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In the Matter of Fact Finding Between:

BAY CITY EDUCATION ASSOCIATION)

-and-)

BAY CITY BOARD OF EDUCATION)

David Heilbrum)

REPORT AND RECOMMENDATION

Appearances

For the Association	-	Harry W. Bishop, MEA Representative
For the Board	-	William M. Lambert, Attorney

Introduction

Based on a Petition for Fact Finding filed by the Association with the Labor Mediation Board on August 23, 1967, hearings were held in Bay City, Michigan on August 31, 1967 and September 1, 1967.

The Board and the Association were parties to a one year Agreement that expired June 30, 1967. The language of this former contract provides the framework of current negotiations for a new Agreement. At issue in

Bay City Public Schools

these negotiations are the following items:

- | | |
|---------------------------|------------------------|
| 01 1. Salary Schedule | 12 6. Agency Shop |
| 2. Current Improvement | 7. School Calendar |
| 3. Terminal Pay | 8. Binding Arbitration |
| 4. Life Insurance | 9. No-Strike Clause |
| 07 5. Preamble - Duration | 10. Class Size |

Facts

1.

The salary schedule for 1966-67 consisted of 14 steps and salary columns for non-degree, B.A. degree and M.A. degree teachers. In addition a professional growth increment of \$200 obtained for teachers with 30 hours beyond their respective degrees. All salaries were indexed to the 1.000 amount of \$5700. The index range was .754 - 1.715.

The Association's salary proposal for 1967-68 is for a \$6400 base (indexed at 1.000) salary schedule of 6 steps for non-degree teachers (index range of .800 - 1.045) and of 12 steps for the following 4 classes, with respective index range shown:

B.A. degree	-	1.000 - 1.605
B.A. degree + 30 hours	-	1.047 - 1.707
M.A. degree	-	1.092 - 1.807
M.A. degree + 30 hours	-	1.144 - 1.903

The Association's proposal would result in the following increases over the 1966-1967 salary schedule, expressed both as dollar amounts and percentages:

<u>Class</u>	<u>Amount</u>	<u>Percentage</u>
Non-degree minimum	\$870	20.5%
Non-degree maximum	618	10.2%
B.A. minimum	700	12.3%
B.A. maximum	1266	14.1%
B.A. + 30 minimum	801	13.5%
B.A. + 30 maximum	1719	18.7%
M.A. minimum	833	13.5%
M.A. maximum	1789	18.4%
M.A. + 30 minimum	966	15.2%
M.A. + 30 maximum	2203	22.1%

In the course of the fact finding hearings certain evidence was adduced as to departure from the above salary proposal by Association negotiators. The entire line of information was objected to by the Association in the nature of a motion to strike. The basis of the objection was that any references to a base proposal other than \$6400

were only "exploratory" and otherwise for the purpose of best effectuating mediation services then underway. Upon consideration of the matter this objection is sustained. This information, in the precise context here involved, was of such a character as to be excludable on policy grounds. The policy at stake is that of preserving and enhancing all opportunity for dispute settlement by direct and amicable adjustment between parties. Furthermore the mediation process would be burdened if disclosures of this type could impeach a party's formal bargaining position. In the fact finding procedures of Act 176 a distinction must exist between the facts of a bargaining position and the underlying conditions of reality that bear on the dispute. As to the former, policy considerations of the type here stated are believed applicable. Accordingly the matters adduced under such objection are not cognizable as a material "fact" of this proceeding.

The Board's salary proposal for 1967-68 is for a \$6000 base(indexed at 1.000) salary schedule of 13 steps covering the same columns as in 1966-67 and bearing the same index range. The professional growth increment of \$200 would be maintained.

The Board's proposal would result in the following increases over the 1966-67 salary schedule, expressed both as dollar amounts and percentages(for convenience in comparison the Board's proposal on professional growth is treated as a degree plus 30 hours since the two concepts are the same under former Article XIV and the parties agree that their respective proposals have no change in meaning):

<u>Class</u>	<u>Amount</u>	<u>Percentage</u>
Non-degree minimum	\$274	6.4%
Non-degree maximum	320	5.3%
B.A. minimum	300	5.3%
B.A. maximum	474	5.3%
B.A. + 30 minimum	300	5.1%
B.A. + 30 maximum	474	5.1%
M.A. minimum	426	6.9%
M.A. maximum	514	5.3%
M.A. + 30 minimum	426	6.7%
M.A. + 30 maximum	514	5.2%

In support of its proposals the Association established that:

1. For 1966-67 Bay City teacher salaries were competitive(in excess of selected state-wide comparison averages), except for M.A. maximum which was below such average.

