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MICHIGAN EMPLOYMENT RELATIONS COMMISSION
PETITION OF BESSEMER EDUCATION ASSOCIATION
MERC Fact Finding Case No. G-85 J-1005

THOMAS B. NORTH, Fact Finder

Location - Ironwood, Michigan
Time - 9:00 a.m.
Date - February 21, 1986

APPEARANCES

For the Bessemer Education Association:

Douglas E. Olsen, SNAP Negotiator
Route 1, 1400 E. Silver St.
Bessemer, MI 49911

For the Bessemer Area School District:

Clarence Hoeft, Superintendent
Bessemer Area Schools
Lead Street
Bessemer, MI 49911

Do you consent to the submission of the award in this matter for publication?

Management:

Yes _____ No _____

Union:

Yes _____ No _____

Note also that if you consent you have the right to notify the Fact Finder within 30 days after the date of the award that you revoke your consent.

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Bessemer Area School

A Hearing was held on February 21, 1986. Neither party requested the opportunity to submit post-hearing briefs. The Petition for Fact Finding was dated September 26, 1985.

A number of exhibits were admitted into evidence including:

Joint Exhibit A, 1983-1984 and 1984-1985 agreements between the parties.

Joint Exhibit B, agreement by the parties to be bound by the decision of the Fact Finder

Joint Exhibit C, contractual items on the table at time of hearing

Education Association Exhibit 1, position regarding Article 5 of the contract

E.A. Exhibit 2, Superintendent's notes and excerpts from contracts in neighboring school districts

E.A. Exhibit 2A, schedule of Joan Negri, elementary school teacher

E.A. Exhibit 2B, grade 3-A class schedule

E.A. Exhibit 4, school health records and excerpts from contracts in neighboring districts

E.A. Exhibit 5, Section 21, Article 2, Michigan School Aid Act

E.A. Exhibit 5A, class size/achievement graph

E.A. Exhibit 5B, Washington School class sizes

E.A. Exhibit 6, list of extra curriculums for Bessemer and neighboring school districts with amounts of pay for Ironwood, Wakefield and, 1982 through 1985, Bessemer

E.A. Exhibit 7, comparison of parties' salary proposals

E.A. Exhibit 8, 1985-1986 Bessemer Area Schools budget study

E.A. Exhibit 9, newspaper article

E.A. Exhibit 10, State membership formula

E.A. Exhibit 11, report and minutes from Bessemer Area Schools' Board Meeting, 8/28/85, and enrollment record

E.A. Exhibit 12, schedule of Patti Koivisto, Junior High teacher

E.A. Exhibit 12A, letter from Mr. Hoeft to Superintendent of Wakefield Township Schools

E.A. Exhibit 13, calculation of savings on change of insurance underwriters

E.A. Exhibit 14, minutes of December 16, 1985 Bessemer School Board meeting

E.A. Exhibit 15, newspaper article

E.A. Exhibit 15A, job posting

E.A. Exhibit 16, Bessemer Schools general fund receipts and disbursements
as of December 31, 1985

E.A. Exhibit 17, letter from Dept. of Education

E.A. Exhibit 18, salary schedules and percentage increases of schools in Gogebic
and Ontonogan Counties

E.A. Exhibit 19, comparison of base increases in salaries between Bessemer and
neighboring school districts

Board Exhibit 1, negotiations report

Board Exhibit 2, Bessemer Schools' 1985-1986 budget

Board Exhibit 3, Bessemer Schools' 1985-1986 general fund budget as adopted

Board Exhibit 4, budget amendments

Board Exhibit 5, Bessemer Area Schools amended general fund budget, 1985-
1986 as adopted

Board Exhibit 6, letter to Bessemer Area Schools from Talaska and Sharpe,
C.P.A.s

Board Exhibit 7, letter to Bessemer Area School Board from Michigan Education
Association

Board Exhibit 8, audited financial statements and other financial information
Bessemer Area Schools

Board Exhibit 10, annual school district financial report

Board Exhibit 11, pre-projection budget, 1986-1987

Board Exhibit 12, budget study Bessemer Area Schools 3-year projection-1986-1989

Background of the controversy: According to the Education Association, there were originally nine issues in this controversy (Joint Exhibit C). Early on in the hearing, the Board withdrew its 3 proposals regarding Article V of the Contract leaving 6 issues remaining. The Board did not dispute the existence of the remaining six issues. These six issues were as follows:

