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In the Matter of the Fact-Finding between
BRANDYWINE BOARD OF EDUCATION

-and-

BRANDYWINE EDUCATION ASSOCIATION

10/20/71 FF
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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

This Fact-Finding Report was authorized under the provisions of Section 25 of Act 176 of Public Acts of 1939, as amended, and the Michigan Employment Relations Commission's Regulations therein. The undersigned Fact-Finder was authorized to issue a report with recommendations regarding the matters of disagreement between the Brandywine Board of Education and the Brandywine Education Association. A preliminary hearing with the parties was held on August 25, 1971. The hearing was conducted in the Brandywine School District on September 23, 1971. Post-hearing briefs were filed by the parties and received by the Fact-Finder on September 23, 1971.

APPEARANCES

For the Education Association

Donald James, Executive Director
Dudley Garcia, Negotiating Committee
Ken Swanson, Negotiating Committee
Jim Anderson, Negotiating Committee
Douglas Bucha, Negotiating Committee
Martha Shreve, Negotiating Committee
Ronald Walz, Negotiating Committee
David Rose, Witness

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For the Board of Education

Darrel D. Jacobs, Attorney
E. J. Ossmann, Superintendent
John F. Kenny, Administrative Assistant

F.F.
E. J. Forsythe
10-21-71

BACKGROUND AND POSITION OF THE PARTIES

Despite bargaining between the parties the following issues are unresolved and are at Fact-Finding:

1. Exclusion of the Guidance Director from the bargaining unit.
2. Pupil-Teacher Ratio
3. The use of Department and Grade Chairmen to perform limited supervisory duties.
4. A provision for the reduction of staff.
5. The use of sick leave credits for funeral, personal business, , and critical illness leave.
6. Pay for adverse weather conditions /when the school is closed.
7. Professional growth requirements.
8. Teacher salary schedule; basic and extra duty.
9. Health insurance

Each of the parties has documented its position in these matters very carefully. Evidence through documents and direct testimony was presented to the Fact-Finder at the hearing.

1. EXCLUSION OF THE GUIDANCE DIRECTOR FROM THE BARGAINING UNIT

As the Association pointed out, the testimony of the Superintendent at the hearing fails to satisfy the requirement of performing administrative duties. The Board's position, in substance, is that the Guidance Director could more fully participate in the administrative decision-making process and exercise those management prerogatives with respect to the effective recommendation for the performance of management duties, including the hiring, promotion, discipline and discharge of employees as well as implement those changes he deems best for his Department.

RECOMMENDATION

At this juncture the Guidance Director is not charged with the above responsibilities of recommending the hiring, promoting or discharge of any employee. In fact that responsibility is delegated by the Board of Education to the Superintendent and not to the Guidance Director. The Guidance Director function is certainly a part of this Bargaining Unit.

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2. PUPIL-TEACHER RATIO

The Pupil-Teacher ratio and class size limitations is not a new question to this School Board District, the Teachers in the District nor to this Fact-Finder. The whole matter is the better education of the children enrolled in the Brandywine School District, and this Fact-Finder cannot give substantive reasons as to the class-size of twenty-five (25) or a few more or less, depending, on the needs of education is this District. There are ratios, suggested by both sides, and I do suggest that the Associations proposal that the Board carefully examine all alternatives during a financial crisis and reduce all areas not directly related to an absolute requirement for the education of the students be examined.

RECOMMENDATION

The Fact-Finder suggests that the parties take into account the summation of the respective positions stated above and his conclusion as stated above is to say, that this is one that the parties can reasonably resolve as to class size until such time as the matter of financing the overall public education in the State of Michigan, and in the Nation, is resolved.

3. THE USE OF DEPARTMENT AND GRADE CHAIRMEN TO PERFORM LIMITED SUPERVISORY DUTIES

The use of Department and Grade Chairmen for "limited supervisory positions" is hardly within definitions, including the term "limited." This Fact-Finder's understanding is that it is not the intention of the Board to utilize the Department and Grade Chairmen for the purpose of making written evaluations of the teachers with whom they worked.

RECOMMENDATION

It is the Fact-Finder's understanding that this language would mean that the Department and Grade Chairmen's recommendations would be an oral evaluation and that the judgment of the Principal or Superintendent's judgment would not be inserted thereto.

Therefore, I recommend the language as my understanding could accept the language "limited supervisory duties" be adopted in the forthcoming Contract.