2. Over the last 4 years Bay City teacher salaries have been competitive(equal or nearly equal to, but without allowing for unknown variables affecting total district outlay for teacher salaries) with the Essexville - Saginaw - Midland average only in 1966-67.

3. A millage proposal by the Board in June, 1967 of 4.5 mills, in lieu

of 2.5 mills, would, if passed, have provided approximately \$450,000 in additional revenue. The 2.5 mills actually passed was followed by the hiring of approximately 100 teachers by the district.

4. For the past 10 years, a deficit has been carried each year and, with the exception of 1964, these have averaged 2.9% of revenue. For 1966-67 the deficit was \$197,000 or 2.3% of revenue.

5. The Board traditionally expends 69.4% of its total annual revenues on salaries to teachers now of the bargaining unit and the state-wide average for this item, in districts of comparable size, is 68.72% (neither of these percentage figures take 1966-67 into account).

6. The Association negotiated for 1966-67 salaries with the Board's budget stated as 7.2 million; that this budget was later revised to 7.6 million and that actual revenue for the year was 8.03 million.

7. Although the Board's budget deficit for 1966-67 was \$208,000, the actual overexpenditure was only \$79,000.

8. The cost of this year's Association proposal on economic items, combining both salaries and fringe benefits, is approximately 67% of the Board's 8.6 million budget for 1967-68.

9. U.S. News & World Report recently published a study conducted under the auspices of Northwestern University which indicated that bachelors degree graduates of 1967 would be hired for various occupations at annual salaries ranging from \$6780 - \$8544 and the range for masters degree graduates of 1967 was \$8376 - \$10,020. This same study indicated that in the occupations of engineering, accounting, sales and general business an average of approximately \$12,150 annually was being earned 10 years after graduation.

In support of its proposals the Board established that:

1. Operating millage was first voted in the district in 1964 after a defeat earlier that year followed by curtailment of school operations. In April 1967 a 2.5 operating millage proposal was defeated. A second election on the question, generated and supported by a citizen's group, resulted in passage in June 1967. In 1953 and again in 1962 proposals for operating millage were defeated.

2. Its budgeted revenues for 1967-68 are approximately \$950,000 greater than the budgeted revenues of 1966-67.

3. Based on budgetary determinations and financial estimates the amount of \$332,438 represents the amount of "cash available" to increase salaries and/or fringe benefits of all employees.

4. The \$332,438 "cash available" figure results from subtracting the following items from the \$950,666 budgeted revenue increase:

Accumulated deficit as of June 30, 1967	-	\$172,399
Budget adjustments (1966-67)	-	237,215
Budgeted expenses over receipts (1966-67)	-	<u>208,614</u>
TOTAL	-	\$618,228

5. The difference in cost between all economic proposals of the Association for 1967-68 and the Board's economic offer is approximately \$697,000.

6. Based on "cash available" for 1967-68 the Association's proposal would create a deficit for the year of approximately \$867,000.

7. Of 22 selected comparison districts salary benchmarks for Bay City teachers increased in position as follows when comparing 1965-66 salaries with those of 1966-67:

B.A. minimum	-	from 2-way tie for 21st to 5-way tie for 3rd
B.A. maximum	-	from 20th to 10th
M.A. minimum	-	from 3-way tie for 18th to 5th
M.A. maximum	-	from 21st to 14th

8. Comparing Ann Arbor, Battle Creek, Flint, Grand Rapids, Jackson, Kalamazoo, Lansing, Midland and Saginaw with Bay City, the teacher salary schedules of the last 2 years reveal that Bay City has experienced the highest average increase at B.A. minimum, B.A. maximum, M.A. minimum and M.A. maximum, the respective percentages being 10.1%, 10.3%, 11.2% and 10.5%.

9. Comparing Midland and Saginaw with Bay City the 3 year average teacher salary increase was of a higher percentage in Bay City than either Midland or Saginaw in the categories of B.A. minimum, B.A. maximum and M.A. minimum, while lower by only 0.4% as to M.A. maximum.

