. Elview brought suit against the district alleging that the contracts were made in violation of Iowa Code Chapter 573, and that the board had acted wrongly in not obtaining performance bonds from all of the contractors.

The court ruled that Elview, as an unsuccessful bidder, had no standing to challenge the district's actions. It also held the board had taken an unnecessary risk in not obtaining performance bonds from all of the contractors. If one of the contractors had defaulted, the school board, as representatives of the taxpayers would be in a precarious position. The court held that all twenty-six of the contracts for the school addition were subject to the guidelines of section 23.18 because each was a part of one public improvement costing in excess of the twenty-five thousand dollar limit. This did not mean that the contract splitting done by the board was illegal, but it did mean that the board should have followed bidding procedure for all of the contracts in the project. In certain instances, such deviation from procedure could render the contracts void, but in this instance, the court did not render judgment on the issue of voidability since there was no remedy. The work had already been completed and the fees paid. Additionally, there were no complaints about the quality of the work as it had been accomplished.

If deviations from prescribed competitive bidding system were severe enough to deprive school board issuing construction contracts of its jurisdiction to act, the resulting contracts were void; however, if board's actions were mere irregularities, the contracts were merely voidable (27, p. 139).

Reversion and Sale

Statutory authority for a school district to allow reversion of a schoolhouse site of less than two acres is found in Chapter 297, The

Code, section 297.15. It provides a procedure whereby such property may revert to the owner of the tract from which it was taken, provided that the owner of the tract pay the value of the site to the school district. Section 297.22 bestows upon boards the authority to sell property which is appraised at \$25,000 or less by board action. Property appraised above that figure must be submitted to the voters for authority to sell under section 278.1.

Skarda located four cases prior to 1971 dealing with sale or reversion of school property. Since 1971, two more such cases have reached the attention of the Supreme Court.

Unification Church v. The Clay Central School District (28)

In February of 1972 the Clay Central Board of Directors decided to sell a vacant school building in the town of Greenville, Iowa. Pursuant to the requirements of then section 279.22, three disinterested freeholders were appointed to appraise the property and did so in the amount of \$7,420. After bids were received the board accepted the highest bid from Billie K. Schomaker in the amount of \$5,005. At that time section 279.22 provided for limitations on the amount a board may realize from sale according to the size of the school district. The average daily attendance of Clay Central was such that the maximum amount the district could realize from the sale was \$5,000. The board was unaware of this limitation at the time of the sale. Schomaker subsequently sold the building to the Unification Church which instituted quiet title action seeking to void the sale by the district due to violations of section 279.22, The Code.

The Court ruled that the district's failure to follow mandated statutory procedures voided the sale. The failure of the Clay County School District to follow those procedures invalidated the conveyance of title to Schomaker.

School sale statutes are mandatory, not merely directory, because school property occupies status of public property subject to public interest (28, p. 579).

Calamus Community School District v. Glenn Rusch and Jean Rusch (29)

The Calamus School District abandoned a half-acre schoolhouse site in 1966. The Rusch's negotiated for the property and in 1967 paid \$200 down on its purchase. A dispute then arose over the total purchase price, the Rusch's claiming it to be \$1,500 while the district insisted it was \$1,700. Without resolving the dispute, the Rusch's entered the property August 15, 1967, and remained in possession. When they learned the school had acquired the property through a lease in 1860 from the owner at that time, the Rusch's claimed possession of the site by virtue of the lease and their ownership of the surrounding land from which the site was leased. The district brought action to determine the ownership of the land.

The court ruled the district to be the owner, citing section 614.24, The Code, which barred action on any claim rooted in a contract for a reversion against the holder of the title in which the instrument was recorded more than twenty years before July 4, 1965. The only exception being claims filed on or before one year after July 4, 1965. The reversion restricting the title of the school became ineffective

when those claiming under it failed to file their claim within one year of that date.

Failure of defendants, who owned the land abutting site of abandoned schoolhouse, to comply with requirements of statute pertaining to reversionary interests in school property resulted in their forfeiture of any statutory reversionary right (29, p. 489).

Significant Legislation Since 1970

Although legislative activity in the area of buildings and grounds has been less than that devoted to other areas of school district management, some changes have been made since 1970. Senate File 59, a product of the 1974 General Assembly, allows local school districts to expend the 2.5 mill voted schoolhouse levy (now the twenty-seven cent site improvement levy) for buildings as well as schoolhouses and for equipment, landscaping, paving, or improving the schoolhouse building grounds and for the rental of facilities under joint agreement. It also allows school districts to enter into rental or lease agreements for up to ten years.

An area that has been receiving increasing attention was addressed by the General Assembly in 1984. House File 2516 authorizes the board of directors of a district to pay the actual cost of removal or encapsulation of asbestos from the general fund of the district, from funds received from the schoolhouse tax under section 278.1(7), The Code, or from the tax levy certified under 297.5. If an additional tax levy is needed, the board of directors may submit a proposal to the electorate for approval. If the voters approve an additional levy,

they must choose between the levy of an additional property tax or the levy of a combination of an enrichment property tax and a school district income surtax. These tax levies may be certified for not more than three years.

House File 2407, a product of the 1986 General Assembly, permits a board of directors of a school district to sell, lease, or dispose of property belonging to the school district without an election. The board must hold a public hearing before taking final action on the property if the appraised value exceeds twenty-five thousand dollars.

CHAPTER VII: PERSONNEL

School districts in Iowa are employers for a variety of job categories, which can be generally grouped into two areas of preparation. Certificated employees are those who must be licensed or certified by the state to perform the responsibilities required by their position. Teachers and school district administrators constitute the largest portion of this job category. These personnel are required by law to be contracted for their services by a school district. Statutory authority for contracts with certificated instructional personnel is found in Chapter 279, The Code of Iowa. For purposes of this study, the use of the terminology "certificated employees" will refer to teachers and administrators exclusively.

Bus drivers must also be licensed by the state and must possess certain job-related skills and abilities in order to be contracted to drive a bus for a school district. The same authority for contracting with bus drivers is found in Chapter 285, The Code. Although bus drivers must be licensed by the state, they are most often categorized as classified employees of a school district, due to the widely discrepant level of training and preparation between their job requirements and that of teachers and administrators.

Other classified employees of a school district include secretarial, maintenance, custodial, and food service personnel. Districts are not required by law to issue contracts to these employees, although many do as a matter of course.

The Code of Iowa is quite specific in its determination of the

procedures to be followed when disciplinary measures or termination of a contract between a school district and a certificated employee is contemplated. Additionally, recent decisions by the Federal Supreme Court in the area of interpretation of the meaning of the terms "due process" in the Fourteenth Amendment have significance to personnel actions in every state. The Federal Court has ruled that the Due Process Clause provides that certain substantive rights — life, liberty, and property — cannot be deprived except pursuant to constitutionally adequate procedures (30, p. 4308). When state law creates job rules and dimensions, it creates a property interest in the job by those employed to fulfill it. Such property interest is implicit and is not conferred by legislative action, but by constitutional guarantee. An essential principle of due process is that a deprivation, in this instance of a means of livelihood, must be preceded by notice and opportunity for hearing appropriate to the nature of the case (30, p. 4307).

The Iowa Department of Education has been given the responsibility of teacher and administrator certification. This agency may not refuse to issue a certificate to a qualified candidate without good cause. Certification is a licensing procedure, and does not constitute nor guarantee a contract between the teacher and the State. Such certificates may be revoked for just cause and the legislature may implement added qualifying standards upon prospective teachers and administrators.

Probationary Teachers

The first two consecutive years of employment of a teacher in the same school district are considered a probationary period. A board of directors may either waive the probationary standing of any teacher who has served such a period in another district, or it may extend the probationary period for a third year with the consent of the teacher. Teachers who have gained nonprobationary status, but who are experiencing difficulties are sometimes placed on probation pending performance improvement, by mutual agreement of a school district and the affected teacher. Termination procedures for probationary teachers include proper notification of the board's intent, and an opportunity for the teacher to request a private hearing before the board, as detailed in section 279.16, The Code. The decision of the board after the hearing will be final and binding, absent any violation of a constitutionally guaranteed right or a violation of public employee rights of the teacher under section 20.10 (31, p. 305).

Probationary Teachers Staff Reduction

Ferree v. Board of Education of the Benton Community School District (32)

Loretta Ferree was a teacher with the Benton Community School District with fifteen years of service to the district. She had been placed on probation in November of 1980 as a result of several negative evaluations. She was subsequently notified in writing that her performance remained unsatisfactory and she would continue in a probationary

status. She was also advised that this status could subject her to termination.

In 1981 it became clear that staff reduction would be necessary due to declining enrollment and budgetary constraints. The master contract provided the following procedure for consideration of teachers to be reduced in the event of staff reduction: (1) natural attrition, (2) staff members with emergency and/or temporary certification, and (3) staff members currently on probation or who were held on the same salary step from the previous year. There was no attrition, nor were there any staff members on emergency or temporary certification. Ferree was selected for termination on the basis of her probationary status. Ferree brought suit claiming the termination was invalid because the probationary status was improperly assigned. The Court ruled that Ferree's action was not timely in that she should have objected to the propriety of the probationary assignment within five days of being notified by the district that she was on probation, and why. She was notified in November 1980 that she was on probation, but did not challenge that action until 1981 when termination proceedings were begun. Under the grievance procedure outlined in the master contract, she could have protested the probation within the time so provided.

Teacher's obligation to file timely grievance arose when she was placed on probation, not when she was selected for termination in a staff reduction because she was on probation, where teacher knew, or should have known, because she was a party to master contract between teachers and school district, that being on probation made her employment position significantly less secure, and potential consequences

of her probation on her employment had been explicitly stated in two evaluations (32, p. 870).

Probationary Teachers Contract Termination

Bonnie Kruse v. Board of Directors of Lamoni Community School District
(33)

Kruse had been hired as a social studies teacher in 1968. Apparently satisfied with her first year of service, the board renewed her contract for the school year 1969-70 in March of 1969. In February of 1970 she received by certified mail a letter in which she was notified that her continuing contract had been terminated effective at the end of the current year pursuant to a majority vote of the board. She responded, protesting the termination and requesting a private hearing, as well as a list of incidents and reasons leading to the board's actions. She was promised and received a hearing before the board, but no list of reasons was supplied until after the hearing. She then received notice that her performance had not been of sufficient quality to warrant continued employment, whereupon she requested and was given a public hearing. In May the board voted again to terminate her contract. Kruse filed suit, alleging that the Code had not been sufficiently adhered to by the board in its action, thereby denying her of due process and equal protection under the law.

The Court held that strict adherence to section 279.13 had not been observed by the board in that Kruse did not have an opportunity to seek a hearing before she received notification of termination, and that the list of reasons was not provided her prior to the hearing.

Consequently, the contract was not terminated, and the issue was returned to the district court to determine damages.

A school district's attempted termination of a teaching contract was null and void where district failed to meet statutory requirements as to notice (33, p. 627).

Moravek v. Davenport Community School District (34)

Edward Moravek was hired as a teacher by the Davenport School District for the 1974-75 school year. He had been hired in September of 1974, one month after the District and the Davenport Education Association had entered into an agreement. This agreement contained a grievance procedure which included the definition of a grievance as a claim by an employee, or the association, based upon the interpretation, application, or violation of the agreement. In March of 1975, the district sent Moravek notice, pursuant to 279.13, The Code, that it was considering the termination of his contract. Upon his request, he was given a private conference and a list of specific reasons for the consideration. He was also notified that he could request a private hearing before the board within twenty days of his receipt of the list of reasons. He never exercised that right. Later he filed a grievance in which he alleged that an article of the agreement, stating that an employee shall not be dismissed without just cause and without procedural due process, had been violated by the board.

Pursuant to advice by counsel, the board refused to submit the matter to arbitration since, in its view, the arbitrator would not have jurisdiction over such matters. Moravek did nothing more to regain his position until he filed suit in district court. District court

dismissed his petition. The Supreme Court ruled that nothing in section 279.13 authorized contracting parties the right to mutually agree to abolish the board's exclusive power to renew, or not to renew, teachers' contracts. In this light, the board was within its rights and had properly terminated Moravek's contract.

Master contract between school district and teachers' representative, which provided for four-step grievance procedure, violated statute governing contracts with teachers and termination of such contracts insofar as grievance procedure purported to govern teacher contract termination (34, p. 798).

Stafford v. Valley Community School District (35)

Judy Stafford was employed by the Valley School District as a part-time tutor, at an hourly rate, for one student from November 1976 to May 1977. During the 1977-78 school year, she was employed by contract on a three-fourths time basis as a remedial reading teacher. In the 1978-79 school year she was employed by contract for the same duties on a one-half time basis. In February 1979, the superintendent initiated proceedings under section 279.15 to terminate her contract at the end of the 1978-79 school year as part of a staff reduction. Following a private hearing, the board filed a decision, including findings of fact and conclusions of law, terminating her contract. Stafford then filed notice of appeal to an adjudicator. The superintendent filed a special appearance with the board, claiming that Stafford was not entitled to an adjudicator's opinion in that she was a probationary teacher. Stafford appealed to district court claiming the designation of probationary teacher had been incorrectly applied by the district in light of her years of experience working for the district.

The Court held that the district had the right to make a determination of her status. It further held that during the 1976-77 school year she had no written contract for the services she performed, she enjoyed no benefits, and was not paid on a salary schedule established in the master contract. It was apparent that the district and Stafford herself mutually considered her services to be that of a part-time tutor for a single student, not a teacher.

Where teacher was hired to be part-time tutor for single student, teacher was paid hourly rate rather than in accordance with master contract salary schedule, did not receive sick leave or other benefits, received no holiday pay, was not hired for full school year, was not required to participate in parent-teacher conferences or staff meetings, and was officially classified as a "tutor," teacher's activity for school district in that school year did not qualify as employment as a teacher for purposes of statute providing that the first two consecutive years of employment in the same school district are a probationary period (35, p. 323).

Larsen v. Oakland Community School District (36)

Larsen was an art teacher and coach with the Oakland Community School District. His employment had begun in the fall of 1983. On March 12, 1985, the superintendent of the district served upon Larsen a notice of recommendation to terminate his teaching contract at the end of the 1984-85 school year. Larsen requested and was provided a private hearing before the board on April 1, 1985. On April 3, 1985, the board held a special meeting, went into closed session to discuss his contract, returned to open session and set a special meeting for April 8 to make the decision. On that date, the board voted to terminate his contract. On April 9, 1985, a notice was mailed to Larsen along

with the board's findings of fact, conclusions of law, and decision. Larsen filed suit, claiming the board had not acted within the statutorily mandated time.

The Court of Appeals decided for the district, ruling that while section 279.16, The Code, clearly provided a time for the determination if there was no hearing, there was no mandated determination time if a hearing had been held, only a time within which the board must meet. It reasoned that although the general intent of the law would demand a relatively short time frame, a board may need to meet in more than one session to consider the evidence and make a decision.

School board did not have to make final decision whether to renew teacher's contract within five days of private hearing requested by teacher; it was enough that school board met within five days of hearing in order to further discuss issue (36, p. 90).

Nonprobationary Teachers Staff Reduction

Hagarty v. Dysart-Geneseo Community School District (37)

Marilyn Hagarty was employed by the Dysart-Geneseo District as a vocal music teacher for grades kindergarten through eighth grade from 1970 through the 1976-77 school year. The superintendent, in the spring of 1977, determined that staff reduction would be necessary due to declining enrollment, and advised the board of his recommendation. Hagarty was notified that her position was recommended for reduction, and she requested a private hearing before the board. Following the hearing the board adopted the recommendation to terminate. Hagarty did not appeal the decision. Independent of these events, a

high school social studies teacher resigned, and was replaced with the middle school social studies teacher. Since Hagarty was endorsed in social studies, the district offered her the middle school position, pursuant to the recall provisions of the master contract. She declined the position. Later an elementary teacher resigned and the superintendent recommended that the position not be filled, but that the district instead reinstate elementary music and hire a part-time librarian. The board agreed with the recommendation and advertised for the positions. Hagarty applied for the music position, but the board instead hired an applicant who would begin employment lower on the salary schedule, permitting the district to fill both positions for what it would have cost to employ Hagarty alone. She filed suit, claiming fraud and asking for an equitable estoppel of the district's actions.

The Court, in ruling for the district, held the central issue to be whether the district had offered Hagarty a position subsequent to her termination for which she was qualified within the requirements of the agreement. In order to prove the falsity element of a fraud action, it would be necessary to establish that the district's representation was false at the time it was relied upon. The fact that the vocal music position was reinstated was not alone sufficient to show that the earlier representation was false.

Where vocal music instructor, whose contract was terminated when her position was eliminated, was qualified to teach social studies but declined offer of such position and staff reduction policy provided a terminated teacher with only right of recall to a position for which the teacher was qualified, the school board was not equitably estopped from relying on the staff policy in refusing to reinstate plaintiff when the position of vocal music instructor was subsequently reinstated (37, p. 93).

Ar-We-Va Community School District v. Long, Ar-We-Va Community School District v. Henkenius (38)

On March 14, 1978, the superintendent of the Ar-We-Va School District served a written notice of recommendation of termination upon Elizabeth Long and Leah Henkenius pursuant to section 279.15, The Code, citing declining enrollment and a decline in the financial assets of the district as reasons necessitating staff reduction. Meeting in closed session the board determined that the relative skill, ability, competence and qualifications of Long and Henkenius were less than the other teachers in the elementary system, and that sufficient cause existed to terminate their contracts. On appeal, an adjudicator ruled that the terminations were in violation of the master contract in the areas of evaluations by the principal and the district's determination of seniority. The board subsequently rejected the adjudicator's decision and appealed to district court for reversal.

The master contract required that consideration be given to the qualifications of the available teachers in making staff reductions. Citing Hagarty (37) the Supreme Court ruled that qualifications meant evidence of certification. Accordingly, before a teacher's contract could be reduced, he or she must be evaluated in relation to all teachers in positions which those under consideration were certified to teach. Long and Henkenius were compared only to elementary teachers in the district, and should have been compared to teachers through grade nine for the school board to have complied with the terms of the master contract. The school district violated the relevant provision of the contract in failing to do so.

Von Krog v. Board of Education of the Beaman-Conrad-Liscomb Community School District (39)

Karlyne Von Krog was a physical education teacher in the BCL District since August 1969. On February 13, 1978, she was notified by the superintendent that her contract was being considered for termination because of contemplated staff reduction. The board subsequently decided to reduce staff in the area of physical education, and Von Krog was formally notified that the superintendent would recommend that her contract be terminated at the end of the current school year. Independent of these events, two other teachers at BCL submitted their resignations, one in the area of social studies, the other at the elementary level. There was no indication that the district intended to reduce the number of physical education classes offered in the district. Von Krog requested a private hearing before the board, after which the board voted to terminate her contract. Upon appeal to an adjudicator, the board's decision was reversed. The board rejected the adjudicator's opinion and appealed to district court.

The Iowa Court of Appeals upheld the school board's decision, ruling that there was evidence from which the board could reasonably conclude, as it did, that the same number of classes could be taught by one full-time teacher with help from presently-employed teachers. The areas of teaching that became vacant were of no assistance since Von Krog was not certified to teach either of them.

Termination of physical education teacher's contract did not violate staff reduction provision, which required school district to attempt to accomplish necessary staff reduction first by attrition, of collective bargaining agreement between school district and teachers' association, in that

teacher was not certified to fill either of district's two vacancies, and section on recall rights in agreement did not place affirmative duty on board of education to perform a wholesale rearrangement of teaching assignments every time a vacancy occurred (39, p. 339).

Wollenzien v. The Board of Education of the Manson Community School District (40)

Norene Wollenzien was employed by the Manson School District as a high school English teacher beginning with the fall of 1974. In 1976 the superintendent became concerned with declining enrollment and prepared a study of anticipated staff requirements for the 1977-78 school year. The school board formally adopted a staff reduction policy which set forth the procedures and considerations necessary to accomplish this reduction. Wollenzien was evaluated on three occasions under standard criteria, along with ten others with whom she was competing for the remaining jobs. All eleven were found to be doing satisfactory work and all were competent and possessed relative skill and ability. Wollenzien was singled out at this point because she was certified to teach only English, whereas the other candidates for termination were either certified in more than one area or possessed some additional training or degree. In January 1977 she was informed by the superintendent that she would be recommended for termination after the current year. A hearing was held before the board which then voted to terminate her contract. Upon appeal, an adjudicator upheld the board's decision. This decision was filed on June 9, 1977. Wollenzien took no action on this decision until July 5, 1977, when she filed a notice of appeal.

The Supreme Court of Iowa dismissed Wollenzien's appeal. The wording of section 279.17 states clearly that the adjudicator's opinion becomes final and binding when it is not rejected in writing within ten days of its issuance. There was no basis in this case to undertake statutory construction that says otherwise.

Under statute providing that dismissed school teacher may reject adjudicator's decision by notifying school board's secretary in writing within ten days of filing of decision, adjudicator's decision became final and binding when it was not rejected by teacher within ten days and decision was not subject to later appeal (40, p. 216).

Olds v. Board of Education of Nashua Community School District (41)

On March 7, 1979, Robert Olds, a high school science teacher with the Nashua Community School District, received a notice and recommendation to terminate his contract. He requested a private hearing before the board, at which time the board voted to terminate his contract. That decision was affirmed by an adjudicator on August 16, 1979. Olds filed a petition for judicial review, and the district court issued its decree finding that Olds' constitutional rights to due process were violated by what the court considered excessive questioning of Olds by the board members.

On February 25, 1980, the superintendent sent Olds a new notice of his recommendation to terminate his contract for the same reasons as stated in 1979. Olds again requested a private hearing before the board. Three of the members of the 1979 board were on the board again in 1980 along with two new members. The board again accepted the superintendent's recommendation and terminated Olds' contract.

Olds again appealed to an adjudicator who again affirmed the board's decision. Upon appeal to district court, the court again reversed the decision, expressing doubt that Olds had yet been heard before an impartial tribunal in that three of the five board members had previously voted to terminate his contract and were overturned by district court. Additionally, the court questioned the district's decision in light of recommendations for increasing the size of the high school science program at Nashua by a State Department of Public Instruction survey, and questioned the district's interpretation of seniority in the staff reduction procedures of the master contract.

The Court of Appeals ruled that it did not necessarily contravene due process to permit judges and administrators who have had their initial rulings reversed on appeal to hear and decide the same issues on remand. It agreed with the board that the seniority provisions had been correctly applied by it, and that the board had rightly considered the individuals who were eligible for staff reduction. The court has a limited scope of review. It should not judge the wisdom of a board's actions, nor can it force a board to adopt a policy which it may think is preferable. The Nashua board could not be forced to retain an employee absent a violation of the procedures utilized.

Smith v. Board of Education of the Mediapolis School District (42)

Joan Smith was a junior high school English teacher with the Mediapolis Schools. The superintendent of the district sought to terminate the teaching contract of Smith as part of the district's staff reduction program. Under the master agreement, if necessary

staff reduction was not accomplished by attrition or reassignment, the employer had to consider the needs of the district and the skill, ability, competence, certification, qualifications, and experience of the professional employees relative to the available work for them. Following Smith's request a private hearing was held by the board, which subsequently followed the superintendent's recommendation and terminated her employment. An adjudicator affirmed the board's decision. Upon appeal by Smith, the district court overturned the adjudicator and ordered Smith reinstated.

Ruling in favor of the board, the Supreme Court drew a distinction between termination of a contract for just cause and termination of a contract for staff reduction purposes. The latter case does not necessarily require evidence of a teacher's faults. The court's primary responsibility is to assure that the decision to terminate was not the result of arbitrariness or capriciousness on the part of the superintendent or the school board. Courts should be reluctant to act as a super school board by viewing each facet of a teacher's skill and comparing it to that of other teachers. The superintendent's recommendation for termination, while in part the result of subjective evaluation, was not unsupported by a preponderance of the evidence.

Just cause for nonrenewal of teacher's contract may be based upon district's personnel and budgetary requirements and does not necessarily require evidence of a teacher's faults (42, p. 150).

Rankin v. Board of Education of the Marshalltown Community School District (43)

Edith Rankin was employed by the Marshalltown Community School District for six years as a high school social studies teacher. In February 1981, as part of a district staff reduction, she was served with the superintendent's notice and recommendation to terminate her contract. She requested and was given a private hearing before the board. As Rankin was the most senior social studies teacher in the district, she argued that there was justification for retaining her position despite financial restrictions. An administrative assistant testified to the board that the district planned to utilize some administrative curriculum coordinators to fill some of the terminated positions, at least on a part-time basis. Following the hearing the board terminated Rankin's contract. Upon appeal, an adjudicator found the district's reductions to be essentially legitimate on grounds of declining enrollment, but that the plan to fill terminated teaching positions to some degree with administrative personnel violated the staff reduction provisions of the collective bargaining agreement. District court reinstated the board's termination.

The Court of Appeals held that the net effect of the board's proposal was to avoid the requirements of the bargaining contract with regard to retention of tenured teachers. Plans to increase the teaching responsibilities of nonunion members in a union position would result in the reinstatement of approximately two-fifths of the teaching position. Such assignment coupled with the termination of a tenured teacher violated the master contract of employment.

