1017

STATE OF MICHIGAN

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Dispute)	Fact Finder's Report August 1, 1985
Between the)	August 17 1903
Beecher Community School district)	Alvin N. Zachrich
and the)	Swartz Creek, Michigan
Beecher Education Association)))	

Appearances

For the District

Alan Luce, Consultant Ronald Erickson, Michigan School Investment Association Robert Towns, Assistant Superintendent

For the Association

Gary E. Vandemark, UniServe Director, MEA Ed McMahan, BEA

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JURISDICTION

On or about May 17, 1985, MERC appointed the undersigned to serve as its Fact Finder in the above captioned matter. Subsequently, pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended and the Commission's Regulations, a fact finding hearing was held on July 22, 1985. The hearing was held in the Beecher Administration Annex, 1020 W., Coldwater Road, Flint, Michigan. During the two hour hearing, the Beecher Community School District (hereinafter the District) and the Beecher Education Association (hereinafter the Association) had the full opportunity to present evidence in support of their positions and to make arguments as they deemed appropriate.

BACKGROUND

The District is located in Genesee County, just north of the City of Flint.

Its audited pupil membership in 1983 was 4,115. There are 189 teachers and other professional staff in the bargaining unit. They are represented by the Beecher Education Association.

The parties have had difficulties with bargaining. In the fall of 1983, there was a teacher strike. As a result, the bargaining process came under the jurisdiction of Judge Harry B. McAra.

In April, 1984, the parties started to bargain for the last two years of their contract. The dispute continued. Later, a mediation session failed to resolve all of the impasse items. This Fact Finding hearing was then ordered by MERC. At the outset of the hearing, the parties stipulated there were three items properly before the Fact-Finder: 1) Wages for 1984-85, 1985-86, 1986-87, 2) Teacher Qualifications 3) Affirmative Action.

ITEMS AT FACT-FINDING

ITEM	POSITION OF ASSOCIATION	POSITION OF DISTRICT
1. Wages 1984-85	6%	4%
Wages 1985-86	8%	5%
Wages 1986-87	8%	4-1/2%
2. Teacher Qualification	Current Contract	Change Language of Article V, Section V Teacher Qualifi- cations (the complete change sought by the District is attached to this report at Page 14.
3. Affirmative Action	Current Contract	Article VII, D Add new section to read: It is the mutual intent of the parties that the affirmative action goal set forth in paragraph two shall control over all other provisions of the con- tract, in the event of any staff reduction.

1. The District's General Fund Equity since 1978 is set out below:

1978	695,009
1979	727,234
1980	241,825
1981	(431,058)
1982	(1,462,231)
1983	(1,426,682)
1984	(192,700)

- 2. The District projects its ending fund balance to be \$265,065 in 1985 and 1986. (See Page 2 of The District's Financial Forecast, Page 17 of this report).
- 3. The District electorate voted an additional 2.1 extra voted operating levy for 1984-85 and 1985-86. The major purpose was to eliminate the operating deficit.
- 4. The District's total levied operational tax rates and the ranking with 20 other County school districts is set out below:

Year	Total	Ranking
1978	30.49	6
1979	30.86	4
1980	30.68	6
1981	30.86	10
1982	34.00	3
1983	34.00	3
1984	38.00	2

- 5. From 1980-81 to 1983-84, instructional salaries have decreased by \$492,080, a 8.52% reduction. During this same period, Instructional Services purchased increased by \$140,925, and Instructional supplies increased by \$504,647. The total cost to operate the instructional budget from 1980-81 to 1983-84 increased by \$153,492 or 2.28%.
- 6. The District enrolled 4,842 students (audited membership) in 1980. The enrollment has declined 727 students to 4,115 pupils in 1983-84.

