

STATE OF MICHIGAN  
DEPARTMENT OF LABOR  
EMPLOYMENT RELATIONS COMMISSION

In re the Fact Finding Between

BENTON HARBOR AREA SCHOOLS

-and-

Case No. L77 E-442

BENTON HARBOR EDUCATION ASSOCIATION

Elaine Frost //

FACT FINDER'S REPORT

Appearances

For the Schools:

Darrel Jacobs, Attorney  
Dean Sanders, Superintendent  
Larry Rankens, Group Director  
of Business  
Warren Andrews, Group Director  
of Personnel  
James Caudill, Director of  
Public Relations

For the Association:

Michael Schroeder, Chief Negotiator  
Camilla Hunt, President  
J. Aleta Mineo, MEA UniServ Director  
Donald Whitaker, Negotiator  
Marjorie Browning, Negotiator  
Earl E. McKee, Negotiator  
Richard Garrison, Negotiator  
Frances Shuck, Negotiator

ABCA AND NATIONAL  
RELATIONS COUNCIL  
MICHIGAN STATE UNIVERSITY

INTRODUCTION

Wages and conditions of employment of Benton Harbor teachers have been governed by collective bargaining agreements between the Benton Harbor Area Schools (the "Board") and the Benton Harbor Education Association (the "Association") since 1972. The last Teachers' Master Contract expired on August 26, 1977. Despite negotiations extending from May to October, 1977,

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*Benton Harbor Area Schools*

the parties were unable to agree on a new contract. In October, with the assistance of State mediator Howard Case, the parties renewed their efforts to reach an agreement, but were again unsuccessful. Fact finding was requested by the Board and a hearing was subsequently held before the undersigned on December 7, 1977, at the Board Offices in Benton Harbor, Michigan. Before issuance of the Report, the Michigan Employment Relations Commission ("MERC") directed the Mediator to reconvene the parties in a further attempt at settlement. Because some optimism was engendered by that attempt, the undersigned requested, and MERC directed, that the dispute be remanded to mediation until January 31, 1978. I have since been contacted by the Mediator and informed of the current work stoppage and the apparent lack of any meaningful progress. Being thus advised, I am of the opinion that a fact finder's report should not be delayed and I therefore issue my findings and recommendations effective as of January 31, 1978.

The unresolved issues before the fact finder are:

- 1/ President's Release Time
- 2/ Sick Leave
- 3/ Religious Holidays
- 4/ Health Insurance
- 5/ Teachers' Salaries
- 6/ Nurses' Salaries
- 7/ Teacher Evaluation System
- 8/ Extra Duty Schedule
- 9/ Retroactivity

President's Release Time

The Association seeks modification of Article I §14 of the 1975-77 Contract to increase the release time of the

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Association President by one hour per day. It notes that the two agreements preceding the 1975-77 Contract included a provision comparable to the current demand. The Board responds that the added release time would interrupt the continuity of pupil-teacher contact--an objection most strenuously urged in situations as the present one where the President is an elementary school teacher. Another Board objection, to increased cost for substitute teachers, is I find, offset by the Association's undertaking to reimburse the Board.

There is no credible challenge to the Association's proposition that its President needs more time to properly execute the obligations of that office; nor is the Board's educational concern about pupil-teacher contact challenged. To accommodate these legitimate interests I suggest adoption of a leave of absence provision whereby the President remains on the Board payroll, at full salary, with the Association reimbursing the total cost. Such leave should be available for a period of not less than a semester, and the Association should be required to notify the Board of its preference within a reasonable time prior to each semester. If a leave of absence is not taken, the current Contract language would apply.

#### Sick Leave

The Board evinces marked concern over rising teacher absenteeism with the financial and educational costs it produces. For 3315 sick leave absences in 1975-76 and 3747 sick days in 1976-77, substitute teachers cost over \$211,000.00. The Board emphasizes that over a third of those 1976-77 sick days were used on either Mondays or Fridays, indicating in its view,

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that abuse rather than illness caused much of the missed work. The other cost of teacher absenteeism, impaired continuity of instruction, appears to be the greater concern. The Board referred to various commentators as well as the opinion of its own Superintendent to support its contention that little if any learning occurs when a regular classroom teacher is replaced by a substitute.

To correct the problem of excessive absenteeism the Board proposed that Article IX §1 be modified, in part, as follows: In the first year the pre-credited allotment of ten sick days will continue; in the second year, if absenteeism has not been reduced by 15% from the 1976-77 figure, the pre-credited days will drop to eight. In the third and all subsequent years the pre-credited days will be limited to eight until such time as a 30% reduction from the 1976-77 figure is achieved.