10. Approximately 1/3 of the elementary and high school age pupils of the 250 square mile geographical area of the district attend parochial schools and the Board must provide them transportation. Cost of such transportation last year was approximately \$300,000.

2.

The Association proposes that the following language replace counterpart provisions of Article XV, to be applied at 3% of salary:

- "1. Five 3 year periods of teaching beyond the maximum step on the salary scale.
2. During each 3 year period the teacher must earn 3 semester hours of credit."

The Board proposes continuation of the former language.

3.

The Association proposes that the following language replace former Article XII:

"A teacher retiring, either under the provisions of the Michigan Public School Employees Retirement Act or the compulsory age requirement of the Bay City Schools, shall be granted \$100 for each year of service in the Bay City School District."

The Board proposes continuation of the former language.

4.

The Association proposes that the following language replace former Article XIII A.:

"The Board of Education shall provide a \$5,000 term life insurance policy for each member of the bargaining group."

The Board proposes continuation of the former language.

5.

The Association proposes that a new Agreement be effective when signed (but retroactive as to salary schedule) and that it expire August 15, 1968.

The Board proposes that a new Agreement be effective when signed and that it expire September 1, 1969 with salaries re-openable for 1968.

6.

The Association proposes that the Recognition Article be amended by addition of an "Agency Shop" clause.

The Board proposes continuation of the former language.

A comparable agency shop clause exists in the contract covering teachers in Warren, Michigan and clauses of this type are found elsewhere in public employment throughout the State, particularly as affecting County Road Commissions employees. In Warren a lawsuit challenging the legality of the clause is pending.

7.

The Association proposes that the following language replace former Article IV C.:

"The School Calendar shall be negotiated with the Association and shall become Appendix C of the contract."

The Board has proposed language to the effect that for school year 1968-69 the Association is entitled to submit recommendations as to the school calendar and to be consulted on its final form prior to implementation by the Board. As to the school year 1967-68 the Board has now promulgated a school calendar which it is stated "shall apply".

A Trial Examiner of the Labor Mediation Board has issued a formal Decision recommending that the refusal of a school district to consider school calendar a negotiable subject be found to constitute an unfair labor practice.

8.

The Association proposes no change to language of Article XVIII - V(d) which reads:

"Arbitration of grievances arising from the language of this Agreement or an alleged breach thereof will be final and binding."

The Board proposes that the above-quoted language be replaced by:

"Arbitration of grievances arising from the language of this Agreement, or an alleged breach thereof, will be advisory only."

The Board also proposes to delete the following former language:

"If any teacher for whom a grievance is sustained shall be found to have been unjustly discharged or disciplined, he shall be entitled to full reimbursement of all professional compensation loss."

9.

The Association proposes to delete the following language of former Article XXV (c):

"The Board of Education, in the event of violation of this Article, shall have the right, in addition to the foregoing and other remedies available at law, to seek injunctive relief and damages for breach hereof against the Association."

The Board proposes continuation of this former language.

10.

The Association proposes that Article VII A. be amended to provide, to the extent that classrooms "become available", revised optimum class sizes and a statement of class size maximums for various grades and types of special activity.

The Board proposal is essentially that the former language be continued.

Contentions

1.

As to salaries the Association contends that the Board's offer is not adequate in terms of budget, comparisons outside the district and general equities. The Association contends that the truest measure of its salary proposals are their relation to total estimated revenue. As to this, the entire economic package is approximately 67%, well within the traditional average. The Association believes that spending must be controlled otherwise the teachers are forced into negotiating matters of curriculum and expenditure that are the Board's responsibility. The Association contends that the 1967 millage vote was based on resignation to another year of deficit. As to comparisons, the Association asserts that the district had been grossly behind on salaries and the increases of recent years have been the "catch-up" variety. The Association contends that its salary proposal is further warranted by the earnings of other business and professional occupations and by the current inroads of rising costs of living.

