

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF FACT FINDING

- between -

Reference MERC
No: G-83D-861

BLOOMINGDALE PUBLIC SCHOOLS

- and -

LOCAL 586, S.E.I.U., AFL-CIO, CLC

REPORT OF FACT FINDER HERBERT BURDICK

REPRESENTING THE PARTIES:

For: Bloomingdale Public Schools, Employer

Mr. Edmund B. Rutledge
421 W. Kalamazoo Avenue
Lansing, Michigan, 48933

For: Local 586, S.E.I.U.

Mr. James Shelton
1095 Third Street, Room 103
Muskego, Michigan, 49440

WITNESSES:

For the Employer:

Steve Dickerson, Director of Building Grounds
and Transportation

Thomas Hoke, Superintendent of Schools

For the Union:

James Shelton, President

Also Present At One Or More Hearing Dates:

For the Employer:

Carl W. Wahmoff, President of School Board
Lawrence J. LeRoy, Labor Relations Consultant
Ron Risdow, Labor Relations Consultant

STATE OF MICHIGAN
DEPARTMENT OF LABOR
EMPLOYMENT RELATIONS COMMISSION
OFFICE OF THE FACT FINDER

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Bloomingdale Public Schools

For the Union:

Jackie Payne, Head Steward-Unit 17
Constance Tenwalde, President S.E.I.U.-Unit 17
Chester Johnson
Philip Beardsley

BACKGROUND HISTORY

The Michigan Employment Relations Commission, having reviewed the application for fact finding, concluded that the matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and possibly known, and, accordingly, on July 23, 1984, appointed Herbert Burdick as the Fact Finder to conduct a fact finding hearing pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission Regulations, and to issue a report and recommendations with respect to the matters in disagreement.

PRE-HEARING CONFERENCE

Upon receipt of notice of his appointment, the Fact Finder communicated with both of the respective parties for a pre-hearing conference to be held on August 14, 1984 at the offices of the Commission in the City of Lansing, Michigan, for the purpose of defining the unresolved disagreements and to establish procedures for the hearings to be held.

The pre-hearing conference was held on said date as scheduled.

The following stipulations were made and agreed upon by both of the parties:

- (a) All items tentatively agreed upon by the parties shall be excluded from consideration as issues;
- (b) The Commission and the Fact Finder have jurisdiction in this matter;
- (c) All statutory time limits are waived by the parties;
- (d) No new item or items previously negotiated reduced to writing and initialled by the parties shall be entertained by the Fact Finder;
- (e) Petitioner Employer shall proceed first;
- (f) Issues will be considered in the order in which they appear in the contract;

- (g) At the close of the hearings, each party will submit to the Fact Finder, the exact written language proposed by the party with respect to the issues herein;
- (h) Mr. Rutledge will act as the representative of the Employer, and Mr. Shelton will act as the representative of the Union;
- (i) The parties stipulate and agree that they have resolved the issue of Wages for the first year, 1983-84 and the issue of Insurance and those particular matters are no longer in issue, and that the old contract language as to insurance shall remain without change in the new contract. (Stipulation January 14, 1985);
- (j) The parties agree that K-12 school districts in the counties of Allegan and Van Buren Counties are comparables to the subject school district;
- (k) Retroactivity is not an issue herein;
- (l) Oral arguments will be heard at the conclusion of the hearings;
- (m) Employer's position is now limited to sub-contracting of bargaining unit work, performed by custodial/maintenance employees and wages;
- (n) Hearings shall be held at the offices of the Commission located in Lansing, Michigan;
- (o) Expiration date of last written contract was extended on June 30, 1983, and parties have been following the provisions of the contract since July 1, 1982. Any new contract will expire on July 1, 1985. (Stipulated January 14, 1985);
- (p) Exhibits offered by either party after January 14, 1985 may be received by the Fact Finder at his discretion, subject, however to objection by any party if any, without the necessity of re-opening hearing. (Stipulated January 14, 1985);
- (q) First years wage settlement may be adopted in Report of Fact Finder. (Stipulated January 14, 1985);
- (r) No stenographic record shall be required.

