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1134 Michigan State University

MICHIGAN EMPLOYMENT RELATIONS
COMMISSION

In the Matter of the Fact-Finding Between:

*Much Fact
Finding
Opinions*

CLINTON BOARD OF EDUCATION

and

No. L75 E347

CLINTON EDUCATION ASSOCIATION

Hearing Held November 26, 1975

Before John B. Kiefer Esq., Fact-Finder
Appointed by the Michigan Employment
Relations Commission

Appearances:

For the AssociationRaymond Karbon
Clinton Education Association PresidentDuane Winter
Michigan Education Association
Executive DirectorHenry A. Schade
Chief-Spokesman
Clinton Education Association
Negotiating TeamOzzie Hashley
Clinton Education Association MemberJohn Jansen
Clinton Education Association MemberFor the Board of Education

Richard Wagner, Superintendent

Norman Randall, Vice President

Tom Carlton, Treasurer

Stanley G. Robertson
School District Auditor

Merry Duda, Business Secretary

FINDINGS OF FACT AND RECOMMENDATIONS

A prior collective bargaining agreement between these parties having expired on June 30, 1975, and a petition for fact-finding having been submitted by the Board of Education on October

29, 1975, the undersigned was appointed by the Michigan Employment Relations Commission pursuant to Section 25 of Act 176 of Public Acts of 1939, as amended, and the Commission's regulations to issue recommendations with respect to the matters in disagreement. The bargaining unit in question is composed of approximately sixty (60) teachers, has approximately twelve hundred twenty six (1,226) students, and is located in Lenawee County. At the formal hearing both testimony and numerous exhibits were ably presented by both sides. The unresolved issues in dispute are as follows:

A. NON-ECONOMIC ISSUE

The Association has proposed that the new contract provide for certain arbitration protection for probationary teachers. The expiring contract contains no such provision but the Association argues that there is a present gap in effecting informal resolution of probationary teacher dismissals since the court has held that the Michigan Teacher Tenure Commission does not have jurisdiction over such matters. The Association takes the position that the probationary teacher should be protected against arbitrary and capricious dismissals and that arbitration would be preferable and less expensive than resort to civil litigation.

The Fact-Finder was not supplied with the suggested language of such a clause, but the Association presented evidence that between 35% and 39% of contracts settled with School Districts throughout the State between 1973 and 1975, have contained some sort of arbitration protection for probationary teachers. In Lenawee County, four out of fourteen School Districts have such a provision. The Association admits that the relationship currently existing between it and the Board with regard to probationary teacher evaluation and dismissal, has been a good one, but asserts that a change in personnel in the future may reverse this good rapport and that a fixed procedure for arbitration would protect

the probationary teacher against such change.

At the hearing, the Board agreed that the present evaluation process is an informal one but also agreed that the Board would prepare a written procedure insuring due process and that it would submit it to the Association for its review and comments. In view of this spirit of cooperation between the parties which may result in an evaluation procedure obviating the need for an arbitration provision, the Fact-Finder recommends that the Association's proposal be rejected at this time.

B. ECONOMIC ISSUES

1. Accumulated Sick Leave Days

The currently expiring contract provides for accumulation up to one hundred (100) sick leave days. The Board is willing to extend this to one hundred five (105) days whereas the Association seeks to remove the limitation entirely. The Association points out that since the Board need only pay the teacher Ten Dollars (\$10.00) upon severance for each unused day (under the expiring contract), but must pay substitute teachers \$25.00 per day for their services, the Board should provide an incentive to regular teachers to accumulate sick days, instead of using them, and thus save Fifteen Dollars (\$15.00) per day. The Association also argues that under the terms of the present limitation, a teacher could be the victim of several short term illnesses and not have sufficient accumulation of sick leave days to cover the result.

Neither side submitted any exhibits or testimony showing comparable limitations of sick leave accumulation days in other Lenawee County School Districts nor throughout the State. Neither was there any evidence presented by the Association showing actual hardships resulting to its members in the past, because of such limitation in then existing contracts. Since the Association is urging a change in the expiring contract, the Fact-Finder feels that it must shoulder the burden of showing that the limitation is

inequitable or suffers from comparison with other School Districts. Having failed to do this, the Fact-Finder recommends that the Board's offer of accumulating one hundred five (105) sick leave days be adopted.

2. Personal Business Days

Although there was originally an impasse in attempting to agree upon the Association's demand that the new contract grant the teacher two (2) personal business days per year instead of one (1) day as provided in the expiring contract, the parties have now resolved this issue and the Fact-Finder adopts this resolution of the parties that there be two (2) personal business days.

3. Sick Leave Bank and Long Term Disability Insurance

The expiring contract (in Article XV) provides that, among other things, the Board shall contribute for each teacher, one (1) day to an illness and disability bank, to be administered by the Association and the Board. The Association has the right to determine whether a teacher who had exhausted his or her accumulated sick leave days, could reasonably "draw" on such bank to the extent of double the days banked in such teacher's name.

