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9/16/79

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- act Finders Report

and

Recommendations

Ferndale Board of Education

and -

Ferndale Education Association

Before

Kenneth Brinster
act Finder

Michigan State University
LABOR AND INDUSTRIAL
RELATIONS LIBRARY

Ferndale Board of Education

September 16, 1979

Fact Finder's Recommendations

Fond du Lac Board of Education

- and -

Fond du Lac Education Association

Having been appointed Fact Finder and Hearing officer in this matter, this report and recommendations is issued pursuant to procedural agreements entered into by the parties and the Fact Finder. (See attached.)

Prior to hearing which was held September 14, 1977, the Fact Finder participated in four pre-hearing conferences with the parties. The issues were eventually reduced to ten and testimony was introduced by the parties on each of the ten issues. While not a negotiable item, the primary and overriding issue in this dispute was ability to pay.

Procedure

After having participated in pre-hearing conference with the parties for the purpose of narrowing the issues and defining the positions on each, it was mutually agreed that each party would formulate its final offer on each issue and exchange the ~~same~~ offers on Thursday, September 13th.

It was hoped that this technique might produce an agreement. The parties were encouraged to negotiate on their last best offers. While some movement toward agreement did occur, the parties were unable to resolve their differences. The hearing was held as scheduled.

The parties agree that the fact Finder would recommend the last best offer, issue by issue, of the parties and that in the interest of producing an early report and recommendations, the fact Finder would not supply the reasons or rationale for his recommendation. The last best offers of the parties on the issues are attached.

Two issues were withdrawn from fact finding. The parties had agreed before the hearing that any agreement entered into would be for 3 years and they agreed to remove the issue of "capping" that portion of the salary schedule for the Ph. D and Educational Specialist Degree teachers.

Evidence was presented on ten issues and recommendation given on each.

While it was agreed that the fact Finder would not supply reason or rationale for his recommendations, it is important to discuss two:

important matters which go to the heart of the dispute. There are ability to pay and layoffs.

Ability to Pay

The Ferndale School District levies a property tax for current operations of 40.75 mills, the highest in Oakland County. Last June (1979) the voters in the Ferndale District approved a 3.50 mill increase. Additionally, taxes for 1979-80 were (1) increased for debt service and (2) to makeup for a tax rollback which had been offset by increased state aid. The total millage increase was 7.11 mills for current operations and debt service. There increases come on top of increased valuation of property.

Given these brief facts, it would appear that the Ferndale district would enjoy a rather good financial position in 1979-80. Additionally, it is readily apparent that the taxpayers/parents in the Ferndale District want a good incentive system and are willing to finance it by paying themselves.

But the matter does not end there.

The auditors for the Ferndale Board of Education

reported by letter (see attached) that the district would incur a budget deficit for the fiscal year ending June 30, 1979 of about \$500,000. The letter, dated August 30, 1979 introduced a paralyzing effect on the negotiation taking place between the Ferndale Education Association and the Board. The teachers struck the district on September 6th and the container. The budget deficit has now been determined to be \$459,396 in the official audit report.

But the 1978-79 budget deficit is the third consecutive deficit the district has incurred. In 1976-77, it had a deficit of \$17,425 and in 1977-78 a deficit of \$122,625. Thus the total accumulated budget deficit for the past three fiscal years is \$598,846, an amount which must be "eliminated".

State law forbids deficit budgeting and provides that if a school district incurs a deficit it must be eliminated "...not later than the end of the second school year after the budget was incurred." (1979 Statute Act § 102). Accordingly, the Ferndale Board is required to reduce its budget deficit by about \$300,000 during each of the 1979-80 and

1980-81 school years. It is possible that the State Board of Education will now monitor the spending in the Ferndale District to assure compliance with the statute. The Board indicated it plans to seek special legislation to provide more time to reduce the deficit since \$1300,000 per year is too large for it to work off.

The budget deficit, and need to eliminate it, are serious matters. But the Board must also not adopt or operate on a deficit for the next two years. These conditions place serious constraints on the Board and make collective bargaining difficult. Obviously the teachers are very frustrated by the budget deficit but do recognize that they must reduce their demands to make an accommodation.

Fixing blame for the budget deficit will do little to conclude this strike and reach an agreement. The board and administrative staff readily admit full responsibility for this embarrassing financial problem. The Board did suggest during the hearing that the teachers must also accept some of the blame. The relatively high salary ranking of the Ferndale

Teachers as compared with the low ranking of the taxable wealth behind each child served as the basis of the Board's assertion. Impulsively, the teacher sought and obtained salary and fringe benefits which were too expensive for the district. Deficit financing resulted. The Board's argument is weak.