The Association counters that the current ten-day provision has been maintained through all prior contracts and that the existing benefit is comparable to those of other Middle Cities Schools. It stresses that the proposed reduction penalizes all teachers for the alleged abuses of the few, and points out that the current provision of Article IX §6 authorizes the Board to require medical verification for more than three separate sick leave absences per year. This, the Association argues, is the proper mechanism for correcting abuse. Finally, it urges the fact finder to reject the Board's proposal because it presented no data to support the premise that Benton Harbor teachers are abusing their sick leave benefit.

Although I agree that specific evidence of sick leave abuse within Benton Harbor would be preferable, and I also note

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that comparative absenteeism figures for 1972-75 would have been helpful, I am nonetheless persuaded that the Board has identified a legitimate concern justifying modification of the contract. The proposed reduction from ten days to eight, however, appears more of an unnecessary penalty than of an incentive to correct the problem. Further, I am unwilling to recommend prospective terms reaching beyond the three-year duration of agreement. I therefore propose that the present provision be maintained during the first year; that the sick leave benefit be reduced by one day during the second year unless absenteeism during the first year is reduced by at least 15% from 1976-77; and that the sick leave benefit for the third year be one day less than that for the second year unless absenteeism during the second year is reduced by at least 30% from the 1976-77 figure. Thus, if the teachers achieve the reduction goals both the first and second years, the benefit will remain at the ten day level throughout the contract. But if the teachers reach the first but not second year goals, the second year benefit will remain at ten and the third year benefit will drop to nine days. If the first year goal is not achieved but the second year goal is, the second year benefit will be nine days and the third year, ten days. Finally, if the teachers fall short of both goals the second year benefit will be nine days and the third year benefit will be eight days.

#### Religious Holidays

The Association seeks a contractual provision that would allow teachers to meet their religious obligations without loss of pay. The demand is focused on the civil rights of a minority of the teachers whose religious holidays do not coincide with the

school calendar. It is suggested that these teachers be allowed to work on school holiday or vacation day(s) in exchange for paid religious observation day(s). In the alternative, the Association proposes that they be allowed to use accumulated sick leave days and personal business days for religious observation. No prior contracts have addressed this subject.

The Board takes the position that a separate provision on religious observation, particularly one which places the onus on the Board to determine the bona fides of a particular request or of a particular religion, would be legally questionable and possibly unworkable. It also opposes the use of sick leave for religious holidays, its rationale on this point having been examined in a prior section.

Although both parties are cognizant of Title VII of the 1964 Civil Rights Act and its requirement of "reasonable accommodation" of an employee's religious practices, its application to the Teacher's Contract is a matter of considerable disagreement. In an effort to comply with that requirement, while giving permissible recognition to the circumstances of the employer-Board and to the working conditions of the employee-teacher, I recommend a provision allowing teachers to use personal business days for religious observation. A teacher should also be permitted to take time in excess of business days, but such additional time shall be without pay. For all absences due to religious obligation, the teacher should provide the Board with ten days prior notice.

#### Insurance

Since July 1, 1973 Benton Harbor teachers have been covered by health insurance under MESSA Super Med II. A dollar amount

equal to the total premium was included in each prior agreement. Thus the 1975-77 Contract provides, during the second year, for a Board contribution of \$68.92 for full family coverage. Appropriate dollar amounts for other types of coverage are also specified.

The Board proposes to maintain its contribution at the \$68.92 level for the duration of the new contract. Alternatively, it offers to contribute the entire full family premium if the Association agrees to change its insurer. The basis for this suggestion is Board's desire to have a carrier that will give an experience rating for the group and, thus, hopefully reduce premiums.

The Association vehemently opposes any change in carriers. It explains that the teachers have confidence, based on experience, in their present coverage and that the teachers support MESSA coverage because of its affiliation with the Michigan Education Association. Rather than change insurers, the Association seeks a full premium contribution under the existing plan. This proposal would require a \$105.50 monthly payment for full family coverage in 1977-78. The total cost for one year at this rate is \$419,184.00 which is \$156,000.00 greater than the Board's present and proposed contribution. For the two remaining years of the agreement, the Association suggests increases equivalent to the percentage increases in the Detroit CPI health care portion of the Cost of Living Index. In support of its proposal the Association refers to prior contracts and a comparison with other Middle Cities Schools, a majority of which have full premium payment. The Association also urges the fact finder to recommend the addition of a dental plan to the agreement. The

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projected annual cost of this coverage, for all teachers, would be approximately \$73,000.00.