1. What, if any language should be added to the Contract regarding performance of noon duty.
2. Should termination pay be increased from \$12.00 to \$17.00 per unused sick leave day.
3. Should language be added to the Contract providing that a teacher absent from work because of Mumps, Scarlet Feaver, Measles, Chicken Pox or Lice shall suffer no diminution of compensation and shall not have the absence charged against his/her sick leave.
4. Should reference be added to the Contract to keeping class size limit to State requirements for receiving extra money from the State.
5. Extra-curricular pay provisions
6. By how much should salaries be increased for 1985-1986.

Findings of Fact Issue #1: According to the current Contract, teh E.A. is responsible for scheduling teachers for noon duty, operating noon duty, with no compensation. The administration only needs to notify the Education Association of the number of people needed for noon duty. The Education Association has no means of disciplining teachers who do not show up for noon duty, which sometimes leads to inadequate supervision of students. On days that they perform noon duty, some teachers to not get any break until 2:30 p.m., which leaves no time to eat lunch, use the restrooms, spend time with students' parents, etc., or prepare reports and grades, etc. Further, the teachers are not allowed to leave their classrooms during teaching time. (E.A. Exhibit 2)

On the other hand, all teachers have a preparation period at the end of the day and rarely do teachers have to perform noon duty more than one day per week. Teachers also have two 40-minute periods during the week when Art is taught.

At one time noon duty was handled by the administrator and a staff person at the two schools in the Bessemer Area School District. The District later saved money by bargaining for the teachers to perform noon duty at \$3.00 per hour and 15 minutes of compensatory time at the end of the day. This was a voluntary arrangement by the teachers. Later, another 15 minutes of compensatory time was added at the end of the day. Eventually, the compensatory time at the end of the day was expanded to 45 minutes in exchange for performance of noon duty by the teachers and a shortened lunch period. The above arrangement resulted in a shortening of the school day.

The position of the E.A. is that the contract be changed so that teachers perform noon duty on a voluntary basis rather than the current rotating basis. The E.A. also proposes that if not enough volunteers agree to work noon duty on any school day, the administration shall assign enough "personnel" to fill the needed compliment for that day, and that the E.A. shall give the administration a list of noon duty workers on a timely basis. An important part of the E.A. proposal is that teachers working noon duty shall be given compensatory time to be taken for early release on the day that they work the noon duty assignment.

The Board is willing to agree to have the administration make daily noon duty assignments from a list of teachers supplied by the E.A., but it is proposed that no compensatory time be involved. Further, that if the assigned teacher cannot do noon duty as assigned, he/she must give ample notice except in extreme emergencies, so a substitute can be assigned.

Both parties agree that if a teacher does not show up for his/her assigned noon duty, he/she should be subject to normal disciplinary action.

Issue #2: The E.A.'s position in this issue is that it is willing to drop the demand for unlimited accumulation of sick leave if the Board agrees to increase termination pay from \$12.00 to \$17.00 per unused sick leave day. The Board rejects the offer and wishes to leave the existing language in the contract. The E.A. further submits that it believes this proposal will not affect the amount of absences. The Board argues that the purpose of sick leave is insurance from loss of pay while ill.

In support of this position, the E.A. offered an Exhibit #3, which was identified by witness, Joseph Green, as an excerpt from the 1984-1985 AFSCME contract with the Bessemer Area School District. The Board objected to the admission of the Exhibit on the grounds of relevancy as the AFSCMA is the union for non-teacher employees of the school district. The objection was taken under advisement and is hereby sustained on the grounds that the proposed Exhibit is not sufficiently relevant to the dispute in this matter because of the fact that the proposed Exhibit relates to a contract between the school district and non-teacher employees.

Issue #3: The various diseases and maladies listed in the language proposed by the E.A. are highly communicable and can be contracted by teachers almost exclusively as a result of everyday contact with students in a classroom setting. It was established that one teacher in the Bessemer School District in the past contracted a severe case of Chicken Pox and that another teacher contracted head lice.

The Board has rejected the proposed addition of language to the contract.

