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STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF
THE FACT FINDING BETWEEN:

MERC Fact Finding
Case No: D85 J-2439

BIRMINGHAM BOARD OF EDUCATION

-and-

MICHIGAN EDUCATION SUPPORT PERSONNEL ASSOCIATION

INTRODUCTION

Pursuant to Section 25 of ACT 176 of Public Acts of 1939, as amended, and the Commission's regulations, a Fact Finding pre-hearing took place on September 19, 1986, and a hearing was held regarding matters in dispute between the above parties on October 24, 1986, at the Birmingham Administration Building in Birmingham, Michigan. The undersigned, Ildiko Knott, is the Fact Finder herein.

The Birmingham Board of Education, shall hereinafter be referred to as the "Employer", and the Michigan Education Support Personnel Association as the "Union".

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DEC 10 1986
MERC Fact Finding
Case No: D85 J-2439

Birmingham Public Schools

APPEARANCES

FOR THE EMPLOYER:

Joseph P. Griffin,
Director, Personnel Relations &
Transportation

FOR THE UNION:

William Murray,
Executive Director

Jerry Haymond,
Executive Director

Shirley Brewer,
President

Virginia Krikorian,
Bargaining Team Member

BACKGROUND

Birmingham is located in the southeast portion of Oakland county. It is a mostly residential community with a population of approximately 70,000. The Birmingham school district services 7454 students according to the Summaries and Surveys 1985-1986 published by the Oakland Schools Intermediate District. It is the tenth largest school district out of twenty-eight in Oakland County. The school system is well known for the quality of its programs and excellent results it achieves when measured in terms of student accomplishments. The district ranks first among twenty-eight in total operating expenditures per pupil, that figure being \$ 5337.89 in 1984-1985. Birmingham also ranks at the top in S.E.V. per pupil, and is the number two employer if one uses the employees per pupil figures for 1985-1986.

Other than executive administrators, the employees of the district are unionized into six bargaining units. The Birmingham Education Association (teachers), the Birmingham Education Association of Office Personnel (secretarial), and the Birmingham Association of Paraprofessionals (aides) are affiliated with the Michigan Education Association. The Birmingham Association of School Administrative and Supervisory Personnel (administrators) is unaffiliated. AFSCME Local #1860, Council 25, represents custodial, maintenance, food service, and transportation employees, and AFSCME Local #1917, the supervisors of these employees.

The teacher aides of the district organized and were certified in 1983 as the Michigan Educational Support Personnel Association (a.k.a. Birmingham Association of Paraprofessionals). The unit includes all regularly employed, full-time teacher aides, library aides, hall monitors, bus aides, special education aides, environmental aides, and Chapter I aides. Joint Exhibit #4 shows the number of members of this unit to be 75.

The first collective bargaining agreement between the parties expired on June 30, 1985. That agreement covered the periods from September 18, 1984, to June 30, 1985, and was retroactive for wages only for the 1983-1984 school year. After its expiration, the contract was extended by mutual agreement pending the outcome of negotiations for a second agreement. Based on discussions with the Employer representatives, the Union proposed a one year renewal of the contract. The salary terms of that renewal proposal were unacceptable to the Board of Education who then countered with a 5% salary increase.

The Union rejected the Board's 5% offer and requested formal negotiations which commenced on August 19, 1985. The contract extension has continued to this date. Eight negotiation sessions

took place which resulted in three tentative agreements: on negotiations procedures, teacher aide evaluations, and an annuity option to hospitalization/medical insurance (Joint #7). The last formal session took place on October 24, 1985, with impasse having been reached on all other issues.

The services of a state mediator were sought by the Union and mediation took place on March 4, 1986, under the auspices of MERC appointed Mediator Charles G. Jamerson. The representatives of the parties were able to agree on a settlement proposal on the outstanding issues of wages, benefits, and probationary period which the Employer representatives were to take back to the Board of Education. The Employer, however, rejected this proposed settlement and subsequently the Union filed a petition for Fact Finding with MERC on June 2, 1986, listing three areas of dispute (Joint #2).