- 7. The average per capita cost per pupil in 1983-84 was \$2,480.79. This is the third highest cost of all the Genesee County schools. Only Flint and Carman-Ainsworth are higher.
- 8. The District's highest schedule teacher salary ranking with the other
 Region 10 schools (Lapeer and Genesee County) highest schedule salary from 1978-79
 through 1984-85 is set out below:

Year	<u>-</u>	Ranking
1978-79		7
1979-80		6
1980-81		7
1981-82		6
1982-83		11
1983-84		17
1984-85	(District Proposal) 18
1984-85	(Assoc. Proposal)	14

- 9. The District provides 3% longevity pay to its teachers at steps 12, 15, 18, 21, etc. Not all schools in Region 10 offer longevity payment.
- 10. On March 4, 1984, Judge McAra suggested to the parties that the 1984-85 salary dispute be settled at 5.1% plus fringes.
- 11. The 1984-85 average percentage wage increase of 27 reporting districts in Region 10 was 5.06%. For 1985-86, the average percentage wage increase of 12 reporting districts is 4.59%. For 1986-87, the average percentage wage increase of 6 reporting districts is 6.15%.
- 12. Article VII, Section D. Affirmative Action of the parties labor agreement states in relevant part, "the goal of the Beecher School system shall be to attain at least the same precentage of minority racial representation on staff as is represented by the student population of the Beecher School System."
- 13. Currently, the district student body reflects a minority enrollment of sixty-nine (69%) percent. The instructional staff reflects a minority factor of

thirty-four (34%) percent according to District figures. (Association exhibits show instructional staff at a 31% minority factor).

IMPASSE ITEM NO. 1, Wages

The Association arguments are set out below:

- ° The District has the ability to pay the wage proposals of the Association.
- o The teachers accepted two wage freezes, one in 1982-83 and again in 1983-84. While other comparative school teachers have had freezes during these years, Beecher teachers are the only teachers who have had wage freezes in both of these years.
- As a result of the wage freezes, the teachers top MA salary is the lowest of any of Region 10 teachers even if the Associations 1984-85 6% wage proposal is accepted.
- Because of the freezes, a wage catch up is warranted. In the comparative schools, the highest teacher salary schedule ranking has dropped from 6th and 7th (1978-79 through 1981-82) to the lowest of all of Region 10 teachers in 1984-85.
- The District has the funds available to pay the Association proposal by re-establishing its expenditure priorities for 1985-86 and 1986-87.
- ° Judge McAra recommended a 5.1% in his order which is well above the 4% offered by the district.

The district arguments are set forth below:

- o The financial record of the District in 1983-84 shows one of the worst cash flow conditions in the State of Michigan and it has been struggling with a poor financial position for the last few years.
- ° As a result, Bankers who would lend operating money to the district are clamping down. The bankers expect if borrowing is to continue, that the deficit would need to be drastically improved.
- The long range financial goal of the district is to move its operation from the financial disaster in 1983-84 into a pay as you go condition for the present year and immediate years ahead. The 2.1 mils voted by the taxpayers has enabled the district to meet its goal to eliminate the deficit and place the district in a positive year end financial condition for 1985-86.
- The proposed 1985-86 budget will eliminate the fund deficit but will not eliminate borrowing. To achieve a pay-as-you-go status, the district will require \$600,000 of additional fund balance. In today's markets, that cash flow would net about \$100,000 of interest income per year.
- °In 1986-87, the projected revenue will stay the same or go slightly down because the 2.1 mils extra voted tax will no longer be levied.
- The bare minimum approach to budgets is established, not by Board action but by State law. The State has said the District must stop its year end fund deficit. The District will accomplish this requirement in 1985-86.
- °A 1985-86 budget with no loans and an \$865,000 Fund Balance will produce

approximately \$95,000 investment income as compared to the \$24,000 it cost the District this year - more than a \$100,000 turn around.

DISCUSSION

The Board of Directors of the District has acted prudently and the electorate has reacted responsibly in turning the financial condition of the school district around. This effort of the Board and the community has removed the District from financial disaster in 1983 to a position in 1985 of financial responsibility as required by the State of Michigan and the reasonable goal of the Board of Directors. Facts No. 1, 2, and 3 bring the undersigned to this conclusion. As examples: The deficit in 1983 was \$1,426,682. Now at the conclusion of the 1984-85 year, the facts show the deficit to be almost eliminated (estimated to be \$192,700) and \$658,700 more operating revenue than operating expenses - a complete turn around and a positive financial condition to face 1985-86, 1986-87, and the immediate years ahead.