EXHIBITS

The following exhibits were introduced by the respective parties:

EMPLOYER SCHOOL DISTRICT:

- Exhibit 1 - Photocopy letter dated May 23, 1983
Bloomington Public Schools (refers
to (Work Specifications and Technical
Specifications for bids);
- Exhibit 2 - Photocopy letter dated August 3, 1983,
lists bids received by Bloomington
Public Schools re: sub-contracting for
daily custodial work-cleaning after
school hours;
- Exhibit 3 - Photocopy Bloomington Public Schools
Job Description re: Custodians
- Exhibit 4 - Photocopy Bloomington Public Schools
"actual costs for Custodial Work in
1983-84 School Year";
- Exhibit 5 - Photocopy "Survey on Subcontracting
1984-85 School Districts in Allegan
and Van Buren Counties";
- Exhibit 6 - Photocopy Bloomington Public Schools
May 11, 1984 "Board Proposed" re:
Article XXIV;
- Exhibit 7 - Photocopy Comparison of Wages Paid
Food Service Workers, 1984-85 School
Districts in Allegan and Van Buren
Counties;
- Exhibit 8 - Photocopy Comparison of Wages Paid Bus
Drivers "1984-85 School Districts in
Allegan and Van Buren Counties";
- Exhibit 9 - Photocopy Comparison of Wages paid
Custodial/Maintenance Workers, 1984-85
School Districts in Allegan and Van
Buren Counties;
- Exhibit 10 - Photocopy Comparison of Wages paid
Mechanics 1984-85 School Districts in
Allegan and Van Buren Counties;
- Exhibit 11 - Photocopy of Bloomington Schools-Local
586, S.E.I.U. Proposal Comparison-Wages.

UNION:

- Exhibit 1 - Contract 1981-1982
- Exhibit 2 - Photocopy Article XIII-A current Bangor Contract;
- Exhibit 3 - Photocopy Article XXII, Section 1 of Covert Contract
- Exhibit 4 - Photocopy Article XXII, Section 22.7 Allegan Contract
- Exhibit 5A - Photocopy 1984 Wage Rates Fennville Schools
- Exhibit 5B - Photocopy 1984 Wage Rates Hopkins Schools
- Exhibit 5C - Wage Rates 1984-85 Paw Paw Schools
- Exhibit 6 - Photocopy Bloomingdale School Elmon Proposal re: sub-contracting and Wages
- Exhibit 7 - Photocopy Labor Agreement between Allegan Public Schools of Allegan County, Michigan and Service Employees International Union Local 586, 1983-86 (contains only sections 26.2 thru 26.5 and "Allegan Wage Proposal");
- Exhibit 8 - Photocopy "agreement", undated between Hartford Public School and Local 586, S.E.I.U. (contains only Article XX Wages)
- Exhibit 9 - Photocopy of "agreement between The Covert School District and the Service Employees International Union, Local 586, July 1, 1984 thru June 30, 1986" (contains only Article XXIX Wages);
- Exhibit 10 - Photocopy "Collective Bargaining Agreement between Plainwell Community Schools and Service Employees International Union, AFL-CIO-CLC, October 1, 1983-September 30, 1985" marked "Draft" but noted that now ratified (contains only schedule "A" Compensation Schedule;
- Exhibit 10A - Photocopy of Page 9 of Plainwell School (contains Section 6.8 Productivity and Contracting);