4. A PROVISION FOR THE REDUCTION IN STAFF

The Association asks for a negotiated procedure for the reduction of staff for the teacher employees of the District.

It is the Board's position that it is charged with the responsibility by law, of determining when a staff reduction is necessary. The Board admits its legal responsibility to bargain on the method to be used in determining who shall be laid off. However, in its brief, the Board maintains that it cannot abrogate its responsibility of determining if a staff reduction is necessary by agreeing to only reduce staff if there is a substantial decrease in funds, enrollment or buildings.

The Board argues that the principle that the best qualified individual with the most ability be retained in lieu of someone who has been with an organization for a longer period of time is an old well-established principle.

However, any staff reduction whether it be in the public or private sector, presents both practical and emotional problems. This is true for Teacher's Associations and for Boards of Education as it is a relatively new experience for both of them.

Since both parties suggested language along this vein this Fact-Finder recommends language along the following in regard to the reduction of personnel:

Section 1: In the event the Board deems it is necessary to reduce or eliminate the number of personnel or consolidate position(s) in any given field, program or discipline, probationary teachers shall be laid off first, providing there are teachers with tenure who are available and have the ability, educational certification, qualification, background and satisfactory performance who can teach the subject(s) of the probationary teacher. Thereafter, teachers in the affected department with the least tenure shall be the ones removed therefrom, providing tenure teachers in the department are available and have the ability to teach the subject(s) of the laid-off teacher. A teacher thus removed from a department shall be appointed to fill the first vacancy in the

school district for which he possesses the educational certification and is qualified to fill. In the event there are no tenure teachers in the department who are available and who have the ability, educational certification, qualifications and background to teach the subject(s) of those scheduled for layoff, the junior tenure shall be retained and the next least junior tenure teacher shall be laid off.

Section 2: Tenure teachers may be recalled as deemed necessary by the Board.

Section 3: Non-tenure teachers may be rehired as deemed necessary by the Board.

Section 4: In the event the Board deems it necessary to recall from layoff or rehire teachers, the Board shall give written notice by sending a certified letter or telegram to said teacher at his address on record with the Board. It shall be the responsibility of each teacher to notify the Board of his address and any changes that occur thereafter. The teacher's address on record with the Board shall be conclusive when used in connection with layoffs, termination, recall or other notice to the teacher. If the teacher fails to notify the Board within five (5) days from the date the letter or telegram was received of the teacher's intent to return to work or if the teacher fails to report to work at the time designated by the Board, said teacher shall be considered as a voluntary quit and shall thereby be terminated and forfeit all rights or claims he may have had against the Board.

5. THE USE OF SICK LEAVE CREDITS FOR FUNERAL, PERSONAL BUSINESS, AND CRITICAL ILLNESS LEAVE

According to the testimony at the hearing, the parties are in approximate consent that the personal business leave will be deducted from the teachers' unused paid sick leave days. The Fact-Finder mentions in passing that despite a few abuses and concerns as to its utilization that in fact this is a reasonable and practical solution to this question. If this is not accepted then the parties are advised to adopt a personal business leave giving substantiation in writing or other evidence as to the reason for the leave

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6. PAY FOR ADVERSE WEATHER CONDITIONS WHEN THE SCHOOL IS CLOSED

The Board of Education has proposed to change the language in the forthcoming Contract relative to adverse weather for many of the same reasons it proposed to change the sick leave provision on the argument of an abuse by a few, and that the Board feels teachers should report to work and utilize that time for preparation, planning and in-service training.

This Arbitrator assumes that the teachers in the Brandywine School District prepare in advance for their classes. In the event a seminar is planned for inclement weather times, it is incumbent upon both the administration and the teachers to have given thought and preparation to it ahead of any bad weather type situation.

The parties respective positions relative to the matter of teachers being paid when school is closed was set forth at the hearing and in the briefs. The Board says the Contract is being abused and the public has called it to their attention to do something about it. The teachers feel the Board's proposed language will place an undue hardship on the teachers especially on severe weather conditions.

The Fact-Finder suggests the following language as a possible solution to the problem:

In the event of inclement weather, Act of God, or for any other reason which necessitates the closing of school to students and teachers must report for duty not later than 10:00 a.m. in order to receive compensation for that day unless, they are excused from so reporting by the Superintendent.