First, the Public Employees' Relations Act does not compel a board of education to reach an agreement or make a concession. The Ferndale Board of Education agreed to part economic packages all by itself and cannot now shift the blame for its current problems to the Association.

Second, the Ferndale Board's practice of withholding fiscal information from the teacher's negotiating team created a climate in which the teacher had no other choice but to negotiate on the basis of salaries and other economic benefits obtained by teacher in comparable, neighbouring districts. It was evident to the last Finder that until the now infamous August 30th letter from the District

auditor that a deficit of \$500,000 for fiscal 1978-79 could be incurred were the Association ever aware of the District's problem. Indeed there was every expectation that the teachers believed the District had adequate financing. The request of the taxpayers to levy a 3.50 mill increase on themselves was favorably endorsed at the polls. ~~the~~

A brief review of some budget information will readily show that the Board has a serious financial problem and has not conducted a straw man for negotiating purposes.

In 1978-79 the District spent \$13,374,844 for current operations. If the same level of revenue is continued into 1979-80 and if it is assumed that costs would rise by 10%, the District would need \$14,402,328 for current operations in 1979-80. In addition, it will need \$300,000 more to reduce one-half of its deficit. Total expenditures for 79-80 would be \$14,902,328. ~~for 79-80~~

The Board reports that it expects to receive \$13,840,127 in revenue in 1979-80. (Incidentally, the Board quite accurately predicted its revenue for 1978-79). If current revenue are maintained and if the Board's estimated revenue are obtained, the budget

shortfall will be \$1,042,201.

The Board does have a financial plan for 1979-80 which shows it expects to spend \$13,738,464 an increase of \$463,800, or a 3.5% increase.

The Board did not describe its plan for curtailing its expenditures in order to meet its obligation to balance its budget and reduce its deficit. But throughout the hearing the Board emphasized that it must have the authority to lay off teachers during the current fiscal year. This important issue must be discussed in some detail in this abbreviated report.

The Lay-off Problem

Under ordinary circumstance a school district's administrative staff has a fairly good notion during late winter and early spring as to the district's financial needs during the next fiscal year. The Ferndale Board was advised that additional funds would be required for fiscal 19-80 and an election to increase the millage by 3.5% mills was authorized for early June. As a hedge against a deficit the Board, on April 10th,

authorized the lay off of 67 teachers per procedure included in its master agreement with the Association.

On June 13th, following the successful millage election, the layoff notices were recinded. It is this group of low seniority teachers, who were once laid off and then recalled, who will most likely bear the burden of additional lay offs if one occurs as the Board suggests.

The Tax Funder is unable to accept the Board's position for two substantial reasons. First, when the voters in Ferndale authorizes an increase in their local property taxes they must of been fully aware of the consequences of a millage deficit which would have been a reduction in services. An announcement went out from the voters that the Ferndale community wants to keep its current level of educational services. If a way must be found to balance the budget and reduce the deficit, the layoff of essential teachers is not a reasonable response to the taxpayer-parents in Ferndale.

Second, it appears to the Tax Funder to be

inappropriate and unfair to the 67 teachers who were laid off and then recalled to now change the language in the master agreement and subject these same people to a lay-off with 60 days notice this year.

The expired agreement restricted lay-offs to a 60 day notice requirement prior to the close of the school year, the lay off being applicable to the next school year.³ The purpose of the language in the expired agreement was to give teachers adequate notice so they could seek employment in other school districts during the teacher recruiting and employment season, which is late spring and early summer. The laying off of teachers in mid-year effectively restricts and possibly prohibits the teachers from finding employment in another school district until the next employment season. Those teachers who were laid off and recalled and who in good faith intend to teach in Ferndale do not deserve even the threat of a 60 day lay off during the school year.

The Fort Fender is not stating as a principle that school districts should never have authority to lay off

teachers with sixty days notice. But given the lay off - recall history in Ferndale last spring, the Board's own action has foreclosed the opportunity to lay off teachers during 1978-80 despite the district's financial plight. The solution to the Board's fiscal problems must be found somewhere else. Lay offs are not acceptable under these circumstances.

This memo does not raise the question of whether it would be legal to lay off language school teachers applicable in a legal sense. That reading is not the proper forum for the testing of contractual issues. It does appear that a reasonable legal theory could be developed and supported holding that the 60 day notice language for lay offs which was in the expense control effectively precludes any involuntary lay-off during this fiscal year.