As to salaries the Board contends that last year's salary increases gave generous "catch-up" relief and that the Board's proposal compares favorably with other districts where settlements are sought or have been recently reached. As to the immediate vicinity, the Board asserts that full examination of step levels, revenue base and comparative benefits would, if fully probed, expose the fallacy of being influenced by superficial salary references. The Board contends it must strive to reduce or eliminate deficits and deficit carry-over and that the 1967 millage figure of 2.5 mills was based on the certainty that passage could eliminate a stated deficit amount whereas a higher figure could not, in good faith, be guaranteed as sufficient to provide for school operations as such would include salary increases of unknown proportion. The Board asserts that the Association has no responsibility for total school

operations nor is it adequately informed on the unforeseen variables that can affect school finances and as to which some protection must be afforded. Finally the Board opposes using percentage of revenue as a guide to salary setting because this would introduce inflexibility into school finances and would inhibit improvement to the general educational program.

2.

As to Current Improvement, the Association contends that its proposal constitutes a desirable incentive for experienced teachers to maintain continuing academic exposure. It visualizes teachers learning and applying the latest instructional techniques thereby generally improving education in the Bay City system.

The Board contends that the proposal is confusing, difficult to cost out and generally without justification at this time.

3.

As to Terminal Pay, the Association contends that a provision tied to sick leave, as formerly was the case, may penalize older teachers, particularly those who suffer serious or chronic illness prior to retirement. The Association believes its proposed \$100 per year of service properly reflects recognition of a retiring teacher's career services.

The Board contends that the proposal is without justification at this time.

4.

As to Life Insurance, the Association again contends that accumulated sick leave is an improper measure of death benefits. It contends the proposed \$5,000 term life insurance benefit is necessary to achieve adequate protection.

The Board contends that premiums for such insurance are too costly and that the possibility of epidemic or multiple accidental deaths prohibit self-insurance at this time.

5.

The Association contends that a one year contract is necessary

until a more settled collective bargaining relationship is established between the parties. As to the August 15th termination date, the Association contends that this will allow a full academic cycle of contract coverage from fall school opening through summer school. The Association points out that under the Board's proposal on termination date, teachers could be employed under two different contracts for the same school year. A one year contract is recommended to affiliates by the Michigan Education Association (MEA) and the Association believes its bargaining position would be weakened if it entered into a multi-year "master" Agreement.

The Board contends that a two year contract is necessary to establish a better semblance of stability to the situation. The Board is willing to agree to an annual re-opening on salaries. As to its proposal to set September 1st as the termination date, the Board states that this would provide for the existence of a contract during the one and two week periods prior to school opening when certain teachers have pre-season or preparatory duties to perform.

6.

As to Agency Shop, the Association contends that this form of union security is both legal and appropriate. The Association asserts that it must represent all employees and the costs of achieving collective bargaining benefits for the whole group should be spread equally among them. The Association finds no plausible basis for the belief that an Agency Shop provision for teachers is fundamentally unlawful in this State.

The Board doubts the legality of such a clause and would resist the subject while litigation is pending elsewhere to better avoid the risk of litigation costs of its own. The Board also asserts that this form of union security carries a type of compulsion that should not be imposed on public school teachers and is contrary to principles of free public employment.

7.

As to School Calendar, the Association seeks only the contractual right to negotiate on the subject and depicts the calendar as a matter closely relating to, and affecting, teacher's working conditions.

The Board contends that by statute it must be the sole party determining the school calendar and its offer to consult on Association recommendations is the most it can do to recognize the claims of the Association on this subject.

8.

As to Binding Arbitration, Attorney General's Opinion No. 4578, dated May 26, 1967, concludes that:

"Boards of education are without lawful authority to include in their master contract with employees a clause providing for compulsory arbitration."

The Association believes that the Opinion actually applies only to the form of arbitration that dictates terms and conditions of new or renewed labor contracts. This type of compulsory arbitration occurs when an outside party imposes a settlement on both employer and union. The Association doubts that the Opinion was intended to bar agreement by school boards for binding arbitration clauses for the purpose of contract interpretation and grievance resolution. It was noted that such binding arbitration clauses were not uncommon throughout school districts last year and that the one in the Bay City Agreement did not require application since no grievance was carried to the arbitration level. The Association also notes the Board's traditional commitment to binding arbitration in, for example, architectural contracts.

The Board contends that the Opinion must be deferred to so long as it remains the only authoritative interpretation and that its offer of advisory arbitration is the best available alternative on the subject.

9.

As to a No-Strike Clause, the Association considers this redundant because there is an affirmation of no-strike policy in the contractual language and Board remedies, were a strike to occur, are available regardless of wording of this type.