Issue #4: Despite the fact that E.A. Exhibit 5A does not relate specifically to the Bessemer Area School District, but appears to be based

on a survey nationwide in scope, I find that class achievement decreases as class size increases. It was also established that the school district can receive extra money per pupil for following the E.A.'s proposal regarding Article 9 of the contract, Section D.

The Board has rejected the proposal that the contract contain a reference to keeping class size limited to State requirements.

Issue #5: Pay for extra-curricular activities supervision in the Bessemer Area School District has remained frozen for three years and in regard to many of the extra-curricular activities, pay is running behind that in neighboring Ironwood and Wakefield schools. However, in light of the Board's last offer on salary, the E.A. does not request any increase in extra's pay, but rather submits that all new money should be placed on the salary schedule.

The Board has offered a \$3,800.00 increase in extra's pay and would allow the E.A. to decide how that money is apportioned between the various extra-curricular activities.

Issue #6: The E.A. requests that the base salaries for B.S. and M.A. each be increased by \$250.00, that each B.S. and M.A. increment be increased by \$40.00, and that a 15th step be added to each column (B.S. and M.A.).

In addition to their offer regarding extras, the Board proposes that the B.S. and M.A. bases each be increased by \$100.00 and agrees that a 15th step be added to each column.

Exhibit 8 is a budget study for 1985-1986 prepared by Mr. Hoeft, which projects a deficit of \$21,618.00. Not included in that budget is the sum of \$27,705.00 owed by the School District to Gogebic County for repayment

of property taxes, a liability which appears to not have been discovered until after preparation of the budget study.

However, as reflect on Exhibit 11, the Board took action at its meeting on August 28, 1985, to reduce the budget which resulted in savings of \$18,021.00, not included in that budget study. Further, the enrollment was found to be 507 students which was higher than the 485 students projected in the budget study and having a bearing upon the resulting deficit. 502 of the 507 students enrolled were eligible for State aid. At the Board meeting on August 28, 1985, Mr. Hoeft stated that this represented about \$45,000.00 in extra money not anticipated in the budget study. Also, at the August 28, 1985 Board meeting, it was stated that the deficit for the 1984-1985 fiscal was \$19,007.00. However, that deficit was covered by the general fund balance in existence at the end of that year.

It was further established that Patti Koivisto is paid \$19,745.00 per year plus benefits from the Bessemer Area Schools although she spends half of her teaching time in the Wakefield School District, on a lease basis. The tentative figure of \$11,996.00 was established as the amount that Wakefield Schools pay Bessemer Schools for her services, none of which amount she receives.

It was further established that the district saved \$9,563.74 when the Education Association agreed to change underwriters for the MESSA Insurance Plan. Further savings were realized by the Bessemer Schools when two part-time bus drivers resigned.

In submitting that the School District is in a financial position to accept the E.A.'s salary demands and in addition to the above facts, the E.A. relied upon exhibits showing that the School District had a cash balance on

December 31, 1985 of \$260,397.98, and Exhibit #17 indicating that an independent audit of the School District showed the financial condition of the District to be sound as of June 30, 1985. In support of its salary demands, the E.A. also established that although the voters of the School District had approved 33 mils, only 30 mils are being levied by the Board and that salary increases and actual salaries in the Bessemer Area Schools lag far behind those in most of the neighboring school districts (Exhibits 18 and 19). Further, it was shown that Bessemer Area Schools rank low among area school districts in increases of base salaries in recent years.

In response, the Board established that a cash balance as of December 31, 1985 was not necessarily pertinent due to the fact that the school district is on a June 30 year-end basis and that cash flow considerations could result in a deficit as of June 30, 1986.

Exhibits introduced by the Board include a pre-projection of the 1986-1987 budget, which while admittedly containing many unknown factors, show anticipation of deficits of the following amounts based on the indicated mils being levied:

33 mils -	\$31,713.00
32 mils -	\$68,214.00
31 mils -	\$104,713.00
30 mils -	\$141,213.00