First Finders Recommendations.

The Board's "last best offer" is recommended on the following issues:

1. SALARY
2. Blue Cross/Blue Shield insurance improvement and life insurance. (The Association's offer on the sub-issue of dental insurance is recommended.)
3. Longevity pay
4. Extra curriculum pay
5. Caps on department heads, counselors and psychologists pay
6. Elementary Teachers' Preparation Time

The Association's "last best offer" is recommended on the following issue:

1. Dental insurance (The Board's position on Blue Cross/Blue Shield and life insurance is recommended).

2. Day off notice
3. Extra contractual pay.
4. Vocational Education Teacher Pay
5. Class size.
6. Employee Bonus Plan

For a more detailed description of the offers see the attached "last best offer."

Because ~~sense~~ some misunderstanding accrued as to the Board's salary proposal the last Funder believes it is essential to describe how the plan will work. All Teachers' base salary will be increased by X. 6.5% for 1979-80 but because of the fiscal problems this year, 5.5% will be paid during 79-80. In July, 1980 the additional % will be paid in a lump sum amount.

The 1980-81 increase will be 9% built off a base but was increased by 6.5%. The following example

Illustrates the salary for a hypothetical situation
 Our hypothetical teacher received a base salary during
 1978-79 of \$15,000. Assuming no incremental increases,
 our teacher's salary base will be increased by 6.5% for
 1979-80 and will be \$15,975 (106.5% of \$15,000).
 The teacher will receive \$15,825 in salary payments
 during 1979-80, and a cash payment of \$150 in
 July.

The teacher's salary for 1980-81 will be
 \$17,412.75 which is 109% of \$15,975.

The plan will effectively postpone into the 1980-81
 fiscal year 1% of the earned teachers' salaries for 1979-80.
 Appropriate contract language must be drafted so as to
 meet statutory budget requirements.

Conclusions

This report has been presented in abbreviated form in order to issue it quickly. The reader should be made aware of the fact that the Test Funder spent many hours in pre-hearing conferences with the parties and was thus well informed on the issues in dispute prior to the formal one day hearing conducted September 14th. The Hearing however, proved very beneficial. It forced all those involved, including the Test Funder, to gather and study the data in an organized fashion. The individuals who participated in preparation of the exhibits and presentation of data at the hearing were very helpful. Particularly, the exhibits and information produced by the Association ^{early} on retirement, class size and mainstreaming, and elementary teacher preparation time were very well done and exceedingly helpful. The Boards administration and legal counsel were very cordial and responsive to my requests. Their briefs and exhibits were well done.

The parties cooperated with the Test Funder more than could be expected and for this I am indeed appreciative.

In particular, I want to thank Mr. Dickstein and Mr. Wolff for their personal and professional conduct throughout these difficult proceedings. They displayed a high level of expertise the Fast Finder often finds lacking in other state officials. Additionally, despite the deep animosity that existed, they never allowed their differences to become personal and thereby "log down" the bargaining process.

Finally, a comment about the value of these recommendations in settling this dispute is in order. These recommendations are said to be advisory, not binding, and thus may be taken too lightly. Such is not the case. The legislature, in creating fastfinding and funding it, has demonstrated its serious interest in resolving disputes in public employment. The appointment of a Fast Finding Hearing Officer, who is directed to conduct a hearing and make recommendations under that its state expects that the recommendation will be given very serious consideration. Given the fact that this strike has lasted for eight working days, exhaustive negotiation have taken place,

a fact finding hearing conducted by an impartial, neutral hearings officer, the state and the citizens of Ferndale expect a speedy resolution of this dispute. To repute this report, in light of the events of the past 2 week period and the continuing strike, would be irresponsible.

After careful study of the report the parties should come together and quickly dispose of the few remaining problems and reach a tentative agreement. The report will be given to the parties at noon, Sunday September 16th (which incidentally is the Fact Finder's birthday and settlement of this dispute would be a nice present). An agreement should be reached on Sunday so that school can open tomorrow, Monday September 17th. There is no other reasonable alternative.

Kenneth Grinstead
Fact Finder
Ferndale Matter

September 16th, 1979.

For any reader as to my fine spelling, grammar and punctuation errors, my apologies.