Shenandoah Education Association and Janice Gardner v. Shenandoah Community School District (44)

On March 2, 1981, the school district superintendent caused to be served upon Janice Gardner, a teacher, a written notice of recommendation of termination citing fiscal problems and program realignment. On March 3, Gardner requested a private hearing, and on March 6, Gardner and the Shenandoah Education Association filed a grievance under the negotiated collective bargaining agreement, alleging a violation of the master contract by incorrectly terminating Gardner's contract. Thus, two concurrent dispute-resolution procedures were initiated, the request for hearing triggering statutory appeal procedures, and the grievance leading toward arbitration under the negotiated agreement. A hearing was held before the board on March 19, at which time the board overruled Gardner's request that the private hearing be continued until the grievance resolution had been accomplished. The board then heard the evidence and upheld the superintendent's recommendation that she be terminated. Gardner filed a statutory appeal from that decision and an adjudicator was selected. In the meantime, the grievance was not resolved in steps provided by the master contract, and the parties selected an arbitrator to render a decision.

On May 15, 1981, the arbitrator issued his decision finding that the district had violated the master contract in terminating Gardner and dictating that she be reinstated. When the date for the hearing before the adjudicator arrived, Gardner requested that the proceedings be stayed on the grounds that the arbitrator's decision was binding upon

the district. The district resisted, the hearing was held, and the adjudicator affirmed the board's decision. The two conflicting opinions were challenged in district court, which vacated the arbitrator's decision and affirmed that of the adjudicator, thereby upholding the action of the district.

The Supreme Court ruled that the arbitration decision was final and binding upon the district. The arbitrator had not exceeded his authority in ruling that the district had incorrectly selected Gardner, and therefore Gardner could not lawfully be terminated through Chapter 279 proceedings. Once it was decided by arbitration that she was improperly selected for lay off, the entire basis for terminating her failed.

Under statutes as revised, it is no longer against public policy reflected in statutes for school board's termination decision to be overturned by outside decision maker (44, p. 477).

Pocahontas Community School District v. Levene (45)

Pursuant to notice and recommendation by the superintendent, the Pocahontas School Board voted to terminate the continuing contract of Alice Levene, a sixth grade teacher of seventeen years in that district. Language in the negotiated contract required the consideration of teachers teaching in more than one department or teachers accepting extra-duty assignments as services to be considered as part of that teacher's skill, ability, competence, and qualifications. Levene appealed to an adjudicator who reversed the board's decision. Upon appeal, the district court reversed the adjudicator.

The Court of Appeals, citing Olds v. Board of Education (41), ruled that the school district had established that due to small class sizes in the elementary school maintenance of the current staff would result in reduced efficiency. The school board had met its burden of proof of showing just cause for the termination. It did not err by segregating five teachers from the staff reduction process, all of whom had less seniority than Levene, but each of whom had special qualifications and special skills in other areas not possessed by the dismissed teacher.

Just cause for terminating a teacher's contract includes budgetary and personnel requirements of school district; lack of need for services alone is just cause for terminating a teacher's contract (45, p. 699).

Nonprobationary Teachers Contract Termination

Keith v. Community School District of Wilton (46)

Derwood Keith had taught vocational agriculture in the Wilton district for twenty-one years. There was nothing of record to indicate any problems with his performance as a teacher until after the 1967-68 school year. In that year he served as president of the Wilton Education Association and was involved in heated and argumentative contract negotiations with the school board. Between that year and 1974, two other proceedings had been commenced by Wilton school boards of different membership to consider termination of Keith's teaching contract. Both efforts had ended in compromise settlements.

In March of 1974, Keith's teaching was evaluated for the first time by the principal, and the result was favorable. On March 20, a

meeting was held between Keith and four of the five board members, who expressed criticisms of Keith's program. No mention was made of contract termination. A special meeting was held on March 25, at which two patrons of the school board voiced dissatisfaction with the vocational agriculture program as it had been conducted. Immediately thereafter and without any discussion the board voted to notify Keith of its intention to terminate his teaching contract at the end of the school year. Keith was notified by letter and requested a private conference with the board, which was held on April 5. A list was also provided Keith of the reasons for the board's consideration of his termination. The board subsequently voted to terminate his contract, and a public hearing was requested. At this hearing testimony was taken from forty people, most of whom were favorable toward Keith's program, and the board voted again to terminate his contract.

The Supreme Court overturned the board's decision, ruling that Keith had not been afforded an impartial decisionmaker, nor had he been given opportunity to confront and cross-examine witnesses. The critical determination here in assessing the charge of partiality of the decisionmaker is whether in weighing the evidence the board was required to call on its own personal knowledge and impression of what occurred. Such was the case here, as there were no other witnesses. The board had determined here from the very start Keith's performance as a teacher was not up to highest caliber. It then called upon itself to judge the credibility of its own determination as to Keith's performance.

Where school board initiated proceedings to terminate teacher, it could not act as impartial decision maker to which teacher was entitled by due process (46, p. 249).

Board of Education of Fort Madison Community School District v. Youel (47)

This was the first case arising under section 279.13, The Code, 1977, which completely revised the procedure for terminating school teachers' contracts. During his tenure with the Fort Madison School District, James Youel served as football coach, athletic director, and mathematics teacher. At the time of his termination, he was no longer athletic director but was still acting as football coach and mathematics teacher. All of the procedural steps pertinent to the termination of Youel's contract were met by the district. The recommendation to terminate listed four reasons including: (1) inattention to duty, (2) negative attitude toward and poor working relations with activities director, (3) lack of cooperation with activities director, and (4) improper handling of the football program resulting in deterioration of the program.

Following Youel's private hearing with the board, the board filed its decision terminating his contract. Youel appealed to an adjudicator who reversed the board and ordered his reinstatement. Upon appeal by the board, the district court overturned the adjudicator and reinstated the original decision of the board.

The Supreme Court found that the only issue the board had acted upon was reason number four, and that the termination must either stand or fall on the basis on the evidence considered by the board on that issue. The quantum of proof required under section 279.13 is a

preponderance of the competent evidence, a de novo issue in this case, as the standard had previously been "substantial" evidence. The Court ruled that the reasons for termination were supported by a preponderance of the evidence and ruled in support of the board's decision.

Term "just cause" as used in statutory section providing that notification of intent to recommend termination of nonprobationary teacher's contract shall contain statement of reasons which shall be for just cause why recommendation is given to board of education encompasses in addition to "good cause," other legitimate reasons relating to school district's personnel and budgetary requirements (47, p. 677).

Bruton v. Ames Community School District and Board of Education of Ames Community School (48)

This appeal challenged the validity of the "one-year-only" clause in a contract of a nonprobationary public school teacher. The Ames Community School District employed Karen Bruton as a teacher for four consecutive years. No question existed as to her competency or performance. At the end of the 1976-77 school year (her third year) the district had terminated her contract in accordance with Chapter 279, The Code. The district then employed her to teach on a part-time basis for the next school year, and in order to be able to plan for staff reduction, staff alignment, and changing program needs, placed the one-year-only clause in her contract. On March 13, 1978 the district superintendent notified Bruton that he would recommend to the board that her contract be terminated at the end of the current year due to the fact that it was a one-year-only contract.

The board held a private meeting with Bruton as a matter of courtesy and issued its findings that her contract was not a continuing

contract and would therefore expire at the end of the current year.

Bruton appealed to an adjudicator, who affirmed the board.

In its review, the Supreme Court ruled in favor of Bruton, citing the 1976 overhaul of the teachers' contract statutes in section 279.13 to 279.19 by the General Assembly. In its action, the legislature established a new system consisting of two categories of teachers: probationary teachers, whose contracts are given procedural protection but are subject to nonrenewal in the final judgment of the board, and nonprobationary teachers, whose contracts are given procedural protection and are terminable on establishment of just cause. The Court held that the General Assembly did not intend to permit teachers and boards to have the ability to waive their respective protections and rights under the statute. The law now writes section 279.13 to 279.19 of the Code into teachers' contracts in Iowa and the one-year-only clause is of no effect.

Clause in contract of nonprobationary public school teacher providing that contracts shall terminate in one year without notice, hearing, or any other action by school board was of no effect, and thus where school board failed to attempt to prove just cause for nonrenewal, board and teacher did not mutually agree to terminate contract, and teacher did not resign, contract automatically renewed (48, p. 351).

Smith v. The Board of Education of the Fort Madison Community School District (49)

Frank Smith was a counselor employed by the Fort Madison School District prior to and including the 1976-77 school year. During the course of that and the preceding school year, it became apparent that he was having difficulties fulfilling his duties, being preoccupied with personal problems, marital separation, and child custody disputes.

On March 15, 1977, pursuant to an agreement with the district superintendent and as an alternative to immediate termination proceedings, Smith went on extended sick leave and sought professional psychiatric help. Under the agreement he would remain on sick leave until such time as the psychiatrist certified to the school district that he was fully capable of returning to his duties to work for a thirty-day probationary period.

When asked on May 3, 1977, the psychiatrist informed the district superintendent that he could not determine when Smith would be fully capable of returning to work but said Smith could try returning to his duties. As that response did not meet the standard set in the agreement, Smith was not given a thirty-day trial period. In August, the superintendent notified Smith that he was recommending the immediate termination of his employment and was suspending Smith without pay pending the hearing on his termination. Grounds for dismissal were listed as inattention to duty, failure to maintain an effective working relationship with peers, and incompetence. A hearing was held before the board who found just cause existed for Smith's dismissal. An adjudicator upheld the board's decision. Upon appeal by Smith, the district court held that the superintendent lacked authority to suspend Smith without pay, that the board did not breach its agreement with Smith when it failed to give a thirty-day trial period, and that a preponderance of the competent evidence supported the termination decision.

The Supreme Court upheld the district court in the matter of the agreement between the board and Smith, but ruled that the grounds for

dismissal were incorrectly stated by the superintendent, and that the district court erred when it held that Smith could not have been suspended without pay in this instance.

Where record disclosed that parties were aware that guidance counselor's teaching difficulties were the result of mental illness, as indicated by their initial agreement and confirmed by an agreed upon psychiatrist, and temporary nature of disability was further evidence by psychiatrist's statement at termination hearing that counselor was no longer suffering from a paranoid condition, termination of counselor's contract should not have proceeded on grounds of inattention to duty, failure to maintain an effective working relationship and incompetence, but should have proceeded on ground of mental disability and involved, at minimum, evaluation of certain specific factors (49, p. 221).

Smith v. Fort Madison Community School District (50)

This is a sequel to Smith v. Board of Education (49). Smith argued here that under the prior opinion, the district must either reinstate him, or initiate new proceedings to terminate his contract, and that it had done neither. The district argued that, under the modification agreement, the next move was up to Smith; he was required to furnish a certificate by a psychiatrist that he would be fully capable of returning to work. The district further argued that Smith was barred from seeking reinstatement or back pay because of doctrine of laches.

The Supreme Court ruled that the agreement between Smith and the superintendent had not been repudiated by the board when it sought to terminate Smith's contract, but that Smith was not barred by the doctrine of laches from seeking reinstatement. The matter had not been lying dormant, but had, in fact, been in a state of fairly constant agitation

in administrative and judicial proceedings since its inception. However, the matter may not be permitted to remain in limbo indefinitely. When the time of performance is indefinite in a contract, it generally must be rendered within a reasonable time.

Fay v. Board of Directors of the North-Linn Community School District (51)

John Fay was a sixth grade teacher employed by the North-Linn Community School District. On March 14, 1979, the district superintendent notified Fay that he would recommend his termination to the Board of Directors for cause. The notice listed the following reasons for the superintendent's action: (1) unacceptable rapport with students, (2) unacceptable ability to motivate students, (3) unacceptable parent/student relations, (4) unsuitable teaching methods, and (5) unacceptable self-control. Fay requested a hearing with the board which was held on March 28-29, 1979. The board subsequently found just cause to terminate his contract. An adjudicator reversed the board and ordered Fay's reinstatement. District court overturned the adjudicator and reinstated the board's decision.

The Supreme Court ruled in favor of the board, finding a preponderance of the entire evidence to indicate Fay's continuing problems in dealing with his students, their parents and the school administration, as well as his teaching methods and lack of self-control. The judicial review statute (section 279.18) did not require the district court to give any particular weight to the decision of the adjudicator. Rather the statute stated that the court shall

reverse the decision of the board or adjudicator when such decision is unsupported by the necessary preponderance.

Board of Directors of the Sioux City Community School District v. Ames Mroz (52)

Mroz was a teacher of junior high science with the Sioux City Community School District until the end of the 1977-78 school year. On March 4, 1978, the superintendent of the district notified Mroz that he would recommend that the board terminate Mroz's contract at the end of the school year because he was an incompetent teacher. The notice specified fourteen reasons why the termination was being recommended, which may be categorized into the following broad categories: (1) inadequate maintenance of discipline during class, (2) excessive and ineffective use of films, (3) ineffective classroom teaching, and (4) failure to improve and cooperate with administrators who tried to assist in correcting his difficulties. Mroz requested and was given a private hearing before the board. After fourteen hours of testimony the board confirmed that just cause existed to terminate the contract. Mroz appealed to an adjudicator who reversed the board and ordered him reinstated. The board rejected the arbitrator's opinion and appealed to district court. In August 1979, the district court affirmed the adjudicator's decision.

The Supreme Court reversed the district court and reinstated the board's decision. It held that a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance. There was a preponderance of evidence to support the board's decision. Mroz contended that he

was ill with high blood pressure at the time of his poor evaluations, but failed to establish a relationship between his teaching deficiencies and his high blood pressure.

Where there is uncontroverted expert testimony that a teacher's incompetence is due to a physical or mental disability, school board must consider the duties required by contract, character and possible duration of the illness, and needs of the employer and extent to which the duties can be performed by another; in contrast, where a teacher's incompetence is not due to a mental or physical disability, board does not have to consider these criteria (52, p. 447).

Munger v. The Jesup Community School District (53)

Larry Munger was a social studies teacher and wrestling coach in the Jesup Community School District. After being notified of the superintendent's intention to recommend termination of his contract, Munger requested a private hearing before the board. The reasons listed for his termination included failure to maintain a competitive wrestling program and failure to maintain rapport with athletes. Subsequent to the hearing, the board voted to terminate Munger's contract, and he appealed to an adjudicator. The adjudicator reversed the board's findings. In the meantime, Munger offered to tender his resignation as wrestling coach but not that of social studies teacher, arguing that he thus was relinquishing those duties which were unsatisfactory. The adjudicator concurred with this argument and ordered Munger reinstated to his duties in the classroom only. The board appealed to district court, which reversed the adjudicator and reinstated the board's decision.

The Supreme Court ruled that Munger's contract was not severable, but that he had tried hard to cooperate and solve the problem, unlike

Youel (47) who tried instead to sabotage the program. Munger was given no reason to believe his job was in jeopardy until he received notice that the superintendent intended to recommend termination, therefore he was given no opportunity to remedy the complaints against him. The decision of the district court was reversed.

Evidence was insufficient to support termination of contract to teach social studies and coach wrestling for failure to maintain competitive wrestling program and to maintain rapport with athletes (53, p. 378).

Board of Directors of the South Winneshiek Community School District v. Sexton (54)

Betty Sexton was a veteran teacher of twenty-nine years, nineteen of which were in the employ of the South Winneshiek Community School District. On March 9, 1981, the superintendent of schools served upon Sexton a notice and recommendation to terminate her teaching contract. Four reasons for the recommendation were given: (1) unsuitable teaching methods, (2) insubordination, (3) inappropriate discipline, and (4) inability to communicate and relate with students. A private hearing was held before the board, after which the board voted to accept the superintendent's recommendation and terminate her contract. Sexton appealed the decision to an adjudicator who reversed the board's decision on the grounds that it was not supported by a preponderance of the competent evidence in the record. The adjudicator did suggest that a disciplinary sanction other than termination might be appropriate. The board rejected the adjudicator's findings and appealed to the district court, which affirmed.

The Court of Appeals likewise affirmed the adjudicator's decision,

ruling that the examples cited by the board as indicia of its allegations were evidence of professional faults which should be corrected by improvement of performance. The Court also noted a record of support for Sexton and her teaching ability by numerous former students and parents, and the fact that Sexton was selected as one of thirty teachers from a field of thirty-three thousand teachers in the state to participate in Project Teach, a project to teach other teachers. The adjudicator's statement of alternative sanction was merely a recommendation and thus did not constitute action in violation of the law or in excess of his authority.

Everett v. Board of Education of the Hampton Community School District
(55)

Arlene Everett was a veteran fifth grade teacher with eleven years of service to the Hampton School District. On March 19, 1981, the district superintendent caused a notice and recommendation to terminate her teaching contract pursuant to section 279.15, The Code, to be served upon Everett. The notice listed the reasons for the termination as unsatisfactory performance, failure to meet district standards, unsuitable teaching methods, inability to motivate students, and persistent failure to provide the type of teacher-directed responses, activities, and reinforcement techniques for students to make satisfactory progress to acquire basic skills and develop a positive self-concept. On May 4, 1981, after a private hearing, the board voted to terminate her contract. The termination was affirmed on appeal to an adjudicator and to the district court.

The Court of Appeals, in affirming the board's decision, held

that it was not necessary that each allegation constitute just cause in and of itself, but that considered as a whole, all allegations together constituted just cause. The evidence submitted by the district detailed several incidents over a period of years that would substantiate problems with Everett's teaching. Although the record contained conflicting testimony regarding some of the problems, including support from some parents, the court considered the evidence in light of the demeanor of the witnesses who presented it.

Bishop v. Eastern Allamakee Community School District (56)

Margaret Bishop was a teacher with the Eastern Allamakee Community School District. On May 10, 1982, the school board voted to terminate her continuing contract of employment for the 1982-83 school year. Bishop appealed to an adjudicator, who upheld the termination action. Although the decision apparently was signed by the adjudicator and mailed on August 11, 1982, it was not received by Bishop's attorney until August 17, 1982. Without designating the date of filing, the parties agreed that Bishop notified the board secretary orally on August 18 and August 20 that she was rejecting the adjudicator's decision. This oral notification was within the ten days of filing deadline, although Bishop did not at that time or any other time notify the board in writing of her rejection. She filed an appeal with the district court on September 3, 1982. In response, the school district contested the court's jurisdiction in hearing her appeal, since she had not complied with the written notice requirement of section 279.17, The Code. District court rejected all arguments

advanced by Bishop and dismissed the petition on the timeliness grounds.

The Supreme Court affirmed the district court action. It warned that a finding that oral notification substantially fulfills the requirements of the statute could inject a great deal of confusion in subsequent termination cases. One purpose of the written notice was to avoid the uncertainties and disputes that might arise over whether the party adversely affected by the adjudicator's decision provided sufficient notice of rejection to their opponent. Bishop's claim that her right to equal protection was violated by the timelines cannot be sustained. Under the rational basis test, a legislative classification is upheld if any conceivable state of facts reasonably justifies it. The guarantee of equal protection does not exact uniformity of procedure.

As a teacher and public employee, a teacher seeking review of an adjudicator's decision upholding termination of her teacher contract could not claim she was similarly situated to private litigants seeking judicial review of their claims for equal protection purposes (56, p. 501).

Libe v. Board of Education of Twin Cedars Community School District (57)

Frank Libe was a teacher with the Twin Cedars Community School District. On May 7, 1982, he was served with notice by the superintendent of his intent to recommend to the board of education the immediate termination of Libe's contract. The reasons listed for the recommendation were: (1) Libe had engaged in a sexual relationship with a student, (2) in the process of giving this student rides home from school functions he had engaged in kissing and petting in his parked car,

(3) his communication with the student had been unprofessional and inappropriate, (4) the contents of this communication had been unprofessional and inappropriate, and (5) the means of delivery of these communications had been unprofessional and inappropriate. At the hearing before the board of education, the student testified that she had a relationship with Libe that involved discussion of personal problems, and that the relationship had gradually escalated in intensity, culminating in one act of sexual intercourse. Over objections by Libe, evidence was admitted that the student had taken a polygraph test with results indicating that she was not deceptive when she stated that she had engaged in sexual intercourse with Libe. The board accepted the superintendent's recommendation and terminated Libe's contract effective immediately. This decision was affirmed by an adjudicator and by district court.

The Court of Appeals held that school boards are not as restricted in receiving evidence as are regular courts of law. The fact that evidence would be inadmissible in a jury trial did not bar its consideration in an administrative proceeding such as this. Applying these principles, the court concluded that the board was entitled to consider the polygraph results. While the Iowa Supreme Court has expressed reservations about the reliability of polygraph examinations, it has not completely forbidden the introduction of such evidence in legal proceedings and has in fact stated that polygraph results "are of some value." The primary issue in this case was one of credibility. The student's testimony supported the allegations against Libe, while he denied any wrongdoing or improper conduct. The board determined

that the student's testimony was credible and Libe's was not. The court would not second-guess the board's judgment in this area. The board's decision was affirmed.

Johnson v. Board of Education of the Woden-Crystal Lake Community School District (58)

Raymond Johnson had been a teacher in the Woden-Crystal Lake School District since the 1969-70 school year, with a two-year absence in the army from 1971-73. On March 15, 1982, the district superintendent gave written notice to Johnson that he would recommend the termination of Johnson's contract to the board. The reasons listed for the recommendation included Johnson's continual nonsupportive attitude toward the school administration, his insubordination, and his lack of cooperation with and ignoring of the administration's directives, assignment, and instructions. After a private hearing the board issued its decision and accepted the superintendent's recommendation by terminating Johnson's contract. Upon appeal, both an adjudicator and the district court affirmed the board's decision.

The Court of Appeals, also affirming the board's decision, ruled that insubordination and lack of cooperation with the school administration have been held to constitute just cause to justify the termination of a teacher's contract. As established in Youel (47), the fact that a teacher may not have been totally responsible for all of the problems does not mean that his contract cannot be terminated. The board must have the final say as to how best to bring an intolerable state of affairs to an end.

Waterloo Education Association v. Waterloo Community School District (59)

Paula McDougall was an employee of the Waterloo Community School District. On March 11, 1983, the district served McDougall with a notice and recommendation to terminate her contract pursuant to section 279.15, The Code, and listing specified reasons for the recommendation. The school district and the Waterloo Education Association had in place a collective bargaining agreement which contained an article on binding arbitration. It also contained an article on discipline and dismissal in which employees questioning the good and proper cause of such actions could have the choice of appealing the discharge under the provision of Iowa Code section 279.13 or by filing a grievance. Once the choice was made, the employee was prohibited from subsequently changing from one procedure to the other. McDougall filed a grievance alleging that no good and proper cause for her termination existed. After various proceedings, the district refused to arbitrate. District court affirmed the school district's action.

The Supreme Court held that, although Chapter 279 of the Code contains the statutory provisions for terminating teachers' contracts, a majority of the court had held in other instances that it did not constitute the exclusive means for terminating teachers' contracts. Arbitration may be substituted under Chapter 20, The Code. The district court was reversed and the school district ordered to process the grievance.

Wilson v. Des Moines Independent Community School District (60)

Rose Wilson was a teacher employed by the Des Moines Independent Community School District. She was transferred from North High School to Tech High School in October of 1981, and received her first formal evaluation at Tech in February of 1982. She was given a composite rating of "needs improvement." An assistance team was requested for her for the 1982-83 school year. In September of that year she was informed that she needed improvement in the areas of planning, meeting individual student's needs, and improving classroom discipline. Throughout that work year, Wilson continued to have problems with district policies and work rules. In March of 1983, she failed to report to work and did not notify the registrar until 9:30 a.m. Because of her repeated violations of work rules, she was suspended for several days. An assistance team was again assigned to her for the 1983-84 school year, and she was given an improvement plan with specific objectives that included all of the previously addressed problems. As her problems continued throughout the year, she was suspended indefinitely on January 12, 1984, pending termination proceedings. After a hearing the board voted to terminate her contract effective June 30, 1984 for the reasons stated. An adjudicator affirmed the board's decision.

The Court of Appeals, in ruling for the board, held that the record showed that during the span of well over a year and a half, Wilson was evaluated and informed of her professional shortcomings. She was informed that her failure to comply with the district's standards may result in sanctions, discipline, or discharge. The

record revealed no evidence that demonstrated a good faith attempt by Wilson to improve her professional skills or in any way rise to the standards stressed to her in her evaluations. The decision of the district was supported by a preponderance of the evidence.

Just cause for termination of nonprobationary teacher is one which directly or indirectly significantly and adversely affects what must be ultimate goal of every school system, high quality education for district's students; it relates to job performance, including leadership and role model effectiveness, and must include concept that school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance; on the other hand, just cause cannot include reasons which are arbitrary, unfair or generated out of some petty vendetta (60, p. 681).

Substitute Teachers

Fitzgerald v. Saydel Consolidated School District (61)

The Saydel Consolidated School District maintained a special education program. One of the district's special education teachers resigned during the 1979-80 school year. The district tried without success to find a certificated special education teacher to fill the vacancy. Robert Fitzgerald was certificated to teach kindergarten through eighth grade and had three years teaching experience in another school. He had applied for employment with the Saydel district and had been placed upon its temporary substitute list. In January 1980, Fitzgerald was employed on a day to day basis to teach the vacated position until a certificated teacher could be located. At the end of eighteen days a properly certificated teacher had not been located, and the district had another of its certificated

special education teachers take over the classroom where Fitzgerald was teaching, moving him to the less difficult special education room newly vacated by the change. To retain him in that position until the end of the year the district had to obtain special permission from the State Department of Public Instruction, which it did.

On March 13, 1980, the superintendent wrote Fitzgerald a letter in which his status with the district was reviewed. In the letter he was reminded that his current position was interim and that it would end on June 6, 1980. No other positions were offered him, and he was invited to write a letter of his interest, if any, in future assignments with the Saydel district. On March 26, 1980, the superintendent wrote a second letter to Fitzgerald advising him that the board had officially terminated his interim position at its regular meeting. Fitzgerald did not request a hearing on this matter. He contacted the district several times during the ensuing summer requesting consideration for various positions that were available, but was not hired. His name was again placed on the temporary substitute list. Fitzgerald brought suit against the district.