Board Exhibit #5, the amended budget for 1985-1986 as adopted anticipates an operating balance of \$2,150.00 as of June 30, 1986. Although the budget indicates a positive cash operating balance at the end of the fiscal year, the various Board Exhibits reveal that in recent years, expenditures have exceeded revenues by a substantial margin eating up a once-healthy general fund balance. Board Exhibit #6 shows that during the year ended June 30, 1985, the District spent \$310,507.00 more than it received. The Board Exhibits

indicate that during the year 1985-1986, the district will spend \$160,095.00 more than it will take in. Board Exhibit #3 is a three-year budget projection which, although found to contain a great deal of speculation which cannot be avoided this far in advance, paints a dire financial picture for the School District in the years to come. Even if the projected deficit is several times that which actually occurs, the School District appears to be moving into a period of great financial difficulty. The root of the problem appears to be declining enrollments in the Bessemer School District in recent years. The E.A. argues that the Board should have been levying the full 33 mils all along and that the E.A. is not at fault for the years for which that revenue was lost. The Board, on that point, sets forth its position that at the time the moneys were not needed and was not aware of the impending requirement of repayment of taxes to the County of Gogebic, and therefore attempted to hold the line on taxes to benefit the community in general.

The E.A. also raises the fact that the Board has a substantial money market certificate in the bank, however the Board established that that asset and the interest derived therefrom are used for expenses.

OPINION

Both parties are to be congratulated for their fine presentations.

Issue #1: It is not recommended by the Fact Finder that the teachers be given compensation for noon duty performance. Pursuant to the chronology of facts set forth above as to how noon duty evolved from the responsibility of the administration to the responsibility of the teachers, the teachers are already receiving compensation from noon duty as they already receive 45 minutes of compensatory time at the end of the day. This fact was not disputed by the E.A. during the hearing. Because it is not recommended

that there be compensation for noon duty, it is also not recommended that there be a deviation from the current rotating basis upon which teachers are assigned to noon duty. However, it is also found to be unreasonable for the teachers to be expected to go until 2:30 p.m. on the days that they have noon duty without a break. All teachers should have at least a short break period some time in the middle of the day to provide them with an opportunity to use restrooms and have a snack.

Accordingly, it is recommended that none of the current language in Article VII, Section D of the current contract be deleted. It is further recommended that the following language be added to that Section: "If a teacher does not report for his/her assigned noon duty, he/she is subject to normal disciplinary action. The BEA building representative may assign teachers to perform noon duty in increments equal to one-half of the lunch period in order to provide each teacher with a break period every day, so long as the required number of persons determined by the building principal are performing noon duty at all times during those periods."

Issue #2: As indicated earlier, the objection to proposed E.A. Exhibit #3 was sustained. Accordingly, the record contains no basis for increasing the termination pay from \$12.00 to \$17.00 per unused sick leave day. It is recommended that the existing language in Section C of Article VIII on Page 10 of the contract remain as is.

Issue #3: It is found that Mumps, Scarlet Fever, Measles, Chicken Pox and Head Lice are highly communicable diseases and maladies which are occupational hazards for teachers in that they almost invariably would result from contacts with the students in a classroom setting. Absences from work resulting therefrom should not be charged against the teacher's sick leave. It is recommended that a Section O be added to Article VII of the

contract setting forth the following language: "A teacher absent from work because of Mumps, Scarlet Feaver, Measles, Chicken Pox or Lice shall suffer no diminution of compensation and shall not have the absence charged against his/her sick leave. The teacher must bring a statement from a physician substantiating these illnesses to avoid the absence being charged against his/her sick leave."

Issue #4: The E.A.'s proposal on this issue could result in the district receiving extra money from the State of Michigan. Although the Board rejected the proposal, at the hearing it presented no strong reasons as to why the proposal should not be adopted. Accordingly, it is recommended that the following language be added to Section D, Article IX of the contract: "The Board further agrees to make a good faith effort to meet the class size requirements contained in Section 21, Article 2 of the 1985-1986 Michigan School Aid Act (Public Act 110 of 1985)."

Issue #5: It was the position of the E.A. that extras not be increased, but that in light of the Board's last offer on salary, all new money should be placed on the salary schedule. Although the Board has offered a \$3,800.00 increase in extras pay, it is recommended that there be no increase in extras pay pursuant to the request of the E.A. It is noted that the Fact Finders recommendations in regard to salaries will include \$3,800.00 added to the salary schedule in lieu of extras pay.