A pre-hearing was scheduled in this matter and took place on September 19, 1986, at the Birmingham Schools Administration Building. The parties agreed to confine their presentation to the three issues as enumerated by the Union in its petition for Fact Finding (Joint #2). Further, procedural details were discussed and agreed to.

On October 24, 1986, a hearing was conducted to take testimony and evidence with regards to the disputed issues. Each side had full opportunity to be heard and place on the record material and factual evidence to advance their case. The Union formally placed on the record that it had adopted the Mediator's proposed settlement, in its entirety, as its own. The parties waived post hearing briefs and did not request detailed analysis for findings and recommendations. The Fact Finder and the parties kept the hearing open in case further clarifications or information was sought by the Fact Finder. The hearing was closed on November 3, 1986. The discussions and findings in this report are based on the materials as presented.

ISSUES IN DISPUTE

A. Article VIII, Probationary Period

B. Compensation

1. salary schedule
2. retroactivity
3. differential
4. addition of position to list of those paid a differential

C. Article XIII, Insurance Programs

1. hospitalization
2. life insurance
3. vision benefits
4. dental insurance
5. long term disability insurance

NOTE ON CRITERIA USED

The Fact Finder's task is made much easier and objective results can be reached much more readily when clear and comprehensive data is provided by the parties. It is particularly helpful to advance information in a variety of ways which have become widely accepted standards in Fact Finding. Some of these are comparisons of prevailing standards and practices, ability to pay, cost-of-living, and bargaining history. These materials, clearly presented, enable the Fact Finder to formulate carefully weighed findings.

The parties to this Fact Finding did provide just such evidence. It was especially helpful that communities chosen by the Union as the basis for its comprehensive external comparisons were acceptable to the Employer. These comparables are the seven communities which are contiguous to Birmingham: Berkley, Bloomfield Hills, Farmington, Royal Oak, Southfield, Troy, and West Bloomfield.

Additionally, the parties agreed that ability to pay was not really in dispute, that the disagreement centered more on how the monies ought to be spent.

A. PROBATIONARY PERIOD

Discussion:

The current contractual provision establishes a ninety working day probationary period for newly hired aides. "The probationary period may be extended by the Board for justifiable reasons for an additional thirty (30) work days" (Joint #1). The Board has the unconditional right to terminate probationary aides without the employee having recourse to the grievance process.

The Employer seeks to extend the probationary period to 120 working days and maintain the extension option as it currently

exists. The Employer cites increased legal restrictions on pre-employment checks as reasons which require that the on the job evaluation period be lengthened--especially in view of this unit's close contact with children. The Employer also notes that Michigan teachers are on probation for two years with a possible third year extension.

The Union desires to maintain the current contract language without change. It points out that 120 working days would be out of line with the seven comparable districts (Union #42); further, that the Employer proposal would make the aides' probationary period longer than any other in the district where probationary periods range from 60 to 90 working days, excluding the teachers (Union #43).

The Union also contends that the Employer has never resorted to the 30 day extension available to it, which leads the Union to conclude that problems did not really exist. The Employer concurred that the extension had never been used.

FINDINGS

The Fact Finder is very cognizant of growing legal restrictions in pre-employment screening and indeed the entire hiring process and, thus, is sympathetic to the legitimate employer need to make certain that only the best employees are retained. Extended probationary periods have been sought by many employers in the private sector--mainly non-unionized--whose termination-at-will powers are being narrowed by the legislatures and the courts.

In the instant case, however, the moving party does not persuade the Fact Finder to recommend the changes sought. To extend the probationary period to only one employee group would place an unnecessary stigma on that group, especially when coupled with the absence of demonstrated problems with the existing contractual provision. The current language also conforms to the probationary periods of the comparable communities for like units. Six of these communities have 90 days or less probationary periods, and none outside of Birmingham having the extension option.

The teacher comparison does not seem valid inasmuch as teacher probation is governed by state laws.

Finally, the Employer of this district maintains the unfettered contractual right to discharge, which, combined with the fact that problems with existing language are purely speculative, convince the Fact Finder that compelling reasons do not exist at this time to recommend altering current contract language.