The Supreme Court upheld the district's actions in its termination of Fitzgerald's position. It ruled that sections 279.13 to 279.19, The Code, do not expressly mention substitute teachers. Past decisions from other jurisdictions have generally held that temporary substitute teaching does not ripen into tenure. With regard to Fitzgerald's status, his period of teaching was not voluntary on the district's part. The district sought, and would have hired, a properly certificated teacher for this classroom had it been able to find one. Fitzgerald's

lack of certification also lent weight to the temporary nature of his job.

Statutory tenure provisions, concerning contract provisions, notice of termination, and the provision of private hearings upon termination, do not apply to temporary substitute teachers (61, p. 101).

Teacher Certification

Erb v. Iowa State Board of Public Instruction (62)

Richard Erb, a military veteran and holder of a master's degree in fine arts, received his teacher certificate in 1963. Since that time he had taught art in the Nishna Valley Community School. In addition to teaching, he had coached wrestling, assisted with football, and served as senior class sponsor. He was married and had two sons. In the spring of 1970, Erb became involved in an extra-marital relationship with Margaret Johnson, a home economics teacher in the Nishna Valley schools, who was planning on resigning her teaching position and opening a boutique in Red Oak. Johnson was married to Robert Johnson, a farmer in the district. Johnson became suspicious of his wife's conduct and by means of various acts of subterfuge eventually discovered Erb and Margaret engaged in sexual intercourse. Erb and Margaret terminated their affair, and Erb offered to resign his position in the district, but the local school board decided unanimously not to accept his resignation. The board president testified Erb's teaching was highly rated by his principal and superintendent, he had been forgiven by his wife and the student body, and he had maintained

the respect of the community. Erb was retained for the ensuing year and continued to teach in the Nishna Valley School District.

Johnson appeared before the Board of Educational Examiners to present his case against Erb, stating that he only wanted him out of Nishna Valley schools, and was not intent on having his certificate revoked. During the hearing the Board refused to allow Erb's attorney to cross-examine Johnson or two witnesses offered by him and also refused to allow testimony of thirty-five other witnesses in support of Erb's character and fitness to teach. The Board voted five to four to revoke Erb's teaching certificate and, without making any findings of fact or conclusions of law, ordered it revoked. District court held that Erb's conduct was sufficient basis for revocation of his certificate.

The Supreme Court ordered Erb's certificate reinstated. It held that since students are taught by example as well as lecture, the teacher's out-of-class conduct may affect his classroom fitness, but such conduct is of limited relevance. The Court was unwilling to make the assumption that merely because Erb admitted adultery, such conduct automatically made him unfit to teach. The Board was not permitted unfettered power by the legislature to revoke the certificate of any teacher whose personal, private conduct incurred its disapproval regardless of its likely or actual effect upon his teaching. A teacher's certificate can be revoked only upon showing a reasonable likelihood that the teacher's retention in the profession will adversely affect the school community.

Power of the Board of Educational Examiners to revoke teaching certificates is neither punitive nor intended to permit exercise of personal moral judgment by members of the Board (62, p. 340).

Discriminatory Practices

Cedar Rapids Human Rights Commission v. Cedar Rapids Community School District (63)

The Cedar Rapids Human Rights Commission was established by Cedar Rapids City Ordinance, which established the Commission, enumerated its powers, defined and set out unfair practices in public accommodations and services, and provided the procedures for redress of grievances. Two Cedar Rapids school teachers filed complaints with the Commission in 1972, alleging sex discrimination in employment by the Cedar Rapids Community School District. The alleged discrimination involved forced maternity leave for pregnant teachers. After investigation, the Commission found probable cause for the complaints and provided for conciliation. When conciliation failed, a public hearing was held in which the Commission found the district had discriminated in the areas of sex and employment against the two teachers. It directed compensation and reemployment for them. After the district failed to comply, the Commission filed a petition in district court asking that the school district be ordered to comply. District court dismissed the petition on the grounds that the Commission had improperly acted as a court, failed to provide judicial review of its ruling, and that its orders were not enforceable.

The Supreme Court affirmed the district court's ruling. The

crux of the issue was whether "judicial power" existed. The power to ascertain facts clearly belonged to the Commission; however, when the ordinance was studied, it was logical to conclude the Commission could not enforce its decision except by suing in the district court. The Commission could not have any order enforced through its own actions alone. The failure of the ordinance to provide for judicial review of the Commission's findings and rulings constituted a failure to provide adequate safeguard to those who were affected by the administrative action.

Cedar Rapids Community School District v. Parr (64)

Joan Parr and Judy McCarthy were teachers in the Cedar Rapids School System. Parr was asked to terminate her duties due to pregnancy in accord with a 1970 school board regulation not extending leave opportunities to nontenured teachers. McCarthy was also requested to temporarily discontinue her teaching duties for the reason of pregnancy. Parr's employment was terminated April 10, 1972, at which time she was two months short of completing the two-year probationary period. Consequently, she was not entitled to maternity leave with automatic right to reinstatement of employment. When McCarthy's employment was temporarily discontinued May 10, 1972, her two-year probationary period had been completed, thus entitling her to maternity leave with reinstatement of employment upon return to work at the beginning of a new academic year. Both teachers advised their supervisors to the effect they desired to work past the fifth month of pregnancy, but neither such wish was honored. Both teachers had obtained permission

from their doctors to continue working.

Pursuant to an agreement between the Human Rights Commission and the district, the district filed a petition for declaratory judgment, requesting an adjudication of the legality of the district's 1970 maternity leave regulation. At the trial the 1972 amendment denying sick leave benefits to teachers on maternity leave was also attacked. The district court ruled both policies to be discriminating and ordered back pay and reinstatement to both teachers.

The Supreme Court affirmed the district court. It held the district illegally isolated pregnancy from other disabilities or physical conditions and made it subject to restrictive provisions. In the case of other illness or debilitating conditions, an individual was not required to cease employment at a fixed time and return to work following recovery at a set date regardless of the employee's wishes or medical advice. Any person affected by a disability other than pregnancy ceased employment and thereafter returned to work when he or she deemed it proper to do so. The policy penalized the teachers and members of their class for being women and suffering disabilities to which they alone were inherently susceptible, and this was discriminatory.

Davenport Community School District v. Iowa Civil Rights Commission (65)

The Davenport Community School District had a policy in effect permitting employees to accrue sick leave from year to year to be used during the tenure of each employee. The district, however, did not permit the use of such leave by female employees against absences

from work due to pregnancy or pregnancy-related disabilities. Six teachers brought proceedings against the district alleging discrimination in violation of Chapter 501A.6, The Code. The hearing officer found in favor of the teachers basing his decision largely on a rule promulgated by the Commission in 1972 which proscribed the employment practice of excluding disability caused by pregnancy from a temporary disability plan. He also noted the Parr (64) decision. The district court affirmed the Commission's ruling.

The Supreme Court, in affirming the Commission cited the Iowa Civil Rights Act, Chapter 105A, amended by the Sixty-fifth General Assembly to prohibit sex discrimination in employment. The school district had notice of the content of the rule in question due to its publication, and there was no evidence in the record that the district took any measure to prevent or enjoin enforcement of the rule pending the decision of Parr (64).

Mandatory Retirement

Johnston v. Marion Independent School District (66)

Ruth Johnston became a teacher in the Marion School District in 1954. During the 1973-74 school year, she reached sixty-five years of age. The district had a mandatory retirement policy which called for retirement on the first day of July following an employee's sixty-fifth birthday. The school reserved the right to reemploy retired teachers on a year-to-year basis. The district attempted to discharge Johnston under section 279.24, which provided for discharge

by a majority vote of the board for any good cause. Johnston resisted the attempt, claiming there was no good cause to discharge her.

The Supreme Court, ruling in Johnston's favor, held that age has nothing to do with fault. The legislature did not vest school boards with the power to designate or change what might constitute cause by mere process of adopting local school policies. This view was bolstered by the district itself, in reserving the right to rehire teachers sixty-five years and older on a year-to-year basis.

Neither teacher's age of sixty-five years nor school policy calling for retirement of a teacher at sixty-five years was sufficient to give school board "good cause" to discharge teacher in absence of evidence of some specific personal fault (66, p. 216).

DeShon v. Bettendorf Community School District (67)

Following a board hearing, the Bettendorf Community School Board determined that their mandatory retirement policy which required the retirement of all employees on the first day of July following the employee's sixty-fifth birthday, constituted just cause to terminate the contract of Margaret DeShon, who had taught in the district for nineteen years. Upon appeal to an adjudicator by DeShon, the decision of the board was upheld. She consequently rejected that decision and appealed to district court for review. District court also upheld the termination.

The sole determination for the board was whether the attainment of their mandatory retirement age constituted just cause. The policy was clearly interrelated with the personnel needs of the district, providing a means of contract termination which allowed both the

district and the teacher to plan for their future needs while incorporating the safeguards of the review procedure. The district was supported in its policy by the Iowa Public Employee's Retirement System which stated that a member's normal retirement age should be sixty-five years. The Supreme Court affirmed the district's decision.

To show a violation of equal protection in case in which no fundamental right or suspect classification is involved, party must show there is no reasonable basis for the classification (67, p. 330).

Extracurricular Contract

Slockett v. Iowa Valley Community School District (68)

Joanne Slockett was employed by the Iowa Valley Community School District as a physical education teacher and junior high basketball coach. Although initially, both assignments were written on the same contract, in subsequent years two contracts were issued, one for the teaching position and a separate contract for a varsity coaching position. In February of 1979, the school board voted not to offer Slockett the coaching position for the following school year. There was no attempt to terminate her other duties. The coaching contract was terminated without affording Slockett the procedural protections provided for termination of teacher contracts. The district court determined that the head coaching position was a mere extra-duty assignment and did not qualify as a tenured position; therefore, the district was not obligated to comply with statutory requirements

for terminating tenured positions. After the trial court entered its ruling, the General Assembly amended Iowa Code Chapters 279 and 260 so as to require separate contracts for positions to coach interscholastic activities.

The Supreme Court, in looking at the legislative action, held that the legislature is presumed not to perform a useless act, hence the statutory amendment was an indication that the law was changed from the statutes that controlled this case. There was a clear separation of the contracts, and the wording of the instruments plainly provided that the coaching was a mere extra-duty assignment. There was nothing in the statutes prior to the amendment which prohibited such a contractual agreement. The actions of the district were upheld.

Suspension Without Pay

McFarland v. Board of Education of the Norwalk Community School District (69)

James McFarland was a teacher and coach in the Norwalk Community School system. On September 10, 1977, he was coaching a freshman football game and one of his players was ejected from the game for fighting. McFarland struck the player on the shoulder pad and helmet and threatened to "throw him into the stands" if he fought again. On September 12, he was notified that the superintendent was going to recommend to the board that his contract be terminated according to the provisions of section 279.24, The Code, and that he was suspended without pay pending the board's decision. The board heard the

recommendation for termination on September 26, met later in executive session, and issued its findings of fact, concluding that McFarland had engaged in conduct ordinarily justifying termination for just cause, but that they had elected not to terminate his contract. Additionally, it found just cause for his suspension without pay from September 12 to October 1. McFarland sought review of the suspension decision by an adjudicator, who concluded that he did not have jurisdiction to hear the appeal and dismissed it. The district court dismissed McFarland's appeal on the same ground.

The Supreme Court reversed the district court. The Court held that even though parts of the termination statute seem to limit the board's options to either accepting or rejecting the superintendent's recommendation of termination, to conclude that no appeal could be taken because the board did not act to terminate was an unduly restrictive view. The purpose of suspension under the discharge section 279.27, The Code, was to provide a safeguard for the students, or possibly the teacher, in those cases in which problems might occur in future associations. Withholding of pay would, in effect, constitute punishment in advance of hearing and would not further advance the purpose of suspension. McFarland was awarded back pay.

Northeast Community Education Association v. Northeast Community School District (70)

James O'Rourke was a teacher employed by the Northeast Community School District. On October 12, 1984, O'Rourke hit a student on the shoulder. This was the third time O'Rourke had struck a student in thirteen months. The district superintendent immediately discussed

the incident with O'Rourke and decided to suspend O'Rourke for three days without pay. He later notified O'Rourke in writing of his decision. At no time did the superintendent seek to invoke the termination or discharge proceedings of Iowa Code Chapter 279. On behalf of the teacher, the employee organization sought a declaratory judgment that the disciplinary suspension was beyond the powers of the superintendent and the school district and was also in violation of procedural due process rights. The district court entered a summary judgment on behalf of the association.

The Supreme Court held that the school district had the power to suspend teachers for proper cause for disciplinary reasons provided that no discharge proceeding had been initiated against the teacher, and that disciplinary suspension could be imposed without pay for punishment. However, it affirmed the district court on the basis that the superintendent's suspension of the teacher was illegal and beyond the superintendent's powers. The superintendent could only recommend such suspension to the board. O'Rourke's suspension was reversed.

Benefits

Barnett v. Durant Community School District (71)

Muriel Barnett and twenty-four other teachers employed by the Durant School District during the 1971-72 and 1972-73 school years claimed a tuition refund of up to three hundred twenty dollars out-of-pocket expenses incurred by them, and provided for in their employment

contracts. Each of them took graduate courses during the 1971-72 school year which met the qualifications and restrictions provided for in their contract. They also returned to their teaching duties for the following year. The district, upon advice from its attorney, claimed that such agreement to pay was beyond the authority of the board. The teachers filed petition for a declaratory judgment; the school district filed petition for a summary judgment alleging the refusal was correct because the agreement was unauthorized. The district court sustained the motion to dismiss.

The Supreme Court held that there was no question of the authority of a school board to grant teacher salary increments based upon additional education. That right was implied in the statutes rather than expressly stated. The purpose of salary increments was obviously to encourage teachers to improve their skills to the benefit of the district. The agreement for tuition was motivated by the same objective, and there was no reason the district should not encourage such work by absorbing the tuition cost. The district court was reversed.

Drinnin v. Heartland Area Education Agency 11 (72)

John Drinnin was a teacher-preschool consultant employed by the Heartland Area Education Agency. As a public school employee, he was subject to Iowa Code 279.40 which granted a yearly leave of absence for medically related disability with full pay from ten to fifteen days depending on the number of years employed. The final sentence of this statute stated that any amounts due an employee under this section shall be reduced by benefits payable as temporary disability

and healing period benefits under the worker's compensation act. Drinnin was injured in an automobile accident in the course of his employment and missed sixty-three days of work as a result. At the time he had accumulated thirty-seven and one-half days of sick leave. During the first thirty-seven and one-half days of his absence he received one hundred percent of his salary from his employer and benefits which amounted to sixty percent of his salary from his employer's insurance carrier. The worker's compensation checks were signed over to the Agency. Following that period, Drinnin received no salary from the Agency, but continued to receive compensation benefits from the insurance carrier, which he kept for himself. Upon returning to work, he discovered that one full day of sick leave had been deducted for each of his first thirty-seven and one-half days of absence, thereby exhausting his available sick leave. He brought action, claiming that only four-tenths of a full day should have been deducted during the first thirty-seven and one-half days of absence, thereby not exhausting his available sick leave. The district court ruled that the Agency had correctly deducted his sick leave.

The Supreme Court affirmed this decision. It held that worker's compensation benefits are, in substance, payments by an employer, either through the purchase of insurance, as was the case here, or by self-insurance. Because the payments should be viewed as coming from the employer, the Agency was entitled to deduct a full day for each day missed.

Administrators

Flanders v. Waterloo Community School District (73)

M. Dean Flanders served as principal of a public school under contract with the Waterloo Community School District. Under the statutes, ordinarily the last day a board or its agent could possibly inform the administrator in writing of notice to recommend termination of contract is March 31. Up to March 30, 1972, the board had not informed Flanders in writing of its intent. School was held on March 30, Flanders attended, but was not notified of contemplated termination. On that day the board caused a written notice to be mailed to Flanders' home by certified mail. The next day, March 31, was Good Friday. Flanders and his wife were not at home for the greater part of the day. A postman attempted to deliver the notice, but finding no one at home, left a notice for Flanders to pick up the mail at the post office. When Flanders arrived home, the post office had closed for the day and remained closed for the next two days due to Easter holidays. Flanders never picked up the notice.

On April 10, the board mailed Flanders notice of termination of his contract by certified mail. He received this notice. He then brought an action for declaratory judgment that the attempted termination of his contract was void. The district court found against him and dismissed his petition.

The Supreme Court ruled that the steps to be taken by the board were at statutorily mandated dates and times, and must therefore have been observed by the board. The court cannot supersede them

by times which it might deem "reasonable." Flanders did not receive the writing at least ten days prior to the mailing of notice of termination by the board, and the board's action was therefore ineffective.

Briggs v. Board of Directors of the Hinton Community School District (74)

Thomas Briggs was an elementary principal in the Hinton Community School District for fourteen years prior to his termination at the close of school year 1977-78. On March 29, 1978, the Hinton board of directors voted to consider termination of Briggs' continuing contract. All procedures mandated by section 279.24, The Code, were followed. The hearing officer issued his proposed decision that just cause for contract termination did not exist, and suggested that in the alternative Briggs be placed on probation for the next school year. The board then voted to review the opinion and a private hearing was held. Following the hearing, the board unanimously rejected the hearing officer's decision, and issued its own findings of fact, conclusions of law, and decision, holding that there was just cause for the dismissal. The district court affirmed the board's actions.

The Supreme Court also affirmed the board's actions. It ruled that in the context of teacher fault a "just cause" is one which directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students. There was substantial evidence in the record before the board to justify the nineteen findings of fact

which noted deficiencies in the areas of teacher supervision, student discipline, and decision making.

Evidence is "substantial" when a reasonable mind would accept it as adequate to reach a conclusion (74, p. 741).

Cook v. Plainfield Community School District (75)

In March of 1977, William Cook received notice the board had voted to consider termination of his employment, stating the following four general reasons: (1) incompetency, (2) insubordination, (3) unsuitable administrative methods, and (4) lack of professional growth. Sixteen specific failures were cited to support the general reasons. Cook requested a hearing before final board action. After many hours of conflicting testimony from numerous witnesses, the hearing officer issued his proposed decision finding no just cause to terminate Cook's employment. The board moved to review the decision and held a private hearing where it found evidence of just cause and rejected the officer's recommendation. Cook appealed to district court which affirmed the district's action.

The Court of Appeals ruled that the record supported the following allegations: (1) failure, inability, or refusal to refrain from overt opposition of the superintendent's administration and to communicate and cooperate with the superintendent regarding school problems and issues, (2) failure, inability, or refusal to maintain and complete on time the learning disabilities screening and placement program, and (3) failure, inability, or refusal to promptly develop and complete

staff evaluation as directed by the board. The district's actions were affirmed.

Wedergren v. Board of Directors of the South Tama Community School District (76)

Joel Wedergren was employed by the district in March 1977 as district superintendent. In 1978 the board and Wedergren entered into a contract of employment which began July 1, 1978 and was to continue for the three-year maximum allowed by law. The board voted on March 8, 1978, to consider discharging Wedergren from his position. The board followed the hearing and review procedures contained in section 279.24, The Code. A hearing officer held an evidentiary hearing in May 1979. His proposed decision recommended that Wedergren not be discharged. The board voted to review the decision. It then heard the case de novo upon the record and made its own findings of fact and conclusions of law, voting to discharge the superintendent. On appeal, the district court affirmed the board's decision.

The Supreme Court likewise affirmed the board's decision. In so doing, it held that in the absence of evidence that a board has prejudged the facts of the case, the court would not find a denial of due process by the combination of investigative and adjudicative roles. The board was faced with a decision which it felt was necessary to the educational integrity of the district. It met that responsibility. The fact that some other person might not agree with that decision, or might have found otherwise, does not impair the validity of that decision.

Gere v. Council Bluffs Community School District (77)

Lloyd Gere had been a teacher and principal in the Council Bluffs Community School District for more than twenty years. Because of declining enrollment and budgetary cutbacks, the district decided to close some elementary schools beginning with the 1981-82 school year. In that process, Gere's assignment for that year was changed to the duties of (1) elementary principal of a small sixty-five student school, (2) coordinator of the district's outdoor education program, and (3) attendance officer for the district. Gere objected to the assignment as attendance officer but performed those duties under protest. He then filed a petition for declaratory judgment, asking the court to prohibit the district from requiring him to serve as attendance officer. The trial court ruled that Gere's contract did not permit the assignment because those duties would not be within the reasonable expectations of the parties and would also be unconscionable in view of the parties' unequal bargaining positions.

The Supreme Court reversed the district court in favor of the school district's position. It ruled that Iowa Code section 279.21 constituted a term of Gere's contract, and that it provided that "the principal shall perform such other duties as may be assigned by the superintendent." The mandate to perform other duties as assigned was not limited to instructional-type duties performed by principals. School districts, in providing effective educational programs, may reasonably be expected to use their administrators in various functions. The Court held that the power to assign could not be unlimited. A principal could not have been required to act as building custodian

or bus driver, but short of such extremes, the decision to assign should be at the discretion of the school authorities.

In the Matter of Waterloo Community School District and concerning William J. Gowens (78)

Because of budget limitations and declining enrollments, the Waterloo Community School District found it necessary to eliminate the positions of three of its twenty-three elementary school principals. The position of Gowens, a nonprobationary administrator with twelve year's service to the district, was one of the three terminated. The board served notice to Gowens and provided him with four reasons for its action: (1) the district continued to have a declining student enrollment, (2) the district continued to have budget limitations, (3) the district had eliminated the position of three full-time elementary principals, and (4) the relative performance and evaluation of the administrators and the needs of the district had been considered. Gowens requested a hearing to review the board's action. At the hearing the board introduced evidence to establish the first three reasons, but chose not to offer proof in support of the fourth reason. The hearing officer found that the district had established the first three reasons and that these reasons amounted to just cause for terminating Gowens' position. On review the district court reversed the board, ruling that, although the district had shown sufficient cause to eliminate three positions, it had not shown just cause for selecting Gowens' position as one of them.

The Supreme Court affirmed the district court. It held that in selecting positions for staff reductions a board need not justify

its decision under the formal procedure, or grounds, that would ordinarily be required to discharge an administrator for just cause, but the board could be called upon to articulate some objective basis for its selections. Such basis could be ability, seniority, experience, or anything else that denoted the decision was not arbitrary. The difficulty with the board's position in this instance was that it left unanswered the crucial question of whether its decision rested within the broad area of discretion or within the narrow area of what might be prohibited. The Court ordered Gowens reinstated.

Unemployment Compensation

Orr v. Lewis Central School District and Employers Mutual Casualty Company (79)

John Orr filed a petition for arbitration in June 1978, seeking benefits for headaches which he alleged he suffered as the result of a work-connected incident in May 1975 when he was struck on the back of the neck by a falling plank. He claimed that, despite reasonable diligence, he was unable to determine the headaches were caused by the May 1975 incident until September 1977. The school district and the insurer moved to dismiss the petition on the ground that the action was barred because it was untimely under section 85.26, The Code. A deputy industrial commissioner sustained the motion and dismissed the petition. Upon petition for judicial review, the district court affirmed.

The Supreme Court held that the discovery rule delays the accrual of a cause of action until the injured person has in fact discovered

his injury or by exercise of reasonable diligence should have discovered it. The time period for notice or claim did not begin to run until Orr, as a reasonable man, should have recognized the nature, seriousness, and probable compensable character of his injury or disease. A motion to dismiss should only be sustained if were certain that the party could not recover under any state of facts which could be proven in support of his claim. The district court was reversed and the issue remanded to the industrial commission.

Courts do not favor statutes of limitations, and thus when two interpretations of limitations statutes are possible, the one giving the longer period to litigate seeking relief is to be preferred and applied (79, p. 257).

Des Moines Independent Community School District v. Department of Job Service and James H. Sorenson (80)

James Sorenson had his name placed on substitute teacher lists at three schools in the Des Moines area, including the Des Moines Independent Community School District, in 1982. He accepted one assignment from the school district and additional assignments from the other two schools during the fourth quarter of 1982. He did not accept any teaching assignments from the district in either the first or second quarters of 1983; however, he did accept assignments in the other two schools during the first quarter of 1983, and from one of the other schools in the second quarter. At the conclusion of the 1982-83 school year, the district sent a letter to Sorenson indicating that the school district would have substitute teaching available to him for the following term. The school district had a policy whereby a substitute was retained on the list if the first letter was not

returned. A second letter was sent to Sorenson in August requesting that he confirm if he wished to have continued employment with the school district. Sorenson did not return the letter or notify the school district because he assumed that his failure to contact the district would indicate that he was no longer available to substitute teach. On June 1, 1983, Sorenson moved from Altoona to Cedar Rapids because of financial reasons. After the move he was employed for a short time as a substitute teacher with the Cedar Rapids School District.

Sorenson filed an initial claim for unemployment insurance benefits effective October 16, 1983. A claims deputy determined that he was entitled to benefits. The school district appealed this decision on the grounds that claimant voluntarily quit. On that appeal the hearing officer concluded that Sorenson was entitled to benefits because: (1) his election not to report for further possible assignment with the district was not a voluntary quit, and (2) he was justified in not accepting suitable work because he no longer resided in the area where the job was offered. On judicial review, the district court affirmed the job service's determination.