Issue #6: At the outset, since both parties agreed that a 15th step be added to each column (B.S. and M.A.) that is made a recommendation of the Fact Finder. Exhibit #8, the budget study for 1985-1986, projected a deficit of \$21,618.00. However, action taken by the Board in August, 1985, reduced the budget and saved \$18,021.00. Further, higher than anticipated

enrollment represents about \$45,000.00 in additional State aid bringing the budget up to a surplus up to about \$42,000.00 which is partially offset by the \$28,000.00 liability to Gogebic County. These calculations, however, reveal approximately \$14,000.00 available to the School District that was not anticipated in the budget study. However, there is not found to be an obligation on the part of the School District to apply all of those moneys toward teacher salaries.

The approximately \$12,000.00 received from Wakefield Schools as a lease for Patti Koivisto's services are not found to be moneys available to the School District for the reason that that amount is offset by half of Ms. Koivisto's salary and benefits. Since both the receipt of the funds and Ms. Koivisto's salary are included in the District's budget, those amounts approximately offset one another.

The \$9,563.74 saved by the District on the change of insurance underwriters is also not found to be money which the District is obligated to expend on salaries. A review of the current contract reveals in Article XII that while the Board is obligated to provide specified health care programs for the employees of the bargaining unit, there is no specified dollar amount of value attached to the insurance programs to which the E.A. is entitled and therefore a savings, although resulting from a voluntary change on the part of the E.A. go to the benefit of the Board. There is also not found to be any obligation on the part of the Board to expend on teacher salaries the money saved from the resignation of the two part-time bus drivers or from the money market certificate in the bank.

While it was established that there was a cash balance on hand as of December 31, 1985, the Fact Finder accepts the argument of the Board

that cash flow considerations do not make that cash balance pertinent to the salary dispute in terms of availability of funds. While Exhibit 17 of the E.A. indicated that the School District was in sound financial condition this was as of the year completed June 30, 1985. The current disputes relate to the year 1985-1986 which was not the subject of that Exhibit. As indicated earlier, the Fact Finder finds that although the District may currently be on solid financial footing, its financial difficulties lie in projections of the future and expenditures that exceed revenues so that the District is not found to have much, if any, ability in the future years to afford increased salaries. Even if the Board begins levying the full 33 mils which it should at the earliest opportunity, there is a projected deficit for 1986-1987 of \$31,713.00, which deficit is based on no salary increases or decreases.

The Board's decision in recent years not to levy the full 33 mils is found to result from a belief that it would not be necessary to do so yet when there was no way of knowing about the liability to Gogebic County that unexpectedly materialized and also from a rational decision to hold the line on taxes to benefit the community in general, which, of course, includes any members of the E.A. who own property. Although that decision in hindsight may not have been the right one and the E.A. is correct that it was not at fault for the Board failing to levy the full 33 mils, the E.A.'s salary demands must be viewed in light of the facts in existence at this time, which include the District's current financial position and projected financial position.

The E.A. submitted evidence of the salary increases and salary schedules in neighboring school districts (Exhibits 18 and 19) from 1984-1985 to 1985-1986. All of the districts listed on Exhibit 18 showed increases in salaries of at least 4.95%, although some of those districts' increases followed contracts of two or more years, during which time, salaries had been frozen. However,

a review of the E.A.'s Exhibits setting forth enrollments in the various neighborhoods also reveals that many of those districts had enrollment gains or declines less than that experienced in the Bessemer School District. The increases in each of the surveyed school districts were substantially higher than the rate of inflation that has been experienced in recent months and years, and in some of those school districts the percentage increase appears to have been exorbitantly high. Further, although the exhibits including information from neighboring school districts were admitted into evidence, as indicated by the Fact Finder at the hearing, that evidence is not binding on the Fact Finder and although considered in making this decision, they are not given an undue amount of weight.

Accordingly, pursuant to all of the above reasons, the recommendation on salaries is as follows:

Increase the B.S. and M.A. base each by \$200.00 and each B.S. and M.A. increment by \$10.00 and add a 15th step to each column.

It is noted that while this recommendation provides for approximately a 4.5% increase in total salaries, the bulk of that increase is attributed to the addition of the 15th step increment and is accordingly a significant lesser percentage increase for those teachers below the 15th step. However, since both parties in Joint Exhibit C agreed to the addition of the 15th step, the Fact Finder felt obligated to incorporate that agreement into the recommendation.

DATED: March 28, 1986

Thomas B. North
THOMAS B. NORTH
Fact Finder