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—FF BROWN CITY AREA SCHOOLS —

STATE OF MICHIGAN

EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE FACT-FINDING BETWEEN:

BROWN CITY AREA SCHOOLS

Case No. D76 D-1447

-and-

BROWN CITY EDUCATION ASSOCIATION,

/

FINDINGS AND RECOMMENDATIONS OF THE FACT-FINDER

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After numerous attempts to establish a hearing date between the Brown City Board of Education (hereinafter referred to as the Board) and the Brown City Education Association (hereinafter referred to as the Association) hearing commenced at 10:00 a.m. on November 8, 1976, in the Brown City High School. Proofs were concluded at 5:00 a.m. and post hearing briefs were requested from the parties. These were received by the fact-finder on November 18, 1976.

This dispute may present one of those relatively rare situations where fact-finding, in its literal sense, could contribute to a resolution of the differences between the parties. The Association's salary demand is more than 4 times the offer made by the Board. This incredible discrepancy, after months and months of bargaining, and one full day of state mediation, is attributable to only one factor. The Association made and relied upon a mathematical miscalculation concerning the amount of monies available to the Brown City School Board in the last fiscal year. The Association's proofs at the hearing (Association Exhibit K-1) stated that the Board's available funds for fiscal year 1975-1976 were $3,030.249 or an increase of approximately $1.8 million over the 1974-1975 figure of approximately $1.2 million. The Board offered proofs to show its total budget

level for the same period at $1,474,101. At the conclusion of the proofs, both sides maintained the validity of their figures even though a one hour break was granted during the presentation to allow the parties to check their calculations.

It was obvious to the fact-finder that both sides could not be right concerning the Board's budget. Inasmuch as this item, and the issue of comparables, appeared crucial to the resolution of the most serious disagreement between the parties (i.e., salary) briefs were requested. Finally, this matter was resolved when the Association at page seven (7) of its brief stated:

> "The Board's general fund revenue for 1976-1977 /sic/[1] in Board exhibit #1 /is/ more nearly correct than the figure presented in Association exhibit K-1 (a /sic/ error in computation was found . . .)."
>
> (Emphasis added).

Throughout the proofs the Association had attempted to justify its extraordinary salary demand by pointing to the alleged extra $1.8 million available to the Board and arguing, with some force of logic, that this largess should be shared by the employees. However, after admitting its mistake, supra, and, therefore, the non-existence of the $1.8 million the Association in no way decreased the magnitude of its salary

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[1] Should read 1975-76; see Board exhibit number 1.

demand. At some point in the bargaining process desire simply must give way to fact. It is hoped that this opinion represents that point in the dispute between these parties.

The Board's salary offer was to place the Association members at exactly the average salary of those bargaining units which represent teachers included in the Sanilac Intermediate School District (S.I.S.D.). However, the S.I.S.D. encompasses parts of three counties and the Association argues that not only are its members below the average of the S.I.S.D. but that this District's salaries are depressed when compared with surrounding school districts.[2] The Association offered comparables from surrounding school districts which lent force to this argument.

With all these factors taken into consideration, and further considering the generally depressed, but improving, nature of the Michigan economy, the fact-finder would respectfully recommend a salary adjustment of 6.5 for the first year and 7.0 for the second; these increases to be applied equally throughout the B.A.± and M.A.± minimum and maximum steps.

DURATION

Such a recommendation presupposes the recommendation herein made that the contract duration be for two years. Given

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[2] S.I.S.D. ranks 402 out of 530 school districts in Michigan, see Board brief, page 8.

the length and the intensity of the disagreement witnessed between these parties it seems essential that the contract be extended two years so that there might be a "cooling off" period between these parties. A one year agreement at this point would mean that the parties would begin negotiating next year's contract almost before the ink was dry on this one.

"DETENTION HALLS IN ELEMENTARY SCHOOL"

This provision in the current contract relates to student discipline. Under this provision the administration may require teachers to supervise a given number of students during break time or after normal school hours. The Association argues that the existence of this provision makes it theoretically impossible for its members rationally to plan in advance their days. The word theoretically is used here because the other Association argument is to the effect that past practice should eliminate this provision in that it has not been used by the Administration in the last two years. This argument was not rebutted by the Board, possibly because the overwhelming number of students in the Brown City School District are bussed to and from school and while it may seem reasonable to have an unruly student stay after school, it isn't reasonable to ask him to walk home. The Board argues that while the administration has not resorted to the use of detention halls in the last two years, nevertheless, the "threat" of their use effectively enhances discipline within the

school. This alleged (and unproven) positive effect on discipline seems outweighed by:

a) The obvious hostility felt by the Association members at having such a "threat" hanging over their heads and their personal time, and

b) the fact that "past practice" clearly indicates that detention halls have not been utilized in the past two years, and

c) the realization that the administration is never going to order an elementary school student to walk home after the school buses have left for the day,

comples the recommendation that this provision of the current contract be deleted.

INSURANCE COVERAGE

The Board has offered to increase its current insurance payments to keep up with increased rates set by the carrier. The Association has demanded increased coverage in a number of areas. On this issue suffice it to say that:

a) The Association offered no proofs to show that the current insurance package worked any hardship or injustice on any of its members.

b) The Association offered no proofs to show that there existed among its members some peculiar or extraordinary need (as opposed to desire) for these increased benefits.