The Supreme Court reversed the decision and remanded the case for denial of benefits. It held that Sorenson was not involved in a conventional employer-employee relationship. Substitute teaching is by its nature inherently indefinite depending on the occurrence of unforeseen vacancies in the teaching faculty. The legislature has treated school district employees differently than other employees. Unemployment benefits are not paid to teachers during the period between

successive academic years or terms, and there is a special provision in employment agency rules which compares substitute teachers favorably with regular instructional employees in regard to the expectation of future employment. A substitute who has been notified that his status will remain the same as the preceding semester or school year, and has no reasons to believe otherwise maintains a continued employment relationship with the school.

Worker's Compensation

Cedar Rapids Community School and Bituminous Casualty Corporation v. Reginald Cady, deceased, Roberta Cady, widow, and Iowa Industrial Commission (81)

Reginald Cady and Graydon Caslavka were employed as janitors by the Cedar Rapids Community School District. They were both recently assigned to Harding school. The two men had no contact outside of work and little contact at work. However, unknown to the employer and Cady, Caslavka was afflicted with paranoid schizophrenia accompanied by delusions of persecution. He believed that a "hit man" was after him to avenge his misconduct in real and imagined past sexual affairs. On the day before the killing, he decided that Cady was the hit man. On the day of the killing, Cady almost collided with Caslavka's car while driving into the school parking lot. Caslavka then took a pistol from his car and shot Cady, fatally wounding him. Subsequent psychiatric examinations established that his conduct was wholly caused by an insane delusion. The Industrial Commission ruled that Cady's death arose out of his employment, on the basis of the

analogy between a latent defect in a machine which breaks down and causes injury and an unforeseen mental disorder which causes a co-employee to run amuck and cause injury. The district court affirmed the commissioner's reasoning.

The Supreme Court also affirmed the commission. It held that in keeping with the humanitarian objective of the workers' compensation statute, the legislation was primarily for the benefit of the worker and his dependents. Its beneficent purpose was not to be defeated by reading something into it which was not there, or by a narrow and constrained construction. When work exposes the employee to the risks of the street, the injury is compensable; when work exposes an employee to the risk of attack by a deranged person, it is like a "street risk" and also compensable.

Death of janitor arising out of an on-the-job assault by an allegedly deranged co-employee janitor at school arose "out of" employment within meaning of Worker's Compensation Law, and thus widow was entitled to death benefits (81, p. 298).

Johnson v. Harlan Community School District, West Des Moines School District and Employers Mutual Insurance Companies (82)

Diana Johnson was an employee of the West Des Moines School District. On January 7, 1984, while working for that district, she was injured in a fall on the premises of the Harlan Community School District. She later brought an action against the Harlan District, alleging its negligence had caused her injuries. Following a jury trial, she recovered a judgment of eighty thousand two hundred fifty dollars in that action. Prior to the conclusion of the litigation, she had received worker's compensation benefits as a result of her

injuries, paid to her by Employers Mutual Insurance Companies. These benefits included over nineteen thousand dollars for weekly healing period and disability benefits and in excess of fifty-five thousand dollars for medical and hospital benefits which her employer was required to furnish under section 85.27, The Code.

The West Des Moines School District and the workers' compensation carrier filed notice of lien in employee's tort action for both weekly benefit payments and cost of medical and hospital services which were furnished, claiming the right to indemnity from Johnson's recovery from tort-feasor. Johnson agreed that the district and the carrier should be reimbursed to the extent of the weekly healing period and disability benefits she received but disputed their right of recovery for the sums paid as medical and hospital expense.

The Supreme Court decided that the benefits were recoverable by the district and the carrier. The Court ruled that the purpose of the subrogation provision of the statute was to permit the employer to recoup monies it had been required to pay under the provision of Chapter 85, The Code, from a tortious third party whose conduct had produced the injury which necessitated the payments. No other reason was advanced which suggested a rational basis for treating the two categories of benefit payments differently for the purpose of the employer's right of subrogation.

Classified Employees Contract Termination

Spilman v. Board of Directors of Davis County Community School District
(83)

D. Sue Spilman was a properly certificated librarian, though she had never previously been so employed. After a rather detailed conference between Spilman and the superintendent of the district, the parties entered into a written employment contract under which she agreed to serve as a library clerk for one hundred eighty working days during the 1974-75 school year. She was to be paid four thousand six hundred dollars, an amount less than the basic teacher scale. The usual teacher employment contract form was not used. At the end of the school year she was orally informed that her contract would not be renewed for the following year. There was no written notice, nor was a hearing granted. Spilman brought action, seeking a declaratory judgment that she was entitled to the protection of section 279.13, The Code, which stipulated the conditions under which the contracts of teachers must be terminated. The district court filed a decision dismissing Spilman's case and assigning cost to her.

The Supreme Court affirmed the district court. It held that the primary task of the court was to construe Spilman's employment contract, in light of the continuing teacher contract statute. At no place in either the Code or Department Rule was there any provisions made for certification of "library clerks." Spilman herself testified that she was familiar with the terms of the contract and was aware she was being employed as a clerk before she signed the contract. There

was no question of the intent of both parties as to the meaning of their contract.

Vinson v. Linn-Mar Community School District (84)

Carolyn Vinson was employed as a school bus driver by the Linn-Mar Community School District. Her immediate supervisor was Jerry Williams, the district's director of transportation. Pursuant to the terms of a master employment contract, Vinson was paid in accordance with the designated route time for the route she drove. Such time was not the actual driving time of a particular occasion but the amount of time determined by Williams to represent a reasonable time within which the route ordinarily could be completed. In filling out her time card, Vinson showed her starting time as 2:45 p.m. and recorded her return time as the time shown on the office clock after her return to the bus barn. The time shown on the cards did not affect her compensation, however, because her compensation was based on the time allotted for the route. Other drivers recorded their time in the same way.

After a dispute with Williams about breakdown pay on October 21, 1980, she was informed by him that she was being overpaid because her route should not start until 2:50. All of the other drivers started at 2:45, and she had never been informed that she had a different starting time. Williams subsequently undertook a time study of Vinson's route, culminating in his decision to reduce her route time by five minutes, and refusing to allow her to include shut-down, clean-up time on her time card. He then instructed her to fill out her time

card every day by indicating that her departure time was 2:50 and her return time was 4:05, regardless of what the return time actually was. Vinson continued to record actual time, and was given a memorandum from Williams on the subject of "Falsifying Time Cards" and informed that if she persisted, she was liable for suspension and dismissal. Vinson continued her practice and was suspended for three days. During that time she responded in writing to Williams accusing him of ordering her to falsify her time card by his insistence on her recording her time in the manner he had chosen. When she returned to work, she continued filling out her time card in the manner she had previously, and Williams dismissed her. Subsequently he instructed drivers merely to show their route numbers on their time cards as a basis for receiving compensation at the predetermined rate. In 1981, Vinson applied for a bus driving position with a neighboring school district. When an official of that district called Williams to inquire why she had been discharged, Williams told him he terminated her for "recording incorrect time on time cards." Vinson brought suit.

The case was submitted to the jury on special verdicts. Vinson was awarded compensatory damages and punitive damages on her defamation claim, compensatory damages and punitive damages on her claim for intentional infliction of emotional distress, and compensatory damages for breach of contract. The district appealed to the Supreme Court.

The Court decided for Vinson in all but one area, intentional infliction of emotional distress. It reasoned that an attack on the integrity and moral character of a party is libelous per se. Thus,

it is libel per se to make a published statement accusing a person of being a liar. The Court believed that a statement that an employee was fired for making incorrect entries on her time card could reasonably be taken as imputing dishonesty to the employee. Therefore, Williams statement could be understood as defamatory per se. The final step was to report the incident to a prospective employer as if it involved dishonesty, knowing the report would be so received and harm Vinson's chance of being employed, and knowing that she had not acted dishonestly. The fact that the entries would not change her compensation bears on the gravity of Williams' behavior, and the fact that the system was changed after she was fired lends support to her claim that she was being singled out.

Union Activities

Valley Educational Support Personnel Association v. Public Employment Relations Board (85)

On May 19, 1985, the Board of Directors of the Valley Community School District promoted Dave Smock to the newly-created position of head custodian. Smock was promoted over John Gass, a sixteen-year employee, and Lou Anne Dennler, a five-year employee. Smock had been an employee of the district for ten months. All three employees had been active in the Valley Educational Support Personnel Association. Smock had been the chief organizer of the union and Gass and Dennler had been elected, respectively, president and vice-president of the association. After the selection of Smock, Dennler submitted her resignation from her janitorial position. The district refused her

subsequent request for reinstatement. The association filed a complaint challenging the district's actions, alleging a violation of Iowa Code section 20.10. PERB dismissed the complaint.

The Court of Appeals ruled that the district would have promoted Smock despite any animus toward the association, and that the evidence of his initiative was sufficient to sustain the district's burden of production. The Court also concluded that there was substantial evidence to support the decision not to reinstate Dennler, absent a finding of prohibited practice by the district's actions.

Under dual motive test, Public Employment Relations Board properly considered evidence tending to show lack of animus on part of school district toward union after union established prima facie case that promotion of junior employee over two senior employees was based on exercise of protected union activities; although test requires employer to produce evidence of legitimate reason for action taken, it does not thereby render irrelevant evidence directly rebutting prima facie case (85, p. 496).

Military Service

Bewley v. Villisca Iowa Community School District (86)

James Bewley was employed as a custodian with the Villisca Community School District. The parties entered into annual contracts of employment, each providing Bewley with a two-week vacation, to be determined with the consent of the superintendent. In 1976 and 1977, Bewley was informed by the superintendent that the district's unofficial policy was that employees who were members of the National Guard were to take their vacations during the same period of time they were attending training camp. Apart from his training time, Bewley

received no vacation time during those two years. He brought action for damages against the district in district court, which found for Bewley. The district appealed.

The Supreme Court ruled for Bewley. In so doing is cited Chapter 29A.43, The Code, which provides in part that no person, firm, or corporation, shall discriminate against any officer or enlisted person of the National Guard or organized reserves of the Armed Forces of the United States because of his membership therein. Such period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus or other employment benefits relating to the employee's particular employment. The Court refused to exclude school districts from the parameters of that statute.

Significant Legislation Since 1970

House File 427, enacted in 1970, created uniform dates for the issuance and return of teachers' contracts. The Act required that no teacher's contract be issued for renewal prior to March 1, and that a minimum of twenty-one days after issuance be allowed for the return of the contract. Another contractual issue was decided in 1975 when the legislature provided for a two-year contract for school principals who had been employed at least nine months by a school district. This Act also defined the duties of the school principal concerning the administration and operation of the attendance center to which the principal was assigned.

Procedures for continuation and termination of teachers' contracts and for discharge of teachers was outlined in Senate File 205, approved by the 1976 General Assembly. The Act specifically exempted superintendents, assistant superintendents, principals and assistant principals. Under its terms, the superintendent initiates termination proceedings which shall be for just cause. A private hearing may be held before the board at the request of the teacher. A nonprobationary teacher may appeal the decision of the board to an adjudicator who may be a person mutually agreeable to the two parties or may be selected from a list of five names submitted by the PERB. The adjudicator's decision is final unless appealed to the district court.

In the same legislative session, House File 1582 provided procedures for the termination of the contract of or discharge of all administrators. Termination of a nonprobationary administrator must be pursuant to notice, a hearing before a hearing officer selected from a list of names submitted by the Professional Teaching Practices Commission, and the decision of the hearing officer may be overruled by the school board. The administrator may appeal to the district court based upon specific reasons enumerated in the Act.

The Sixty-sixth General Assembly also redefined sick leave for state employees as a medically-related disability so that it includes pregnancy, and prohibits employers from discriminating in promotion, discharge, demotion, or suspension of employees because of valid absence for a medically-related disability. The law on mandatory retirement was changed in 1979. For employees in the Iowa Public

Employment Retirement System, two changes were made: (1) an employee of the state cannot be retired involuntarily because of age, and (2) an employee of a political subdivision may be retired on the basis of age at seventy or above.

Significant changes in teaching contracts for extracurricular sports activities were enacted in 1984 through Senate File 2215. The Act requires school districts to issue separate extracurricular contracts to coaches of interscholastic athletic activities. If the holder of an extracurricular contract is a teacher, the teacher must possess a coaching endorsement for that sport. However, the Act also allows school boards to employ noncertificated persons to serve as assistant coaches of any sport and head coaches of any sport except varsity football, basketball, track, baseball, softball, volleyball, gymnastics, hockey, or wrestling if the individuals hold a coaching authorization issued by the Board of Educational Examiners. If an extracurricular contract is held by a certificated teacher, the contract can be terminated or the teacher may be discharged using the present law for termination or discharge. If an extracurricular contract is held by an individual possessing a coaching authorization, that individual serves at the pleasure of the board. If an individual holding an extracurricular contract does not wish to accept the contract for that activity for the next school year, the individual may resign from that contract for that year. However, the board may require that a teacher employed by the district either continue coaching for the next year or accept an extracurricular contract to coach for the next year if the board has made a good faith effort to fill the position

and has been unable to do so. An appeal procedure for teachers required to accept extracurricular contracts is provided. The termination of an extracurricular contract of a certificated teacher does not affect a regular teaching contract of that teacher, but if an employee's regular teaching contract is terminated, the employee's extracurricular contract is also terminated.

The following year the legislature once more addressed this issue and provided that an individual who possesses a teaching certificate with a coaching endorsement who is employed by the board of directors of a school district in a coaching capacity but is not issued a teaching contract serves at the pleasure of the board and is not subject to termination procedures.

CHAPTER VIII: STUDENTS

Chapter 299, The Code of Iowa, provides in part that all children over the age of seven and under the age of sixteen who are physically and mentally able must attend some public school for at least one hundred twenty days per each school year. In lieu of such attendance, such child may attend a private school, provided that equivalent instruction is provided by a certified teacher.

Exceptions to this requirement include: (1) any child who is over the age of fourteen and regularly employed, (2) any child whose educational qualifications are equal to those of students who have completed the eighth grade, (3) any child who is excused by any court of record or judge, (4) children attending religious services or receiving religious instruction, and (5) children who are attending a private college preparatory school approved under section 275.25 (87, p. 379).

Students may be excluded from school for violations of the regulations established by the board, for reasons of immorality, or when the presence of a student is determined to be detrimental to the best interests of the school. School administrators may suspend students for short periods of time provided that such suspension is duly reported to the board in writing. A school board may, by a majority vote, expel any student from school for the reasons listed above, but such suspension may not be for a longer period of time than the current school year (88, p. 335).

Eleven cases relating to student issues were decided by the Supreme Court since 1970. The causes for litigation involving schools and students have changed from the concerns of racial discrimination, corporal punishment and discipline related issues reported by Skarda, to those involving eligibility for athletics, cases involving tort liability wherein students sustained personal injury, and special education.

Eligibility

Bunger v. Iowa High School Athletic Association (89)

The Iowa High School Athletic Association (IHSAA), an unincorporated association in charge of boys' interscholastic athletic events in Iowa, developed rules of conduct to determine eligibility of students to participate in athletic events for their member schools. One such rule contained a section that prohibited athletes from consuming alcoholic beverages and controlled drugs. An interpretation of that rule by the IHSAA placed a student ineligible if he was in a vehicle that was stopped by a law officer and one such substance was found inside the vehicle, even if the student was not consuming the substance, and even if the incident did not occur during the school year.

On June 7, 1971, William Bunger and three other minors were riding in a car containing a case of beer. The car was stopped by a highway patrolman and the beer was discovered. Upon reporting the incident to his school officials, Bunger was declared ineligible to play football

during the coming fall for the first six weeks of the season. Bunger brought suit to enjoin enforcement of the IHSAA rule.

The Court found the rule in question to be a rule of the IHSAA, an organization that had no authority to promulgate rules to students. Neither the State Board of Public Instruction nor a school district operating under that Board could redelegate its rule-making authority to the IHSAA. Therefore, the rule was invalid. The Court further stated that the rule on its face was too tenuous to uphold. An incident outside of school, outside of the school year, and outside of football season, involving no illegal use of beer could not be upheld in this situation.

Statute authorizing schools to participate in inter-scholastic events sponsored by qualifying organizations and inferentially to belong to such organizations did not authorize school board to turn over its statutory rule-making authority to such organizations (89, p. 555).

Student Injury/Death

Sprung v. Rasmussen (90)

Senior Daniel Sprung was injured in a physical education class, while attempting to perform a tumbling exercise under the supervision of instructor Rasmussen. The incident occurred on February 14, 1968 and Sprung was incapacitated until May 11, 1968. On June 29, 1968, one hundred thirty-six days after the happening of the incident, Sprung's father formally notified the district through his attorney of his intent to file suit. In October he brought petition against the district. The district, in its response, claimed the notice had

not been given within the required ninety days and asked for a dismissal.

The Court found the section of law relied upon by the district to be ambiguous. The issue was involved not with two separate statutory timelines, but two permissible interpretations of the same timeline. Reading the questioned sentence to favor the position taken by Sprung and his father, it concluded that legislative intent was to permit an injured party to defer the service of the sixty-day notice for a period of ninety days, thus giving the party a maximum period of one hundred fifty days before service of notice would be required.

Where student injured in physical education class was incapacitated for period of 87 days, notice given to school district of student's claim for damages arising from injuries served 49 days after termination of claimed incapacity confirmed with statutory notice requirements (90, p. 431).

Fosselman v. Waterloo Community School District (91)

On September 20, 1968 Stephen Fosselman (a ninth grade student) was participating in a game of "bombardment" in his physical education class at Logan Junior High School in Waterloo. He was injured at the start of the game when, in the act of retrieving the ball, he was struck in the face by another student's knee. At the time of the injury instructor Frank Guild was either participating in the game or observing the activity from a platform at the side of the court. He did not observe the accident. Fosselman left the game in a dazed condition and was found later in the locker room. A later medical examination disclosed four fractures of the facial bones, a depressed sinus and bruises to the left eye and surrounding area. The fractures

were repaired and the doctor's report concluded no permanent injury. Fosselman and his father filed suit claiming negligent supervision of the physical education class.

There was uncontradicted evidence that the rules of the game had been explained by the instructor, that the students had frequently requested the game, and it had been played many times prior to the time that Fosselman was injured. The Supreme Court found that no evidence had been introduced that established that more than one instructor was needed to provide appropriate supervision of the class.

Evidence was insufficient, in action for damages for injuries sustained during student's participation in game of "bombardment" in ninth grade physical education class, to require submission of negligent supervision issue to jury (91, p. 281).

Wong v. Waterloo Community School District (92)

On July 17, 1970, eleven year old Peter Wong was drowned while participating in a swimming class conducted under the auspices of the Waterloo School District. The class involved a summer program of six swimming lessons held at McKinstry Junior High School. The classes were supervised by employees of the district, including both classroom teachers and lifeguards. Peter was known to be afraid of water and was last seen in the shallow end of the pool. Sometime later his body was discovered in the deep end. Artificial respiration was attempted, both by those present and later, by the Waterloo Fire Department inhalator squad. All efforts failed. Peter's father brought suit, alleging specific negligence.

The Court cited various factors as persuasive against the negligence allegation. Those factors included the inherent dangers of swimming, the possibility of bodily malfunction on the part of the victim, the possibility of the victim's own negligence, and the lack of control over other swimmers who might cause or contribute to the misadventure. The authorities were unanimous that drowning is not such an occurrence, which in the ordinary course of things happens only if there is negligence.

In action for death of 11-year-old boy who drowned while participating in a swimming class conducted under auspices of defendant school district, the refusal to permit *res ipsa loquitur* to stay in the case was not reversible error, where the intestate was one of 17 young boys in swimming class, there were seven persons engaged to supervise their activities, the whereabouts and conduct of each were inquired into at trial, and it did not appear that any other witnesses or any additional evidence would have been produced under application of the *res ipsa* doctrine (92, p. 867).

Shearer v. Perry Community School District (93)

On March 25, 1971, Kenneth Shearer, a fourteen year old student at Perry Community High School, was engaged in an exercise which involved a weight attached to a bar with a cable on a weight machine. While he was so involved a portion of the machine became disengaged, striking him in the mouth and teeth. The blow resulted in the loss of two front teeth and necessitated considerable dental treatment. At the time of the injury, the physical education teacher was in the room with Shearer, and the injury was immediately reported to the principal of the school. On March 23, 1973, two years later, Shearer filed a petition against the district alleging negligence. The district filed

a motion for dismissal on the grounds that the timelines in section 613A.5, The Code, had not been complied with.

Unlike the situation in Sprung (90) discussed above, the Court ruled in this case that official notification was not delivered to the district in a timely fashion. Notification of the building principal by the instructor involved, and verbal notification to the superintendent on the following day by the mother of Shearer did not constitute formal notification of intent to file suit.

Verbal notification to superintendent of school district of injuries sustained by student while using exercise machine in school would not constitute substantial compliance with statute specifically requiring written notice to governmental subdivision of tort claim (93, p. 689).

Kautman v. Mar-Mac Community School District (94)

Sara Kautman was injured in a school bus accident which occurred when she and other members of the Mar-Mac seventh grade basketball team were returning home from a game. Upon bringing suit, a trial jury awarded her \$25,000 whereupon she unsuccessfully moved for a new trial unless the district consented to additur in such amount as the trial court might allow. The Supreme Court ruled the jury award had effected substantial justice between the parties and refused to remand for either a new trial or additur.

In determining whether jury's award was inadequate, question is not whether the evidence might have justified a higher award but whether under the record, giving the jury its right to accept or reject whatever portions of the conflicting evidence it chose, the verdict effects substantial justice between the parties (94, p. 147).

Greene v. Tri-County Community School District (95)

This suit arose from an accident which occurred in a high school football game played on October 12, 1973. It was not brought initially until October 1975; pleadings were not completed until February 1977. On August 15, 1977, the district court clerk filed and delivered to all parties the "try-or-dismiss" notices pursuant to Iowa Rules of Civil Procedure 215.1. The rule set in motion in this case requires that such notice be delivered before August 15. The parties did not observe that the notice was late, and proceeded to act upon it. On December 29, 1977, all parties joined in an application to continue the suit to the 1978 court sessions. The application was granted but no further action was taken in 1978. In February 1979, the district moved to dismiss the action, essentially on the basis of the plaintiff's failure to prosecute. The trial court dismissed the action.

Eleven months later, after adding new counsel, the plaintiff petitioned to vacate the dismissal, relying on the failure of the clerk to give the proper notice in 1977. In its consideration, the Supreme Court held that because the stakes are high and the results harsh, the formalities prescribed to implement rule 215.1 procedure might be strictly followed. If there was not substantial compliance, the rule was not invoked and there was no automatic dismissal to set aside. There was no automatic dismissal here; the notice was served one day late, hence the rule never came into effect. The case was reinstated.

Mulinix v. Saydel Consolidated School District and Joy McDowell (96)

Student Kathleen Mulinix was injured when struck by a car driven by McDowell while exiting a school bus owned by the Saydel District and driven by one of its regular drivers. The student brought action against both McDowell and the District. McDowell settled in the amount of \$6,000 with the student and the mother prior to the jury's verdict. The jury found McDowell to be 0% negligent, the student to be 60% negligent and the school district and driver to be 40% negligent. The attorney for the District and the driver filed a motion to offset the jury verdict by the settlement paid by McDowell. The motion was denied.

When it reached the Supreme Court, that body cited itself in Glidden v. German, 360 N.W. 2nd, 716 establishing the proper method of offset. Pursuant to that scheme the fault against Mulinix was first deducted. From that net amount was then deducted the payment made by the settling party (McDowell). The Court held that it was not necessary to show that the settling party was not actually liable, but it was sufficient if it appeared that the plaintiff could have sued the settling party. In this case, the plaintiff not only could have sued McDowell, but in fact, did.

Oliver v. Sioux City Community School District (97)

On February 17, 1983, an accident occurred during high school gymnastics practice involving the fall of a student from uneven parallel bars. Student Cindy Oliver suffered a fractured spine in the fall. She was taken by ambulance to the hospital where surgery was performed

that night. She remained bedridden for eight weeks, and will probably never walk normally again. After the accident, Oliver's father presented the ambulance bill to the district, seeking reimbursement. He was refused. Two questions reached the Supreme Court for its consideration: (1) Did the ambulance bill constitute a written notification under the provision of 613A.5, and (2) was the notice delivered within sixty days of the accident?

The Court, noting that the statute does not require the writing to follow any particular form, concluded the bill for the ambulance service was a claim for damages. The bill might not have been technically perfect, but the substance was there. The question of timeliness was remanded to district court for determination thereof.

Student's allegation that notice of her injury had been sent to school district was sufficient to allege compliance with statutory notice provisions (97, p. 665).

Special Education

Southeast Warren Community School District v. Department of Public Instruction (98)

The Southeast Warren Community School District initiated regular expulsion procedures against Thomas Konrad, a special education student. Upon his mother's appeal, the Department of Public Instruction ruled that a special education student cannot be expelled under any circumstances. In a judicial review proceeding, the district court held to the contrary, sustaining the position of the school district.

Two statutes are alleged to be in direct conflict: Section 282.3(1), establishing a duty to provide special education programs

and services for all children requiring special education; and Section 282.4, stating the district's expulsion authority. The Court ruled that the policy expressed in the special education chapter put a special gloss on any expulsion proceedings involving special education students. It did not preclude expulsion, but it required special procedures before expulsion may occur. Those procedures must include reevaluation of the child by the diagnostic-education team provided for in 670 Iowa Administrative Code, and after a full hearing, a determination by the school board whether an alternative placement would better meet the needs of the student and the district. Expulsion should be resorted to only when no reasonable alternative placement is available.