The reason for the above language is that I can appreciate the fact that the decision to close the school is made at a rather early hour in the day, plus the fact that something over 75% of the students are bussed to school which means the school is much more readily closed. The Board's

proposal that the teachers report at their regular starting time is unrealistic under the above conditions, because as the Superintendent testified it is sometimes as late as 9:00 a.m. before it is safe to travel. In the event the roads are not cleaned off or plowed by 10:00 a.m. for those teachers who live out in the country, the Superintendent will still have the latitude to excuse those teachers from so reporting. It should be borne in mind that if the provision is abused there will always be another Contract year.

7. PROFESSIONAL GROWTH REQUIREMENTS

The provision in ARTICLE X, Section 1(a) of the 1970-71 Contract appears to have been a part of the District's policies and Master Contract for several years. Apparently the teachers have lived with it until this year, and it is my interpretation that the phrase, "within every consecutive five year period" means exactly what it says, which is that teachers cannot earn five (5) semester hours of college credit during the first year of a five year block and then wait until the last year of the second five year block and meet the requirements of Section 1(a) of Article X even though the five year blocks are consecutive.

In view of the fact the parties' primary dispute centered around the interpretation of the above quoted language and the Fact-Finder has given his interpretation, the Fact-Finder recommends that the parties continue to abide by the language set forth in Article X, Section 1(a) of the 1970-71 Agreement.

As a person who has been in the education field for a good many years, I do not feel that the above cited provision places an undue burden on the teachers. There are many colleges and universities within reasonable distance in addition to the many extension courses which are available to-day.

8. TEACHER SALARY SCHEDULE; BASIC AND EXTRA DUTY

Both parties have agreed that Brandywine does not enjoy the excellent financial condition of some other school districts in Berrien County or other Group I School Districts in the state.

The Brandywine Public School District is not alone this year in the financial squeeze being placed upon it by the taxpayer; by the State, who had not approved a realistic School Aid Bill and by inflation which continues to erode the systems's purchasing power and by the President of the United States Wage Freeze Order, the results of which, despite Phase Two are still unknown.

The parties informed the Fact-Finder, and from my own resources, have learned it has not industry which can assume a greater share of the tax burden nor does it have any hard-core slums. The Brandywine School District is highly regarded and is apparently a good place to teach.

The fact that the Brandywine District is known as a good place to teach will not in and of itself retain and continue to attract the higher caliber of teachers the Board of Education desires. I have been apprised of the fact that the people of the District have one of the highest millages in the surrounding area. I realize the enrollment this year is down by seventy-five (75) pupils and the State Aid has not been fully determined. I realize the Form B Report reflects the District is some \$14,000.00 in the "red" and I realize it was necessary to grant salary increases to the administrative staff.

However, I feel it is important for the District to remain competitive in the market place if it hopes to retain the very fine staff it now has. Therefore, I am recommending, particularly in view of settlements in like areas, that the beginning salary for a teacher with a Bachelor's degree

be increased to \$7,600.00 and a Masters' beginning salary be increased to \$8,050.00 with 4% increment per annum in accordance with the established school indices.

9. HEALTH INSURANCE

I further recommend that the Board increase its contribution towards the purchase of Health Insurance from the present \$15.00 per month to \$23.00 per month. I do not recommend any other increases and no other economic demands were raised at the hearing.

The Fact-Finder is well aware of the fact that the Wage Freeze may render my recommendations moot. However, I recommend that the parties negotiate a provision with respect to the Wage-Price Freeze, upon which my recommendations are contingent and insert such a provision in the Contract.

I do hope that the parties will accept my recommendations in good faith, with my own realization that this report requires compromise on behalf of both parties if it is to be accepted. The Board will have to review its own objectives and it must remember it is obligated by law to operate the system for a full 180 days within the purview of the economic ability of the system to meet its expenses and complete the year.

The Association must bear in mind that certain exactions are required of them and may have to wait for another bargaining year. The Fact-Finder advises the Association and the Board that the salary recommendations are not only bargainable but are contingent upon the outcome of the Wage-Price Freeze as established by the U. S. Government.

It is my understanding that the issues discussed in this report were all of the major issues that were submitted by the parties to Fact-Finding. The parties have already reached tentative agreements between themselves prior to these hearings. My impression of the parties is that they will concern themselves with the primary purpose of educating the youth in the

Brandywine School District.

EJ Forsythe
E. J. FORSYTHE, FACT/FINDER

October 20, 1971