However, the Association did indicate in exhibit L-1 that at least 8 comparable school districts in the general area provide "insurance fully paid by the Board." Furthermore, at page 8 of the Board's brief "the Board of Education has offered to include accidental death and dismemberment as part of their life insurance program in the third year of the three year contract."

It is, therefore, recommended that the insurance package offered in Baord exhibit 4 be adopted and incorporated in the next contract to be executed between the parties, and that the 1977-1978 provisions be augmented by accidental death and dismemberment as outlined on page 8 of the Board's brief.

"ACT OF GOD DAYS" OR "SNOW DAYS"

Last year's winter produced one of the most interesting disputes between the parties. Admittedly abnormal weather conditions last year caused cancellation of 16 school days. Under the current contract between the parties, the Association members are not required to report to school on such days, and there exists no provision for making up these lost days. The Association argued that the current contract language be maintained while the

Board took the position that the contract should be changed to provide that all such days lost may be made up at the discretion of the administration.

It is abvious that when weather conditions in a rural school district are such as to present danger to bus transportation, the only prudent decision must be to close school. No doubt the parents and taxpayers of such a school district would expect and even demand such prudence. The problem, pointed out by the Board, is that these same parents and taxpayers pay for and expect their children to receive a full year's schooling. The matter is further complicated by time (school-day) limitations imposed by state law, school vacations, and the reasonable expectations of parents (and teachers) to have certain days available for personal matters, work chores, vacations, and the like.

However, it must be admitted (if there is any efficacy in education) that the loss of 16 school days must have a deliterious effect on a student's general educational achievement. To continue to provide no way for any of this time to be made up seems to unduly deemphasize the basic rationale for the existence of a school system (and, therefore, administrators and teachers): the education of the students. On the other hand, students, teachers, administrators, parents, Board members and taxpayers who reside in a rural area of the Michigan thumb must

expect some disruption of their lives (and, therefore, their school system) by virtue of the rural life style they have chosen. Proofs indicated, for instance, that students in the Brown City School System traditionally take officially sanctioned "hunt days" at the start of hunting season. Needless to say, that if this practice is followed in the metropolitan Detroit area, it is not officially sanctioned.

With all of the above taken into consideration, it is respectfully recommended that the next contract between the parties provide that;

a) the first six (6) "snow days" (as defined by the current contract between the parties) may be made up at the discretion of the Administration by scheduling two school days.

b) Any "snow days" supra, over six (6) may be made up at the discretion of the Administration. All such make-up days shall be announced only after prior consultation with the Association and shall involve only scheduled classes; no in-service training or other non-student involved activity shall be permitted on any "make-up" day.

EXTRA DUTY POSITIONS

These positions (which range from head football coach, through drivers' education instructor to Pom-Pom advisor) are currently paid out of an agreed-upon[3] amount of money set aside for this purpose with individual amounts left to the sound discretion of the Board.

The Association has argued that the Board's discretion relative to these payments should be supplanted with a fairly complicated but nevertheless, fixed percentage and dollar amount, which would remove any discretion in this area from the Board's elected officials. Furthermore, Association exhibit M-1 showed eleven comparable school districts which now have such a fixed schedule. However, the Association offered no proof:

1) that the Board has been capricious or arbitrary in the use of its discretion or;

2) that the Board's decisions have worked a hardship on any of the individuals involved in extra duty positions or;

3) that the Board has unfairly favored one group of employees (i.e., athletic coaches) over another group.

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[3] "The Board and the Association have agreed to the amount of money to be spent on schedule B, the extra duty schedule, for the 1976-77 school year." Board brief, page 8.

Absent such a showing (or combination thereof) there seems to be no reason to remove from elected public officials an area of responsibility currently and historically within their sound discretion. It is, therefore, respectfully recommended that the next contract between the parties retain with the Board the discretion for disbursements for extra duty pay, and further, that the additional amount agreed upon (see Board brief page 8) for 1976-77 be supplemented by a like amount for 1977-78.

"TERMINAL STEP OF THE GRIEVANCE PROCEDURE"

In the present contract there can be binding arbitration as the final step of the grievance procedure only if both sides consent. It is, therefore, not surprising that, as pointed out in the Board's brief "the Association, by its own testimony has never used the final step of the grievance procedure." The Board argues that past practice should, therefore, preclude the necessity to change the current contract language. The Association argues that its use of the existing final step would have proven fruitless especially when an independent decision could only be had when both sides agreed. However, the most compelling argument made on this issue was the instant fact-finding process itself. The distance between the parties on some of the issues, the mistakes inherent in some of the presentations and the pent up hostility existent between the parties might all

be ameliorated to some degree if each side realized that an independent, uninvolved third party was available to help them resolve their differences. Hopefully, the potential of binding arbitration will cause both sides to be more reasonable in their relationships. It is respectfully recommended that the next contract between the parties contain a clause providing for compulsory arbitration at the request of either party as the final step of the grievance procedure, both sides to bear the cost equally.

Respectfully submitted,

DATED: December 22, 1976.

GEORGE C. EDWARDS III, ESQ.