Statutory duty to provide special education programs and services for all children requiring special education did not deprive school district of statutory authority to expel such children (98, p. 173).

Buchholtz v. Iowa Department of Public Instruction (99)

Michael Buchholtz and his family lived on a farm in the Rockwell Swaledale Community School District. The farm bordered the Meservy-Thornton School District. Michael attended the first, second and third grades in the Rockwell district. He experienced learning difficulties and was placed in a remedial reading program in 1976, with the permission of his parents. He continued to have problems and was tested by the AEA and diagnosed as having a learning disability. He was subsequently placed in a resource room in March 1978 and remained there until the end of the school year. There was discussion with his parents about retaining him in third grade and allowing the resource room to help bring him up to grade level, but summer tutoring

was not encouraged. Michael's parents wished to have him tutored in the hope that he could progress to fourth grade and so arranged with a learning disability teacher in the Meservy-Thornton district.

As a result of the tutoring, Michael made good progress and the parents sought to have the district lines altered to allow him to stay in the Meservy-Thornton schools, or in the alternative, to have the Rockwell District pay his tuition to that district. The State Department of Public Instruction denied their request. The Supreme Court reasoned that the Iowa standard does not require the "best" or "maximum" program in the sense of an unlimited commitment of resources and effort to meet the needs of each handicapped child. The standard established a goal of equality of education of handicapped and nonhandicapped children. The district must strive to meet the needs of special education students with the same level of effort which was devoted to meeting the needs of nonhandicapped children. A reasonable person could conclude that no material difference existed between the special education programs available in the two school districts. One district's program was not made inappropriate merely because another had a better program.

There must be parity of educational opportunity between handicapped and nonhandicapped children and district must strive to meet needs of special education students with the same level of effort which is devoted to meeting needs of nonhandicapped students; whether equality of education is actually realized depends on nature of handicap, availability of resources, and what effort is reasonable in context of individual case (99, p. 789).

Significant Legislation Since 1970

Many of the cases involving students that have been litigated over the time considered by this study have been in the area of tort liability. The legislature has also been concerned with the rights of students. In 1974, House File 753 was enacted, prohibiting certified guidance counselors in schools from being required to disclose confidential communications entrusted to them by pupils or their parents or guardians.

In 1984, Senate File 2168 was passed, permitting school districts to use additional allowable growth for dropout prevention programs. The school district is required to submit an application for approval of the dropout prevention program to the Department of Public Education. The program is funded on the basis of one-fourth or more from the district cost and up to three-fourths by an increase in allowable growth.

House File 162, from the same legislative session provides that special education programs can be continued beyond the date on which an individual reaches twenty-one years of age until the individual reaches the age of twenty-four with the approval of the Department if the individual had an accident or prolonged illness that delayed the completion of the individual's educational program. Current law also provides for continuation of a special education program beyond age twenty-one because of congenital factors.

The 71st General Assembly enacted legislation in 1986 that establishes requirements for the search of students or protected student

areas. Under the provisions of the bill, school districts are required to adopt a "student search rule." Additionally, the law establishes standards by which searches may be conducted, and strictly prohibits searches which involve a strip search, a body cavity search, the use of a drug sniffing animal to search a student's body, and the search of a student by a school official not of the same sex as the student.

School districts are allowed to conduct general, routine inspections of lockers, if twenty-four hour notice is given. If there is an individualized suspicion that a student has violated a law or school rule, the twenty-four hour notice is not required.

CHAPTER IX: SCHOOL DISTRICT REORGANIZATION

Prior to July 1, 1975, the responsibility to study and approve county plans for school reorganization was given by the Legislature to county boards of education. In instances where school districts contained land that was located in more than one county, joint county boards of education were organized to approve such plans. The county boards were mandated to consult with school district officials and hold public hearings when necessary. Part of their task was to assign elementary school districts that did not provide a high school attendance center to neighboring districts that did, in effect consolidating the districts.

The State Department of Public Instruction provided assistance to the county boards, and appeals relative to territories in two or more counties were brought to its attention for adjudication. All decisions at this level were final (1, p. 131). When the Area Education Agencies were created by the Legislature in 1975, the responsibility for the study and formulation of school reorganization plans became part of that organizational scheme, replacing the county boards of education. Statutory authority for school reorganization is found in Chapter 275, The Code of Iowa, wherein procedures are stipulated for such actions. Section 275.1 states in part: "It is the policy of the state to encourage economical and efficient school districts which will ensure an equal educational opportunity to all children of the state" (100, p. 283).

Three cases were considered by the Supreme Court after 1970

that grew from the county board concept, and one from actions of an Area Education Agency in a reorganization proposal. The amount of litigation in this area has been significantly reduced from that discussed by Skarda, partly in light of the more popular concept of sharing of both students and educators. Legislation encouraging sharing is discussed at the end of this chapter.

County Boards

Eden Township Board of Directors v. Carroll County Board of Education and Templeton Independent School District v. Carroll County Board of Education (101)

In 1958 a county plan for the reorganization of schools in Carroll County was adopted by the Carroll County Board of Education. In late 1965 approximately thirty independent school districts in the county were not maintaining high school grades. In the following years many of these districts were attached to districts maintaining twelve grades. A portion of Eden Township had been placed in one of these attachments in the Carroll Community School District. In August 1968 the Carroll County Board made attachments of the remaining portion of Eden Township and Templeton Independent School District to the Manning Community School District which was maintaining twelve grades. Both Eden and Templeton districts and their boards of directors appealed the county board's actions. The district court overturned the attachments. Following this decision three members of the Carroll County Board as individuals, and one member of the Eden Township Board of Directors appealed to the Supreme Court.

The Court held that the individual members of the boards had no standing to appeal since they did not constitute the board of directors of a school district or a county board of education. It further found that the county board had fallen into what might be termed appeasement when attempting to accomplish the reorganization with as little difficulty as possible.

Reason for limiting the right to appeal to a court of record to parties allegedly interested through certain bodies whose territory is involved in proposed attachments and by no other, applies to appeals from district court to Supreme Court, and right to appeal to Supreme Court is restricted to those having standing as an aggrieved party (101, p. 195).

Board of Education of Audubon County v. Joint Board of Education of Audubon, Cass, and Shelby Counties (102)

A procedural question arose when the Joint County Board of Education considered a proposal to reorganize the nonhigh school district of Kimballton with Elk Horn-Kimballton, a high school district previously reorganized. The matter had a history of litigation and both the Elk Horn-Kimballton District and the Audubon District desired to reorganize with Kimballton. During the course of the hearing, the county board heard several objections to the proposed reorganization and passed motions to overrule them. No motion to accept the proposal was made. The county superintendent notified the public of the petition and set a date for the election to be held. The proposed reorganization was approved in both districts. The Audubon County Board filed an appeal from the Joint Board's action, claiming that the election was illegal because no motion was made to accept the petition.

The Supreme Court ruled that the evidence was clear that the Joint Board did not dismiss the petition and had no intention of doing so. By overruling a motion to dismiss the petition, the Board thought it was approving the same.

School reorganization law is to be liberally construed, and precise and exact compliance is not essential, but substantial compliance is necessary and will suffice (102, p. 423).

Templeton Independent School District v. Carroll County Board of Education and Eden Township School District v. Carroll County Board of Education and Manning Community School District v. Carroll County Board of Education (103)

This case is a continuation of the litigation surrounding the Carroll County Board of Education's efforts to attach portions of the Eden and Templeton School Districts, neither having a high school, to the Manning Community School District. A previous attempt at attachment was held to be null and void because it was effected without considering the desires of residents of the subject districts. In this instance, however, the record showed that adequate opportunity was afforded Templeton and Eden residents to make their wishes known to the county board regarding attachment preferences, and that the county board did fairly consider the desires expressed. The Supreme Court refused to weigh the wisdom of legislative action by the Carroll County Board of Education so long as it acted pursuant to statutory authority.

A court has neither the right to ignore the statutory criteria for effectuating attachments and reorganization of school districts nor the power to provide a substitute for same, i.e. compulsory adherence to the wishes of the residents of the attached area (103, p. 1).

Area Education Agencies

Myron Bloom v. Arrowhead Education Agency and Elmer Klahs v. Arrowhead Education Agency (104)

In June of 1975, during the period of transition from county to area boards, the Arrowhead Board of Directors passed a resolution adopting the existing county plans for school reorganization as the tentative reorganization plan for the area under its jurisdiction, pending future reorganization studies. In January 1976, a proposal for reorganization of the Sioux Rapids and Rembrandt districts was filed with Arrowhead. A public hearing was held in July, after which the Arrowhead Board concluded a larger reorganization proposal should be explored and dismissed the proposal.

In August an identical reorganization proposal was filed with the Agency. Another hearing was held in September at which time the Board decided to approve the new proposal for submission to the voters. The proposal was approved by the voters. Bloom and Klahs brought suit to overturn the election, alleging the Agency Board had not properly adopted a tentative plan for school reorganization. District court affirmed and overturned the election.

The Supreme Court found that although the adoption was done in June, before Arrowhead would have had an opportunity to conduct studies and surveys, the Board may well have concluded it had insufficient basis for departing from the county plans. The Board was relying upon districting which presumably was in compliance with reorganization requirements of the former statutes. The election was allowed to stand.

School reorganization statutes are to be liberally construed and substantial compliance with them is sufficient (104, p. 594).

Significant Legislation Since 1970

Although the creation of the area education agencies affected many areas of public school operation, enacting legislation is pertinent to the reorganization of school districts in that such agencies replaced the county systems that had been authorized to oversee and facilitate district reorganization. In 1974 the Sixty-fifth General Assembly established the fifteen area education agencies with boundary lines the same as the fifteen merged area schools. The purpose of the agencies is to provide to the local school districts in the area special education instructional and support services, media services, and additional optional services, which may previously have been provided by the county school systems and joint county system abolished by the Act. The Act mandates special education instructional services, establishes a plan for weighted enrollment for each type of handicap of from 1.8 to 4.4, and provides for state foundation aid to be paid on the basis of the adjusted enrollment.

Increased attention to school district reorganization was evidenced by the 1978 General Assembly in the form of House File 2359. This Act relates to school district reorganization procedures. It deletes the option of the State Board of Public Instruction to allow additional time for school districts making a good faith effort to comply with approval standards before commencing reorganization of the

district. It provides that when two or more area education agencies are discussing the formation of a school district which includes territory in more than one area agency, the total votes of each board will be equal. The Act provides that for the first year of existence of a reorganized district, the board will consist of all the resident members of the boards of the constituent districts.

This same legislation provides that the collective bargaining agreement of the district with the largest enrollment will continue in effect until a successor agreement for the reorganized district is negotiated. It also provides that if only one collective bargaining agreement is in effect, the employees of the reorganized district will be included in the bargaining unit of that agreement.

Legislation enacted in 1982 specifically states that the State Board of Public Instruction can attach a school district not maintaining twelve grades to one or more adjacent school districts.

House File 477, passed in 1983 prohibits the filing of a school reorganization petition with an area education agency administrator if the petition describes similar or identical boundaries to a previous petition for six months after an area education agency board has disapproved a change in boundaries designated in the petition, and for six months after a reorganization election fails. It also prohibits an area education agency administrator from accepting a reorganization petition from a district that has approved the issuance of general obligation bonds at an election during the preceding six-month period.

In 1985 the Iowa Legislature approved Senate File 398, which relates to school district reorganization procedures. One provision

of the bill increased from five to ten the number of days within which an AEA board is required to render a decision following the public hearing.

House File 2462, approved in the 1986 legislative session, is the omnibus bill relating to incentives for school district efficiency, reorganization, and sharing. It provides that, for school districts with an enrollment of less than six hundred before reorganization, property tax rates will not increase with respect to the additional property tax and taxes for bonded indebtedness. It reduces the foundation levy of a reorganized school district from \$5.40 to \$4.40 in the budget year following reorganization. The levy would then increase by twenty cents a year for five years, until it reached the \$5.40 amount.

As part of the incentive to become more efficient through reorganization and sharing, this legislation provides supplementary weighting for school districts which share administrators, excluding principals. School districts and area education agencies are limited in their expenditures for executive administration to five percent of the school corporation's operating budget, effective July 1, 1989.

The 1987 session produced House File 499, another omnibus bill dealing with educational standards and school efficiencies. It made several changes to the law concerning whole grade sharing agreements. In addition to providing more specific definitions for different types of whole grade sharing, the Act established new timelines for signing a sharing agreement, and allows students to opt out of a sharing agreement under certain conditions.

House File 2226, enacted during the 1988 General Assembly session allows a school district reorganizing on or after July 1, 1988 to use as its budget enrollment the combined budget enrollments of the districts that were involved in the reorganization as if they had not reorganized. In some cases reorganized school districts had lost enrollment count because they no longer qualified for the budget guarantee.

CHAPTER X: ELECTIONS

Although the number of instances of court intervention in decisions involving indebtedness of school districts has diminished substantially since 1970, such matters are often the subject of emotional controversies at the local level. The property taxes that are generated by such undertakings are of immediate effect to the district's constituents, and the election process utilized to assume such indebtedness is subject to challenge on many fronts. To assist in this process, the Iowa Legislature has provided statutory guidance as to when a district may incur indebtedness, for what reasons, and to what extent. School districts are authorized to contract indebtedness and to issue general obligation bonds to defray the costs thereof. Bonds may be sold to assist in purchasing, building, furnishing, reconstructing, repairing, improving, or remodeling a schoolhouse, gymnasium, stadium, field house, school bus garage, teachers' or superintendent's home, and obtaining a site for or improving an already owned site for an athletic complex. Section 296, The Code, stipulates that the length of time for such bonded indebtedness shall not exceed twenty years, and the total indebtedness of a district shall not exceed five percent of the actual value of the taxable property within the school district, as determined by the most recent state and county tax lists (105, p. 369).

However, before indebtedness can be undertaken by a district in an amount that exceeds one and one-quarter percent of the assessed value of the taxable property, certain procedures must be followed.

A petition must be signed by a number equal to twenty-five percent of those voting in the last school election and filed with the President of the Board, asking that an election be held. The petition must state the amount of the indebtedness being proposed and the purposes for which it will be used, if it is authorized. The board will meet and establish the date of the election unless it determines unanimously that the propositions in the petition are grossly unrealistic or contrary to the best interests of the district. In the case of bond elections, an extra-majority, or sixty percent of the votes cast must approve the measure or it fails.

Three instances of elections disputes have been considered by the Supreme Court over the course of this study. Each of the three involved a bond election.

Bond Issues

Adams v. The Fort Madison Community School District (106)

In a bond election in the Fort Madison Community School District, 53.1% of those voting cast affirmative votes. According to statute, an extra-majority vote, or 60% of those voting, is required to pass a bond issue. Adams and several voters who had supported the issue brought suit challenging the constitutionality of the sixty percent requirement. They reasoned that under the current statute, the voting power of the "no" voters was disproportionate to their numbers as compared with that of the "yes" voters. This, in effect, would violate the principle of one person, one vote announced by the United

States Supreme Court in 1963.

The Supreme Court, however, held that due to the long-term effects of a bond issue, the extra-majority vote is reasonable. Bond levies remain fixed charges to a school district in affluent times and in bad times. The sixty percent requirement constituted an effective tool for keeping fiscal affairs in hand by insuring that a true majority of those voting were willing to undertake such an obligation.

Fiscal stability and continued solvency of local government provided sufficient justification under either traditional rational basis test or compelling interest test for departing from simple majority test in statutes requiring at least a 60% affirmative vote in order for school district general obligation bond proposals to carry (106, p. 133).

Paulson v. Forest City Community School District (107)

On December 3, 1974, the Forest City Community School District held an election on the question of issuing bonds to build and equip a schoolhouse. Waldorf College, a two-year liberal arts institution, is located in the school district. At the election, one hundred forty-five Waldorf students signed declarations of eligibility to vote under Chapter 49.77 of the Code of Iowa. An election board member approved the declarations and the students voted in the election. The voting on the proposition to issue the bonds was such that if one hundred forty of the Waldorf students had voted affirmatively, and if they were not qualified voters, the proposition would have failed. Paulson and other taxpayers brought suit in equity against the district and the election officials.

The Court found the underlying problem was that of determination of the students' voting residence. It reasoned that a person's

residence, for voting purposes only, is the place which he declares is his home with the intent to remain there permanently or for a definite or indefinite or indeterminable length of time. In this case, the students' declarations that Forest City was their residence, under those qualifications, tipped the scales in favor of their ability to vote.

Unmarried college students who made voter's declaration of eligibility at polls and who declared college town to be their home were voting residents qualified to vote in school district election on question of issuing bonds to build and equip school house, even though students' family homes were outside the school district (107, p. 344).

Brutsche v. Coon Rapids Community School District (108)

Certain election irregularities were found regarding a bond issue election in the amount of \$1,900,000 to finance a new school building. Among these irregularities were the following: (1) the canvas of the election was held on Monday following the election, rather than the statutorily required Friday, (2) the school board did not officially notify the commissioner of elections to call a special election, nor did it provide him with a list of possible election officials, (3) the requirements of section 53.22 providing for voting in nursing homes was not exactly complied with, and (4) there was some question as to whether the district intended to use some of the funds generated to construct an athletic field, even though such intention was not included in the proposal.

The Court refused to overturn the election, ruling that the matter of the canvas was an irregularity, not a matter of substance, the authority of the commissioner of elections was so broad as to make

the furnishing of the list a technical requirement at most, the election officials performed their duties satisfactorily with regard to the nursing home voters, and there was no evidence the board intended to build an athletic field with revenues generated from the bond issue.

Bond election will not be held invalid on account of disregard of merely directory provisions of election laws where similar disregard would not render election of officials invalid (108, p. 338).

CHAPTER XI: COLLECTIVE BARGAINING

Collective bargaining by public employees was authorized in 1975 by the General Assembly through enactment of the Iowa Public Employment Relations Act, Chapter 20, The Code of Iowa. This law, often referred to as PERA, states and defines the rights of public employers and employees. It has broad coverage, applying to virtually all public employees within the state, excepting supervisors, confidential employees, and a few other specified classifications (109, p. 1).

PERA provides that employees may organize and bargain collectively with their employers through representatives of their own choosing. To insure this right, secret ballot elections are conducted by the Public Employment Relations Board, often referred to as PERB. Further to insure that the rights of employer and employees are protected and to prevent disruption of services to the public, PERA defines certain practices of employers, union, employees and other individuals as prohibited practices (109, p. 2).

PERA provides a duty to bargain with the designated representatives of the employees. The subjects of mandatory bargaining are set down in a "laundry list" fashion which provides a more limited scope than the traditional "wages, hours, and other terms and conditions of employment," used in the National Labor Relations Act (110, p. 397). Strikes are prohibited and strong sanctions are provided in the event of an illegal work stoppage. Election procedures are carefully stipulated in the PERA. Unlike the NLRA, which does not require the representative to be selected by any particular procedure, the Iowa law requires

PERB-conducted representation elections to be by secret ballot. A petition for bargaining representative determination is to be accompanied by a thirty percent show of interest, i.e., evidence that thirty percent of the employees in the appropriate unit support the petitioner (111, p. 49). Generally, eligible voters in a PERB election are those employees who were employed in the bargaining unit during the pay period preceding the date of election and who remain employed in the bargaining unit on the date of the election. However, the parties may mutually agree on different criteria to determine voter eligibility.

Of all the issues raised in labor relations in the public sector, one of the most significant has been questions about scope of bargaining. Such questions have arisen in several different forms: prohibited practice complaints alleging that a party has refused to negotiate over mandatory subjects of bargaining; petitions for declaratory rulings; or specialized procedures established specifically to address these issues. Often the questions have been the result of negotiations: one party presents a demand which the other side refuses to consider. In Iowa this has created some frustration in the bargaining process because of potential delay when all bargaining must be completed by the certified budget date of the employer, March 15 (112, p. 760). To cope with these problems, the Board has instituted the special expedited declaratory ruling procedure for resolving negotiability disputes during the bargaining process.

There has been considerable case litigation regarding the mandatory subjects of bargaining set forth in section 20.9. The Iowa Supreme Court has generally placed a narrow construction on these bargaining

subjects. Federal agency and court opinions, arising out of NLRA cases, are not controlling on Iowa subjects of bargaining (109, p. 11).

The Supreme Court and PERA have placed bargaining proposals in three categories: mandatory, permissive, and illegal. Proposals which fit within a mandatory subject as found in section 20.9, must be negotiated upon the request of either party. In addition, proposals fitting with the mandatory designation may be submitted to a fact-finder or arbitrator, and their inclusion in the negotiated contract may be ordered. Permissive proposals are those on which bargaining is permitted but not required. Permissive proposals may be submitted to a neutral for resolution only upon mutual written consent of both parties. Illegal proposals are those on which negotiations are precluded by law.

PERB has the general responsibility for the administration of resolution of bargaining disputes by neutrals. Such resolution is provided for through mediation, fact-finding, interest or contract issue arbitration, and grievance arbitration. Mediation services may be requested by either party in a dispute. The request must be dated and signed, filed with PERB, and served upon the other parties to the negotiations. Ten days are allocated for the mediation process. PERB has determined that the day of the first meeting is the date which starts the ten-day allowance.

Fact-finding is a compulsory component of the impasse procedures unless the parties to the dispute mutually agree to dispense with it and proceed directly to arbitration. Normally, in the event mediation

efforts are unsuccessful, the statute requires the PERB to appoint a fact-finder (111, p. 51). In most cases, the PERB has allowed the parties to select a fact-finder from a list provided them. The fact-finder conducts a hearing and issues findings and recommendations for the parties' consideration. After reading the fact-finder's report, the parties must either accept or reject within ten days. If the dispute is unresolved after ten days, the PERB makes the report public. In Iowa, fact-finding is particularly significant in that the report generated by the fact-finder becomes a third option for the arbitrator to consider in rendering his or her decision.

Interest arbitration in Iowa is final offer arbitration on an issue by issue basis. If the fact-finder's recommendations are not accepted by either party, they may request arbitration. Following such a request, the parties are required to exchange their final and best offers of each issue at which they are at impasse. The most commonly utilized form of arbitration is for a single arbitrator to hear the dispute. The parties can opt for a tripartite arbitration panel if they choose. Arbitrators are usually picked from a list supplied by the PERB.

The arbitrator is required by statute to consider certain criteria in making his or her award. Included in these criteria are a comparison of wages, hours, and conditions of employment of the involved public employees with other public employees doing comparable work, past contracts between the parties, the employer's power to levy taxes, and the ability of the employer to finance economic adjustments (111, p. 52). The award must be issued within fifteen days of the hearing,

unless the parties have otherwise agreed. Arbitrators are prohibited by statute from mediating the dispute, and the award is subject to judicial review under Chapter 17A, The Code.

The main function of the PERB in grievance arbitration cases is to provide panels of arbitrators upon request. Such services are offered based on an hourly fee rate, shared by the parties and paid to the state.

The Iowa Supreme Court or Court of Appeals has been asked to make determinations based upon Chapter 20, twenty-five times since the law was enacted. Additionally, one case is included that preceded the PERA, involving a "working agreement" between a school district and its classified employees.

Working Agreement

Service Employees International, Local No. 55 v. Cedar Rapids Community School District (113)

The members of the Service Employees International organization, the authorized and acting representative of the custodial and maintenance employees of the Cedar Rapids School District, filed suit asking for judicial construction of a certain clause of its working agreement with the district. The union alleged that the working agreement was arrived at through negotiations and was designed to regulate working conditions and compensation of its members. It further claimed that two months after its adoption, the district advised the Union that certain changes would be made in schedules of certain employees,

thereby establishing a rule that was not in the agreement. The district argued the agreement was illegal in that it could not enter into a collective bargaining agreement in an industrial context with labor unions.

The Supreme Court ruled that the Board of Directors of the district made the final judgment in matters to be included in written policy. The district was not obligated to include the recommendations of representatives of the custodial organization. The working agreement was not an enforceable contract.

Where school board retained authority to unilaterally accept, reject, or modify any and all demands made by custodial employees' union representatives without possibility of sanctions such as strikes or boycotts being taken by the union membership, and board in no way indicated its assent to be bound by terms of "working agreement" which it adopted as to terms and conditions of employment of custodial employees, working agreement was not binding contract (113, p. 403).

Elections

Mount Pleasant Community School District v. Public Employment Relations Board and Mount Pleasant Para-Professionals, Aides, Secretaries Organization (114)

In June 1981, several nonteaching employees of the Mount Pleasant Community School District who were members of the Para-Professional, Aides, Secretaries Organization petitioned PERB to conduct a representation election. On October 6, 1981, PERB conducted the election, which the organization lost by a vote of ten to twelve. On October 5, 1981, approximately thirty hours before the election, the superintendent of schools wrote and posted a notice in each of the school buildings

where members of the organization were likely to see it. The notice posed and answered questions dealing with various aspects of contract negotiation from the standpoint of the district. The organization challenged the results of the election, claiming the notice misrepresented facts and threatened employment if the union won the election. PERB ruled that no misrepresentation of fact was presented by the notice, but that some statements pertaining to job security could have affected the outcome of the election, and consequently set the election aside.

The Supreme Court held that underlying all representation election cases was the right of free speech guaranteed by the First Amendment to the United States Constitution. An employer's view may be expressed freely so long as that expression does not contain a threat of reprisal or force or promise of benefit. The notice in this case could not be shown to contain such threats, and did not have a significant effect on the election.