The teaching staff too carried a significant part in resolving the past deficit conditions. They settled for wage freezes in 1982-83 and 1983-84. Had the Beecher teachers been paid the average increase of 4% received by teachers in Region 10 schools during these two years, the deficit would have been hundreds of thousands of dollars greater: As an example, the average increase for both years in Region 10 approximated 4%.(4% x \$5,818,148, the 1981-82 instructional salaries = \$232,726). (4% x \$5,446,748, the 1982-83 instructional salaries = \$217,870). \$232,726 + 217,870 = \$450,596). The major portion of this \$450,596 would have been earmarked for teachers wages. Therefore, the example noted above supports the view that the deficit would be several hundred thousand dollars greater without a two year wage freeze for all the teachers.

Now that the parties have turned the financial corner, consideration must be given for reasonable teacher wages for the three years at issue here. This conclusion is supported by Fact No. 8 which shows that the relative ranking of similar teachers in comparable schools has dropped severely because of the two year wage freeze. As the fact shows, the ranking dropped from 6th or 7th in 1978 through

1982 to 11th in 1982-83 and 17th in 1983-84. Under the District proposal, it would drop further to 18th for 1984-85. The statistics from Fact No. 8 are skewed somewhat inasmuch as long tenured Beecher teachers receive an excellent longevity pay provision. Longevity is not a part of the rankings from Fact No. 8. The undersigned submits that if longevity were to be applied, the rankings might be higher in 1978 through 1982 and not as low in the more recent years 1982-83 to 1984-85. It is undisputed however that Beecher teachers wages have dropped drastically as compared to their peers because of the wage freeze they agreed to for two years.

Fiscal 1984-85 is completed. The deficit is not quite eliminated. A settlement for this past year if it goes beyond the 4% district proposal will increase the year end deficit somewhat if the District estimates are accurate. However, this fact-finder considers that the wage increase for 1984-85 should be retroactively increased 5.1%. This is of course the increase suggested by the Court in March of 1984. Judge McAra, through his Master advisors, had a deeper more comprehensive look at the problem than does this finder of facts. Equally as important he is a judicial figure with jurisdiction within the Beecher district. Therefore he must be sensitive to the needs of the community. He is in an excellent position to reflect the welfare and interests of the Beecher public and the education of the District's children. Therefore I turn to his suggestion for my recommendation for the wage increase for 1984-85.

The Association seeks an 8% improvement for 1985-86 which goes to its "catch up" argument. While this argument is understandable, it is not persuasive under the circumstances. The District is reasonably reluctant to reach out further than its 5% proposal because of its recent experience with deficit funding. The high relative ranking of the teachers can not be recouped too quickly and still provide the Board with its needed assurance of financial stability. Moreover, the average wage increase in the 12 settled Region 10 schools is 4.59%. The District proposal is 5% and somewhat higher than the average and more reasonable than the 8% Association proposal. The 5% will be the undersigned's recommendation for 1985-86.

The District offers 4-1/2% for 1986-87. This is predicated on a 3% increase in expenditures. The Fact Finder considers the District can go above that 4-1/2% offer and still remain in its desired improved financial condition for 1986-87 and the years ahead. It would probably require either a realignment of the District's budget priorities and/or a continuation of the 2.1 extra voted levy for another year or more. Facts No. 5 and 7 support this fact finder's consideration that a change in budget priorities could be made without any adverse effect on the educational program or on the financial ability to fund an average settlement. A lesser budget expenditure for instructional services or supplies and a higher allocation for teachers wages could make this possible even using the financial considerations as set out in District Exhibits. Should this budget adjustment fail to solve the problem, then the District could ask the voters to renew the 2.1 levy for operations for 1986-87 and for further years to insure continued sound financial operation as desired by the Board of Directors. It would not require an increase in taxes; it would require a renewal of the 2.1 extra voted operational levy.

The Association seeks an 8% increase for 1986-87 Again its argument is that it needs the 8% as a catch up because of the two year wage freeze. This is too high to be reasonable with no hard facts beyond its drop in ranking to support such an increase. There is nothing in evidence that indicates settlements for 1986-87 will approximate 8%.