B. COMPENSATION

Discussion:

At the heart of the Union's position is the demand for parity for its members. Parity both as measured against comparable bargaining units in comparable communities and in comparison to the way other units are treated in the Birmingham district. In its extensive analysis of comparable districts, the Union argues that its proposal of 6% increases for each of the three years of the proposed contract would simply maintain its current ranking relative to the other comparable units in Oakland county; whereas, the Employer's proposal of 3.5% for 1985-1986, 4% for 1986-1987, and 4% for 1987-1988 would result in a loss of relative position. Most of the Union's figures for 1987-1988 for the comparable communities are based on projected 6% settlements.

The Union relies strongly on the Employer's financial stability in terms of fiscal growth (Union #22) and revenues and expenditures traced from 1983 to 1987 (Union# 21) in pleading its case for parity. The Union also cites the recent settlement between the Board and the teachers of a four year contract with yearly 6% increases and other improvements, and an offer to the secretarial group of 6% wage increases for 1986-1987, as proof that the problem is not ability to pay, but a philosophic position that the Employer has taken toward the aides' unit with a resultant pattern of disparate treatment of this group.

As previously stated, the Union has formally adopted the Mediator's recommendations as its own and stressed that this position represents a substantial reduction of its earlier negotiation positions.

The Union's proposal, then, seeks to improve the current salary schedule by 6% for each year of the new agreement and to advance each eligible employee one step for each year of the agreement. The Union further proposes to preserve the percentage differential for pay for highly specialized assignments by also applying this 6% increase to the existing 45 cents per hour differential and wishes to add the position of Alternate Education High School Aide to the list of those who receive the differential.

The Employer's proposal would improve the current salary schedule by 3.5% for 1985-1986, 4% for 1986-1987, and 4% in 1987-1988. The Employer would also advance each eligible employee in the unit one step for each year of the contract, but would maintain the present 45 cent differential for the duration of the agreement. The Employer rejects the addition of of the Alternate

Education High School Aide to the list of those receiving this differential.

The essence of the Employer's position is the belief that since the Union is a relatively new one it cannot expect to make gains which it took other bargaining units years to achieve.

The Employer additionally advances the position that the rate of increase in the cost of living had substantially declined in the last two years and consequently wages have not suffered the same erosion as they had in the past (Employer #2 and #3). While not refuting the fiscal well being of the district, the Employer representative stresses the district's responsibility to the taxpayer and states that it has no desire to be the leader in wages and benefits, but wishes only to attract and retain good employees.

Findings:

Based on the record, The Fact Finder would characterize the financial condition of the district as very sound, with a healthy fund balance of over three million dollars for fiscal years 1984-1985 and 1985-1986, and a projected fund balance for 1986-1987 of two and three-quarters million dollars. The district also has one of the soundest tax structures behind it. As the ability to pay has never been the issue in these negotiations, a detailed analysis of the budget or the district's finances is not called for.

As has already been noted, the Fact Finder was offered a wealth of information. The reliance on seven comparable districts provided factual basis for the Union's equity arguments. Such comparisons of wages and other conditions of employment made with employee units performing similar services are by far the most valid comparisons to make. In matters of compensation, internal comparisons to other employee bargaining units is not nearly as compelling.

Each bargaining unit has its own rationale for wages in collective bargaining. The relative worth of one occupation vis-a-vis another is not in the purview of this Fact Finder. Differentials will exist based on level of training, responsibility, skill, value to employer, market forces, and numerous other factors. The entire negotiated package must be taken into account and the give and take that took place cannot be evaluated retroactively by a Fact Finder. What one bargaining unit might gain or not gain in their negotiations with the district will depend on the particular circumstances of their negotiations, their needs, their bargaining power, and their

bargaining history. None of these are automatically transferable to another unit.

Intra-district comparisons of bargaining units are valid only insofar as they can demonstrate whether one unit is being substantially excluded from gains made by all or most others.

The Fact Finder has thoroughly reviewed the information and comparisons which in the main consist of the Union's unrefuted exhibits and found sufficient reasons that the Union's position on compensation (salary schedule) should prevail. The reasons are as follows:

The Union's external comparative data clearly substantiates its contention that its demands are moderate and represent no more than a maintenance of current ranking with comparable bargaining units (Union #24-28). There is no real danger that the Employer would become a leader in wages, a position which the Employer wishes to avoid. Based on reasonable projections, however, the Employer's proposal would erode the unit's ranking to a projected last place by 1987-1988.