Test in representation election case is whether sufficient showing is made to permit conclusion that allegedly offensive conduct and surrounding circumstances cumulatively tended to interfere with the election; application of that test requires a finding of proscribed conduct, which prevented employees from freely registering their choice of a bargaining representative (114, p. 473).

Bargaining Unit

Iowa Association of School Boards and Iowa State Education Association v. Iowa Public Employment Relations Board (115)

On March 20, 1984, the Iowa State Education Association filed a petition for declaratory ruling with the PERB. The petition set forth

a series of hypothetical facts involving a school district and substitute teachers who had served that district in one of several time frames within a school year. ISEA sought to have the PERB define the situations under which substitute teachers would be eligible for coverage under the PERA. The Iowa Association of School Boards filed a petition to intervene, which was granted.

PERB issued its declaratory ruling, holding that substitute teachers are public employees and are not excluded from the Act if the substitute performs any service during each of more than four consecutive months during the school year. Both ISEA and IASB filed petitions for judicial review.

The Supreme Court based its ruling on a determination of the meaning of Iowa Code section 20.4(5) which grants to public employees rights under the Act. The provision of section 20.4 relevant to this case excludes certain public employees from the provisions of the chapter, including temporary public employees employed for a period of four months or less. The Court ruled the legislature did not indicate whether the work of a temporary employee must be full or part time, but included a four-month requirement of service rather than a minimum number of days or hours for eligibility under Chapter 20, The Code.

Any employment by substitute teacher within consecutive months is sufficient to be included in statutory four-month standard for inclusion as public employee under Public Employment Act (115, p. 571).

Anthon-Oto Community School District v. Public Employment Relations Board (116)

A petition was filed with the PERB by the Anthon-Oto Education Association which sought to amend the existing bargaining unit of professional employees to include fourteen classified employees. The proposed consolidation was favored by the classified employees in an informal survey taken by the Education Association. The district opposed the concept of a combined professional/classified bargaining unit. The PERB found that the proposed unit met the criteria of section 20.13, The Code, even though it had previously made the opposite determination in Mid-Prairie Community School District 85 PERB 2395.

The Supreme Court ruled that, relying largely on the small size of the Anthon-Oto School District, PERB's decision was consistent with geographical location and efficiency of administration of government tests. It held that the similarities between Anthon-Oto and Mid-Prairie were mitigated by the differences in size between the two districts. Mid-Prairie was large enough that the classified staff there could constitute its own bargaining unit efficiently. The staff at Anthon-Oto could not.

Public Employment Relations Board's determination that appropriate bargaining unit for school consisted of combined professional/nonprofessional bargaining unit was reached in a manner consistent with reasoned balancing of factors, displayed in prior, similar cases and, as such, discretion Board exercised was neither arbitrary nor capricious (116, p. 141).

Dubuque Community School District v. Public Employment Relations Board and Dubuque Education Association (117)

In May 1985, the Dubuque Education Association petitioned the PERB to amend its collective bargaining unit to add substitute teachers qualifying for inclusion under the Public Employment Relations Act. The Dubuque School District resisted the amendment, contending the substitute teachers were ineligible for coverage under section 20.4(5) which excludes temporary public employees employed for a period of four months or less, and argued that including substitute teachers in a bargaining unit already composed of regular teachers and professional employees would be inappropriate. PERB ruled in harmony with its decision in Iowa Association of School Boards and Iowa State Education Association, No. 2703 PERB (Feb. 18, 1985), allowing the inclusion.

The Court ruled that the question had been addressed in Iowa Association of School Boards v. PERB (113), and declined to revisit the decision. It stated that greater similarities than differences are evidenced between substitute teachers and regular teachers. Considering also a desire to avoid duplication of time and expense of negotiations, the Court held that these issues favored a single bargaining unit.

Substitute teachers who perform service for school district in each of four consecutive months are entitled to benefits of collective bargaining under Public Employment Relations Act (117, p. 428).

Benefits

Bettendorf Education Association v. Bettendorf Community School District (118)

Several years after negotiations with the Bettendorf Education Association, the Bettendorf School District had adopted a rule which provided that accumulated personal illness leave up to the age of sixty-five could be drawn as a lump sum at the time of retirement or as a death benefit to members of the family, at prevailing substitute rates. At the request of the superintendent, an attorney general's opinion was obtained in February 1972, on the issue of the board's authority to pay the benefits provided in the rule. The attorney general expressed the opinion that the benefits were unauthorized. The Education Association and the District agreed on March 9, 1972 that contracts for the ensuing year should not include such benefits for accrued sick leave and that available funds should be used to improve health insurance coverage instead.

Four teachers who retired in the spring of 1972 and three who retired in the spring of 1973 brought suit against the district for the recovery of the benefit. The district court affirmed the attorney general's opinion and an appeal to the Supreme Court followed.

The Court held the payments at issue in this case were not disability pay, but a reward to teachers who did not use up sick leave. The district acknowledged that the purpose was to discourage teacher absenteeism, which the Court ruled to be an appropriate objective of school districts. With regard to the retirees of 1972, the Court ruled that the district was plainly contracted to deliver the benefit,

and the agreement was binding. Since the Education Association and the District had mutually agreed to remove the provision from the 1973 contracts, no such obligation rested with the district for those retirees.

Lump-sum benefits payable upon retirement for accrued sick leave were a form of teacher compensation, so that school district had authority to contract to pay then under statutory provisions authorizing school district to contract with teachers regarding compensation (118, p. 550).

Prohibited Practices

Burlington Community School District v. Public Employment Relations Board and Burlington Education Association (119)

The Burlington Community School District and the Burlington Education Association had been negotiating for collective bargaining with regard to the pay scale of the teachers employed by that district. The district requested that the negotiation sessions be held in public, and the association requested closed sessions instead. The district then filed with the PERB for a declaratory ruling to determine whether a public employer could unilaterally determine whether such sessions were to be open or closed. On November 3, 1976, PERB issued its declaratory ruling, finding that if parties to the collective bargaining disagree, the negotiations sessions must be closed. A unilateral demand on the part of a public employer that such sessions be opened would amount to bad faith on the employer's part since bargaining in public would tend to inhibit, if not destroy, the bargaining process.

The Supreme Court held that the public policy of the PERB is to

encourage harmony between public employees and government, and the privilege requested by the school board in this case would contribute to discord and a complete lack of harmony between the two parties. It ruled that a board's insistence on open sessions as a condition precedent to bargaining was a prohibited practice under section 20.10(3), The Code, as such insistence would interfere with the rights of public employees to bargain collectively.

If legislature intended an agency to be able to unilaterally decide whether public employment bargaining sessions could or must be open to the public, it could have included negotiating sessions as a meeting which could be closed by a vote of the agency's members (119, p. 517).

Brown v. Public Employment Relations Board (120)

Elaine Brown had been teaching in the Sioux City Public School system since 1974. During that time the Sioux City Education Association had been the collective bargaining organization representing Brown and other employees of the Sioux City Community School District. The collective bargaining agreement between the association and the district contained language determining the seniority of teachers employed by the district. As early as 1978, a dispute arose as to whether Brown or another teacher, Fedderson, had greater seniority under the master agreement. Fedderson began teaching in the district after Brown, but Brown had signed a continuing contract three months after Fedderson. Faced with declining student enrollment and the distinct possibility of staff reduction, the district and the association together reviewed the seniority language in the master agreement in an effort to prevent future controversies. In the spring of 1979, the association's

executive committee, of which Brown was a member, received a recommendation from the association's seniority committee that each teacher's seniority dated from the signing of a continuing contract. The association subsequently adopted that recommendation, elevating Fedderson above Brown on the seniority list. She subsequently resigned from the association.

Thereafter the school in which Brown and Fedderson were teaching was closed. When Fedderson was given a position in another building for which both he and Brown had applied, she asked the association to process a grievance for her against the district. The grievance was processed through prearbitration steps but not further because the association concluded that Fedderson was clearly senior to Brown in light of the adopted language. Brown filed complaints against both the district and the association, accusing the association of prohibited practice in its failure to represent her; first in agreeing to the language and second, in failing to process her grievance completely. Her complaint against the district was in agreeing to the language mid-term, and in granting seniority to Fedderson. Both the district and the association raised the issue of timeliness of her complaint at all stages of the proceedings. PERB ruled that the evidence did not support Brown's complaints against the district, but that the association had committed a prohibited practice when it agreed to language that adversely affected only her, a change which the association knew would have that effect. The district court affirmed that Brown's complaint against the association was not timely, and reversed the PERB on the issue of prohibited practice.

The Supreme Court agreed that Brown's complaint may not have been filed in accordance with the timelines established under section 20.11, The Code. It remanded to the PERB to first determine whether Brown filed her complaint within ninety days of the occurrence of the prohibited practice. If she had not, PERB was asked to decide whether she had established a found factual and legal basis for being excepted from the requirement.

Statutory 90-day limit for filing complaint with Public Employment Relations Board alleging prohibited practice is mandatory rather than directory (120, p. 89).

Negotiability

Charles City Community School District v. Public Employment Relations Board (121)

The Charles City School District had been engaged in collective bargaining with the Charles City Education Association, when during the course of the negotiations, the parties disagreed as to whether two proposals submitted by the association constituted mandatory subjects of bargaining. The district refused to negotiate on the proposals involving medical insurance for dependents and the right of the employee organization to process grievance procedures during company time without the loss of pay. A prohibited practice complaint was filed by the district with the PERB. In a recommended decision and order the PERB ruled the proposals to be mandatory subjects according to section 20.9, The Code. Subsequently the district court reversed the PERB, finding both proposals permissive under the statute.

The Supreme Court found the insurance proposal to be mandatory by applying a two-step analysis: a determination that the proposal came within the meaning of "insurance," and a determination that the proposal was not illegal. The proposal to give the employee organization paid time to process grievances was found not to be mandatory by the Court. Section 20.18 provides the cost of arbitration of grievances to be shared equally by the parties. The proposal would effectively have required the employer to pay the entire cost of processing grievances up to the point of arbitration. This would have limited the authority expressly granted to the employer under section 20.7.

Given legislative history of Public Employment Relations Act section listing mandatory subjects on which parties are required to bargain if requested and cogent policy arguments for distinguishing public and private sector bargaining, Iowa legislative intent was to adopt a restrictive approach to interpreting subjects listed in such section (121, p. 766).

Charles City Education Association v. Public Employment Relations Board and Charles City Community School District (122)

A dispute arose during the course of contract negotiations late in 1978 between the Charles City Education Association and the School District. The association submitted for mandatory negotiation a proposal regarding the nature of post graduate hours that would qualify an educator for advancement along a district salary schedule, also proposed by the association. The district argued that the proposal was not a mandatory subject insofar as the nature of qualifying credit hours was concerned.

The district petitioned the PERB requesting a resolution of the

negotiability dispute. The PERB ruled that the nature of the hours necessary for advancement was a question of job qualification, a matter of management prerogative, and was therefore a permissive subject of bargaining; and that while the number of semester hours to be utilized in the salary schedule was a mandatory subject, the determination of which college courses should qualify as credit hours per column was a management prerogative. District court reversed the PERB, finding the proposals mandatory within the meaning of "wages" in section 20.9, The Code.

The Supreme Court affirmed PERB's determination, ruling that the public employer has the exclusive right to determine job qualifications of an employee due to its duty and right to hire, promote, demote, transfer, assign and retain employees. The Court held that, if the word "exclusive" in section 20.7 was to have its ordinary meaning, the employer should not be compelled to bargain on a proposal that bore only on job qualifications of an employee.

Under Public Employment Relations Act, it was province of city school district to decide what education and what specific subject areas of the education would qualify a teacher for a particular teaching assignment (122, p. 663).

Marshalltown Education Association v. Public Employment Relations Board and Marshalltown Community School District (123)

During contract negotiations the Marshalltown Education Association and the Marshalltown Community School District reached an impasse when the district made a contract proposal that the employer's administrative employees retain and accumulate seniority to be used if they were reassigned by the employer to the bargaining unit.

The association refused to discuss the proposal, arguing that it was not a mandatory subject under section 20.9, The Code. After a fact-finding hearing ended in disagreement on this point, the association filed a petition with the PERB for an expedited resolution of negotiability dispute. The PERB ruled the district's proposal was a mandatory subject of bargaining. The association brought an appeal to the district court which affirmed the PERB.

The Supreme Court, reasoning that the PERA, section 20.4 specifically excluded school administrators from those persons permitted to exercise public employee rights, including the right to engage in collective bargaining, found the proposal to be a permissive subject of bargaining. It held that the proposal was not limited to present teachers in the unit who might have later become administrators, nor was it limited to administrators who were in the bargaining unit as teachers in the past. Instead, the proposal related to administrators who were not at the time and may never have been members of the bargaining unit. Therefore, the Court held that the proposal illegally sought to impose mandatory bargaining for the benefit of persons who were excluded both from the Act and from the bargaining unit.

For proposal, made by public school district in negotiating a collective bargaining agreement, to be within scope of mandatory bargaining under Public Employment Relations Act, proposal must come within the meaning of one of subjects listed as mandatory in Act, and there must be no legal prohibition against bargaining on the particular topic (123, p. 470).

Woodbine Community School District v. Public Employment Relations Board and Woodbine Education Association (124)

A difference arose between the Woodbine Community School District and the Woodbine Education Association concerning whether a proposal establishing the number of hours teachers must earn to advance on the salary schedule, and the kind of hours acceptable for such movement constituted a mandatory subject of bargaining. The proposal further stated that teachers who did not comply with the hours requirement were to remain stationary on the salary schedule. The district argued that the proposals were mandatory under the Act, while the association took the position that they were permissive in that they constituted work rules and disciplinary action. Responding to the district's request for an expedited resolution, the PERB ruled the proposals to be permissive.

The Supreme Court ruled the case to be controlled by prior decisions of PERB and of itself. In Charles City Education Association (122) the court said the nature of credit hours to be earned in order to advance along an established salary scale was not a mandatory subject of negotiation. In another decision the PERB had distinguished between the number of hours and the kind of hours, holding the former to be a mandatory subject and the latter a permissive one. The Court rejected the argument that the proposal was disciplinary. It said it was rather intended to sharpen teaching skills, to maintain teaching standards, and to keep abreast of changing educational theories. The decision to freeze those who did not comply was not disciplinary. It was

simply a recognition of the fact those better qualified should be advanced along the salary scale.

Fort Dodge Community School District v. Public Employment Relations Board and Fort Dodge Education Association (125)

Faced with the problem of declining enrollment, the Fort Dodge Community School District adopted a plan providing cash incentives for early retirement for teachers sixty years of age or older. Adoption of the policy evoked a prohibited practice complaint before the PERB by the Fort Dodge Education Association. The employee organization asserted that the plan was a mandatory subject of bargaining and the district had violated the Act by unilaterally adopting it. The PERB concurred with this position and ordered the district to negotiate the plan with the association. The district court reversed the PERB.

The Supreme Court reiterated its position that legislative intent was to narrowly define the list of mandatory subjects of bargaining. It held that if the legislature had intended to give "wages" the broad application the association claimed, it would have been unnecessary to include in the list of mandatory subjects as many wage-related items such as insurance, vacations, overtime compensation, and supplemental pay. Further, the terminology "supplemental pay" meant pay for rendering a service, directly related to time, skill, and nature of those services. It was not intended to be tied solely to a person's age, as was the cash incentive plan of the district.

Statute providing list of mandatory subjects of bargaining between public employer and employee organization was intended to carve out specific, narrowly defined, exceptions for mandatory negotiation (125, p. 181).

Saydel Education Association v. Public Employment Relations Board
and Saydel Consolidated School District (126)

During the course of collective bargaining between the district and the association for a collective bargaining agreement for the 1981-82 school year, a dispute arose over the district's proposed means of effecting transfers and staff reductions. The district's proposal involved the consideration of seniority, experience, education, relative skill and ability, and other criteria in making a decision about voluntary transfers and teacher retention in the face of staff reduction. The association contended that the district must make those decisions solely on the basis of seniority unless the resulting staff would no longer comply with state minimum standards. The PERB ruled that the criteria sought by the district fell within the meaning of the statutory phrases "transfer procedures" and "procedures for staff reduction" as found in section 20.9, The Code. District court affirmed the PERB's ruling.

The Supreme Court upheld the decisions of the PERB and the district court, ruling that the legislature did not intend to place the severe limitations on a public employer's ability to maintain staff quality which would follow the association's construction of section 20.9.

School district's proposal that certain criteria, other than seniority, including skill, ability, and experience, be considered by school district in connection with transfer or staff reductions was mandatory subject of bargaining under the Public Employment Relations Act; proposed criteria are encompassed within mandatory subjects of "transfer procedures" and "procedures for staff reduction," notwithstanding that criterion of "seniority" is separately listed in mandatory bargaining statute, unlike criteria of skill, ability, and experience, in view of fact that "seniority" has meaning apart from transfer or staff-reduction procedures (126, p. 486).

Professional Staff Association of Area Education Agency 12 v. Public Employment Relations Board and Western Hills Area Education Agency 12 (127)

During the course of negotiations for a collective bargaining agreement between the association and the agency, a dispute arose over the bargaining status of two proposals submitted by the association. The first was a proposal which required the agency to reimburse all employees upon termination of their employment, a rate equal to one-half of their unused sick leave, up to one hundred thirty-five days. The second was a severance pay proposal in which the agency would follow a formula in the proposal to provide a similar payment to all departing employees with at least five years of service to the agency. The agency concluded the proposals were not mandatory and filed a petition for expedited resolution with the PERB. The PERB determined that neither proposal was illegal, but that both were permissive subjects of bargaining. District court affirmed the PERB.

The Supreme Court found that the compensatory nature of sick leave made it a mandatory subject, unlike the proposals involved here. The payment of unused sick leave was not directly related to services rendered, or to the time, skill, and nature of additional services, but rather a form of severance pay. The circumstance that would trigger payment was the termination of employment, not the performance of any primary or extra services.

Public Employment Relations Act specifically lists issues which are mandatory bargaining topics, and such list is a definition, rather than a description, of mandatory bargaining topics under the Act; an issue must fall within one of those listed by statute, I.C.A. 20.9, to be a mandatory bargaining topic (127, p. 516).

Aplington Community School District and Iowa Association of School Boards v. Iowa Public Employment Relations Board and Aplington Education Association (6)

During negotiations between the Aplington Community School District and the Aplington Education Association, the association proposed that an article on evaluations be included in the contract. Language in this proposal established evaluation criteria to be utilized within the evaluation procedure. Additionally, the proposal constructed a grievance procedure to be used within the context of evaluation. A disagreement arose as to the bargaining status of these proposals and the association filed a petition with the PERB seeking an expedited resolution as to whether the two proposals were mandatory subjects of bargaining. The PERB held a hearing and issued its ruling that both proposals were mandatory subjects. District court reversed the PERB's decision.

The Supreme Court, citing its decision in Saydel (124), stated the term "procedures" in the PERA had a broader meaning than it had been given in previous PERB decisions, and concluded that the term "procedures" necessarily included substantive criteria. The evaluation procedures criteria proposed by the association in this case had similarities to the impasse procedures criteria in that some comparisons of substantive factors were involved. No principled difference existed between the use of the terminology in the two cases.

Northeast Community School District v. Public Employment Relations Board (128)

During the course of negotiations between the Northeast Community School District and the Northeast Education Association, a dispute

arose very similar in nature to that of Aplington (6) and Saydel (126). Four proposals submitted by the association dealing with evaluation criteria and procedures for grieving erroneous or inappropriate evaluations became the center of a dispute between the two parties who disagreed as to their bargaining status. The PERB was requested to issue an expedited resolution of negotiability regarding the proposals, and did so, ruling that they were all mandatory. District court, however, reversed PERB finding that the terms "evaluation procedures" and "evaluation criteria" were mutually exclusive under section 279.14, The Code.

The Supreme Court held that its ruling in Aplington (6) effectively disposed of three of the four proposals. It found the fourth proposal, involving remediation procedures, to be substantially the same as language ruled mandatory in the Aplington proposal. It stated that remediation is a part of the evaluation procedure, and evaluation would be incomplete without it.

Remediation proposal, which required principal to identify problems and offer suggestions, was part of teacher evaluation procedures and thus, except for portion requiring building principal to perform remediation, constituted mandatory subject of bargaining between teachers' association and school district (128, p. 46).

Impasse Arbitration

West Des Moines Community School District v. West Des Moines Educational Support Personnel (129)

The West Des Moines Educational Support Personnel, a union representing the nonprofessional employees of the district, and the West

Des Moines School District had entered into a collectively bargained contract. A provision of that contract stipulated that the employees would work a seven and one-half hour day with a half-hour duty free lunch free period and with two fifteen-minute coffee breaks. The union argued that the employees should be paid for the duty-free lunch period. The district declined. The union filed a grievance with the school board which was rejected, whereupon it sought an arbitrator's decision. The arbitrator ruled for the union.

The Supreme Court, affirming the arbitrator, ruled that although the arbitrator interpreted the contract in a way the school district did not, such interpretation did not alter the intent of the contract.

Fact that arbitrator, acting pursuant to binding arbitration clause in contract between nonprofessional school employee union and school district concerning dispute as to pay for "duty-free" lunch period, interpreted contract in a way school district would not, and in a manner reviewing court might not, did not render arbitrator's interpretation an alteration of contract terms (129, p. 625).

West Des Moines Education Association v. Public Employment Relations Board and Iowa Association of School Boards (130)

The essence of the dispute involved the meaning of the words "impasse item" as used in Iowa Code sections 20.22(3) and 20.22(11). In June 1976, the association filed a petition with the PERB asking for a declaratory ruling on such meaning, and PERB responded, holding that the phrase "impasse item" as used in the PERA meant subject category. PERB ruled that parties must submit their final offers on a subject category to the arbitrator. On appeal, the district court reversed PERB, ruling that the phrase referred to any word, clause, phrase, sentence, or paragraph upon which the parties to arbitration

were in disagreement.

The Supreme Court based its reversal of district court on the nature of final offer arbitration as opposed to conventional arbitration. In final offer arbitration, as mandated by the PERA, the arbitrator must select the position of one of the parties and may not select a compromise position. In conventional arbitration, the arbitrator could tailor a remedy somewhere between the last offers of both parties.

A problem commonly perceived concerning this latter approach was its "narcotic effect." This problem was believed to stem from the arbitrator's real or imagined tendency to split the difference between the parties' positions. Management argued that because the employee organization was primarily the demanding party in negotiations, with conventional arbitration as the end result, true collective bargaining would not occur if the employee representative felt ultimate victory lies in the hands of the arbitrator rather than at the bargaining table. In order to limit this effect, the legislature required a form of arbitration which circumscribed the arbitrator's discretionary power, final offer arbitration. The effect of this was to encourage mutual agreement before arbitration because a third party would select one of the offers as binding with no compromise between the positions.

The court reasoned that because the purpose of the procedure was to enhance the reasonableness of the offers, and reduce the discretion of the arbitrator, anything which served to fractionalize a particular subject would likely erode the effectiveness of the procedure. Therefore, the final offers must be submitted on a subject category basis.

In interpreting any statute, court must determine the intent of the legislature and court's construction of statute must be sensibly and fairly made with a view of carrying out legislature's intent (130, p. 118).

Maquoketa Valley Community School District v. Maquoketa Valley Education Association (131)

In September 1975 the district and the association began negotiations to reach their first collective bargaining agreement. By the end of 1975 the parties had reached agreement on all subjects except salary and supplemental pay. Mediation was unsuccessful. In January of 1976 the parties went to fact-finding. The association accepted but the district rejected the fact-finder's findings and recommendations. On February 24, the district filed a request with the PERB for binding arbitration. A tripartite panel of arbitrators was selected. The panel's first meeting was held March 18, at which presentations and arguments were heard from both parties supporting their final offers. During this hearing the parties agreed on supplemental pay and withdrew that issue from arbitration. Sometime in April, well beyond the fifteen days required by statute, the panel chairman sent the other arbitrators and PERB an "Award of Neutral Chairman." The association arbitrator sent a letter "voting" for the award. The district sought a declaratory judgment that the award was invalid because it incorrectly defined "impasse item" and the decision was not timely. The trial court overruled the district.

The Supreme Court, after noting that the district had not utilized the proper vehicle for challenging the award, ruled that the arbitrators had violated the final offer concept by selecting the association's

final offer on every aspect of the salary schedule but adding in the non-degree lane proposed by the district. The panel should have selected either offer, or the fact-finder's decision in total. The Court also ruled that an arbitrator's decision rendered more than fifteen days after the panel's first meeting is unenforceable.

Arbitration of a collective bargaining impasse under Public Employment Relations Act is "agency action" and reviewable only pursuant to Administrative Procedure Act (131, p. 510).

Sergeant Bluff-Luton Education Association, Lorraine Stodden and Lois Moore v. Sergeant Bluff-Luton Community School District (132)

Moore and Stodden were hired as teachers in the Sergeant Bluff-Luton School District in 1975 and 1965, respectively. They were both placed on the existing salary schedule at steps lower than those commensurate with their years of experience. They were maintained at those steps after the collective bargaining agreement became effective. The association and the teachers sought to have their placement adjusted according to language in the contract which they interpreted as requiring credit on the salary schedule for all experience. The district refused to make any adjustments in this regard. The teachers filed a grievance alleging erroneous interpretation or application of the agreement by the district. As a final step in the grievance procedure, arbitration was invoked.

The arbitrator found in favor of the teachers, ordering their advancement on the schedule and additional pay retroactive to April 1977. The district refused to abide by the arbitrator's decision, and the association and the teachers brought an action in equity to enforce the arbitrator's award and to recover attorney's fees from

the district. The district court refused to enforce the arbitrator's decision.