The difference between the proposals reflects a common dilemma of school boards and teachers' association across the State--the ever rising cost of health care insurance. If agreement is to be reached, both parties must moderate their positions. First, I am convinced that teacher support for MESSA is so strong that any agreement which omits that coverage is destined to defeat. Consequently, I recommend continuation of the current coverage. I believe, however that the effort of the Board to seek out less expensive coverage is entitled to deference, and I am also convinced that the Association package which increases insurance premiums by more than 85% the first year, is unrealistic. I therefore recommend against a dental plan and further recommend that the Board and the teachers share the insurance burden. The Board should increase its contribution each year by 15% over the premium of the prior year. Thus the increases for full family coverage would be \$79.26, \$91.15 and \$104.82, respectively. In light of the premium increase of nearly 50% this year in full family coverage, the suggested amounts are, at best, modest.

#### TEACHERS' SALARIES

##### Background

Over the past five years student enrollment in Benton Harbor has declined by more than 10% to the current level of 10,034. With a total SEV of \$182,651,075--down from \$210,135,553 in 1975-76-- the SEV per pupil is currently \$21,797. The loss in State aid due to reduced enrollment, coupled with a declining SEV are key factors in the Board's evaluation that its financial



picture is bleak. Moreover, the Benton Harbor voters have not increased the tax rate of 29.726 mills since 1970 and two millage proposals were defeated last year. The Board adds that the district's general fund equity is presently too low to meet the most minor contingencies; that the district is also faced with liability of as much as \$500,000 for damages in two pending lawsuits; and that student bussing to correct racial imbalance will probably be implemented in the near future and could cost as much as \$1,000,000. When one also considers the effect of inflation on fixed expenses such as utilities, and recognizes the effect of wage increases for non-teaching personnel, it is clear that the Board is faced with a financial crisis.

#### 1976-77 Salary Schedule

The salary schedule for 1976-77 consists of five "tracks", representing a teacher's highest college degree and post-graduate credits. Eleven increments or steps reflecting teacher experience are provided on the first two tracks; 13 steps are required to reach the top of the three remaining tracks. The base and top salaries were:

<u>AB</u>	<u>AB+20</u>	<u>MA</u>	<u>MA+15</u>	Ed. S. Ed. D. <u>Ph. D.</u>
9,564	9,947	10,329	10,712	11,094
15,302	15,685	17,215	17,598	17,980

The incremental increases between the steps within each track are \$574, with a variation between steps 0 and 1 and steps 1 and 2 which are \$393 and \$765 and reflect an unequal division of two incremental increases.

#### Board Salary Schedule

The Board propose to increase all teachers' salaries by six percent, the off encompassing both increments and a general

increase. The Board contends that its six percent offer is the highest settlement it can afford. Base and top rates for the schedule are:

<u>AB</u>	<u>AB+20</u>	<u>MA</u>	<u>MA+15</u>	Ed. S. Ed. D. <u>Ph. D</u>
9,899	10,295	10,691	11,087	11,483
15,838	16,234	17,818	18,214	18,610

The incremental increases, but for the first two, are all \$594.

The first two increments in each track are again unequally divided in favor of the higher move from step 1 to step 2.

The general increase reflected in the schedule is 3.5% across the board. Thus all teachers not at the top of their track in 1976-77 would receive an incremental increase plus the 3.5%.

Teachers at the top, however, would only receive the 3.5% raise.

As to these teachers I find that a six percent raise would require additional increases of \$382 at the 11th step of the BA; \$392 at the 11th step of the AB+20; \$429 at the 13th step of the MA; \$440 at the 13th step of the MA+15; and \$449 at the 13th step of Ed. S.-Ph. D. track.

As to the second and third years of the contract the Board offers an increase to all teachers of 5% each year. Salary schedules as to these years were not provided.

#### Association Salary Schedule

The teacher's schedule provides a 4.56% general increase at all steps. Its construction rests, however, upon an earlier Board offer rather than any given percentage. The Association states that it accepts the Board's offer of September 17, 1977 and the \$460,000 increase for 1977-78 that the Association argues was offered. By pooling the \$460,000 amount with the

teacher salary expense figures for 1976-77, the Association determined the total amount the teachers would have this year to "spend". Some of this sum was allotted to fringes and the balance spread over the salary schedule with this result at the base and top:

<u>AB</u>	<u>AB+20</u>	<u>MA</u>	<u>MA+15</u>	<u>MA+30</u>	<u>Ed. S.</u>	<u>Ed. D.</u>	<u>Ph. D.</u>
10,000	10,400	10,800	11,200	11,600	12,000	12,400	12,400
16,000	16,400	18,000	18,400	18,800	19,200	19,600	19,600