- Exhibit 11 - Photocopy "agreement between the Bangor Public Schools and Local 586 of the Service Employee International Union AFL-CIO, 1982-1984 (contains only Article XIV Wages);
- Exhibit 11A - Photocopy of Article XIV Wages, Section A and B, (represented to be current provision)
- Exhibit 12 - Photocopy of part of contract 1984-85 Gobles Schools showing Wages which include 1984-85 increases for Bus Drivers, Custodial Employees and Maintenance Employees (represented that kitchen, food service and bus drivers are included);
- Exhibit 13 - Photocopy of Otsego Schools wage rates for bus drivers and custodiarries, (represented as excluding maintenance, kitchen and mechanics);
- Exhibit 14 - Photocopy of Lawrence Schools 1984 Wage Rates for Custodial, Bus Drivers (represented no Union or agreement);
- Exhibit 15 - Photocopy of Douglas Saugatuck Schools 1984 Wage Rates for Custodial and Bus Driver (represented that no Union and applies to 1984-85);
- Exhibit 16 - Photocopy Hamilton Schools 1984 Wage Rates for Custodial/Maintenance and Bus Driver - (no sub-contracting language custodial/maintenance represented by M.E.S.P.A.);
- Exhibit 17 - Photocopy Decatur Schools 1984 Wage Rates for Custodial and Bus Drivers. No Union--(represented no sub-contracting agreement);
- Exhibit 18 - Photocopy Lawton Schools 1984 Wage Rates for custodial and bus driver-- no sub-contracting agreement;
- Exhibit 19 - Photocopy Wayland Schools 1984 Wage Rates for custodial and bus driver (represented 1984-85 year; employees represented by M.E.S.P.A. no sub-contracting language);
- Exhibit 20 - Photocopy South Haven Public Schools -- shows wage rates for bus driver, custodial and maintenance. (Represented that no bargaining unit);

- Exhibit 21 - "Superintendent's Annual Report, May, 1982-1983 Bloomington Public Schools, Bloomington, Pullman, Grand Junction;
- Exhibit 22 - Photocopy excerpt South Haven (Michigan) Daily Tribune, Monday, August, 1984, Page C-4;
- Exhibit 23 - Photocopy letter dated October 30, 1984 to Herbert Burdick.

HEARINGS

The initial public hearing was convened as scheduled on September 13, 1984, and subsequent hearings were held on October 15, 1984 and January 14, 1985. The scheduled hearing date of November 26, 1984 was adjourned without date pending the resolution of the question raised by virtue of the petition filed by Michigan Education Support Personnel Association requesting that it be certified as the exclusive bargaining representative for the bus drivers, mechanics, custodians, maintenance and kitchen employees. Upon the resolution thereof, the above hearing date of January 14, 1985 was set.

The hearings were held under the provision of Section 25, of Act No. 176, P.A., 1939, as amended, and the Fact Finder acting as an impartial person is required to make written findings and promulgate a written opinion and recommendations upon the issues presented.

Among the concerns of the Fact Finder are (a) stipulations of the parties, (b) interests and welfare of the public and the financial ability of the unit of government to pay those costs, (c) comparisons of wages and conditions for performing similar services, (d) other factors normally taken into consideration in the determination of wages, hours, and conditions of employment through collective bargaining, mediation and fact finding, (e) the impact on existing contract language (f) comparability.

A total of 11 exhibits were received from the Employer and a total of 23 exhibits were received from the Union.

Initially, there were 3 issues to be decided, to-wit:

1. Subcontracting
2. Wages
3. Insurance

The issue of Insurance was settled between the parties and is now withdrawn. By stipulation of the parties, only the issues of (a) Employer's right to sub-contract out bargaining unit work at will, and (b) wages remain for consideration.

In connection with the issue of Wages, it is noted that despite the parties' stipulation with reference to a settlement of first year wage improvements, it appears that the Employer's offer was subject to the Union's acceptance of the Employer's "package", which includes Employer's requested sub-contracting language.

The last contract expired June 30, 1982 and the expiration date was extended, by agreement, to July 1, 1983.

All issues and conditions of new contract, excepting the above-stated three (3) issues, have been agreed upon and the next contract will run thru June 30, 1985.

The duration of the new contract would be July 1, 1983 thru June 30, 1985.

ISSUE No. 1 - CONTRACTING OR SUB-CONTRACTING

Article XXIV of the last contract provides:

"SUB-CONTRACTING

Section 1. Nothing contained herein shall preclude the Employer from contracting or sub-contracting the work, which, in its opinion, it does not have the manpower, equipment or facilities to perform or which, in its judgment it cannot economically and/or practically perform with the existing work force. Providing no bargaining unit employee suffer loss of regular pay as a direct result of work being performed by an outside contractor."