The Board believes that the clause is beneficial as a reminder of certain obligations of the teachers as employees. The Board also characterizes Article XXV as containing, in present form, standard and customary treatment of the subject matter.

10.

The Association contends that class maximums should be included as a goal of the parties.

The Board contends that the proposal is premature, particularly since a building study is in progress. The Board does not reject the possibility that future conditions may allow specification of class size maximums.

Discussion

1.

The data as to relative standing of Bay City teacher salaries when compared to nearby districts, or on a state-wide basis, is of limited value in resolving the present salary schedule dispute. Increases in place standing, comparisons of minimum and maximum salary amounts and percentage salary increases within the district in recent years do not reveal the many factors that are needed to fully evaluate these comparisons. District wealth, salary history, salary details and various local conditions should be known before a refined or equated comparison could be made. Even then it is doubtful that controlling weight should be given to comparison data, even when such is quite current. In the Bay City vicinity alone the recent past has shown that in 1963-64 Midland paid the highest B.A. minimum, in 1964-65 Essexville was high, in 1965-66 Saginaw was high, in 1966-67 Bay City equalled the high and for 1967-68 Essexville is presently high, with a \$6400 base equal to the Association's pending proposal. These fluctuations in nearby comparisons and the many variables of state-wide comparisons lead me to consider comparative facts essentially for background purposes. Much the same considerations apply to the question of "competitiveness" which was advanced by each party.

I also find limited significance to the data concerning earnings of other occupations. In the first place these are presumably year round jobs with the salary reflecting this 12 month commitment. Secondly the salaries in some fields, particularly engineering, are typically inflated by competition for profits. In the final analysis many variables exist in total remuneration for other occupations just as teachers may or may not seek supplemental earnings within their own school district or otherwise. I will relegate this information to background consideration.

The matter of district finances seems most significant to the salary question. The root cause of continued financial pressure in the district is its low total operating millage related to its wealth per pupil. There is an apparent difficulty in securing passage of operating millage except under distress conditions. Furthermore no debt retirement or building and site millage appears to exist as yet in the district. Given the likelihood that teacher salaries will continue to bear some relationship to the background factors stated above, the electorate may soon face a genuine question of whether they would prefer to pay for a more financially sound school district or experience curtailment in curriculum, activities and services.

The Association has highlighted budgetary facts tending to support its claim that the Board is reasonably able to afford the salary proposals. I find no indication from the facts that financial management was other than sound and responsible. Estimates were borne out to be of a general

accuracy reflecting their good faith. Factors causing additional revenues beyond those anticipated and over-expenditures were for the most part unforeseen and outside the administration's control. On the other hand I cannot adopt the Board's theory that as a matter for teacher negotiation, the "cash available" must be deemed to be reduced by the \$618,228 figure noted above. While a constant effort toward deficit liquidation is commendable, I am not convinced that this amount can be reasonably claimed to result in a lid on funds available for teacher salary improvements this year.

The parties disagree as to the appropriateness of viewing the percentage of past budgeted revenue attributable to bargaining unit salaries as a measure of the reasonableness of current Association proposals. In this regard I am persuaded that the Association's claim has fundamental validity. Recognizing that the Board is best informed on the myriad matters that affect an intelligent judgment as to school planning and spending, I do not see how this responsibility can be claimed to have some relevance in saying that past salary percentages are not a tentative guide to evaluating current proposals. The Association's proposals have been shown to be 67% of presently budgeted revenues. This figure includes fringe benefit costs tending to drive down the percentage amount when compared to past years in which only instructional salaries were measured. In sum I am satisfied that this concept is valid and as important as any in arriving at a salary agreement.

My recommendation as to salary base, which is set forth below, is based on careful consideration of an amalgamation of factors. These are:

1. Ratio of instructional salaries to total budget.
2. Desirability of deficit avoidance.
3. Comparative salary data.
4. Reasonable compensation for teachers under present day conditions.

Before specifying a salary base, the entire context of teacher compensation must be treated. In this regard there are four ingredients.