No financial justification exists to single out the teacher aides unit to the extent that its relative standing should be reduced to the lowest among comparable districts. No other valid reasons, for example reduced productivity, were demonstrated by the Employer.

The Union's proposal is by no means extravagant as it would maintain the unit in a lower half of the comparable rankings. Although the Employer's reduced increase in the cost of living argument is verifiable and well taken, it loses much of its thrust as it is not also applied to the other units.

So then we come to the real core of the conflict of these negotiations, the Employer's belief that since this is only the second round of contract talks for the MESPA group in the Birmingham district, they have not evolved enough to have earned the same level of compensation increases as other groups have.

However sincere, this argument does not hold its own with more established standards of Fact Finding. The age of the bargaining unit does not constitute a very reliable determinant of a reasonable wage settlement.

We must also remember that at one time the Employer was willing to grant a 5% increase in a one year contract. Further, that the Employer representatives and the Union representatives were able to agree to the Mediator's recommended package which was, however, subsequently rejected by the Board of Education.

For the reasons advanced above, the Fact Finder is in general agreement with the terms on which the parties were able to agree in mediation. I, therefore, recommend the Union's compensation position, with the exception of retroactivity for employees who have left the district. That issue is addressed below.

The recommended salary schedule is as follows:

That all salary increases to be retroactive (with exception noted separately below) to 6/30/85.

That the wage schedule for each year of the contract be increased by 6% across the board and that each employee be advanced one step on that schedule for each year of the agreement.

That the amount of the current differential be increased by 6% for each year of the agreement.

The Fact Finder also recommends the addition of the Alternate Education High School Aide to the list of positions that receive the differential in recognition of the highly specialized and demanding nature of the job.

RETROACTIVITY

Discussion:

There was no disagreement between the parties regarding retroactive wage adjustments to current employees, those on approved leaves, and those who officially retired.

The Union takes the position, however, that those employees who left the district for reasons other than leaves or retirement should also partake of the retroactivity to 6/30/85, and it argues that these employees should not be penalized for the extended delays in negotiations.

The Employer countered quite adamantly that the Union can no longer legally represent those outside the bargaining unit.

Findings:

The Fact Finder understands the considerations which move the Union to champion this cause. It is, however, quite obvious that it is a serious block to reaching settlement with the Employer and as such it is recommended that the issue be set aside. The Fact Finder notes that neither the petition for Fact Finding nor the Mediator's recommendation makes mention of this issue.

Indeed, the petition specifically refers to retroactivity "for all unit members."

The issue must, however, have been considered in the first contract negotiations. In that case an agreement was reached which, in Schedule A (Compensation), provides retroactivity only to permanent employees "who are actively employed at the date the agreement becomes effective" (Joint #1). From Employer exhibit #2, it is apparent that the Employer has since become willing to include those on leave and those who have officially retired. Quite clearly, the Employer is not willing to a beyond that.

The Fact Finder agrees with the Employer that those who have voluntarily severed their relationship with the employer and, thus, their membership in the bargaining unit to pursue other opportunities should not expect to gain from these negotiations. The Fact Finder could find no precedent for the type of retroactivity sought by the Union and cannot recommend it for reasons cited above.

C. FRINGE BENEFITS

The controversy in the fringe benefits area is virtually identical to that of the compensation issue. Namely, the Union's quest to achieve parity and the Employer's principle that gains must be evolutionary.

The Union blames the district's fringe benefits as the primary reason for the aides' unionization in 1983 and maintains that while their benefits are not the worst in each fringe benefit category as measured against the comparable districts, that as a package it is the worst both in external and internal comparisons.

Specifically, the Union stresses that within the Birmingham school district, the only employee group without a dental insurance and long term disability insurance is this one. Also, that the unit had less life insurance, vision insurance, and medical/hospitalization insurance coverage than any other bargaining unit in the district (Union # 32-41).

As on the issue of wages, it adopted the Mediator's proposal as its own.