Employer Proposal:

(a) Article XXIV - Nothing contained herein shall preclude the Employer from contracting or sub-contracting that non-custodial/maintenance work which, in its opinion it does not have the manpower, equipment or facilities to perform or which, in its judgment it cannot economically and/or practically perform with the existing work force. Providing no bargaining unit employee working in said non-custodial/maintenance classifications suffer loss of regular pay as a direct result of work being performed by an outside contractor. Nevertheless, nothing contained in this provision or this Agreement shall preclude the Employer from contracting or sub-contracting custodial/maintenance work." (Employers Exhibit 6).

Union Proposal:

The Union's proposal provides:

"Subcontracting same as in the 81-82 contract with the addition that the employer will have the right to sub-contract or contract custodial/maintenance work when the

Herbert Burdick

SUITE 400
607 SHELBY ST.
DETROIT, MICHIGAN 48226

LAW OFFICES OF
BURDICK AND BURDICK, P.C.

TELEPHONE
961-4377

March 26, 1985

Mr. James Amar, Executive Assistant
Michigan Employment Relations Commission
14th Floor - 1200 Sixth Street
Detroit, Michigan, 48226

RE: Bloomingdale Public Schools -and S.E.I.U. Local 586
REPORT OF FACT FINDER

Dear Mr. Amar:

Please note that a typographical error exists on page 9 of the above report, and that Employer's actual costs for the school year for custodial work, as indicated by Employer's Exhibit #4 is \$105,775., rather than the figure of \$10,775. as stated therein.

Thank you for making this correction.

Very truly yours,

Herbert Burdick
Herbert Burdick,
Fact Finder

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employer can prove with the existence work force that the custodial/maintenance can not do their job." (Union's Exhibit 6).

COMMENT

Evidence, in the form of exhibits, was adduced as to provisions relative to this issue adopted under contract or policy of other comparable school districts. The Employer introduced testimony and exhibits pertaining to advertisement for, and responses to, bids for outside contracting of custodial and maintenance per the Employer's Work Specifications (Employer's Exhibit 1) and a summary of the responsive bids received (Employer's Exhibit 2), Job Descriptions (Employer's Exhibit 3), and a summary of "actual costs for custodial work in 1983-84 school year."

Employer's Exhibit 2:

It should be noted that such bids range from \$50,876 per year to \$113,057 per year, and, in each instance, per the Summary, excludes "toilet paper, roll towels and plastic liners", and notes that "it will be necessary to employ two custodians during the students day, one (1) four hour person for mail, food, Grand Junction and Pullman servicing, and one (1) five hour person for High School and Bloomingdale Elementary duties. Cost approximately \$13,500, or "we could use one of our Maintenance people to handle mail, food Grd. Jct. and Pullman, eliminating four hours or approximately \$6,000."

Employer's Exhibit 4 shows its actual costs for Custodial Work in 1983-1984 school year as a total of \$10,775.

When considering the bids received and the sometimes great disparity between them, making allowances for exclusion of the specified items of supplies and adding thereto the estimated costs of additional custodians mentioned in note C to Employer's Exhibit 2, one is not convinced that such startling or truly significant savings would in fact result from contracting or sub-contracting out custodial or maintenance work. No evidence as to the costs of similar custodial/maintenance services and supplies in comparable districts was submitted.

No evidence was offered to show that the Employer lacks the ability to pay. Rather, from the testimony adduced at the hearings, it appears that the size of the student body has been substantially increased and that, therefore, more and greater use of facilities has been necessitated. (Union's exhibit 22).

The Union, through Union Exhibits 2, 3, 4, 5-A, 5-B, 5-C, 10, 19 and 23 submitted evidence of contract provisions relating to Employers right to contract or sub-contracts custodial/maintenance services as effective in the comparable districts of Bangor, Covert, Allegan, Fennville, Plainwell, Wayland and Hamilton.