The undersigned considers that an increase should be established that would come in at the average settlements of the other Region 10 schools. This would be consistent with past wage increase patterns. As an example from 1978-79 through 1981-82, the District percentage increases were very close to the average settlements of Region 10 schools:

<u>Year</u>	Beecher Teachers	Region 10 Average
1978-79	7.14%	7.33%
1979 – 1980	9.00%	8.93%
1980-81	9.00%	9.77%
1981-82	8.98%	9.40%

There is little evidence on record as to what the average will be for 1986-87. However, six districts within Region 10 have established percentage wage increases for 1986-87:

Grand Blanc	5.50
Fenton	6.00
Goodrich	7.06
Lake Fenton	6.00
Swartz Creek	7.06
North Branch	5.25
1986-87 average	6.15

An interesting aspect of these six districts is worth noting. For the past two years, 1984-85 and 1983-84, the average settlements of these districts approximated the average for all Region 10 schools:

Year	6 School Group Average	Region 10 Average
1984 – 85	5.29%	5.06%
1983 – 84	3.93%	4.15%

Based on the above settlements and past wage increase patterns, it appears likely that the average settlement in Region 10 schools for 1986-87 will approximate 6% when all the Region 10 settlements are established. This 6% will by my recommendation.

RECOMMENDATIONS

It is the recommendation of the Fact Finder that the percentage increase for 1984-85 be set at 5.1%, the percentage increase for 1985-86 be set at 5.0% and the percentage increase for 1986-87 be set at 6.0%.

IMPASSE ITEM NO. 2 - TEACHER QUALIFICATIONS

The District arguments are set out below:

- * The issue of qualifications for Head Start teachers, vocational educational certification, resource teachers and student youth advocacy personnel has been upheld in a previous arbitration ruling.
- The essence of the position of the board of Education in reference to qualifications is to improve the required academic preparation of instructional personnel and to avoid major voids currently allowed under the Michigan State Department of Education certification code.
- of It is common knowledge that certification and qualification of teachers are not synonymous terms. Many teacher contracts in Genesee county specify academic preparation qualifications in addition to the State's certification code.

- The recognition of academic preparation standards established by the North Central Association of Schools and Colleges is common in the nineteen (19) states served by the association.
- Students in this school district have been confronted with a number of situations which have complicated scheduling of teachers and students and have placed students and this school system in very comprising positions.
- o In this time of declining enrollment and subsequent layoffs, the issue of employment supercedes appropriate qualifications.

The Association arguments are set out below:

- The Board has shown no need for such qualifications and no problem with current certification requirements. The proposed State Board of Education requirements are even more stringent and would make such language null and void. North Central accreditation requirements can change without notice and there is no local control over such requirements.
- Six month notification of change is not acceptable. It provides the Board the ability to change the qualifications on a whim and to use change or the threat of change to punish those who do not follow the party line. The bargaining process exists to make changes or to create new qualifications.
- o An 85-86 effective date provides no time for current employees to meet such qualifications.
- Even if all of the association concerns could be dealt with, the Board can offer no assurance that such changes are worthwhile. They offer no evidence that the current staff is not doing its job, and no evidence that increased qualifications mean better education for students.
- The District has been unable to bargain a change in this language for four years.
- There have been no bad evaluations, no disciplinary actions, no firings.

DISCUSSION

The District has a number of understandable arguments as it seeks a comprehensive change and addition to current language at Article V, Section V. Perhaps the strongest argument has to do with layoff of staff as student enrollments continue to decline.

According to Association arguments, however, the parties have negotiated over this language during the past four contracts and to no avail. What the dispute here comes down to is that the District seeks a significant language change from a neutral that it has been unable to bargain into the contract via negotiations.

It is generally accepted by grievance arbitrators that a party will not be

awarded a decision in arbitration that it failed to accomplish via negotiations. This fact finder holds to this view in interest cases. My position is, unless the moving party can show supportive comparative data and/or provides factual evidence that the parties have had serious difficulties with the language, I will not recommend any change. In this dispute, the fact finder finds no comparable data or any evidence to warrant the change sought by the District.

RECOMMENDATION

It is the recommendation of the Fact Finder that Article V, Section V remain per current contract in the 1985-86 labor agreement.