Procedures for Fact Finding ^(c) Page 1

The following procedures have been developed for Fact Finding Hearing to commence at ~~9:30 a.m.~~ 9:30 a.m., Sept 14th and be held in the Bd. of Education Room at 130 E. 9 mile in Ferndale Michigan. Ferndale Bd. of Edu - and Ferndale Edu Assn

1. The Board will make its presentation on all issues first, after making presentation on all issues, then Assn will make presentation in same manner.
2. Each party is restricted to making written and oral presentation on issues but cannot cross examine or ask questions about other parties' presentations. Fact Finder may ask question to clarify exhibits and presentation. Interruption will be kept to a minimum.
3. After parties each have made presentations, each side has maximum time for rebuttal of one hour. Board will make rebuttal first.
4. The Fact Finder will ~~not~~ recommend the last offer of one of the parties, issue by issue.
5. The parties will divulge their last offer for exchange at 12:00 P.M. Sept. 12th. It is agreed that the parties will negotiate their last offer in an attempt to reach final agreement it being understood that if

Procedures for Joint Findings (page 2)

a Joint Findings Hearing is held, the last offer presented on each issue will serve as the basis for joint findings recommendations. Whatever changes in position shall occur after 12:00 PM Sept. 12th will be set aside unless mutually stipulated to by the parties.

6. It is understood that the Joint Finder will make specific recommendations, issue by issue, accepting the last offer of one of the parties. It is further understood that the Joint Finder is not under any controls to accept ~~or~~ all of the position of one party on all issues while rejecting all positions on all parties. The Joint Finder will not furnish reasons / rationales for his recommendations.
7. The recommendations are not binding, but are advisory.
8. A report will be given in writing not later than noontime Tuesday, Sept 18th.

Sept 11th, 1979

Ray Webb
For the Board

James A. Kline
For the Assn

Kenneth Strubert
Joint Finder

FERNDALE EDUCATION ASSOCIATION

Last Best Offer1. Duration

2 years

2. Salary

	<u>1979-80</u>	<u>1980-81</u>
	7 1/4%	9 1/2%

Pay-out as follows:

	<u>1979-80</u>	<u>1980-81</u>
September - June 30 6%	July 1.25% (lump sum)	9 1/2%

The 1980-81 Salary Schedule shall be built on the 7 1/4% of 1979-80.

3. Insurance

- MESSA II health insurance and/. BC/MVF², MM4, \$2.00 co-pay drug riders.
- Retain 80-80-80 dental plus add internal/external coordination of benefits.
- Life, \$30,000.

4. Lay-Off Notice

Board must drop 30-day lay-off proposal and return to 1978-79 contract language.

5. Longevity, 1979-80

The percentage for longevity would drop so that the pay-out would be at:

	<u>MA</u>	<u>BA</u>
16 yr.	\$1,103.00	16 yr. \$ 976.00
21 yr.	2,206.00	21 yr. 1,951.00
26 yr.	3,309.00	26 yr. 2,927.00

The actual percentage will be based on the 1979-80 Salary Schedule.

FERNDALE EDUCATION ASSOCIATION

Last Best Offer (page 2)Longevity, 1980-81

The percentage for longevity would drop so that the pay-out would be at:

MA	BA
----	----

16 yr.	\$1,103.00
21 yr.	2,206.00
26 yr.	3,309.00

16 yr.	\$ 976.00
21 yr.	1,951.00
26 yr.	2,927.00

The actual percentage will be based on the 1980-81 Salary Schedule.

6. Extra-Curricular Pay

1979-80 \$11,000 to be distributed on the Extra-Curricular Schedule as percentage increase. This is in addition to the roll-up factor in the Schedule.

1980-81 No further increase.

7. Extra-Contractual Pay

Add 33¢ per hour to the current capped amount for the 1978-79 year.
Add 50¢ per hour to the 1979-80 capped amount.

8. Board must drop proposal for caps on department heads, counselors, and psychologists.

9. Vocational Education Teachers Pay

Revert to 1978-79 contract language.

10. Class Size

Retain 1978-79 contract language and reduce elementary number by one in each category.

minimum
for 4 classes

22

FERNDALE EDUCATION ASSOCIATION

Last Best Offer (page 3)

11. Elementary Teachers Preparation Time

The Board shall provide 140 minutes of guaranteed released preparation time per week. This is a guaranteed increase of 50 minutes per week over the 1978-79 contract.

These planning periods shall be provided in blocks of time no less than 20 minutes each.

12. Employee Bonus Plan

--Ages to be implemented 55-65.

--10-year pay-out or to 65 years of age, whichever comes first.

--Must have taught 11years in Ferndale.