The first is that of salary divisions, variously called "classes", "levels", "columns" or similar term. The former Agreement, and present proposals of both parties, contain five such classes, although not in that form. The professional growth payment is actually the establishment of a salary class above the particular academic degree held by the teacher. I believe that the format embodied in the Association's proposal is preferable as a matter of both contract negotiation and administration. It is easier to understand the actual salary divisions that exist when they are set forth in an appended schedule, rather than to compound salary increments by reference back to the basic Agreement. My belief as to this point is limited to the form of stating a salary schedule and does not go to the Association's contentions on progressively increasing index increments between steps which I shall treat separately.

The second ingredient is the matter of number of steps in the

schedule. 14 were used last year; the Board proposes 13 and the Association seeks 12. Reduction in step level is estimated to cost approximately \$32,800 per step eliminated. The Association's evidence shows that of 194 selected districts, only 8% are on a schedule of 13 or more steps. This data is, however, incomplete and does not establish any intrinsic fault with moderation in this area. It seems to me that gradual change here is more desirable in order that effects can be assessed and assimilated. I recommend that the Board's proposal of a 13 step salary schedule be adopted.

The third ingredient is that of index. The index of the former Agreement had, with some exception, a constant increase within the index range. The Board's proposal is essentially to continue this concept into a new Agreement. Thus its proposed index for B.A. progresses with increments of either .048 or .049 per step and, comparably, .051 or .052 for M.A. step progression. The Association visualizes an index in which a progressively greater increment occurs at each step of the index. The Association argues that this allows a teacher's pay to be increased on the basis of a percentage applied to his own salary rather than that of someone else. The Association's index for B.A. has .045 as its first increment and each succeeding one is increased by .002, while its M.A. index proposal starts with a .050 increment and each succeeding one is increased by .003. This formula is similarly proposed for the B.A. + 30 and M.A. + 30 levels. The Association proposes somewhat specialized index treatment for non-degree teachers.

I believe that the Association's general theory of indexing is more valid. It is commonly true that in salary systems higher standing by training and/or experience allows progressively greater salary increments when compared to lower grades. I feel there is good reason to extend this approach to teachers as their increasing experience and academic growth combines for the cumulative effect of sharply increased teacher competence. This accelerating competence merits compensation of the same measure.

On the other hand the Association's present proposal is too extravagant. It seeks to move too drastically into an area which is new to the district's salary experience. A more gradual adjustment will better allow assessment of the impact, tangible and intangible, of such an innovation but will otherwise provide reasonable salary recognition to the more advanced teacher. I recommend adoption of the index set forth below. In proposing this index I give greatest weight to degree attainment. Particularly above the B.A. level I believe it is more significant that a teacher has achieved the orderly requirements of the M.A. degree than that he has, in the aggregate, an accumulation of 30 additional credit hours.

Non-degree

.754
.778
.802
.826
.850
.874
.898
.923
.948
.973
.998
1.023
1.048

B.A.

1.000
1.046
1.092
1.139
1.186
1.234
1.282
1.331
1.380
1.430
1.480
1.531
1.582

B.A. + 30

1.032
1.078
1.124
1.171
1.218
1.266
1.314
1.363
1.412
1.462
1.512
1.563
1.614

M.A.

1.092
1.142
1.192
1.243
1.294
1.346
1.398
1.451
1.504
1.558
1.612
1.667
1.722

M.A. + 30

1.124
1.174
1.224
1.275
1.326
1.378
1.430
1.483
1.536
1.590
1.644
1.699
1.754

The fourth ingredient is the salary base itself. I believe that a \$6300 base is appropriate and so recommend. In reaching this figure I note that "cash available" is actually substantially more than suggested by evidence of the Board. On the other hand, I believe that this figure, indexed at 1.000, will provide the Board with needed financial flexibility for the coming school year, particularly if 13 steps are used and the salary index modified as recommended herein. Furthermore this salary base would drive the total annual salaries of bargaining unit personnel another full percentage point lower when compared to total budgeted revenue for 1967-68.

My recommended 13 step index, applied on this \$6300 base, would have the following results for 1967-68, expressed as salary amounts at minimums and maximums of classes and percentage increase of such amounts over counterpart amounts of 1966-67:

<u>Class</u>	<u>Amount</u>	<u>Percentage</u>
Non-degree minimum	\$4750	11.8%
Non-degree maximum	6602	8.8%
B.A. minimum	6300	10.5%
B.A. maximum	9966	10.7%
B.A. + 30 minimum	6502	10.2%
B.A. + 30 maximum	10168	10.4%
M.A. minimum	6880	11.8%
M.A. maximum	10849	10.9%
M.A. + 30 minimum	7081	11.2%
M.A. + 30 maximum	11050	10.8%

2.