IMPASSE ITEM NO.3 - AFFIRMATIVE ACTION

The District arguments are set out below:

- Research strongly supports the significant role of class room teachers in development of their students. The role model of minority teachers is an essential component in the formation of attitudes, expectations, values and priorities for our student population.
- ° Currently the Beecher Community School District student body reflects a minority enrollment of sixty-nine (69%) per cent. The instructional staff reflects a minority factor of thirty-four (34%) per cent.
- ° In an effort to achieve the goal as defined in Article VII paragraph D, we submit that staff reductions should be in compliance with Article VII.

The Association arguments are set out below:

- Affirmative action is an issue of the Beecher Education Association, not the Beecher Board of Education. The Board did not see fit to make this an issue until the EA did so four years ago.
- Affirmative action is an issue caused by the hiring practices of the Beecher Board of Education over the years the district has existed. This practice has not been and is not controlled by the EA, and it has caused a situation that cannot be rectified overnight.
- Despite its policy on affirmative action, the Board's commitment to affirmative action is open to question. Fifty-eight (58) of the 189 current staff member (31%) are minorities. Only 42 of the 111 teachers hired in the last 15 years (38%) have been minorities. Of the 11 hired since 1980, only 2 (18%) have been minorities.
- The Board's proposal would place affirmative action as the only qualification in determining layoff. That would mean putting people out of positions who have more than 12 years of seniority, while retaining or calling back others with much less time. This displacement of teachers so far advanced into their careers would not allow a reasonable chance of re-employment anywhere.

We believe that the current language, when considered in light of the new retirement benefits bill that just became law, will allow us to begin and continue steady progress toward achieving the contractual goal already specified.

Current court cases leave us in doubt as to the legality of such language at this time.

DISCUSSION

There is insufficient evidence in the record to indicate why the District is not in compliance with its 4 year old Affirmative Action language. As examples, there is no indication in the record to ascertain whether recent teacher layoffs eliminated any minority teachers. The record also fails to show whether in filling the eleven teaching vacancies since 1980, more than 2 minority persons applied and/or were qualified for the vacancies.

A recent reading, by the undersigned, of District Court Judge J. Gilmore's 1984 decision in the Detroit N.A.A.C.P. v The Detroit Police Officers association case brings the fact finder to the conclusion that there is no easy, single answer to the parties Affirmative Actions dispute (See 591 Federal Supplement 1194, 1984).

The fact finder takes the view that the answer requires deliberate study and research by the parties. Fortunately, the District does not plan any teacher layoffs in 1985-86 which provides a year for the parties to properly resolve this issue.

The fact finder considers that there may be other Michigan school districts that have in place a workable affirmative action plan. If not in Michigan, then other schools across the nation may have a model for Beecher. If not, one can be fashioned before the start of the 1986-87 school year.

RECOMMENDATIONS

It is the recommendation of the Fact Finder that language, i.e., a plan, be developed by the parties for incorporation in the 1986-87 labor agreement - the plan to set out how the goal in Article VII can be reached. Further that this District allocate adequate financial resourses to make a comprehensive study involving teachers, administrators, Board of Director members, and community persons.

Dated this 1st day of August, 1985, Swartz Creek Michigan.

Alvin N. Zachrich Fact Finder

Article V

V. Line 3

Change to: of their teaching certification, their major or minor field of study and specified qualifications. (See Below)

V. 1.

Add New: The following teacher qualifications are effective with the 1985-86 school year:

- a. All 9-12 teaching assignments shall require appropriate teacher certification and North Central Association qualifications. Teachers shall be updated annually in the first semester as to North Central Qualifications.
- b. The following 9-12 positions shall require appropriate vocational educational certification:
 - (1) Industrial Arts
 - (2) Home Economics
 - (3) Business Education
- c. All 9-12 physical education teacher assignments shall require a current Senior Life Saving Certificate.
- d. All resource teachers shall have a minimum of three (3) years successful teaching experience and a Master's Degree in reading instruction or 30 semester graduate hours in a Master's Degree program in reading instruction.
- e. Reading and Math Consultants shall have:
 - (1) Valid Teacher Certification
 - (2) Minimum of three years successful teaching experience in which reading/math instruction was a major responsibility.
 - (3) A Master's Degree of 30 semester hours in a Master's Degree program with emphasis in reading/math.
 - (4) Experience in developing and implementing instructional methods and materials in the language arts.
 - (5) Experience in the use of micro computers for both computer assisted instruction and computer managed instruction.