The Board now seeks to delete this sick leave bank and the Association counters with a proposal that long term disability insurance be substituted in its place if there were to be no bank. The Board introduced no evidence nor exhibits which might explain its reasons for deleting the provision. At the hearing, neither party showed any abuses nor failures occurring under Article XV. The Fact-Finder must thus presume that the sick day bank provision has been operable and viable and accordingly, recommends that the Board's request to delete it, be denied. This would render moot the Association's request for substitute long term disability insurance.

4. Health Insurance

The expiring contract under Paragraph 9 of Appendix 1 requires the Board to provide the premium for full family basic care not to exceed Forty Five and 44/100 Dollars (\$45.44) per month for 1973-74 school year and the lower of the premiums for Blue Cross or M. E. A. for 1974-75 school year. The Board is willing to increase the "cap" on the premium to Fifty Eight and 44/100 Dollars (\$58.44) per month, with the teacher paying any excess premium for more extensive coverage. On the other hand, the Association wants to continue to give the teacher the option of electing either Full Family M.E.S.S.A. or Blue Cross-Blue Shield, but wants to upgrade the coverage to M.E.S.S.A. Super Medical 2 or the Blue Cross equivalent.

At the hearing, there was some disagreement between the parties as to the comparison of rates for the three plans offered by each of the providers. The schedule submitted by the Association, however, showed the maximum full family premium for M.E.S.S.A. to be Sixty Eight and 92/100 Dollars (\$68.92) and for Blue Cross to be Fifty Nine and 91/100 Dollars (\$59.91) monthly. The Association's Exhibit 2 shows that the total cost to the Board of adopting the Association's demand would result in expenditure by the Board for the year would be Twenty Seven Thousand Ninety Six Dollars (\$27,096.00). The Association testified that this would result in an increase of approximately Seven Thousand Dollars (\$7,000.00) over last year (assuming that the teachers would continue to elect coverage with the same providers covering the same family units). However, the Board, on page 4 of its presentation, claims that the increased coverage requested by the Association will result in additional costs to the Board of Thirteen Thousand Five Hundred Twenty Seven Dollars (\$13,527.00). No explanation was given for this disparity by either side but the Fact-Finder is inclined to

rely on the Association's Exhibit 2 since it is detailed whereas the Board has merely set forth its total without back-up data. The Association also argues that half (seven out of fourteen) the Lenawee County School Districts have M.E.S.S.A. Super Medical 2 coverage (currently the more expensive of the two providers) and three (3) of the remaining Districts, did not negotiate a contract this year.

It appears to the Fact-Finder that the trend in providing health insurance to teachers in Lenawee County is toward those policies which provide the maximum coverage. Since the expiring contract gives the teacher the election of choosing his or her own carrier, this philosophy should be continued and the Fact-Finder recommends that the Association's proposal giving the teacher the election of choosing either M.E.S.S.A. Super Medical 2 or the Blue Cross equivalent, be adopted with the exception that a cap of Sixty Eight and 92/100 Dollars (\$68.92) be established on the monthly premium required of the Board, in order to limit its liability during the term of the contract..

5. Dental Health Insurance

The currently expiring contract contains no provision for the payment by the Board of any dental care insurance premiums for the benefit of the teachers. The Association now seeks to include such a provision and wants the Board to provide for the M.E.S.S.A. Delta Dental program. The Board resists this request citing no specific reason but cites the statistic that such a program would cost Fifteen Thousand Seven Hundred Sixty Seven Dollars (\$15,767.00) per year which would far exceed its budgetary limitations. On the other hand, the Association introduced Exhibit 3 which indicated that 103 School Districts out of 367 settlements in the fiscal year 1975-76 in Michigan negotiated contracts which contained dental care provisions. Although not highlighted by

either party, a cursory review of Exhibit 3 discloses that nearly all of the Lenawee School District contracts negotiated in 1975, contained no such provision. The Fact-Finder is impressed by the Board's fiscal problems as they relate to this desired fringe benefit. While it is true that dental coverage is a desirable benefit to the teachers and that no doubt a trend is developing in the State wherein School Districts are beginning to include such a program in their teacher contracts, it is also true that such benefits are expensive (as is evidenced by the Board's estimate of Fifteen Thousand Seven Hundred Sixty Seven Dollars (\$15,767.00) cost per year; uncontested by the Association) and, in this fiscal year for Clinton, such costs seem to exceed the Board's ability to pay. For these reasons, the Fact-Finder recommends that the Board's position be sustained and the new contract not contain a program for dental insurance coverage.

6. Extra-Duty Pay Schedule

The expiring contract (in Appendix I) provides for extra-duty pay ranging from a low of 4% for Play Director to a high of 12% for Athletic Director, and the Head Football, Wrestling and Basketball Coaches. The Association seeks to increase the percentages (mainly in the girls athletic fields) and to establish new positions and percentages. The Board was agreeable to some of these changes but seeks to limit the Assistant Girls Basketball Coach to 5% (of the B.A. scale); the High School and Middle School Cheerleading Advisor to 5% and the Elementary and Middle School Music teachers to receive no percentage.