The concept of a teachers' unit apportioning its share of the budget between wages and fringes recommends itself as a sound approach, particularly where a budget is admittedly strained. But the Association's proposal in this case is fatally defective for other reasons. The prior Board offer upon which the Association figures are based, states in pertinent part:

<u>AB</u>	<u>AB+20</u>	<u>MA</u>	<u>MA+15</u>	<u>Ed. S.</u>	<u>Ed. D.</u>	<u>Ph. D.</u>
9,615	10,000	10,384	10,769	11,153		
15,384	15,769	17,307	17,692	18,076		

The following language appeared beneath the schedule:

"1st year Teachers in the 10th step on the AB & AB+20 and 12th Step on the MA, MA+15, & Ed. S. etc should receive in addition to step a bonus paid over the school year of \$495.00 (\$460,000.00)\*\*/"

"2nd year Grant a general increase of \$407,000 to be reasonable and appropriately spread over the teachers in the B.U.

"3rd year Grant a general increase of \$427,350.00 to be reasonably and appropriately spread over the teachers in the B.U.

\* / These three tracks do not appear in the 1975-77 Contract. Neither evidence nor argument was presented to the fact finder to support a change in number or designation of tracks.

\*\* / The underscored figure, \$460,000.00 is penciled in on the exhibit which is otherwise written in ink. No evidence as to who wrote this figure or when it was written was presented.

The schedule itself does not include actual, total cost data. Nor are the numbers of teachers at each step indicated. Even so, the Association's representative testified that the Board's attorney referred to \$460,000 for 1977-78 and said "that this amount to be (sic?) reasonably and appropriately spread over the teachers in the bargaining unit." No other data or testimony to support the existence of \$460,000 being available to teachers in 1977-78 was presented by the Association. Moreover, Board witnesses contradicted <sup>the</sup> quoted statement and the interpretation given it by the Association. Further, testimony was given to the effect that no agreement to maintain current staff was made in conjunction with the September 17th offer and that \$460,000 sum for teachers did not and does not exist.

For the reasons above, I conclude that the Association's proposal lacks a sufficient factual basis to justify further consideration. Since the Association's second and third year proposals are based on the proposed schedule for 1977-78 as well as on the September 17th offer, I find them similarly defective.

#### Salary Schedule Recommendation

Upon review and analysis I conclude that the Board's proposal, with certain changes should be adopted. A total increase including increments, of six percent is by no means generous; but given the financial plight of the district I find it to be fair. I do not, however, recommend acceptance of the 1977-78 Schedule as to the top step within each track. As to these teachers the Board's proposal has an uneven and inequitable effect. As previously noted the addition of varying

supplements to these positions would insure each teacher of at least a six percent raise. I therefore recommend that a \$450.00 addition be applied, across the board, to the top each track.

Turning to 1978-79 and 1979-80 salary schedules I recommend the parties agree to the Board's proposal of five percent each year. As to these schedules I also recommend an adjustment be made to insure full five percent raise to teachers at the top steps.

#### NURSES' SALARIES

A total of six nurses are employed by the Benton Harbor Schools. Their salaries range from \$8,148 to \$9,564 and their service from 1 to 11 1/2 years. Two nurses hold B.S. Degrees while the others hold three year Nursing Diplomas. After being excluded for several years, the nurses were returned to the unit as a result of a MERC election in Summer 1977.

The Association contends that the nurses are paid far less than their counterparts in other school districts. It argues that the two nurses with degrees should be placed on the AB schedule and that four other nurses should be paid 70% in 1977-78, of the AB step to which their experience correlates. A percentage increase to 75% in 1978-79 and to 80% in 1979-80 is also part of the proposal. Association exhibits reveal eight school districts (Ann Arbor, Bay City, Flint, Grand Rapids, Lansing, Kalamazoo, St. Joseph & Pontiac) which place nurses on the same schedule as teachers or provide a separate nurses schedule. These salary schedules support the Association's position.

The Board responds that the nurses' current salaries are comparable to those paid by other school districts and certain non-educational employers. Instead of tying the nurses to the salary schedule, it proposes increases of 6%, 5% and 5% over the term of the contract. One Board exhibit compares the nurses current salary range to those paid by four private and one governmental establishments. It reveals salaries, as much as 35% over the low of \$8,148 paid in Benton Harbor and, at the high end, it shows salaries as much as 52% over the \$9,564 figure. The negative disparity is not eliminated, in my view, by the variance between a 273 work year and a school calendar year.

In light of the exhibits furnished by both parties I find that the Benton Harbor nurses are not paid a comparative rate to nurses in similarly situated. I therefore recommend that the Board accede to the Association proposal.