Article V Cont'd

V,1 Cont'd

f. Head Start Teachers shall have a CDA credential or a CDA Equivalent (See Region V Policy on CDA equivalent) or an alternate CDA Equivalent for their state (see Region V Policy).

V.2

Add New:

The following teacher qualifications are effective with the 1985-86 school year:

- a. The following 7-8 teaching assignments shall require a minimum of 12 semester hours in the specified academic discipline.
 - (1) Art
 - (2) Home Economics
 - (3) Industrial Arts
 - (4) Science
 - (5) Mathematics
 - (6) English
 - (7) Social Studies
 - (8) Music (instrumental)
 - (9) Music (vocal)
 - (10) Physical Education

V,3

Add New:

The following staff assignments will be effective upon implemention of the programs:

- a. Student Youth Advocacy assignment qualifications and requirements:
 - One year of successful training and internship as evidenced by a certificate of participation issued by the State Office of Social Services.

Article V Cont'd

V, 3 a. Cont'd

- (2) Demonstrated personal characteristics, interest and ability which are supportive of working with troubled youth.
- (3) The selection of staff for S.Y.A. training and assignment will be an administrative prerogative.
- b. In School Suspension assignment qualifications and requirements:
 - (1) Demonstrated personal characteristics, interest and ability which are supportive of working with students in a discipline setting.
 - (2) Selection of staff for ISS assignment will be an administrative prerogative.

V. 4

Add New:

The Board of Education may establish or change qualifications for new or existing positions upon six (6) months notification to the Association.

BEECHER COMMUNITY SCHOOLS JULY 22, 1985 BUDGET ASSUMPTION

(GROSS ALLOWANCE INCREASED 4% PER YEAR)

STATE AID	1984-85 ======= \$ 7,532,500	1985-86 ======= \$ 8,043,964	NO FUND BAL 1985-86 ======= \$ 8,043,964	1986-87 ====================================	NO FUND BAL 1986-87 ====================================
TAXES	\$ 3,898,019	\$ 3,837,469	\$ 3,837,469	\$ 3,700,000*	\$ 3,700,000
OTHER	\$ 1,327,381	\$ 1,392,182	\$ 1,392,182	\$ 1,392,182	\$ 1,392,182
REVENUE	\$12,757,900	\$13,273,615	\$13,273,615	\$13,195,238	\$13.195,238
EXPENSE	\$11,899,200	\$12,615,850	\$12,880,915	\$12,995,238	\$12,995,238
INCREASE OVER P	RIOR YEAR	6%	8.25%	3%	.88%
CAPITAL OUTLAY	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000
OPER. BALANCE	\$ 658,700	∕ \$ 457,765	\$ 192,700	\$ -0-	\$ -0-
BEG FUND BAL	\$(1,072,409)	\\$ (192,700)	\$ (1,92,700)	\$ 265,065	\$ -0-
EST END FUND BA	L\$ (192,700)	\$ 265,065	\$ -0-	\$ 265,065	\$ -0-
BEG CASH	\$ 1,595,000	\$ 179,300	\$ 179,300	\$ 637,059	\$ 372,000
END CASH	\$ 179,300	\$ 637,059	\$ 372,000	\$ 637,124	\$ 372,000
CASH LOW FOINT	\$(1,417,900)	\$ (829,000)	\$ (872,200)	\$ (445,000)	\$ (710,000)
BORROWING	\$ 2,800,000	\$ 2,300,000	\$ 2,500.000	\$ 1,000,000	\$ 1,200,000
INTEREST EXP.	\$ 149,100	\$ 70,000	\$ 72,000	\$ 60,000	\$ 72.000
INTEREST INCOME	\$ 125,000	\$ 112,000	\$ 104,250	\$ 120,000	\$ 113,750

^{* 2.1} MILLS NOT LEVIED THIS YEAR