I believe the Association has overreached with this proposal. The five periods(or "blocks") proposed have no relationship to the one year contract which is sought. If the concept is designed to establish a foundation for this type of approach it may be done with a much more modest beginning. Furthermore the shift from a period of five years to one of three years is unwarranted in terms of the greater need for moderation and gradual change in areas of innovation. The Association's proposal for a 3% current improvement payment is proper in principle, particularly since this concept of applying percentages to supplementary is near acceptance as to proposed Appendix B. However the 3% figure is too high in view of the total economic proposals of the Association for 1967-68. I recommend modifying Article XV only to provide one additional five year period(or "block"), in which again entitlement to a current improvement increment will arise by the earning of three semester hours of credit, and as to which this increment amount would be 2½% of salary.

3.

Terminal pay based on remaining accumulated sick leave is unsound for the reasons stated by the Association. There is no showing of merit however to a terminal pay provision of the cost proposed by the Association. I recommend adoption of the Association's proposal as to amendment of Article XII, but substituting \$50 for \$100.

4.

For similar reasons the former death benefit is unsound. Term life insurance of an amount less than \$5000 would be of little practical value. I am satisfied that the Board can obtain a suitable group policy without burdening its budget. I recommend that the Association's proposal on term life insurance be adopted.

5.

The respective contentions of the parties as to the length of a new Agreement are well known in labor relations experience. In the context of collective bargaining by teachers in this State I believe the Association's theory is more appropriate. The relationship under Act 379 is too recent to favor long term stability over the opportunity to respond to evolving circumstances of each school year.

As to the expiration date of an Agreement, it appears that each party has tactical reasons for its contentions. I presume the Board would prefer an Agreement to run until September 1st in order that such members of the bargaining unit as must report for a new school year prior to that date can be used as evidence of the fact that the bargaining unit is in the process of "returning to work". I presume further that the Association would prefer an Agreement ending August 15th in order that summer school activity may be specifically covered but that the argument would remain to it that no "master" contract exists beyond that date.

Unfortunately there are many significant matters affecting school operations, and teachers, which have little or no relationship to the matter of contract expiration. Budget deadlines, legislative action, teacher "intent to return" statements, allocation and equalization determinations, execution of individual teacher contracts and preliminary start up of fall school operations are impossible to reconcile with an appropriate expiration date for a collective bargaining Agreement. I have little to go on here except elementary principles of orderliness in contract law. My view of these tends to favor the Association's theory. The very least that can be said for an August 15th expiration date is that should a new agreement be reached to have immediate effect as of August 16th, then in that instance teachers will not have their employment in

the district split under two contracts during any given school year.

I recommend that a one year Agreement, effective when signed, be adopted and that it bear an expiration date of August 15, 1968.

6.

The pending court case is not of itself enough to affect the arguable validity of an agency shop agreement. I am sympathetic with the desire of the Board to avoid litigation, however this danger is present in practically all actions taken by a public body.

I believe first that an agency shop for teachers is basically desirable in order to avoid the divisiveness of the "free rider" situation. Many public employers in Michigan have agreed to fuller forms of union security and I am unaware of any major difficulties in such instances.

I believe further that an accommodation can be reached on this issue. I propose a qualified agency shop provision with an escape clause for individuals who possess a "strong personal conviction" against payment of an amount equivalent to union dues. To be effective this "strong personal conviction" should be expressed in a signed writing, but without specification of reasons, and a signed copy be furnished the Association. All other non-member teachers would pay the equivalent amount. I am advised that such a provision exists in a contract between Michigan State University and certain of its employees. This qualification is appropriate where a public employer advances in good faith, as I find has occurred here, the contention that public employment need not be conditioned on agency shop payments.

I recommend adoption of a qualified agency shop provision of the type I have described.

7.

Upon consideration of Section 340.575 of the General School Laws and Act 237, I find insufficient basis to support the Board's position that it cannot commit itself to bilateral negotiation of a school calendar. The determination that the Board is to make as to school calendar can occur as validly within a collective bargaining context as without. I do not consider the Board's position as specious but simply too conservative. The impact of Act 379 on school boards' traditional actions involves subtle conceptual distinctions, and in no case are these more difficult to articulate than with this subject.