The Board estimates that as a result of its agreement to new percentages it will cost an additional Six Hundred Sixty Six Dollars (\$666.00) while, if it accedes to the Association's entire demand, its budget will be increased One Thousand Four Hundred Thirty Three Dollars (\$1,433.00). The Association representative explained the reasons for its request by testifying that the

coaches, teachers and advisors have additional games, additional duties and evening work, to justify the increased percentages. The Fact-Finder was presented with no comparison figures with other Michigan or Lenawee School Districts. Nor did the Association explain how Title IX of the Civil Rights Act mandates equity for girls' sports if the pay scale applies to the teachers and those teachers may be either male or female for either boys or girls sports.

Again, since the Association has the burden of proof to convince the Fact-Finder that an increase is equitable and just, the Fact-Finder determines that the Association has failed to meet that burden and recommends that the Board's offer be accepted.

7. Adjustment to Present Salary Schedule

The Association has proposed that the teachers receive a 3% increase at each step of the current salary schedule and that the Board also pay the 5% Employee Contribution to Retirement Fund. The Board has offered to pay the 5% contribution to the Retirement Fund but wishes the present salary schedule to remain in effect.

Numerous exhibits have been introduced by both sides which are directed at the question of the Board's ability to pay the increased salaries (in addition to the fringes) demanded by the teachers. This seems to be the crucial question, as it is in most bargaining situations, where employees are seeking to compensate for shrunken purchasing power caused by inflation, and public employers are confronted with other increased costs also caused by inflation, as well as the reduction in revenue caused by the recession. Here, both sides generally agree that the Board shall enjoy an increase in revenue this year over last year of approximately Eighty One Thousand Dollars (\$81,000.00) and that the net revenue shall approximate One Million Two Hundred Twenty One Thousand Dollars (\$1,221,000.00). From this point of departure, however,

the parties quickly produce different figures and percentages. The Board claims that the teachers' historic percentage of operating revenue is 57% and thus they should be entitled to Forty Five Thousand Seven Hundred Nineteen Dollars (\$45,719.00) of the increased revenue, while the Association produces figures showing that the teachers should achieve 64.02% of the revenue and thus be entitled to Fifty One Thousand Nine Hundred Ninety Three Dollars (\$51,993.00) of the increased revenue.

Likewise, the Board contends that under its present budget which does not include the 3% increase demanded by the teachers, the General Fund Equity shall be reduced to Ninety Seven Thousand Seven Hundred Six Dollars (\$97,706.00) (Exhibit D), or 6.77% of the operational Fund Revenue (Exhibit D-3). This, the Board asserts, will bring the Equity dangerously low, but it feels it can live with such a deficit budget for one year only, recognizing that increased millage is essential for the following year. On the other hand, the Association has produced Exhibit 23 which is an analysis of the trends in operating expenses for the past five (5) years in Clinton, and which projects a General Fund Equity of One Hundred Fifty Two Thousand Six Hundred Thirty Six Dollars (\$152,636.00) at the end of the current fiscal year, which is 10.45% of the operational Fund Revenue. The Association relates this percentage to its Exhibits 21 and 22 which show the Lenawee County average to range from 8% in 1971-72 to 11% in 1973-74. The Association thus concludes that the Board is needlessly alarmed by its budget and that Clinton's Fund Equity is either on a par with, or exceeds the County average. The Association also points out, that in order to maintain its third position in the County (after Adrian and Tecumseh but before Blissfield), it must receive the salary increase. The Board counters this by claiming that Clinton's salary schedule is already superior to Blissfield for a

far greater number of teachers, without the salary increase, because Blissfield has only two tracts compared to seven tracts for Clinton.

Although the competing statistics might be confusing, two facts appear to stand out in bold relief. First, the Board will be operating with a clearly deficit budget which will substantially reduce its Fund Equity, whether we use either the Board's calculations or the Association's figures. This will be true in spite of the increased revenue over last year. Second, the teachers' salaries have not kept pace with the Consumers Price Index since the 1971-72 school year. How is it possible to reconcile this disparity between limited revenue on the one hand and reduced purchasing power on the other hand? Of course, the payment by the Board of the 5% retirement fund will help to bridge the gap because it is not subject to normal payroll deductions, and the increased health insurance benefits will also be of some assistance. But the Fact-Finder is of the opinion that these two benefits are not sufficient. In his opinion, no increase in basic salary would be inequitable and unfair, whereas, a 3% increase would seriously jeopardize the Board's financial stability.

Accordingly, the Fact-Finder recommends a compromise of 1-1/2% increase in an effort to accommodate the conflicting considerations.

Respectfully submitted,

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Dated: January 5, 1976.