The Employer, through Employer's Exhibit 5, introduced a survey on subcontracting, 1984-85 in school districts in Allegan and Van Buren Counties. The survey indicates that most of the school districts in Allegan and Van Buren Counties have some provision relative to contracting or sub-contracting of custodial/maintenance services. Six (6) of said districts are non-union, and no policy restriction exists in those districts. The remaining districts have Union contracts of which 8 permit such contracting or sub-contracting upon restrictive grounds and 5 do not permit the same.

Where included in the contract, provisions with respect thereto are not uniform. Generally, however, the Employer is permitted to contract or sub-contract for services where the employees of the bargaining units are of insufficient number or are not qualified to perform the required work, or the district does not have equipment or facilities to perform same, or which, in its judgment, it cannot economically and/or practically perform with the existing force. Some contracts such as the school districts of Hamilton and Wayland contain no contracting or sub-contracting language.

Generally, exercise of the right to contract or sub-contract, when granted is predicated upon the condition that bargaining unit members are not displaced due to such work, or denied their regularly scheduled and standard working hours, or Employer shall not exercise such right for the express purpose of undermining the Union or discriminating against Union members.

FINDINGS OF FACT

It may become necessary for the Employer School District to contract or sub-contract custodial or non-custodial/maintenance work when it does not have the manpower, equipment or facilities to perform or cannot economically practically perform with the existing custodial/maintenance work force. In such event, the Employer should have the right to do so, providing that no bargaining unit employee working in said classification suffers loss of regular pay as a result thereof and providing that such right may not be exercised for the purpose of undermining the Union or discriminating against unit members. Utilization of the non-compensated services of volunteer, students and teachers should be permitted and not deemed to be a contract violation.

The evidence does not conclusively demonstrate that significant operational savings can be realized by the Employer, if it were able to contract out custodial/maintenance work.

RECOMMENDATION

It is recommended that the contract provide that the Employers shall be permitted to contract or sub-contract custodial/maintenance or non-custodial/maintenance work when the district does not have the manpower, equipment or facilities to perform or cannot economically or practically perform with the existing work force, providing, that (a) no bargaining unit employees would be denied their regularly scheduled and standard working hours, and (b) the Employer shall not exercise such right for the purpose of undermining the Union or discriminate against Union members. Further, that the contract provide that the District Employer shall be permitted to utilize volunteer non-compensated students and teachers to perform bargaining unit tasks.

ISSUE No. 2 - WAGES FIRST YEAR

Employer:

The Employer purposes that, subject to the Union's agreement to adopt the language of its proposal with respect to contracting and sub-contracting of bargaining unit work, Wage improvements for the 1983-84 school year, retroactive to September 1, 1983, be granted as follows:

EMPLOYER'S EXHIBIT "6":

Bus Drivers	\$.40
Mechanic	.40
Food Service	.40
Cook	.40
Head Cook	.40
Custodial/Maintenance	NONE

UNION:

The union proposes that wage improvements for the first year, 1983-84 school year be the same as proposed by the Employer, excepting that the same not be conditioned upon the Union's acceptance of the Employer's proposal as to contracting and sub-contracting.

COMMENT

Nothing in the evidence suggests that wage improvements as proposed by the Employer without granting to the Employer an unrestricted, indiscriminate right to contract out custodial/maintenance work; would create an undue financial hardship upon it. Nor does the evidence adduced at the hearing

suggest that such wage improvements are not justifiable in the light of wages received by employees of similar classification employed in comparable school districts.

Rather, it appears that such first year wage improvements (1982-83) are reasonably calculated to maintain competitive wages in comparable employments.

RECOMMENDATION

The Fact-Finder recommends the adoption of the following wage improvements for the first contract year, 1983-84, retroactive to September 1, 1983:

Bus Drivers	\$.40
Mechanic	.40
Food Service	.40
Cook	.40
Head Cook	.40
Custodial/Maintenance	- N O N E

ISSUE No. 3 - WAGE IMPROVEMENTS 1984-85

EMPLOYER:

The Employer School District proposes wage improvements for custodial, maintenance employees, bus drivers, mechanics and kitchen employees--all wages, by 2.5%, subject, however, to the adoption of its proposed contracting or sub-contracting provision as set forth in sub-paragraph 1(a) of Board Proposal, May 11, 1984, Employer's Exhibit "6".