The Supreme Court stated several reasons to favor a broad scope of arbitrator authority and a corresponding restriction of judicial involvement in the process. It held arbitration to be a faster process, that it drew upon the expertise of persons in the field, and was less expensive. It felt that the Court should not "second guess" the arbitrator, and thereby nullify those advantages. Binding arbitration should be final, and not binding only if the Court agrees with the arbitrator's conclusion. The Court ruled that the arbitrator drew his award from the essence of the collective bargaining agreement and should be enforced. With regard to attorney's fees, the Court ruled that such fees could only be collected if evidence of bad faith was presented. Such was not the case in this instance.

Once arbitrability of the issue is established, sole question to be determined by the court on review of arbitrator's award is whether the arbitrator's award drew its essence from the collective bargaining agreement; it is not the function of the court to determine whether arbitrator has resolved grievance correctly (132, p. 144).

Ottumwa Education Association v. Ottumwa Community School District (133)

An employee of the Ottumwa School District applied for the position of junior high counselor at another school in the district, but the position was filled from outside. He claimed that in so doing, the district violated that part of the collective bargaining agreement relating to transfer procedure and staff reduction. He filed a grievance and it was duly processed at the lower levels and ultimately

denied by the superintendent. This set the stage for compulsory and binding arbitration of the dispute under the agreement. The district was notified that the association intended to pursue arbitration on behalf of the teacher. It refused to proceed to arbitration or to meet with the association to select an arbitrator.

The association filed a petition in district court to force the district to arbitration and the district answered that it should not be so compelled because the grievance alleged was not a violation of the contract, and the subject matter of the grievance fell within an area of determination reserved exclusively to the employer under section 20.7, The Code. The district's position was upheld by the trial court.

The Court of Appeals reversed the trial court and remanded for arbitration. It reasoned that the school district should not be permitted to defeat the association's right to binding arbitration by asserting that the contract provisions did not apply. These were the very matters within the scope of what had been agreed to be arbitrated. It did not agree that section 20.7 retained for the employer a right to act unilaterally on matters that have been made the subject of collective bargaining.

Dubuque Community School District v. Dubuque Education Association, Margaret Tyler and Lenard Heath (134)

Tyler and Heath were teachers in the Dubuque School District, represented for collective bargaining purposes by the association. Prior to February 20, 1978, they signed and returned the regular teaching contract for the 1978-79 school year. The contracts were

subsequently approved by the district. During the following summer both teachers were informed that the district had unilaterally amended their contracts, assigning them additional duties, for which they would be compensated. They had each performed similar extra duties in the past and had both resisted the reassignment of them. Both teachers subsequently filed grievances with respect to the assignments, asserting they were in violation of specified portions of the agreement. The grievances proceeded through the first three levels of the process and were denied by the superintendent. Arbitration was requested under level four of the procedure.

At the hearing the association took the position that such assignments beyond the regular seven and one-half hour work day were voluntary and need not be accepted by teachers. The district took the position that it had the right to make mandatory extra-duty assignments under section 20.7, The Code, and that such right could not be abrogated by any provision of the agreement. The arbitrator issued a written decision sustaining the grievance of the teachers. Upon challenge in the district court, the arbitrator's ruling was vacated.

The Court of Appeals ruled that the arbitrator had sustained the grievances on a procedural ground (how and when such extra-duty assignments should be made), and not within the matters submitted to arbitration. It held that if the arbitrator's reasoning were allowed to stand, the district could never make extra-duty work assignments for the school year after the preceding spring, unless the individual teachers involved consented. This was not the language of the master contract or the individual contracts.

Iowa City Community School District v. Iowa City Education Association
(135)

Richard D. Brisco, a social studies teacher with the Iowa City Community School System, was notified in March 1980 that his 1980-81 salary would be frozen at the 1979-80 level because of "unsatisfactory service." The collective bargaining agreement between the district and the association contained a grievance procedure culminating in binding arbitration for alleged violations, misinterpretations, or misapplications of specific provisions of the contract. A salary schedule was among the specific contract provisions, along with language that entitled teachers to step increases with every completed year of service, subject to the right of the district to withhold such increases for unsatisfactory performance.

The association pursued grievance procedures in Brisco's behalf through binding arbitration, where a favorable award was gained. The school district filed a petition in district court to have the award vacated. The court rejected the district's argument. Upon further appeal, the Court of Appeals reversed the district court, and the Supreme Court granted review.

The Supreme Court reinstated the arbitrator's award, reasoning that nothing in the contract provided a positive assurance that the dispute was not arbitrable. The district's right to withhold a salary increase depended on the teacher's "unsatisfactory" performance. The contract did not define the term. Unless the parties to an agreement limited their submission, the arbitrator became the final judge of the facts and law. Even if the arbitrator made a mistake in arriving

at his decision, it was not a basis for upsetting his award. The Court could not presume that an arbitrator had exceeded his authority merely because it might disagree with his reasoning.

Arbitrator's decision regarding unsatisfactory performance standard in collective bargaining agreement between school district and teachers union "drew its essence" from the collective bargaining agreement, and thus arbitrator did not exceed his authority (135, p. 140).

Iowa State Education Association v. Public Employment Relations Board
(136)

The Iowa State Education Association posed a hypothetical situation involving impasse resolution to the PERB. The question assumed the existence of both the association and a school district which had in place clearly developed and ascertainable personnel policies with respect to all areas of mandatory bargaining under Iowa Code section 20.9. During the course of the hypothetical bargaining process, both sides presented positions with regard to mandatory subjects of bargaining, but no agreement was reached, either in negotiations or in subsequent mediation.

During the fact-finding hearing which followed, the district, maintaining that it had adequate policies to cover the issues under discussion and that the policies compared favorably to other districts, asked the fact-finder to either not make a recommendation about these topics or to recommend that the existing policies be incorporated into the contract. ISEA's question to PERB was whether a fact-finder could in fact, make a recommendation that there not be a contract provision on an unresolved mandatory topic, and whether an arbitrator could then adopt the position of the fact-finder, thereby denying the parties

a bargaining agreement on a mandatory subject. PERB agreed that should a fact-finder adopt such a position, it would limit the choices of the arbitrator, and that an arbitrator could adopt the same position, but felt that it would be inappropriate to forbid a fact-finder the ability to make such a decision. ISEA petitioned the district court for judicial review. That court concluded that the PERB ruling was a proper interpretation of the provisions of the PERA.

The Supreme Court reversed the arbitrator's ruling. It held that the ruling confused discretion to recommend some solution with discretion to recommend no solution. It cited PERB's own rules requiring that a recommendation be made by fact-finders with respect to all topics of mandatory bargaining on a subject category basis. With regard to arbitration, the Court ruled that it was the intent of the legislature that the PERA establish the means of assuring fruition of a bargaining agreement establishing the rights and obligations of both parties on all topics of mandatory bargaining. The Court said it was not permissible for an arbitrator's decision to leave a submitted topic of mandatory bargaining unsettled.

It is only necessary in operation of final stage of impasse process, under statutes governing public employee collective bargaining disputes that all impasse issues are resolved in manner which clearly reveals what collective bargaining agreement is (136, p. 793).

CHAPTER XII: SUMMARY AND RECOMMENDATIONS

Need for the Study

This study was undertaken to assist educators, board members, school district employees, and any other persons interested in gaining a more complete knowledge of school law. Its purpose is to provide general knowledge of the laws that govern school districts in Iowa as interpreted by the judiciary system at the top of Iowa's appellate court structure, the Iowa Court of Appeals and the Iowa Supreme Court.

Statement of the Problem

The laws under which schools in Iowa operate are established by the legislature. These laws may be expanded upon by various administrative agencies within the authorized governmental structure. This is accomplished through the establishment of administrative rules. The statutes and these rules are ultimately interpreted through court decisions when disputes arise as to their application in a specified situation. It is important for school authorities to have a clear concept of not only the statutes, but they also must possess timely knowledge of the interpretation of them through the courts' decisions.

Procedures and Techniques Used in the Study

Decisions of the Iowa Court of Appeals and the Iowa Supreme Court as reported in the Second Series of the North Western Reporter since

1970 constituted the primary sources of information for this study. These decisions were analyzed for the following components: (1) facts, (2) issues, (3) decisions, and (4) reasons. They were then grouped chronologically by category and summarized. Where appropriate, a summary of legislation enacted recently affecting the category under discussion was included at the end of the chapter. Other sources of information utilized included the Code of Iowa, 1985, School Laws of Iowa, 1985, and Summaries of Legislation from 1970 through 1988. Ample citations to the Code of Iowa and case law were included to assist in further research in any of the areas discussed.

Delimitations of the Study

The cases reviewed were only those of the Supreme Court of Iowa and the Iowa Court of Appeals. No attempt was made to research unreported cases from lower court jurisdictions, nor was a study attempted of the substantial record of Public Employment Relations Board decisions that were not challenged in court.

The review of legal principles included in this study were limited to the state of Iowa. In order to apply them to any other specific state, a review of statutes and administrative rules of that state would be necessary.

The decisions presented herein represent interpretations of statutes and rules that were in place at the time of the hearing. Due to the dynamic nature of school law, they may or may not remain viable over the course of time. Thus, persons interested in these

issues must be constantly alert to changes in legislation and to consequent court decisions.

Following are indications of current trends in the decision-making processes of the Iowa courts. Specific case summaries are contained in the previous chapters. A listing of individual cases by category is found in Appendix I. It is hoped that school authorities who find themselves involved in similar situations will benefit from these cases of record.

School Districts

School districts are the basic units of school government in the State of Iowa. They operate as corporations with limited powers under Chapter 274 of the Code of Iowa.

School districts are authorized to provide a free education to students who are bona fide residents of the district by virtue of their parents' or legal guardians' place of residence within the district. Districts may also allow nonresident students to attend classes in other than their district of residence providing that a tuition fee is paid to the district of attendance. The amount of that fee is established by the legislature and the Department of Public Education. School districts may themselves tuition their students into other districts under certain circumstances. It is anticipated that an increase in such activity will result from the recent emphasis on whole-grade sharing between neighboring school districts.

Unlike most corporations, school districts may not incur original indebtedness by issuing bonds until authorized to do so by the voters of the

school district. Such bonds are utilized to acquire property, construct buildings, and repair and maintain all district-owned facilities.

For many years the Iowa public schools were immune to suit for tortious acts because they were considered agencies of the state. Chapter 613A of the Code of Iowa now assigns responsibility for torts to municipalities and their officers and employees, acting within the scope of their employment or duties. School districts are included within the meaning of the term "municipality." A tort is a civil wrong which results in the death or injury to a person or to property rights, and it includes actions based upon negligence, error or omission, nuisance, breach of duty, or denial or impairment of constitutional or statutory right.

The areas of separation of church and state and compulsory attendance to an approved school have become matters of judicial review in recent years. At issue is the right of the state to establish educational standards for private religious schools and to require evidence of compliance with such standards from the directors of such schools and the parents of children who attend them. The legislature has established a single instance when an exemption has been granted to state standards and reporting requirements in the case of the Amish communities in Iowa, and the courts have steadfastly refused to expand this exemption to other religious groups absent the specific characteristics of the Amish society.

In recent years there has been significant legislative interest in the educational programs and standards of the public schools of Iowa. This is reflective of a revived national interest in the accomplishments of public and private schools, and it is likely to continue to be a source of legislation and rules in the near future. Although the courts have

not had a great deal of opportunity to address standards and approval during the time period covered by this study, it is an area that will bear observation and study, both in terms of increasing standards and the attempts of school districts to meet them.

Boards of Education

Members of boards of directors of school districts are officials of the state. They are elected locally to represent a specific jurisdiction and are ultimately responsible to the state agencies which have authority over public education in Iowa. Boards of directors may be comprised of either five or seven members, depending upon the size of the district, and in some cases, the wishes of the voters of the school district. The terms of board members rotate and are so arranged that an entire board is not elected at the same time. Most board terms are three years in length.

Boards are given broad discretion in making decisions to employ counsel and run the local district's affairs. The authority for their actions is found in Chapter 279 of the Code of Iowa. In the cases reviewed, the courts have been reluctant to second-guess the judgment of local boards, absent a violation of procedure or law.

In most cases, meetings of school boards must be open to the public. Closed or executive session may be held under certain circumstances which are detailed in Chapter 21 of the Code. In the cases where the legality of a closed meeting has been challenged, the courts have looked beyond the act to the intent of the board in holding the meeting and the likelihood that a similar violation would occur in

the future, before reaching a conclusion. The courts have held that contracts approved in a closed meeting, even though such action is violative of the law, are neither void nor voidable.

The role of a school board member is a dynamic one, being susceptible to the constantly changing role of schools in society. In light of recent legislation in these areas, it is likely that boards of directors of public schools will be faced with increased responsibilities in the area of health and safety, standards and program evaluation, and personnel evaluation.

Buildings and Grounds

School districts are authorized to acquire and hold property in the name of the state. They may build facilities and purchase land for all types of school use, including playgrounds, athletic fields, and transportation facilities. Such authorization is found in Chapter 297 of the Code of Iowa. Districts are required to advertise for and accept bids for construction, demolition, erection, alteration, or repair of a school facility when the cost for such work exceeds twenty-five thousand dollars. The process of letting bids is a quasi-judicial function of the school district and may be reviewed by writ of certiorari (request for certified record).

Districts have some discretion in the manner in which they handle the bid-letting process so long as they adhere to statutory guidelines. A district may split bids for a project totaling twenty-five thousand dollars or more, thereby obtaining several projects that

do not equal that amount individually but equal or exceed it collectively, so long as they treat each project as though it met the requirements for bid-letting. A district may not split the project to avoid the bid-letting process.

Generally the courts have been reluctant to interfere with the local district's determination of who has submitted the lowest responsible bid, absent indications that the determination was fraudulent, arbitrary, in bad faith, or an abuse of discretion. They have consistently ruled that an unsuccessful bidder has no standing to appeal the district's decision, so long as the district has acted in good faith.

Prior to recent legislative action, school districts were under some constraints regarding the sale of unused buildings and sites. The current status of legislation gives school boards the authority to dispose of property at their discretion, requiring only that a public hearing be held prior to such disposal if the property in question is valued at more than twenty-five thousand dollars.

Personnel

The largest number of court cases reviewed in this study are in the area of personnel. School boards employ a variety of certificated and classified individuals to accomplish the mission of the district, and they expend a greater portion of their budget in so doing than in any other area of expenditure. Of all the employees of a school district, school boards are most regulated by statute in their attempts

to employ, evaluate, discipline, terminate, or retain certificated staff members. For the purpose of this study, the terminology "certificated staff" refers to teachers and administrators exclusively.

The Code of Iowa is specific in its determination of the procedures to be followed when action is taken relevant to the contract of a certificated employee. The Fourteenth Amendment to the Constitution of the United States is also brought to bear by application of the concepts of "due process" in personnel actions. Recent Federal Supreme Court interpretations have focused attention on the property right of an individual to his or her job, as a means of livelihood. Courts are reluctant to take this property interest away from an employee without assurances that all safeguards have been utilized and that the individual has been given ample opportunity to be notified of his or her situation, to be afforded a fair hearing, and to be given an opportunity to remediate.

In Iowa, the first two years of employment by a certificated staff member are probationary in nature. The safeguards for employment for these individuals are not as extensive as those for nonprobationary employees. Nevertheless, such individuals have a right under the statute to be notified and to request a private hearing before the board. The decision of the board is final and binding at this point so long as there has been no violation of a constitutional right or of the public employee rights of the employee under Chapter 20 of the Code.

Staff reduction has been fertile ground for litigation in recent years, due to statewide factors of declining enrollment and financial

constraints. The courts have generally upheld the district's right to make a determination that staff reduction is necessary, ruling that the lack of need for an individual's services alone is just cause for terminating a contract. At the same time, the courts have been insistent that all parties follow the procedural guidelines established by the legislature. Failure to do so by one party or the other has often resulted in an adverse decision for that party.

The matter of contract termination for cause is equally reliant upon procedural considerations. The courts have not been tolerant of contract terminations that appear to be arbitrary or capricious in nature, or that were incorrectly instigated at the outset. A school board may not, of its own instigation, move to terminate the contract of a teacher. In so doing, it becomes the judge of its own decision-making process at the hearing level. The court has ruled that such situations preclude an individual's ability to be heard before an impartial tribunal, thereby violating his or her due process rights.

In the instance of mental or physical disability of a certificated employee, districts are required to look farther in their evaluation of that employee's ability to perform his or her job than they might be required under another circumstance. The courts have not precluded the dismissal of an employee under those circumstances, but have indicated that boards should proceed on grounds other than inattention to duty and incompetence.

Certificated employees may be discharged from their duties if they have failed to respond to remediation or have become uncooperative

with their fellow employees and administrators. The court has stated that school districts are not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance. School boards are required to produce a preponderance of evidence to support their claims in certificated employee dismissal proceedings.

The concept of a one-year-only teaching contract has been ruled illegal by the courts. A district may not contract with a teacher on a year-to-year basis to avoid the continuing contract law if the teacher has achieved nonprobationary status. Recent legislation recognizes only two types of teaching contracts, probationary and continuing. The legislature has also moved to separate athletic coaching contracts from teaching contracts in recent years, and it has written guidelines for the termination of such contracts.

Moral and behavioral issues are relevant to the ability of a teacher to maintain his or her position within a school district to the extent that they affect the individual's credibility with the students, the parents, and the community. School boards have not been vested by the legislature with unlimited power to dismiss an individual whose personal or private conduct has incurred its disapproval regardless of its likely or actual effect upon his or her teaching. The courts have allowed the introduction of polygraph evidence in board hearings under certain conditions.

Students

According to statute, all children over the age of seven and under the age of sixteen who are physically and mentally able must attend some public school, or in the alternative, a private school providing equivalent instruction, for at least one hundred twenty days per school year. The statute lists five reasons for exception from this attendance requirement. Students may be excluded from school for violations of board regulations, for immorality, or when the presence of a student is determined to be detrimental to the best interests of the school.

Most of the court cases involving students reviewed by this study involve instances of alleged tort liability wherein a student received an injury while under the care of the school. As is the case in personnel-related litigation, observance of statutory procedure and timelines are central to many suits. In other areas the courts were asked to look at student supervision in terms of its adequacy for the activity in which the injured student had been engaged. Courts have been reluctant to place a burden of additional supervision for physical activities upon the school when the school has been able to demonstrate that it has exercised responsible actions in the past.

In the area of special education placement, the court has ruled that such students may be excluded from school, but only when the district has determined that no reasonable alternative is available. The courts have also maintained the position that parity of educational opportunity between special education students and others must exist. A district must strive to meet the needs of special education students

with the same level of effort which it devotes to meeting the needs of nonhandicapped children. The Iowa standard does not require an unlimited commitment of resources and effort in meeting the needs of each handicapped child.

School District Reorganization

The reorganization of school districts has been an issue that has lain quiet in Iowa courtrooms over the period researched in this study. This has been in contrast to a great deal of activity centering upon district reorganization prior to 1971. The responsibility for overseeing such reorganizations has been given to the area education agencies created by the legislature in 1974. Each education agency is required to develop and keep on file reorganization plans for districts within its area, and to review them periodically.

An alternative to district reorganization that has become more viable in recent years is the concept of whole-grade sharing between school districts. The legislature has encouraged this concept, and in certain cases, has provided financial incentives to smaller districts to move in this direction.

Elections

A school district depends upon direct referendum for two major aspects of its operation. School board members are elected for terms of office on a rotating schedule that requires at least one member be elected every year. The other major aspect is the solicitation

of voter approval to undertake indebtedness, and thereby increase the amount of property taxes levied to support the district.

The latter category of election has been the most litigated one over the time period reviewed by this study, albeit even that activity has been relatively quiet. The Supreme Court has defended the requirement that bond issue elections be carried by a sixty percent, or extra-majority vote, in spite of challenges that such a requirement defeats the one-person one-vote concept. The court has also upheld the right of college students who live in the district of their college attendance to declare it to be their residence for voting purposes, even though their parents live elsewhere. There is a certain contradictory nature to these decisions in that the rationale for the former decision involved a concern for the long-term effect of such indebtedness and the need for the district to be cautious in its undertaking, while the latter decision seems to empower students of local colleges to participate in approving long-term commitments which they likely would not help defray.

Collective Bargaining

The enactment of the Public Employment Relations Act in 1975 has had significant impact upon the operation of school districts in Iowa. The Act provides that public employees may organize and bargain collectively with their employers through representatives of their own choosing. The subjects upon which they may bargain are specified by the Act in a "laundry list" fashion which provides a more limited

scope than traditional National Labor Relations Act language encompassing wages, hours, and other terms and conditions of employment. Strikes are prohibited by PERA.

The Act also authorized the establishment of the Public Employment Relations Board, empowered to administer the Act and provide neutrals to resolve bargaining disputes between the parties. Such resolution takes the form of mediation, fact-finding, interest or contract issue arbitration, and grievance arbitration.

The Supreme Court or Court of Appeals has been asked to make determinations based upon Chapter 20, the PERA, twenty-five times since the law was enacted. Procedurally, these cases reach the courts on appeal after having been adjudicated by PERB or decided by an arbitrator, although direct appeal to the courts is possible in certain instances.

A classification of dispute that has been addressed by the court many times is that involved with the determination of the negotiability of issues. Parties to negotiations have disagreed on the scope of bargaining indicated by the list in Chapter 20 and have asked the courts to interpret the same for them. The issues of evaluation procedures and transfer procedures are two examples of this type of dispute. In both instances, the court ruled that they constitute mandatory topics of bargaining under the law.

The accusation that one party or the other has committed a prohibited practice is another dispute brought to the court. Included in this category are questions over the interpretation of language within a bargained agreement and the implementation thereof,

particularly in cases of staff reduction and designation of seniority.

The court will not allow preclusion of law through negotiated contract language, even though parties may have mutually agreed on the issues in question. The standard for review of an arbitrator's findings has been to determine that his or her decision was drawn from the essence of the contract, not whether another individual would have come to the same conclusion. Once the parties to an agreement have established procedures under which they will operate, the court has insisted they utilize these procedures. Contract language may not be arbitrarily abrogated by either party.

Negotiated contracts are binding upon both parties so long as they do not breach the law. Nevertheless, the courts have held that school districts have the statutory right and obligation to provide the best possible educational opportunities for their students through personnel administration. A collectively bargained agreement does not void this responsibility nor can it allow the bargaining unit to share it.

Recommendations

Some recommendations for future consideration and study are appropriate, even though the court system has been generally consistent in its decisions with regard to school issues. The constant thread throughout the litigation reviewed by this study has been the court's reliance upon procedural consistency in determining the legality of an action. Prudent school authorities must be knowledgeable about the

regulations and laws under which they carry on the business of the district. To that end, it is recommended that a handbook or digest of all Iowa Court of Appeals and Supreme Court decisions that affect schools be made available to district administrators, area education agency administrators, attorneys who avail their services to school districts, and those who teach law at the Iowa college level.

Due to the dynamic nature of the laws of the state, it is likely that interpretations will change. Therefore, it is recommended that this study be replicated every ten years at the minimum.

It is apparent from the recent legislative interest in school efficiencies in a time of declining enrollment and financial constraint that schools will receive continuing attention in these areas. New legislative mandates and departmental rules can be expected to exert pressure upon districts to reorganize. Parallel to these efforts are evidences that stricter approval standards are being considered for implementation, and greater expectations in the area of personnel evaluation are being formulated. It is recommended that a careful analysis of the forthcoming statutes be made in the light of procedural requirements for their implementation. Such analysis should be provided to school authorities to assist them in their efforts to safeguard against unnecessary litigation and to insure success when it cannot be avoided.

Other potential legal issues that will face school districts in the near future are those which surround the Environmental Protection Agency's regulations regarding encapsulation and removal of asbestos-containing materials, the Iowa Right-To-Know Rules requiring

employers to develop and implement written hazard warning programs for the work place, and the Family Educational Rights and Privacy Act recently adopted by the federal government and administered by the United States Department of Education. Such issues present challenges to school authorities that must be met in a timely fashion. To assist in this effort, it is recommended that a handbook of legislation affecting school districts be developed and distributed to school authorities. Such a digest should present not only issues to be addressed, but procedural considerations and deadlines for compliance for each issue.

As evidenced by the decisions reviewed in this study, school authorities need not fear the legal process, and they may choose to utilize it constructively to assist in the proper administration of the schools of Iowa. In order for that end to be reached with a minimum of frustration and needless expenditure of resources, knowledge of the law and its interpretation continues to be a significant tool.

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APPENDIX I:

CASE LISTINGS BY CATEGORY CHART

A listing of topics, case titles, issues, and page numbers is presented for the convenience of the reader.