#### TEACHER EVALUATION SYSTEM

Article XII §5 of the 1975-77 Contract established a committee to develop a teacher evaluation system. Subsection (g) provides that implementation for teachers in 1976-77 would be "on a dry-run basis".

At the hearing the Association evinced concern that implementation could place teachers in a position where they would be exercising supervisory responsibilities and/or effecting the professional careers of other teachers they evaluated. The Association apparently prefers to allow the dry-run to continue.

Although the Board prefers to implement the system, and it noted the educational value of the evaluations, it did not

suggest procedures or safeguards to offset concerns about the evaluations and their effect on the teachers.

In short, both presentations were sketchy and indicate a need for further discussion between the parties. I therefore remand this issue to the parties for further negotiation.

#### EXTRA DUTY SCHEDULE

The Board's proposal for the 1977-78 Salary Schedule: Extra Pay-Extra Duty, is objected to by the Association because it eliminates credit for outside experience. The Association appears to be particularly concerned about the district's ability to recruit coaches for football and basketball. The Board counters that other schools are able to attract the necessary talent without a credit provision. In support of its position the Board produced data on seven other districts (Battle Creek, Grand Haven, Kalamazoo, Muskegon, Muskegon Catholic, Muskegon Mona Shores, Traverse City). Of these schools two provided no credit for experience in or out of the district and all the remaining schools give at least partial credit for outside experience.

There being no other proof or argument in support of the Board's proposal, I conclude that the out-of-district experience provision should remain in the contract.

#### RETROACTIVITY

The final issue in this Report is one of utmost concern to both the Board and the Association. The teachers demand that all economic benefits for the 1977-78 school year be retroactive to August 27, 1977. The Board is equally adamant that neither increments nor increases for 1977-78 be paid for any period prior to the date of settlement.

This apparent standoff reflects and repetes a difficult bargaining history. In the 1970-71 school year a fact finder's Report lead to settlement on October 30, 1970. Salaries were retroactively applied to the first day of school. Negotiations for 1971-73 again end up in fact finding with a Report in February, 1972 and settlement not being reached until April 27, 1972. Insurance provisions and salary increase were prospectively applied. More successful negotiations lead to early settlement of the 1973-75 contract. The 1975-77 contract settled the second week of October with insurance provisions retroactive to October 1st and salaries to the beginning of the pay period.

Negotiations for the current contract have unfortunately followed the least desirable of these experiences. They began in May, 1977. The contract expired August 27th and teachers reported for work on the 29th. By the first day of school nine bargaining sessions had been held and the parties met again on the 29th for several hours. Despite these continuing efforts and two lengthy sessions in September, on the 8th and the 16th, it was not until September 17th that the Board made its first full offer of settlement. It was that offer that the Association said it would accept at the fact finding hearing on December 7th. Yet between those two dates the parties held two further bargaining sessions and then met with the Mediator October 11th. Being certified at impasse the Board petitioned for fact finding October 12th. The undersigned was appointed on November 3rd, the hearing followed in December and this Report is issued January 31, 1978.

I draw from this scrambled set of dates and meetings a firm conviction that neither party approaches its present,

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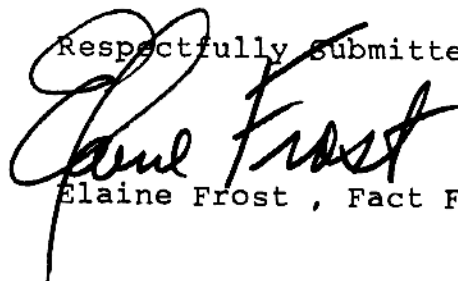
inflexible position with "clean hands and pure heart". The Board insists that it allows no retroactivity to its organized employees. Yet it was no doubt pleased that the teachers reported to work last August without a contract. I would also ask the Board why the Board's first offer of a salary schedule and fringes was made in September when bargaining had been in progress since May.

The Association insists that no retroactivity discourages teachers from reporting. Yet it is presently engaged in a work stoppage while the State's appointed mediator and fact finder are working to overcome the impasse. I would ask the Association, also, a question; namely why did it wait until December to accept the offer proposed in September.

It is clear to me that if the parties had approached the bargaining table with greater concern for the community of Benton Harbor and the disruption inevitably engendered by lack of a contract, a settlement would have long since been consummated.

With this evaluation in mind I conclude that neither party is entitled to its proclaimed position on retroactivity. From the end of August to the end of January is five months. I recommend that the 1977-78 economic settlement be retroactive to November 15, 1977.

Respectfully Submitted,

  
Elaine Frost, Fact Finder

Dated: January 31, 1978