Employer's Exhibit "11" sets forth the wages, as improved during the term of the contract, (if sub-paragraph 1(a) Exhibit "6" were adopted.

UNION:

The Union demands wage improvements for the school year 1983-84 as proposed by the Employer at "9:55 p.m. May 11, 1984", and wage improvements of \$.35 per hour--all wages for the school year 1984-85.

COMMENT

Wages of Custodial/Maintenance employees were frozen for the school year of 1982-83 and, according to the Employer's conditional offer would be frozen again for the school year of 1983-84.

The Employer's student body has been increasing and the use of a number of facilities has been expanded or re-instituted. Likewise, it appears that its financial condition has materially improved, to the extent that wage improvements as conditionally offered by the Employer can be granted, without such condition and without imposition upon the Employer of any financial hardship by reason thereof. The material betterment of the Employer's financial condition is disclosed on page 1 of the May 1982-83 Superintendent's Annual Report, under the paragraph heading entitled "CAPITAL, MONEY, MONEY, MONEY". Among other things, it states that "the financial status of Bloomington Public School District has improved tremendously" (emphasis mine). Union Exhibit No. 21.

Employer's improved financial status is also mentioned on Page C-4 of South Haven (Mich.) Daily Tribune Mon. August 20, 1984. (Union Exhibit No. 22).

Employer's Proposal Comparison-Wages--(Employer's Exhibit No. 11) shows the wages before and after the respective improvements conditionally offered by the Employer, for the periods 1982-83, 1983-84 and 1984-85 and clearly establishes the fact that they fall within the low and high wages paid for workers in similar classifications, in comparable districts; and that such wage improvements are reasonably required in order to place employees classified as custodial/maintenance, bus drivers, mechanics and food service and cooks in competitive status therewith and further are reflective of reasonable Cost of Living adjustments.

Further, it is noted that, in the comparable school districts, custodial/maintenance hourly wages range from a low of approximately \$5.08 after 3 years, to as much as approximately \$9.00 per hour after 5 years. (Union Exhibit 13-Otsego schools).

No basis exists for special wage-improvement considerations to employees by reason of increased efficiency, development of special skills, costs savings, or otherwise, on the part of the said employees and which inure to the special benefit of the Employees. None was presented at the hearings herein.

FINDINGS OF FACT

There has been a very material betterment of the financial status of the Bloomington Schools, Employer. The Employer's present financial status is such that it is well able to pay for reasonable wage improvements required to bring the wages of its custodial/maintenance, bus drivers, mechanics and food service workers up to the respective

standards required in order for them to maintain fair and competitive standings to those engaged in comparable employment in comparable units of government.

RECOMMENDATION

It is recommended that the proposal of Employer Bloomingdale Public Schools as is particularly shown on Employer's Exhibit No. "6", Section 1(b) but eliminating the conditions contained in Section 1(a) thereof, be adopted and that the following schedule of Wages for 1984-85 school year be adopted retroactive to July 1, 1984:

BLOOMINGDALE SCHOOLS - LOCAL 586, S.E.I.U.

Classification	Wages 1984-85 <u>Effective 7/1/85</u>
<u>Custodial/Maintenance</u>	
Start	\$5.02
End of Probation	5.38
6 Months	5.64
1 Year	5.84
18 Months	6.05
2 years	6.41
Working Lead Maintenance	6.71
Working Lead Custodial	6.71
<u>Bus Drivers</u>	
Regular & Extra Run	6.36
Extra M.S. (Take Home)	0.15
<u>Mechanics</u>	
Start	6.00
45 Days	7.02
Working Lead Mechanic	7.64

Kitchen

Food Service	\$4.66
Cook	5.13
Working Lead Cook	6.00

ISSUE No. 4 - INSURANCE

The issue of insurance having been settled between and withdrawn by the parties, the same is moot.


HERBERT BURDICK, Fact-Finder

DATED: March 19, 1985

NOTE: An Appendix identifying all Exhibits furnished by the parties is attached to this reprot. The original Exhibits in this matter are being furnished to the Michigan Employment Relations Commission.