For hospitalization/medical insurance, the Union proposes that, effective in July 1987, its current coverage be increased to the Blue Cross/Blue Shield 4.0 plan, which is the plan provided to the other employee groups.

For life insurance, the Union seeks to obtain coverage in the amount of \$7,500 for 1985-1986 and 1986-1987, and \$10,000 for 1987-1988. It also seeks a waiver of premium rider to the policy.

In vision insurance category, the Union seeks a retroactive increase in the current allowance to \$30.00 for 1985-1986. Further, it seeks to have the Blue Cross/Blue Shield A-80 Vision Plan provided to members of the aides' unit starting in 1986-1987. This is the policy presently provided to the other employee groups in the district.

In the area of dental insurance, the Union seeks to obtain the Delta Dental 100- 65/50/0 plan with internal and external coordination of benefits with said plan to commence in 1986-1987.

Regarding long term disability insurance, the Union seeks to obtain coverage which would provide for 66.6% replacement of salary with a monthly maximum of \$1,000 and a waiting period of 180 days. This provision would take effect at signing of the agreement.

The Employer focuses, as it did with compensation, on the newness of the bargaining unit while also stating that the aides' fringe benefits compare favorably with similar bargaining units in the comparable districts.

In hospitalization/medical insurance, the Employer wishes to maintain the current level of coverage, without changes, during the life of the contract.

The Employer proposes to provide life insurance in the amount of \$7,500 for 1986-1987 and \$8,000 for 1987-1988.

In the category of vision benefits, the Employer would maintain the present system of self-insurance and proposes to increase the allowance from the current \$20.00 to \$24.00 for 1986-1987 and 1987-1988.

The Employer does not wish to provide dental coverage.

The Employer does not wish to provide long term disability insurance.

Findings:

While salary differentials by job are common, natural, and justifiable, the same cannot be said for fringe benefits. Fringe benefits granted to employees, whether unionized or not, do not usually vary as widely in relation to the job or job related

factors as does salary. This is especially true for jobs under the same employer. To determine whether this generalization holds for a particular employer, internal comparisons become crucial. A review of the record demonstrates that while the Birmingham Board of Education has historically recognized major differentials in salary paid for various jobs, this has not been the case in fringe benefit. While there have been differences from time to time, the Employer has generally treated its employee groups substantially equally in this regard.

Further, there is a level of expectation regarding fringe benefits among employees today which did not exist in the 1960's or even 1970's. As a matter of fact, the types of coverage offered by insurance carriers today simply were not available in those days. Each newly formed bargaining unit cannot realistically be expected to relive the growing pains of the history of collective bargaining or repeat the bargaining history of other employee groups. The sophistication and maturity in labor relations that the Employer spoke of and seeks will be difficult to attain if the Union is penalized for organizing later than the others. The evolutionary process the Employer desires is not always a smooth one, particularly if the Union believes itself to be in a position of relative deprivation.

Nevertheless, the Union has recognized the Employer's concerns and has addressed these by moderating its demands to phased in parity. Indeed as one examines the Union proposals closely, absolute parity with all groups will not be achieved in dental, vision, or life insurance.

The Fact Finder believes that the phase in of fringe benefits as proposed by the Union (and the Mediator's recommendation), is a fair and reasonable way to address the concerns and needs of both parties and recommends it.

LENGTH OF CONTRACT

Although throughout the negotiations, Mediation, and Fact Finding the parties have operated under the assumption of a contract which would end with 1987-1988, the Union, in its closing remarks, did put forward, for the Employer's consideration, a proposal to add another year to the contract, making it effective through 1988-1989. The Union stated this position was based on the delays that have taken place and expressed a willingness to address the Employer's primary concern, by adjusting the phase in of fringe benefits by moving each out one year if an agreement through 1988-1989 could be concluded.

To allow the parties some measure of stability, the Fact Finder would strongly urge the parties to explore this approach.

It is the sincere hope of the Fact Finder that this report will serve to provide the foundation for a speedy settlement by the parties.

A handwritten signature in cursive script, reading "Ildiko Knott". The signature is written in dark ink and is positioned above a horizontal line.

Ildiko Knott
Fact Finder
December 6, 1986