School Districts

Clinton Community School District v. Anderson — retrieval of fines, p. 22
 Hoefler v. Sioux City Community School District — employee health insurance, p. 24
 Hubbard v. Des Moines Independent Community School District — wage garnishment, p. 23
 Johnson v. Charles City Community School Board of Education — religion, compulsory attendance, p. 31
 Kriener v. Turkey Valley Community School District — tort liability, p. 30
 Lakota Consolidated Independent School District v. Buffalo Center — tuition, p. 27
 Langel v. Board of Supervisors of Carroll County — property tax, p. 28
 Maquoketa Community School District v. George — tuition, p. 26
 Sioux City Community School District v. Board of Public Instruction — employee health insurance, p. 25

Boards of Education

Anti-Administration Association v. North Fayette Community School District — official meetings, p. 41
 Bishop v. Iowa State Board of Public Instruction — board authority, p. 39
 Board of Directors of the Davenport Community School District v. The Quad City Times — public disclosure, p. 43
 Keeler v. Iowa State Board of Public Instruction — official meetings, p. 42

Buildings and Grounds

Calamus Community School District v. Glenn Rusch and Jean Rusch — reversion and sale, p. 54
 Elview Construction Company, Inc. v. North Scott Community School District — bids, p. 51
 Menke v. Board of Education, Independent School District of West Burlington — bids, p. 48

Unification Church v. Clay Central School District — reversion and sale, p. 53

West Harrison Community School v. Iowa State Board of Public Instruction — bids, p. 49

Personnel

Ar-We-Va Community School District v. Long — nonprobationary teachers, staff reduction, p. 67

Barnett v. Durant Community School District — tuition reimbursement, p. 106

Bewley v. Villisca, Iowa Community School District — classified employee, military service, p. 125

Bishop v. Eastern Allamakee Community School District — nonprobationary teacher, contract termination, p. 88

Briggs v. Board of Directors of the Hinton Community School District — administrator contract termination, p. 110

Board of Directors of the Sioux City Community School District v. Ames Mroz — nonprobationary teacher, contract termination, p. 84

Board of Directors of the South Winneshiek Community School District v. Sexton — nonprobationary teacher, contract termination, p. 86

Board of Education of Fort Madison Community School District v. Youel — nonprobationary teacher, contract termination, p. 78

Bruton v. Ames Community School District — nonprobationary teacher, contract termination, p. 79

Cedar Rapids Community School v. Cady — worker's compensation, p. 118

Cedar Rapids Community School District v. Parr — discriminatory practices, p. 99

Cedar Rapids Human Rights Commission v. Cedar Rapids Community School District — discriminatory practices, p. 98

Cook v. Plainfield Community School District — administrator contract termination, p. 111

Davenport Community School District v. Iowa Civil Rights Commission — discriminatory practices, p. 100

DeShon v. Bettendorf Community School District — mandatory retirement, p. 102

Des Moines Independent Community School District v. Department of Job Service — unemployment compensation, p. 116

Drinnin v. Heartland Area Education Agency 11 — sick leave benefits, p. 107

Erb v. Iowa State Board of Public Instruction — teacher certification, p. 96

Everett v. Board of Education of the Hampton Community School District — nonprobationary teacher, contract termination, p. 87

Fay v. Board of Directors of the North-Linn Community School District — nonprobationary teacher, contract termination, p. 83

- Ferree v. Board of Education of the Benton Community School District — probationary teacher, staff reduction, p. 59
- Fitzgerald v. Saydel Consolidated School District — substitute teacher, p. 94
- Flanders v. Waterloo Community School District — administrator contract termination, p. 109
- Gere v. Council Bluffs Community School District — administrator contract termination, p. 113
- Hagarty v. Dysart-Geneseo Community School District — nonprobationary teacher, staff reduction, p. 65
- In the Matter of Waterloo Community School District and William J. Gowens — administrator contract termination, p. 114
- Johnson v. Board of Education of the Woden-Crystal Lake Community School District — nonprobationary teacher, contract termination, p. 91
- Johnson v. Harlan Community School District — worker's compensation, p. 119
- Johnston v. Marion Independent School District — mandatory retirement, p. 101
- Kruse v. Board of Directors of Lamoni Community School District — probationary teacher, contract termination, p. 61
- Keith v. Community School District of Wilton — nonprobationary teacher, contract termination, p. 76
- Larsen v. Oakland Community School District — probationary teacher, contract termination, p. 64
- Libe v. Board of Education of Twin Cedars Community School District — nonprobationary teacher, contract termination, p. 89
- McFarland v. Board of Education of the Norwalk Community School District — suspension without pay, p. 104
- Moravek v. Davenport Community School District — probationary teacher, contract termination, p. 62
- Munger v. The Jesup Community School District — nonprobationary teacher, contract termination, p. 85
- Northeast Community Education Association v. Northeast Community School District — suspension without pay, p. 105
- Olds v. Board of Education of Nashua Community School District — nonprobationary teacher, staff reduction, p. 70
- Orr v. Lewis Central School District — unemployment compensation, p. 115
- Pocahontas Community School District v. Levene — nonprobationary teacher, staff reduction, p. 75
- Rankin v. Board of Education of the Marshalltown Community School District — nonprobationary teacher, staff reduction, p. 73
- Shenendoah Education Association v. Shenendoah Community School District — nonprobationary teacher, staff reduction, p. 74
- Slockett v. Iowa Valley Community School District — extracurricular contract, p. 103
- Smith v. Board of Education of the Mediapolis School District — nonprobationary teacher, staff reduction, p. 71
- Smith v. Fort Madison Community School District — nonprobationary teacher, contract termination, p. 82

- Smith v. The Board of Education of the Fort Madison Community School District — nonprobationary teacher, contract termination, p. 80
- Spilman v. Board of Directors of Davis County Community School District — classified employee, contract termination, p. 121
- Stafford v. Valley Community School District — probationary teacher, contract termination, p. 63
- Valley Educational Support Personnel Association v. Public Employment Relations Board — classified employee, union activities, p. 124
- Vinson v. Linn-Mar Community School District — classified employee, contract termination, p. 122
- Von Krog v. Board of Education of the Beaman-Conrad-Liscomb Community School District — nonprobationary teacher, staff reduction, p. 68
- Waterloo Education Association v. Waterloo Community School District — nonprobationary teacher, contract termination, p. 92
- Wedergren v. Board of Directors of the South Tama Community School District — administrator contract termination, p. 112
- Wilson v. Des Moines Independent Community School District — nonprobationary teacher, contract termination, p. 93
- Wollenzien v. Board of Education of the Manson Community School District — nonprobationary teacher, staff reduction, p. 69

Students

- Buchholtz v. Iowa Department of Public Instruction — special education, p. 140
- Bunger v. Iowa High School Athletic Association — eligibility, p. 131
- Fosselman v. Waterloo Community School District — student injury, p. 133
- Greene v. Tri-County Community School District — student injury, p. 137
- Kautman v. Mar-Mac Community School District — student injury, p. 136
- Mulinix v. Saydel Consolidated School District — student injury, p. 138
- Oliver v. Sioux City Community School District — student injury, p. 138
- Shearer v. Perry Community School District — student injury, p. 135
- Southeast Warren Community School District v. Department of Public Instruction — special education, p. 139
- Sprung v. Rasmussen — student injury, p. 132
- Wong v. Waterloo Community School District — student death, p. 134

School District Reorganization

Board of Education of Audubon County v. Joint Board of Education of Audubon, Cass, and Shelby Counties — county boards, p. 146

Bloom v. Arrowhead Education Agency — reorganization proposal, p. 148

Eden Township Board of Directors v. Carroll County Board of Education — county boards, p. 145

Templeton Independent School District v. Carroll County Board of Education — county boards, p. 147

Elections

Adams v. Fort Madison Community School District — bond election, p. 154

Brutsche v. Coon Rapids Community School District — election challenge, p. 156

Paulson v. Forest City Community School District — residence for voting purposes, p. 155

Collective Bargaining

Antho-n-Oto Community School District v. Public Employment Relations Board — bargaining unit, p. 166

Aplington Community School District and Iowa Association of School Boards v. Iowa Public Employment Relations Board — negotiability, p. 180

Bettendorf Education Association v. Bettendorf Community School District — benefits, p. 168

Brown v. Public Employment Relations Board — prohibited practice, p. 170

Burlington Community School District v. Public Employment Relations Board — prohibited practice, p. 169

Charles City Community School District v. Public Employment Relations Board — negotiability, p. 172

Charles City Education Association v. Public Employment Relations Board — negotiability, p. 173

Dubuque Community School District v. Dubuque Education Association, Tyler and Heath — impasse arbitration, p. 187

Dubuque Community School District v. Public Employment Relations Board — bargaining unit, p. 167

Fort Dodge Community School District v. Public Employment Relations Board — negotiability, p. 177

Iowa Association of School Boards and Iowa State Education Association v. Iowa Public Employment Relations Board — bargaining unit, p. 164

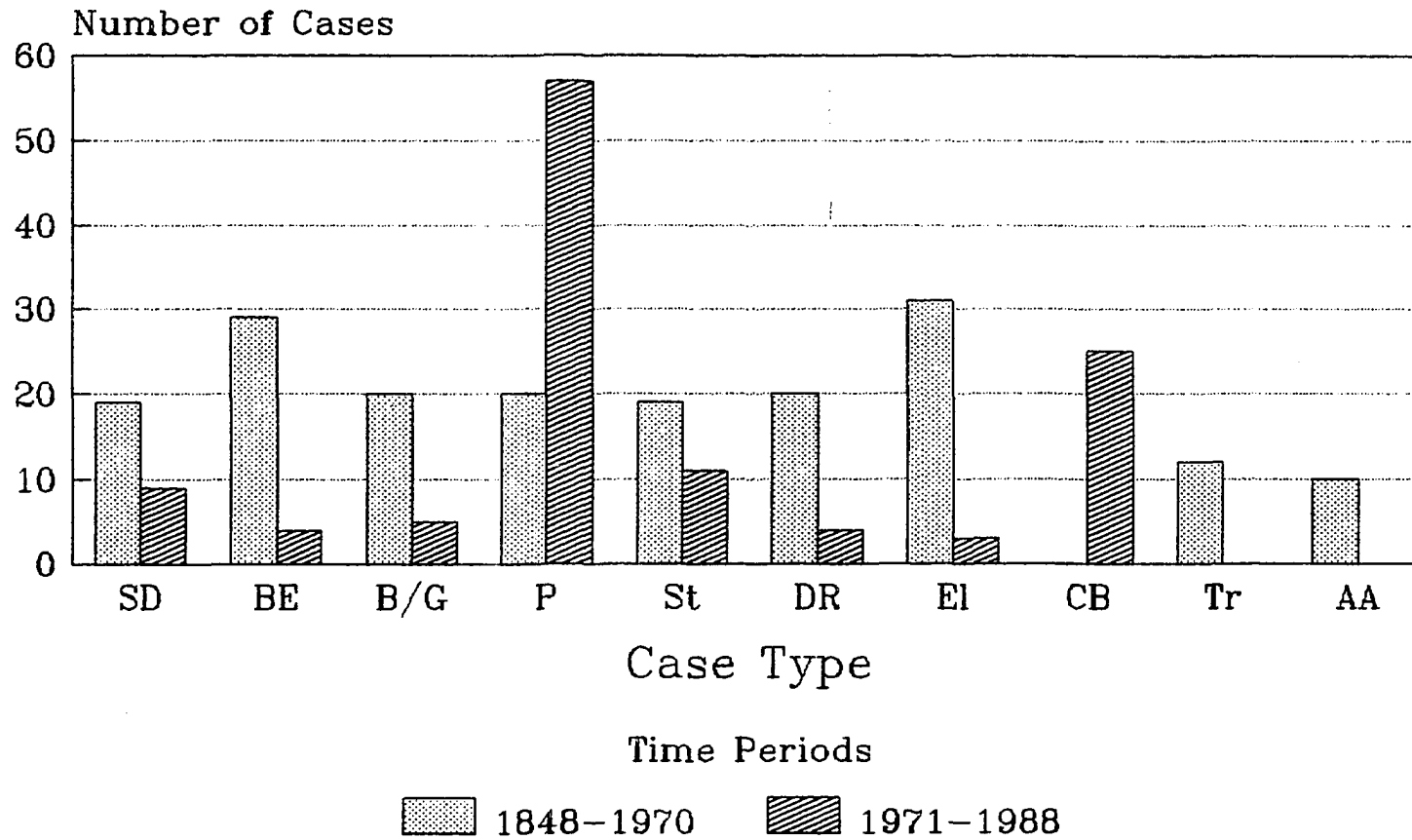
Iowa City Community School District v. Iowa City Education Association — impasse arbitration, p. 189

- Iowa State Education Association v. Public Employment Relations Board — impasse arbitration, p. 190
- Maquoketa Valley Community School District v. Maquoketa Valley Education Association — impasse arbitration, p. 184
- Marshalltown Education Association v. Public Employment Relations Board — negotiability, p. 174
- Mount Pleasant Community School District v. Public Employment Relations Board — election, p. 163
- Northeast Community School District v. Public Employment Relations Board — negotiability, p. 180
- Ottumwa Education Association v. Ottumwa Community School District — impasse arbitration, p. 186
- Professional Staff Association of Area Education Agency 12 v. Public Employment Relations Board — negotiability, p. 179
- Saydel Education Association v. Public Employment Relations Board — negotiability, p. 178
- Sergeant Bluff-Luton Education Association, Stodden and Moore v. Sergeant Bluff-Luton Community School District — impasse arbitration, p. 185
- Service Employees International, Local No. 55 v. Cedar Rapids Community School District — working agreement, p. 162
- West Des Moines Community School District v. West Des Moines Educational Support Personnel — impasse arbitration, p. 181
- West Des Moines Education Association v. Public Employment Relations Board — impasse arbitration, p. 182
- Woodbine Community School District v. Public Employment Relations Board — negotiability, p. 176

APPENDIX II:
SCHOOLS IN COURT CHART

Schools in Court

Pre-Post 1971 Comparison

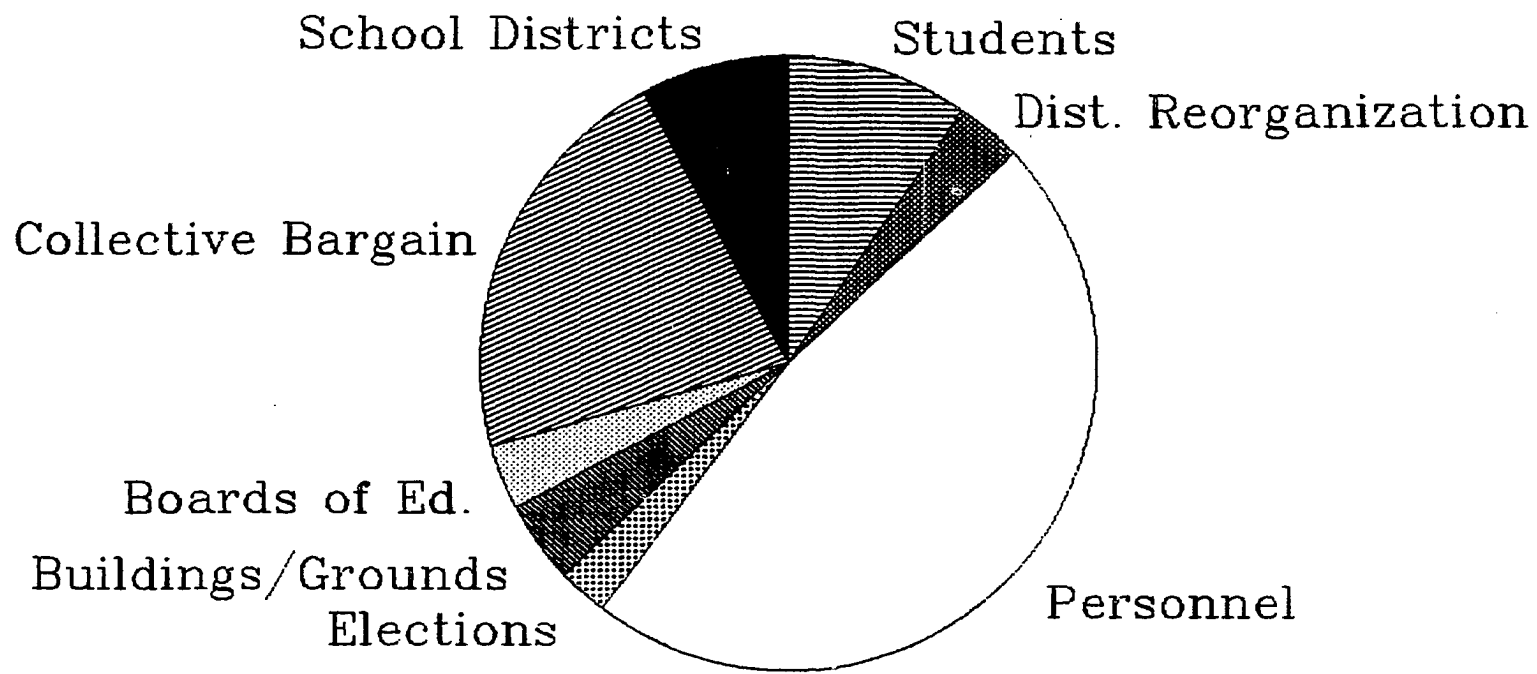


Reported Iowa Supreme Court Cases

APPENDIX III:
COURT CASES 1971-1988 CHART

Court Cases: 1971-1988

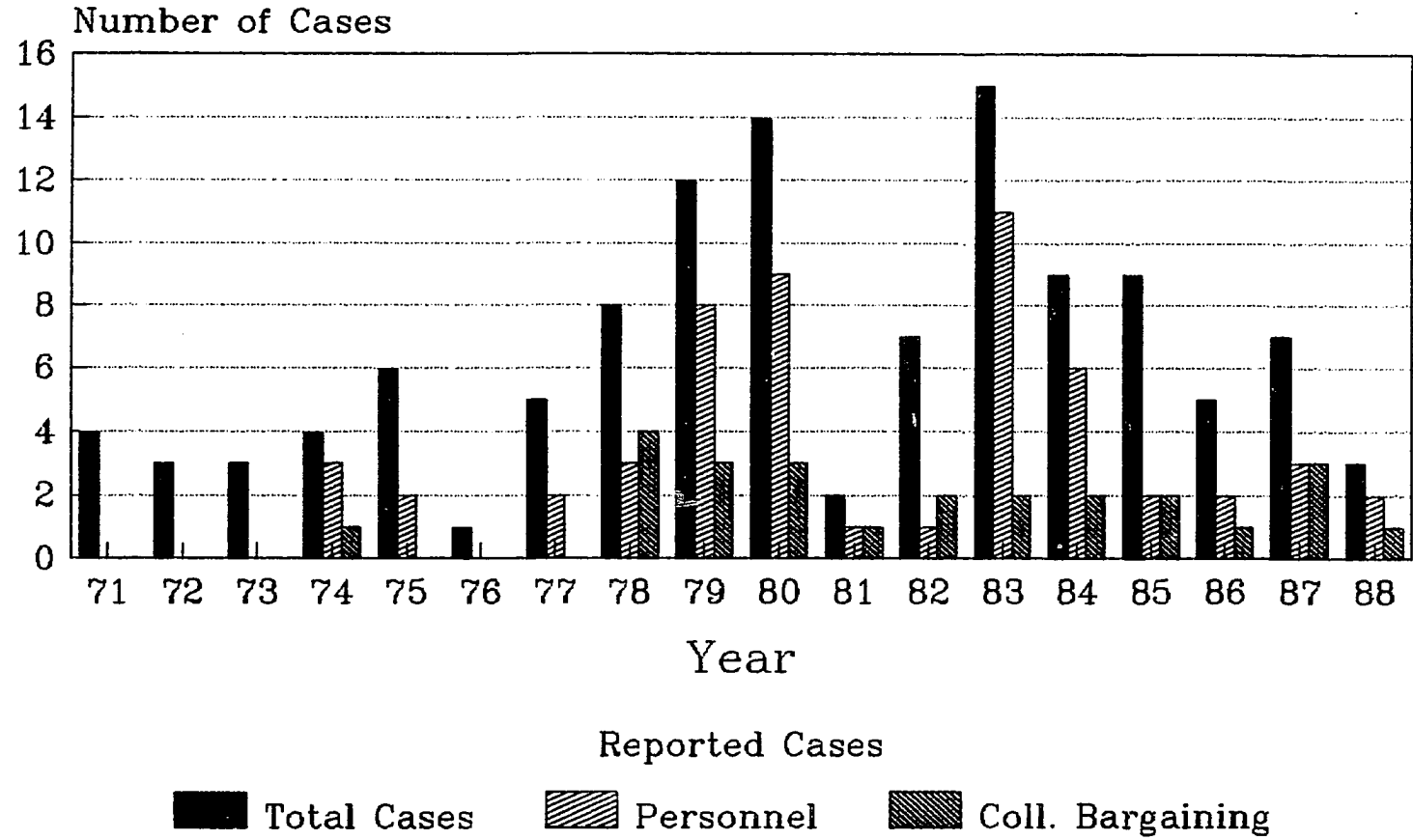
Case Distribution



Reported Iowa Supreme Court Decisions

APPENDIX IV:
CASE FREQUENCY CHART

Case Frequency Distribution by Year



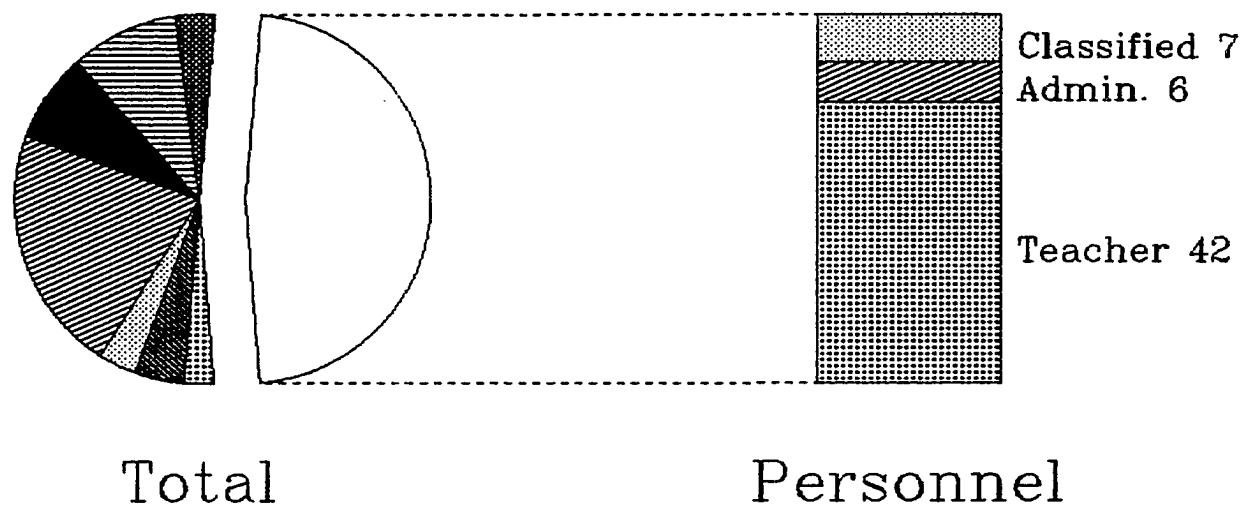
Reported Iowa Supreme Court Cases

APPENDIX V:

CASE DISTRIBUTION CHART -- PERSONNEL

Court Cases: 1971-1988

Case Distribution

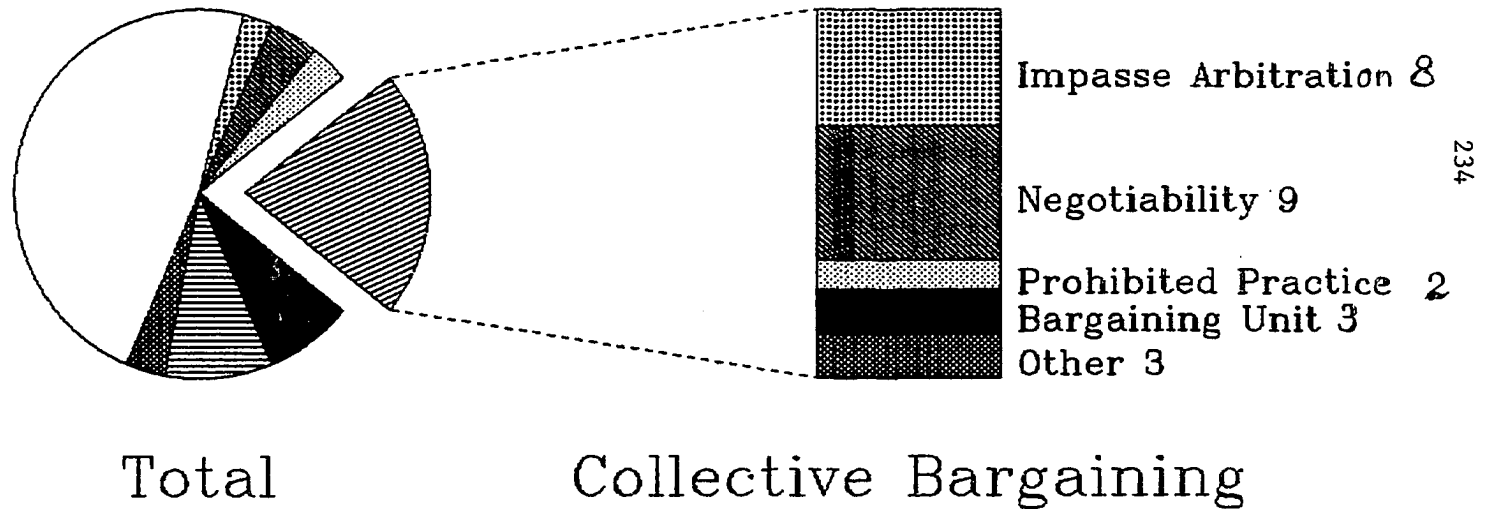


APPENDIX VI:

CASE DISTRIBUTION CHART -- COLLECTIVE BARGAINING

Court Cases: 1971-1988

Case Distribution



Reported Iowa Supreme Court Decisions