

3/25/72

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MICHIGAN EMPLOYMENT RELATIONS COMMISSION, ADMINISTRATOR

FACT-FINDING REPORT AND RECOMMENDATION

LABOR AND INDUSTRIAL  
RELATIONS  
Michigan State University

\* \* \* \* \*

In the Matter of the Contract Dispute between \*

Bullock Creek School District

\* RE: MERC File  
#D71-F-1714

-and-

Bullock Creek Education Association \*

\* \* \* \* \*

REPORT on FINDINGS by M. David Keefe, Arbitrator

Appearances:

Bullock Creek School

Bullock Creek E.A.

W. Sinclair, Atty.  
D. Coe, Supt.  
R. Gordon, Negotiator  
J. Trisher, Bd. Pres.  
F. Brown, Bd. Rep.  
P. Wolf, Bd. Member  
T. Holmsen, Bd. Member  
J. Fisher, Bd. Member

F. Fitch, Exec. Dir.  
A. Hoffman, Chf. Neg.  
A. Carroll, Pres.  
J. LaCroix, V.P.  
M. Burleson, Committee Member  
B. Stark, Committee Member

\* \* \* \* \*

Prefatory Hearing Record

Fact-Finding in the above captioned matter took place on February 10; February 16; March 15 and March 23, 1972, in conference quarters of the School District Administration Building located in Midland, Michigan. The parties were afforded full opportunity to develop the issues, present their proofs and complete their arguments. The hearing concluded at the end of the last session, enumerated herein, with the results recorded hereinafter.

\* \* \* \* \*

Bullock Creek School District

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STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
MEDICATION DIVISION  
DETROIT OFFICE

## Identification of Disputed Matters

The parties stipulated the issues in this dispute consisted of four items, as follows:

- Item 1: The Grievance Process
- Item 2: Maternity Leave
- Item 3: Hospitalization and Alternate Fringe, and
- Item 4: Duration of Agreement; Scope of Reopeners and Method of Ratification

\* \* \* \* \*

## Resolution of the Open Issues

In the course of the hearing, all items in dispute became resolved with the result that a complete Agreement between the parties was reached. The basis for the accord is mutual acceptance of the Employers *Proposed Master Contract*, dated 1-5-72 (Board Ex. #1) as modified in the Employer's revisions dated 3-22-72 (Board Ex. #2) and further revised in the final session, specifically as follows:

1. *Article VII - Leaves, Section A*, was amended by suffixing: *Absence due to pregnancy is not applicable to sick leave.*
2. *Article VII - Leaves, Section M*, was revised in the final session as set forth in Page 9 of the Final Draft of the Board's proposed Master Contract, dated 3-22-72 and identified as Board Exhibit #2.
3. *Article XII - Grievance Procedures* was revised in the final session as set forth on Pages 14 and 15 of the Final Draft (Board Ex. #2).

The crux of this settlement revolved around clear, mutual understanding as to the intent and projected implementation of *Step 5* therein which, by direction of the parties, the Fact-Finder was instructed to memorialize in this Report.

This is separately recorded, following this Summary account of the complete contract settlement.

4. *Article XIV - Compensation* was inserted in Board Exhibit #2 on Pages 18 through 23, as previously negotiated and separately agreed upon.
5. *Article XV - Insurance* was revised in the final session as set forth on pages 24 and 25 of Board Exhibit #2.
6. *Article XVI - Duration and Ratification* was revised in the final session as set forth on page 26 of Board Exhibit #2.

Thus, Board Exhibit #2 (the revised Proposed Master Contract dated 3-22-72) represents precisely and without change, the substance and contents of Board Ex. #1 (dated 1-5-72) except that, in the specific areas delineated herein, the substitutions, revisions and insertions prevail and take force and effect in Board Ex. #2 over the counterparts originally contained in Board Ex. #1.

\* \* \* \* \*

#### GRIEVANCE PROCEDURE - STEP #5

A most serious impasse issue in this case developed from the Association's obduracy in demanding final and binding arbitration as the terminal point to the Grievance Process and the Employer's unshaken resolution in rejecting the objective.

The expired Agreement (Joint Ex. #1) had provided, in Step 5 of the Procedure, as follows:

*If the aggrieved teacher is not satisfied with the decision or subsequent Board action, the aggrieved teacher shall have recourse to such other sources as provided by law.*

In the course of explaining the extent of the gulf between the parties in the dispute over arbitration, it was agreed that the impasse

wss disposed of by renewing the language of Step 5, as quoted above, and by, further, inserting time-limits and other modifications in the procedure. Step 5 was the fulcrum on which the impasse was moved into accord because the parties individually and mutually subscribed to and adopted the following intent and application as the force and effect the particular Step shall have in the renewal Agreement:

1. Arbitration is a dispute-settlement method provided for by the Statutes of the State of Michigan.
2. Step 5 is subject to future determination as to whether or not arbitration is a *source provided by law* for dispute-settlement to which an aggrieved teacher may have recourse.
3. The Employer does not concede or agree that arbitration is a *source* for an aggrieved teacher's recourse.
4. The Association does not concede or agree that arbitration is not a *source* for an aggrieved teacher's recourse.
5. The question as to whether or not arbitration is a *source* for a Grievant's recourse is open and subject to resolution by a judicial forum of appropriate jurisdiction.
6. If an appropriate court is called upon to and does decide the question, then an affirmative ruling establishes arbitration as the final and binding terminal point in the dispute-solving process of the contract between the parties. Conversely, a negative ruling bars mandatory arbitration as the final step in dispute-settlement under the Agreement.
7. In the event that the Association seeks to force a dispute to arbitration by serving a demand for the same on the Employer, the Association shall carry the burden of appealing to a court of proper jurisdiction for a ruling on the question to determine if the Employer must comply.
8. The Employer's refusal to accede to arbitration without prior issuance of a court ruling that arbitration is a *source* for a Grievant's *recourse*, shall not constitute a refusal to bargain and shall not be the basis for any unfair labor practices charge by the Association against the Employer.

Thus, in short, the parties overcame the dispute as to whether arbitration should be granted or denied by transferring the resolution of the question to a limbo of uncertainty unless and until a grievance lodges at Step 5 during the term of the Agreement and the aggrieved teacher seeks recourse to arbitration as another source provided by law for dispute-settlement. At that point, the question will be decided through the means outlined herein if the Association assumes the burden of resort to the courts.

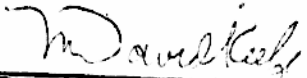
\* \* \* \* \*

Certification of the Settlement

The Fact-Finder hereby attests that the terms, conditions and understandings listed, accounted for, discussed and explained herein are, in fact, the terms, conditions and understandings reached by the parties before him in the hearings on the dispute.

\* \* \* \* \*

DATED: March 25, 1972  
Roseville, Michigan

  
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M. David Keefe, Arbitrator  
MERC appointed Fact-Finder