--Pay-out as follows:

a. \$25.00 per sick day saved up to a maximum of 75 days (maximum amount is \$1,875.00).

b. \$3,500 per year up to a maximum of 10 years or 65 years of age, whichever comes first (maximum amount would be \$35,000).

13. Ph.D. -- Specialists' Cap

Board must drop proposal for a cap on the above and return to language of 1978-79 contract.

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Last Best offer of the Board of Education

Contract Duration - Two years DPP

Salary Amounts

A) First year.

1) 5.5% on schedule

B) Second year

1) 1% of 77-78 step (schedule amount) paid to each teacher who completes the school year,
payment to be made in July.

2) 9% on schedule.

Health Insurance

a) Blue Cross-Blue Shield - add VST, RPS, and FAS Riders to current coverage. No other changes in coverage or language.

b) Life Insurance - add \$2,000 to current coverage.

Layoff Notice

"The Board will provide such notice as may be required by law and in no event will less than sixty (60) ~~days~~ calendar days prior to the ~~start of~~ effective date of the layoff.

Loyalty Pay

Cap Loyalty pay at 78-79 contract amounts

c) Extra Curricular Pay

\$7,000 dollars to committee to correct inequities in current percentage amounts in Schedule A. Such amount to be converted in the 77-78 school year.

B6 B) Extra Contractual pay

No Change in current amounts.

7) Department Heads, Counselors, School Psychologists

Cap payment to current level of extra pay. Cap is on absolute ~~H~~ ~~but not~~
7 is left out.

8) Vocational Education Teachers

Payment to those teachers who teach a course that is approved and reimbursed by the STATE Department of Education. The teacher must be a certified Voc. Ed. Teacher.

9) Class Size

a) No change in current contract language on class size.

b) No change in current contract language regarding mainstreamed children.

10) Elementary preparation time.

No change in language

11) The Board will provide for an Early Retirement program for employees who qualify for Michigan Retirement as per attached plan.

12) Ph. D. & Specialist Degree pay

pay to be maintained to current amounts. DRP

BOARD

September 9, 1979

EARLY RETIREMENT

The Board of Education agrees to pay to each eligible member an early retirement plan according to the following conditions.

An employee, to be eligible for this retirement plan must have been employed by the School District of the City of Ferndale for 10 years and qualify for retirement under the Michigan School Employees Retirement System and have filed for such retirement. A teacher who files for and/or receives unemployment benefits following retirement shall not be eligible for the retirement plan up to 65 years of age.

EARLY RETIREMENT PROPOSAL

Age at Time of Retirement	Flat Dollar Amount	Sick Day Allowance % of Unused Days	\$ Rate for Days Paid
55-57	\$12,000	85%	\$40
58-60	8,000	85%	40
61-63	4,000	85%	40

The annual dollar amount paid to an individual under this early retirement plan will equal the flat dollar amount and the sick day allowance divided by three (3). This amount will be paid in three (3) equal annual installments during the first three (3) years of retirement.

The total dollar amount paid to an individual under this early retirement plan will equal the flat dollar amount and the sick day allowance.

P.

In order to be eligible for benefits under this plan, the teacher must complete the full school year of teaching, if so requested by the BOE. Furthermore, the teacher must give notice of his/her intention to participate in the Early Retirement Plan to the Board of Education no later than 90 days before the end of the school year.

This 90 day notification requirement may be waived by the Board of Education if the Board feels that there are extenuating circumstances.

For purposes of computing allowances under this plan, the individual's age will be their actual age on the last day of school of the school year in which notification was given to the Board of Education. Benefits under this plan will be effective as of July 1 immediately following the school year in which notification was given. The first annual lump sum payment will be paid to the individual on the January 15th immediately following this effective date (July 1st). The second /third payments will be on January 15 of the next two years.

Should the payment of funds under this provision be declared illegal, the Board's obligation to any present employee or retired employee shall cease.

ISSUES.

9:30 PM (26)
met again

1. DURATION OF AGREEMENT.
2. SALARY-SCHEDULE
3. INSURANCES-

4. LAY OFF NOTICE
5. LONGEVITY PAY.
6. EXTRA CURRICULAR PAY (~~CONTRACTUAL PAY~~).
CONTRACTUAL PAY.

7. DEPT HEADS / COUNSELORS / School Pay.
CAP.
8. VOCATIONAL EDUCATION TEACHERS PAY.
9. CLASS SIZE

10. ELEMENTARY TEACHERS PREP TIME

11. EMPLOYEE BONUS PLAN.
(EARLY RETIREMENT).

12. P.V.D. SPECIALIST PAY CAP.