A two phase proposition is involved. The first is agreement to the proposition that the school calendar is a proper and mandatory subject

for bargaining and the second is to reach agreement on the calendar itself. By its present proposal the Association seeks to settle the first question. For the reasons stated and because I am satisfied that school calendar is a mandatory subject for bargaining, I recommend that the Association's proposal be adopted.

As to the actual calendar itself, the proposed one for 1967-68 was only furnished the Association during the second day of hearing. The Association has not, to my knowledge, taken a final position on the proposed calendar except to indicate generally that it is most likely an agreement can be achieved as to the calendar for the coming year once the Board agrees to the threshold proposal. In these circumstances my recommendation can be no more specific than stated.

8.

But for Attorney General's Opinion 4578 there is no indication that the language on binding arbitration would not have been continued. The Association would distinguish the Opinion and argue that it does not apply to grievance arbitration. This argument cannot be supported from the language of the Opinion as presently written.

It is not my function to comment on the wisdom or legal reasoning involved in this Opinion. Unless and until amended, clarified or voided by competent judicial authority, it remains the only known authoritative expression on the point. In such a circumstance I believe the Board's view is proper and its offer to provide advisory arbitration is a suitable alternative.

Since, however, the parties once agreed to binding arbitration, I believe a qualification, not uncommon in private collective bargaining Agreements, be added. This would provide that should, during the term of a new Agreement, binding arbitration be held to be within the lawful authority of a school board, then binding arbitration shall be the means of dispute settlement on any grievance not as yet submitted to an arbitrator. While there is a certain latitude in the phrase " . . . held to be within the lawful authority . . . " in reality this would most likely arise from a reversal of the Opinion or by court decision holding it to be in error. In any event such a provision would serve as the vehicle to preserve a feature over which the parties would have otherwise agreed.

I recommend that the parties agree to advisory arbitration of grievances with a provision for re-activation of binding arbitration and its related feature of an express right to reimbursement for unjust discharge or discipline upon such again becoming clearly lawful.

9.

The No-strike language of the former Agreement is perhaps less a redundancy than it is surplusage. I would see little reason to preserve a true redundancy, but collective bargaining agreements often contain surplus and restatement. The former Agreement here contained several surplus restatements of law or principle. The Board has stated that the present language is customary for the subject and that it is beneficial to have this appear as a "reminder" to the parties and a furtherance of their "education" on the subject. Were not the language once agreed to I would question whether it should be affirmatively imposed. For reasons satisfactory to them the parties originally agreed to its inclusion and I have seen no strong reason for change. Perhaps future dealings will reach a point where harmony between the parties will be better served by its deletion. At present it is a close question, but I believe that the Board's view has greater merit. I recommend that the language of former Article XXV (c) be continued.

10.

The Association's specific proposal was only furnished the Board during the first day of hearing. The subject matter is one better suited for a long term goal than a hastily considered proposal under crisis conditions. Pending studies may substantially affect the Board's ability to achieve the class size maximums sought. Both parties have indicated the subject is one of probable resolution. Under the circumstances I recommend that, unless mutually agreed otherwise, the language of former Article VII A. be continued.

Summary of Recommendations

1. \$6300 - 13 step - 5 class - re-indexed salary schedule.

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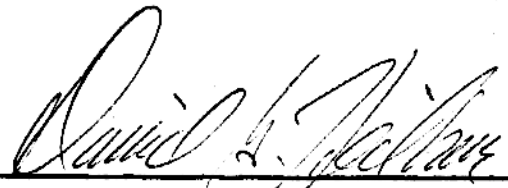
2. 2 current improvement "blocks" of 5 years each -
2½% supplemental pay.

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3. Terminal pay of \$50 per year of service.

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4. \$5000 term life insurance.
* * * * *
5. 1 year contract expiring 8/15/68.
* * * * *
6. Qualfied agency shop.
* * * * *
7. Bilateral negotiation of school calendar.
* * * * *
8. Conditional binding arbitration.
* * * * *
9. Retention of no-strike clause.
* * * * *
10. Retention of "optimums" as guides to class size.



David G. Heilbrun
Hearings Officer

Dated September 4, 1967
at Southfield, Michigan